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Truth, Justice, and Reconciliation Commission

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY, THE 28TH
FEBRUARY, 2012, AT NYAYO HOUSE, NAIROBI**

PRESENT

| | | |
|--------------------------|---|-----------------------------|
| Gertrude Chawatama | - | The Presiding Chair, Zambia |
| Tecla Namachanja Wanjala | - | The Acting Chair, Kenya |
| Berhanu Dinka | - | Commissioner, Ethiopia |
| Tom Chavangi | - | Leader of Evidence |

(National Anthem and Prayer)

(The Commission commenced at 10.30 a.m.)

(The Presiding Chair (Commissioner Chawatama) introduced the Acting Chair, fellow Commissioner and herself)

The Presiding Chair (Commissioner Chawatama): Good morning, we shall remain standing for the national anthem and the Commission prayer and after that we will observe a minute of silence in honour for those who died from torture.

Thank you.

(The Commission observed a minute's silence)

On behalf of the Truth, Justice and Reconciliation Commission (TJRC), we wish to welcome you to today's hearing. I must say that these are special hearings today in the sense that I believe that this is the first time, as a Commission, we have had an opportunity to sit at the site where violations that we are going to talk about today had taken place.

It was befitting that we observe a minute of silence for the lives that have been lost through torture. It is also befitting that we observe a minute of silence in support of the survivors of torture and their families. We are very happy as a Commission to be here today. We know that issues of torture have been before the courts of Kenya. We are also aware that the courts have awarded some Kenyans. But as a Commission, it is important to have these hearings today because we are tasked to come up with a complete and accurate historical record. If these hearings do not take place, there would be a part of the history of this nation that would be left unrecorded. It is also befitting that these hearings are held because of recommendations that we will make as a Commission; which recommendations are mandatory and which are going to be implemented. Justice will be served and as a Commission, we are committed to the work that we are doing and we want to assure the victims, not only of torture, but other victims that we are committed to this process.

With me today on this panel are two Commissioners; there will be two other Commissioners who will join us.

You will be interested to know that seven per cent of the 2,843 statements we received as a Commission were on torture. We received 696 statements from females and 2, 47 from the male. From Nyayo House, we received 24 statements, but the number is much more because there are many who did not record statements and they are many others who are related to people who were tortured and whom we did not have an opportunity to get statements from. The other statements came from those who were alleged to have been involved in the coup'd'état and their number was 158.

We will observe a few rules as we sit here; we will observe silence and listen quietly to the testimonies of the witnesses. We will switch off our mobile phones because they disturb the equipment for recording these proceedings. I am sure you are aware that in a lot of instances witnesses do break down. As a Commission, we will allow for these with a lot of respect and we will give such witnesses an opportunity to compose themselves. Please co-operate with us because the testimonies which we will be given today will not be easy for these witnesses. We beg your indulgence to afford the witnesses the respect that is due to them, as Kenyans and as fellow human beings.

We would like to thank the witnesses in advance for being courageous enough to come and speak to us; we acknowledge the pain that will accompany your testimonies. We thank you in the same way, Leader of Evidence.

We are ready to proceed with the first witness.

Thank you very much.

Mr. Tom Chavangi: Thank you Presiding Chair and your fellow Commissioners. The first witness is Mr. Kang'ethe Mungai, who will speak on issues of human rights and how he was arrested, tortured and jailed for about 12 years on allegations that he was a member of an illegal group.

He has worked extensively with torture victims and survivors. He will also speak on issue of torture that has visited him as a result of this.

Thank you very much.

(Mr. Kang'ethe Mungai took the oath)

Mr. Tom Chavangi: For the record purposes, kindly state your name again.

Mr. Kang'ethe Mungai: My name is Kang'ethe Mungai

Mr. Tom Chavangi: Mr. Mungai, what do you do currently?

Mr. Kang'ethe Mungai: I work as a human rights consultant currently, and also a volunteer in human rights centres in Kenya.

Mr. Tom Chavangi: Presiding Chair and Commissioners, Mr. Kang'ethe Mungai is the last witness in the list of witness on the cause list, after lunch break. But we decided to bring him first, because of the issues that he is going to articulate.

Mr. Kang'ethe Mungai, are you aware of what has brought you here?

Mr. Kang'ethe Mungai: Yes.

Mr. Tom Chavangi: What you had gone through, that is torture and detention during the previous regime.

Mr. Kang'ethe Mungai: Yes.

Mr. Tom Chavangi: Kindly, would you state to the Commissioners in a very brief manner how these issues were brought to you and how they were perpetrated.

Mr. Kang'ethe Mungai: Yes.

Mr. Tom Chavangi: Thank you very much.

Mr. Kang'ethe Mungai: Honourable Commissioners, it all started when I was a university student. At university we were very concerned about the depression that was taking place in the country. So, we decided to do something about it and we started organizing with people outside the university. Some of the people we were working with very closely were my three brothers; Waweru Mungai, Guchache Mungai who is late now and Doge Mungai. Also there were my other very close relatives like Mungai wa Ruiru, my nephew, who died in Kamiti Maximum Prison.

Gitau Nduati was later jailed for seven years and my uncle Njoroge Wanguthi who was later tortured here and jailed.

We organized and formed an organization called "*Muungano wa Wazalendo wa Kuikomboa Kenya*" in short *Mwakenya*. Before that, there was an organization called the December, 12 Movement.

So, what we were handling basically was that we set out to educate the Kenyan people about what was happening in the country and what they could do to make this country a nation that respects human rights and that allows freedom of its own people.

Mr. Tom Chavangi: Sorry! Hon. Commissioners, *Muungano wa Wazalendo wa Kuikomboa Kenya*; for the purposes of our foreign Commissioners is a grouping of nationalists for the purposes of liberating Kenya. I was just keen on that interpretation.

The Presiding Chair (Commissioner Chawatama): Before you can proceed; Leader of Evidence, the Acting Chair needs some clarification.

The Acting Chair (Commissioner Namachanja): Thank you. I thought also the last words of the witness were not translated into Kiswahili. Maybe after this translation, it can just go backwards, the sentences that he made before you we came in.

Mr. Tom Chavangi: Okay. Very well Commissioners, it is understood. Mr. Mungai, before you said *Mwakenya*, there is something else you said. Can you say it again it for purposes of translation

The Presiding Chair (Commissioner Chawatama): I can remind the witness. He said: “We set out to educate Kenyans on what was going on and---”

Mr. Kang’ethe Mungai: We set out to educate our people on what was going on in the country and what they could do to make this country a nation that respects human rights and allows the freedom of its own people, especially the democratic freedom which was lacking in this country.

The Presiding Chair (Commissioner Chawatama): I am so sorry. We do not have problem with that now. You may continue.

Mr. Kang’ethe Mungai: The newspapers, airwaves; the radios and television were not free; they were all controlled very tightly by the regime of that time, the KANU regime. So, we went out to create publications that were to speak freely about what was going on in the country and one of these publications was *Mpatanishi*, which was for our own internal education; educating the cadres of the struggle. Then there was another one for mass consumption which was called *Pambana*. *Pambana* was something that we were writing and distributing all over the country so that people could know the truth that was happening. The Kenya Broadcasting Corporation (KBC) was the only broadcasting station of that time, so, we tried to create a free press. But it was an underground press.

Then because we wanted to get a structure in the country, we created a network of sales all over the country. We had a centre that was controlling it. So, the Government appears to have been very afraid of that kind of organization. Therefore, repression started in earnest towards 1980s. It started very hard. They started hunting us down and arresting people right, left and centre. When these people were arrested, they were not just arrested but were tortured in a very bad way.

At that time we did not know why they were doing it. We thought that they were doing it in the ordinary way. The well known place for torture was Nyati House and, of course, the police stations all over the country. We did not know that there was a place like Nyayo House until much later. One of the very first people to be arrested was a person called Peter Young Kihara, who was a very close family friend and his relatives are here today. I used to work very closely with him although he is now late. Slowly by slowly those of us who were organizing were put in a cell in western Kenya. I was a civil servant

in western Kenya then. We were five people in a cell, Oduor Ongwen, Peter Odenda, the late Karimi Nduthu, Job Gichuru and me. The late Job Gichuru was a Commissioner of the National Commission on Human Rights.

We gradually came to learn that there was a torture chamber at Nyayo House; the provincial headquarters where bad things were being done to people. So, we tried to educate our people on what to do in case of arrest. We wrote in one of *Mpatanishi* what to do if you are arrested. But unfortunately, those of us who were able to read could cope with the torturers much more easily than most of the people who were tortured here. What happened is that the Government arrested people right, left and centre; especially those they suspected to be democratic activist. But then they were arresting a lot of people who simply fled or the relatives of the people who were active in terms of democratic activism. These are the people who were tortured most.

I will give you a few examples of my very close relatives who were arrested, interrogated and tortured very badly and the police had no evidence to take them to court. These people were the ones who were tortured more than anybody else because they did not know anything while the police thought that they were hiding information. So, they were trying to make information come out of these people which information was not there at all, because they did not know anything.

Just to give you an example, I had one cousin who was called Waruhiu Muhia who was arrested on suspicion that he knew where one of my brothers who were in exile was. Mr. Cheha Mungai, my younger brother is now dead. He was suspected of communicating with me. So, the police brought him here and they thought he knew about the whereabouts of my brothers. I was arrested and imprisoned but my brothers went to exile because of that, so the police were looking for them. This man was arrested from where he was working at the Kenya Breweries Limited and brought here. Having written his account, the police started--- Now he is dead, but fortunately for us he wrote about his account. The first thing they did was to undress him completely. He was undressed to his birth suit in front of nine men here in this building, at the uppermost floor. They undressed him and made him start going round on his finger on the ground as they beat him everywhere. They were telling him to tell them that he was a member of an organization and to tell them where all the others were. They beat him up until he fell unconscious, but he told them he knew nothing about all this. They did not succeed to get information from him. They took him downstairs to the cells still undressed. That is what he tell told us. I interviewed him and I have no doubt that this is what happened to him. After that they pushed him into a cell and brought a horse pipe. He was still naked and they sprayed water on him. Then they left him there without food. He was not communicating with anyone; he stayed without water and without going to the toilet for four days. They could come and ask him whether he was ready to tell them what was happening, but he kept telling them that he had no information at all. So, it continued like that until finally after 17 days, they were unable to get anything out of him. So, they removed him from the cell with his skin bleeding off his feet and being quite ill. They took him to a place in town and told him to go home.

His wife was waiting for him at home but he did not find the child they were expecting because the wife had miscarried because of shock. This man continued ailing and died a year ago. This man was compensated by the court to a tune of Kshs1.5 million late last year. But he died before he could get his compensation. It is still within the Government system.

Hon. Commissioners, I have given that testimony as an example of those people who suffered very severely. On my part, I was arrested in Gilgil where we were still distributing our publications. We were working with people from all over the country and outside. We were operating underground with my colleagues Tirop Kitur and the late Karimi Nduthi. So, the Special Branch slowly found where we were. But as they arrested me they kept threatening me and telling me that I may be hiding what I know. I still remember the words they used as they walked me to the police station; “*Kijana utaongea, utaongea kijana!*” I knew what awaited me and I was not ready for it all.

Mr. Tom Chavangi: Hon. Commissioners, the meaning of the words “*kijana utaongea*” or “*utaongea kijana*” is, “young man, you are going to talk” or “you are going to talk, young man!”

Mr. Kang’ethe Mungai: So, on that day, as we were walking with the police on top of an overpass on the Naivasha-Nakuru Road, I decided that, knowing what happens at Nyayo House, I would not go there. I knew that they knew I had a lot of information and I did not want to endanger my colleagues who were then free. I had a lot of information on the organization and who were doing what and I knew if they succeeded in torturing me and getting the information out of me, it would have endangered the whole organization and my colleagues. So, I decided that it is better to die than go through the suffering at Nyayo Chambers.

So, I quickly disengaged from the two policemen who were carrying rifles and escorting me, one on either side. I dashed to the side of the overpass which had rails. There is a railwayline overpass at Gilgil over the highway to Nakuru. So, I quickly went to the edge of the bridge and dived down to the road below as I wanted to die than face torture in this place. I got badly injured and became unconscious. When the police came and collected me, I was still alive. So, they took me to Gilgil Police Station and by then my body was swollen all over. They kept me there for the whole day.

In the evening, they drove me to Nakuru Police Station and from there I was taken to a cell. It was actually a room in the office they had converted into a cell. I was put there and by that time, they had also caught up with my colleagues Karimi Nduthu and Tirop Kitur. So, all of us were brought there. The police there beat up my colleagues very badly. They beat Karimi Nduthu very badly for a reason we have never known up to today. They did not beat me because I was already injured. They did not beat Tirop too.

After that, they took us to the Provincial Commissioner (PC), Mr. Hezekiah Oyugi, who talked to us. He asked why we were doing what we were doing and we told him we were struggling because we were unhappy with the way the Government was governing

Kenya. We told him people's rights were being violated right, left and centre. He tried to convince us to abandon our agenda since things would be okay. We told him that it was him and his government that were wrong and that we had absolutely nothing to apologize.

After that, I do not know who ordered it, but somebody ordered that I be taken to hospital. I do not know whether it was the PC, the police or who. They took me to Nakuru Provincial General Hospital while Tirop and Karimi were taken to Nyayo House. So, I stayed in hospital for two days and the doctor was planning to operate on my broken arm. But the day before the operation, Special Branch officers came to Nakuru General Hospital and said that they were transferring me to Kenyatta National Hospital for better treatment. That is what they told the doctor. Therefore, the doctor handed over to them the medical report. They put me in a vehicle though it was very painful and drove to Nairobi. I was expecting to be taken to Kenyatta National Hospital but the ward turned out to be cell number three behind us here; one of the cells near the entrance. That is where they brought me.

I had a temporary bandage that the doctors had put on my wound; there were injuries and it was putrefying, but they did not take me to hospital. They started interrogating us. Luckily for us, we had been trained on how to respond to torturers. So, we kept talking to them and whatever information was not injurious to the course we gave them; information about people who were already in exile or in prison so that they could not think that we were trying to hide information. That was harmless to us and I discovered that they knew a lot. So, they kept telling me, "Kang'ethe, you give us information and talk to us; we will take you to hospital. If you do not talk to us, we will break the leg and the other arm." So, they kept us incommunicado and they did not give me treatment. I had been given a cane to support myself with while walking; at least they did not take it away. I was still able to walk with the support of a cane.

Finally, after all the interrogations for about two weeks, the hospital that they were supposed to take me to, Kenyatta National Hospital turned out to be Nakuru High Court. We were taken to court in the evening. The threat we had received here and the information we had about this place was such that - in fact all of us, Karimi, Tirop and myself - we were looking forward to the day when we would go to prison and never ever return here. So, we were asked: "Did you do all those things you are accused of doing? Did you break this or that law? Did you sabotage the railway?" We said, "Yes we sabotaged the railway system and the Tele-communication system in Nakuru". All that we told them was part of the struggle to make the world know. We told them that we did. We actually explained very well even to the PC that the African National Congress (ANC) in South Africa staged sabotage activities against oil for coal production. There was an establishment in South Africa that was producing oil from coal. We told them that we are doing that to attract the attention of the world about the repression of our people. We told them that we were not criminals but we were fighting for a better nation. So, when they asked whether we did that, we confessed and said we did. But the key thing for pleading guilty to the charges that they had written and forced us to sign was

because we did not want to be taken back there at all. We did not want that possibility of ever being taken back to the Nyayo Torture Chambers.

So, we were imprisoned for 15 years for Karimi, 14 years for Tirop and 12 and a half years for me. From Nakuru Prison they took us to Kamiti Maximum Prison and Naivasha Prison.

Hon. Commissioners, as this was happening, there was a repression that was taking place and it was completely unknown to us; the harassment of our families back home. I was made to understand later when we came out of prison that my home in Kabete - this was narrated to me by my mother - her home was converted to something worse than a grave. Nobody would ever dare enter that home. This was because the police were looking for my three other brothers; luckily one of the brothers got a scholarship and went to another country. But the other two were around either in Kenya or Tanzania. The police wanted to arrest them and in the process they were harassing our parents and relatives.

My mother narrated to me how the police came to her and told her to produce her sons. They did not mention Kang'ethe, but they said: "*Tuko na Kang'ethe.*" They wanted the other two. They started beating her up. She told me that before, she had never been slapped by a strong able bodied man with full force. I asked her how many slaps she suffered, she told me that she could not remember, but they were from six upwards. So they beat her in front of her daughter. There was one of our sisters who was left at home and they were beating our mother while she was watching. Finally when she could not produce her sons, she was arrested and taken to Muthaiga Police Station and locked there.

