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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY, 13TH
SEPTEMBER, 2011 AT THE NHIF AUDITORIUM, NAIROBI**

PRESENT

Margaret Shava	-	The Presiding Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Gertrude Chawatama	-	Commissioner, Zambia
Ahmed Farah	-	Commissioner, Kenya
Tom Ojienda	-	Commissioner, Kenya

(The Commission commenced at 2.40 p.m.)

The Presiding Chair (Commissioner Shava): Good afternoon, ladies and gentlemen. Please remain standing for the National Anthem and the Commission's prayer.

(The National Anthem was sung)

(Opening Prayers)

*(The Presiding Chair (Commissioner Shava)
introduced herself and the other TJRC Commissioners)*

With that, I would hand over to the Leader of Evidence. How many witnesses do we have for this afternoon?

Mr. Tom Chavangi: Thank you, Presiding Chair. Today, we were supposed to call two witnesses; Witness No.TJRC3, Nairobi, Western, WN/Nairobi, the Permanent Secretary, Ministry of State for Provincial Administration and Internal Security. He was supposed to appear before this Commission at 9.00 a.m. However, he sent a letter which I received today morning stating that he would not be available. I got further communication that he will be available on 20th September. My understanding of all that is that we shall not be around. We shall be in the Rift Valley. So I leave that to the commissioners to make a decision on.

Commissioner Chawatama: Maybe, through the Presiding Chair, did the Permanent Secretary give reasons?

Mr. Tom Chavangi: The Permanent Secretary did not give any reason. He just stated in a one-lined letter that he is attending to some security issues. However, those security issues are not known to the Commission.

Commissioner Chawatama: How was the letter delivered? Was this through a person that you met?

Mr. Tom Chavangi: No. It was scanned to my e-mail address.

Commissioner Chawatama: But, surely, our laws provide for ways and means of communicating to the Commission. Is that an acceptable way?

Mr. Tom Chavangi: That is not an acceptable way, Presiding Chair. We need to be given at least three to seven days notice if a witness is not going to attend and reasons for not attending should be in written form and not by way of a document being scanned in the morning, a few hours to the hearing.

Commissioner Chawatama: Again, through the Presiding Chair, I am concerned that this is the second day that we are being shown what amounts to disrespect. I think we ought to take some action through you.

The Presiding Chair (Commissioner Shava): Leader of Evidence, I just have one question. Was the Permanent Secretary adequately served with our summonses?

Mr. Tom Chavangi: The Permanent Secretary was adequately served on 1st of September.

The Presiding Chair (Commissioner Shava): And we have received the returns?

Mr. Tom Chavangi: We have the return of service and the notice of intention to attend to the summons stamped by the Secretary to the Permanent Secretary.

The Presiding Chair (Commissioner Shava): Thank you very much, Leader of Evidence. The Commission will deliberate and communicate our decision on that matter. Do we have a further witness?

Mr. Tom Chavangi: We have our second witness, the Minister of State for Defence, Hon. Yusuf Haji, TJRC Witness No.4. We were supposed to start with him at about 2.00 p.m. but he requested that we start with him at 2.30 p.m. today. He is available.

The Presiding Chair (Commissioner Shava): Is the witness present?

Mr. Tom Chavangi: Yes, Presiding Chair.

The Presiding Chair (Commissioner Shava): Please proceed to have the Clerk of the Session swear in the witness so that we can proceed.

As we await the introduction of our witness, we will welcome you. I will restate our ground rules. We have been on recess so just to remind ourselves that at this point, we request that everybody switches off their mobile phones. Please do not put it on silent mode. Please switch off entirely because we are also disturbed by people walking in and out to go and receive calls and send text messages. While we will allow still photography,

no flash photography is permitted while the witness is speaking. We do not want to disrupt our witness and his testimony. We also request that you respect the testimony of the witness. You would hear things with which you may agree and you may hear things which are contrary to your own experience and with which you strongly disagree. In all circumstances, we ask that you listen in silence to the witness and respect the fact that the witnesses came here to enter into dialogue in this national process. I would ask the Session Clerk now to kindly swear in the witness.

(Hon. Mohamed Yusuf Haji took the Oath)

For the benefit of the witness who was not here earlier during the introductions, I will once again introduce the panel.

