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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION ON THURSDAY, 5<sup>TH</sup> MAY, 2011  
AT CAVALLERA PASTORAL CENTRE, MARSABIT**

**PRESENT**

<b>Ronald Slye</b>	-	<b>The Presiding Chair</b>
Tecla Namachanja	-	The Acting Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Gertrude Chawatama	-	Commissioner, Zambia
Tom Ojienda	-	Commissioner, Kenya
Margaret Shava	-	Commissioner, Kenya

*(The Commission commenced at 9.20 a.m.)*

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

*(Opening Prayers)*

*(The National Anthem was sung)*

**The Presiding Chair** (Commissioner Slye): You may be seated. I want to welcome all of you to our second day of public hearings here in Marsabit. Yesterday, we heard a number of witnesses, the first two of which set out the legal framework for the historical injustices that had been suffered, not only here in Marsabit, but in the entire northern region.

In addition to those two witnesses, we heard a number of individual witnesses who spoke about specific incidences of violation of their rights here in Marsabit and the surrounding areas. We heard about extra judicial killings, ethnic conflict, torture and prolonged detention, lack of access to justice and environmental degradation and violation that resulted from the dumping of toxic or otherwise hazardous waste in this region. Today, we will continue to hear from individual witnesses with the respect to specific violations in this region.

Before we get started, I would like to state a number of ground rules. First, I would like to ask those of you with mobile phones to, please, switch them off. If you need to take a phone call, or enter into a discussion with your neighbour, we ask that you, please, leave the room to make that phone call or to engage in that discussion.

Secondly, we are here to listen to the witnesses that have agreed to testify in public. They will be testifying in public before you, but also before the rest of Kenya through the coverage that the media is providing to us. We ask that you respectfully listen to them and that you do not disrupt their testimony in these proceedings. They may testify to

things of which you are not aware, or they may testify with respect to something that you are familiar with. Their experience may or may not be the same as yours. We ask that you listen to them respectfully even if what they say is different from your understanding of the history of this region. Can I also ask those with cameras, including members of the media, to only take pictures of the witnesses before and after they testify? Please, do not take pictures while they are testifying. Any person who does not cooperate with these ground rules will be politely asked to leave the premises.

The process that we will follow this morning is similar to the process that we used yesterday. Witnesses will come forward, and they will take an oath. The leader of evidence will then question the witness and lead the witness in his or her testimony. After the evidence and leader has finished questioning the witness, the panel may then ask additional questions.

May I now ask if there any counsel present representing any individuals? If so, could they, please, identify themselves and the individuals who they represent?

**Mr. Nyamu Nyaga:** My name is Nyamu Nyaga. I am appearing on behalf of----

**The Presiding Chair** (Commissioner Slye): Thank you, counsel. When we get to your witness, we will ask if you have any preliminary issues that you would like to raise with us. We appreciate you being here representing your client.

**Mr. Nyamu Nyaga:** Most obliged your honour. There are some issues that I would like to raise before my clients are called.

**The Presiding Chair** (Commissioner Slye): That is fine. So when we get to your client's case, we will then ask you to present those arguments. I see no other counsel present, so I would like to ask the hearing clerk to, please, swear in the first witness.

**Mr. Patrick Njue:** Commissioners, our first witness is coded 006.

*(Ms. Abdullahi Shongolo took the oath)*

**Mr. Patrick Njue:** Mama, good morning? Kindly state your name, once again, for the record.

**Ms. Abdullahi Shongolo:** My name is Abdullahi Shongolo and I live in Turbi.

**Mr. Patrick Njue:** You are here this morning following a statement you recorded with this Commission on violations that you went through as a family. The same was in relation to an extra judicial killing that occurred in Turbi and is now famously known as the Turbi Massacre.

**Ms. Abdullahi Shongolo:** In July, the school and *manyattas* were invaded and my son who was in class eight was killed. Many children and women were murdered. There was

nowhere we could run to, so we stayed in the same place. There were only two administration police men and Marsabit, Sololo and Moyale were very far so the rescue team could not come immediately. The raiders stayed in our village up to 2 pm and eight people were killed. Their bodies were buried. We had no water or any dispensaries, but we were patient. The Government did not help us. An airplane carrying the NTV crew came. The plane that carried the soldiers stayed in the hills and they saw the people who had been killed and the animals that were being driven away. Nobody came to our rescue. We asked ourselves why we were not rescued yet we were born in Kenya. Just imagine 21 children were killed. These children were supposed to be the future leaders of this country.

We are asking the Commission to recommend that we be compensated because everything I have said is the truth. We know the people who killed us, but we do not know why they did so. We want the truth to be revealed. I have nothing more to say. We just want to be heard and to tell our fellow people to embrace peace. We want people to live peacefully and in unity. I would like to ask the Government to ensure that such a thing will not happen again in this country. We do not own any shamba and the only work we are doing is to collect firewood for sale. I have eight children. They have all gone to school except the one who died. I want to thank you for coming and I want God to reveal the whole truth to you.

**Mr. Patrick Njue:** That is the reason why we are here today because we want the truth to be told, so that we may find healing within ourselves.

I empathize with what you went through as a mother and as a community. I am sorry to relieve this memory, but I ask that you bear with me as I ask a few questions just to clarify what it is that you told us.

Going back to this day, you said that it was in July. Could you remember the date and the year?

**Ms. Abdullahi Shongolo:** We were raided on 12<sup>th</sup>. It is now six years since then

**Mr. Patrick Njue:** I take then that it was 2005. These people who raided you, who were they?

**Ms. Abdullahi Shongolo:** We do not know the real raiders because we were running away, but they spoke in the Borana Language. We could not identify who they were because they were attacking us.

**Mr. Patrick Njue:** Looking at them, how did they look like? Were they dressed in uniform and what weapons did they have?

**Ms. Abdullahi Shongolo:** Four of the raiders died. They were all in uniform. The people who were telling us to run away because the raiders had come were Boranas.

**Ms. Abdullahi Shongolo:** They were speaking in Borana Language telling us to run away. They directed the animals towards the Ethiopian border. It is not easy for me to know who these people were because they were moving towards Ethiopia. I could not identify them then because my life was in danger; I was running away.

**Mr. Patrick Njue:** Were they armed?

**Ms. Abdullahi Shongolo:** They were armed though we did not see the people who were killed with guns, but the people who followed them said that they were armed with AK 47 rifles.

**Mr. Patrick Njue:** At the time of the raid, would you confirm that you were at home in the *manyatta*?

**Ms. Abdullahi Shongolo:** I was not at home at that time. After preparing tea for my children, the raiders came and I did not know what was happening because I was running for my safety. I am telling you the truth. It is only God who will reveal the truth.

**Mr. Patrick Njue:** I do agree and the fact that you took the oath, you swore to tell the truth. So, I do not doubt that you are telling the truth. Confirm the time that this was taking place.

**Ms. Abdullahi Shongolo:** The first shot was fired around 6.00 a.m. It continued until 9.30 a.m. There were no vehicles coming from Marsabit or Moyale. It is as if the perpetrators colluded with the Government. That is why we could not be rescued on time. The Government is supposed to have rescued us because it has all the necessary machinery needed to do so. We have been patient and we are asking God to reveal the truth. We are speaking about the pain that was inflicted on us.

We want the truth to be revealed and we want to be compensated. We do not want a person who violates the law. That is why we want peace to prevail. The Government has not made any effort to get to the bottom of this. How can people come from Ethiopia to attack us in Kenya and yet, Kenya is a sovereign state? We are not refugees. I was born in Kenya. When Kenyatta became President, I was four years old. I have voted in this country and I hope that the truth will be revealed.

**Mr. Patrick Njue:** I am still going back to the events of that day. When your children left for school, did they make it to school?

**Ms. Abdullahi Shongolo:** There were some who ran away while others ran back to the village and the raiders followed them up to their houses. They killed some of them. Others ran to the bushes and they were killed there.

**Mr. Patrick Njue:** About your son who was killed and who I am really sorry for, where was he when he was killed?

**Ms. Abdullahi Shongolo:** My son was killed in the house. They were four of them in class eight and all of them were killed. I cannot revenge for his death and I have left it to God. I am asking the Government or the Commission to write the truth because I do not want war.

**Mr. Patrick Njue:** By the end of this raid, approximately how many people would you say were killed in Turbi?

**Ms. Abdullahi Shongolo:** Twenty one school children were killed and ten other people were also killed in the outskirts.

**Mr. Patrick Njue:** You have also come out strongly to say that you did not see any help from the Government at the time of the attack. Were there enough Government personnel prior to the raid at Turbi?

**Ms. Abdullahi Shongolo:** We did not get any help. We were given maize by the NGOs. It is them who helped us. We did not get any help or support from the Government. We were dying because of them. We got Independence many years ago, but still we do not have clean water. It is very sad that we are sharing water with animals.

**Mr. Patrick Njue:** Did you have security people, for example, an AP post or a police post at Turbi at the time of the attack?

**Ms. Abdullahi Shongolo:** At the time of the attack, there were only two Administration police officers and we asked for more soldiers from the DC's office. We felt that because our community is very small, then may be that was why the Government was not helping us. We are a minority group. May be that is why the Government does not identify us as the real citizens of this country.

**Mr. Patrick Njue:** You have also told us the problems that your community faces at Turbi, for example, lack of water and health facilities.

**Ms. Abdullahi Shongolo:** We do not have hospitals. When women in labour are taken to Sololo, most of them die on the way. We do not have any development worth mentioning. The Government is not making any effort to help us. Sometimes we take expired drugs because we do not know how to read the prescription. We just put our hope and trust in God because no human being can assist us.

**Mr. Patrick Njue:** I want to thank you, Ms. Shongolo, for your testimony. Indeed, I want to confirm that as you speak today, you speak on behalf of many other women and community members, who similarly suffered and continue to suffer from this very ugly incident of the day.

I will ask that you hold as our commissioners may have a question or two to just clarify what you told us today. Once again, I thank you.

**The Presiding Chair** (Commissioner Slye): Thank you, leader of evidence and mama for coming here and speaking on behalf of the women of Turbi and the people of Turbi. We appreciate, and I am somewhat in wonder at your ability to continue to seek and call for peace given the way your community has suffered. We admire your strength and fortitude pushing for peace and reconciliation even though you suffered a terrible tragedy. I would like to ask my fellow commissioners if they have any additional questions to ask you.

**Commissioner Ojienda:** Thank you, mama Hawa, for your testimony. I want to join The Presiding Chair in thanking you for finding that strength to speak about the loss of your son in 2005. The Commission had occasion to visit the site at Turbi and we had time to hear from you. However, having said that, what expectations do you have of the Commission, beyond your call for lasting peace? What would you want the Commission to specifically recommend?

**Ms. Abdullahi Shongolo:** I want the truth to be revealed and I am expecting justice to be done. All our animals were taken away and we now have nothing. We still want the truth to be revealed after this investigation.

**Commissioner Chawatama:** Mama, thank you so much for your testimony. I admire your strength. I cannot imagine what it was like for you on that day when you lost your son as well as the other mothers who lost their children. In your own word, these children represented the future. I would like to hear from you what the 13<sup>th</sup> day of July is like. It is like the second day in your life?

**Ms. Abdullahi Shongolo:** It was a very bad day for me. After talking to this Commission, it is as if all that happened today.

**Commissioner Chawatama:** I would like to hear from you, personally, in the days that followed (inaudible)

**Ms. Abdullahi Shongolo:** I lost my son who could have helped the tribe. It is by the grace of God that this happened to me and I have left it all to Him.

**Commissioner Chawatama:** Was there anybody from the Government who approached you?

**Ms. Abdullahi Shongolo:** Nobody has ever approached or consoled me.

**Commissioner Chawatama:** Nobody asked you what happened before the members of the Truth, Justice and Reconciliation Commission?

**Ms. Abdullahi Shongolo:** It is only the NGOs who came to me, but nobody from the Government came to us. It is as if the Government did not want to give us any help.

**Commissioner Chawatama:** I am sorry for questioning you on things that obviously make you very sad. I hope that by talking about it, that you are experiencing some relief of your pain. Thank you.

**The Presiding Chair** (Commissioner Slye): Mama Hawa, I also want to express my sorrow to you for your loss and my admiration for your willingness to come here and speak to us. Abdi Tura was your son who passed away on that day?

**Ms. Abdullahi Shongolo:** His name was Adano Tura.

**The Presiding Chair** (Commissioner Slye): We never had the pleasure of meeting your son. I wonder if you would like to tell us who he was.

**Ms. Abdullahi Shongolo:** My son was a very clever boy who used to help me all the time. On weekends, he used to fetch water and firewood for me. He was 14 years old. He used to help me in all the domestic chores and he used to do a lot of things for me.

**The Presiding Chair** (Commissioner Slye): Do you have a favorite memory of him that you would like to share with us?

**Ms. Abdullahi Shongolo:** Let me rest for some time.

**The Presiding Chair** (Commissioner Slye): I want to thank you again for sharing your pain with us. You have called for peace and reconciliation. Thank you very much Mama Hawa. Clerk, can you bring in the next witness?

**Mr. Patrick Njue:** Hon. Commissioners, our next witness is coded 007.

*(Ms. Elizabeth Killi Jirma Talaso took the oath)*

Good morning mama. I want to welcome you to today's session. Kindly, to begin, please, state your full names for the record.

**Ms. Elizabeth Killi Jirma Talaso:** My name is Talaso Jirma and my Christian name is Elizabeth.

**Mr. Patrick Njue:** Elizabeth, where do you live?

**Ms. Elizabeth Killi Jirma Talaso:** My place is Turbi and I have lived in Turbi since I was born.

**Mr. Patrick Njue:** Mama, you are seated there today because you recorded a statement with this Commission about what is known as Turbi massacre. Is that the case?



**Ms. Elizabeth Killi Jirma Talaso:** Yes; there are so many things which have been written. About two to three times, different people have come to us and have extracted statements from us.

**Mr. Patrick Njue:** Specifically, I want to talk about the statement you recorded with this Commission. I would like you to take us through the events of this very day, in so far as you are able to remember. You should begin by telling us the day, the month and perhaps even the year that incident took place.

**Ms. Elizabeth Killi Jirma Talaso:** To know what happened is the problem of Turbi. There are very many problems which actually happened in Turbi such as war, health and water. There are so many problems. I have been in Turbi since 1973. Since I was born, I have lived in Turbi. The first time I settled in Turbi, there was no water and there were no dams; people climbed up the hills. We struggle for the scarce water with the hyenas and the monkeys. There are no permanent water sources.

That time, I did not give birth to any child. My husband and I actually bore children, but all of them and our grandchildren went through the same problems we underwent. We have a lot of problems, especially of water. People and NGOs actually come to us. They can give us water and we normally answer the same questions, but nothing has been seen or done.

**Mr. Patrick Njue:** We have heard about the water problem, and I wanted us to begin on that important thing we recorded, which is the Turbi massacre.

**Ms. Elizabeth Killi Jirma Talaso:** What happened that time, at 5.30 a.m., when we woke up and children were going to school was war. The raiders who came were speaking Kiborana. They said: “We have come; move out of your houses if you want to save yourselves”. We asked them: “Who are you? How can people who come and massacre people tell us to get out of our houses?” They told us: “The raiders have come; come out of your houses”. We wondered how somebody who raids you could tell you they are raiders. So, when we came out of the houses, children who could have run away and saved themselves, we told them not to run away because they were telling us they were homeguards, and that we should not run away. They said they were looking for the people who had come to raid us; so, even our children who could actually have rescued themselves, we told them not to run away.

We talked and agreed that these were not raiders, because they were not armed people. We asked our people to come back and not to run away. Our animals were taken away; our people were killed including very old people aged 90 years, breast feeding children, school children and others. Others were killed in front of their classes and while in uniform. The Red Cross people came and took photos of them. That was the way it happened. There were women who were in labour pains, and they were killed despite midwives being there to help them.

There was a mother who was in labour pains and had a midwife known as Kardhoroba Sharavu, she was also killed in that condition. The mother of Sharavu and a midwife called Gudid Jaro was there. Their children and the husband, who was with the animals out there, ran away, but she was killed there and then. The animals were taken away and the people who were injured and others who were unconscious were carried to the road. We told the priest of Sololo that our people had been killed and asked him whether he could take the injured to the hospital, but he refused and proceeded on with his journey. I sat amidst the people injured and dead people and cried. I appealed to God to come to our mercy, so that justice could be done.

I do not know whether that father is still alive. We happened to be in the same parish, but he did not help. We sent our petition to the Government and soldiers came in two days time in airplanes. Although we could see the animals, there were no recoveries made by the Government soldiers. I can remember that the PC from Embu came with our MP, Dr. Bonaya Godana, and they sought to know our problems and why this had actually happened. They asked that question and we told them we did not know what caused the problem as these people were neighbours, and we used water resources together. We had been grazing animals together and their children and ours went to the same schools. We asked our PC to dig into the root cause of this problem, look for the animals which had been taken away and see how they could compensate us for the lost lives. The PC stood up and told us there was a problem in every place but they would look into the root cause of the problem. Even if there are problems in a whole society, they had not seen people who come and kill children and women in labour pains; because children had been killed alongside their mothers. They had not seen that kind of massacre, even though they had been seeing wars; they were Kenyans born in Kenya but they had never seen that kind of a massacre. I was the one who spoke to the DC and I told him since Independence, I had lived in the country but I had not seen that kind of a problem before. I was born in Kenya and I had not seen such kind of a problem. I asked him to look into our rights and look for ways and means of solving our problems. Since the DC left, we have not seen any Government agency or personnel, or any help from the Government. The next time we saw the Government was during the elections because people came to us looking for votes. When they came asking for votes, they were in aeroplanes, yet they were unable to recover our animals. They came and asked us to give them our votes, but we told them when our animals were stolen and we were killed, they never assisted; so, how could we possibly give them votes?

They told us that we had voted for the KANU Government, but now the Government would be a new one, and that the animals which had been taken would be returned, and that those who had been killed would be compensated. They said the animals were not far, but they were within the borders of Kenya and Ethiopia and they would be returned. Minister John Michuki told us that he was the one who was going to look for our animals; we just vote for them and then we our animals would come back, otherwise we could question them. That was what Michuki told us. We voted for them because we thought that our animals would actually be returned and our people would be compensated, and they formed the Government. After voting for them, we have never seen them with our eyes.

**Mr. Patrick Njue:** We have heard your story, especially the sad bit about the losses that, as a community, you suffered, the empty promises that were made to you, and that you now bitterly lament about. I will ask you two questions just to clarify what you have told us today. First, you said that many people were killed and livestock driven away. You, personally, what is the loss that you suffered?

**Ms. Elizabeth Killi Jirma Talaso:** We had lost our people who were killed including my brother, my mother, my brother's wife was killed and their children were also killed. We have also written all those names. I also wrote that in the statement that I gave.

**Mr. Patrick Njue:** And what about livestock, that which you personally lost?

**Ms. Elizabeth Killi Jirma Talaso:** I cannot remember the number of animals which were taken but I have written in the statement that I have recorded with you. I have put the number of all the animals and the people who were killed in the statement I presented.

