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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON THURSDAY, 14TH APRIL,
2011 AT KENYA NATIONAL LIBRARY HALL, GARISSA,**

PRESENT

Gertrude Chawatama	-	The Presiding Chair, Zambia
Tecla Namachanja	-	The Acting Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Ronald Slye	-	Commissioner, USA
Margaret Wambui Shava	-	Commissioner, Kenya

IN ATTENDANCE

Patricia Nyaundi	-	Commission Secretary
Simon Njenga	-	Presiding clerk
Mohammed Abdi Nuru	-	Regional Co-ordinator
Tom Onyambu	-	Legal Counsel for Amb. Francis Sigei

(The Commission commenced at 9.40 a.m.)

The Presiding Chair (Commissioner Chawatama): Good morning, everybody. I would like to welcome you to our first hearing. Welcome to the third and final session here in Garissa. We wish to invite the Presiding Clerk to lead the witnesses to their reserved seats.

Master of Ceremonies, could you lead us in the singing of the national anthem followed by the Commission's prayer?

(The National Anthem was sung)

(Opening Prayers)

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

On behalf of the Commission, we would like to thank all those who recorded statements with us. For those who agreed to come and testify before us, we say thank you very much. The testimonies that you have given, you have given not only for yourselves, but on behalf of hundreds, if not thousands of other people, for which we are grateful.

The testimonies that we have heard and will hear today included testimonies on issues of murder, torture at the hands of security officers, extra-judicial killings and sexual violations.

The Commission has done its investigations and research. The result of the work that we have done will be published in our report.

This morning we would like to appeal to members of the public present to exercise patience throughout these proceedings. You will see some people break down. I am sure you saw some people crying as they gave their testimonies. Some people have shared their testimonies for the first time and we expect that some people will break down. We have in our midst, trained counsellors to take care of anybody who breaks down. Our appeal is that members of the public should not rush to this person. We want to give them time to get over their emotions and then carry on when they are ready to do so.

At this time, those of us with cell phones could you, please, switch them off. I cannot over-emphasize the need to respect witnesses even when you do not agree with the testimony that they are stating. Those who choose not to co-operate will be asked to leave. I would also urge our friends from the media that no photos will be allowed whilst the witness is giving his testimony. What you will see take place today, like on the other days, is that a witness will be called, the oath will be administered, and the Evidence Leader will lead him, after which, any one of us on the panel may ask questions.

At this stage, I would like to ask that the first witness be called.

(Mr. Dubat Ali Amey took the oath)

The Commission Secretary (Ms. Nyaundi): Please, tell the Commission your name.

Mr. Dubat Ali Amey: My name is Mr. Dubat Ali Amey.

The Commission Secretary (Ms. Nyaundi): Where do you stay?

Mr. Dubat Ali Amey: I stay in Garissa County.

The Commission Secretary (Ms. Nyaundi): You have recorded a memorandum with the Commission dated 13th April, 2011.

Mr. Dubat Ali Amey: Yes.

The Commission Secretary (Ms. Nyaundi): I am asking you to, please, explain to the Commission the contents of your memorandum.

Mr. Dubat Ali Amey: As you have heard, I am Dubat Ali Amey. I am an elder of this community here. Besides the memorandum, I want to briefly talk about some of what has happened in this region.

Before we started the session, the National Anthem was sung. I want to tell you that we have never been part of the National Anthem. The National Anthem talks of justice, fellowship, awareness, good life, abundance, among other things. These things have never been experienced in this region. In totality, I can say that we have never been part of this country.

The other thing which I want to say before I explain issues in my memorandum is that we have never been considered as part of the diversity of this country. We have never been considered part of this country as a community, our culture, lifestyle and partly our religion.

To begin with, this country was ruled by the white man. Garissa is part of what used to be called Northern Frontier Districts (NFD). This NFD was ruled differently by the white man. We had two different sets of laws. Nobody could go out of NFD to other parts of Kenya. This resulted in us being segregated, isolated and being kept away from other Kenyans. This was done for two reasons: One, the white man wanted to protect the Asian businessman. They knew Somalis were very aggressive businessmen, so they were protecting the Asians and the white men who were helping them colonize this country.

The other thing they were protecting is that they knew Somalis were Islamic evangelists. We could easily convert Kenyans who were mostly traditionalists. So, they created a buffer zone.

Leaving that one aside, in the 1960s when the wind of Independence came, political parties were created. There was KANU and KADU. In this region, we had our own political parties. They were small ones, but the two big parties were Northern Province People's Progressive Party (NPPPP) and the Northern Frontier Democratic Party (NFDPP). Basically, their mission and vision was to secede from this country.