*(The Presiding Chair (Commissioner Shava)
introduced herself and other members of the Panel)*

Mr. Tom Chavangi: Hon. Haji, kindly, for the record, tell the commissioners your names.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): My name is Mohamed Yusuf Haji. Yusuf Haji is my father.

Mr. Tom Chavangi: Thank you very much, Mr. Haji. What do you do?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I am a Member of Parliament and the Minister of State for Defence.

Mr. Tom Chavangi: Thank you very much. Which is your constituency?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Ijara Constituency in North Eastern Province.

Mr. Tom Chavangi: So, what is your role in Government at the moment? What portfolio do you hold in Government at the moment?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I hold the portfolio of the Minister of State for Defence.

Mr. Tom Chavangi: As Minister of State for Defence, what are your roles? What functions do you do?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): My roles are to direct the Ministry of State for Defence matters by co-operating through the civil authority ensuring that there is security within our borders.

Mr. Tom Chavangi: Thank you very much, Mr. Minister. Commissioners, just for your attention, I happen to have shared the research document with Mr. Haji earlier. So, he is aware of what we are going to discuss today. I thought it was kind enough so that he knows what we are going to discuss today.

Mr. Haji, you have been called here today within regard to the 1989 Trans Mara evictions. Kindly, can you shed light on what took place during that period while you were serving as the Rift Valley Provincial Commissioner?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Hon. Commissioners, during my time as Provincial Commissioner, there was a problem in Trans Mara, particularly in Lolgorian Division. The Maasai, who are the traditional holders of that land, complained to the authority that their land had been invaded by the Kuria from Tanzania.

If you go back to the history of land in that area; the pre-Independence, the Kurias were allowed to come and graze in that area on payments of certain fees to the County Council of Narok at that time. Way back in 1961, they defaulted on payment. Cattle rustling became so prevalent that the British Government at that time decided to exclude them from grazing in that area and, therefore, they were not allowed to come and graze there. Way back in 1976, this land was adjudicated. The Ministry of Lands adjudicated the area for the Maasai. If really the Kuria had any legitimate ownership of that land, one wonders why they did not register themselves during the adjudication. We were receiving reports during that time that the Maasai were very unhappy. They were fed up and threatened to go to war under any circumstances if the Government did not stop the invasion of their land by the Kuria.

Remember during the war between President Nyerere and President Idi Amin, the Kuria acquired arms because they participated in that war as soldiers because of their proximity to Tanzania. So, they became a serious threat. Cattle rustling became even more serious. So, I was tasked to go and listen to both sides. I went and listened to both sides. I asked the Kuria to give me any tangible evidence that this land belonged to them. I wanted them to prove that claim that that land belonged to them. The Maasai actually told me that there are two things in this world, that is, God and Government. They told me: "We cannot talk to God, but we can talk to the Government. We are telling you and we want you to tell the Government that if the Government will not remove these people from our land, we will use force." They said they would take their land by using a spear. That was a very serious threat. So, I briefed the Office of the President. The late (Hezekiah) Oyugi was the Permanent Secretary and, eventually, we briefed the President. It was resolved that we should avert any bloodshed. The Maasai were very furious people. They were determined to shed blood. So, the Government decided that these people would be removed and that is how they were removed.

Mr. Tom Chavangi: Thank you, Mr. Haji. Our investigations reveal that prior to the removal of the Kuria, or prior to the orders for the Kuria to be removed from Trans Mara,

there was a memorandum that was issued by you. Is it true that you issued that memorandum?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Well, I went there personally and I was there for two days. I tried to reconcile both the Kuria and Maasai. However, the Maasai were adamant that the land was theirs. They had the proof. They accepted 58 Kuria. You know they have a traditional way of accommodating other communities. They have accommodated Kipsigis, Kisii and Luo as long as you conform to their traditional way of life. They refer to them as acceptees. Once you are accepted, you become part of them. The Kuria did not own land other than the 58 persons who were there during the meeting. The rest did not have any *bona fide* claim to that land.