Hon. Commissioners, being beaten and taken to a cell was the worst form of torture for a lady of 77 years. The Special Branch planted spies among my relatives. People were paid to report to them what was happening in my home. They created so much fear that nobody would step in our home. My mother suffered deeply. What was terrible for the family is that my nephew, Mungai wa Ruiru, the son of my half-brother who was working with Kenya Railways was arrested and jailed for seven years at Kamiti Maximum Prison. He was jailed in 1986, just around the same time with us. While he was at Shimo la Tewa, he contracted Tuberculosis and he was transferred to Kamiti Maximum Prison. He continued ailing there without medical attention.

So, his younger brother, Muiruri wa Ruiru who is with us here, for fear of being associated with people who were agitating against the Government, never went to see him in prison. His father who is my brother but has since died was the Assistant Chief of our area. He disowned his son to save his job. So, Mungai got ill and so thin and never got attention until after two years. He died in Kamiti Maximum Prison. The family would go to the prison and he would be brought to them by two prisoners carrying him. Around 1988, they went to prison to see him and he was not brought. When they asked where he was, they were told that the prisoners who carry him were not around. They were told to come the following day of which they did, but they were told he had been taken to hospital. They kept going there for two weeks not knowing that he had died. They finally disclosed that he had died and gave them a number. The family went to

Kilimani Police Station and then to the City Mortuary. There they found him; a small heap of bones. So, a funeral was done and the Special Branch officers were all over the place.

The Presiding Chair (Commissioner Chawatama): We know that it is a difficult time for you and as I said earlier, we have had the experience and we know that there are a lot of wounds that we are going to have to reopen. It has not been an easy journey for us and we know that it has not been an easy journey even for the witnesses who have testified before us. We are really sorry for the experiences that you personally went through, the experience your mother went through and your family. But we also celebrate the fact that you are alive today so that the truth is being spoken in this place. There are children who are alive who were not born at the time you went through what you went through and would not be able to know what happened to many Kenyans at that time. So, we are so grateful that you are here and we will have an opportunity to ask your nephew's wife and child and your uncle to stand up so that we can also acknowledge them. We thank you for the fact that you mentioned that they are here and whenever you are ready for us to continue, that would be okay. Please take your time.

Mr. Kang'ethe Mungai: They could stand up. They are at the corner there. Mungai's family!

The Presiding Chair (Commissioner Chawatama): Could the family, please stand up so that we can see them? They are right at the back. We do not see you; we will have an opportunity to just meet you a little bit later and just shake your hands. We are so happy that you are here and we thank you that you took time to be here. We are really sorry for all that you went through but we will have an opportunity to shake your hands a little bit later. Thank you.

Mr. Kang'ethe Mungai: So, hon. Commissioners, we continued to stay in prison for six years until the mothers of political prisoners went to the Freedom Corner, led by the late Professor Wangari Maathai, Nobel Laureate and we were able to benefit from the protests by the mothers of the political prisoners. But even as our mothers went to protest on our behalf, the repression that was meted out against them was brutal. Fortunately it is well documented how they were tear-gassed at Uhuru Park, that we now call Freedom Corner. They were tear-gassed and harassed until they undressed.

Madam Presiding Chair, I do not know whether in Zambia this is done by the African women. Undressing is the highest form of protest that an old lady can do to protest what you are doing to her. So, our mothers had to undress. They went to the prisons to ask for their children. Their children were not criminals, but people who fought for the rights of others. So, they demanded that we get released. So, when they were attacked by the police, our mothers protested by undressing. Luckily for us, the Government responded. But of course, there was a lot of pressure from all over the world. I think we are also beneficiaries of changes in the world. The Berlin wall had collapsed. You remember that when we were being imprisoned it was at the end of the Cold War. Now the Cold War had come to an end and so, the reason for imprisoning us, and all the harassment that we

were undergoing was nonsense. So, our mothers insisted that we must get these children set free. So luckily for us, the Government acted.

For me, I think that struggle was like it was being done for me. I told my mother and Professor Maathai that just before the protest, I had developed ulcers. Due to lack of medical attention my skin had started changing. The way it had changed was exactly the same way I had observed Titus Tito Adungosi's skin change, one of the leaders of the University of Nairobi students union who was also with us in Naivasha. Just before he died, that was the way he had looked. So, I knew if nothing happened in about three months or so, I would also follow suit. But luckily for us we were set free within that time. So, we came out, and it was all celebrations. We continued to protest for Koigi Wa Wamwere, Rumba Kinuthia, and all other people who were in prison. We formed an organization called Release Political Prisoners that was very active in our release and we continued to strengthen it. I became an official, Tirop Kitur was the Chairperson, and the late Karimi Nduthu, was the Secretary-General. So, we just came from prison straight to working on that so that the people in prison could also benefit.

Unfortunately, for our group, hon. Commissioners, we were set free in 1997 and we have been fairly active trying to change the country. Even if we were set free, there were still very horrible laws. The Constitution was very bad and prisons were horrible. People were being harassed all over by the police. So, we tried to see what could be done to change all that. Among the three of us, Tirop Kitur, Karimi Nduthu, and myself I can say with all certainty, without any fear of contradiction that Karimi was the most forceful among us. He was one of those people who were so totally and utterly convinced that justice must be fought for at any cost. So, Karimi was very active as the Secretary-General of RPP and I was the Treasurer, and Tirop Kitur, Vice-Chairman, but Karimi was also in so many other forums.

So, in 1997, I went to see a friend of mine on Luthuli Avenue, an advocate called Kimani Macharia who was a family friend. He told me to sit down. I sat down. Karimi was also a frequent visitor in that office. So, Macharia Kimani told me that he had news to tell me. I just guessed there was something. Those days there were no mobile phones. I thought there was bad news that he wanted to tell me. He told me that Karimi had been murdered the previous night. Initially, I thought he was not telling me the truth. I thought that maybe the information had been communicated to him by mistake. But slowly he convinced me that, that was the situation. Karimi had been murdered the night before in his house, in a place called Riruta, which is near Kawangware. That was where he was staying in a rented house. So, that was a very big shock to us, because we never expected it.

Sorry Madam Chair, I am informed I have taken Karimi's date of death one year ahead. It was in 1996, March, 24th. We now started trying to----

Mr. Tom Chavangi: It was 24th March, 1996.

Mr. Kang'ethe Mungai: Sorry for that error of dates. We tried to find out what could have happened. Hon. Commissioners, even the very first time we asked neighbours whether they knew who had murdered him, they told us those were security agents because of what they said as they ran away. Nothing was taken in terms of property. Instead, what were taken from him were books and papers and things like those. So, we automatically knew these were security agents and it was a very trying time for Karimi's mother who is here with his family and the entire fraternity of human rights people. The inquest was conducted after we agitated for it and everything was pointing to the security agents of the former regime.

So, we tried to seek justice for Karimi but we have never succeeded. Everywhere we went we got roadblocks. The last major attempt we did to seek justice for Karimi, in terms of being told who killed him and why, was a meeting with the former Attorney-General, Amos Wako. We told him the inquest ordered for the arrest of one Rono. We will get you the full name later. The court ordered the arrest of that man who had rented a room just next to where Karimi was and after Karimi was murdered, he disappeared. So, it was very suspicious, and the police never arrested that man.

The court also ordered the arrest of a lady who was a friend of Karimi who was in the room with him when he was killed. Up to today, that lady has never been arrested or even interrogated by the police. So, we went to the Attorney General. We can get you the date of the visit to the Attorney-General's Chambers and we were organizing that as the Release Political Prisoners group because I was still working there. The Attorney-General told us that the Government would not do anything on that issue at that time because the whole nation had agreed to set up a Truth, Justice and Reconciliation Commission that would find out about all those violations and give a recommendation that the Government can act upon.

Madam Presiding Chair even before we request anything else from this Commission, we request you to address yourself to the issue of Karimi Nduthu's murder. That is in addition to all the other cases. We are picking on the case because the Attorney General went on record saying that. Of course, we did not agree with him at all. But now that here is at least a chance to further that search for justice for Karimi, kindly see what you can do about this issue in terms of the suffering that the family has undergone. Although Karimi's mother and father have other children, Karimi was a special child. He was a special child. All children were special but Karimi was in a class of his own. Karimi was one person whom whatever problem you had, you were very sure that if you took it to him he would listen to you and do whatever he could do about it. That was why in RPP he was very instrumental in leadership. Karimi was a born leader wherever he went. Even in prison he led us in hunger strikes, protesting the heavy labour that Naivasha Prison was giving us. After this, they gave us light labour. So, here is a born leader that this country could have benefited so much from if only he had lived.

Now if I go back to my own family as I have told you, people lost jobs. I think this is something that cuts across families of these people who were brought here. People lost their jobs. I was a civil servant working as an Agricultural Officer in Western Province.

My cousin Gitau Davy was working in the City Council of Nairobi and he was one of the union leaders. He was a shop steward. My nephew Mungai was also working in the Railways and so on. When we came out of prison, nobody could employ us. We were sort of outcasts. Of course, the Government could not take you back. We were already marked men and women. So, these people lost their livelihoods. Even my mother could not go on with the work on the *shamba* because of the harassment that was going on and the support that her children were giving. Almost all the families that were being arrested suffered in more than one way and economic loss was almost uniform. Everywhere you tried to invest, you found economic loss. This economic loss, hon. Commissioners, is an important matter to address.

We are very happy that the courts are aware of it and they are doing something. I think it is very important because these were people who were patriots, fighting for a better country. Now when their economic status took a dive, they became laughing stocks in the villages. People point at them. "You see, when you fight for human rights, when you fight for justice, when you fight for a better country, you are going to become like Kang'ethe there. Kang'ethe by now would be a Director of Agriculture or he would be even the PS in the Ministry of Agriculture. Now see, he is jobless. Even his clothes are torn. His children are chased from school. His house is falling over". So, he will become a laughing stock and that discourages people from fighting for justice and, therefore, that now takes our country back, our continent back to the Third World.

So, we should do something; whatever is humanly possible for the rehabilitation of people, who struggled. People keep pointing and saying, "look at the *Mau Mau* fighters, they were neglected and their children are dying of poverty. Look at the patriots who fought against the repression by the Nyayo regime, look at the way they have suffered." So, when people keep pointing at others, who have been struggling like that it means our children will say, "It is not worthwhile to fight for the country and you are going to lose all the time". So, if we can do something as a country and your Commission can help catalyze this to make sure that people do not become laughing stocks in their villages, laughing stocks in the world and laughing stocks all over because of fighting to make their nations better, I think that will take our nation forward. Africa is going to be a better place and better nation.

Hon. Commissioners, I was told that I must give some recommendations. I think I will now come to recommendations as I conclude:-

One of the recommendations, Madam Chair is about the chambers here. When I was working in an organization called People against Torture, we worked to agitate for the opening of this place. We created an activity that involved visiting the PC up here with the media. The media was very supportive and we are forever grateful. The whole country was told that there were people who were demanding the opening of the chambers to the public and that they were insisting that they had been tortured here. The country did not know. Now, the Government did not want to do that. But the clamour was overwhelming and they just could not do anything about it. Therefore, they opened them.

When it was opened, hon. Commissioners, the Minister for Justice was here. He came right here. In fact, he was addressing us here. That was hon. Kiraitu Murungi. The Minister for Justice, of course, apologised for what the former Government had done. But he pledged that the Government of Kenya was going to convert this place into what he called a monument of shame, like a museum. The museum is just across here. The old PCs office is just next door here. It has already been converted and handed over to the National Museums of Kenya. It is a national heritage site. We were hoping that the conversion of this place into a site, where people can be coming to see where we came from and understanding what happened in the past in terms of torture, we thought that would happen. It has never been done. Instead they are changing things like this one here. They even tried to demolish this place. You can see that they tried it but they were told by the architects that if they do that, they were going to endanger the entire building. They tried to demolish and then they are changing things. Like now, there is a metal thing there, which is the door to the lift that was taking us to the upper floors. I do not know why they are changing because we agreed with the Minister, it would be preserved the way it was. Hon. Commissioners, we demand that this place be not interfered with for posterity to see.

(Applause)

Thank you very much. Hon. Commissioners we are also requesting that you help us in terms of our criminal records and even some of our relatives who were not jailed but taken through all those fingerprinting and so forth in the police stations. So, they kind of have criminal records. The courts have already declared that these people's rights were violated and they were not violators. They were not criminals and they were wronged. If you go to ask for a job, like now if I wanted to become a Commissioner in your Commission, I have a criminal record and I would be denied the job. So, hon. Commissioners can the criminal records of the patriots be removed from the police records? I have never done it myself, but I hear there is something called certificate of good conduct. If you go for that, they will not give you. So, that is something that we are also demanding that the criminal records be removed.

Lastly, hon. Commissioners, some of us have succeeded in getting compensation from the courts. But as we speak, none of the people whose relatives were killed have done it and also very many others are unable to file their cases because of various reasons; they live very far from Nairobi, and also very many people are already dead. Now, either they died in prison, or they were killed like Karimi. The lawyer had said he wanted the people to sign affidavit, but they are dead. So, we would like those people who died or even those people who are unable to file their cases in court to be compensated without having to go to court. The court process is extremely difficult. It takes a long time and I can give you many examples. I can give you the example of Peter Young Kihara whose children are here with us. He died just before the compensation and so many other cases that we could give you because of the time it takes for these cases to go through the court. So, we would urge the Commission to see what can be done so that compensation is paid without having to go to court. This is something that the Prime Minister has promised. He

promised because he knows the court process is too bad and difficult in Kenya and so, he was going to see what can be done so that people are compensated as part of rehabilitation. They are compensated without having to go to court. They have done nothing about it. So, we hope that with your involvement, this process is going to be done soon, because people are aging. Many of them are ailing and some are already dead while others will die before they are compensated. We hope that we can avoid that.

Madam Chair, unless you have a question, that is the end of my presentation.

(Applause)

Mr. Tom Chavangi: Thank you very much, Kang'ethe for those shocking revelations that some of us were not aware of.

The Presiding Chair (Commissioner Shava): Leader of Evidence, your microphone is causing havoc to our ears. I think we need some technician to come and attend to it.

Mr. Tom Chavangi: Thank you Kang'ethe for those shocking revelations. I will ask you a few questions and then I will pass you over to the Commissioners who will also seek clarifications from you.

You were jailed for 12 years. Did you serve the 12 years of the sentence?

Mr. Kang'ethe Mungai: Madam Presiding Chair, I did not serve the 12 and half years of my sentence, because of the protest of the mothers of political prisoners. They managed to get us released after six years. We served only six years.

Mr. Tom Chavangi: How old were you when you were arrested?

Mr. Kang'ethe Mungai: When I was arrested I was 27 years.

Mr. Tom Chavangi: You also mentioned that yourself, your brothers, your cousins and very close friends were the ones who actually started this process of *Mwakenya*. Why was it within your family that this process started? Why is it that it started within your nucleus family?

Mr. Kang'ethe Mungai: You know it did not begin with my family. It began all over the country and my family got deeply involved. I think the reason for that has to do with our history as a family because my father and his elder brother whom I am named after, Kang'ethe were the leaders of the *Mau Mau* in that area. They were deeply involved in the struggle there. I do not know whether it is in the genes or what. I think because we heard so much about how our parents struggled and we were happy about it, it came like a family tradition fighting for a better country.

Mr. Tom Chavangi: When we were in Busia doing our public hearings, we managed to visit Adungosi's family at Adungosi Market and the mother testified before this

Commission in Busia. So many questions are being asked about Adungosi and today, you mentioned his name and you said that when he was just about to die, you saw his condition; he was turning pale. Are you saying that you witnessed the death of Adungosi in Naivasha?

(Microphone hitch)

Sorry for that, and members of the public I apologise. The question I was asking Kang'ethe is to the extent that when we were in Busia during our public hearings the family to Adungosi testified before the Commission. Today, Kang'ethe has told us that when Adungosi was just about to die, his skin texture started changing. So, the question I am asking Kang'ethe, did you witness the death of Adungosi or did Adungosi die while you were at Naivasha Maximum Prison? That is what I presume.

Mr. Kang'ethe Mungai: Actually, I did not witness the death of Adungosi, because that would have been difficult for us, because in Naivasha Prison they had kept us separate from the rest of the prisoners. It just happened that one day, Adungosi happened to be passing by our block--- You know they had put us in a block called punishment block, the three of us, and Adungosi happened to be passing by and we saw him with Karimi and Tirop. That is when we noticed that.

They were not mixing us with the rest of the prisoners. They were just keeping us separate as political prisoners. So, they were not allowing us even to talk with other prisoners. So, one day, there was one prisoner who was bringing us food. He would bring us food and then be escorted out of the block. It just happened that one day the guards were not very keen and we were very eager to know about our other colleagues and what had been going on. So, we asked the fellow prisoner who brought food in the block how Adungosi was because we noticed he was not looking well. He told us; *Huyo ali dead*. So, that is when we knew that he had died. We were estimating that from the time we had seen him changing like that it was not a long time, about three months or so. So, we never witnessed the death. We just noticed that he was looking pale.