In 1962, the white man, for no reason, created a referendum headed by a Nigerian. We were told to vote to decide whether we would remain in Kenya or go to Somalia. About 85 per cent of the people of the NFD area voted to secede from Kenya because of fears. At a later stage, those fears came to be true.

Up to today, the result of that referendum has never been honoured. From that point of view, then we can say that our staying in Kenya was more or less like a forced marriage and not a marriage of convenience.

Leaving that one aside, in 1963, immediately after Independence, this region, Garissa, Wajir and Mandera, were declared as the seventh province of Kenya under the name North Eastern Province. That is the time all the misfortunes befell us. A state of emergency was declared and this area was declared a war zone. The powers of the Governor-General were transferred to the President. They removed the word Governor-General only leaving all other Executive powers and the arbitrary use of powers intact.

There are a lot of things that I cannot say. Very many bad things have happened. That was in 1963 and 1964. There have been wanton and indiscriminate killings. There have been killings of our animals, particularly camels.

In 1965 and 1966, all the Somalis were put under villages; something called villagization. In the whole of Garissa County with 43, 000 square kilometres, we were put into five camps. One camp was in Modogashe, the other one in Mbalambala, another one in Garissa, another one in Bura and another one in Ijara. This one was more or less like the villagization system used by the white man during Mau Mau.

We are pastoralists. Our animals have to go out and graze. We are not farmers. That contributed to many of us remaining poor. It was another method of making us poor, so that we could succumb to the advances of the rogue officers who wanted to prostitute our children.

(Mr. Dubat Ali Amey broke down and wept)

In the year 1967, you have heard of the Jaribu Concentration Camp. You have heard of the 11 brothers. These were called the Special Interrogation Team. The PC, at that time, J.G. Mburu, went round and told people that there was the Public Security Preservation Act which gave him the powers to kill indiscriminately. I was a civil servant. On 19th May, I was picked from the office, thrown into the police station, taken to the SIG under the leadership of a very notorious and brutal police officer called Gikandi. I remained there until 2nd June, when the late President Kenyatta gave us amnesty.

In the same month, there were 15 people who were killed in Rigmi area of Ijara Constituency. These were 15 people, including a very prominent businessman called Ashafadar. There was massive killing of camels in the same year.

In 1963 many people from Garissa were detained. Most of the people who were detained have died. I think there are one or two people who survived. If you want their names, I can tell you in camera.

In 1976, there was the Arusha peace meeting brokered by Kenneth Kaunda. I am happy that there is a Commissioner from Zambia. We have some attachment to the Zambians. Former President Kaunda brokered peace between Kenya and Somalia signed by Jomo Kenyatta on behalf of Kenya and Prime Minister Ibrahim Ighal; may God rest his soul in peace.

The contents of this agreement were never communicated to us. Up to today, it is secret. We do not understand if it was our fate that was discussed. We do not understand why this issue remained classified. I am told thorough searches have been done by members of this community. Up to today, they are not able to get that information. It is not in the internet or archives. Most likely, it has been hidden somewhere else.

Now, from 1967, at one time, for reasons only known to the Government, there were a lot of poachers. There were many people with arms killing elephants, rhinos and everybody. I want to say some Government officers were party to that and they were making a lot of money. Some of them were buying ivory. One of them, I am very sorry to mention someone who has died, is the former Commissioner of Police, Mr. Kilonzo, who was very seriously in this business. Now, many people have been killed. From there, that is the product of the 1980 burning. There was somebody called Abdi Mutodhe who was a big poacher. He accumulated a lot of tusks and then he was robbed. He killed some people and that led to Garissa burning. Of course, there was one DO called Mr. Johnson Walemo, who was killed from Western Province. We are very sorry for his death. He was killed by Abdi Mutodhe. Then on 9th November, the PC, Benson Kaaria, and I think you can look at *Sunday Nation* where he said, “you kill one officer, we kill 100”. That means 100 Somalis for any Government officer who is killed. I want to tell the Commission that it was not us killing but people from Somalia who were killing the Government officers. But why should we be repaid? Why should we be told that we are going to be killed? I do not want to emphasise what happened in 1980 because many people gave testimonies on the same. But I want to say that it was a calculated move designed to be bigger than Garissa. This is because there is evidence that Mengistu Detha, the Ethiopian Ambassador was a guest of the former PC that night and they flew up to Liboi in a helicopter and came back. Mengistu Detha slept in the PC’s house. So, the move must have been something bigger. It must have been something to do with the coup of 1982. It had nothing to do with our problem.