Mr. Tom Chavangi: Thank you, Mr. Haji. You said that after you did your ground work, you informed the President about the position obtaining in Trans Mara. Who was the President then?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I informed Mr. Oyugi. The procedure was that I communicate with the Permanent Secretary. He was our Permanent Secretary. When he seized the matter, he decided to brief His Excellency the President. I received a directive from Mr. Oyugi, who supported the idea. Although some people claimed there were 200 APs, we only sent 90 GSU, APs and police officers. There were about 6 District Officers who were supposed to supervise the smooth relocation of the people of Kuria. By that time, His Excellency Daniel arap Moi was the President.

Mr. Tom Chavangi: Thank you, Mr. Haji. When we were in Kuria, the witnesses there said that the method used to evict them was forceful and dehumanizing and some of them went through some form of ill treatment. Is that right? Could you clarify that?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): In the first instance, I am not aware that they were mistreated. I saw reports that they were raped. This is new information to me. I remember His Excellency President Moi went to Kericho, where we facilitated some elders from Kuria to see him over that issue. We were tasked to bring the Kuria and Maasai together to try and find an amicable way of resolving that issue. Unfortunately, we did that through my District Commissioner, C.A Akelo, a very good District Commissioner. He tried but he did not succeed. This is because the Maasai were always adamant that they could not accommodate these people who had invaded their land. To them, the Kuria were a threat because they were armed.

Mr. Tom Chavangi: In your introduction, Mr. Haji, you had mentioned that these areas of Trans Mara initially belonged to the Maasai. However, there was an invasion by the Kuria from Tanzania. Is that the position?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Yes, that was the information I had. That was the truth of the matter.

Mr. Tom Chavangi: Thank you very much, Mr. Haji. Why would the President then have a dialogue and try and bring reconciliation when these people were actually

invaders from a foreign land? It would have been easier to drive them to their land as opposed to having dialogue with them when they were actually foreigners.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Actually, the dialogue was initiated after they had been driven out of the land. It is human that as a leader if people come and cry to you, you will listen to them and you try to work ways of getting a solution to their problems. I would have done the same thing.

Mr. Tom Chavangi: The dialogue was between the leadership then, that is, the President and the Kuria elders?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): It was between the Kuria and Maasai elders. It was facilitated by the Provincial Administration.

Mr. Tom Chavangi: Mr. Haji, the reason I am asking that is because you had earlier said that this land was invaded by the Kuria from Tanzania. So, these Kuria that were dialoguing with Maasai, were they from Tanzania or Kenya Kuria?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I think some of them found their way to their land in Kuria and others from Maasai. I cannot exactly say but they were led by their Member of Parliament from Kuria. It is natural since they were Kuria that their Member of Parliament would lead them wherever they came from.

Mr. Tom Chavangi: Just for the record of the Commission, who was their Member of Parliament then?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I cannot remember the name but he was the one preceding the current one. I cannot remember his name but I recall he was an engineer.

Mr. Tom Chavangi: Thank you very much. There is also the Akiwumi Commission that went round to investigate these issues. Did you at any given time appear before the Akiwumi Commission?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Yes, I did appear before the Akiwumi Commission.

Mr. Tom Chavangi: And whatever you said at the Akiwumi Commission is what you are telling this Commission now?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): No. I think I have been grossly misreported. I had no opportunity to correct that. I am happy that today I am before this honorable Commission. I did not say what is written there. I remember the question I was asked vividly. It was: "If there was a court order prohibiting you from evicting these people, what would you have done? My answer was: "Since there was no court order prohibiting me, as a PC, my responsibility was to maintain law and order. I

could not allow people butchering each other.” That is what I said and not what is written in the memo given to me.

Mr. Tom Chavangi: So, we are in agreement that there was no court order and that both parties had no court order?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): There was no court order. I gave them a one month’s notice. If they had any claim, they could have gone to court and got an order. There was no order at all.

Mr. Tom Chavangi: Did you ever see the Akiwumi Report?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Yes, I read it.

Mr. Tom Chavangi: And you clearly said that you were highly misrepresented in that report?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Yes, that is my position and I said that I had no way of correcting it because the report was written and released. We were never given an opportunity to defend it.

Mr. Tom Chavangi: When these people were moved from this land in Trans Mara, what procedure was followed? Was there need to have the General Service Unit (GSU)?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): There was no need. After they were given a one month notice to vacate the land, they did not do so and, therefore, the GSU, police and AP and District Officers had to be used to make them move out of the land.