**Mr. Patrick Njue:** If I may read for you what it is that you wrote maybe this might serve to remind you and you can confirm. You talked of 200 goats, 250 cows, 8 camels and 5 donkeys. Was this your personal loss or the loss of the community?

**Ms. Elizabeth Killi Jirma Talaso:** Those people who asked me asked about the whole village but those are actually animals which were taken from my house.

**Mr. Patrick Njue:** As you sit there today what are you asking this Commission to do for you or for your community?

**Ms. Elizabeth Killi Jirma Talaso:** This is what I want. Those who remained have no parents or shelter and the animals were taken away from them. We have children who were left behind and whom we are trying to educate. If it is a daughter, I am the one who gave her out for marriage, and if it is, a boy I did the same thing. Those children have no shelter and I want them to be given shelter. Somebody who does not have a shelter has no place to stay. I want them to be given shelter, so that they have a place to live in when they come from school

**Mr. Patrick Njue:** Thank you once again for your testimony. The commissioners now may want to ask you a question.

**The Presiding Chair (Commissioner Slye):** Thank you, mama, for your testimony. Can I, please, ask, what are your names?

**Ms. Elizabeth Killi Jirma Talaso:** I have written my names. I will just be patient as I am feeling very sad. There are no other names which I can give to the Commission now.

**The Presiding Chair** (Commissioner Slye): Thank you, mama, for coming here and speaking to us. We appreciate your sacrifice to come here and testify. I would like to ask my fellow commissioners if they have any questions to ask you.

**Ms. Elizabeth Killi Jirma Talaso:** I have written some names there. Have you seen them? You can read the names I have given, or the testimony I gave before the Commission, so that you can help us.

**The Presiding Chair** (Commissioner Slye): We have seen your names and we have them. What kind of problems do you have, and how would you like to be assisted? Do we address you by the name Elizabeth or Talaso, or which one?

**Ms. Elizabeth Killi Jirma Talaso:** My names on ID is Talaso Jirma. That is enough.

**Commissioner Ojienda:** Thank you, mama Talaso, for your testimony. We share the pain that you went through, but thank you for giving a detailed testimony of what happened on the 12<sup>th</sup> of July, 2005. In your testimony, you have identified certain people were at the centre of this massacre? Do you recall those names, the ones you wrote in the statement?

**Ms. Elizabeth Killi Jirma Talaso:** There are some people who came to the village; they were arrested by the Government and taken to the court. Some people asked me the names of the people who were arrested, but I have not gone to the court, though I heard there were people who were arrested and later released. I do not know how they were released or what happened in court. When somebody has been taken to court there is cross examination; there are some people who know the procedures of the court and who actually go to court. I have not known who were taken to the court, but I have told them what happened during the massacre.

**Commissioner Ojienda:** Thank you very much, we are just about to break again. Did you know or identify any of the people who attacked you? Had you seen any of the attackers before the date of the attack?

**Ms. Elizabeth Killi Jirma Talaso:** That particular time I could not identify the people as they were violent, but I have heard about the people who have been arrested, but, personally, I cannot actually say who they were.

**Commissioner Ojienda:** You said you lost livestock; that is, camels and sheep. Have you recovered from that loss to date?

**Ms. Elizabeth Killi Jirma Talaso:** There is nothing that I have ever been given as compensation. To date, nothing has been recovered.

**Commissioner Ojienda:** Lastly, Mama Talaso, I want to ask you one question; you have said that the Government did not act as you would have expected them, what would you like this Commission to do by way of recommendation to better secure the community?

**Ms. Elizabeth Killi Jirma Talaso:** We want to be compensated. I want compensation for those lost persons and my family.

**Commissioner Chawatama:** Thank you so much for your testimony this morning. Thank you for giving the Commission a statement and for agreeing to speak at a public hearing. We know that so many victims have not received the help that they should have received to get over their losses, namely the loss of loved ones and the loss of property. I have one question to ask you. You mentioned in your testimony that you belonged to a parish and that you spoke to the Father of the parish, to whom you appealed for help and this help was not given. What is the name, if you can remember, of this Father?

**Ms. Elizabeth Killi Jirma Talaso:** It is long ago; I cannot remember his name.

**Commissioner Chawatama:** Was the Father a Kenyan?

**Ms. Elizabeth Killi Jirma Talaso:** He was a Kenyan; he lives in Sololo. He has been in Sololo for so many years. He always comes for prayers at our place and we pray together. We have been in the same parish for so many years.

**Commissioner Chawatama:** How did you feel when you failed to get help from the Father who comes and prays with you?

**Ms. Elizabeth Killi Jirma Talaso:** I felt very bad. I cried and said what I could not have said to the Father. I told him the accident which actually happened to me, and cursed him, I wished that what had happened to me befall him too. In the tradition of Christianity, I should not have said that, but it was out of the stress. I was in at that time. I also prayed later after that so that God forgave him and me too.

**Commissioner Chawatama:** It is six years since the incident; have you spoken to the Father about what you felt on that day?

**Ms. Elizabeth Killi Jirma Talaso:** I have not seen that Father, but I have seen another Father, George, who came to our place.

**Commissioner Chawatama:** I am happy for you, happy that you were able to ask for forgiveness, because you said that you said words that you would not have ordinarily said, and that is the heart of a Christian. I thank you for your testimony.

**The Presiding Chair (Commissioner Slye):** Thank you, Mama Talaso. We met you two days ago in Turbi and you narrated about the terrible day in 2005. I want to again thank you for having the courage to come forward, and speak to us in public and share your story with us. Thank you very much. May I ask the Hearing Clerk to take the witness back to her seat.

**Mr. Patrick Njue:** Honourable commissioners that will be the first session for this morning in terms of public hearing, and then we will take a break.

**The Presiding Chair** (Commissioner Slye): We will take a brief recess and then come back.

*[The Commission adjourned temporarily at 10.40 a.m.]*

*[The Committee resumed at 11.25 a.m.]*

**The Presiding Chair** (Commissioner Slye): We now resume this morning session, the second day of the hearings in Marsabit. Please, be seated.

May I ask the Hearing Clerk to, please, swear in our next witness. Thank you.

**Mr. Patrick Njue:** Commissioners, this is witness coded 009.

*(Mr. Sharu Doti Ana took the oath)*

**Mr. Patrick Njue:** Sir, I want to welcome you to this session of the Commission sittings. I want you, once again, to start by stating your full names for the records.

**Mr. Sharu Doti Ana:** My names are Sharu Doti Ana.

**Mr. Patrick Njue:** Where do you live?

**Mr. Sharu Doti Ana:** I live in Marsabit. I am a resident of this Marsabit Town.

**Mr. Patrick Njue:** (off-record)

**Mr. Sharu Doti Ana:** I know Doti Duda Ana because he is my father.

**Mr. Patrick Njue:** Very well. Where is the said Doti Duda Ana?

**Mr. Sharu Doti Ana:** My dad at this moment is sick. At this time, he is in hospital in Meru. He is admitted at the Meru District Hospital.

**Mr. Patrick Njue:** Sorry for his sickness. You appear on his behalf; do you confirm that?

**Mr. Sharu Doti Ana:** Yes, I do confirm that I am the first born and I know all his details; I am here to represent him.

**Mr. Patrick Njue:** Indeed, I am grateful when I hear that you know so much of his details, as his first born. Now more specifically, the details that we will be talking about today are in relation to that which he has recorded with us on an alleged violation of the

right to property, land. I want you to briefly tell us about this issue in brief terms, after which I will be asking you a couple of questions.

**Mr. Sharu Doti Ana:** Thank you very much. My dad bought a plot here in Marsabit at the Chile Manyatta in 1986. We were very young at that time. By bad luck the plot was grabbed in spite of the fact that he had all the documents that were necessary for the land. All this time up to now my dad has been fighting for justice. It is almost 26 years now and my father has never got the justice that he deserves. That is why I am presenting all these documents here to prove that. All the documents are here to prove that. All this time my father has never received any justice. He is in Meru District Hospital at this moment. Even as he is at the hospital bed he is just crying, saying that I should represent him here according to all the information he has given me. He said I try so that God can intervene for the justice to be done.

**Mr. Patrick Njue:** Thank you, indeed, for keeping it brief. You seem to well know that he bought it in the year 1986. Do you remember the month or the date? Is there any document that can best assist you to get this information?

**Mr. Sharu Doti Ana:** Yes, I can prove that because according to the documents here, there are letters which show how he bought the land in 1986. It was on 14<sup>th</sup> of February.

**Mr. Patrick Njue:** The document shows that he bought it from whom?

**Mr. Sharu Doti Ana:** He bought the land from the late Mzee Jillo Gullo Sagar.

**Mr. Patrick Njue:** What did you say happened to this plot?

**Mr. Sharu Doti Ana:** After buying the land my dad heard that the plot had been grabbed by somebody, who was already cultivating it and planting crops on it. My father tried to seek justice. He sought legal intervention, but until now nothing has been done.

**Mr. Patrick Njue:** The person who allegedly took the plot from your father, do you have his name?

**Mr. Sharu Doti Ana:** I have his name because the documents here show it. But by bad luck the man is also dead. He was known as Sheriff Abdi Noor.

**Mr. Patrick Njue:** Your father initiated certain steps towards recovery of the said land, what did he has visit, or what are the places he has sought assistance from?

**Mr. Sharu Doti Ana:** My father engaged the Marsabit County Council. He also talked to the standing committee on human rights. He also tried to talk to the Kenya National Commission on Human Rights, and now he is presenting his problem before the TJRC.

**Mr. Patrick Njue:** Very well, what has been the outcome from these places he has visited? Has any assistance been forthcoming?

**Mr. Sharu Doti Ana:** The results that came out were not that bad. After writing so many letters there were official results, but on the ground nothing was taking place for him to get back his land. Until now, we are still searching for justice.

**Mr. Patrick Njue:** Did he try to explore the option of going to court?

**Mr. Sharu Doti Ana:** We have not decided to go to court because we want to find out if we can get results from those people whom we have complained to. You know courts require a lot of money and my dad is poor. We could not go ahead because we were searching for justice and maybe it can prevail without payment of money.

**Mr. Patrick Njue:** I want you to look at copies of documents that I have here with me. You can just peruse through them and confirm to this Commission if the said copies are made from originals that were sent by your father; show that your father sent you with to this Commission and that you want the same to be adopted for investigation by the Commission.

**Mr. Sharu Doti Ana:** Thank you very much. As I go through these documents, it seems that they are the same as the ones which I found in his records. I can prove that they are the same documents.

**Mr. Patrick Njue:** Do you want to present them to this Commission for further scrutiny?

**Mr. Sharu Doti Ana:** Yes, I want to present them.

**Mr. Patrick Njue:** Lastly from me, as you sit there today being a representative of your family, and more so of your father, what were his words to you that would be his wish to this Commission?

**Mr. Sharu Doti Ana:** His wish is that, as he is old and without energy, he does not want anything else. He only needs justice. He is asking to get justice from you people. That is his prayer.

**Mr. Patrick Njue:** Thank you very much Mr. Doti. Indeed, we wish *mzee* a quick recovery.

Commissioners, maybe you have a question or two for him to clarify what he told us today.

**The Presiding Chair (Commissioner Slye):** Thank you for your testimony. I join the Leader of Evidence in asking you to convey to your father wishes for his quick recovery. I would like to ask my fellow Commissioners if they have any additional questions for you.



**Commissioner Shava:** Thank you very much Mr. Doti. I have only one question I would like to ask you. Do you believe that if you had that plot, which your father has fought for, for all this time, your life, as his son, would have changed?

**Mr. Sharu Doti Ana:** I believe that if we had that plot, our life would not be the same. This is because at the time we were still young and did not know what was going on. I believe if we had that plot we could now be having a good residence. I believe that we could have a place to cultivate and plant vegetables.

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

**Commissioner Dinka:** Mr. Doti, how large is the piece of land in acres or square metres?

**Mr. Sharu Doti Ana:** I can get that from the records. This is an ordinary plot and its size is not indicated in this document here. However, it is just an ordinary plot which is 110 feet by 70 feet.

**Commissioner Dinka:** Why is it that in 25 years, your father has not tried any kind of court action, not in the High Court which is very expensive, but even in the lower courts?

**Mr. Sharu Doti Ana:** My father had hopes that before he went to court, he could go through commissions like this TJRC. If he could not get through this he would just cry to God for justice.

**Commissioner Dinka:** In Marsabit, to which level of authority have you appealed?

**Mr. Sharu Doti Ana:** He went to the County Council and also the DC's office. There is a time my father took the case to the DC, but before he went there he went to the County Council.

**Commissioner Dinka:** I have not seen the documents that you have presented yet, but what was the decision of county council and the DC?

**Mr. Sharu Doti Ana:** The DC has not given the feedback.

**Commissioner Dinka:** Thank you.

**Commissioner Chawatama:** Thank you for attaching a lot of importance to this process, so that even when your father was unable to make it because he is not well he sent you here on his behalf. It is important that you came because you are talking about an issue touching on your inheritance. I would like to hear from you what is the impact that this issue has had on your father's life?

**Mr. Sharu Doti Ana:** Even at this time my father is sick, because of a lot of stress in his mind and thinking. As he is in his hospital bed he is still waiting for the outcome from this Commission. He can even heal without being given medicine.

**Commissioner Chawatama:** Thank you very much for making yourself available. I think the other question that I wanted to ask has been asked. How many children are there in your family? How many children did your father and mother give birth to?

**Mr. Sharu Doti Ana:** In total they managed to get eight children, I being the first born.

**Commissioner Chawatama:** As a family, do you have any other property, other than this one?

**Mr. Sharu Doti Ana:** We do not own any other property. The only thing we have is this plot.

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

**The Presiding Chair (Commissioner Slye):** Okay, thank you. I want to thank you very much for being willing to appear before the Commission, and appearing on behalf of your father. You have given us a number of documents with respect to your father's plot issue. We will make sure that our investigations team undertakes whatever additional research that may be necessary. We will notify you if we need any additional information from you or your father. So, again, thank you very much for coming here and sharing this with us.

Could you escort the witness back to his seat?

Okay, Hearing Clerk could you please call the next witness?

*(Mr. Mohammed Adan Safa Tele took the oath)*

**Mr. Patrick Njue:** How are you Sir?

**Mr. Mohammed Adan Safa Tele:** I am fine.

**Mr. Patrick Njue:** I want to welcome you to this Commission sitting today. I want you to start by stating your full names for record purposes.

**Mr. Mohammed Adan Safa Tele:** Jina langu ni Mohammed Adan Safe Tele.

**Mr. Patrick Njue:** Where do you live?

**Mr. Mohammed Adan Safa Tele:** I live in Barichole Location in Marsabit.

**Mr. Patrick Njue:** Mr. Tele, you had requested to appear before this Commission specifically for the very reason that you wanted to present a memorandum on behalf of your community – the Burji; is that the case?

**Mr. Mohammed Adan Safa Tele:** That is the case.

**Mr. Patrick Njue:** Since you have confirmed that you will be giving copies of the same to us, I ask kindly that you just give a summary. We will have the privilege of delving into the memorandum, after you make your presentation. If you are ready you may begin.

**Mr. Mohammed Adan Safa Tele:** As I said earlier, my names are Mohammed Adan Safe Tele. I come from the Burji Community. We live in Marsabit, Moyale and Nairobi. The Burji Community mostly engages in farming and business. It is a community that is found in towns. I have lived in town for so many years. According to our history, the Burji Community has stayed in Marsabit for more than 100 years. The word “Marsabit” is a Burji word for an old man, who lived there, and who was called “Marsa”. The Burji Community has lived with other communities in the hills in peace and for a very long time.

However, there has been a big problem since Independence. In 1964, there was massacre of the Burji Community. This happened when the ex-Chief, Sheikh Dawe, was killed by shifta bandits. This was as a result of revenge, because the Burji Community, during the colonial days, was with the Government. The other communities wanted to be in Somalia. At that time this region was known as “NFD”. We underwent so many difficulties. There was also another time in 1969 when another person was killed. He was called Philip Godhana Burji; he was the brother to Elisha Gadhen Godhana. More than 101 houses were burnt down due to the clashes. So many people were affected.

After the massacre and the loss of property, the Burji people never got any help from the Government. Although they tried as much as they could, they were neglected.

There were also clashes which erupted that I am going to talk about. These were the clashes between the Burji and the Borana. It happened in 1992 and 1997. We were leaving so peacefully for so long, from the 1960s up to 1992, when there was political conflict and tribal clashes. We were very much affected as the Burji Community. We were attacked by those who were incited by politicians, who are still alive. There was also the DC of Marsabit, Mr. P. P. Olando.

We wrote so many letters to the Government. I have copies of some of them. However, we did not get any assistance because nobody was representing us in the Government. As you know very well, in the Government of Kenya before it was that if you do not have somebody like an MP to represent you, you could not get any assistance. We did not have an MP and we only had a nominated councilor; he had been nominated by KANU. People were sent out of their lands. I have the list of the people with me here. These people were displaced from their farms. We were neighbours with the Borana.

As I said earlier, we were living in peace for so long. But come 1992 there was a disagreement. When the massacre took place there was tension that was brought about by the former MP for Saku. He led almost 60 Boranas to demonstrate in Marsabit Town. This led to destruction of property belonging to the Burji. If the Commission could have time to visit the town, there was an old man who was a Burji elder; he lived on the side of the DC's office. Some people were injured and taken to hospital.

I can show a place of the demonstration that was led by the former MP, Mr. Falana. The war started when there was tension, after a young man was killed and buried in Burji land. At that time many people said the boy came from the Borana Community led by former MP, Mr. J. J. Falana. They tried to blame the Burji Community, saying that the Burjis were the ones had killed the boy. People were surprised. Although at that time we were still young, when our parents talked they were so surprised about how the Burji Community could kill a boy and bury the body on their land.

I have some letters which show that there was a meeting. They wrote to the PS and the District Community Chairman, who was Mr. P. P. Olando. After the discussions at the meeting, the elders from Gabra, Nderino and Rendille, came to a conclusion that the killing of that boy was not by the Burji. It was found out that the boy was from the Gabra Community. The conflict went on. Farms were destroyed. Crops on more than 20 acres of land were destroyed at night. We were surprised because there was a chief in that area and a security officer. Until now, the person who did that has not been identified. We thought that the people who live on the other side could cause such destruction on Burji land.

More than 102 farms were destroyed; maize, miraa, mangoes, oranges, bananas and coffee were all destroyed. This destruction was done in farms. However, there was also an attack on people in Marsabit Town, where so many shops were looted. Some people were arrested and taken to court. At that time there was no MP, whom I can blame. I blame former MP, Mr. J. J. Falana, because he was the one leading all the demonstrations. He stood on pulpits and pointed out the Burji Community and other people. He did not represent all the communities equally.

There was also looting of livestock. They were taken to the lower part. In our memorandum, which we wrote with old men, we indicate that more than 5,000 livestock were stolen. Up to now we do not know how far the issue has gone. There were also internally displaced people, as I have shown in the list. More than 200 houses and other properties were burnt down.