Mr. Tom Chavangi: Thank you, Kang'ethe. You were taken to the court at Nakuru in the evening. What time was it?

Mr. Kang'ethe Muigai: The sentencing occurred late at about 5.00 p.m. We came to learn later that the magistrate who sentenced us--- The Government of the day would pick the magistrates who would do whatever they wanted. We hear that hon. Wabirianga who sentenced us was in a seminar at the KIA. He has to be called from the seminar to conduct the trial and the sentencing. The way things used to happen was that you would be taken to court at about 11.00 a.m. Our case, since we were three, took us a bit of time. They took us to court around noon and by 5.00 p.m, we had already been tried and sentenced and we were in a prison truck on our way to prison. There was nothing like being told to get a lawyer and our relatives were not informed. They would do that to make sure that nothing would stop them from taking you to prison and that you would definitely be imprisoned.

Mr. Tom Chavangi: Thank you Kangethe. In fact, you have answered my next question. I was leading you to tell the Commission the Presiding Officer and you have mentioned that it was former Justice Waribirianga. That is public knowledge. My last question is on you as a person. You were an Agricultural Officer at the age of 27 or 28. You had the knowledge of sabotage or of becoming some saboteur or of an instrument or institution for the purpose of telling the world that this Government is oppressive. Where did you get this training from or was it hands on training?

Mr. Kang'ethe Muigai: We were reading a lot. We read a lot and in fact, one of the things that the police were ready to do was to get the books we were reading and destroy them. There is an interesting case of the late Muigai, my nephew. They knew that he had books and they wanted them. So, they came home and demanded to know where the books were. Muiruri, the younger brother of Muigai who is sitting there, because of the fear had taken the books and buried them in the farm. So, somehow, the mother discovered the books while working on the farm. Knowing how dangerous it was when one was caught with the books, she dug them out and threw them into the pit latrine. So, the Special Branch or the secret police came and demanded to have them. They would come in a threatening manner because they came after arresting Muiruri and taking him to Parklands Police Station for three days demanding the books. Muiruri did not know where they were because he knew there was a hole where he had buried them. Because the mother felt that his son would be jailed like the other one, she told them she is the one who knew where those books were. So, they asked her where the books were and she said that she had thrown them into the pit latrine a month ago. So, the police took torches and went to the pit latrine. They said, no, you are lying to us because all we are seeing here are newspapers.

Madam Chair, the rural people cannot afford tissue paper and so they use newspapers most of the time especially those days. The police did not believe that and so they said that they would leave. They told her that if she did not take the books to them, her son would also go to prison. So, they went with him and took him back to the cells in Parklands Police Station. So, they were afraid that this son would be jailed just like the other son. They had to demolish the pit latrine and use hooks and other things to look for the books in the pit latrine that had been under constant use for a whole month. So, you can imagine how the books were buried deep. They got the books but luckily, they were tied together in a net like the one used for tying onions. So, the hooks succeeded in getting the books out. But the big job was that when Muiruri was released to get the books he succeeded in cleaning them and he said that he was happy to clean them. He said that he was seeing, in the act of washing the books, his freedom. So, he washed the books very carefully and joyfully because he knew once they got the books, he may not be tortured or taken to prison. So, he finally put them in a plastic paper bag and left. There were no mobile phones. So, he went to the place they had agreed to meet with the Special Branch opposite the Central Police Station. So, he went there and after struggling to locate them, he had to use other police officers to report that he had arrived and had the books. So, finally, they came and he told them that he had the books. They told him to

open and he told them that if he opened, they would vomit. They then told him to put them at the back of the vehicle. So, they carried the books in that state.

I was just illustrating where we were learning the techniques of the struggle. We read a lot about the ANC and how they were doing their things, Nicaragua and what Museveni was doing. In fact, some of us like my younger brother went to Uganda for guerilla training under the National Resistance Army and others would go to other places. It was not a Kenyan struggle and you know how those days were. Madam Chair, you were old enough to know about those days. People were struggling all over. South Africa was still under bondage and Zimbabwe was still under bondage. Angola and Namibia were also operating the same. In Tanzania, Mwalimu Julius Nyerere was the Chairman of Front Line States and very sympathetic to people who were struggling. For example, my brother went to exile in Tanzania and they were very well received. They stayed in Dar es Salaam until they returned. So, we would learn from others.

Mr. Tom Chavangi: Madam Presiding Chair, people in the rural areas also use leaves in the absence of newspapers. Some of those leaves have small thorns.

(Laughter)

I wonder if the Special Branch guys, with that kind of energy would read the books that you used to read very well. My other question is; do you remember the people who tortured you?

Mr. Kang'ethe Muigai: I can remember Mjomba, a light skinned guy who later became the Head of Operations at the National Security Intelligence Service and I very well remember James Opiyo. Those are the two people that I can remember. Opiyo is the one who was pointing at broken legs of chairs and he would tell me if I do not cooperate, that is what they would use to break my other leg. I remember that kind of threat. The person who was taking my statement was called Mjomba. I do not remember his other name but he is the one who was personally taking my statement.

Mr. Tom Chavangi: Thank you, Madam Chair. I hand over the witness to you.

The Presiding Chair (Commissioner Chawatama): Thank you. Commissioner Dinka, do you have any questions for the witness?

Commissioner Dinka: Thank you very much, Mr. Muigai for your testimony. I would like to salute your strength of struggle for the liberation of your people and to expand democratic space in Kenya. We empathize with you for the suffering you have gone through and the pain you have gone through. I would also like to salute the memory of your relatives, brothers and friends who followed in the same manner and were maimed, died and some were exiled. My question is just on one thing. You said to the Leader of Evidence that some of your people went to Uganda for some guerilla training under the national movement of Uganda. Did you acquire weapons and explosives or how did you do the sabotage that you are accused of?

Mr. Kang'ethe Muigai: We never reached that level of sophistication or even the capacity was low in terms of wading through the struggle. The sabotage work we tried to do was something low scale because, for example, we wanted to sabotage the railway station so that somebody would know that something was wrong in Kenya but we were also afraid of causing injury to an innocent person and we did not want to do that at all. We knew that if that occurred, it would backfire on the struggle. So, in that attempt to prevent the injury to innocent people, we did not want the collateral damage that America keeps on talking about when they say that they injure or kill innocent people. We wanted to make sure that 100 per cent, it would not happen. We wanted to have, at least, if one sabotage succeeded and so we studied the time table of the trains that were using the Kenya-Uganda Railway line and we were very sure that we had understood the movement of the trains. We made sure that all the passenger trains had passed because we knew the time they passed. We knew that the only trains that would come were the ones carrying goods. So, we wanted to derail and have the track closed so that people would know that we are the ones who had done that and we explain to them why. We were creating an event for people to know that things were wrong in Kenya and we were going to organize people to do worse things like it was being done all over the world when a Government did not change. I am now answering your question indirectly. We were using spanners that we would buy from hardware shops. We were working on the track and because it takes long for you to succeed, we would work and stop to allow the passenger trains to pass to avoid any injury to any innocent person. We were very cautious about that. I always personally urged that anybody who is fighting for whatever cause, even those who are rioting in the city here, like when we were carrying out mass actions--- We have conducted a lot of mass action for this country to change. We have done a lot of work and people call it rioting. But even as we were doing that all that time as a group in the struggle, we would urge everybody that they make sure that no innocent person gets hurt unnecessarily. If we did that and injured innocent people, what would we be doing to our struggle? We would be doing more harm.

Commissioner Dinka: My next question is, when you started this struggle, you and your group, you were young; 20 years or 27 years old and you had just come out of the universities and started working. Starting a countrywide underground network of cells and producing pamphlets that would be produced and distributed throughout the country required a lot of funding. Did you contribute yourselves or did you have any other sources? You do not have to explain who they were.

Mr. Kang'ethe Muigai: What we used to do was contribute, those who were earning money, out of our salaries. For instance, I had worked in the Government for several years and had accumulated some money in the Harambee Sacco. So, I took a loan and gave to the movement. That is how we would sustain ourselves and Wanyiri Kihoro and other Kenyans who were in London and other capitals of the world would fundraise and support the movement. So, there was a network of local people who would contribute and those who were outside the country, like Ngugi Wa Thiong'o, Wanyiri Kihoro and many other Kenyan patriots would help.

Commissioner Dinka: My last question is, if you knew what would happen to you because you got to know much later about the torture chambers and the prison, would you have started or joined *Mwakenya*?

Mr. Kang'ethe Muigai: Certainly, I would have.

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

The Acting Chair (Commissioner Namachanja): Thank you, Mr. Muigai for coming to share what you and others went through in this building. We heard a lot in your testimony about your relatives and colleagues in this movement. I have a personal question for you. What was the hardest moment that you remember during this struggle?

Mr. Kang'ethe Muigai: I do not even have to think about that and you have also helped me to remember. This is something I like forgetting and it is probably why I did not remember to tell you. Of course the hardest part was my family. I was very young and my wife was very young. We had just got our first child and my first born was two months old. So, that was my hardest part. As it has happened with most of my colleagues, my family broke down because when I came out--- She was a young girl and I had stayed with her very briefly. When I came out, we each had changed in different directions and something did not work out. So, we had to separate. I first tried and even got two more children with her. So, I have three children with the same lady but we had changed very much that we tried to salvage the relationship for ten years. After those ten years, we could not do it anymore. I have two boys after prison and I love them very much even if I separated with their mother because I associate them with freedom. It was very difficult for me to start another relationship. This has happened to very many people. I have talked to my own colleagues.

I have one of my colleagues who had to get married later to a person more than 20 years younger than him. It was difficult because this was a *dot-com* and he was becoming an old man and the language to use becomes difficult. It is difficult but we are coping. Many families were affected like that.

The Acting Chair (Commissioner Namachanja): After you were released, I wonder whether you met some of the people who tortured you one on one.

Mr. Kang'ethe Muigai: Not yet but I have only managed to talk on phone with Mjomba because when we were agitating for the opening of these Chambers, I was working for the People Against Torture, we kept on insisting that the people who tortured us must be brought to justice. So, Mjomba, after the struggle, I do not know how he got my number but he rang me from the NSIS Agency and he told me that he would like us to go and talk. I did not feel like it and so I did not go. I did not see what we were going to discuss. Our insistence was that if they tortured people against the law, they must be brought to justice. At that time, there was no talk about reconciliation. The only language we knew was that you committed a crime and, therefore, you must be punished.

The Acting Chair (Commissioner Namachanja): One of the objectives of this Commission is to promote national healing and reconciliation. Are you willing, for closure, for example, to meet the two people who tortured you if that opportunity was facilitated?

Mr. Kang'ethe Muigai: Yes, Madam Commissioner, I think I am more than willing because apart from the fact that the nation needs to move on and put all these behind us, I am also very curious to know what they thought and who was ordering this. Who ordered the creation of this chamber and for what purpose? Why could they not ask themselves, suppose they were put there, how would they feel? So, I would be very curious to know what they thought. I would also be very interested in letting them know how we felt and how we suffered. I would like them to know how my brother's wife and Muigai's mother felt when her son had been dead for two weeks and no one told her that her son was dead. I would like them to know how we felt.

The Acting Chair (Commissioner Namachanja): Thank you, my brother. I have no further questions for you. Thank you for appearing before this Commission. Our story would not have been complete without the story from you and others.

Mr. Kang'ethe Muigai: Thank you.

The Presiding Chair (Commissioner Chawatama): Since you were the first testimony, your testimony has taken a bit longer than I anticipated. You have remembered a number of people whose lives we shall celebrate especially the mothers and there is nothing like a mother's love and when a mother decides that enough is enough, a mother will always act. So, we will remember them and our records will reflect that there was a day when mothers rose up and said that enough is enough and they got them back.

My question is; you had an experience with the police and also with the judicial system. Both are undergoing reforms right now. I do not know if this is something you have been following keenly. I just would like to hear from you whether based on the reforms that you are seeing taking place in the institutions, you have the confidence that they will perform better. For example, you talked about the magistrates and the fact that you were not given an opportunity to exercise your right. This is something that should have been brought to your attention. As a way of moving forward, do you have the confidence with the reforms that are taking place, both in the police and our judicial system that maybe matters similar to yours will be handled differently?

Mr. Kang'ethe Muigai: Yes, Madam Chair, I have a lot of confidence but this is only based on my belief that Kenyans will -I have participated and my colleagues and I are hoping that Kenyans will be vigilant enough because even if they look very good on paper, unless we are vigilant and relenting, nothing much will be achieved. I have faith in the people of Kenya that they will be vigilant enough. You have seen it all over. You saw how we fought. We fought very hard. You may not have been here at that time but we fought for the Constitution to pass. So, I hope and believe that I am confident that we will be vigilant enough. I urge our people never to let down their guard because no matter

how good we make the country appear, somebody somewhere will always try to take us back. There will always be those attempts and we must never ever go to sleep at all.

The Presiding Chair (Commissioner Chawatama): We thank you very much for making time to come and share with us your experiences. Our record or our report will reflect the fact that you were here and the recommendations that you have made. It will be our desire to see some if not all our recommendations implemented. We shall do our part because you have done your part.

Thank you very much.

Mr. Kang'ethe Muigai: Thank you too, Madam Commissioner.

The Presiding Chair (Commissioner Chawatama): In our acknowledgement, we will have the names of the people who have been mentioned. So, we will allow the people to stand just to acknowledge them because we have a lot of heroes and also heroines in this room. We acknowledge you. We thank you very much for your attendance.

Leader of Evidence, how many witnesses do we have so that we plan our day?

Ms. Emily Kimani: Thank you, Madam Presiding Chair. Today we have 11 more witnesses. Majority have arrived but a few have not.

(Mr. Abuya Abuya took the oath)

Ms. Emily Kimani: Commissioners, our witness is listed No.2 in today's programme.

The Presiding Chair (Commissioner Chawatama): Our friends from the media, please, settle. We have many matters to listen to.

Ms. Emily Kimani: Mr. Abuya, how are you?

Mr. Abuya Abuya: I am fine thank you.

Ms. Emily Kimani: Before I proceed to ask you to give us your testimony, kindly, start off by telling us your full names for record purposes.

Mr. Abuya Abuya: My names are Abuya Abuya. It may sound a bit strange but it has a special meaning. When I was born; according to our Kisii culture of naming newly born babies, the new born takes the name of any immediate dead person in the clan or the village. At this particular time when I was born, my father had just died. His name was Abuya. So, my first Abuya is a name given after a dead person, the immediate name and the second is constant because it is my father's.

Ms. Emily Kimani: The reason you are seated in front of us today is in your capacity as a former Member of Parliament and you will speak about the repression that was meted

against the legitimately elected leaders during the KANU regime. I now invite you to give us your testimony and the recommendations hereto. You are most welcome.

Mr. Abuya Abuya: As I have said, when I was growing up, I was brought up by my mother and the villagers. In other words, when I went to school I would be taken as a child from a poor family. Later on I was elected and there is that significance of being elected with a background of coming from a poor family.

First, I was educated for free through the support of the villagers. Those days, they would identify children without parents and they would be educated for free. I went to high school and was also given bursary. This is very significant that when I contested as a Member of Parliament in 1979, I had against eight other candidates Kshs3, 000 at Barclays Bank, Kisii Branch. I was working with British Airways and my salary was Kshs2, 000 per month. I asked for leave of 30 days and went to campaign. By the time I went through, I had a balance of Kshs500. So, I spent a total of Kshs4, 500 in the whole exercise and still had a balance. That was significant later during my life in Parliament.

Secondly, was the fact that I did not bribe. When I became a Member of Parliament for the first time in 1973, and the other time was 1983 to 1988, during my two-terms in *Bunge* a few of us felt that the leadership was very oppressive and we came out to challenge the regime openly. There were detentions, torture and all that. During that time, I was approached by a very senior official, in fact, I was invited to visit the President at State House and I refused. Some emissaries were sent to me requesting me to go and see the President but I refused. A senior officer from State House came and had an appointment with me at a hotel called "Fairview" which is behind Panafric Hotel asking me to scale down my contribution during debates in Parliament. The rewards from the President would have been to be promoted to be an Assistant Minister and be given land. I was to write a statement of loyalty and keep it under lock until the President fulfilled his promise. That was a challenge and I could not have accepted it.

That was just a challenge and I looked back and said I would not accept it and I explained and gave my background how I was brought up by the community and how much money I spent to be elected as a Member of Parliament. I did tell him it is not possible because God had a reason to have propelled me from that poor background to represent the people and if I go against that and accept to be rewarded and become an Assistant Minister and get land, I said - we have a saying in our culture - God would punish me. I told him it is not possible and I said this in Swahili to him, that if I do that, *Mungu atatuma radi iniuwe kwa hivyo siwezi kukubali*. Subsequently, we were harassed and those of you who know, during our contribution in Bunge...