Mr. Tom Chavangi: Was it such a security threat that the Provincial Administration had to call in the GSU, AP and police? What necessitated that?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): In the first place, we did not want the Maasai to take the opportunity to attack these people. The GSU, Kenya Police and AP were there to safeguard the security of the area and make sure that people abided by what was agreed in the meetings.

Mr. Tom Chavangi: Hon. Yusuf Haji, after the evictions, was there a report that was prepared by you to your bosses?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Normally, we did reports that the exercise was over and the people had left the land.

Mr. Tom Chavangi: In essence, you are saying there was a report prepared?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Definitely, there was a report although I do not have one here now.

Mr. Tom Chavangi: And the report must have been prepared by you?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Well, we prepared it in the District Security Committee meeting whereby we reported on what happened.

Mr. Tom Chavangi: Thank you very much, Hon. Haji. Commissioners, I have no further questions for this witness. I now hand him over to you.

Commissioner Ojienda: Thank you, Hon. Haji, for your testimony. I want to ask you a few questions to clarify the evidence that you have given. How were decisions made in the District Security Committee meetings? You have said that there were decisions that were made preceding the evictions. Just tell us the steps that you took as a member of the committee.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I first went to the area and met the Kuria. We had dialogue with them and the Maasai. I brought them together so that we could find a solution to the problem. We were not able to reach any tangible solution. On the second day, I decided to meet them and on the third day, I had a *baraza* because I had then formed an opinion with my officers that the Maasai were going to fight and not to tell the Government that their land had been stolen and they were to return it by the spear. They were telling us now that if the Government was not going to take action, they were going to fight and retrieve back their land. So, we found this to be very serious. So, to cool the matter and to give me time for further consultations, I told the Kuria that they had one month to move from the area. I communicated with Mr. Oyugi, who was my Permanent Secretary, and the decision was made that these people should be evicted. That is how it went.

Commissioner Ojienda: So, who was tasked with this role? Was it the District Security Committee (DSC) or was it just yourself as the PC?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): It was the DSC because the police are part of the security agencies. The GSU also has similar authority. I believe even the Commissioner of Police was aware that Mr. Oyugi had tasked those people to go there and work along with the DC.

Commissioner Ojienda: Mr. Yusuf Haji, if we are able to follow, you have talked of meetings preceding the eviction. Is it possible to get documents of the minutes of the meetings you held before the final decision of the eviction was made? Are they available as public records?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Presiding Chair, it is now 21 years since that time and I do not personally have any records that I can produce to help the Commission. I do not know whether that record can be obtained although I

tried to obtain some documents but I was unable to do so. Maybe the files were closed and destroyed. To be honest with you, I have not been able to get those records.

Commissioner Ojienda: Thank you. My second line of questioning relates to why you did not resettle the people you evicted. What was so difficult with the Government finding alternative land for the Kuria people that you evicted?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): That is a very good question. You will appreciate that as a PC, I do not have any land to give to people. Since the Government had not given me any land to settle them, there was no way I could have settled them anywhere since I could not take them to Ijara.

Commissioner Ojienda: And Ijara is very far. I agree with you but you see what we are dealing with here are gross human rights violations of a people who were evicted and are destitute and have come to this Commission for a solution. Do you think that if you are faced with that problem now you would handle it differently?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Well, if I am allowed to suggest, the Commission has the authority now, since it has been tasked to find a solution to the problem facing this country, to recommend that those were Kenyans and not Tanzanians and that any Kenyan Kuria who was evicted should be considered for resettlement somewhere else.

Commissioner Ojienda: Just in the same line you are making recommendations, when we did our hearings in Kuria, one of the issues we had to deal with was the problems of cattle rustling and insecurity at the border because of cross-border rustling between Kenya and Tanzania. Do you as the Minister in charge of Defence think our borders are safe?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Our borders are safe and this question should have gone to the Minister for Provincial Administration and Internal Security. Maj-Gen. Farah will tell you that the role of the Army is to deal with any foreign incursion. We do not deal with cattle rustling nor do we deal with cross-border issues. It will be disastrous to use the Army to deal with civilians.