I was displaced in 1995 when I was in standard Six. At that time, we were sleeping out in the cold, and it was raining. Our parents were taking us to the forest, so that we could spend the night there. That is what we went through. Until now, I remember that situation very well. It has affected our levels of education until today.

Some of us moved from that area. We became IDPs in town. I was taken to a Burji old man, who was in town who, and who gave me a reason to live. When I was in his house it

was attacked by four bombs. The suspects who were arrested were later released. Even the person who was giving out the information was killed; however, God saved our lives.

There is a list of names of people who died between 1965 and 1994. I have mentioned them. Between 1992 and 2008 some more people died. We have the list, but we do not know where others are. We have pending questions without answers. We had a home guard who was a Kenya Police Reservist (KPR), and who was killed in Badasa. That old man was called Dhofa.

There is also an excerpt from the *Daily Nation* newspaper of some day in February 1995 that a man was speared to death in the Badasa area. He was a home guard. We know the case very well. We did not have powerful people and so, the suspects were set free. So many people were killed, including Kenyatta Juti, Abdul Leshanko, Chiwe Bucha, Dawe Lolo, Shalo Gene and Guna Sololo. So many others were injured and I have their names written here.

We the Burji were really violated. This time we are living peacefully. We thank the formation of this Commission because we are now able to tell our story with regard to what happened to us. We the Burji learnt a lot of things. The Government violated our rights. We were expecting the security to help us. We thought that the DC then, a Mr. Orlando, would step in to assist us. He later became a PC in Nyanza Province. The OCPD then, a Mr. Choropode and the area MP then, a Mr. J.J. Falana really mistreated us. We need this Commission to help us get our justice. If we cannot get it, then people will remain with the riddle with no answer.

Since they violated our rights, we have written statements and letters to the Government, but nobody has listened to us. Most members of this community are jobless. They are not given the opportunity to be employed. We are neglected. It is only recently when the police were recruiting that we managed to get some of our people getting recruited. Even in the high ranks in our Government, we do not have our people. Formerly, we used to have an ambassador and an MP; that is, Ali Mudhadhaye and Elisha Godhana, respectively. I am talking about early 1970s. Since then, we have been marginalized although we have educated people.

We, therefore, need equality in terms of employment. When Mzalendo Kibunjia released a report showing which tribes occupy which vacancies in the Government offices, it was clear that the Burji people have only 288 people. That is a very small number. We are discouraged that even if we go to school, we are not given job opportunities.

Most of our people own trucks that transport goods from Nairobi to Moyale. The lorries are attacked on the roads, but when this is reported, no action is taken. So, we lose a lot of money to highway robbers. We have really suffered. I remember that in 1992 my paternal uncle, Ade Sanko, was killed on his way to Moyale. We do not have any information about his death. Security should be beefed up.

We need to encourage healthy competition. In Marsabit Town, members of our community are targeted. We do not have security from the Government. The Government should settle the people who have been displaced due to inadequate security. We have land that lies uncultivated. We the Burji are farmers and businessmen. When we are prone to attacks, we can do very little. People just wait to die.

**Mr. Patrick Njue:** Thank you, Mr. Mohammed for enumerating the issues that affect your community. I am encouraged to learn that your community can give responsibility of leadership to the youth by virtue of your being seated there to represent them. Congratulations for that appointment.

You presented to us a list of names of people who were displaced during the 1992 and 1997 clashes. What is their plight today? Have they found their way back to their land?

**Mr. Mohammed Adan Safa Tele:** Those people have never gone back to their land. They live in rental houses in Marsabit Town. Others have been accommodated by members of their families. They underwent a lot of problems and they cannot go back there. A few of them go to cultivate their land, but still come back to Marsabit Town. Most of them fear for their lives; so, they have never gone back there.

**Mr. Patrick Njue:** Do you want to share these documents with the Commission? If so, tell us what the documents are.

**Mr. Mohammed Adan Safa Tele:** I can present these documents to you. This is a document that was written in 1994 by the Burji elders addressed to the Office of the President. This letter was written by the Burji elders on 17<sup>th</sup> March, 1995 addressed to the Head of Public Service and Secretary to the Cabinet, the Attorney-General, and the PC. It is about insecurity in our community. This other one is a letter on the Burji/Borana conflict.

*(Mr. Safa laid the documents before the Commission)*

**Mr. Patrick Njue:** What would be your suggestions on how to foster peace as a community?

**Mr. Mohammed Adan Safa Tele:** First and foremost, there is always a person who is a mediator. In this case, it is the Government. We blame the Government. The Government should not be biased. They need to find out the problems affecting the people and try to solve them. The youth have no problem now. The issue of tribalism was there in 1995 when there were problems amongst the Gabbra and the Burji. We need to live as one.

**Mr. Patrick Njue:** Thank you, Mr. Safa.

**Commissioner Slye:** Mr. Safa, I would like to thank you for coming here to represent your community. I want to applaud you for the efforts you have made in your words with respect to peace and reconciliation amongst the communities here.

I would like to ask if any of my fellow Commissioners have a question for you.

**Commissioner Ojienda:** Mr. Tele Safa, I want to thank you for the memorandum and the openness with which you have presented it. Clearly, it is a call to courage openness to persons your age and level. Mine is a clarion call to the Borana, the Burji, the Gabbra, and any other community living here that the foundation of every inch of development in this country is peace. As you have said, we need to know that the new Constitution has planted the mustard seed, whereupon diversity and inclusivity of every shade of different opinion must be respected. All the communities here must find their space in governance, and representation. Issues of marginalization should be a thing of the past with the new dispensation and with the devolution of governance created by the new Constitution. Urge your youth to continue to work together in peace and in respect for every person in this country.

**Commissioner Chawatama:** I want to join the other Commissioners in thanking you for taking time to come and present your memo before us. I noted your disappointment in the judiciary. You mentioned that matters have gone to court, but you have not known the outcome of those matters. You also said where people were taken to court, they have been released. You also mentioned the frustration of making inquiries. You mentioned Government offices like the PS offices and others. It is our hope that with the reforms in the judiciary and the police, that will change. It is encouraging to see one so young express oneself so well. I will have you know that you are elder No.5 in our list. Thank you for the valuable information you have imparted to us.

**Commissioner Slye:** I would once, again, like to thank you Elder No.5 for your testimony and the message you have brought to this Commission and the community.

The Commission will now take a recess until 2.00 p.m. when we will resume our sitting. This afternoon, we will be hearing from individuals who have been named in some of the statements that we have collected in this region. They will tell us their side of the story if they want to. It is their choice.

We are not a court of law, but a Commission. For now, we are at the stage of investigations. We are listening to people's stories. We are collecting information. Our research information and the investigation department are independently collecting additional information. At the end of this process, we will look at all that information.

*[The Commission adjourned temporarily at 12.33 p.m.]*

*[The Commission resumed at 2.05p.m.]*

*(The Presiding Chair (Commissioner Slye)  
introduced himself and fellow Commissioners)*

**The Presiding Chair** (Commissioner Slye): I want to welcome you back to this afternoon's sitting of the Truth, Justice and Reconciliation Commission. I would like to

introduce an additional member of our panel in addition to those of us who were here this morning.

I ask the Hearing Clerk to swear in the next witness.

Counsel Onyambu, are you representing this witness? Are you representing the witness that is about to testify before the Commission?

**Counsel Onyambu:** *(Off record)*

**The Presiding Chair** (Commissioner Slye): Excuse me; do those issues have anything to do with the testimony of the witness that we are about to hear?

**Counsel Onyambu:** *(Off record)*

**The Presiding Chair** (Commissioner Slye): Counsel Onyambu, we appreciate the magnitude of issues that you are dealing with here. I think what we would prefer is that you raise those issues after we have dealt with this other witness who does not have anything to do with your client, as I understand it. But before we hear your client, we will like you to address the Commission on issues you will like to address us.

**Counsel Onyambu:** *(Off record)*

**The Presiding Chair** (Commissioner Slye): Individuals can be mentioned after this hearing, but the nature of these proceedings is that individuals will be mentioned. The issue is whether your client will want to speak before us on what other information you or your client might want in connection with that testimony. So, I do not see whether there is anything with respect to this witness which concerns another matter as I understand it, that is related to your client.

We would like to hear this witness and I believe two other witnesses and then we will come to your client and then we will invite you to address the Commission.

**Counsel Onyambu:** *(Off record)*

**The Presiding Chair** (Commissioner Slye): Counsel Onyambu, we will hear you. We will listen to your arguments but later this afternoon. So, if you could please be seated so that we can continue with this witness and then we will give you an opportunity to address us.

I think the record can reflect that you have asked to address the Commission at this point in time, and that we have ruled that you cannot address us but later this afternoon, and not at this point. You will be able to address us prior to your client coming to testify.

**Counsel Onyambu:** I wish to be given the reason.



**The Presiding Chair** (Commissioner Slye): I am sorry!

**Counsel Onyambu:** The reason for that!

**The Presiding Chair** (Commissioner Slye): I gave you the reasons. The reasons are that this individual that we are about to hear, as I understand it, does not have anything to do with issues related to your client. We want to hear your arguments. You have every right to make your arguments before us. I think what you and I are differing over, is the time when you make those arguments and we are saying that we would like you to make those arguments after we hear this witness and two other witnesses that have to do with matters unrelated to your client; then, we will hear your arguments and then we can proceed from there.

**Counsel Onyambu:** *(Off record)*

**The Presiding Chair** (Commissioner Slye): Now, counsel Onyambu, maybe, you do not understand the process. The process here is that we allow individuals to come and tell their stories. We do not allow cross-examination and we do not allow interruptions. This is a forum for individuals, including your client who can come forward and say whatever they want without interruption. We provide that for the benefit and dignity to your client and we have also provided to every individual that comes to testify before this Commission. If any individual does represent your client, you can take note of that and you can raise it with us when we invite you to address the Commission.

**Counsel Onyambu:** *(Off record)*

**The Presiding Chair** (Commissioner Slye): Counsel Onyambu, I am not sure whether there is much for us to discuss. We have made our ruling. I will ask you politely to take your seat and listen to our proceedings and when we get to your client, we will listen to you. Thank you.

*(Bishop Ambrose Ravasi took the oath)*

**Ms. Belinda Akello:** Good afternoon, Bishop. Kindly, state your three names and your title for record.

**Bishop Ambrose Ravasi:** I am Bishop Ambrose Ravasi. I am Kenyan born but naturalized American citizen, since I studied and did my ministering in America. In 1971, I was assigned to do missionary work in Kenya. After ten years, I was the Bishop of Marsabit under which Maralal District was at that time.

**Ms. Belinda Akello:** Thank you very much Bishop Ravasi. Kindly confirm to this Commission that you did receive an invitation dated 31<sup>st</sup>, March, 2011 to attend this hearing.

**Bishop Ambrose Ravasi:** Yes. I did receive a letter dated 31<sup>st</sup> March, 2011. It was received only a day before yesterday.

**Ms. Belinda Akello:** Thank you very much. In the letter of invitation, you were informed that you may have useful information by virtue of your position as the Bishop of the Diocese of Marsabit. The event which made it of the essence for this invitation was the massacre that took place on the 12<sup>th</sup> July, 2005. You were invited because you might have useful information for this Commission.

Would you kindly provide any information you may have with regard to this event and with regard to your position as the Bishop of the Diocese of Marsabit on the material day?

**Bishop Ambrose Ravasi:** Yes, I am going to do so. But before doing so, I might want to say that whatever I will be saying in my statement is not said by way of being an eye witness because when those killings of the Turbi happened, on 12<sup>th</sup> July, 2005 and later on the same day, the killing of the Catechist of the Catholic Church, I was in Nairobi attending a meeting of the peace keeping conference. So, whatever I am saying is by way of information given to me by my credible collaborator such as Ndung'u Wangu, who was the Vicar General, the then driver of the car in which the Catechist was killed in Bubisa and the people of Sololo and the friends of Marsabit. But this is not information from me as an eye witness.

So, the fact is that, on that day, one of the fathers of Sololo Parish, one of the eleven members of the Parish of the Marsabit Diocese at the time whose name is Janito Joseph, Philipino Paul was asked by his superiors to take some Catechist to a workshop in Marsabit. It was on Tuesday and six to seven Catechists were driven in a car belonging to the Sololo Mission, together with the seven Catechists. Some were with their wives and children. They left Sololo around 7.30 p.m. and from Sololo to Turbi is about 50 kilometres. When they reached there, they noticed that there was something unusual. They tried to stop but they were told not to stop but go on. That is what I was told.

**Ms. Belinda Akello:** Where was this?

**Bishop Ambrose Ravasi:** At Turbi, 50 kilometres south of Sololo. So they went and I do not know whether they stopped for a while. But they saw that there was something unusual. However, they did not realize the seriousness of the massacre. So, they went with the car carrying the Catechist, the wife and children. Another car joined them and they did not know those who were in that car but later on, they understood who was in the car. However, they agreed to drive together from Turbi to Bubisa and then to Marsabit.

From Turbi to Bubisa is about 80 Kilometres. The other car left them behind and because of dust, they slowed down to leave the dust to settle before they could drive on. When the car of the Catechist driven by Father Janito arrived in Bubisa they were stopped and Father Janito was told to get out of the car and the rest were killed. They told him that

they could not kill him because he was not a Kenyan. They told him to go and not to say anything on what he had seen - this is what I was told by the Father himself when I met him. They continued and when they reached Marsabit, they informed their Secretary-General, at Maili Ndogo, who took over what I should have done. He intervened and found out what had happened and then he started apologizing for what had happened and he went personally to Bubisa; he met the police the following day and asked them to release the bodies to be buried. When they agreed and went to get the bodies, they were shown the bodies in a ditch far away from the centre of Bubisa. But miraculously, they found that one of the Catechists was still alive after 48 hours; he had faked death. He was taken to Marsabit hospital and he is now teaching theology. His name is Andrew Wako.

The bodies were buried in Sololo and some at Sueni depending on the wish of the family. We tried to present an offer of apology to those who had suffered so much both in Bubisa and Turbi, because both in Bubisa and Turbi, there was a group of Christian membership developing. Those Christians and the Muslims have always got on very well. We have sponsored a school and built a church there for all. So, there was no indication of religious rivalry or conflict. Even today, we are asking ourselves and wondering what caused the incident and why they killed so many people in Turbi. Then they killed the Catechist who happened to be a Boran from Sololo who was passing through Turbi. He was from the Gabra community and he was headed to Bubisa where the Gabra people settled. Why they killed them is still not known up to today. That incident was regretted very much and we insist that the truth of this matter be found.

Whether some investigation was done or not, we do not know. The fact is that, today, nearly six years since it happened, we do not know the motive behind the killings in Turbi and the ten Catechists in Bubisa. Of course, we have tried to talk to the people so that they can understand that what happened simply happened, so they should forget and forge ahead by accepting the situation, though it is not easy.

This matter is supposed to be investigated and then some justice done. Then retribution should be given to the affected people.

But as far as I know, and as I have stated in my statement, it seems that there is no much that can be done. Maybe, it has been done but it has not been made public. So, we do not know but we hope the truth will come out. We suffered so much and the people continue to suffer not because of the loss they incurred but because of the disinterest from the Government. No action has been taken. They have the right to know whether it was political, revenge or hatred on religious grounds. It is our conviction that it was not due to religious reasons.

**Ms. Belinda Akello:** Okay. Thank you very much Bishop Ravasi. Maybe, just to make a few clarifications; you have informed us that your assistant, Vicar General, did give you this information. What is the name of Vicar General?

**Bishop Ambrose Ravasi:** The name of the Vicar General, he is a Portuguese Comboni Father whose name is Alexander Ferreira. He was transferred a few years ago to Portugal, but not for these reasons.

**Ms. Belinda Akello:** Thank you very much. You have also indicated that there was a driver who also gave you the information. This is Father Aldrin?

**Bishop Ambrose Ravasi:** Yes.

**Ms. Belinda Akello:** You have also said, based on the information that you were given; there was another car that urged them to drive together. Or were you told the name of the driver in that other vehicle?

**Bishop Ambrose Ravasi:** I do not know the name of the driver because I understand he was living and he is still living in Marsabit. But as far as the name is concerned, I doubt whether I know it. He had so many nick names like Galgallo. There are so many other names he was using and so, we do not know which one is his correct name. It is very difficult to know the exact name. As far as I am concerned, I was not told the name. In Bubisa, he is known.

**Ms. Belinda Akello:** Bishop, were you not told, or you cannot remember with certainty?

**Bishop Ambrose Ravasi:** Actually, the name was mentioned, but I am not sure whether it was Wario, Wako or Galgallo. Sometimes, I get the name Roba; there are many people called Roba.

**Ms. Belinda Akello:** Thank you. When you had a workshop here at Marsabit, and you were also expecting a team of catechists to come on this day, had you not received any information of the happenings or events of the previous day? I want to refer to the Turbi Massacre that took place before the incident involving your catechists.

**Bishop Ambrose Ravasi:** The previous day, 11<sup>th</sup> July, 2005, there was absolutely no notice given. I received the news from Maili Ndogo for the rally at Marsabit because I was in Nairobi on the evening of 12<sup>th</sup> July, 2005.

**Ms. Belinda Akello:** Also for the record, confirm like you had said, that you were not in Marsabit, but you were in Nairobi and the person in charge was the Vicar- General.

**Bishop Ambrose Ravasi:** You know when the Bishop is away, automatically the Vicar General takes over the responsibility.

**Ms. Belinda Akello:** Kindly clarify. Is this also to mean that any decision made at the diocese level by the Parish is made on your behalf by the Vicar General?

**Bishop Ambrose Ravasi:** Yes.

**Ms. Belinda Akello:** Bishop Ravasi, did Father Aldrin, after this event and having been the driver of all these catechists with their spouses end up losing their lives? Did he record a statement at the police station or with the Kenya Government?

**Bishop Ambrose Ravasi:** To tell the truth, I do not know whether he wrote a statement either in Marsabit or elsewhere. Maybe, the police know it. But I know that he was accompanied to Nairobi. He underwent a medical checkup at a hospital in Nairobi and then when he felt okay, he was transferred to his home in Philippines. Since then, he has not come back to Kenya.

**Ms. Belinda Akello:** Did he leave Marsabit immediately after the incident or did he stay in Marsabit a bit longer before he went for the medical checkup?

**Bishop Ambrose Ravasi:** He went there the following day. I think he was flown to Nairobi the following day.

**Ms. Belinda Akello:** Bishop Ravasi, who made the decision for Father Aldrin to be flown to Nairobi? Was it you in Nairobi or was it Vicar General?

**Bishop Ambrose Ravasi:** In this case, it was the Vicar General together with superiors of the Comboni Missionaries which Father Aldrin was a member.

**Ms. Belinda Akello:** Bishop, you are making references to Comboni Missionaries. Is there any distinction between yourself and Comboni Missionaries? If there is, are you also part of them or which Missionaries do you belong to?