Ms. Nancy Kimani: Mr. Abuya, before you proceed, for the benefit of the international Commissioners, you said that *Mungu atatuma radi iniuwe* means that God will send lightning to kill you.

Mr. Abuya Abuya: So a few of us stood firm and were always telling the Government particularly in torture and detention. That is the time a lot of people were in detention like

our present Chief Justice, the late Anyona and many others, but we stood firm. Some of us were later nicknamed by the former Attorney-General Charles Njonjo as the seven bearded sisters. He borrowed this language from the American book of the five sisters. These are five rich oil companies and whenever there were debates in the Congress affecting their businesses, they would come together and lobby through the congressmen and they would have it their way but they never bribed. Njonjo likened us to the five oil companies. It was I, Koigi Wamwere, Chelagat Mutai, Mwachofi from Taita Taveta, Sifuna, Dr. Chibule and an old man also joined us. He was the late Wasike Ndombi who used to be the Secretary-General of Local Government Workers Union but he became a Member of Parliament and another old man Anyango Midika. Those two were older than us and as we continued and I had refused this offer, I was being trailed by the Special Branch everywhere I went in my constituency and in my home in Nairobi at Kibera. In 1982, there was an attempted coup and we were so harassed and the Special Branch wanted to arrest us and tell the country that we were behind that attempted coup but it all failed.

Come 1987 during my second term, three young men came to Parliament on a Thursday afternoon when I was getting into the Chamber ready for the afternoon. As I walked into the Chamber, they stopped me and saluted me and said Honorable, we have a message for you and the message was if I could remember a Mr. James Opiyo an old friend of mine. That he wanted to talk to me. I had forgotten about this James Opiyo but happened to have been one class ahead of me in Kisii High School. So they explained where he was and that he has an office in Nyayo House. I asked him what he does and they told me that he works with the Provincial Administration and that he was waiting for me. I said that I could not go because I had business in the Chamber and then they asked me when I could go. I said maybe on Saturday when I am travelling to my constituency. They said I was welcome and that they would be waiting for me just outside Nyayo House.

On Saturday morning at 10 O'clock, I drove here with my cousin who was also my driver. They saluted me outside here in the entrance and we parked the car. They said that my driver would be waiting for me and that my friend James Opiyo is waiting for me upstairs. We went to the 25th floor using a lift then I sat on a bench in the corridors and they told me that my friend was going to be there within five minutes and they disappeared. I waited and then James Opiyo came and with all the good greetings, he said that we had not met for a long time and he congratulated me for becoming a Member of Parliament. He led me into a room and said that his officers will have an interview with me. He did not even tell me what kind of job he was doing. He told me that the officers will take a statement from me then I could proceed. He disappeared and then a group of about eight people and a lady came into the room and they all sat on the table and then put a chair in the middle.

After some time, I was asked questions on how I wanted to overthrow the Government and I said I had no idea about overthrowing the Government. As I answered, they started beating me and knocking my knees saying that that was not Bunge and that we were the people who wanted to overthrow the Government. After all that harassment of about an hour and a half, they put me back into the lift and to a white Land Rover and drove me

round several times obviously blind folded. At about five, I ended up at Kileleshwa police station. I was there until about eight and then I was brought here in one of these cells, I think cell no. 3.

I was thrown in and then they started pouring water up to the level of the waist into the room for about two hours and I was wondering what was happening. Then about 11 O'clock, they came and drained the water and cleaned the place and then brought a mattress which was wet and a sheet. Before that, they brought some half cooked maize mixed with beans with weevils and I could not eat in that situation. Towards the morning, I was taken upstairs then I was stripped naked and I have never had the courage to say this. I was beaten in front of the lady. It was very sad. I could not walk and then I was taken back to the cell and they would talk to me from a small window and say that I must confess now that I was in a meeting in Nakuru with Koigi to overthrow this Government and many others. I refused since I had no idea of what group wanted to overthrow the Government. On the second day, I was taken out then driven again around blindfolded and at about nine o'clock, I was very sick.

They put me in a Land Rover and rushed me to Kenyatta National Hospital and those days, the detainees were attended to by no other doctor except the Director of Kenyatta National Hospital; A Dr. Gata who was the Director of Kenyatta National Hospital, but he happened to have been with me in secondary school but they did not ask him to come and attend to me. They asked a Dr. Bodo who was his deputy to come and attend to me. They took me to his office and they were around me when he was examining me but the doctor said that he could not examine the patient in their presence and told them to step out; that he would call them later.

He examined me and wrote some prescription and he asked one of them whether they knew where the Chief Pharmacist of Kenyatta National Hospital stayed so that they could go and wake him up to come and supply me with the medicine. It took time but they came with the medicine and the doctor gave me the medicine and some water. I refused and told him that if he was not administering the drugs on me, I would take nothing else. Then he did ask them to go out again and the doctor gave me the drugs. I swallowed some but then I was getting a bit serious and he asked them not to take me away until he came to release me.

The doctor went to his house and he came back at about 5.30 in the morning. Then he said that I was relatively okay and that they could take me but they had a way to contact them if I got serious. I was brought here and stayed for another day and then on the fourth day, they requested for my details but before that, I could not eat because the only good thing was tea without milk or sugar and a piece of bread. That was the best meal that they administered on me. I was not able to eat the half baked ugali with sukuma wiki with no salt or anything but somehow, the fellow who was supplying the food found me so frail and he turned to speak to me in ki-Kisii. He said, mheshimiwa, I come from your constituency, many have died here, please eat to survive. He gave me his name and when I went to check a few years later, I found that he had died. That is the man who saved me. I would not have survived. In some of these cells, you would see some writings scribbled

on the wall saying, please be careful, pray to your God so that you can survive and come out of here. It was very sad and I do not know why they never cleaned those writings. But it was a horrible experience. When you look back you wonder why these people acted like animals and not human beings.

I served two terms as a Member of Parliament from 1979 to 1983 and 1983 to 1988. I served the people and I served with the present President as the Vice President of this country. I served with the late Michuki and the late Karume and may God rest their souls. I served with people like Matano, the late Nyaga, not the sons but the father and all the time we used to tell the Vice President to go and tell the President that he is ruining this country badly.

Corruption went up, people were dying in detention and he did nothing. Some of them like Paul Ngei and Nyaga would talk to us and tell us that they were trying to find a way to reach the President and they would tell us secretly to continue with our contributions in Parliament. Somehow, those of you who remember, during our second term, queuing system of voting in the 1988 General Election was designed to remove some of us and none of the group became elected in 1988. Of course Koigi went back to detention, Orengo ran away to Tanzania with Chelagat Mutai. We organized from Parliament for Orengo to run away and he did not even have spectacles but he used mine to run away to Tanzania. We still continued to arouse people's awareness to what was happening. For example, when Orengo was returned here from Dar-es-Salaam by an arrangement with the President of Tanzania and our President Moi, he was brought in secretly and I got information that Orengo was very sick and he was languishing in Naivasha Maximum Prison. I quickly raised it in Parliament through what they call Questions by Private Notice but I got a lot of pressure from the people in Government, like the late hon. Ondieki who was his brother-in-law. He was sent to tell me to withdraw that question, but I refused.

The Special Branch was always around my home intimidating me to withdraw the question but I did not. When I raised that question that week on a Thursday, by Saturday morning, the newspapers splashed that Orengo is ill but had been released from the Naivasha Maximum Prison. I and my colleague Mwachofi drove that very day to Kisumu General Hospital where he had been taken to and we visited him and looked for certain doctors to attend to him.

There is a lot more but because of time, I would like to request this Commission to get the details of these fellows; all of them who were involved in this criminal torture and most of them are around. For example, K'Opiyo is around and also those who were tortured and underwent these sufferings. This Commission has a responsibility to ensure that these people are compensated. I am not very satisfied that the courts are open. I was in Wako's office sometimes before he left and he was very sly. The whole office of the Attorney-General has not changed, I must say. In any case, you have a lot of people who suffered who are very poor and cannot afford to hire lawyers. I feel I am better off, but I have not been able to file a case because when you go to the lawyers, what they are asking is astronomical. So, it is very prohibitive.

I would like this Commission to present to the Attorney-General or to the DPP that a special committee be formed to help those who suffered to process their compensation. Then you are talking about confessions. It is unfair to begin with the people who were tortured because psychologically, they need some counseling at that stage, but I would rather then you as the Commission mandated for this process to begin with the past President, the Ministers and the people who were involved and ask them. They should come and confess to us. It is not the other way round. Then we are not doing justice. The only other thing which I would say is that when I was then released from here, I had my money about Kshs1, 800 which they took, my belt and a few other items. I would stop there unless there are any questions, but this Commission should assist the people who were tortured.

Ms. Emily Kimani: Thank you Mr. Abuya for sharing with us your testimony and also telling us about how the torture which was ongoing during the Moi regime impacted on the leaders then. I have a few questions for clarification purposes. How did the torture experience impact on your family in brief?

Mr. Abuya Abuya: My family, particularly my wife and my children do not want me to go back to politics or associate myself with any organization that does politics. They are also very demoralized. My children who were then at school were psychologically affected.

Ms. Emily Kimani: Looking at our country today and the far that we have come, would you say that your suffering was in vain?

Mr. Abuya Abuya: No, it was not in vain. I am happy that we have a new Constitution but I am very unhappy that the leadership in place may negate the achievements. There are a lot of maneuvers to put people in very important positions who are supposed to propel this Constitution to success but I can see there are a lot of maneuvers to put in people who most likely might turn us back to where we were. There is a lot of horse trading in the distribution of wealth, particularly in positions but it is not in vain and I am happy we have a good Constitution.

Ms. Emily Kimani: What are your feelings towards the Moi regime?

Mr. Abuya Abuya: It was very oppressive. It was like the apartheid regime in South Africa. It was a group of a few people and this is what this country must dismantle; a few people with power, resources and they do not look around and see how poor this country is. There is no way you can make progress if you have power around a few people.

Ms. Emily Kimani: Thank you Mr. Abuya, I have no further questions.

The Presiding Chair (Commissioner Chawatama): Before I turn to the Commissioners to ask questions or make observations, I would like to welcome Commissioner Ronald

Sly, who has just joined us. You are welcome. This is our second witness. Amb. Dinka, any questions for the witness?

Commissioner Dinka: Hon. Abuya, thank you very much for coming and giving us the details of what happened to you and other people like yourself in this place. I hope that this will bring closure to your pain and at the same time contribute to the creation of an environment of good governance and constitutional framework which we have in Kenya, so that nothing like this would happen to any Kenyan in the future. Maybe you have mentioned it but I probably missed it. How long have you been in prison?

Mr. Abuya Abuya: I did not go to prison.

Commissioner Dinka: This place?

Mr. Abuya Abuya: Five days.

Commissioner Dinka: After five days, they released you?

Mr. Abuya Abuya: They released me.

Commissioner Dinka: This man, who was sent to you as a former school mate, you met him, exchanged very warm greetings on the 25th Floor and after that he said that people would take care of him and then he disappeared. Have you ever met since or talked to him?

Mr. Abuya Abuya: I have never met him.

Commissioner Dinka: What would you say if you meet him again? Would you forgive him if he apologizes?

Mr. Abuya Abuya: Yes.

Commissioner Dinka: You were an elected Member of Parliament and your crime was what you said in Parliament and also the refusal to go to State House or accepting any kind of inducement from the Government to turn off your statement or your political stand. What did any of your colleagues in Parliament do publicly to protest this kind of imprisonment of someone who had Parliamentary immunity? Did they do anything in terms of demonstration or speech in Parliament to get you released or to protect their own or at least to give some kind of respect to the immunity of Parliament?

Mr. Abuya Abuya: None that I know of. In fact, I would even mention that those who were coming with these inducements, some of them were even Cabinet Ministers. In fact, the whole of Parliament then changed. I do not see this Parliament or any Parliament since 2002 being different from the Parliament of the Moi regime.

Commissioner Dinka: What do you see as the main or the principal protection against this kind of abuse of power in Kenya; what exists now and what should exist?

Mr. Abuya Abuya: We should fight impunity. We should not tolerate corrupt people in leadership or people who are suspected of corruption. If we do not do that, then there is no hope. The problem is leadership and people in positions of power. They will not fight against corruption if they are corrupt. Therefore, impunity continues.

Commissioner Dinka: In terms of illegal detention like you have, do you think situations have now changed radically from the days you were in prison?

Mr. Abuya Abuya: Yes.

Commissioner Dinka: On that optimistic note, I have no further question.

The Acting Chair (Commissioner Namachanja): After you went through this process, did you go back to Parliament?

Mr. Abuya Abuya: No, I did not, but I was among those who joined the original organizations to agitate for multiparty democracy. In the original FORD, I was the only person, and you will be surprised from my district; the larger Kisii, who joined and when the newspapers flashed that the Nyanza representative is Abuya Abuya and Prof. Ouma Muga, most of those from my place said I was a mad man. They wondered how I could do that.

Subsequently, we continued to fight for multi-partism and in 1989 when the original FORD split, I joined FORD-Kenya as their organizing Secretary and when the late Jaramogi died and the late Michael Wamalwa took over as the Chairman and then there was that meeting of the Opposition and the Government to have the Electoral Commission expanded through the IPPG - I am sure you understand what it meant - the party that I was serving then proposed my name to join the Electoral Commission. I heard it over the radio and I went straight to my late Chairman and I had a quarrel with him. I said, I will not take it up until that Electoral Commission is dismantled. I said I could not join it and we could not be effective.

It took a lot of persuasion from people like the late Omino who were the officials of the party, hon. Orenge, Denis Akumu, the late Ochieng Aneko and many others. I still refused, but somehow the late Anyona, whom I am distantly related to, was also approaching me because he joined the IPPG and was given a slot to nominate a person to join the ECK. He came to me and asked if he could propose my name, I said, George, I will not. Then with the concerted effort of Wamalwa and Anyona, I was persuaded and joined, but later on.

I am proud of my contribution, it was a bit late in 1997, but we did not salvage that general election in 1997 because we joined two months to the elections. Subsequently, in 2002, we did a wonderful job; the referendum of 2005 and Kenyans were very happy

with the results and even the international community. You will be surprised that then Kenya was able to be invited to many other African and overseas countries to give their experience.

Finally, before I left that Commission -thank God I left before what happened in 2007 - my contract was not renewed about two and a half months before. But before I left, there was a proposal by the international community that they were going to set up an office in Nairobi for free and fair elections and the former chairman was earmarked to take that position but then it did not happen. Then you can remember what happened. I thank God because some people came to persuade me that I should approach two Ministers close to President Mwai Kibaki but I said, no. Parliament is more important and senior than the Electoral Commission and in any case, the Ministers they were asking me to ask to talk to Kibaki, I am senior to them because I went to Parliament much earlier than them. So, God help me, I am a very free person. I can walk freely. I was not involved in that saga. I think God said: get out quickly before you get entangled in this. So, I served the Commission up to 2007.

Since then as usual in Kenya, I have no job. I have a small *shamba* of bananas. You know the Kisiis grow bananas. That is all I am doing.

The Acting Chair (Commissioner Namachanja): Now that you have mentioned the commission many people think that what we went through as the Post Election Violence (PEV) would have not happened if the commission assured Kenyans and gave directions concerning the results. I do not know what you have to say about this.

Mr. Abuya Abuya: Before we left, we had put everything in place. In other words, we had selected returning officers; these are the people in charge of elections in every constituency and then presiding officers are those who man the polling stations. I must say there was political interference which was the result of all the conflict. There were no consultations with the other interested parties or with those who replaced us. It is not that I wanted to continue at the commission. I remember in the constituency that I had served and where I come from, the returning officer was sent there from Oloitoktok just a week before I left. You know we had appointed them two months before because they had to be in place to familiarize them with the area. Many of these fellows were taken to various constituencies at the very last minute.

Our experience was that the officers particularly returning officers were swapped within the province not Eastern to Kisumu at the very last minute. There is no way he can perform. I guess again there was political interference.

The Acting Chair (Commissioner Namachanja): Thank you. I do not have any more questions for you.

Commissioner Slye: Mr. Abuya Abuya and Presiding Chair, I apologize for not having been here from the beginning of your testimony. When I walked in, I think you were speaking about a guard or somebody here at Nyayo House who I guess in a small way

seemed to have befriended you and encouraged you to eat. This is somebody you said you then later got to meet and now he has passed away. I do not know or maybe you did this before I arrived, but are you willing to share his names with us?

Mr. Abuya Abuya: I will get the details and he confessed and said I was his MP. He said he was doing this to help me survive.