Commissioner Ojienda: Thank you very much. I would just want to get back to other measures to do with reconciliation. You have talked about conflicts among the Luo, Kisii, Kuria, Maasai and the possibility of spilling of blood that made you as the PC to take certain decisions. Have there been continuing measures or what measures did you then as PC put in place in terms of preventing the recurrence of clashes that we saw, especially in the Rift Valley, where you were PC? We saw clashes in Molo. We have seen the Akiwumi Report. We saw clashes in the Kisii/Kuria border. What steps did you as the PC and member of the DSC take to avert these clashes?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Thank you very much. If you will get an opportunity maybe to see some of the recommendations that we normally make in the DSC, you will see that we always try to beef up security in the area

concerned but unfortunately, the people on the ground, basically the chiefs, are partisan themselves. They are Luo, Maasai or Kisii and most of the time we were never given accurate information to be able to deal with the issues. So, we normally tried as much as we could to contain what was at hand at that particular time but the Government is really trying. It is a cultural thing that will be hard to die but maybe in the next 50 years or so, this will be behind all of us.

Commissioner Ojienda: Mr. Haji, 50 years is too long. We saw the events that occurred after the last General elections. I hope you are not talking about cattle rustling. I am talking about tribal clashes and border conflicts. Do you think that you are doing enough as Government since you are a minister there to contain this problem?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Yes, the Government is doing everything possible. Sometimes politicians are also accused of being involved and, therefore, I think the whole country will have to resolve that tribal clashes should be a thing of the past and should never happen again after 2007.

Commissioner Ojienda: Thank you, *Mheshimiwa*, for those answers.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Thank you, Presiding Chair.

Commissioner Chawatama: Thank you very much for making yourself available to this Commission. I think being a foreigner, I might ask some questions that are obvious to everyone but may not be obvious to me. Did I hear you say that there were Tanzanian Kuria and Kenyan Kuria? Is that correct?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): What I said is that the people who were being evicted were obviously the Kuria from Tanzania. You cannot eliminate the few Kenyan Kuria. That is why I said that some elders came to see President Moi so that they could be facilitated to discuss with their counterparts in Masaailand.

Commissioner Chawatama: So, what steps did you take to identify who was a Tanzanian Kuria and a Kenyan one?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): During our meetings, we told them to be open with us and tell us the truth and nobody raised his hand to say he was a Kenyan. When I went back to the record, I found that in 1960, also another 50 or so Kuria were actually assimilated by the Maasai and were given land. During that meeting, 58 of them were from Kenya and were assimilated, accepted and given land by the Maasai.

Commissioner Chawatama: You said that 21 years later there are people who are still hurt as a result of the exercise that took place. So, these are people who felt that they had

a right to be on this land. You told us that you talked to both sides. Can you remember some of the issues that the Kuria people told you when you talked to them?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): The question that I asked them was: “Why did you not register during the registration exercise of the land adjudication?” They said that the Government officers in charge of registration did not inform them. I could not believe them because they lived with the Maasai side by side. It is not possible for the Maasai to know and they not know.

Commissioner Chawatama: But is this something that you investigated or you just disbelieved them?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Well, I believed it because I had no way of investigating since I was not the adjudication officer.

Commissioner Chawatama: You also said that when you went there for two days, you tried to reconcile the two sides. How did you hope to effect reconciliation with the information that you already knew?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): There is one thing with Maasai unlike other Kenyans; they have what they call acceptees. If you agree to their norms and accept to be one of them, they will normally accept you and may give you land. I thought I would use this kind of arrangement so that they could be accepted but this did not work because the Kuria claimed that this was their land and these people said no, that was their land.

Commissioner Chawatama: I think my colleague asked you this question but I cannot remember your response. When you made a report that the exercise was over, how did you come to this conclusion that the exercise was over? What took place to persuade you that the exercise was over?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): The DOs who were tasked to supervise the exercise reported to the DC, who reported to me that the Kuria had then left the area.

Commissioner Chawatama: Where did they say that the Kuria had gone?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): They had gone beyond the border of Trans Mara. They could be in Tanzania or anywhere else.

Commissioner Chawatama: Did you receive any reports of deaths?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Presiding Chair, I have never received any reports of deaths. That is why we were using DOs to make sure that the people were never mishandled nor their property taken. It should be in a very smooth and in an orderly manner.