**Bishop Ambrose Ravasi:** Father Alexander Ferreira and Father Janito belong to the Comboni Missionaries which is one of the missionary congregations founded in Italy. I belong to the northern missionaries called the Consolata Missionaries. So, in the Diocese, we have many members of the different congregations. Father Ferreira is from Consolata Missionaries and Father Alexander Ferreira and Father Janito was for Comboni Missionaries. And they are serially Marsabit. Marsabit is still run by the Comboni Missionaries.

**Ms. Belinda Akello:** Just for clarification Bishop, the decision to move a member of one group of missionaries, in this regard the Comboni Missionaries, is it made by you as Bishop who is ideally the person responsible for this Diocese or is it made by the people who are superior in the missionaries that deploy that father on the ground?

**Bishop Ambrose Ravasi:** The assignment and the transfer of a missionary of any congregation is made after dialogue between the superior of the congregation and the bishop. In my case, it would be the bishop.

**Ms. Belinda Akello:** I would like to say at that time you were consulted about the movement of father Aldrin the next day?

**Bishop Ambrose Ravasi:** I know he was taken to Nairobi and I know he underwent a medical checkup. It might have been that his superiors took over.

**Ms. Belinda Akello:** Do you know because you were informed or do you know because they consulted you to make the decision?

**Bishop Ambrose Ravasi:** Which decision, please?

**Ms. Belinda Akello:** The decision to move Father Aldrin to Nairobi. Did they consult you? This is because you have informed us that it is the missionaries in conjunction with the bishop.

**Bishop Ambrose Ravasi:** We were all involved; Father Ferreira's superiors and myself. And when I was told that they had decided to take him, I said: "Please do it".

**Ms. Belinda Akello:** Bishop, we are asking this because we had received testimony before from two persons who are direct victims of the witnesses of this incident. And, it is their opinion or they do feel that it was under your direction that father Aldrin was moved out.

**Bishop Ambrose Ravasi:** Absolutely not! It is natural that he should have gone to Nairobi to undergo a medical checkup. But absolutely, it was not my work to move Father Aldrin to Nairobi. As a matter of fact, he would have been very happy to travel to Nairobi. His superiors felt that it was not advisable to reassign him Sololo for security reasons. I would have liked it but Father Janito Joseph was deeply loved in Sololo Mission.

**Ms. Belinda Akello:** Bishop Ravasi, after how long did you come back to Marsabit from the Episcopal Conference in Nairobi?

**Bishop Ambrose Ravasi:** I do not know, but it could have been at the middle of the week or at the end of the week. We had a meeting with the other bishops where we were discussing the Eucharist Congress when the Pope came to Kenya.

**Ms. Belinda Akello:** Thank you. One last thing; when you did come back to the office and when you got a full briefing of the events that had taken place, as head of the Diocese, did you try to order any investigations or did you have any report written based on that event?

**Bishop Ambrose Ravasi:** I do not think we did any report to the police or the authorities, but we carried out investigations. As a matter of fact, in the Diocese, we have our own department which deals with such matters. We have the Justice and Peace Commission. They looked into the matter carefully, but it was a very delicate and dangerous situation. Certainly, what we did was to convince the people to accept what had happened and which could not be changed. Then we organized several meetings of reconciliation. As a matter of fact, we did it in collaboration with the Government.

The plane accident where five Members of parliament died was precisely organized with the co-ordination of the pastoral centre right here, to create a little bit of understanding and peace and not the rejection of each other.

**Ms. Belinda Akello:** Bishop, the reconciliation was between who and who?

**Bishop Ambrose Ravasi:** It was between different tribes. These were the after effects of the Turbi Massacre and that of Bubisa. There were a lot of tribal sentiments. As a matter of fact, all the Borans who lived in Maikona were afraid to live there because a Boran man was killed; so, they were running away. They became internal refugees. Those who were in other places came to Marsabit. Even now, we have places where the Gabra and Boran live. They had started to inter-marry and live together but then, that took us back many years.

**Ms. Belinda Akello:** So, just to confirm, was the reconciliation between the Borans and the Gabra?

**Bishop Ambrose Ravasi:** These are two tribes that we thought were agreeing. It was already tribalised. In fact, there were tribal wars between the Gabra and the Rendile in Samburu District or in Loyangalani between the Turkana and the Gabra.

**Ms. Belinda Akello:** Just one last clarification. When I tried to inquire whether any report was written, you said that it was a delicate situation.

**Bishop Ambrose Ravasi:** Of course, it was a delicate situation.

**Ms. Belinda Akello:** Why would you use those words; “it was a delicate situation”. What was peculiar about it?

**Bishop Ambrose Ravasi:** It is because whatever statement you made, you risked your life. So, even those who represented us, we told them to be careful because they could be killed. This is because there was a lot tension. I would say that it is slowly dying.

**Ms. Belinda Akello:** Bishop, you have also informed us that there was only one person who survived and you have mentioned the name as Andrew Wako. I want to assume this was somewhat a miracle. Is there something that the church did, first to this survivor and secondly, in memory of the lives that were lost?

**Bishop Ambrose Ravasi:** We tried to help the family manage medical expenses in the hospital. They were not charged anything and we took care of the family.

**Ms. Belinda Akello:** Given that the victims were members of your church, has the church as an institution, not you as Bishop Ravasi, done anything to aid memorization of the loss of the big part of your folk and followers of its faith?

**Bishop Ambrose Ravasi:** Not this case in particular, but all other cases. We have written letters calling for reconciliation. We have done that but each diocese has its own problems; Nakuru diocese has its own problems and even the Kisumu diocese. By and large, we are still doomed, especially on the side of educating people to respect each other and to end differences in the schools. There are no problems in schools. It is only when they go out those tribal differences arise.

**Ms. Belinda Akello:** Bishop, as a shepherd who has worked, not only in Kenya, America and in Italy where you were born, how has the church reacted in those other places? Has it reacted in the same way it did here in Marsabit or in any similar event, did they react any different?

**Bishop Ambrose Ravasi:** I think whenever such things happen, like in Turbi and Bubisa, the Church reacts by condemning the criminality of the event and then they offer assistance to the communities that are suffering in the Parish. I think it is more or less the same. In Kenya, we distribute food to the people. Even now, there is a Gabra Settlement where we have constructed houses. We also give food or go to the Government and ask them to assist the situation.

**Ms. Belinda Akello:** Are you still in touch with the survivors and those whose loved ones passed on in the incident?

**Bishop Ambrose Ravasi:** I was in touch with them very often. As long as I was a Bishop in charge of the Diocese of Marsabit, but for the last four years, I have seen them once or twice when they come to Marsabit.

**Ms. Belinda Akello:** To the best of your knowledge and recollection, were these people contented to the extent which the church had gone to help them? In this regard both the person who survived, Andrew Wako, or any other person who was assisting and, maybe, lost a loved one in the process, to the best of your knowledge and recollection, are they contented?

**Bishop Ambrose Ravasi:** I do not think they have any accusations to make against the church. They are deeply disappointed, and perhaps, because investigations were done but feedback was not officially given to the public and no retribution or help from the Government has been forthcoming.

**Ms. Belinda Akello:** Hon. Commissioners, that is all from our desk. Probably, if you have any clarifications to seek, you can proceed.

Thank you very much.

**The Presiding Chair (Commissioner Slye):** Thank you, Evidence Leader. Father, I thank you for accepting to come here and testify, or share your knowledge with this Commission. As I said this morning, this is something which was your choice to do. We appreciate you for taking the time. As I remember, you have been here most of today, and



you were here yesterday. We appreciate your dedication to sitting here and listening to the stories of the residents of Marsabit. So, I just want to thank you, on behalf of the Commission.

I would like to ask my fellow Commissioners, if they have any further questions for you.

**The Acting Chair** (Commissioner Namachanja): Thank you, Bishop, for sharing your version of the story. We had a similar session in Moyale, at which Andrew came to testify. Together with Andrew, there was another witness by the name “Balgaja”, who lost his wife and children during the massacre. When they were narrating their stories, they got very emotional; that was when their statements were being recorded.

Balgaja went to the police station here and reported the incident. He wanted to record a statement as somebody who had reached the bodies and supported during their burial. He could not do so because he was not at the scene at the time of the incident, but he told the policemen that there was one eye witness who was there – Father Adriano. He was encouraged to go and come back with the Father, who was the sole survivor. I am talking about the Father who was transporting the cart casters and their wives. I am sorry if I have messed up with the names.

So, he was encouraged to go back with the Father, so that the Father could record a statement. However, when he came to where he had left the Father, he did not find him. He later learnt that the Father was transferred from here. Balgaja is now a bitter person with that decision. He was denied the only eyewitness, who witnessed that incident. He sees that as having been denied justice. I do not know what you will say about this.

**Bishop Ambrose Ravasi:** I want to say that I was not made aware of what you have told me now. Could I ask? Was it in Marsabit or in Nairobi?

**The Acting Chair** (Commissioner Namachanja): It was in Marsabit. After they discovered the bodies, the survivors, who were transported to this place; I believe that was Andrew Waswa and the Father, who was the driver. At that point, they wanted the Father to record a statement, but he was not found.

**Bishop Ambrose Ravasi:** I am not aware of what you have cited. Therefore, I do not know it.

**The Acting Chair** (Commissioner Namachanja): Sorry that you are not aware Bishop but, so that you know this happened, when we asked Balgaja about what he needed to be done, he asked for reconciliation, especially amongst the Bishop, him and the people who suffered. Sorry that he has not had a chance to talk to you, but it would be very important that you meet him, so that he can share his bitterness with you.

**Bishop Ambrose Ravasi:** You are very right. We should do just that.

**Commissioner Dinka:** With grace, I thank you very much for your testimony. As my colleague has just mentioned, there is a lot of bitterness on the part of some members of your own flock. I am very happy that you said you will do everything to get in touch with them and resolve these differences, but I want to ask you something. Most of us have some kind of exposure to the western world. I have always believed that the Catholic Church is one of the most organised institutions in terms of hierarchy, with its top down right from the Vatican.

This kind of organisation cannot really survive nor do its job properly, unless there is a well defined reporting procedure and reporting channels. From my little understanding, a Bishop in a Diocese is like the chairman of the board. There may be different Catholic organisations, like the Comboni, Consolata and others, but the Bishop is the final authority. Given these facts and the need for reporting, and taking into account what happened in Bubisa, resulting in the death of nine catechists and their families, from the crime investigation point of view, the impact is significant but its importance to the Catholic Church, and particularly to your Diocese, is even more significant.

So, how is it that Father Alex, being the Vicar-General and your Deputy, who had taken important decisions in your absence, has not made a detailed report, in writing, to you? Also, certainly, you would also be reporting to someone above you – either to Rome or to the Ministry in Nairobi. This incident is so important that some important report must have been written somewhere, by either your office or by Father Alex.

There is also the issue of taking away of Father Aldriano. Although, as you said, he belonged to the Comboni Mission, he was working under you. Even the Komboni Mission is duty-bound to have a very strong consultative relationship with your office as to whether to move him or not to move him. Taking into consideration the fact that he was at the scene of the incident, and that his testimony was critical, he was taken out of the country without recording any statement at the Bishop's Office, which he could have left behind, and which would be available in your office, or at a police station. According to one of the witnesses we have had before, he was ready, if he had not been whisked away, to go and record a statement with the police.

How can such repeated administrative lapses take place in such an organised hierarchical organisation like the Catholic Church, under your leadership? My question is: Has Father Alex, upon your return from Nairobi, given you a detailed report of what had happened, including the condition under which Father Andrew left the country?

**Bishop Ambrose Ravasi:** Thank you, Commissioner, for your comments. As far as the report is concerned, Father Alex gave me the report earlier by phone and when we met. He gave me the report of the facts, which I gave you today, as to what happened. So, your wonder is what else we can do. I told you what we have done as far as the meeting of the families of the catechists and taking care of them is concerned. Certainly, the report from me went to the Nuncio, who is the ambassador of the Holy Father, who notifies Rome. That is the report we made about the facts. It was done mostly by the superiors.

When a priest is transferred from a diocese, the local Bishop has no more jurisdictions over him ordinarily. In this case, of course, we would consult because he was working here. So, his transfer from Kenya to Philippines was not the Bishop's decision or my decision. It was the superior's decision, both for a little bit of change of environment or for the sake of taking him away from the situation by which he was really shocked.

As far as we are concerned, we would have liked him to come back and continue with the work he left, but the superior's decision was negative. I was told that the decision was taken for security reasons. So, I do not feel guilty for having done whatever I could do as far as the reporting was concerned. That Father Adrian did not go to testify, I do not know. It is up to the police to say why he did not do so. As I said, I am completely ignorant of the reason.

I do not know whether I have answered all your questions, Commissioner.

**Commissioner Dinka:** After the departure of Father Alex – I do not know for how long Father he had stayed behind. Did Father Alex or yourself ask the Comboni Missionaries to get in touch with Father Adrian to ask him to give you a report of what he had seen at Bubisa?

**Bishop Ambrose Ravasi:** I did not do it. I do not know if Father Alex did it; a report had already been made. The facts were given. The reasons as to why it happened, we could not tell. There were many rumours. I do not want to put on the record, names without there being certainty.

**Commissioner Dinka:** There may be many rumours but my point is that you may have written a report, as the Bishop. Father Alex may have given you what he had but the number one witness, who was actually involved in it and survived, has not said anything about what he saw. That is what is bothering the residents.

**Commissioner Ojienda:** Thank you, Father Ravasi, for your testimony and the clarification over the issues that happened on the 12<sup>th</sup> July. I want to ask you a very simple question. I want you to tell us how you felt when you received the news of the death of your catchists and their families.

**Bishop Ambrose Ravasi:** I and the entire diocese felt terribly sad, because of the fact that we invest so much in training catchists. There were two or three years' training, which we had put into their families; then, all of a sudden, we lost six or seven of them; with only one surviving, it was a great loss. Believe me, we sympathise a little bit with those people who lost their wives/husbands and their children in Turbi. The whole diocese was in mourning. Up to now, we have no replacement of the catechists of Sololo in the incident after five years. You know, it takes time to train one, and it takes people who volunteer to do that work. So, sincerely, the sorrow is still there.

**Commissioner Ojienda:** It is good you have clarified that the sorrow is still there. It is still there for Andrea, and it is good that you acknowledge that fact. I hope that brings

reconciliation. You need to take further steps to find out how to bring back your flock into the fold?

**Commissioner Chawatama:** Bishop, thank you very much for your testimony. I would like to know; are Fathers barred from being witnesses in courts of law? Is there anything which bars a Father from being a witness?

**Bishop Ambrose Ravasi:** I did not get your question; excuse me.

**Commissioner Chawatama:** Is there something which prevents a Father from being a witness, for example, in a court of law?

**Bishop Ambrose Ravasi:** Absolutely not. It is a duty to do so.

**Commissioner Chawatama:** That is what I thought. You mentioned the fact that the Father had gone to Nairobi, where he underwent medical check up. Did you receive any medical report as to his condition?

**Bishop Ambrose Ravasi:** I did not in writing, but verbally yes.

**Commissioner Chawatama:** What was said to you verbally concerning his condition?

**Bishop Ambrose Ravasi:** Verbally, I was told that he was regaining confidence in himself fast, and forgetting the terrible experience that he had to go through, and that they would have continued to take care of him, but part of his restoration was to repatriate him back to his own country, the Philippines, for a period of time.

**Commissioner Chawatama:** As a result of the transfer that took place, would you say that the relationship between the Church and the flock may have suffered? Was there some mistrust after that transfer?

**Bishop Ambrose Ravasi:** To the contrary. I do not know if some patients of Sololo are here. They wish that he is allowed to come back, because he was doing very well. He was in a good relationship with people who were patients and people who were not patients. We suffer in the sense that we lost very able catechists. The church suffers. The local communities suffer. Even now, we are suffering because we have fewer catechists than what we need.

**Commissioner Chawatama:** Having heard what some of the witnesses have said to us, and now that you have also given your testimony, do you think it would have been a good thing for the Father to have been here and to have given evidence of what he saw?

**Bishop Ambrose Ravasi:** Personally, I think yes but that is not the way his superiors thought, really, for security reasons. They say that even if he is loved, there is always someone who can do his part.

**Commissioner Chawatama:** My last question is on the security of the Father. I wonder what his superiors based that decision on. Were you required to make a report, on which his superiors based their fears for his security?

**Bishop Ambrose Ravasi:** I do not understand you. Do you suggest to me to make a request now?

**Commissioner Chawatama:** No. My question is based on the fact that his superiors were not here, in Kenya.

**Bishop Ambrose Ravasi:** There are lots of superiors. His provincial superiors were here in Kenya.

**Commissioner Chawatama:** So, they would have prepared a report that would have caused his superiors elsewhere to make the decision. Did you have sight of such a report?

**Bishop Ambrose Ravasi:** No.

**Commissioner Chawatama:** Thank you.

**The Presiding Chair (Commissioner Slye):** Thank you, Bishop Ravasi. I want to thank you for being willing to come here and give your testimony. I also want to applaud the statement you have made of your intent to try to reconcile some individuals from your Diocese, who have concerns and issues arising from that horrible event six years ago. The questions and the concerns that they have, as I understand it, are that the only eye witness to these horrible killings, whom most people are aware of, was not present to provide testimony to the police with respect to what happened. That probably contributed to the failure to have an effective investigation. I think the questions and concerns about why the Father was not available to testify, are matters we have heard, and which we have shared with you today. So, we want to provide you with that information and hope that, with it, you will be able to engage those individuals – others within your Parish can also engage with those people – and hope that some understanding out of the reconciliation will come about.

Again, I want to thank you for agreeing to be here and testifying before this Commission. Thank you very much.

Hearing Clerk, you can escort the witness to his seat and, please, bring in the next witness.

While the next witness is being brought in, the Commission will take a five-minutes break.

*[The Commission adjourned temporarily at 3.11 p.m.]*

*[The Commission resumed at 3.17 p.m.]*

*(Mr. Amos Cheboi took the oath)*

**Ms. Belinda Akello:** Hon. Commissioners, kindly, allow us to provide you with the file of documents that will be referred to during this testimony.

Welcome and good afternoon. For the record, kindly state your names.

**Mr. Amos Cheboi:** Hon. Commissioners, I am Amos Cheboi. I am, currently, the OCPD, Bungoma South District. I was invited to these hearings. So, I am here.

**Ms. Belinda Akello:** Thank you very much, Mr. Amos Cheboi. Kindly, confirm that you received a letter dated 31<sup>st</sup> March, as you have indicated in writing.

**Mr. Amos Cheboi:** I received the letter.

**Ms. Belinda Akello:** Thank you. Also, confirm for the record that the letter gave you the right to secure legal representation, if you so wished.

**Mr. Amos Cheboi:** Yes; I read it and decided that there was no need for doing so.

**Ms. Belinda Akello:** Thank you very much. Just as you stated in your letter, you were invited to these hearings as a witness of the Commission because the Commission was of the opinion that you have some useful information, by virtue of your capacity as an OCPD, information which might shed light on events that are part of the mandate of and concern of this sitting. We shall require you to give us information, to the best of your knowledge, on three accounts. Firstly, as OCPD, we will require your information on the Turbi massacre. Secondly, we will require information, to the best of your knowledge, on the Bubisa massacre. Lastly, we will require your information or response to allegations made by another police officer. If you are prepared, kindly concisely and briefly give us information on the Turbi massacre to the best of your knowledge.