Then in 1981, there were many killings. Even camels were killed. One of the things that I can remember is when hon. Abdikadir Hassan went to his constituency Garissa North, one chief who identified the animals which were killed as his and the people who were killed as from his location, he was just cut. That man lost his job. His name was Kuso Dubet. He comes from Banari and I come from the southern end but he caught mixed up and became crazy and died later. Now, coming from there, you have heard of the Galmagala Massacre. It is not only this massacre which happened in 1989. There was the Somali screening card. We were given a card which was very different from the one of other Kenyans. This one was meant for ethnic witch-hunting. It meant to destroy the economy of the prosperous Somali businessman upcountry under the pretext that they were not Kenyans. There is a Swahili saying which says: “*Anayekuchukia hakutakii mema.*” That is: one who hates you will not choose for you what he is going to abuse you with. If somebody hates you, he will tell you whatever he wants. If you are a citizen, he will tell you that you are not a citizen. Whether you are a drunkard or not, he will tell you that you smell of beer. We have even witnessed people from the mosques being charged as drunk and disorderly. So, anybody who hates you can do anything. I want to put it on record that there was a Somali who was exporting animals to Saudi Arabia who brought us a huge market because the animals shot from Kshs300 to Kshs2, 000 when he started exporting. I hope that poor Somali will come in front of you. He was deported, put in a plane to Somalia and it ended like that. There were also big Somali businessman who had lorries who were deported under the pretext that they were not Kenyans. That is something we can dispute but we know it was meant to sabotage the Somalis economically. It was meant to enforce the buffer zone which the white man initially

initiated. So, I think the agents of Moi--- I am told that you have not warned this man, then I am not going to mention his name. However, he is known. He has been Moi's agent and PC. He was the man who administered the red card. I think he should be summoned and asked. If possible, he has violated the Social Ethics Act. He is not entitled to hold a public office.

Now, coming down to the last issue, in the 2007 elections, I wanted to vie for the Ijara parliamentary seat. I paid the money to KANU and I was cleared. I went for the primary nominations but, unfortunately, nothing like that happened. The current Member of Parliament for Ijara was given nomination in a board room. I have recorded that in Ijara Police Station. I went ahead and employed an advocate asking for nullification of his nomination. I appeared before a judge called Visram. My advocate is Mugoya. His office is in Anniversary Towers, 11th Floor. Up to today, that case is undecided. At one time, I was told that the file disappeared. I went to the Registrar of the High Court and protested and the file was retrieved. However, up to today, the case has not been mentioned. So, this shows that the Judiciary in this country is as bad as everybody is saying. The judge that I appeared before is not fair. He looked at me from up to down like I was a pick-pocket. That shows a sign of unfairness. I am an old man and when I see a judge looking at me in that manner, then I have reasons to believe that he was unfair. Who stopped him from smiling? Nobody stopped him from smiling as a judge. Some of you are lawyers and I do not think there is any provision to stop the judge from looking humble.

Finally, this is what I want to say to the Commission. You can never compensate people who were killed, raped or people who became poor because of Government agencies. The solution is very simple to me. The President and the Prime Minister should admit that atrocities like genocide, wanton killings, rape, looting and everything have happened and then they say; "we apologize to the people of North Eastern Province (NEP)". We can accept that. Personally, I believe there are many things that can be done. Improve the communication in this region. Tarmacking the roads costs about Kshs9 billion. That is tarmacking the road from Garissa to Mandera. Give us good roads, special provisions and good schools. This province does not have a single national school. When I tell you that we are not part of the national anthem, I am not joking. I am serious. So, we need a lot of improvement. The Commission told us the other day to raise our hands as part of reconciliation but raising hands and shaking the other fellow's hands is not reconciliation. Reconciliation, first and foremost is that the mistakes must be admitted. The leaders must apologize and then people must be told the way forward for you to forgive others. I end there.

The Presiding Chair (Commissioner Chawatama): Thank you for your testimony. We would also like to thank you for honoring your word when we asked you not to mention a specific name because the person has not been informed by us. We also thank you for the suggestions that you have made. We agree that reconciliation is a process. I would like the Leader of Evidence to ask you a few questions.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Amey. I need to get some few clarifications. When you said you were arrested, did you understand the reasons for your arrest?

Mr. Dubat Ali Amey: Not at all. I was working in the PC's office and then two plainclothes police officers walked into the accounts section where I was working. I was just then taken to the police station and then later on taken to Garissa Prison Detention Camp. In fact, I forgot to ask the Commissioners to visit this camp today. It is still there. I was there yesterday. The site where people have been killed is still there. I remember Sheikh Mohammed Timowen, an elder of the Sheikh Ad Somali community was killed in that camp. Several people were castrated and I am not lying. I have taken the oath. Those buildings are there. I request the Commission to see the inside of that house. I had not been told the reasons for my arrest.