Commissioner Chawatama: So, what you are saying is that you did not receive any reports of burning houses?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): We did not receive any reports of burning houses.

Commissioner Chawatama: You also did not receive any report of women and girls, who were raped and a whole lot of them infected with sexually transmitted diseases (STDs)?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I have never heard of that and even the Kuria never reported this to me. It will be a sad thing.

Commissioner Chawatama: You did not receive any report of houses that were looted?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I did not receive any report of houses that were looted.

Commissioner Chawatama: During the time you were PC, were there learning institutions---

So, what you are saying is that you did not receive any report on burning of houses?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Yes, I did not receive any report on burning of houses.

Commissioner Chawatama: You also did not receive any report on women and girls who were raped. Many of them were infected with STDs.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I did not receive any report to that effect. In fact, many Kuria came to see me but did not report those happenings to me or my officers. It is very sad if that happened and it was not brought to our attention.

Commissioner Chawatama: You did not receive any report of houses that were looted.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I did not receive any report on houses that were looted.

Commissioner Chawatama: During the time you were Provincial Commissioner, were there learning institutions, health facilities and churches in your area?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): There were very many of them all over the province.

Commissioner Chawatama: Did you receive any report of the same institutions being demolished?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I did not receive any report on houses that were demolished. However, I came to learn later that there were houses that were demolished. This was reported by the media houses. But at that time, nobody brought it to my attention.

Commissioner Chawatama: Do you know or do you have an approximate number of the people who were involved in this exercise? You called it elimination, but I believe it was an eviction. Do you have the number?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): They were 258 people involved.

Commissioner Chawatama: So, if a report says they were about 13,000 people involved that would not be true.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): It would be far-fetched.

Commissioner Chawatama: Please, help us as a Commission. We still have people out there, who gave statements on how their rights were violated. Up to now, they still feel the pain because they lost so much. Some of their houses were burnt and others looted. They still cry for justice. Give us some suggestions in the facilitation of reconciliation and healing. What would you suggest to this Commission should take place just to help these people come to terms with the fact that they are Kenyans and that they deserve to be healed? We want to help communities to reconcile.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I think this Commission has a very important task of making recommendations from experience elsewhere on how reconciliation can be reached. Some of these allegations are against officers and communities. So, one of the recommendation is that I would urge people to sit together and agree to forgive each other for the sake of peace and development.

Commissioner Chawatama: As I said earlier, thank you very much for making yourself available to this Commission and we wish you all the best, Mr. Minister.

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Commissioners, there was a Cabinet meeting today in Nairobi but I decided not to attend because I value the work of this Commission. I highly respect the work of this Commission.

Commissioner Chawatama: Thank you very much. As a leader, you have obviously led by example. I hope that other leaders will also avail themselves before us when we summon them because there is need for reconciliation in this country. There are many

people in Kenya who have spoken to us and are concerned with the state of affairs of the past. They are looking forward to a brighter future and a more peaceful country.

Commissioner Farah: Mine is just to thank you, Hon. Minister for skipping the Cabinet meeting to appear before us. This is a good example to the other witnesses who hold Government offices that this Commission is of value to the people of Kenya. Therefore, we are honoured by your timely appearance and honest evidence. Thank you very much.

Commissioner Dinka: I have no question for the witness. However, I would like to join my colleagues to thank him for appearing before us and giving us the information.

The Presiding Chair (Commissioner Shava): Hon. Mohamed Yussuf Haji, I have several questions to ask you. Some of these questions may have been asked you in one form or the other. So, bear with me because I want it to be clear to me and also for purposes of the record.

My first question is about ethnic identity. When you started your presentation, you spoke about the Kuria from Tanzania. However, I did not hear you talk about the Kuria from Kenya. I would just like to understand the Government thinking at that time. Apart from ethnic identity, what other criteria were employed to determine *bona fide* ownership of land at that time? Was the Government proceeding from a position that each and every person of Maasai ethnicity was a *bona fide* owner of the land and had the right to it? Do you want to tell us each and every Kuria person was considered not to have the proper ownership unless they could expressly demonstrate it? This was a decision that the Government took and then executed. Was there any time for anybody to show who they were? What criteria did the Government use to decide who should leave and who should stay?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Madam Chairlady, as you know this country was balkanised by the colonial Government into tribal areas. If you go to Nyanza, you get the Luo. If you go to North Eastern, mostly we have the Somali. The Kikuyu are found in Central Province and so on.