**Mr. Amos Cheboi:** As I have said, I am currently the OCPD, Bungoma South District. I was the OCPD for Marsabit District from the year 2005 to 2006. I was in charge of the whole Police Division, from Iliret to Laisamis. I remember one day, when we were hosting our Commissioner of Police, on 11<sup>th</sup> July, 2005, we had lunch, and we were to have another meeting on the 12<sup>th</sup> at Merti, Isiolo. So, as the District Security Committee, we travelled to spend the night in Isiolo. On the following day, very early in morning, we went straight to Merti.

Communication was very poor and, therefore, we could not communicate with Marsabit or Isiolo but when we reached Merti, I went to our Radio Call Room, because I wanted to inquire whether there was anything that had happened the previous night. I was immediately informed that there was a serious incident that had happened in Turbi. Since nobody had the information, I informed the OCS, who was at Marsabit, to organise

himself and the officers and leave immediately to Turbi. He did so. He managed to get a lorry from the DC's office. He was given some officers and moved straight to Turbi.

Before my OCS reached Turbi, I had communicated to our Provincial Headquarters in Embu, from where we were ordered to leave immediately and go straight to Turbi. We were supposed to be airlifted from Merti to Turbi, but we realised that the aeroplane was delaying. We managed to go by road up to Laisamis. From Laisamis, we came up to Marsabit because we also wanted to get some reinforcements. We arrived in Marsabit at about 12.00 noon. I was informed that a police chopper had left, and that it was flying towards Turbi.

I also received information from the Department of Defence (DoD) that they were releasing two choppers. When the OCS reached Turbi, he found that people had been murdered. He did not hesitate. He pursued the attackers and caught up with them at a place called "Benale". They fought and managed to recover some animals. They also got reinforcement from officers from Moyale. They tracked the raiders up to the border of Kenya and Ethiopia. Since they wanted to drive back the recovered animals, some officers came back to Turbi. The rest of the officers pursued the attackers.

While in Turbi, several people came, who included the Provincial Police Officer, a Deputy Commissioner of Police and somebody else. We were so many in that area. So, we mobilised ourselves. It was becoming dark. So, we postponed our operation up to the following morning. We went to Moyale very early in the morning to inform our counterparts in Ethiopia, who promised that they were also going to search for those animals. We then came back to Marsabit to collect data.

When we arrived back in Marsabit, we held a meeting. There was a letter given to the Ambassador of Ethiopia, through the normal procedure. We were then informed that they would communicate to us. We believed that the people who had attacked the people of Turbi had come from Ethiopia. However, we came to learn later that the attack was mounted by the group known as "OLF". That was what we communicated to the Government of Ethiopia, which assisted us very much. I remember that on that same day, they returned 30 camels immediately we left Moyale.

After our meeting, which took place on the second day, there was a lot of tension. We were moving from place to place. We were rushing from here to Moyale and from Moyale to Marsabit. We had a lot of officers. I have given other briefs to the Commissioners. If you have time, you will look at them.

**Ms. Belinda Akelo:** Mr. Amos Cheboi, when you say "briefs", do you mean the letter with the initials "ATT" on the front of it?

**Mr. Amos Cheboi:** Correct.

**Ms. Belinda Akelo:** Would you like to submit it as evidence?

**Mr. Amos Cheboi:** I would like to submit it as such.

**Ms. Belinda Akelo:** Hon. Commissioners, kindly, admit the letter.

**The Presiding Chair** (Commissioner Slye): It is so admitted.

**Ms. Belinda Akelo:** Mr. Amos Cheboi, is there any other document regarding this incident, which you would like to submit to the Commission?

**Mr. Amos Cheboi:** I have also submitted to the Commission, minutes of a joint meeting chaired by the DC, Moyale, and his counterpart on the Ethiopian side.

**Ms. Belinda Akelo:** Hon. Commissioners, the witness is referring to a document headed “Minutes to the Moyale/Marsabit Joint DSC Meeting”, dated 16<sup>th</sup> November, 2005, and which forms part of your file. Through the presiding Chair, if you could, kindly, admit it as evidence.

**The Presiding Chair** (Commissioner Slye): It is so admitted.

**Ms. Belinda Akelo:** Mr. Amos Cheboi, thank you very much for the information on the Turbi massacre. Would you now like to make a statement, with recollection, on the second count, which is information on the Bubisa massacre?

**Mr. Amos Cheboi:** Yes, honourable Commissioners. As we were pursuing the attackers, one of my officers, who was at Marsabit, informed me that they had received information that some people had been murdered in Bubisa. I immediately ordered him to leave Marsabit and rush to Bubisa. When he reached Bubisa, he was not given any assistance. He informed me that the people around that area were not co-operating with him. It was becoming night. So, I informed him that it would be better that we search tomorrow. The information we got was about killings of ten people. A missionary had left Sololo and passed Turbi without any problem, but when he reached Bubisa, he found a roadblock. I understand that he personally disembarked from the vehicle and went to talk with the crowd but he was asked: “Who are you carrying?” He replied: “I am carrying people from my church and we are going to Marsabit”.

People from my church and I were going to Marsabit for a seminar when we were asked whether we had heard about Turbi. We answered in affirmative. We were asked if we saw so many bodies lying around that area. That was the information by Father Aldrin. He narrated how those people were killed. They used the same vehicle to dump the bodies in the thicket. There was a lorry which was used and we managed to get the owner.

After a search we were unable to get the bodies on the same day. When I came from Moyale, I went with my team and we were assisted with a helicopter. We went to about 10 kilometres from the scene of murder. We were able to trace some bodies. We had information that the police reservists were guarding the bodies. But unfortunately, when



we reached there we were cautious. We met one person who was standing between the corpses. We thought maybe this was the reservist who was guarding the bodies.

We went round and we saw that he had no gun. So, we shot in the air. He responded by lying down. We realized that this person was alive. So, we went to him and found he was one of the victims. It was so sad because he was sleeping between the bodies. Due to the harsh nature of that area, he was sleeping between the corpses and when the vultures came he had to chase them away.

After we came from Bubisa, we were able to write the statements of the survivors that is Father Aldrin and Abduba. We were able to get also information that there was a lorry which blocked the vehicle of the father. Thereafter, people went after them and beat them up.

When we wrote the statement some people were mentioned. We arrested them and took them to court. Our file was CR No.5451/96 of 2005 then Court File No.1753 of 2005. They were taken to court on 5<sup>th</sup> August, 2005.

Mr. Mamo Wako was the chief of Bubisa. Mr. Robert Guyo was the Assistant Chief and Mr. Galgalo Barile was the owner of the lorry. So, we did our part as the police and took them to court.

The two witnesses gave evidence in court, but the eye-witness, that is Father Aldrin, after writing the statement, he went and we never knew where he was. When he was writing his statement, he informed us he was going to Nairobi. We were in dire need of him because he was the only witness who could give us information. In the court, we could not proceed with the case without him. After some time, we sought advice from the Attorney-General and he agreed that we could withdraw the case under Section 87(a) which can allow us also to re-arrest the suspects when Father Aldrin came. So, that is how the case of Bubisa transpired.

**Ms. Belinda Akello:** Before we make any clarifications, we will now come to the card account which was an allegation made by one of the officers. Before you respond, we would like to play the clip that the person did bring before the Commission to both refresh your memory and that of the Commission.

Presiding Chair, maybe after you have watched it, you can bring one laptop so that the witness can also watch the same after the Commissioners have seen it.

*(The video clip was played)*

**Ms. Belinda Akello:** Mr. Amos Cheboi, would you like to respond to that claim and on the allegation that the officer made here yesterday?

**Mr. Amos Cheboi:** After the incident of Turbi, I was able to talk to my officers and inform them that any vehicle ferrying animals to Nairobi should be checked. I informed them that they should check the vehicles in Turbi and finally Marsabit. So, the officer

who alleges that his animals were stolen, I informed him to give me the number. Even in that clip, I wanted to get the number of animals he is purporting to have been stolen.

Maybe if I can start from the beginning. When we learnt that maybe these animals could be driven to Nairobi we decided that all the vehicles would pass by Marsabit. Even those which were passing from Moyale to Bupe and Garissa; we informed them to pass here for us to identify our animals. During that day, we had a meeting with leaders and we were choosing the Security Committee leaders. When we finished we had already brought four lorries, with others carrying cows, sheep and goat.

We went to Moyale. Since I was the secretary of the DSIC, I wanted to take the data. So, the DC by then informed all the *wananchi* who were present to identify their animals, so that they could go to Moyale because we were meeting with our Ethiopian counterparts. In case of any compensation, we were supposed to give the correct data. But when we emerged from our office, the officer who was here yesterday told us: these are the people who want to take our animals. I thought maybe he was not a police officer. I went to him and informed him that I was the OCPD and the secretary of the Committee. I told him that he could tell me how many of his animals had been stolen. Then he uttered some very abusive words in Kiswahili Language. If I may quote what he said: "You dogs; you want to take our livestock."

Then the PC arrived at that church and informed all the members that we had ordered all the vehicles to come to Marsabit. There was some information that some goats were returned from Laisamis. I want to inform you that they identified those vehicles. They were to identify only two goats. We drove the two goats. Since we did not want any confrontation, we released the lorry and it was driven away. But immediately some people came and alleged that the same lorry was carrying their animals.

I, as the OCPD, informed those who were in Laisamis - because we had no communication in between - to intercept and return back the animals. So, when they came here, we detained those animals. For your information, nobody identified those animals until we went to court to request whether they could be disposed of at their own peril.

The officer was claiming that all those animals were his. Before I knew him, Mr. Mohammed then confronted us. I did not see the second part of the clip. The first time we took the gun, this man was armed. He was given a firearm irregularly by an inspector of police called Fondo, because this officer was on leave. According to our rules, nobody is allowed to carry any gun when he is not in uniform; and more so, when on leave.

So, this man came and was given a firearm. I do not know what his intentions were because during that time when we got the gun, we found it was fully cocked. I thought he was a Kenya police reservist. I came to learn that he was given the firearm by our officers. So, we took action against our officers who had given him the gun.

When they reached Nairobi the Commissioner of Police ordered that officer to be charged and that his disciplinary papers be taken to Nairobi, so that he could take action.

I want to inform you that the OCPD has no powers to sack or dismiss anybody. We only recommend according to the charges. But this officer was lucky because I did not even mention him to be sacked. I felt that since he came from the aggrieved family maybe he was so emotional. I put him in the cell to cool down. I was to release him, but unfortunately, we received the information we had no option, but to hold him. He was informed to put in writing what happened.

After some time, I understand he was dismissed. He came to my office. I advised him that he had to appeal. He appealed after seven days had elapsed. In the letter, he wrote a complaint against the OCPD. I informed him to make sure that he wrote his appeal against the sentence or the dismissal. He wrote it again and I was able to forward it. So, far I have not received information concerning that because it will come through him.

I want to confirm that the officer was accused of gross misconduct and he was charged accordingly. The penalty for the action he took amounts to dismissal unless he proves that he had no ill intentions.

**Ms. Belinda Akello:** Thank you for your long and elaborate statement that you have made today. I have a few clarifications to make with you and then we will hand you over to the Commissioners. I will make my clarifications in tandem with the way you have made your statement.

**The Presiding Chair** (Commissioner Slye): Excuse me counsel, that is not what I said. I said that we would listen to you before we hear your client. We are in the middle of a testimony of an individual. We would like to finish with questioning that individual. We have another witness we will hear and then we will hear you; and then if appropriate, we will hear your client.

**Ms. Belinda Akello:** Mr. Amos Cheboi, you have informed us that once you got information about the Turbi massacre, you sent an OCS to the ground with other officers and that you did not immediately go. What was the name of the OCS that you sent?

**Mr. Amos Cheboi:** Chief Inspector Joshua Koech.

**Ms. Belinda Akello:** You have also informed us that the PPO and the Commissioner of Police did also come during that time. Do you remember the name of the PPO then?

**Mr. Amos Cheboi:** The PPO who came was the late Chigamba.

**Ms. Belinda Akello:** The Commissioner of Police?

**Mr. Amos Cheboi:** The Commissioner of Police sent a representative.

**Ms. Belinda Akello:** Who was sent?

**Mr. Amos Cheboi:** I do not remember the name, but he came from police headquarters.

**Ms. Belinda Akello:** That is all for Turbi. If we go back to Bubisa which officer did you send on the ground whom you said that when he went, he did not get any assistance from the people as they were not co-operative? What was the name of the officer you sent and tasked with the operation?

**Mr. Amos Cheboi:** It is the same OCS, Joshua Koech.

**Ms. Belinda Akello:** Kindly clarify to the Commission, you did send Joshua Koech on the same day the massacre took place?

**Mr. Amos Cheboi:** Correct. I sent him the same day.

**Ms. Belinda Akello:** How did your office get information of the Bubisa massacre before you sent the OCS?

**Mr. Amos Cheboi:** Since we were in Merti there was a watchman who worked with Telecom Posta; who managed to rush to Rawana. Rawana is about 15 kilometres. He rushed to Rawana and gave that information. So, they got the information from that man from Teleposta.

**Ms. Belinda Akello:** Did the watchman write a statement when he came from Rawana?

**Mr. Amos Cheboi:** No he never mentioned anything. We learnt later on that he was the one who gave information. He never mentioned his name; he only said that people had been massacred.

**Ms. Belinda Akello:** You also informed us that you had a statement from Father Aldrin. Did Father Aldrin officially write a statement to the police?

**Mr. Amos Cheboi:** Correct. He wrote a statement.

**Ms. Belinda Akello:** You have also indicated that you found the owner of the lorry. For the record, kindly confirm the name of the owner of the lorry.

**Mr. Amos Cheboi:** The owner of the lorry is Barile Boro.

**Ms. Belinda Akello:** Did you find out what the lorry did or what was the significance of the lorry at the site of the massacre?

**Mr. Amos Cheboi:** According to Abduba Wako who was a survivor, they met a lorry christened Bubisa. After inquiring we found that the lorry was for Mr. Galgalo and we managed to arrest him.

**Ms. Belinda Akello:** So, Mr. Galgalo was the owner of the lorry. What was the contribution, if any at all, or the significance of the lorry in relation to the massacre? Did the owner of the lorry do anything in particular either to help, jeopardize or perpetuate the event that took place?

**Mr. Amos Cheboi:** We missed vital information because Father Aldrin gave information which we were supposed to counter-check. I understand the lorry blocked the road and there were some stones laid along the road. So, it played a major role in blocking the road.

**Ms. Belinda Akello:** In Andrea Wako Abduba's statement, did he also mention this lorry or the owner of the lorry?

**Mr. Amos Cheboi:** You know he was unconscious, but before he went into a coma he was able to recall that he saw the lorry.

**Ms. Belinda Akello:** Mr. Amos Cheboi, you have also informed this Commission that when you went with a helicopter and you were able to trace the body, on sighting the bodies you found some Kenya police reservists who were there, guarding the bodies. Did you establish why they were guarding the bodies and from whom they were guarding them?

**Mr. Amos Cheboi:** I did not say that we met the police reservists. I said that the information we got was that the bodies we were looking at were being guarded by Kenya police reservists. But when we found one man who was a survivor, we thought maybe he was the one who was guarding the bodies. I want to confirm to you there was nobody. It was only the survivor. We thought that maybe they were guarding the bodies during the night.

**Ms. Belinda Akello:** To the best of your recollection, did you have any member of the public who helped you with the search of the bodies?

**Mr. Amos Cheboi:** Actually we were so many including members of the Catholic Church of Marsabit. We also had some officers from Marsabit whom we went with to view the bodies.

**Ms. Belinda Akello:** Just for clarification, did any person from the parish go along with your officers; which person was able also to find this survivor?

**Mr. Amos Cheboi:** We went with two sisters up to where the bodies were dumped. These were sisters from the parish.

**Ms. Belinda Akello:** Could you recall their names?

**Ms. Amos Cheboi:** I do not recall, but they wrote their statements.

**Ms. Belinda Akello:** Do you have access to these statements that were written by the sisters?

**Mr. Amos Cheboi:** Yes. I can quickly check.

**Ms. Belinda Akello:** Hon. Commissioners, the witness is showing us a statutory declaration signed by Sister Karenina from the Catholic Mission of Marsabit and a second one from Sister Beta Arimenga. Mr. Amos Cheboi, are you able to provide for us these statements to be part of the evidence you adduce?

**Mr. Amos Cheboi:** I will provide them.

**Ms. Belinda Akello:** Hon. Commissioners, kindly admit the statements by the sisters.

**The Presiding Chair (Commissioner Slye):** So, admitted.

**Ms. Belinda Akello:** Mr. Amos Cheboi, this Commission did receive a statement from a witness who did inform us that he accompanied the police officer in search of the bodies. You have not mentioned him. He is not a nun. Kindly confirm again. Is there any other member of the public who accompanied you? He is not a police officer, but he worked with the church and he helped you with your search for the bodies.

**Mr. Amos Cheboi:** I do not recall because we had so many people. So, I cannot even recall who was with us and who was not.

**Ms. Belinda Akello:** Can you remember on what dates the statements you have on this case were recorded to clarify that statements were recorded immediately after the massacre?

**Mr. Amos Cheboi:** There was a lot of tension. I remember we took the statement of Father Aldrin immediately on 13<sup>th</sup>. The rest followed as we went on.

**Ms. Belinda Akello:** Do you have a copy of Father Aldrin's statement in your file?

**Mr. Amos Cheboi:** Yes, we have it.

**Ms. Belinda Akello:** Could you kindly also adduce this copy to the Commission? Hon. Commissioners, this does provide evidence that we had got to the contrary indicating that Father Aldrin has not recorded any statement. Hon. Commissioners, kindly admit this statement.

**The Presiding Chair (Commissioner Slye):** It is so admitted.

**Ms. Belinda Akello:** Hon. Commissioners, as you are still confirming, there is a statement by Father Alex who was the Vicar-General at the time.

There is a statement by Father Aldrin J. Anito, care of the Diocese of Marsabit whose nationality is Filipino.

Mr. Amos Cheboi, you have also indicated that you prosecute and go to court. You have indicated that two witnesses gave evidence in court. Which of these two witnesses did give evidence in court?

**Mr. Amos Cheboi:** I want to confirm to you that I saw in the file that two witnesses had already given evidence in court. I left immediately after the massacre and was transferred to Kiambu. So, I was not able to follow the process of the court. Maybe I can refer to the file.

**Ms. Belinda Akello:** Thank you very much. I would like now to go to the third count, which was incident and allegation that was made. Kindly confirm on what day this incident took place for which the recording has been provided.

**Mr. Amos Cheboi:** Could you repeat?

**Ms. Belinda Akello:** Can you recall the date on which this recording that has been brought before this Commission was made? What date was it?