Commissioner Slye: Thank you, we will appreciate. I think as part of what we are doing as you have observed; trying to identify and understand to the extent that we can hold accountable those who have committed wrongs, we also want to recognize those who also committed wrongs but in the context showed, some made choices that they did not wish to make. You mentioned Mr. Opiyo and the former President and many other people, we hope that we are able to engage them on what occurred here and their responsibility. If Mr. Opiyo were here today sitting in front of you, is there anything you would want to ask him or say to him?

Mr. Abuya Abuya: Yes, I would ask him how he got to that position. He was in charge of the squad. I knew him; when he left high school he was a land surveyor. I think he trained in that. So how he ended up in this position I do not know. I would like to ask him how he landed in that position.

Secondly, we were together in high school but he did not even show any sympathy to me as an old friend.

Commissioner Slye: Would you be willing or interested in meeting with him?

Mr. Abuya Abuya: Yes, only through the Commission when they say all those who were involved right from top to bottom that they are willing to make confessions and ask for forgiveness. But as I said, I should not be asked to go and meet them. Let them come and say, "Yes, sorry this happened. Let us get on. Forget about the past".

Commissioner Slye: I think we all agree that people in your position should not be forced or pressured in any way to meet such individuals or forgive them. That is something that is obviously very personal. What I was exploring is if the opportunity arose, is it something you would be open to?

Is there anything with respect to the former President if he was sitting here in front of you, you would have liked to have asked or said to him?

Mr. Abuya Abuya: As an elder statesman, I respect him. I continue to respect him. In fact, I never even during my contributions in Parliament indirectly or directly referred to him. But because he was in charge then if he says, "I am sorry on behalf of the Government that I was heading that this had to happen". Maybe some of the things that were happening perhaps he did not know. Then if he starts that kind of approach then I would be happy to be with him and have a chat.

Commissioner Slye: Thank you Mr. Abuya for your testimony. I have no further questions.

The Presiding Chair (Commissioner Chawatama): Thank you for your testimony. Mine is a follow up to the question that Ms. Namachanja asked. I needed to understand, I know that the term of Parliament is five years, and how long into that particular term were you before you were detained? Had Parliament's life come to an end or still sitting?

Mr. Abuya Abuya: This was during my second term in Parliament. The first term was 1979 to 1983. Then the second was 1983 to 1988. It is towards the end of this term; it was in the month of January 1987.

The Presiding Chair (Commissioner Chawatama): So, Parliament probably still had a year to go before it came to an end.

What is also shocking is that knowing Parliament as one of the arms of the Government; the Legislature, you have told us that there was no reaction whatsoever from the Speaker or any Member of Parliament. So in those five days there was no curiosity as to where you were or what had happened to you. Parliament said nothing?

Mr. Abuya Abuya: Nothing absolutely. In fact, the *Daily Nation* newspaper wrote on the 25th "Abuya Picked up". The same says, "Kitutu East MP released". The other one was, "Abuya still being held". That is all. There was nothing from Parliament. In fact, there was a lot of intimidation of Parliament from the Executive. Secondly, most of the parliamentarians got elected through maneuvers of the Executive using the provincial administration; the DC, DOs and chiefs. You could not be independent. I mean, an individual was in Parliament at the mercy of the system.

May be you have another question but as we continue maybe you will be surprised to see this photographs where I was being beaten outside Parliament and all my clothes being removed.

The Presiding Chair (Commissioner Chawatama): Since the term of Parliament had not come to an end is it safe to assume that you went back to finish your term?

Mr. Abuya Abuya: Yes, I did.

The Presiding Chair (Commissioner Chawatama): And how were you received?

Mr. Abuya Abuya: Very negatively from the Executive except a few of us. We were less than 15 although we used to be called the Seven Bearded Sisters. Otherwise even other Members who got elected with the assistance of the Executive were never independent. They would always look at us and label us anti-government. Thank God I stood firm because of my background.

The Presiding Chair (Commissioner Chawatama): I think in response to a question that was asked by ambassador you seemed to suggest that Parliament today is no different. Is that correct?

Mr. Abuya Abuya: Yes, it is no different.

The Presiding Chair (Commissioner Chawatama): But looking at a Parliament that has an opposition of sorts, what would you say is not different?

Mr. Abuya Abuya: I would say so because if you can see when you listen to debate or watch these Members of Parliament they are, in a way, in groups which in my judgment are non-reformist.

Secondly, the Constitution has the framework on how you go about implementing it and sometimes they cannot go outside that. My assessment is that if they had their way, they would even throw out this Constitution.

The Presiding Chair (Commissioner Chawatama): The voice of Kenyans has spoken in as far as the Constitution is concerned and I believe when people are in Parliament they are there to represent.

I would like to thank you more sincerely for your contribution to this Commission. Our Report will be the richer because you have contributed to it. It is our prayer that the recommendations that we make are not only implemented but also that even you will be satisfied and many Kenyans will be satisfied and we will be able to look back at the life of this Commission at least with praise.

Leader of Evidence can you please approach us.

Can we quickly settle please! We are going to hear from three witnesses.

Leader of Evidence, as you swear in the witness we would like to find out his age.

(Mr. Waninga Ronald took the oath)

(Mrs. Veronica Wambui took the oath)

Ms. Emily Kimani: Commissioners, the witnesses before us are family members of people who were killed as a result of torture. We have the mother of Karimi Nduthu and Mr. Ronald Waninga. Mr. Waninga is the son of Mr. George Waninga who was allegedly killed in Nyayo House as a result of constant harassment of the family, whereas the mother of Karimi Nduthu lost her son to torture during the Moi regime.

As I invite them to give us their testimony, we will start with the mother of Karimi Nduthu. The first speaker, Mr. Kang'ethe Mungai talked about the issue of your son extensively. So, as I invite you to give us your testimony, you will start off by telling us your full names after which you will tell us the family experience. How has life changed after the death of your son? After which you will give us your recommendations. You are most welcome.

\Mrs. Veronica Wambui Nduthu: I will speak on behalf of my son and the torture he underwent. When he started going to school in 1983 he went to the university---

Ms. Emily Kimani: Just tell us your full names for record purposes.

Mrs. Veronica Wambui Nduthu: My name is Veronica Wambui the mother to Karimi and my husband is called Nduthu. I will speak on behalf of my son. When my son started going to school he went to the university in 1983. He learnt for one year. In the second year he was sent away in the month of March. We were summoned to the university. The police came home and asked to see Nduthu. My husband walked out of the house and told them he was Nduthu. They said, "No, we want Nduthu". He told them it is him who is called Nduthu and the son is called Karimi. They went but came back again. They then said it is him who they wanted.

They carried him in a car. I tried to prevent them from going with him and said I would go with them. They however said I could not. I went back to the house. He went to Molo where he was told he was needed in Nairobi. When he went to Nairobi he was taken to the leader who was called Kilonzo. They said that they wanted him to carry his child. By then he had already met Karimi. Karimi asked what he had done but they did not tell him.

They said that they had held a meeting inquiring about Adungosi who had been arrested in 1982 and that is where our problem started. His father came back home then we started being harassed. The police were consistently at our home at night or even at around 2.00 a.m. They would even come and check under the bed and keep asking where he was. We were harassed and even our neighbours did not want us because they had been told that we were bad people. We were left as loners and we continued staying like that.

The following year around June the harassment went on as they continued searching for them. Sometimes we could even eat with them at my home. One of them was called Muchiri. They arrested us and took us to Kericho with my husband. We spent the night in the cells and in the morning they took my husband to court. At that time the former President Moi had a meeting in Nakuru. We were released and transported back home. We thought they were taking us to President Moi and started wondering if they were going to kill us. By then my children were left crying. In Nakuru, we were detained again at the Central Police Station where we spent the night. In the morning they called us and started interrogating us with a lot of harassment, torture and beating. They kept asking us: "Why did you give birth to this son? What kind of a son is this?" We told them it was okay because it is God who blessed us with the son.

They locked us in for about two weeks. They went for his brothers and his friend. There was a lot of torture and they were not feeding us. They kept telling us that we were going to produce our son. That is when they separated us. Even our parents in Kikuyu were harassed. They transported me at night and took me to my grandmother. In the morning I called from afar so that she would run away. I told them if she saw them she would just die and yes, she died.

We continued in the same way. More people were arrested. That time we were with the mother to Tirop. The wife had been released because she had a sick child. We were released and told to go back home. That was at around 5.00 p.m. in the evening. I told them I would not leave there until I saw my child. They asked me what I wanted to tell him. I told them even if someone is a corpse we see them so I have to see him before I go home. They opened for us. I found Tirop and Karimi. Karimi had a bent leg but Tirop was unhurt because he ran away and was being hosted by his aunt who took him to the police. So, I asked Karimi what happened to his leg. He told me he fell down.

I got a vehicle that transported me and we went back home. We arrived at home at around 11.00 p.m. In the morning we had an announcement that Kang'ethe and Tirop had been taken to court and charged. We heard that three gentlemen had been sentenced to 60 years imprisonment. I asked my husband to go and look for a newspaper. On the newspaper headlines he saw they were the ones written. He came and told me it was them. We asked ourselves what we could do because they had been jailed.

Karimi wrote to us a letter and told us to appeal against the case. We went to Nakuru to Mirugi but on reaching there we found that he had been picked up and we did not know what to do. From there on we started visiting them in Naivasha. We tried and even went to Nakuru to see Bishop Ndingi and asked him what we could do. He told us to go and ask our child if he has repented.

It was decided that people should strike. I joined fellow women and we came to Hilton Corner. We then started demonstrations demanding for their release. They were eventually released after we demonstrated and striped at the Freedom Corner.

I kept asking Karimi questions and he kept telling me the country was not safe. He told me the country is not well and we do not have freedom. When I asked more questions he would keep quiet. Later we heard that he had been killed. I knew it was the Government that had killed him. All I did was to scream and ask why they had killed him. I would have preferred if they had jailed him.

We tried to investigate who had killed him and filled a case. The group he used to work with; the Release Political Prisoners (RPP) group tried forwarding cases and pressing charges. Up to today there has never been a way through. I have never been satisfied. These people even burnt our house. I do not have a place to stay. I stay like a bird; I move from here to there. That is how things are. They have even started destroying his grave because I am not usually there. I would like to know more about those cases. I would like the case to go on.

I have gone to Odinga. I have gone to Odinga and they have promised to try. So I have had those many problems. He was our only source of support.

Ms. Emily Kimani: Thank you so much for sharing with us that very sad testimony. I now invite Ronald to tell us how the death of his father has impacted on their family.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence, before Ronald speaks, we would also like to join you in thanking mama for being so courageous and talk about a very painful loss of a son. We see your pain and we have heard your questions, wanting to know what happened. You said it would be better if your son had served a sentence because that one comes to an end but death is so final. So, there are so many questions that deserve to be answered, so that it can help you bring the matter to some sort of closure. We have heard your suffering. Thank you very much. We will come back to you later for questions and clarifications.

Before I hand over to the Leader of Evidence, I welcome Commissioner Ahmed Farah. Welcome.

Ms. Emily Kimani: Ronald, how are you this afternoon?

Mr. Ronald Waninga: I am fine.

Ms. Emily Kimani: Please, tell us your full name for record purposes.

Mr. Ronald Waninga: My names are Ronald Waninga.

Ms. Emily Kimani: What do you do for a living?

Mr. Ronald Waninga: These days I do nothing. I just stay at home. I used to sell *chapatis* in Kampala.

Ms. Emily Kimani: Thank you very much. You are now seated before us as a son of the late George Waninga, who died as a result of torture here in Nyayo House. I now invite you to give us your testimony by telling us how your father came to meet his death, and how that has affected your family to date. You will then give us your recommendations.

You are most welcome.

Mr. Ronald Waninga: Thank you. I am sorry for my bad English. I am not good at English because I do not have education.

The Presiding Chair (Commissioner Chawatama): Ronald, we are here specifically for you. We want you to be very comfortable in sharing with us what you and your family have gone through. So, we want you to use a language that you are comfortable with. What language would you want to use before us this morning?

Mr. Ronald Waninga: I do not know whether you understand Kiganda.

The Presiding Chair (Commissioner Chawatama): Do we have somebody who would be able to interpret?

Ms. Emily Kimani: No.

The Presiding Chair (Commissioner Chawatama): Do you not speak Swahili, Ronald?

Mr. Ronald Waninga: I can just understand when somebody speaks but I cannot speak it myself.

The Presiding Chair (Commissioner Chawatama): These are issues that should have been taken care of; arrangements should have been put in place. I do not know how we should now proceed.

What you will do, Ronald, maybe, for as far as possible, try to communicate in English. If it becomes a little bit unbearable, we will try and see if we can make other arrangements. We can always organise for somebody who speaks your language, so that you can give us a written statement through that person. But because you are here already, just try a little bit. We are not English either, except for your namesake, who is also Ronald. So, try your best and we will just see.

Mr. Ronald Waninga: Can I start talking about my relatives?

The Presiding Chair (Commissioner Chawatama): You can talk about your father, how many children there were in the family and what you recall about the incident that led to your father being brought here and then what happened thereafter and how life has been without your dad.

Mr. Ronald Waninga: I was just told by my relatives because my dad died when I was still young. In the last years, we were staying in Bungoma, at Wamuno Parish. My grandfather was Kenyan and my grandmother was Ugandan. I do not have much to say about my father. The person who knows is Mr. Bukezi.

I survived a lot because even my education is not good. I stopped at Form Two in Uganda due to lack of school fees. What I heard about my father is that he was killed at Nyayo House, and that he even wrote his name in the cell where he was locked in.

The Presiding Chair (Commissioner Chawatama): What we will do, maybe, is to proceed by asking you certain questions and then you respond. By responding to those questions, maybe, other issues will arise. For example: Who then brought you up? Do you have any brothers and sisters? So, we will ask you questions but if there is somebody from the TJRC who knows the cell where his father's name is written and it is still visible, that is something we would also like to see.

Leader of Evidence, do you have any questions or can we, as Commissioners, go ahead and ask questions?

Ms. Emily Kimani: I have a few questions for the mother of Nduthu before I hand him over to the Commissioners.

Mama, I have a few questions to ask you, in light of your testimony before us this afternoon, so that we may be able to understand better what happened to your son: My first question is that you told us that your son was at the university. What was he studying and in which university was he?

Ms. Veronica Wambui Nduthu: He was in Nairobi University, and he was taking engineering.

Ms. Emily Kimani: You told us that at some point, you were arrested and taken to Kericho. Where was your family living at that time?

Ms. Veronica Wambui Nduthu: Our family was in Molo, in Soi.

Ms. Emily Kimani: How old was he at the time of his arrest?

Ms. Veronica Wambui Nduthu: He was 25 years old.

Ms. Emily Kimani: You told us in your testimony that he was convicted and sentenced to 60 years in prison, if I heard you right.

Ms. Veronica Wambui Nduthu: He was sentenced to 14 years. All the years together add up to 60 years.

Mr. Emily Kimani: Mr. Nduthu was sentenced to 14 years in prison?

Ms. Veronica Wambui Nduthu: Yes.

Ms. Emily Kimani: What charges were preferred against him in court?

Ms. Veronica Wambui Nduthu: He was told that he had opened the railway to cut the electrical wires.

Ms. Emily Kimani: It is in your testimony that when you heard about his murder, you knew that it was the Government that was responsible?

(Loud consultations)

The Presiding Chair (Commissioner Chawatama): Sorry, Leader of Evidence. I will not accept any noise, please. If people are going to continue to talk, we shall ask them to leave. It is as easy as that. We are here to listen to a mother who is sharing a very painful experience of the loss of her son. I do not think this is time for people to talk. I have warned you a number of times. Now I will ask that whoever makes noise will be asked to leave.

Thank you very much.

Ms. Emily Kimani: Sorry for that, mum. I was asking you, in the first instance, when you heard about the death of your son, you told us in your testimony that you knew it was the Government that was responsible. Why did you think so?

Ms. Veronica Wambui Nduthu: It was because the Government had said that it was going to kill the enemies of the Government. They said that they were thieves but they had already said that they were going to kill their enemies.

Ms. Emily Kimani: Was a post-mortem carried out before his burial?

Ms. Veronica Wambui Nduthu: Yes.

Ms. Emily Kimani: What was said to be the cause of his death?

Ms. Veronica Wambui Nduthu: They never released the results. They said that he had been hit on the body.

Ms. Emily Kimani: After his death, some people came and burnt your house. When did this happen and who did it?

Ms. Veronica Wambui Nduthu: This happened after the clashes and they burnt everything.

Ms. Emily Kimani: Thank you for your testimony. I empathise with your family and hope that God will bring about justice to remedy what happened. I have no question for Ronald, Commissioners.

The Presiding Chair (Commissioner Chawatama): Commissioner Ronald, do you have any questions for either witness?