Trans Mara was basically Maasai land. It is a fact. Kuria were allowed to go and graze on payment of fees. This land did not belong to the Kuria, whether Kenyan or Tanzanian. Therefore, the basis on which this decision was made is that Transmara was a Maasai area. However, they welcomed various clans of Kenyan tribes.

The Presiding Chair (Commissioner Shava): Thank you for that answer. This has also been asked in other ways but I did not really get a clear understanding. You said as a PC, you did not have land to give to people. However, you were part of the machinery of Government. You were at a very senior level in the Government. Basically, you were the boss of an entire province, so when people were told that they were to leave that place, I believe you knew. Where were they supposed to go? Where were the Kuria people supposed to go? What arrangements were made for them to now re-establish their livelihoods?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): They were supposed to go back where they had come from. Those from Tanzania were supposed to go back to Tanzania. I am sure they are living there up to now. There were a few Kenyans. As I said, some of them were accepted by the Maasai. Therefore, there were two issues here; removing and settling them. In the first place, the bulk of the people were from Tanzania. I do not think Kenya had any responsibility of finding land for people from other countries. So, it never occurred to my mind that I should be looking for land to settle people from Tanzania.

The Presiding Chair (Commissioner Shava): We were there a few weeks ago. We found very many Kuria people. These people are living in various degrees of hardships. Women and children are suffering. They are experiencing difficulties in terms of livelihoods. I do not know whether people would then chose if they had somewhere else to go to live basically as squatters in small urban and rural settings. I am sure we will do further research and come up with our conclusion on this issue.

You said the Maasai are very determined people and that they had issued threats to evict the Kuria if the Government did not take action. They had vowed to take action. That, for you, constituted a certain security threat. Therefore, the decision to evict them was hatched on your advice. If you were to base those threats of evicting the Kuria on law, would you say they were lawful? Was there any justification to use force to evict the Kuria from that land? If the threat was emanating from one side, was action taken against the other side? What action was taken against the people who were issuing such threats? Was there any other decision that the Government could have taken instead of evicting the Kuria people?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I think the Constitution provides the right to ownership of property and life. This land belongs to Maasai. Therefore, it is their land. When we learnt of their threats, we decided to remove the Kuria to avert bloodshed in the area.

The Presiding Chair (Commissioner Shava): My next question, in a way, is related to what you have just said. This was 1989 and I think we have come quite a long way from the colonial period. I myself never saw the colonial period. However, in 1989, I was a person who was well aware of what was going on in the world. My question relates to the issue of national identity because we cannot blame the British for everything forever although there are issues of structural injustice which remain from that period. However, in terms of national cohesion and national identity, why would the Government and its officials, yourself included, promote ethnic identity over the national identity? Was that not contributing to the problem or, even perhaps somebody would say, driving the problem of failure of national identity?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Madam Chair, I think we cannot have it both ways. We are told the Constitution provides for the right to ownership of property and that the Government has the responsibility to protect that right.

However, in the same tone, we are being told to protect the rights of the minority groups. Therefore, we cannot claim that because these rights are enshrined in the Constitution, somebody may do as he pleases.

The Presiding Chair (Commissioner Shava): So, was there a system obtaining at that time which proved that that area belonged to a certain community? Was it owned by the community? Is that what you are saying, so that that is will lead the Government then to recognize one community over another?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Yes, this is trust land. It is owned by the community. I think in the new Constitution there is public land, trust land and all these things. So, this is trust land and it belongs to the community of that area.