The Commission Secretary (Ms. Nyaundi): You have spoken very strongly about the relationship of the people in this region with the Government and previous speakers have also spoken on the same. What is the relationship between the people of this region and the ordinary Kenyan citizen?

Mr. Dubat Ali Amey: Madam Chair, I want to tell you that we have had problems with areas like Ukambani where some cattle rustling has occurred. Even in the mouth, in the course of grinding the food, the teeth bites the tongue. So, there have been small problems between us and the Kamba. However, for other Kenyans, I have never heard a person abusing me because I am a Somali. I went to study in Germany and I was sick and there was a Kenyan called Odipo from Western who used to travel from Munich to Diesen, about 90 kilometers. He used to come and visit me on Sunday. So, I would not say there is a problem with the relations with ordinary Kenyans. These were Government officers who were groomed, indoctrinated, something bad inculcated in them and made wild by the system to destroy. I have never seen any prejudice. I have been privileged to be a director of the Coffee Development Authority, Kenya National Federation of Co-operatives, a civil servant, chairman of Garissa and Ijara county councils, we have ALGAK meetings and I have never seen any Kenyan with prejudice to the Somali community.

The Commission Secretary (Ms. Nyaundi): Mr. Amey, I am asking as one of those other Kenyans. Is there something that the ordinary Kenyan can or should do so that as people of this region, you would say we do have Kenyan brothers and sisters?

Mr. Dubat Ali Amey: You see that question is very broad. In this province, and particularly Garissa County, I think Kenyans have given us what was necessary for a human being. I would ask Kenyans to come and invest here so that we can share the resources as brothers. We can kill witch-hunting. I am very sorry because they were getting orders from the Provincial Administration but I am happy they will no longer have the teeth to bite us. Even if they are going to remain there, they will be very symbolic and probably their duties will be confined to areas where they will not have much power. So, I think Kenyans can do a lot. Secondly, we have a lot of tourist

attraction centres which Kenyans can come and visit. Although it is out of the Commission's mandate, in North Africa, the white man visits the Bedouins in their homes. So, Kenyans can come and visit us, and look at our tourist attractions, our culture and lifestyle and they will be able to cement a life-long relationship.

The Commission Secretary (Ms. Nyaundi): Thank you Mr. Amey. You spoke about the odd nominations of 2007. Is this an isolated incident or would you like to speak--- It is just an observation about---

Mr. Dubat Ali Amey: I think it is not an isolated case. Many people have been given nominations through boardroom systems or through preliminary rigging and I have evidence. Even Justice Ransley said that from nomination to election, the whole thing was flawed. We ask the Commission to look at the process of nomination and the political parties. In fact, the political parties were more or less run by personalities. They had no policies. It is the leader of a respective party who decides who to give the nomination to. It is his wish and the whole thing was shameful. Of course, post-election violence was due to rigging of the elections which includes the primaries and the nominations.

The Commission Secretary (Ms. Nyaundi): Mr. Amey, you also said that in your view, the judicial system is not as good as it should be. Just in your observations, what has been the consequence of this in terms of justice? Do people trust the system? If people do not trust the system, what are the options they are taking?

Mr. Dubat Ali Amey: Madam, I think you are a lawyer. I suppose you know the judicial system of this country. You also know that at one time, the security of tenure for judges was withdrawn. So, it was just like the old times of 1964 to 1980 when the District Commissioners were the judges in this region. Of course, the DCs were executives. So, the system in this country where judges just took their appointments, and were also picked according to their clans, shows that they are more or less appointees of the Executive. It was the Executive which was denying Kenyans their right. So, more or less, they were the agents of the Executive and not an independent Judiciary.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Amey. Please wait as the other Commissioners ask you some questions.

The Presiding Chair (Commissioner Chawatama): Thank you very much. I will ask my fellow Commissioners to ask you some questions.

Commissioner Farah: Mr. Amey, you said that District Commissioners were judges in this North Eastern Province. When did the government appoint judges in the province to take over from the District Commissioners?

Mr. Dubat Ali Amey: With all due respect, there is no qualified judge up to day. We only have magistrates. The only time we had a senior magistrate was because somebody was promoted from a principal magistrate and then to chief magistrate. Then he was

transferred to another part of the country. So, we have magistrates in Wajir, Garissa and Mandera. Of course, in Garissa, I think he is a principal magistrate or something like that because I am not sure. He is more senior than the other ones. However, if my memory serves me correctly, it was only after 1980 that third class magistrates were posted here. Up to today, some cases are taken to Meru, Thika and Kitui. We only have subordinate courts. We do not have a high court in Garissa. That shows a little bit of discrimination.