Commissioner Slye: Thank you, Presiding Chair. Thank you, mama for sharing your story with us. I know that it is not easy to come before a group like this and share such a painful story. So, I would like to personally thank you for having the courage to do it. It is extremely useful for us as we go about our business of trying to understand not only what happened in the past and why it happened but also how it affected individuals and families like you and yours. I do not have any specific question for you.

Ronald, I also want to thank you for coming and testifying. I just have a couple of questions for you. Are you currently living in Uganda?

Mr. Ronald Waninga: Yes, I am living in Uganda.

Commissioner Slye: Had you ever been to Nyayo House before today?

Mr. Ronald Waninga: This is my first time to come to Nyayo House.

Commissioner Slye: Would you mind sharing with us what your feelings are in visiting this place for the first time?

Mr. Ronald Waninga: Yes, I am okay.

Commissioner Slye: How often have you come to Kenya or do you mostly live in Uganda?

Mr. Ronald Waninga: I have not got you clearly.

Commissioner Slye: You were born in Kenya. Is that correct?

Mr. Ronald Waninga: Yes.

Commissioner Slye: Then you travelled to Uganda. How old were you when you left for Uganda?

Mr. Ronald Waninga: I do not know because I used to come to Kenya because it was nearby the Bukusu people. So, I do not know how many times I have entered Kenya.

Commissioner Slye: What is your impression of Kenya? What do you think of Kenya? Do you have positive thoughts about Kenya or negative thoughts or not any thoughts at all?

Mr. Ronald Waninga: Kenya is good. I even want Kenyan citizenship.

Commissioner Slye: Why do you want Kenyan citizenship? Why do you want to come to Kenya?

Mr. Ronald Waninga: I want to come to Kenya again. My relatives moved to Uganda because they had a problem then where they were staying.

Commissioner Slye: Thank you very much. I appreciate your being here. I am sorry, as the Presiding Chair said that we have not been able to provide you with the ability to speak in a language you are most comfortable with. I hope that we will do something about that together for the statement from you. So, that you very much appreciate.

Mr. Ronald Waninga: Welcome.

The Acting Chair (Commissioner Namachanja): Let me start by thanking mama Karimi for coming before this Commission. You mentioned that when they were looking for your son, they were asking about one Adungosi. This Commission also went to Busia and met Mama Adungosi. We visited her home and each time she saw somebody in a suit or a big bodied person, all she said was: "If my son were alive, he could be as big as you." The sad thing, which I can see that the situation is also very similar to yours, is the

pathetic situation or the neglect of the families of the people who perished, as they struggled to ensure that Kenya was a better place for all of us. The irony is that your children were in prison with some of our powerful people, some of whom are our leaders. If we wait for compensation, I do not know if it will find you alive.

My appeal is for those of us leaders who know the struggle that the children of, for example, Mama Karimi went through, surely, it does not cost a lot to get a home. For example, Mama Karimi says that she was affected by tribal clashes and that she lives like a bird. Why should she live like a bird? What happens is that whenever she remembers about the son, there are bitter memories; because she will think that if he was around, she will not be living the kind of life she is living. So, mine is an appeal to those of us Kenyans who are able to try and help the parents and families of people who lost their lives as they struggled for our cause.

Mama, thank you so much for coming before us. We feel honoured that you are a voice for your poor son. He is supposed to be a voice for you but you have been a voice. I am sure that wherever he is, his spirits will also rest in peace because of what you have shared with us.

Ahsante mama na pole sana.

Now to our son, Ronald, I would like to also get to hear more about you. Do you understand some little Bukusu language?

Mr. Ronald Waninga: I understand it.

The Acting Chair (Commissioner Namachanja): Wafula, can you go to the booth and interpret for me, so that I can have dialogue with this young man? I am sorry that we did not anticipate this but we have to improvise in order for us to understand one another.

Ronald, first, I want to thank you for coming before the Commission. I do not know whether you came from Uganda or from Bungoma.

Mr. Ronald Waninga: I came from Uganda.

The Acting Chair (Commissioner Namachanja): According to your family, are you Ugandan or Kenya? Is your father Kenyan or Ugandan?

Mr. Ronald Waninga: He is Kenyan.

The Acting Chair (Commissioner Namachanja): Do you remember when you left Kenya for Uganda? Which year?

Mr. Ronald Waninga: I do not remember.

The Acting Chair (Commissioner Namachanja): Do you remember the year when your father died?

Mr. Ronald Waninga: I do not know. I have never been told.

The Acting Chair (Commissioner Namachanja): How old were you when you learnt of your father's death?

Mr. Ronald Waninga: I remember that it was in 1990.

The Acting Chair (Commissioner Namachanja): What do you remember to have been the cause of your father's death?

Mr. Ronald Waninga: What I heard was that he was arrested, beaten up and detained here and then he was shot dead.

The Acting Chair (Commissioner Namachanja): Were you told the reason as to why they arrested your father and killed him?

(Mr. Ronald Waninga suffered an emotional breakdown)

The Acting Chair (Commissioner Namachanja): I am sorry about that. We are going to remind you many things. How you stayed and how your father came to die. Do you want to continue or what do you think?

Mr. Ronald Waninga: What I heard was that my grandfather and my grandmother do not want to talk about it. Every time they begin talking about him, they start crying. What I heard was things like politics. He was labelled a rebel. That is what I heard from my grandfather.

The Acting Chair (Commissioner Namachanja): We are sorry, Ronald. You said that you did not school much. You just reached Form Two. Why did you just stop in Form Two?

Mr. Ronald Waninga: The little chance of schooling I got only enabled me to go up to Primary Seven. It is called Uganda Primary Education. We do not pay any fees. So, I schooled free in primary school. That was how I managed to get to Standard Seven. After completing Standard Seven, I went to my mother's place because at home, my grandmother changed base to Kampala to my aunt. My grandfather had another wife. My mother was also married elsewhere. When I finished Standard Seven and joined my mother, I started my secondary education. I finished Form One. My mother managed to raise my fees for Form One. I went to Form Two. I was about to complete third term. My mother had a shop.

Several times, they went home and left me in the shop, together with my step brother. One Sunday, we worked from morning to evening, cleaning the place and organising everything in the shop until nightfall. On that day, we lost electricity. So, we lit a candle. As it approached 11.00 p.m., time for sleeping, we closed the shop because my step father and mother had gone to their home.

The mistake we made was that we left the candle on, on the counter and slept. At about 4.00 a.m. we woke up to a lot of smoke. The commodities on the shelves were burning. We tried to put off the fire. In the morning, my stepmother and my stepfather came. My stepfather did not ask any questions. He just started beating me and told me to go to the rural areas.

I went back home in 2006. My grandfather had died. It became difficult raising school fees in the rural areas. So, my aunt who used to live in Kampala called me to go to Kampala and, maybe, secure a job. When I got there, they gave me an assignment of constructing buildings but it was not okay. He had a son who used to sell *chapatis*. So, he gave him an assignment to continue making *chapatis* and selling them and giving the money back to him.

The Acting Chair (Commissioner Namachanja): Is that the job you are doing up to now?

Mr. Ronald Waninga: We were sent away because we were working on the roadside. The owner of the space sent us away.

The Acting Chair (Commissioner Namachanja): What do you do now?

Mr. Ronald Waninga: There is a company called Straburger. I offload cargo and put it aside.

The Acting Chair (Commissioner Namachanja): How many brothers and sisters do you have?

Mr. Ronald Waninga: I am the only child from my father.

The Acting Chair (Commissioner Namachanja): Now that you have come to the Government that killed your father, can you tell the Commissioners how you would like this Government to help you?

Mr. Ronald Waninga: I need a home because where we stay; we have small space where all of us are lumped together.

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The Acting Chair (Commissioner Namachanja): Do you live at one place?

Mr. Ronald Waninga: Yes, and when it reaches the planting season, they hire some workers.

The Acting Chair (Commissioner Namachanja): How do you feel when you reach where your father was killed?

Mr. Ronald Waninga: I feel---

(The witness broke down)

I would like to get his name. It is like that of my grandfather but in a short form. It is like my grandfather's who was called Makanya or Emuke.

The Acting Chair (Commissioner Namachanja); Thank you, Presiding Chair.

The Presiding Chair (Commissioner Chawatama): Thank you. You have made it possible for us to hear from Ronald and he has also been given an opportunity to share with us and it was very important that this platform was used specifically for what you have managed to achieve. Do you have any questions, General?

Commissioner Farah: No questions.

The Presiding Chair (Commissioner Chawatama): Buke, I would like to find out from you--- Ladies and gentlemen, we are going to adjourn and we are going to take Ronald into the cell where his father was kept and we believe that his name was written on the wall just to be able to show him that space and it is our desire that this is part of his healing as well and to begin to put together the pieces of the jigsaw that he needs so desperately to do.

I would also suggest that we break for lunch. I know that there are two witnesses who would like to speak to us and you will speak to our Leader of Evidence. We will take a very short break; maybe of 45 minutes and then come back. So, please, bear with us as we go and then come back.

(The Commission adjourned temporarily at 2.30 p.m.)

(The Commission resumed at 3.20 p.m.)

The Presiding Chair (Commissioner Chawatama): Welcome back. Could you please settle down?

We will hand over the programme to the Leader of Evidence to swear in the next witness.

(Mr. Wahinya Bore and Mr. Onyango Oloo took the oath)

The Presiding chair (Commissioner Chawatama): Thank you very much all of you and welcome.

Ms. Emily Kimani: I join the Presiding Chair in welcoming the two of you to our session this afternoon. First, I will invite Mr. Oloo to give us his testimony. Briefly, tell us what happened to you and also give us your recommendations. Start by telling us your full names for record purposes.

Mr. David Onyango Oloo: My name is David Onyango Oloo. I have prepared a statement that briefly says what happened in 1982 when I was a first year Bachelor of Arts student at the University of Nairobi. I grew up in Mombasa and days after the aborted coup, I was going to Mombasa. I was in the train; third class compartment. When we had gone past Mtito Andei towards Voi, police boarded the train and asked for our identification. They found out that I am a university student and they arrested me. They charged me because of a handwritten script that I had written two months previously called "Plea to Comrades". It was an essay urging students and the youth to fight for democracy and justice. That was considered a seditious publication, and I was eventually jailed for five years.

I served that term in Kamiti Maximum Security Prison. I was released on 11th May, 1987 because I was a prisoner of conscience adopted by Amnesty International. So, we decided to take the Kenya Government to court because they had denied political prisoners their remission. I won the case and I was released. I am a writer and I was jailed because I was a writer. Therefore, I will read from a prepared statement. This will be a bit different from your usual statements. I read:-

Today, I am looking back in sad amazement that it was actually 30 years ago when I was led away in handcuffs from the Nairobi Law Courts, which is less than 10 minutes walk from this basement of Nyayo House. I was sent away in handcuffs to embark on my five year sentence at the Kamiti Maximum Security Prison. Here, I am on Sunday night before the big day and we are sleeping in that narrow Block D at the Industrial Area Remand Prison. We were 70 university students. To my left, there is Mwakidua Mwachofi who would later blow his brains in the United States of America (USA) in July 1994. Sleeping next are the Aseka brothers from Kenyatta University. Elsewhere in the cell, I spy Ken Sagala and Evans Atisia heroes of the Mean Machine University rugby team, SONU leaders like Adongo Ogony, Onyango Sihe, Chira Wambere, David Murathe and Kirimaina Kimaita. There were my classmates like Richard Onyonka, the current Assistant Minister for Foreign Affairs, Njuguna Mutonya, Ephantus Kinyua, Omondi Oluthe, David Ndubi who later killed himself, the well known actor and Kibisu Kabatesi who is the current Private Secretary to hon. Musalia Mudavadi. Wahinya Bore is here but we buried Dave Mwangi Kirichia two weeks ago. He died in Norway. There was also Ong'ele Pala and Thomas Mututho who were plucked from that crowd to be tried and they joined us in Kamiti.

It is a Sunday night and everybody knows that tomorrow, I am going to go before Senior Resident Magistrate Joyce Aluoch who went to school with my father's younger sister. Everybody knows that she is going to find me guilty and send me to prison. We do not know the number of years but who cares. It is the last day of October in the chilly overcrowded remand prison. My comrades and friends who are there with me are offering words of encouragement. The religious ones have already said prayers for me. People are taking turns in expressing their solidarity. We are putting up a brave face but the fact is that it is a sad occasion but we are not afraid. The mood here is one of restrained anger.

It is my turn to bid bye to my cell mates and fellow university students. I thank them for their friendship and solidarity. I tell them that I am going to miss them. I tell them that I wish and hope that they are released. There is no point of all of us ending up in Kamiti. We are so immersed in a farewell bid that the askari for the night in charge of our block is standing outside. He begins to bang on the iron doors in the windows to indicate that it is sleep time; that is, 9.00 p.m. We ignore him for some reason and continue talking. This is a special moment for me because I do not know if I will ever see these faces again. That is why at this point, the restrictors from the askari appear petty and somewhat irrelevant. The warder is furious when I impatiently wave him off. In that mood pregnant with menace, he promises that "*Utaona cha mtema kuni asubuhi*".

Sleep does not come easily that night. Tossing and turning, I read a novel that I was given at the St. Paul's Church of University of Nairobi. Soon dawn is here. We hear the usual bells and whistles and the sounds that accompany the prison wake up. We are all set to "kaba" a corruption for the word "cover up", a colonial procedure where prisoners are required to squat in front of guards with their hands on the shoulders of the person in front. When the doors of the cell block are swung open, the night askari comes to me with his rungu. He says: "*Ni nongwe huyu. Ni kichwa ngumu sana*" I am roughly bundled out with my blankets. Outside the entire night shift, guards wait with rungu. It is a frightening scene. Over the last one month, I have seen inmates clobbered and I have no illusion that I will be spared the same treatment. So, I brace myself for the worst.

It turns out that the duty officer is none other than Muraya; an arrogant university graduate who looks down on everybody and has a special block reserved for the 70 university students, one lecturer Maina wa Kinyati and the Late Wang'ondy Kariuki. For some reason, I hit it off with officer Muraya from the day I was flung into cell No.19 on 7th August, 1982. He has been told that there is a prisoner who should be taught a lesson. I have avoided any unnecessary confrontation in prison with authorities. He asks me if I know what he is capable of doing. I look at him in silence. He told me that it takes a second for him to snap his fingers and his men will start working on me. I told him to do whatever he wants. He was shocked at my impudence.

Another sergeant came and whispered something to Muraya and he told me that I am lucky because I am going to court this morning and I should pray that I should not come back to Industrial Area. The night askari squirms with bitter disappointment almost as if he has been swindled out of a multimillion Kenya Charity Sweepstake jackpot.

We go to a bumpy ride in the crowded prison van via Thika Road back to the city. We are taken in the prison cells in the basement of the Nairobi Law Courts. I am sitting with my handcuffs in the front row of Court No.5. It is full of relatives, friends, comrades, local and foreign journalists and many plain clothes police officers. Here is my younger sister, Janet, who has just finished Form Six at Coast Girls in Mombasa. She is flipping through the album. Despite of all these, I am calm. I am not afraid because I know that I am going to prison but that does not scare me. In fact, I watch with amusement the scared looks of my family members and supporters. You would think that it is them who are waiting for the harsh judgement. My sister shows me pictures of my mother who had died two years ago at the age of 40 from a botched vasectomy. My grandmother and my grandfather were all there. My father is calm. He almost lost his job while fighting for my release between August and October when I was finally committed to trial. My uncle who was shocked and disappointed the previous week because I had decided to fire my lawyer, Otieno Kwach, who was insisting that I plead guilty for the crime that I did not commit. There was also my auntie, Joyce, Edward Rina and Andrew Kuria, the two *Nation* and *Standard* reporters who courageously told the truth about my case and defense for the last few weeks. There was the prosecutor, CID officers and other officers. Senior Officer Shureya who is currently the lawyer for victims at the International Criminal Court (ICC) is the one who prosecuted me. Mr. Mwanzia, the Officer Commanding Station (OCS) from Railways Police Station who had blown my arrest out of proportion by calling Nairobi that I am one of the biggest dissidents in the country when I was just a mere 22 year old university student whose only crime was to be found in possession of a handwritten draft of an essay calling on Kenyan students to struggle for democracy, justice, freedom and sustainable development.

A court official orders all of us to stand up. Senior Resident Magistrate, Aluoch, who is now a Judge at the ICC, enters her chambers. I was watching her and I saw pain and discomfort with a predetermined outcome that you all know about. She goes through a prepared script that masquerades as a ruling and judgement. I am, of course, found guilty although she does not quite put it that way. She says that I said terrible things about the Kenyan Government and that I divided Kenyans into two groups; the ones who are oppressed on one hand and the oppressors on the other. I called on the Kenyan youths to rise up. She says that this is explosive content. I was charged with three counts of sedition; writing a seditious publication, publishing a seditious publication and being in possession of the same.