The Presiding Chair (Commissioner Shava): I only have two questions. You said that you never heard of the mistreatment of people during this process. Now my colleague has read the catalogue of ills, mistreatment, violations and abuses that we were told about when we were there, so I would not go through that again. But we were also told by the people in Kuria that they woke up and found themselves surrounded. That was the way the eviction was executed. Now as a person with a long and distinguished career in Government service, what would be your expectation in an operation of this nature? What was the pattern, because we have covered so far North Eastern and Upper Eastern part of Kenya as well as this particular operation? We have listened to people in Mt. Elgon and a pattern emerges that there were definitely very many violations that took place even in the recent operations in Mt. Elgon. The pattern is the same. There are violations against men, women, and children, properties burnt, livestock driven away and so forth. This happens. So, I find myself a bit surprised when you say that you never heard of any mistreatment at all. Do you want to revisit that statement?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Madam Chair, I will not revisit it. My position is very clear. I took oath holding the Qur'an and I do not want to lie. Nobody ever came to report to me, including the Kuria themselves, that women were raped, people lost their property and others were mistreated.

The reason District Officers were in charge of the operation was to make sure that it was done in a civilised manner. If I was the one really what I was going to do was to call the people and say, you have been given one month notice; please, move away. That is what I expected everybody to be doing.

The Presiding Chair (Commissioner Shava): In relation to that, it is shown in the Akiwumi Commission report that you personally gave them 14 days to move, otherwise their homes would be burnt down.

Do you recall making any such statements?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Madam, I am a very responsible person. By nature, I am a very humble person. I would not have told them their houses would be burnt down. That was an allegation. It was an unfortunate allegation. People can make allegations when you are not there. It is unfortunate that some Kenyans lie over anything. How could I have said that? It was also alleged that I gave them 14 days to leave, failure to which we would use force. That was not true.

The Presiding Chair (Commissioner Shava): My final question is with regard to how we are going to move forward as a nation. You are a senior member of this society in terms of service and age. Given the kind of things that we have heard when we have been going around, it is clear that a lot of people just want an acknowledgement that wrong things were done to them. They feel they can begin afresh to move on with the acknowledgement that harm was done. It was grave harm that was done by the person who did it. I think even if you examine our Act, there is an acknowledgement in our Act that wrongs are sometimes done by the State. It talks about state officer, an acknowledgement and an apology by the State. With regard to this particular incident, what would your recommendation to this Commission be in terms of what the State can do to facilitate healing, particularly of those people who feel that the wrong done to them has been carried out by the State?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): Madam Chair and Commissioners, if it can be proven by them that they were really tortured and raped and their property taken away, then I think the Commission has a responsibility to recommend to the Government to take the necessary action. If Government officials were involved, then the Government must apologise and compensate them. If there is any way they can be compensated, they should be compensated if they are Kenyans.

The Presiding Chair (Commissioner Shava): Thank you, Hon. Haji. I have no further questions for you. The Commissioners have no further questions for you. Once again, we thank you for prioritizing the Commission and this national dialogue over your other national duties and for coming here to speak to us today.

Yes, Leader of evidence.

Mr. Tom Chavangi: Thank you, Presiding Chair and honorable Commissioners. If you allow me, arising from your questioning, two questions have come to me and I seek your indulgence. I would seek to ask the witness.

Hon. Haji, you said this operation was conducted by DCs. I must appreciate that you have a very sharp mind and, probably, an elephant's memory. Could you tell the Commissioners if you remember the names of these DCs who initiated this operation?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): The DC at that time was Mr. Salah. After him we had Mr. Akelo. We used him to try and bring these people together but all in vain.

Mr. Tom Chavangi: My last question is about the Akiwumi report. You stated clearly that you actually saw the Report. But then my question is, you did not challenge it in court to the extent that you said most of the issues there were misreported in regard to your name and reputation? Why did you not challenge the report in court?

The Minister of State for Defence (Hon. Mohamed Yusuf Haji): I thought it was a waste of time challenging something that I did not say. I think many people did not challenge--- It is not only me who did not do it.

Mr. Tom Chavangi: Thank you very much Hon. Haji. This brings us to the end of the session. Tomorrow we shall move into *in camera* hearings of four witnesses. One has indicated through his lawyers that he will not attend the hearings and so we have three witnesses for *in camera* tomorrow. Therefore, we might not need the presence of the public and the media. But we shall proceed on Thursday; all witnesses for Thursday and Friday have confirmed attendance. However, we shall re-confirm again tomorrow if they will be attending.

The Presiding Chair (Commissioner Shava): Thank you very much, Leader of Evidence. Please stand down the witness. We have concluded for today and we will reconvene here again on Thursday morning.

(The Commission adjourned at 3.43 p.m.)