Commissioner Farah: The other thing I want you to clarify is this: You said that Mr. Benson Kaaria said: "If you kill one officer, we will kill 100 Somalis." It is quoted in the *Sunday Nation*. Can you remember which *Sunday Nation* it was in? Of which date?

Mr. Dubat Ali Amey: I think the Commission has that capacity to look at the *Sunday Nation* of 10th November and then the previous Sunday. The Commission will be able to get that one. I think it is not wise for me to say something which I am not sure of 100 per cent. But I am 100 per cent sure that before the burning of Garissa, I was there on Sunday and I had the paper until sometime later. It can be traced.

Commissioner Farah: I know that we have the machinery and capacity to determine. I only thought that you know but if you do not know, that is okay. Thank you very much. I do not have any further questions.

The Acting Chair (Commissioner Namachanja): Mr. Amey, I would like to thank you very much for sharing from your heart the atrocities that your people have suffered. Maybe, just for you to highlight again, how did the villagization process impact on the lives of the people?

Mr. Dubat Ali Amey: Thank you very much, Madam. It is a sad memory. Looking at our lifestyle, we are pastoralists and nomads who move from one place to another with our animals. There are people with cattle, sheep, goats and donkeys for loading. This villagisation system meant everybody in Garissa Township being put under those five villages. Anybody who was seen between the village and the border of Somalia was declared a rebel or *shifita*. He was killed. I forgot to tell you that at one time, about 9, 000 livestock was seized. This was the order from the Provincial Commissioner. There was a law they were using called the Special Districts Administration Ordinance (SDAO) which empowered or allowed the PC to seize properties from people whom he considered enemies. The PC could declare anybody an enemy even if he was not. So, 9, 000 cattle were seized and taken to the Kenya Meat Commission (KMC). The proceeds only ended up in the Government officers' hands. At that time, it is the members of the Provincial Administration, and if you want, I can tell you their names and who ordered that. So, any animal which was seen between the villages and the border of Somalia was considered as the property of the enemy and killed. Camels were only killed. Goats and sheep were loaded into lorries and used as meat for the military officers. The herds of cattle were taken to KMC to enrich the officers. So, if you look at that, there were two moves which made us poor. One was that--- I do not want to repeat the other one because I have heard somebody giving testimony of the three-mile border stopping us from drinking water from the river, something which has never happened in the history of the world. So, these

villages were more or less like the Hitler concentration camps to the Jews. It really made us poor. When you become poor you lose your pride and succumb to the intimidation of whoever has money. I think basically that is what I meant. It is very painful. Personally, I lost a lot of property which I do not need to say because it has been said here before.

Commissioner Dinka: Mr. Amey, thank you very much for coming and sharing with us not only your own suffering and difficulties, but also the difficulties and pains that your own people have gone through for several decades. We appreciate your efforts and we thank you very much. My question is a little bit out of the box. We know that in a number of countries, particularly developing countries, there is what we call the centre and the periphery. The furthest a location is from the centre of power, the less attention it gets. This has been the case in a number of cases and Kenya is no exception. But today, we are standing on the threshold of a big change in Kenya. We have a new constitutional dispensation in place. The judiciary is being reformed. The police and army are being reformed. There is a new electoral and boundary commission in place. More importantly, there is a national commission for integration in place and the TJRC itself. Hopefully, all these will create a more united, cohesive, peaceful and egalitarian Kenya. My question is: The areas that have been marginalized - like your own area- that is the northern region - what are you and your people doing in trying to create a very strong constituency for this dispensation to be operationalized as quickly and as fairly as possible because the marginalized ones are the most important ones under this new Constitution? Is there some kind of mobilization or peaceful organization in Northern Kenya to support the new dispensation and the mechanisms and institutions that are beginning to come into being now and to make you not to be in the periphery anymore but to put you in the centre of Kenya politically?

Mr. Dubat Ali Amey: Thank you very much, Commissioner. I am not an expert but I think the new system of governance will actually help the people. As you said, the system is coming closer to the people and then it is going to be managed by locals. I want to dispel some notion which is being advanced by the Provincial Administration that the Somalis cannot rule themselves. That is an ill feeling because the Somalis were ruling themselves before the white man. We had our traditional system of governance, rulers and elders and their judgment was binding. So, I think there are several things remaining. Of course, they have not legislated the qualifications of the people who are going to be governors and deputies but we will get good people. God is great. These are some of the things that people have been fighting for. This is because people will know their priorities. The Governor and the Assembly will ask every location what their priorities are. They may give wrong priorities but it is theirs. So, it is something very good. We have a lot of expectations. I think God will keep me until this thing becomes operational so that I see the bad and the better to the best points.