She is satisfied that the prosecution managed to pull off its task of discharging the burden of proof and established that I, David Onyango Oloo, had offended the Kenya Government by law established. I was guilty on all three counts. She asked me whether I had anything to say. I told her that I had left everything at her discretion refusing to grabble and refusing to plead for mercy in a disgraceful display of mitigation. That is something that will last for eternity but it is only a few seconds long. She wrote something and she announced that she is sentencing me to five years on each count. I saw a sea of shocked faces. She said that the sentence will run concurrently. The magistrate then left the court.

I was then taken out of the court and led to Kamiti Maximum Security Prison where the sadistic officer, Mbuthia, tortured me as I stood before him shivering from the cold, of course, stark naked and embarrassed with a freshly roughly shaved head; clutching some torn prison clothes waiting to be fingerprinted and given my new identity for the next five years; KAM/667/82/LS, where the KAM stands for Kamiti. The “667” indicates that I was the 667th prisoners admitted to that hell in 1982 to start serving a Long Sentence (LS).

Thirty years later as I look back, I shake my head for several reasons. I shake my head as I contemplate the reality that those five years were a mere bump in the rocky and winding road, which is my ongoing existence. There is an entire generation of Kenyans, some of them born in 1982 and after, that have grown up and continued to oppose the same regime in an even more militant and dramatic ways. I am thinking of the Latin American poet who warned a certain dictator; that even if that despot cut off and uprooted all the flowers in one year, the tyrant would nevertheless not be able to stop spring from occurring the very next year and fresh flowers from blooming. What a waste of time the Moi KANU regime went through, plucking university students from their classrooms and homes and dumping them in filthy dungeons. It did not stop anything. Did it? We are still here. Are we not? We survived. Did we not? Yes, we are survivors and not victims. We are victorious overcomers and not carcasses of State oppression. They tried to bury us alive but we defiantly emerged from the graves called maximum security penitentiaries. We are still here standing up and fighting for peace, justice and democracy. You can lock people up but no oppressor has yet found a way of imprisoning patriotic, democratic and revolutionary ideas.

For many of us, our political apprenticeship began in jail. Sometimes I think that if I was not imprisoned, I probably would have ended up being yet another wishy-washy well meaning liberal, beseeching the Government to carry out reforms.

Kamiti Maximum Security Prison turned out to be a revolutionary campus where I got a chance to study comprehensively the ideas, practices, history and writings of Karl Marx, Vladimir Lenin, Mao Tse-tung, *Ho Chi Minh*, *Amilcar Cabral*, Walter Rodney, Abraham & Mohamed, Ngugi Wa Thiong’o and so on. Mind you, you are not allowed to read anything apart from a Bible or Quran in Prison, and we read all those books. Do not ask me why because I do not have time to tell that story today.

We got a chance to start and develop a progressive study group right there in prison that later developed into one of those movements that took shape underground in Kenya, Tanzania, Uganda, Mozambique, Zimbabwe, Canada, Sweden, Norway and elsewhere in the late 1980s. For all that, I would like to thank my jailers, starting with Daniel arap Moi and his one-time Vice-President, Mwai Kibaki and members of his Government, including people like Saitoti and others, for having been so kind to have provided me and my comrades with a space and time to grow and mature politically behind bars. Thank you! Thank you! Thank you!

Whatever skills I have today in political analysis, social research and current affairs debate, were developed, polished and honed in the harsh discussions we had in the segregation block, where we managed to overcome our special status and solitary confinement cells, to network with each other, infiltrate the social prisoners and smuggle out exposes to Amnesty International. Greetings to imprisoned comrades like Nelson Mandela in Robben Island, Kim Daiyong in South Korea and Sumbiyeta Acholi in the United States.

As I said, and still say, cynicism is a luxury that one can ill afford, especially if one has committed their lives to the struggle for progressive social change. I, therefore, celebrate the fact that our humble efforts--- I am talking about comrades like Kang'ethe Mungai who were there earlier, Tirop Kitur, Wafula Buke who is in the room, Karimi Nduthu, whose mother is here, Ngugi Wa Thiong'o, Wanyiri Kihoro, Micheri Mugo, Edward Oyugi, Mwandawiro Mganga and my comrade here, Wahinya. We stubbornly fought the Moi dictatorship when many of the present mainstream so-called political leaders saw it fit to benefit from the status quo. Many scared intellectuals and academics saw it fit to shave of their beads, lest they be called Marxists and burnt their entire counters of their personal libraries, lest they be accused of being subversive. They feared being labeled as dissidents.

I celebrate the fact that the humble efforts of a handful of Kenyan progressive patriots behind bars and away in exile blazed the trail and prepared the scene for this massive unprecedented upsurge which has brought out democracy in our country. What a change from those days in 1982 when the Kenya Army changed Kamiti into a massive concentration camp, with hundreds of university students as political prisoners, many of us very young in our early 20s.

Having said that, I want to say just briefly what the prison did to me. As you have heard from Mama Karimi, when somebody is imprisoned, their families are imprisoned together with them. I will tell you two things which happened to two members of my family. I am the first born in a family of eight, although now many have passed on. One of those who have passed on is my younger brother, Joseph Ochieng Oloo. He was four years younger than I. When I went to prison, he kept reading my books from the university and became very political. Unfortunately, he also suffered a mental breakdown. Between 1982 and 1987, everyday on the newspapers there was something about Mwakenya or a Kenyan being jailed because of subversion. So, my brother, because of my experience, went crazy. He used to go to police stations and report that he knew the dissidents who were trying to overthrow the Government. Now, the Kenyan system does not know how to deal with mental health issues. They used to arrest my brother, beat him up and lock him up. He actually went to the Industrial Area remand home where he was beaten up by fellow prisoners. Later on, he was killed by the police, but I do not want to go into that.

My father, ironically, was a senior prisons officer and so, I grew up in the prison. So, I have seen prison from both sides. I grew up as an officer's son in 1960s in many prisons around this country. When I was arrested, my father spent a lot of time trying to get me

released. In 1984, there was a rumour that the Government was going to release all university students. This time, we were given a specific date, that is, Jamhuri Day on 12th December, 1984. So, one of his in-laws who was a Member of Parliament and an Assistant Minister, came and told him: “Good news! Your son and his fellow students are being released on 12th December.” So, he was ready waiting for me. You know, within the elite, Moi had fallen out with Charles Njonjo and was labeled a traitor. So, instead of releasing the university students on 12th December, Moi announced that he had forgiven Charles Njonjo. My father was so mad that he got a stroke. On 18th November, 1996, he got a second stroke and that is what killed him.

My younger sister was right behind me and had qualified for university, but family members went to my father and told him: “Just marry her off because if she goes to university---“Everybody knows that those days I used to be called David. I have just started using the name again, because there is another Onyango Oloo who has the exact opposite views like me but also he is a commentator and writes. Everybody confuses him for me. So, I have reluctantly reclaimed my Jewish name David for the time being for purposes of identity. They told my sister not go to university. A lot of things went down.

When I came out of prison, I later went to exile in Toronto and Montreal in Canada. I used to forget turning lights off until I realized that in prison, the lights are never turned off. I noticed that even if I go to bed at 3.00 a.m. in the morning, at 5.00 a.m., I am up. Even if I go to a restaurant, I am always facing the entrance. These are little things which you do not notice. When I went to prison, I did not have asthma but now I do. I have carried prisoners in hands; people who have died because of medical neglect and all those kinds of things.

So, Kamiti Maximum Security Prison is not the Intercontinental, Crowne Plaza or a five star hotel. We went there and suffered. Our lives were changed forever, but I must say in concluding, that there is a poet who was also a national liberation fighter in South East Asia called Ho Chi Minh. He said that misfortune tempers you and makes you as strong as steel. I think that is what happened to us, because anybody who takes you to prison is trying to kill you. That is why sometimes when I notice parents who want to take their kids to prison because they believe that they are juvenile delinquents, I feel that they do not know what they are doing. They are just fast-tracking the child to an early death or condemned life of crime and all that. It is terrible. I am very angry but I am not bitter.

Now, in terms of recommendations, first of all, I am talking to the men in the room. Women live longer because they know how to express themselves. At least, in the cultures of Western Kenya – the Luhyas, Luos and Kisiis – thank God those men have been encouraged by society to cry at funerals openly. Otherwise, men all over the world are socialized not to express themselves. But what happened to us in prison was traumatic. I have seen my fellow men, not just from Kenya, but from Palestine and South Africa. What do we do when we cannot cry? We cry in the bottle. We drink ourselves to death. I saw some of the people who came out of Kamiti who turned inward the violence that they had inside. They battered their wives and children. They killed themselves with alcohol. I think there has been an attempt to set up a national centre for the victims of

torture, to deal with long-term counseling support. Of course, as everybody has mentioned, if you come out of prison, you cannot get a job. If you are married and come out of prison after seven years, you will find a four year old child. Obviously, he or she was not born through artificial insemination. They did not allow conjugal visits back then. Somebody was comforting your wife a little bit too closely, but what do you do with that reality? How do you deal with the reality if you find all your property gone? How do we deal with those internal demons?

One of the first recommendations I will make is that there needs to be something which targets, particularly men on those issues of dealing with post-traumatic stress disorder and the myriad number of issues.

The second recommendation that I would like to make is that we left prison, but I think some people should replace us back there. They include Daniel arap Moi and members of his Government. Kibaki has tried to redeem himself, but he was still the chairman of the National Security Council. Like somebody said in the morning, all these people, including Kalonzo Musyoka, need to come here and confess. I know that I will forgive them after they have spent some time in prison. I will visit and take some food to them. But they need to go through those trials and if they are found guilty, they should be jailed. Healing and reconciliation is part of the package. We can be holding joint sessions with them in Kamiti and talk to them about how it felt like to eat rotten food. I can even visit them at home and play some music. But the culture of impunity in this country has to be stopped. People cannot just jail and kill others and they are still walking around scot-free. They still want to be my President or Senator. The worst part is that not only do they have the history of killing people, but they are also drug dealers and business people. Every one of them wants to be our next governor. We have a new Constitution which is a good document. Many of us paid with our young lives, but we need to live and walk that Constitution. I think we need to hold people accountable. I do not think that there is a statute of limitations on crimes against humanity and human rights abuses. People have done it well in South Africa by mixing up punishment with healing and those kinds of things.

In ending, I should say that much more needs to be done. I have been supporting this process of day one, but one of the problems is the way cynical politicians have been trying to use the TJRC as the soft option. They say: "We just need to learn to forgive and hug each other." I think that healing and reconciliation has to go hand in hand with holding people accountable and not being vindictive. I, for one, would be very uncomfortable if, for example, my Lord came to power and started hounding and hunting down all those people who jailed us. No! We cannot be like them. We have to be better. We have to believe in the rule of law. We were denied things like natural justice and due process. It cannot be truth for the truth and an eye for an eye. But certainly, we cannot move ahead in this country when people who did all these things go to church on Sunday or Mosque five times a day and all those things, and then we pretend that nothing happened to us in this country. We can only come together as Kenyans once we look each other in the eye and say: "Something wrong was done to me and those people who

did wrong look us in the eye and say: I am sorry for what I did.” In other words, it is about people owning up and taking responsibility.

I guess I have spoken for too long.

(Applause)

Ms. Emily Kaman: Thank you very much, Mr. Oloo, for your eloquent presentation.

I now invite Mr. Wahinya to give us a brief account of what happened to him and your recommendations. You will start off by telling us your full names for record purposes.

Mr. Wahinya Bore: Thank you. My names are Wahinya Bore. I am from Nyeri. By the time of my arrest, I was a third year university student at Kenyatta University taking a Bachelors of Education Degree in Economics and Sports Science.

I was arrested on 3rd September, 1983 by the then dreaded Special Branch police officers who stormed my home. I was taken to Nyeri Police Station where I stayed for a whole week incommunicado and yet, my home is just near Nyeri Town. Unfortunately, my parents and sisters did not know where I was. After a week, I was picked up and brought to Nairobi. At this particular time, I would wish to say that there is one house here in Nairobi that was being used by the Special Branch to monitor the university, that is, Carpet House. It is still there even today. That is where I met Inspector Mutua who requested that I write a statement about what I did before the coup, during the day that the coup happened and after the coup. I wrote a statement of what I did in the university, but unfortunately, it was not admissible. He tore it off and told me to write another statement. I wrote the same thing and, again, he tore it off. At this juncture, I would like you, honourable commissioners, to, first, realize that I am here essentially to bring to your notice that there are other torture sites in this particular country and nobody has ever talked about. One is Nyati House which is just next here. The other one is the GSU Training School in Embakasi.

When I was arrested and taken before Inspector Mutua at Carpet House, I wrote the same statement. He told me that he knew much more about me and had been told what I did before, during and after the coup happened. I was taken to Nyati House where there are some cells full of ants, in fact, as big as a match box. I really wondered what they are fed on because they would pounce on you the way a cat would pounce on a rat. You are put in there naked. It was very painful. If you did not yield, you would be put into another cell full of snakes, I think that they were not poisonous and if you said nothing after that that is when you would be beaten. They would come with needles and put them between your nail and the flesh. That is how they used to torture us in Nyati House. Unfortunately, I did not say anything because, definitely, I did not know anything.

I was taken to the GSU Training School with other university students who had been arrested. The recruits there are given a chance of aiming at you as a target. You would

hear a bullet burst your ears. Actually, most of the time, you would faint. That is the torture that we went through.

I was taken to court before the then Chief Magistrate, Abduratiff, and Bernard Chunga being the prosecutor. I was charged with sedition. The charge read:

“Wahinya Bore, you are charged with sedition, contrary to Section 57(1) A of the Penal Code. It is alleged that on 1st August, within Nairobi Area, you took part in a demonstration, the purpose of which was to excite disaffection against the Government and President of Kenya as per the law established. Are you guilty or not?”

Definitely, I was not guilty. I was taken before Lady Justice Joyce Aluoch and after going through a very hard time at the law courts, and even through a trial within a trial, because I did say how I was tortured, unfortunately, on 13th March, 1983, I was jailed for six years and taken to the Kamiti Maximum Security Prison.

Let me go back a bit. Why had we, as university students, been so much against the KANU Government? First and foremost, the KANU Government had started arresting our lecturers, including Maina Kanyati, Ali Mazrui and Kamoji Wachira. So, there was a lot of discontentment in the university. That is how we started publishing the December 12 Movement paper known as *Pambana*. We started distributing them in the country and even within the campuses of Nairobi and Kenyatta University.

My late brother, comrade Jeff Mwangi, God rest his soul in peace, and I--- As comrade Onyango has said, he died in Norway not as a businessman, but a guy running away from injustices. Comrade Jeff Mwangi, Ong’ele Pala and Wang’onduru Kariuki who is also deceased and I started by going to the university press and publishing *the Pambana* and distributing it.

Let us go back to prison. I was taken to Kamiti and given the number 157/83. I was taken to Block B, Cell No.8.

Honourable Commissioners, it is my wish again to request you to visit these two sites, because the only site that many people are talking about is Nyayo House but, unfortunately, they did not know that there are other sites that the Government was using. I do not know whether the Government of today is still using those sites to torture people, especially the notorious GSU Training School. I believe that that one is still there even today.

As I said, I am just here specifically to let people know how I was jailed. I will not talk about torture because you have heard so many stories about torture inside Nyayo House and prison.

I would like to thank the TJRC because they gave me a job as a Statement Taker having stayed for many years without a job. There is a famous saying that goes “forward ever,

backward never.” I hope that the TJRC will not go by the saying “forward ever, backward also.”

As Mr. Nyangolo has said, we are not victims but people who are simply victorious. We are not carcasses of state oppression or repression. We are people who are strong. Let it not be seen as if victims are begging for mercy or be heard. No! We want the world to know that something happened somewhere in Kenya. The issue here is that there is a constituency of some people in this particular country who fought for the liberation of this particular country, but they have never been recognized. We only hear of the – I am sorry to say – hero John Michuki, hero Matiba--- Anyway, they are heroes by their right, but, to me, they are just joyriders.

As for my recommendations, there is one thing that I know that has always escaped jailers. If I am taken to a court of law and refuse the charge read before me, I will be taken to a remand prison. I may stay in that remand prison for two to three years. Eventually, I will be taken to a court of law and jailed for two years having stayed in remand for three years. Being in remand itself, you are actually in jail. So, if I am jailed for two years and I have stayed in remand for three years, I should go home. So, the time that I spent in remand should also be part and parcel of my sentence. That should be the case if it can be recommended.

Secondly, I believe that victims, as you have seen them, even break down. I would request the Commission to look into ways and means of which these people can get some counseling. This is because to be in prison is actually traumatizing. Those who have been imprisoned, like me, know that a time comes when you do not even remember the face of your mother. Those who have been in prison can testify to that. So, it is actually traumatizing. So, counseling is also a way of rehabilitating the victims of torture.