**Mr. Amos Cheboi:** The recording of the video?

**Ms. Belinda Akello:** Yes.

**Mr. Amos Cheboi:** The recording came immediately on 20<sup>th</sup>.

**Ms. Belinda Akello:** Thank you very much. Can you for the record state the name of the officer in that recording?

**Mr. Amos Cheboi:** The officer is No.01043, police constable Mohamed Denge. He was based in Kilifi CID. His home is in Marsabit.

**Ms. Belinda Akello:** Mr. Amos Cheboi, based on what we have seen before the Commission, in your own words, what would you say provoked you?

**Mr. Amos Cheboi:** Actually, I am a very humble man. I remember one incident where this officer called us “these dogs, you want to steal our animals.” I went there and talked to him. One resident of this area, who happens to be a neighbour informed me that the officer was sick and that he is suffering from diabetes. He made me cool and I informed him that we were not going to harass him. But it reached a time when he was very furious and got hold of me. He was about to get my neck. If you can see even in the clip he was trying very much to reach me, but because I had an able officer--- I was not even able to control emotions. I did not even imagine that I could do that, but the officer was ready to fight. He confronted me and came straight to fight me. So, it was a way of self-defence. I had requested him to give his name and number of shorts or coats he had. He insisted that

I should not ask those questions. Even the DC was present, but the officer was not surrendering. He fought me when I was in uniform and he knows our regulations. So, it happened abruptly; I did not even know. He mentioned something which was very hurting to me; that I wanted to take those animals to my home area. So, maybe that was the cause of those emotions.

**Ms. Belinda Akello:** Thank you very much, Mr. Amos Cheboi. Maybe just to follow up on that, we had a witness yesterday who said that you shot him. Without going back to that testimony, could you confirm or deny that allegation?

**Mr. Amos Cheboi:** I want to confirm to you the OB. I was able to get the records and that is OB No.12/21 July, 2005. There was a patrol by the officers, led by Superintendent Koku, Muthui who was my deputy, Sergeant Kivindio and many others. They arrested Sakante and Trip Kombo when they met them. They were two. I do not know whether the name is correct because they do not have--- It was Halsama Chaldesa and the person who was here yesterday, Dida Tacho. They were arrested and brought to the police station. We had a suspect also with a similar name. He was a wanted murderer who murdered some children along the forest. So, I got interested and was keen. I interrogated him and he informed me that he had no ID card. I asked him where he was coming from and he informed me that he was from Turbi and that he had come from Rawana two weeks ago. Because we were still checking those who were here illegally, it occurred to my mind that, that person maybe the one who killed the children. After interrogating him we did not find anything. He was taken to court for failing to register. We have even the OB here. He never complained when he was brought in. We even stayed with him for three or four days waiting for the survivors of the forest incident, and he never complained. I want to say that it is not true. Gun wounds penetrate and it can be seen that it is a gun wound. I would like that person to provide a P3 form or anything showing the hospital he went to prove that it was a gun wound. We never even beat him and he came when he was sober. According to our records he was put in cells without any complaint.

**Ms. Belinda Akello:** Thank you very much, Mr. Amos Cheboi. My last question is with regard to the officer who provided the clip. You have informed this Commission that you did advise him to appeal his dismissal. Did you advise him before the seven days elapsed?

**Mr. Amos Cheboi:** When he got the letter it was in black and white. It was written that he had a right to apply within a period of seven days. This officer came after the elapse of seven days. But he wrote complaining about the OCPD. The appeal came again so that I could advise him to write what was supposed to be written. We forwarded the same to the headquarters.

**Ms. Belinda Akello:** Thank you very much, Mr. Amos Cheboi. Hon. Commissioners, that is all. Do you have any clarifications?

**The Presiding Chair (Commissioner Slye):** Thank you, Leader of Evidence. I also want to thank Mr. Amos Cheboi for appearing before us and providing us with the information



which will be quite useful to us in our investigations. I would like to ask if any of my fellow Commissioners have any further questions to you.

**Commissioner Shava:** Mr. Amos Cheboi, thank you very much for responding to our invitation to come here today. Your information has been very useful to our work. I would just like to go step by step, the way you went, and ask you a few questions. I would like to start with Turbi. As a member of the District Security Committee, were you aware of the heightened tensions in the community? What is it that you did to prevent such a massacre from taking place? What steps did the District Security Committee members and the State apparatus take since they were aware? What is it that went wrong, that resulted in the loss of very many lives?

**Mr. Amos Cheboi:** Commissioners, according to the statement I gave, we have written very many things. There was tension right from 2004. During those days we had no information that they were going to attack Turbi. We were informed that they were going to attack Forole and Aladi. We stationed one vehicle in Dukano and Forole. We went further and alerted the officers in Turbi because we had no police station there. It is being served by Forole. We had a camp of Administration Police (AP). We had received information about some tension, not in Turbi alone but everywhere in Marsabit. We were overwhelmed because of the resources. The OCS had no vehicle and we were able to cover only two places; Forole and Aladi.

**Commissioner Shava:** Thank you. The second questions relate to Bubisa. First, I would like to commend you and your officers for participating in the search for survivors and the bodies, which gave people a measure of relief in being able to bury their dead and luckily to find the survivors. Having said that, I would suggest that the recovery rate of these animals is abysmal. People speak of thousands of animals being captured and you have spoken of 30 camels being returned. I think if I was a resident here I would feel rather disappointed and, perhaps, expect more. We recognize that the police have many challenges. Do you have any suggestions as to how this situation can be improved, bearing in mind that the population here relies on livestock not only for food, but also as a source of wealth? That is how people educate their children. If somebody takes my 1,000 camels and I get 20 back, I am impoverished and this is a generational circle. How can that situation be improved? What can the police do to improve that situation?

**Mr. Amos Cheboi:** I want to clarify. I said that on the same day, on 13<sup>th</sup> after the incident, we were given the animals which had already crossed to Ethiopia. I do not recall the number because we recovered very many animals and we have the records. So, I was giving the number that we were given that day only. Another day we were given 250 camels. As we went on, we were given more and maybe the owners can bear me witness because we were handing over the recovered animals to them. I want to confirm to you that we were taking very seriously the issue of the animals being the only source of their livelihood. That is why we went across the border to request that those animals be returned.

I want to confirm to you, basing on the information we had and the political situation, that it was because of politics. Even when we were going to these meetings, the politicians could even water down those issues and were not supporting us. I can recall one meeting in Moyale. We were told by the leaders that the problem was the late Guracha Galgalo and Bonaya Godana, who has since died

They informed us that we were not supposed to have very many meetings and that we should let those people agree. Before they met their death, they went to Parliament and they were informed to go back to Marsabit and reconcile and make sure that the two communities co-exist. That was maybe God's plan and we were unable to proceed with the meeting.

**Commissioner Shava:** Thank you very much, Mr. Amos Cheboi. My final question is that as we have been in this area and other areas in the northern part of Kenya and very many Kenyans have told us that the security forces are involved heavily in preying upon the population. Some of the things they cite are theft of medical supplies and medicines and also livestock. Now, the clip that we just saw, I heard the officer accusing you personally of being involved in such theft. What is your comment?

**Mr. Amos Cheboi:** I want to confirm to you that it is not true. I initiated the issue of bringing the animals to Marsabit. We liaised with the OCPD Moyale and he agreed with me. I had no ill intentions. If he has any evidence he can give it, but my intention was to do justice and make sure that the owner of the animals was able to identify his stock as soon as possible. So, I had no ill intentions.

**Commissioner Shava:** Do you have any comment with regard to other State security officers being involved in such activities?

**Mr. Amos Cheboi:** If there is any evidence, I do not have it. But I have never heard of it.

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

**Commissioner Ojienda:** Mr. OCPD, I just want to ask one pointed question. You hit a man and we have seen it in video. You have also acknowledged it. Are you sorry about that act? Would you be in a position to offer public apology to this policeman for that particular act of overreacting?

**Mr. Amos Cheboi:** I want to confirm to you that I even talked to the officer before he left. After three days I apologized to him. I can extend the same that I had no ill intention; it was only by emotions. I have no problem with him. I apologize to him for what happened. It was tit for tat and maybe he could also be told to apologize to me. But I have no grudge against him.

**Commissioner Ojienda:** Thank you.

**Commissioner Chawatama:** In the second massacre, what were the people who were taken to court charged with? What was the offence?

**Mr. Amos Cheboi:** Maybe I can refer to the records. The charges were robbery with violence, contrary to Section 296/2 of the Penal Code.

**Commissioner Chawatama:** In relation to the assault, who was the senior officer between you and the constable?

**Mr. Amos Cheboi:** I am the senior most.

**Commissioner Chawatama:** Can you recall what he was wearing in the clip?

**Mr. Amos Cheboi:** He was wearing a jacket.

**Commissioner Chawatama:** What kind of jacket?

**Mr. Amos Cheboi:** A jungle jacket.

**Commissioner Chawatama:** Who wears such a jacket?

**Mr. Amos Cheboi:** A police officer.

**Commissioner Chawatama:** At what point did you identify him as a police officer?

**Mr. Amos Cheboi:** I never identified him until when he was in the police cells. When the officer wanted to know what happened, he disclosed that he was a police officer. I regarded him as a Kenya Police Reserve.

**Commissioner Chawatama:** Did it really matter who he was? Did he deserve to be slapped?

**Mr. Amos Cheboi:** No.

**Commissioner Chawatama:** I was very curious about the truck from which you said two goats were removed and then you said that the truck should go. Was my understanding right?

**Mr. Amos Cheboi:** You were right, but I was not the one who released the lorry. It was the OCS after identifying the two goats. He released the two lorries, because there was nobody who could identify others.

**Commissioner Chawatama:** The two goats were stolen?

**Mr. Amos Cheboi:** The two goats bore the mark of Gabra.

**Commissioner Chawatama:** The officer was then charged with gross misconduct. What were the particulars of that particular offence?

**Mr. Amos Cheboi:** Let me read.

**Commissioner Chawatama:** Remember just the gist. Was it assaulting you?

**Mr. Amos Cheboi:** Initially, I did not know whether the officer was a police officer. When we took him to the cells, he was to be charged with creating disturbance and obstructing a police officer.

**Commissioner Chawatama:** I am talking about the action that led to his dismissal. You said that initially it was gross misconduct. I am asking you: What were the particulars of that offence? What did the officer do to warrant him being charged with gross misconduct and losing his job?

**Mr. Amos Cheboi:** The action is found in Section 7 of our Force Standing Orders. It says that when any junior police officer utters any words or acts purporting to be threatening, he will be charged in orderly room proceedings. It is not the one which made him to be dismissed. It was the decision of the Commissioner of Police. We only facilitated.

**Commissioner Chawatama:** So, he was charged for an offence and then dismissed because of that offence. Were you ever charged for assaulting him?

**Mr. Amos Cheboi:** I was also warned.

**Commissioner Chawatama:** You received a warning?

**Mr. Amos Cheboi:** Yes. Everybody who was involved in that scene received the same.

**Commissioner Chawatama:** So, you did not lose your job?

**Mr. Amos Cheboi:** I did not.

**Commissioner Chawatama:** Thank you.

**The Presiding Chair** (Commissioner Slye): Thank you, Mr. Amos Cheboi. I have some brief questions.

First, in reality you have been referring to a file of documents that include statements of witnesses and related documents with respect to Bubisa and maybe even the Turbi massacre. I am wondering if we could have a copy of that file made for our own investigation and research.

**Mr. Amos Cheboi:** I will arrange and avail them.

**The Presiding Chair** (Commissioner Slye): Thank you. We very much appreciate that.

I had a couple of brief questions. My understanding when you were testifying about the Turbi massacre is that the officers working with you very quickly located individuals that you thought were responsible for that massacre. Is that right?

**Mr. Amos Cheboi:** Maybe you could repeat.

**The Presiding Chair** (Commissioner Slye): With respect to the Turbi massacre, the one of 12<sup>th</sup> July, if I understood your testimony correctly, you said that individuals were located very quickly, I think within a day of the massacre, who you had reason to believe were involved in that massacre.

**Mr. Amos Cheboi:** We later received information that some people were involved in that massacre.

**The Presiding Chair** (Commissioner Slye): The people gave you information. It was not that you found people on the run and captured them?

**Mr. Amos Cheboi:** I want to inform you that there were a lot of killings because there was confrontation between our officers and the attackers. They fought from noon up to 6.00 p.m. So, there were so many deaths, including even our officers. We lost one officer and some Kenya Police Reservists while we were trying to bring the animals. So, the information we got was that certain people were involved.

**The Presiding Chair** (Commissioner Slye): Those individuals were arrested and then what happened with them?

**Mr. Amos Cheboi:** I am not in possession of the file, but some people were arrested and taken to court.

**The Presiding Chair** (Commissioner Slye): You are not aware of what then happened with them? Secondly, with respect to Bubisa, did I understand correctly that the charge against the individuals that were allegedly involved in the killing of those nine individuals was robbery with violence? Is that correct?

**Mr. Amos Cheboi:** It is correct.

**The Presiding Chair** (Commissioner Slye): Do you know why they would only be charged with robbery with violence and not murder or some other murder related charge?

**Mr. Amos Cheboi:** I am not able to establish, but all these are capital offences.

**The Presiding Chair** (Commissioner Slye): You had received statements from the Father and others indicating that nine people had been killed. Did you then give that information to the prosecuting authorities?

**Mr. Amos Cheboi:** Yes.

**The Presiding Chair** (Commissioner Slye): Okay. We can follow up on what happened with that.

My last question is a more general one. It follows from what one of my fellow Commissioners asked. How long were you in Marsabit as an OCPD?

**Mr. Amos Cheboi:** For about two years and three months.

**The Presiding Chair** (Commissioner Slye): So, in that time I assume that you were able to develop a relatively good sense of the issues in the area; the sort of things that, probably, we heard both yesterday and today, in terms of theft of livestock, lack of access to water, security concerns and those sort of things. I am wondering, now with the passage of time and you are somewhere else, if you could reflect a bit upon what you would advise the Government to do to make life here for the individuals more secure and productive.

**Mr. Amos Cheboi:** I want to confirm to you that when I came there was a lot of tension. We managed to cool them down by electing a committee of leaders. We were able to talk to them and they were able to pass the same message to wananchi. The most hindrance was the political wing. Whenever killings occur it wriggles back to the community and not individuals. So, that was the problem we were facing here. But after five months, we were able to penetrate right to the wananchi themselves and they were very supportive. The Referendum issue came where some people were for banana and others for orange. That also triggered tension. The politicians took over from there and it was so tense. We called several meetings. Every week we had two or three meetings; either by the community leaders or politicians. We were also informing the Government about the situation.

We were receiving so much information. Some of the information was true while some was not true. So we advised the Government to set up police stations around Huri Hills, Turbi and to upgrade Forori.

In my capacity as the OCPD, I had to pass that information through the PPO. The PPO could pass the same information to the Commissioner of Police. So, we had given out our reports. Up to now, they have done some improvement. I want to confirm that what we proposed, although it came late, they have done so.

**The Presiding Chair** (Commissioner Slye): So, if I understand, is it your view that if the politicians refrained from engaging in activities that either intentionally or not, inflame the local populations, the existing security structure here would be sufficient in terms of protecting individuals and their livestock?

**Mr. Amos Cheboi:** It is true.

**The Presiding Chair** (Commissioner Slye): I want to thank you for accepting our invitation to appear here today. I want to thank you for the documents that you will be availing to the Commission. I want to thank you for participating in our process.

*(Mr. Patrick Mugo took the oath)*

**Ms. Belinda Akello:** Hon. Commissioners, our next witness was the Deputy CID officer, Eastern Province. He was also the investigating officer who covered the three incidents that the previous officer has talked about. He shall give you his statement as the investigating officer of what was found of the Turbi/Bubisa massacres. He was also present on the third count which the previous witness has just given. He will also give information to this Commission as being the senior-most officer in that compound when that incident happened according to the clip.

For the record, kindly state your name.

**Mr. Patrick Mugo:** My name is Patrick Mugo. I am a Senior Assistant Commissioner of Police attached to CID headquarters. I am a staff inspection officer.

**Ms. Belinda Akello:** How many years have you served in the police force?

**Mr. Patrick Mugo:** I have served in the police force for the last 32 years and some months.

**Ms. Belinda Akello:** You did receive a letter of invitation from the Commission which invited you as a witness before this hearing. You were informed that you could have useful information by virtue of your position as the Deputy Provincial CID officer in Upper Eastern. You were also informed that it is in relation to the investigations of the Turbi and Bubisa massacres. You were informed that you could also have very useful information with regard to an incident that was recorded as a statement by a witness and that a former witness has also given information. So, we shall require you to give information on these issues as an investigating officer from a senior perspective on the manner in which these things happened. Before you start, kindly confirm that in your invitation letter you were informed of your right to secure legal representation if you wish.

**Mr. Patrick Mugo:** Yes. I received an invitation which informed me that I was identified as a potential witness, to state what happened in the Turbi massacre.

**Ms. Belinda Akello:** You also did waive your right to secure legal representation?

**Mr. Patrick Mugo:** I did not have the details of what I was to say so, I felt that I could not have any legal representation. I have the letter here and I read its contents. I was not

given the areas which I was supposed to cover in this Commission. I would also like to say that I was not at the investigation per se on the ground. I was supervising and co-ordinating the investigations. I would like to make that correction.

**Ms. Belinda Akello:** That is noted. Kindly inform this Commission of any information within your knowledge of the event that took place on or around the 12<sup>th</sup> of July, 2005 and your involvement in whatever capacity.

**Mr. Patrick Mugo:** In April 2005, I was posted to Eastern Province whose headquarters is in Embu. I was posted there as the Deputy Provincial CID officer. My duties were to co-ordinate all investigations in all the CID divisions within the province. I was also meant to deal with administrative issues in relation to CID matters and various investigations which were to be undertaken by the CID and even advising and crime investigation in all criminal cases.

I used to deputize the Provincial CID Officer in various fora where he was to sit in committees sometimes in his absence. I do remember, that on 12<sup>th</sup> July, the Provincial CID Officer whom we refer to in short as the PCIO, was not in the station. So, I was in charge. At around 9.00 a.m., I received a telephone call from the CID headquarters. I was told to prepare to accompany the Provincial Security Intelligence Committee. The committee comprises of the Provincial Commissioner, the Provincial Police Officer, the Provincial CID officer, the regional co-ordinator and the National Security Intelligence Services. It used to have a secretary who was the Deputy Provincial Commissioner.

On that day, I accompanied the committee and there was Mr. Nandasaba, who was the late former Provincial Police Officer, Mr. Chigamba who was a Deputy Commissioner of Police and the late Deputy Regional Co-ordinator National Security Intelligence Services. Our duty was to go and assess the security situation at Marsabit and find out the cause of the massacre and inform the Government of the situation on the ground.

We waited for a police helicopter which came at around 1.30 p.m. we arrived there at around 2.30 p.m. The police chopper landed at Turbi. We held a hearing where we listened to the people. Various people were in agony. Some were crying and it was a very sorrowful situation. It was so moving, I would say, because most had lost their entire family.

When we arrived, the OCS was on the ground. The CID officers who were stationed there were on the ground and they were trying to locate whether there were bodies. We realized that some of the bodies had been buried in accordance with the Islamic religion.