Commissioner Slye: Mr. Amey, I want to add my voice to that of my fellow Commissioners in thanking you for coming here before this Commission. As you know, one of our major tasks is to compile an actual historical record of the historical injustices. We have heard testimonies from individuals before in the last few days so that we can get a flavour of the types of injustices that have occurred here and how they have affected

individuals. You have helped us to understand the larger context within which those violations have occurred and that is very helpful to us. It is also important you mentioned about how you personally lost property and suffered and yet, in most of your testimony, you focus on the suffering of the larger community here. I think it is that attitude that will serve you and this community well. I hope that will encourage other leaders in this community and other parts of Kenya. Lastly, you made a statement with respect to ordinary Kenyans and how the problems facing people here in the northern region are not experienced by the ordinary and average Kenyan. It is not the prejudice that exists at that level. It is a problem with governance and I think as we move towards truth and justice and eventually to reconciliation, that foundation of respect and engagement among all Kenyans will be one of optimism for the future of this country. Thank you.

Mr. Dubat Ali Amey: Well, before I leave the Commission, there are two things which I forgot. There is the Indemnity (Repeal) Bill; and I hope you have heard about it. With all due respect to our President, whom I admire, he signed the Alcohol Bill but he has not been able to sign the Indemnity (Repeal) Bill. We would like to tell our President that the presidency is the unifying factor in this country. That is the umbrella where everybody would run to when it is raining. I said in my first remarks that we have never been part of the national asset. President Kibaki never harmed anybody and he has no reason to fear signing the Indemnity (Repeal) Bill. I am requesting the President – and the members of the Press are here – that for us to feel that we are one of the diversities of this country he should sign the Bill.

Secondly, when I was talking about the detention camp in the year 1967, a gentleman called Oyoo Daar Hersi was killed by the police. He came from Mombasa; he had money and he slaughtered animals at the Kenya Meat Commission. He was removed from the house of an old man called Abdi Hassan – Abdi *Dereva*. They killed him and took the body to the mortuary. They killed him somewhere else and took the body to the mortuary. After that, we were rounded up to identify the dead body. Most of us feared for our lives, but that old man, Abdi Hassan “*Dereva*”, who also happened to be his cousin and from whose house they removed him said “this is my cousin”. He was taken to the police station; he was beaten thoroughly and that old man – God is my witness – died as a result of that. I am even wondering why his son is not appearing before the Commission. However, I will tell him to appear before the Commission.

Thank you very much. It is my prayers as an elder, that the Commission’s recommendations will be implemented, even if it is slowly but progressively.

Commissioner Slye: Mr. Amey, let me say a few words about the Indemnity Act, which you raised. I want to make a couple of points. First, I want to assure you and the members of the public who are here that the Indemnity Act does not affect our work. That is, it does not apply to individuals who want to appear before this Commission and testify about the wrongs that occurred during the period covered by the Indemnity Act. However, as you have correctly pointed out, the Indemnity Act creates two different rules of law to different parts of Kenya and it provides more protection or less accountability

with respect to acts undertaken by the Government officials in the northern and parts of the Coast region between 1964 and 1967. This Commission has been very clear that, in our view, the Indemnity Act is an injustice. We support you and many hon. Members of Parliament in urging that it be repealed and that the President supports that repeal. Whereas we do not say that everything that a Government official did during that period in that place was necessarily wrong, we do say that those individuals should be held to the same standards of conduct and accountability as every other Kenyan in every other part of Kenya and every other time in the history of Kenya.

The Presiding Chair (Commissioner Chawatama): I join the other Commissioners in thanking you for your testimony. We have managed to achieve what we set out to achieve, and that is to ensure that other Kenyans get an opportunity to hear of the experiences that the people in Garissa have gone through. We realize that not every Kenyan will get hold of the report, once published, but we know that through television and radio, many Kenyans will hear of your experiences. We thank you very much for making yourself available.

Let us have the next witness. Welcome to this hearing. Could you, please, administer the oath?

(Mr. Abdinassir Falir Bashal took the oath)

The Commission Secretary (Ms. Nyaundi): Please, tell the Commission your names?

Mr. Abdinassir Falir Bashal: I am Abdinassir Bashal.

The Commission Secretary (Ms. Nyaundi): Where do you stay, Mr. Abdinassir?

Mr. Abdinassir Falir Bashal: I stay in Garissa.

The Commission Secretary (Ms. Nyaundi): Mr. Bashal, you recorded a statement with the Commission?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): We would like you to share with the Commission what you shared in the statement.