Thirdly, you are seeing Wahinya here talking to you, but you do not know him deep inside. It would be good if you visited this Wahinya at home. Go and see where he stays. How are his brothers and sisters? We are only talking about them, but you do know them. Please, let us visit these victims, even if it is randomly, so that you can also see for yourselves what we are actually saying here.

The fourth thing that I would like to recommend is that some of us have gone through a court process and given some money. This money is very little compared to what I know. Somebody like me who has been in jail for six years, I was given Kshs1 million. What does that actually translate to, when I have already sold my land to educate even my kids? That Kshs1 million cannot even buy a piece of land in Kenya today. I will take it because I do not have the money anyway, but the suffering I went through, definitely, cannot be quantified. If I went in for six years and I was given Kshs1 million and somebody who went in for two weeks is also given Kshs1 million. Who has suffered more? So, that is an issue that should be looked into.

The fifth thing is that, please, if it is possible for the Commission to help us--- I have been given a tag since I was jailed that I am “criminal.” Even today, if I want a passport,

I cannot be given. This is because my fingerprints from the CID headquarters will come here and I am branded a criminal. I cannot be given even a certificate of good conduct. I am always a “criminal” and that tag has always been following me throughout my life. If it is possible, the Commission should remove that tag from us. We are suffering because of that tag, yet even the courts of law have already said that we are not criminals. I hope that the commissioners will help us through that thing.

Finally, I want a job because I do not have one. If there is any job in TJRC, please, give it to me.

(Applause)

The Presiding Chair (Commissioner Chawatama): Thank you very much, both the witnesses who have testified before us. I did not want to make this announcement because I know that there are witnesses who are waiting to testify before us. We have been told that this room will be closed at 5.00 p.m. We were hoping that we would be able to sit up to about 6.00 p.m., or 6.30 p.m. So, we have agreed, as Commissioners, that we need to set another day when we will hear the other witnesses.

We deliberately decided that we will let you speak for as long as you wanted. This is because we understand and appreciate all the experiences that you went through and that, for some of you, this is the first time that you had an opportunity to offload. So, we did not want to interrupt you by telling you that you only have 15 minutes. So, I beg my brothers and sisters who have not had an opportunity to speak today, that we will arrange a day for them. I am sure if we work hard, before we leave, we will tell you when we will meet again for continuation. That is because we do not want to give you just five minutes. We want to give you the time and respect that is due to you.

The two witnesses will be asked questions and then after that, we will leave and come back another day. I pray that, that is acceptable.

Thank you very much.

Ms. Emily Kimani: Thank you very much, Presiding Chair. I also take this opportunity once again to thank you, Mr. Oloo and Mr. Wahinya, for taking time to share with us your stories. I hope that you will be in a position to also furnish us with written copies of your testimonies. I have no questions given that your testimony was straight and to the point. May God bless you in your endeavours.

Thank you very much.

The Presiding Chair (Commissioner Chawatama): David, it was very refreshing just hearing from you. When you said that your statement was different from all we have heard, I thought that a statement is a statement. But as you opened your mouth and began to speak, your melodious voice, personality and talent came out. I am so glad that you are

who you are and able to speak the way you speak. It was very unique but a refreshing change.

Thank you very much both of you. I will ask the commissioners if they have any questions.

Commissioner Slye, do you have any questions?

Commissioner Slye: I do not have any questions, but I also want to thank both of you for your very evocative story telling, which hinted a very vivid picture of your life. Also, it was somewhat disturbing and humbling, particularly, for me, as a law professor and my area of specialty is international criminal law.

I am hearing that some people currently involved in the International Criminal Court (ICC) either judging presumably to affect justice or represent victims who are seeking justice, themselves have some things to answer for. I think it is a very sobering thing not only for me but also for all of us.

One other thing that I think is unfortunately true about the human condition is that there are no purely good and bad people. People tend to do good things and bad things, and some people tend to do more good things while some people, unfortunately, tend to do bad things. I think that is something that we need to highlight more and more. So, I appreciate that your testimony highlighted that to us.

Mr. Bore Wahinya, how would you like to be referred?

Mr. Bore Wahinya: Wahinya.

Commissioner Slye: I very much appreciate the statement that we are not victims, but we are victorious and we are strong. It is something that I first came across very vividly when I was doing similar work in South Africa at the time of the South African Truth Commission. Like Kenya, in South Africa, in the law that created the Truth Commission, they created a term called “victims.” So the South African Truth Commission and as well as we use the term “victim” but many of the so-called victims in South Africa did not like that because it tended to identify them as passive; as people upon whom things have been done; upon whom other people have acted and it took away from them their urgency, their identity and their humanity. So, I take to heart what you said, coming from you and I assumed probably on behalf of most, if not all people who suffered during the period as a result of the historical injustices. That is what we are looking into.

So, I want to thank you for bringing that to us, to all in the room, to our hearings and, therefore, to our final report. So, again, I want to thank both of you for taking the time and I think I did know a little bit about some of the torture places, but I am not sure I know as much as I probably need to know. I think it is a very good suggestion that we need to investigate to what extent those places still exist. I think that if there is a place in

Nyati House, for example, that looks like this, I am not sure why that place also should not be memorialized as this place is about to be.

Mr. Onyango Oloo: I want to say something in terms of what Wahinya was saying. You know where we are, it is when the atrocities got exposed. People knew about the swimming pool here. That is why I would encourage the TJRC to seek out those political prisoners who were arrested from the military – the Kenya Air Force, Air Cavalry and Army – because in 1992, an Olympic- size swimming pool was at the Naivasha Maximum Security Prison. This is because they arrested thousands of young people – we were really of the same age – and taken to Naivasha. You know, first of all, Naivasha is very cold and what they did here was a perfection of what they tried in 1982. When we went to Kamiti Maximum Security Prison, it had been a giant concentration camp. So, that will come out very vividly in the testimonies of hundreds. We thought we had long sentences of five or six years. The longest sentence – Sapalan – was jailed for 25 years and 18 years. But more than that, nine of them who had sought asylum in Tanzania and actually were supposed to go to Sweden, the State of Tanzania had people who had tried to overthrow the Government and had ran to Kenya and Kenya had people who had run away to Tanzania. They cut a deal – our Pan Africanists – Nyerere and Moi – they abducted the Kenyans who had protection from the UNHCR and they were brought here in November, 1984. Can you imagine, particularly for the sisters in the room? You remember the women’s conference. Before the Beijing one, there was Nairobi. In the middle of the Nairobi Conference, nine of those people were hanged. It was on Wednesday, 9th June, 1985. Two of them resisted being hanged; one of them was a martial arts expert, Ogidi. He was simply hacked to death. One of them is the older brother of the current Assistant Minister for Internal Security and Provincial Administration, Hon. Orwa Ojode. He was one of those people who were killed and imagine the Kenyan Government carrying out these killings in the middle of an international conference. I am opposed to the death penalty, first of all, because I do not want to die, but also because it does not work. Talk to the people who were jailed as soldiers, they will tell you a lot.

Commissioner Slye: Thank you very much, Mr. Onyango. Again, I want to thank both of you. I think we have certainly learnt an enormous amount from your testimony and the testimonies of others here today. So, again, I just want to register, in particular, my personal appreciation.

Thank you.

The Presiding Chair (Commissioner Chawatama): Do you have any questions, Acting Chair?

The Acting Chair (Commissioner Namachanja): Mr. Oloo and Wahinya, thank you very much for your testimonies. I have no particular question to Mr. Wahinya but just to thank him for supporting us during the statement-taking process. To Mr. Oloo, maybe, you could briefly share about your experience as an exiled Kenyan there. How was life like there?

Mr. Onyango Oloo: Well, the first thing to say is that I did not go to Canada as a tourist. You know what? I did not finish my sentence. I got released on 11th May because I sued the Kenyan Government. Why did I sue the Kenyan Government? Because university students, the one lecturer, Maina Kinyati and the Air Force were illegally--- You know when you are imprisoned in Kenya, you do not serve your entire sentence. In fact, the conventional among many Kenyans, to say in Swahili, *ninahesabiwa usiku na mchana*. They think that they count the day and the night. Because people always wonder; how come some should be there for five years and they are out after three years? It is because they give you one-third. In our cases, the Government decided in its wisdom or foolhardiness – take your pick – on 23rd February, 1993, we got a letter from the then Commissioner of Prisons, Reuben Mutua – he died – that in the interest of our reformation and rehabilitation, we, the university students, the lecturers and the Air Force, we would serve our sentences, to use the prison lingo, “dry”. In other words, if it is five years, it is five years; if it is six years, it is six years. Otherwise, somebody like Masefu was to come out in three years and four months, and you can do your mathematics. So, we were denied remission. We soon became prisoners of conscience. Amnesty International was supporting us and we decided to take the Government to court. At that time, we thought the most high profile person would have been the former Commander of the Air Force, General Peter Kariuki, and then his lawyer was the prominent human rights lawyer, Paul Muite. So, Paul Muite filed the case but on the eleventh hour Moi sent emissaries to Gen. Kariuki because apparently, Gen. Kariuki was not involved in the coup. He just took responsibility because, actually, they were buddies – Gen. Kariuki and Moi had actually bought a wheat farm together in Timau. So, Moi told Kariuki: “My business friend, what is all this? Just withdraw the case; *sisi*, we are friends. We bought a farm together. Withdraw this case; do not embarrass me.” So, they came to a meeting and, of course, Muite was there. Muite tried to convince Kariuki, but he said that he knows that Moi is a man of honor. He withdrew his case and the only thing is that Moi did what he usually does best; he stabbed him in the back. He served his sentence. You know prisoners earn ten cents a day. So, I came out of prison very broke because I was so stubborn and every place they took me, they had to remove me. So, the last 16 months, I had a big thing called “SW,” which means special watch; locked up 23 hours a day. For half an hour, you can go and pee and do other things like eat, and then you get locked up. So, for the last 16 months, I was in the punishment block together with the people who had tried to escape prison. I think they made an informal diagnosis because they locked me up with the psychiatric inmates who had also killed people and done other things. So, Anyway, we decided to sue the Government and my lawyer was Kiraitu Murungi – he has an office here – the current Minister for Energy. He was then a human rights lawyer and now he is a human rights violator, but I would not go into it.

(Laughter)

So, what happened is that, he represented me. First, he tried to do it through a *habeas corpus* so it was thrown out. He appealed and I won the case. So, they announced that I was released on the 7th or 8th March on a Thursday. It was on the papers the next day on the front page of *The Standard* but they did not tell me until three or four days later. In

fact, my younger brother came to pick me up and they told him: “What? We transferred that person to another prison.” He just decided to go back to Mombasa. So, they just came for me. Usually, when you are ordered released, you are supposed to be released the same day. But that is not what happened but, anyway, I got out. I think I had only earned Kshs3 in five years. The first thing I did when I got out is that I got in the bus and I went straight to the *Nation* Newspapers and I told them that it was wrong for me to be jailed, and that they should release other people. So, it was the journalists who were scared now. They said: “You just came out of prison and you are saying that you want to go back or what?” But, obviously, I knew that was my only chance to say that.

I grew up at the Coast in Mombasa, so it was very clear. I got information that they wanted to take me back to Kamiti, and since I really did not like their food and their sleeping arrangements---

(Laughter)

I said: “Why do I not go back to neighbouring Tanzania to look for alternative accommodation?” So, I fled across the border. I will not tell you how I did it because you never know with this Government because I may still need to flee!

(Laughter)

So, it is a secret how I went. I ended up in Tanzania and I sought political asylum. I was accepted by the UNHCR but before that, I also got Kshs100, 000, which was unusual in Moi’s time. The court awarded me Kshs100, 000 but, of course, it did not write a cheque to David Onyango Oloo, but three years later, my lawyer, whose law partner, Kamau Kuria, was detained, was also in Ethiopia to flee to Harvard. But when he was in Harvard, he called me. He found my number through the current Chief Justice, Dr. Willy Mutunga, who was doing his PhD at Harvard Law School. He called me and said: “Oloo, how are you?” I told him that I was fine. He then told me that they paid us that money; the Kshs100, 000. I was excited and I asked him whether he gave it to my dad through my sister and he said “No”. He then told me: “Oloo, I ate the money!”

(Laughter)

I think that before I go to the courts, Kiraitu will have to pay me my money. If there are accountants, Kshs100, 000 in 1987, how much is it worth now? He is just upstairs. I might even pass by on my way out but he ate my money.

(Laughter)

So, on 23rd December, 2003, I wrote to him and said: “Mr. Kiraitu, you ate my money; please give it back.” But I did not just write to him alone because I copied that letter to everybody in my address book. So, he was not very happy but he has still not paid me. But now, people say he is a billionaire. So, I think he can part with Kshs10 million but I do not know.

Anyway, he asked me how I ended up in Canada. So, when we were in Tanzania, there were many other Kenyan exiles. We got credible reports that the Kenyan Government was planning to send some goons to abduct us and bring us back. So, we wrote to the UNHCR in Geneva, and at that time, there were only two countries which wanted to take Kenyans. It was not the United States of America but Benin in West Africa and Canada. So, I think the Canadians worked a little bit faster than Benin and so I ended up in Toronto. I arrived there on 17th November, 1988, and I lived there, first, in Toronto for about 14 years and then Montreal. Unfortunately, I only picked up 16 words in French, which I cannot use in the same sentence. But, anyway, I came back here on 28th October, 2005, because I was head-hunted to come and head the Kenya Social Forum which was organizing our social forum. But in Canada, my experiences were more or less the same, because I even became more militant and I became a Canadian social justice activist. Now instead of dealing with Kenyans, I was dealing with the Salvadorians and the Americans. Do you know that Americans are seeking refugee status in Canada because of Iraq? Soldiers were running away to Canada and so, the USA is a refugee-producing country too.

Anyway, the experience was good because it has broadened my horizons. I saw that it is not just in Kenya; but in every continent, there are despots who are trying to oppress their citizens. In every single country, there are people – women and men – who are fighting for justice. You know having that global citizenship approach where you look beyond skin color and language, living in Canada was a very good experience for me because it taught me to be a global citizen. I have a Canadian relative – he is my son – who was born there. His mother is also Kenyan. So, when we ask him “Who are you?” He said: “Dad, you are Kenyan; Mom, you are a Kenyan, but I am an African Canadian.” This is the case although in the new Constitution, he is a Kenyan by birth but I used to come back to the country. The first time I came back and I was going to Japan, the Kenyan Government which is very vindictive--- I did not fly out of Kenya through the Jomo Kenyatta International Airport. I did not have a Kenyan passport. So, when I was coming back, even though I qualified for Canadian citizenship in 1992, I refused to take Canadian citizenship. I was a permanent resident of Canada but remained the citizen of Kenya. When I wanted my passport, they gave me a one way travel document and told me: “This will allow you to go to Kenya, but when you reach the airport, please, give it up.” Imagine I live in Canada and they are telling me to give it up. I have a cousin who has since passed on who was a lawyer and a former State Counsel. She came there and made sure that they did not take me back to Kamiti, but getting my passport was a nightmare. But I must say on record that the same Kiraitu and Willy Mutunga are the people who helped endorse my passport. There was another one I do not want to mention his or her name. Amos Wako was also involved in me getting my passport. Amos Wako, who was not a progressive, played an indirect role – I am just going to share that anecdote. One of these guys, the current Chief Justice, was telling me when I went to pick up my passport in this building, that the Principal Immigration Official was shocked; he thought that I was a big guy. He said: “You kid, you are the one who has been--- Our *waheshimiwa* or honorables are being called in the middle of the night!” I plead with Amos Wako not sue me for what I am going to say. Amos Wako had a mistress and one day, the mistress was

visiting. They were in bed and were about to make love and then the mistress said: “*Mheshimiwa*, you know there is this friend of mine and we were in college together. He has been trying to get his passport. His name is David Onyango Oloo; can you help him?” So, that is how I got my passport.

(Laughter)

Anyway, I am now back in Kenya!

(Laughter)

(Loud consultations)

Commissioner Dinka: I would like to thank David and Mr. Wahinya for your testimonies. Thank you very much.

(Silence)

The Acting Chair (Commissioner Namachanja): We are proposing the 1st of March. We will meet here to hear the other witnesses.

(Silence)

I am sorry, we cannot commit to the date because 1st March is taken up as well for access to justice. So, Mr. Wachira, we will communicate with you but we will, definitely, hear you.

Thank you very much. Over to you, Ms. Kimani!

Ms. Emily Kimani: Thank you, Commissioners and everyone who was available today for the hearings. We will have a lady close for us the meeting with prayers.

(Closing Prayers)

(The Commission adjourned at 5.10 p.m.)