So, we, as a committee, decided to call the people who were co-ordinating; the OCS, the CID officer in charge and the DC who was there. The DC arrived shortly after with the OCPD.

We instructed them to make sure that all was done. There were so many activities being done. There was a full battalion of the army which the Government had mobilized which



had about four choppers. There were also about five tankers. So, we told them to plan for an operation which was to be a joint operation. Because of the weather, we left as a provincial security intelligence committee and came to Marsabit. We were taken to where we were to spend the night, which was Marsabit Safari Lodge.

The late PPO was receiving a brief from the OCPD. At around 8.00 p.m., when we were in the lounge, we were informed about the Bubisa incident. The OCPD was ordered by the PPO to make sure that all those bodies were recovered. In the morning, we went to welcome the late Hon. Mirugi Kariuki who came as part of the Government delegation. The late MP for North Horr Dr. Bonaya Godana was also present to receive the Assistant Minister. We held a security meeting and we decided to go to the scene again.

We went to the scene. That was when the OCPD briefed us about that horrifying incident of Bubisa. We ordered security operation to be mounted to make sure that those bodies were recovered. We were informed that the nine persons met their death at Bubisa through beatings and that they were actually killed using stones.

We ordered an investigation into the issue and there were a lot of activities because we were even trying to engage with the local opinion leaders, councillors and MPs. After that, we retired again to the Marsabit Lodge. The Assistant Minister was still there. In the morning he left for Nairobi. It was then that we decided with the PPO that I should remain behind. I was left behind to ensure that everything in terms of investigations was done. So, I allocated various responsibilities to people and we were working in league with the OCPD, CID officers and other officers.

The Government was very concerned about the issue. The Assistant Minister had promised that food would be brought to that area and on behalf of the Provincial Security Intelligence team, that was done.

I was interested in the investigations to see that, that issue had received all the attention legally. It was the third or the fourth day – I cannot remember very well – that the OCPD informed me that they had recovered nine bodies and one survivor. We ordered that this survivor be taken to the hospital. I visited him at the hospital and I saw that he was shivering because of the period he had stayed in the forest. He was confused. He could not say anything and he was very shy.

We informed the police headquarters and he was airlifted to Nairobi for medical treatment. We continued with our investigations. It is a long story. We recorded a statement here and there in relation to the Turbi issue. A full operation was carried out. So many people were arrested. Some were illegal migrants and were taken to court. But we also found people who were identified by the Turbi people who were actually named as the people who participated in the massacre. So, after completing the investigations, we had to take them to court.

On the issue of Bubisa, we did not get the actual witness; the Father who was driving the vehicle. Information was that he was made to sit at a place when the nine were killed.

They took over the vehicle by force and went somewhere and the vehicle was returned afterwards. Even when the vehicle was brought to the Marsabit Catholic Diocese where it was stationed, there were a lot of stones, blood, the windscreen had been smashed and various signs indicating that there had been violence.

We were informed that the priest was taken the following day to Isiolo. From Isiolo, he was rushed to Nairobi. In Nairobi, they have the congregation head who is the provincial conveyor who ordered the priest to leave immediately for home. During the course of the investigations I visited the congregation centre at Nairobi and I recorded a statement with the police and the provincial conveyor and he said it was the wish of the priest to leave the country. I was engaged in some discussion with him to tell him of the importance of having justice done about the matter and he said he would try.

As the case proceeded in court, we had one hindrance which was that the actual witness who witnessed the incident was not there. So, I informed Interpol, Filipinos, but this did not bear any fruit. Shortly after, I was transferred to Western Province as the Provincial CID officer.

On transfer, I handed over the file to the other officer who took over from me. I also would like to bring to light that this file never left this place. It was left with the CID officers who were there. I had to concentrate on my new station in Western Province. But I remember during one of the hearing dates, I was called to give evidence on this case. I think the magistrate was indisposed during that time; therefore, I had to go back. Shortly after, I was told the case was withdrawn.

The case was withdrawn under Section 87(a). I would like to say that the case can still be reinstated according to our Kenyan law subject to the availability of the priest. There are boundaries that we cannot cross as the police. The Government of Filipinos and the Government of Kenya can talk and the priest can be made available. That is all I can say regarding those issues.

**Ms. Belinda Akello:** Thank you for your elaborate testimony. On the last issue, should you wish the clip to be replayed, there was a clip that was brought and an allegation made by a witness regarding the then OCPD who has also testified before this Commission. To the best of your recollection, we do have information that you were on the ground and you also were the senior-most officer then. By virtue of this fact, kindly inform this Commission what transpired and, if, indeed, what transpired was the right thing in accordance with police procedure?

**Mr. Patrick Mugo:** I remember on 21<sup>st</sup> July, 2005, as we continued with investigations we had recovered a lot of cows. They were between 500 and 1,000 and they were kept in a station which is about two acres. This station is where the Divisional Commander has an office and where the OCS is stationed. This is where the CID offices are also stationed. There were also goats which had been recovered. They were about 500. Investigation involved a lot of activities. Lorries were travelling from Moyale to Marsabit. Any animal that would be identified by the owner would be offloaded. There

were a lot of activities from Moyale and here. There were many people who were claiming their animals had been taken away.

If I may talk a bit about the climate here; during the morning hours as opposed to Moyale, there is a lot of fog. It is very cold in the morning. In fact, it is chilly in the morning. Cows and goats started dying because of the bad weather. It was a heavy burden for us. I decided that since I had no authority to decide who owns what animal, I could only refer the matter to the courts. I talked to the magistrate and he kindly agreed to have a session at the police station. We said anybody who had a claim to raise it and it was done.

I think there is a portion I did not talk about. I did not talk about the incident prior to that incident. I am sorry; I do not have a written script. I did not know which issues I was supposed to address. So, I am just getting this and that. You will excuse me for that.

On the video clip, honestly, before God I have nothing to say about it because I did not witness that. The police station is at a far end and there is workshop at the far end. Those people who were there can say that I was looking into the issue of the animals which were dying and two animals which had died were slaughtered. The slaughter was for the purpose of retaining the skin because that is what we could only save.

We could not do anything about the carcass. When we were there, we heard a commotion. We could not see what was happening and there were a lot of people. Since that commotion was well heard, I went to see what was happening. I heard people saying that there was somebody who wanted to fight the OCPD. I called the OCPD and asked him what was happening. He narrated to me that there was somebody who had a gun and whom he suspected was one of our police reserves and he ordered that he be put in cells. So, that ended there but at around 1.00 p.m. through the news bulletin, a script was played on the Kenya Television Network (KTN). I did not see it because we did not have a television but I recall very well that my boss called and asked me about the incident and I explained to him about what had happened. At 1600 hours, that is 4.00 p.m., as I was in the station, I think I visited the cell of the witness who was before the Commission yesterday and one of the Criminal Investigation Department (CID) officers informed me that, that was a police officer. I went to the cells and I asked him to explain what had happened and since he was not violent and was sober, I decided to release him. However, the OCPD had hinted to me that he was on leave and he had a firearm issued to him illegally and he had the smoke jacket on. In the ordinary course of nature as a police officer, we could suspect he was one of the people who were being investigated, but I did not tell him. So, I decided that a search be done to see whether we could find anything. I called a very independent officer who was the court prosecutor and I told the person who was there and a few General Service Unit (GSU) soldiers to come. Remember, I briefed the constable very well that we are going to see whether he had any gun at home and immediately we could release him. When they went, they did not find anything. He was released at around 1657 hours. Before the arrest and as we were discussing with him, he said he was one of the victims because his animals had been stolen. I ordered the officers from the CID to record a statement as one of our witness of the Turbi Massacre.

My Lord, Commissioners, that is when the other process of disposing of the animals started and he was one of the victims who was awarded his animals by the court. That is all I can say about the issues. I would like, as a senior officer, to bring to light to this issue. The Commissioner of Police, under Section 5, is empowered to make police standing orders which are known as administrative orders. The full standing orders are found in chapters 1 to 60 and they talk about different issues. I would like to talk about Chapter 20. Chapter 1 talks about constitutional organization and control. Chapter 2 is about duties and responsibilities. Chapter 60 talks about Kenya Airport Police but the chapter I want to talk about is Chapter 20 which talks about discipline. Every police officer is supposed to promptly obey orders issued by any senior officer. The same chapter has provisions where the officer can complain against another officer and that is our official operation. The action of the officer, of shouting to an OCPD that he was corrupt in full view of the public, in my own opinion as a senior officer, he was in breach of the laws. In the same chapter, we have 46 disciplinary offences where we normally charge officers of the inspectorate rank and below. It happened and I have also heard a bit of the OCPD's testimony and how they exchanged words and I leave that to the Commissioners. I would like to say that the officer was not saying the truth because he was ordered to be charged by the Commissioner of Police. Given that he is indisciplined officer, he was supposed to be disciplined.

**Ms. Belinda Akello:** Mr. Mugo, which officer are you referring to now?

**Mr. Patrick Mugo:** I am referring to a witness who came here yesterday called Mohammed.

**Ms. Belinda Akello:** Thank you very much, Mr. Mugo. You have also provided sections of the Police Act and a caption of the Penal Code Cap.60 of the Laws of Kenya. Would you like both of them to be admitted as part of your evidence?

**Mr. Patrick Mugo:** Yes, my Lords.

**Ms. Belinda Akello:** You have also provided a written statement. Would you also like it to be admitted?

**Mr. Patrick Mugo:** Yes, my Lords.

**Ms. Belinda Akello:** Honourable Commissioner, Presiding Chair, kindly admit the written statement and caption of Cap.63 of the Laws of Kenya and Police Act, Cap. 64 which has been provided by the witness?

**The Presiding Chair (Commissioner Slye):** So admitted.

**Mr. Patrick Mugo:** My Lords, since Marsabit is far, I also wanted to present Chapter 84. The reason why I brought up this is because it is an Act of Parliament. Allow me to comment on Section 34. It is titled "Powers to Arrest for Disciplinary Offences." It states:-

“Any gazetted officer or inspector may arrest without warrant or order the arrest without warrant of any officer (not being a police officer of a senior rank) who is accused of any offence against discipline and any police officer may on receipt of such orders, apprehend such an officer without a warrant and shall forthwith be brought before a gazetted police officer or an inspector who may confine such police officer in any building set as a guardroom or cell.”

My Lords, the full standing orders in the same Chapter 20 goes ahead and documents this. But it says only when the officer is violent and immediately he is sober, he is supposed to be released and that confinement is not seen to be a punishment. That is why I decided to bring the issue out. I also had the Penal Code, Chapter 63 and I would like the Commissioners to get sight of Section 95(1) where we could actually charge the officer. That is why I say the officer was in gross indiscipline and had actually committed a criminal offence but I decided to leave him as he was a victim. But the Commissioner ordered a warrant of arrest. I really sympathized with the officer after realizing that he had lost some animals and that is why I had mercy on him but disciplinary wise, he is a senior officer who is supposed to have the policies of the force. He committed an offence. Thank you.

**Ms. Belinda Akello:** Thank you very much, Mr. Mugo for your elaborate statement that you have provided. I only have two clarifications to get from you. Do you remember the names of those who were in court and who were subsequently released under Section 87(a)?

**Mr. Patrick Mugo:** My Lords, I can remember them but not their full names. I can get their names from the file which was produced by the previous witness and which is here with me. One was Mamo Wako. The others were Sura, Roba, Guya and Guracha, Barree and Boro. This was in relation to the Bubisa incident.

**Ms. Belinda Akello:** Thank you very much. The second clarification is that you indicated that the case was withdrawn for one of the witness. You also indicated that the sole survivor Andrea Wako also wrote a statement. From your position as a senior officer, could this not stand as a direct eye witness to hold the case?

**Mr. Patrick Mugo:** My Lords, Commissioners, according to me, that statement could stand if you go by what is in Section 143 of the Evidence Act, where no particular number of witness are supposed to prove any fact. But the rule of the court, the previous ruling and the precedent - even the High Court may say it is unsafe to convict on uncorroborated evidence. In my opinion, I think that was why the Provincial Criminal Investigations Officer (PCIO), who took over from me, decided to seek the authority of the Attorney-General. Even if it was me, I could do the same because why should I take a case which was not well corroborated?

**Ms. Belinda Akello:** Thank you very much. My last clarification that I want to seek is that you ordered to have the house of the officer searched and no gun was recovered from his house. Was it ever established whether he had a gun at all?

**Mr. Patrick Mugo:** My Lords, that was a preventive measure. We have investigated cases where we feel some people have had guns and my highest worry was why he had a gun and yet he was on leave.

**Ms. Belinda Akello:** So, he did have a gun in his possession?

**Mr. Patrick Mugo:** No. It was recovered in the police station but he took a gun immediately he went on leave and he was staying with it at home. He made me become suspicious. We normally give them pistols. I could not tell him that and that is why I wanted a search to be conducted. In front of you, I wanted to cross-examine him yesterday but I respect and obey your rules. I asked him if he had any gun at home and he denied. I told him that we were going to search his house. I told my officers to treat him with respect because he was one of us. So, when it was not recovered, that was the end of the matter.

**Ms. Belinda Akello:** Thank you very much. Hon. Commissioners, that is all from us.

**The Presiding Chair** (Commissioner Slye): Thank you very much Mr. Mugo for appearing before us and honouring our invitation and for your patience in waiting this afternoon. Do any of my fellow Commissioners have any questions?

**The Acting Chair** (Commissioner Namachanja): Thank you very much for your testimony. I have one question with regard to the Turbi Massacre. You said that some suspects were arrested and taken to court. Could you know how their cases were concluded?

**Mr. Patrick Mugo:** My Lords, I heard that the case was determined and I think it was acquitted because of one reason or another. However, it went through a full hearing.

**The Acting Chair** (Commissioner Namachanja): As a CID officer in this region, would you advise us to revisit such cases?

**Mr. Patrick Mugo:** My Lords, under our Kenyan laws, and allow me to give an opinion because you are the Commissioners who will be deciding, when a court gives a decision, it is actually a judicial authority. It is only the Attorney-General who can order a revisit of the issue. It is only the Attorney-General who can reverse the decision of the lower court.

**The Acting Chair** (Commissioner Namachanja): Thank you.

**Commissioner Shava:** Thank you, Mr. Mugo. I just want a few clarifications which I would like to get from you. My understanding from the witness yesterday was that he came to the station because there was this emergency at his home where animals had been stolen and he came without a firearm. Is that true?

**Mr. Patrick Mugo:** That is true, my Lords.

**Commissioner Shava:** And when he got there, he requested for a rifle. So, at the time the incident that we saw on the video was happening, this officer, to me, appeared to be carrying that rifle. Was that the case?

**Mr. Patrick Mugo:** My Lords, the officer had a gun at the time of the incident.

**Commissioner Shava:** So, you suspect that he had another gun?

**Mr. Patrick Mugo:** Yes. This is because normally in our ordinary course, we have found constables going on leave with guns and we have very strong instructions that the guns must be handed over. Sometimes, an officer can decide to go home with his gun after duty, but we normally take action. I would like to inform you that the issue of the G3 firearm was in breach of the standing orders.

**Commissioner Shava:** Yes, and that is my next question. Since this officer was carrying a firearm, is there any allegation that some people had secretly removed it from your armoury?

**Mr. Patrick Mugo:** My Lords, the procedure which should have been used was for the officer to come to the OCPD and tell him, "I have abcd". I am a Senior Assistant Commissioner and I cannot go home with a gun. Personally, I cannot do that. Instead, I will see the OCPD of that area who will give me security and security will include patrols and if it so serious, station some people there. I would like to tell you that the officer who gave the gun was also disciplined under the chapter because it was in breach of the orders.

**Commissioner Shava:** Okay. So, the officer who actually gave out the gun was disciplined?

**Mr. Patrick Mugo:** Yes.

**Commissioner Shava:** Was he dismissed?

**Mr. Patrick Mugo:** He was not.

**Commissioner Shava:** Thank you. My third question and this is because this is in your area of specialization, we may not understand very much the distinction between a constable and an OCPD. Could you set out for us all the ranks in between?

**Mr. Patrick Mugo:** My Lords, at the lowest level, we have Police Constable. At the second level, we have Police Corporal. At the third level, we have Sergeant of Police. At the fourth level, we have Senior Sergeant of Police. At the fifth level, we have Inspector. At the sixth level, we have Chief Inspector. At the seventh level, we have Superintendent. At the eighth level, we have Senior Superintendent. At the ninth level, we have an

Assistant Commissioner of Police. We normally abbreviate it as ACP. Then we have my rank, Senior Assistant Commissioner of Police. Then we have Deputy Commissioner of Police. We have Senior Deputy Commissioner of Police. We have Senior Deputy Commissioner 1, who is the principal deputy of the Commissioner of Police and we have the Commissioner of Police. That is the ranking structure of the police force

**Commissioner Shava:** Thank you very much. So, there are, perhaps, 11 ranks between a constable and an OCPD. The OCPD is at what rank?

**Mr. Patrick Mugo:** A police station is commanded by a Chief Inspector.

**Commissioner Shava:** Okay. So, that could be five ranks or so?

**Mr. Patrick Mugo:** Those are seven ranks.

**Commissioner Shava:** So, seven ranks and then maybe about 11 or 12 ranks between a constable and the Commissioner of Police?

**Mr. Patrick Mugo:** Yes, they are many. They are 13 ranks.

**Commissioner Shava:** So, disciplinary proceedings against a constable should be undertaken by an OCPD?

**Mr. Patrick Mugo:** Yes, he is the one in charge of discipline of all specialized police and any other technical officer because we have signalers, the CID. In terms of disciplinary matters, it is the duty of the OCPD.

**Commissioner Shava:** Thank you very much for that clarification. I have two more questions. In the clip that we have seen three times, we see the constable throwing some remarks and words at the OCPD who in turn responds with a punch. We see him throwing the first punch. In this situation, whom would you fault?

**Mr. Patrick Mugo:** My Lords, Commissioners, I would fault both.

**Commissioner Shava:** Precisely, would you say also that there was anyone with a higher level of responsibility and seniority but acted in an incorrect version?

**Mr. Patrick Mugo:** My Lords, the incident has different approaches. There were many people. This is a disciplined police officer telling the OCPD: "You have been corrupt. Yesterday, you were given two goats." That was in full view of the public who do not know about operations. Believing what the officer is saying, the public would lose confidence in him.

**Commissioner Shava:** Did the senior officer have an option in that situation because we saw very many police officers around who came to separate them. Would it be correct for



this senior officer to ask the other officers to arrest this officer who was behaving in this manner in public? Would that be an option?

**Mr. Patrick Mugo:** Yes, that would have been an option.

**Commissioner Shava:** Finally, having seen the hierarchy as you were describing, I have not understood how the disciplinary procedure was taken by somebody in such a high position as the Commissioner of Police. The officer has said that no firearm was found on him. I would like to believe that the charge was to do with the kind of behavior that was portrayed. Is it normal for a constable to be disciplined in this manner by the Commissioner of Police?