Mr. Abdinassir Falir Bashal: I am ready. May I go ahead? On 24th November, 1997, at around 3.00 p.m., I was in the police lines together with some colleagues. Suddenly, we were called for assembly. When we assembled together, the Commandant Double, Mr. Ekeno, announced some happenings which, to me, was quite surprising. I was charged with disciplinary offenses. First, I was charged with breaking out of police lines unlawfully on 15th December, 1997. Secondly, I was charged with being guilty of conduct to the prejudice of good order and discipline on 15th December, 1997. I pleaded not guilty to the above charges, but I was taken to a Kangaroo court and charged with the law of the jungle. Later, I was transferred to North Eastern Province (NEP). After four

months of working, I was dismissed from the police force. I have tried to appeal to the Commissioner of Police thrice through the right channels, but all in vain. Now, I appeal to the TJRC to investigate my case and ensure that justice prevails.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Bashal. I will ask you some questions. When were you recruited to the police force?

Mr. Abdinassir Falir Bashal: I was enlisted in 1991.

The Commission Secretary (Ms. Nyaundi): And at what grade?

Mr. Abdinassir Falir Bashal: My grade was very low.

The Commission Secretary (Ms. Nyaundi): Were you a constable or a corporal?

Mr. Abdinassir Falir Bashal: I was a constable.

The Commission Secretary (Ms. Nyaundi): So, when this incident happened on 24th November, 1997, what was your rank?

Mr. Abdinassir Falir Bashal: I was a police constable.

The Commission Secretary (Ms. Nyaundi): Where were you stationed?

Mr. Abdinassir Falir Bashal: At that time I was in Kitale Police Station.

The Commission Secretary (Ms. Nyaundi): What were your duties at Kitale Police Station?

Mr. Abdinassir Falir Bashal: It was operation duties.

The Commission Secretary (Ms. Nyaundi): So, when you say that you were charged with two offences, the first time you were informed of these charges was on 24th November, 1997?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): Were you told when you had committed the offences?

Mr. Abdinassir Falir Bashal: It was on that date.

The Commission Secretary (Ms. Nyaundi): So, you were told that you had committed those offences on that date?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): Did you understand what breaking out of police lines---

Mr. Abdinassir Falir Bashal: Yes, it was just a petty offence.

The Commission Secretary (Ms. Nyaundi): And had you broken out of police lines?

Mr. Abdinassir Falir Bashal: No, I was innocent!

The Commission Secretary (Ms. Nyaundi): What does this offence entail?

Mr. Abdinassir Falir Bashal: This offence is just a petty offence and any police officer can commit it.

The Commission Secretary (Ms. Nyaundi): So, it means that you left the police lines without authority?

Mr. Abdinassir Falir Bashal: No! I was in the police lines. We were called for the assembly and when we assembled, the Commandant Double, Mr. Ekeno announced---

The Commission Secretary (Ms. Nyaundi): Were there other officers, apart from you, who were affected?

Mr. Abdinassir Falir Bashal: Yes, we were 63 police officers.

The Commission Secretary (Ms. Nyaundi): So, you say that, later, you appeared before what you are calling a “Kangaroo” court?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): On what date did this happen?

Mr. Abdinassir Falir Bashal: I cannot remember very well. It was some time from 15th but I cannot remember the date very well.

The Commission Secretary (Ms. Nyaundi): Was it in the same month of February?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): But the charges were read to you in December?

Mr. Abdinassir Falir Bashal: Yes, it was on 12th December, 1997.

The Commission Secretary (Ms. Nyaundi): 1997?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): So, you appeared before a panel in December or the following year?

Mr. Abdinassir Falir Bashal: It was in the same year.

The Commission Secretary (Ms. Nyaundi): And it was there in Kitale or in Nairobi?

Mr. Abdinassir Falir Bashal: It was in Kitale.

The Commission Secretary (Ms. Nyaundi): Do you remember some of the officers who presided over your matter?

Mr. Abdinassir Falir Bashal: It was done by an Inspector of Police.

The Commission Secretary (Ms. Nyaundi): Do you remember him by name?

Mr. Abdinassir Falir Bashal: No.

The Commission Secretary (Ms. Nyaundi): Would you remember if the proceedings were recorded?

Mr. Abdinassir Falir Bashal: Yes, they were recorded.

The Commission Secretary (Ms. Nyaundi): Did you get a copy of the proceedings?

Mr. Abdinassir Falir Bashal: No.

The Commission Secretary (Ms. Nyaundi): Did you get a copy of the decision?

Mr. Abdinassir Falir Bashal: No, because the Commandant Double was an Assistant Commissioner of Police and he was very hostile. I was not even given a chance to defend myself.

The Commission Secretary (Ms. Nyaundi): You said that other officers were also called to the parade on 24th, 1997?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): Were they also charged?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): Do you know the outcome?

Mr. Abdinassir Falir Bashal: The outcome was dismissal.