**Mr. Patrick Mugo:** My Lords, I would not say the discretion was within the Commissioner but this issue was highlighted all over the Republic of Kenya and that is why the Commissioner was irritated. I would also say the Commissioner may have felt that as a disciplined officer and knowing the channels of complaints, he should not have behaved in such a manner. However, I am aware that there was communication between the OCPD and the Commissioner in relation to that. All I can say is that the Commissioner of Police decided to act due to gross misconduct.

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

**Commissioner Dinka:** Thank you very much for your testimony. I have only one question and that is in regard to the Bubisa Massacre. When you heard that the court had dismissed the case because of that, you said that you tried through the Archer's Post to get further evidence? What was the response?

**Mr. Patrick Mugo:** My Lords, I remember that by that time I had not gone. The case was withdrawn after an Interpol signal. This is when we felt that this person needed to be secured and the court said that we could not go on like that. That is when the then DCIO forwarded the file to the Attorney-General for direction. When I wrote a signal, I asked Interpol Nairobi to tell me whether they had any response, but I think those people did not respond. But I am not very sure. I still feel there was a signal that was saying that he was not traced. I have just peeped through his file, but I think this is a different file. There is another file where it shows that the signal was sent.

**Commissioner Dinka:** In your response, is it normal for the Interpol not to respond and in that case, what can the Government of Kenya or the Police Commissioner do? What is the procedure?

**Mr. Patrick Mugo:** In that case, we can request the Attorney-General to have a bilateral agreement between those countries. He cannot be extradited since he is just a witness. I am not very clear on the law but we can still request the Attorney-General to request that country to facilitate that person to appear hear as a witness. In this case, the Government undertakes to pay his allowances, air tickets and accommodation. There is that provision.

In the Kenyan law, is that allowed because this priest is probably concerned about his own personal security if he came to Kenya? Is it acceptable according to the law of Kenya, for example, to get his testimony through video conferencing?

**Mr. Patrick Mugo:** I do not know if we have that technology; the technology is not there yet. But since we saw Ocampo in the video the other day, maybe we can request that and it can be done. We have the question of the magistrate who will be taking that witness, in terms of jurisdiction, has he got powers to preside over that place? But here, if a witness is in Mombasa and he cannot come, we can send a commission to Mombasa where the magistrate there can hear the witness and then it is brought back to court. But as for a witness in a foreign country, I do not think it can work like that. So, it is a case of bilateral agreement.

**Commissioner Chawatama:** I just have an observation and maybe one question. I agree with Commissioner Shava. I am very puzzled as to why a Commissioner should make the decision that the Commissioner made because even in terms of appealing, who was this person supposed to appeal to? My second question is on the disposal form that was signed by the magistrate to dispose of the livestock. I think you said owners could not be found. Do we have a copy of the disposal form?

**Mr. Patrick Mugo:** Mr. Presiding Chair, Sir, you know the animals were dying and there was a lot of foul smell within the police station.

**Commissioner Chawatama:** I understand the procedure. I am asking; do you have a copy of the disposal form? Because a part of the evidence that we would like is just how many animals were disposed of under the hand of the magistrate. If the form is there, say it is there. If it is not, say so.

**Mr. Patrick Mugo:** That was a matter of the court and I think the court has those records.

**Commissioner Chawatama:** Thank you.

**Mr. Patrick Mugo:** May I clarify one issue, Mr. Presiding Chair, Sir, if you would like? Once we take a person to court, unless there are orders, we do not have those records. So, these animals were disposed of and the magistrate kept the disposal form. But I remember that in his ruling, because he said that at the police station, he told them not to dispose of any animal because at that stage, he could not say whether they were the rightful owners or not since nobody was claiming them. So, the police did not have any record.

Mr. Presiding Chair, Sir, there was this issue of the Commissioner. I would say that it is within the Police Act, Section 4 where it gives the Commissioner of Police, the power to command, control and superintend. I would not talk for the holder of that office because it was within his jurisdiction, but I can say that according to the Act and according to the Force Standing Orders, he was quite right to order that; and not only that, we have had

other cases. If we can be given time, we can trace where the Commissioner has ordered, because he has that control. That is all I can state.

**The Presiding Chair** (Commissioner Slye): Thank you, Mr. Mugo. I do not have any additional questions for you, but I just want to thank you for taking the time to accept our invitation and to come and testify and, frankly, to give us a lot of very useful and helpful information with respect to various incidents that we are investigating at the moment. So, I want to, again, on behalf of the Commission, thank you for your co-operation.

Hearing Clerk, you may escort the witness back to his seat.

**Mr. Patrick Mugo:** Can I say something?

**The Presiding Chair** (Commissioner Slye): Sure, go ahead!

**Mr. Patrick Mugo:** I was saying that, from the evidence I heard yesterday, sometimes it can be very scandalous. It is important to be allowed to cross-examine a witness. A witness can come here and say, “she was here” knowing very well that she was not there. It is only through cross-examination that you can establish the truth. I really felt that – with due respect and humbly speaking – if it is an issue of the police, even the local OCPD should be called to take note.

Mr. Presiding Chair, Sir, I did not want to touch on that, but I am a senior officer and I carry the image of the police with me. That witness was saying: “An OCPD shot me.” It is a grave issue on the OCPD and which I should tell the Commissioner of Police to take action, if it really happened. This morning I went through the Occurrence Book (OB) and I found that the OCPD was not there; it was other officers.

Mr. Presiding Chair, Sir, I fully respect your rules; I will abide by your rules, but some of those things that are very scandalous will be captured by the Fourth Estate and they will be all over in the media. I feel sometimes that it is good that once something like that is said, a person should be cross-examined. I am a Christian and I have a senior position in Church. I do not know what I can say if somebody said, “Mugo was there and he shot me”. It would not be fair to me in the rules of natural justice.

Mr. Presiding Chair, Sir, I have no complaint; you have given me a chance to explain but sometimes some of those things can be very scandalous.

Thank you, Mr. Presiding Chair, Sir, for giving me this opportunity.

**The Presiding Chair** (Commissioner Slye): Thank you, Mr. Mugo. If I can just briefly respond to the observation, which we very much appreciate and I think you have identified an issue that we have thought a lot about with respect to this process, in coming to the rules that we came to, we consulted widely. We both looked at the practice of other truth commissions throughout the world and we also consulted widely with lawyers within Kenya to come up with the procedures that we came up with. We decided, based

on discussion and frankly because of the common practice of the truth commissions throughout the world that we would not allow direct cross-examination except by our own staff and the Commissioners themselves. The reason for that is that a truth commission is meant to be a safe place for individuals to speak and cross-examination tends to curtail that a bit. But as you have noted, the risk of that is that individuals can come forward and just say anything about another individual. So, in order to address that, we, first, made a clear decision that anyone who is named has the right to himself or herself testify. Secondly, when we come to our findings, we will make a finding; either we find that, that incident did occur or that incident did not occur or that the evidence is inconclusive. I know that given the media cycle, it is not a satisfactory remedy as one would like; the media tends to pick up on something and then if there is a correction or a clarification a day or a few months later, it is not as always widely publicized. But it is something we take very seriously and we will, with respect to that incident, undertake additional investigations and we will come to some conclusion and that conclusion will be made available to the relevant individuals for their comment before we go public.

**Mr. Patrick Mugo:** Thank you, Mr. Presiding Chair, Sir. I was not privy to that and I am much obliged to hear that. I do respect your decision. I have seen that in other commissions, but I know that it is tedious also in cross-examination.

Thank you, Mr. Acting Chairman, Sir.

**The Presiding Chair** (Commissioner Slye): Thank you very much, Mr. Mugo. Hearing Clerk, you may escort the witness to his seat.

**Ms. Belinda Akello:** Mr. Presiding Chair, Sir, we have one more named person for the day. So, we stand directed by your advice.

**The Presiding Chair** (Commissioner Slye): I understand that, that last person is represented by Mr. Nyaga. Is that correct?

**Ms. Belinda Akelo:** That is the correct position.

**The Presiding Chair** (Commissioner Slye): And that Mr. Nyaga has made it clear that he has some preliminary issues that he would like to raise with us? So, the way we would like to proceed is that Mr. Nyaga could take a seat over at the microphone so that his remarks can be recorded and then raise the issues that he would like to raise with us before his client comes to testify.

Mr. Nyaga, if your client would like to be present, then he is certainly welcome to come and be present with you.

**Mr. Nyamu Nyaga:** Mr. Presiding Chair, Sir, I have two clients whom I would like to be near me as I make this submission.

Mr. Presiding Chair, Sir, my application is based on Article 50 of the Constitution of Kenya---

**The Presiding Chair** (Commissioner Slye): I am sorry to interrupt, Mr. Nyaga. But would you mind introducing your clients for record purposes and then you may proceed with your argument?

**Mr. Nyamu Nyaga:** Mr. Presiding Chair, Sir, on my far left is Mr. Damucha Dibo and on my immediate left is Mr. Galgalo Mbarire. Those are my clients.

Mr. Presiding Chair, Sir, my application is based on Article 50 of the Constitution of Kenya. I believe that this Commission is under Article 50(1) which indicates:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

Sub-section 2 (c) of Article 50 provides:-

“Every accused person has the right to a fair trial, which includes the right to have adequate time and facilities to prepare a defence.”

Sub-section 2(g) of that Article provides that:-

“Every accused person has the right to a fair trial, which includes the right to choose, and be represented by, an advocate, and to be informed of this right promptly.”

Sub-section 2(j) states:-

“Every accused person has the right to a fair trial, which includes the right to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;”

Then Article 159 2(d) provides:-

“Justice shall be administered without undue regard to procedural technicalities;”

Mr. Presiding Chair , Sir, you note that I have been in this hall since morning. I brought to the attention of this honourable Commission that I was representing my clients. On my attempt to apply for an opportunity to address the Commission, I was told that I will talk when my client is called. I wish to submit that for my client to be able to testify, there needs to be what is called disclosure; they must be supplied with the statements of anybody who has mentioned them or otherwise to ensure that they prepare for their defence. They are supposed to be supplied with exhibits or any documents which is within the knowledge or the possession of the Commission to ensure that they have prepared themselves.

Mr. Presiding Chair, Sir, when I was seated in this Hall, I heard one of my clients being mentioned by Cheboi and Patrick Mugo. There could also have been other witnesses who

could have mentioned my clients adversely or otherwise. It is my humble submission that my clients cannot be able to give any evidence before this Commission unless they are supplied with the necessary materials as provided for by the Kenyan Constitution.

Mr. Presiding Chair, Sir, I wish to submit that Section 128 of the TJRC Act in Sub-section 1 clearly states that a party has the right to have a legal representation. When you look at the Constitution at Section 159, which I have already quoted, technicalities are actually not to be taken into account when a party is supposed to be heard.

So it is a constitutional right for him to be supplied with the materials. I want to humbly plead with this Commission that my clients be supplied with all the materials, particularly today's statement which was given by Cheboi. I have also heard one person mentioned, called Father Adriano Anito; we would like to be supplied with that statement. We would also like to be supplied with the statement of a lady who is said to have survived the massacre of Babusa. I would also like to have the statement of Cheboi, who has also testified. I will also emphasize that I need to be supplied with the statements and also the exhibits they have given to this Commission. We also need to be supplied with the charge sheet of Case No.1753 of 2006, the outcome of that case and any other statement or information in possession of the Commission or which is mentioning my clients adversely. I have already said that. I would also like to be supplied with the proceedings of this Commission for yesterday and today.

Mr. Presiding Chair, Sir, I would also like to cross-examine those witnesses who have particularly mentioned my clients adversely; even those who may have testified yesterday mentioning my client. I would want to cross-examine Cheboi and Patrick Mugo so that we can put the record straight.

So, Mr. Presiding Chair, Sir, I am praying humbly because we strongly believe that this Commission is a creation of the law, that my clients will be given a fair hearing; whether he could have been mentioned adversely or whether he is just a mere witness because the law clearly states that one must be able to know his accusers and the evidence that is adduced before this Commission.

Once we are given what we have requested this honourable Commission, we shall be able now to prepare ourselves so that we can come and give evidence. We have no problem with giving evidence so long as we are given those particulars.

That is my humble prayer, Mr. Presiding Chair, Sir.

**The Presiding Chair** (Commissioner Slye): Thank you, Mr. Nyaga. The way I would like to proceed is to first ask if any of the Commissioners have any questions or clarifications they would like from you based on the legal arguments you have offered. Then, the Commission will retire to deliberate and give our ruling. So, let me ask if anyone has any questions.

**Commissioner Shava:** Mr. Nyaga, I would like to make sure that I have understood you very well. You have read out a list of requests. Are you saying to this Commission that those are conditionalities; are you saying to the Commission that unless these requests are granted, then you shall advise your clients or your clients would choose not to exercise their right to speak before this Commission? Is that your position?

**Mr. Nyamu Nyaga:** That is our position. We need to be given those statements so that we can be able to move.

**Commissioner Shava:** Thank you for that clarification.

**Commissioner Chawatama:** Of all the laws that you have mentioned, you have not mentioned our rules. Have you had sight of our rules?

**Mr. Nyamu Nyaga:** I am aware of the rules, but with due respect, I believe that any law which contravenes any clause of the Constitution cannot be really---

**Commissioner Chawatama:** Counsel, my question was clear. I just asked you whether you have had sight of the rules. It is a simple “yes” or “no” answer.

**Mr. Nyamu Nyaga:** I have had sight of the rules.

**Commissioner Chawatama:** Thank you.

**The Presiding Chair (Commissioner Slye):** Okay, thank you, Mr. Nyaga.

The Commissioners will take a brief recess and then we will come back with our ruling.

*[The Commission adjourned temporarily at 6.42 p.m.]*

*[The Commission resumed at 7.10 p.m.]*

*[The Presiding Chair (Commissioner Slye) in the Chair]*

**The Presiding Chair (Commissioner Slye):** Welcome back. First of all, I want to thank you, Mr. Nyaga, for bringing your arguments before the Commission. I also want to thank your clients for having sat here today and I know that you had wanted to have this issue addressed earlier. So, we appreciate your patience as we heard other witnesses and dealt with this matter.

First, I want to clarify for the record what our procedures are with respect to individuals who have been named and representation of those individuals. The Commission, on 31<sup>st</sup> March, 2011, wrote to both your clients indicating that they have been named by individuals in our statements. That letter was also an invitation for them to come here and tell their side of the story, if they so desired. That letter also indicated that they were entitled to legal representation. Included within that letter is a form called “Notification

of Intention to Appear.” That is a form to which counsel is to fill in and give to the Commission to indicate that they will be representing individuals before this Commission. Our procedures are that once we have received that notification from counsel, additional information will be made available to that counsel and his or her clients. We have no record of having received that notification of intention to appear from you on behalf of these two clients. I say all this not because it bears upon our decision today, but I say it to make clear both to you and to others the procedures that this Commission has established with respect to representation of individuals before this Commission.

You have raised a number of very important constitutional issues before this Commission with respect to the rights of your clients. Those rights concern due process and the right to have their rights determined by a duly constituted tribunal, court or other body. I think the confusion here is in understanding this process here today. This process here today is a voluntary investigative process; it is not a process by which we will make a determination based upon the testimony given before us today of the rights or responsibilities of any individuals, including your clients. It is an investigative process and your clients are fully entitled to either participate or not participate in this process. What we have done is to provide them with an opportunity to hear the testimony of other individuals and then if they want, they may provide their own testimony with respect to those events that we have heard today and yesterday.

The process then, after these hearings in our investigations, will result in findings and recommendations by the Commission. Those findings and recommendations may include a recommendation that individuals should be investigated and, if warranted, prosecuted. Such a finding or recommendation could, of course, be made with respect to your clients. It is at that point that the criminal justice system will then be triggered. It is at that point that the rights that you have raised are clearly at play. It is at that point where your clients are entitled to cross-examine any witness who is testifying adversely with respect to them. It is at that point that the prosecution is obligated to them and to you, as their counsel, the adverse information and evidence that has been collected with respect to them. We are not yet at that place. So, the conclusion that we draw is that you and your clients are free to either testify or not testify before the Commission today. We have not compelled them to be here; we have invited them to be here. As I hope you saw with the previous witnesses that testified this afternoon, some individuals have been adversely named and have accepted our invitation to provide their own side of the story. And as you should have seen, some of them directly denied the allegations that other individuals have raised with respect to them.

So, I think where we are is in your hands. We will give you an opportunity, if you would like to confer with your clients and they can determine whether they want to testify and take advantage of this public forum or rather whether they would prefer not to testify. If they decide not to testify, it does not mean that they cannot, either by themselves or through you, provide additional information to this Commission with respect to the events we heard yesterday and today. That information can include evidence, affidavits or other documentation. So, we are now in your hands, counsel.



**Mr. Nyamu Nyaga:** Mr. Presiding Chair, Sir, I have heard the ruling, but I want to put it on record that my clients have never received any notices and the position is that we would like, at this stage, to still insist on--- But in view of the ruling, we would like to be supplied with that ruling of the Commission together with the proceedings of yesterday and today to enable us move to the High Court.

That is my prayer.

**The Presiding Chair** (Commissioner Slye): So, if I understand you, on behalf of our clients are you saying that they do not want to testify? Is that correct?

**Mr. Nyamu Nyaga:** Until we are supplied with the necessary materials.

**The Presiding Chair** (Commissioner Slye): Okay. Thank you very much. So, I guess that our hearings now are adjourned. May I ask for a Hearing Clerk to escort the witnesses and the counsel back to their seats.

**Mr. Nyamu Nyaga:** Mr. Presiding Chair, Sir, may I know how soon I can be supplied with the proceedings of yesterday and the ruling made today?

**The Presiding Chair** (Commissioner Slye): Counsel, I think what you should do is to be in touch with our Legal Department and we can proceed from there.

We have now reached the end of our public hearings here in Marsabit. We have heard a number of different witnesses over the last two days covering a wide variety of issues. We have heard about the massacres, extra-judicial killings, environmental harm, ethnic conflicts and sexual violence among others. We have heard from individuals who have suffered those violations and we have also heard from individuals who either had additional information with respect to those violations or were themselves named as being complicit in those violations. I would, therefore, like to publicly acknowledge and thank all those individuals that voluntarily appeared before this Commission and gave their testimony. They are Hawo Abdullahi Sangolo, Kili Duma Tuwacha, Shiru Njoti Anna on behalf of his father, Bati Duba Anna; Mohamed Tele Saba, Bishop Ruvasi, Amos Cheboi and Patrick Mugo.

I would also like to thank the counsel who is here today, Mr. Nyaga, on behalf of Mr. Damucha Dibo and Mr. Galgalo Mbarire. I finally want to thank you, members of the public, for having sat here patiently and with respect during our hearings. I know that some of the things you have heard here today were difficult to hear; difficult because in some cases, they may have had you relieve things that you would probably not want to relieve and, perhaps, also difficult because you heard things from people that differed from your own understanding of the events that we were examining. So, on behalf of the Commission, I want to thank you very much for your patience and for the respect that you paid during our public hearings.

With that, I now hereby end our public hearings in Marsabit.

Thank you.

*(The Commission adjourned at 7.30 p.m.)*