The Commission Secretary (Ms. Nyaundi): Do you remember the names of the other officers?

Mr. Abdinassir Falir Bashal: I can remember my colleague who was transferred to NEP by the name Adan Mohamed. Another one was called Mohamud.

The Commission Secretary (Ms. Nyaundi): After receiving communication that you had been dismissed, did you take any action?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): What action did you take?

Mr. Abdinassir Falir Bashal: Yes, I had appealed to the Commissioner of Police to use the right channel but all was in vain.

The Commission Secretary (Ms. Nyaundi): So, did you appear before another panel?

Mr. Abdinassir Falir Bashal: Yes, I appeared before many panels.

The Commission Secretary (Ms. Nyaundi): Was that in Kitale or Nairobi?

Mr. Abdinassir Falir Bashal: In Garissa.

The Commission Secretary (Ms. Nyaundi): Eventually, when did the matter end?

Mr. Abdinassir Falir Bashal: Up to now, I do not know about it. I am still waiting for my appeal to go through.

The Commission Secretary (Ms. Nyaundi): Did you receive any final communication from any office?

Mr. Abdinassir Falir Bashal: No!

The Commission Secretary (Ms. Nyaundi): I have a document dated 5th March, 1998. It is entitled “Dismissal from Force” and it is signed by S. Mutungi and it is addressed to you. Would you like to leave the document with the Commission?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): I also have a document dated 4th April, 2000 addressed to you. It is entitled: “Appeal against Dismissal from the Police Force”, and it is signed by Omar Dago. Would you like to leave the document with the Commission?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): There is also a document dated 23rd March, 1998 addressed to you. The subject is “Dismissal from the Force” and it is signed by AG Kalume. Would you also like to leave that document with the Commission?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): There is a document dated 25th March, 1998 and it is written by you and addressed to the Commissioner of Police. The subject is: “Appeal Against Dismissal from the Police Force.” Would you like to leave that document with the Commission?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): There is a newspaper cutting from the *Daily Nation* of 7th March, 1998. The caption is entitled “Force Sacks 17 Officers”. Would you like to leave it with the Commission?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): There is a document dated 14th October, 1998 and signed by the Provincial Police Officer, North Eastern Province. The subject is, “PC Abdinassir Bashal”. Would you like to leave that document with the Commission?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): There is also a document dated 9th December, 1998. It is addressed to Mr. Francis Murea, Superintendent and it is signed by TK Yoma. Would you like to leave that document?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): There is also a letter dated 3rd March, 2005 addressed to you by the then Vice President, Mr. Moody Awori. The subject is your request for reinstatement. Would you like to leave that document with the Commission?

Mr. Abdinassir Falir Bashal: Yes.

The Commission Secretary (Ms. Nyaundi): Commissioners, I am requesting that the bundle of documents be admitted. Mr. Bashal, the Commission is supposed to investigate

systemic violations of human rights. You have spoken to us about your personal experience. Would you know whether this kind of thing has happened to other officers?

Mr. Abdinassir Falir Bashal: Yes, it has happened to many of my colleagues. Some of them were transferred to various places but finally they were dismissed from the police force.

The Commission Secretary (Ms. Nyaundi): Outside the mechanism of the police service, have you tried to seek justice in courts?

Mr. Abdinassir Falir Bashal: No.

The Commission Secretary (Ms. Nyaundi): Why have you not done that? Do you have a good reason?

Mr. Abdinassir Falir Bashal: First of all, I am from a very poor family. I could not get money to hire a lawyer.

The Commission Secretary (Ms. Nyaundi): Do you have a family?

Mr. Abdinassir Falir Bashal: Right now I have.

The Commission Secretary (Ms. Nyaundi): After you lost your job in 1998, have you found alternative employment?

Mr. Abdinassir Falir Bashal: No.

The Commission Secretary (Ms. Nyaundi): What can you say has been the greatest consequence of the experience that you have gone through?

Mr. Abdinassir Falir Bashal: It has been very harsh and I cannot forget it in my life. I was a police officer serving in the force and was dismissed without any benefits after serving for six years and five months.

The Commission Secretary (Ms. Nyaundi): What is your specific request to the Commission?

Mr. Abdinassir Falir Bashal: I would like the police force to either reinstate me or give me my benefits.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Bashal. The Commissioners will ask you a few questions.

Commissioner Farah: Mr. Bashal, what do you think was the reason for the dismissal?

Mr. Abdinassir Falir Bashal: Up to now, that is the question that disturbs me because I am innocent. I do not know what offences I committed.

The Presiding Chair (Commissioner Chawatama): It is unfortunate that we did not have a chance to look at the documents before. Maybe, we would have had several questions to ask. All the same, I have looked at the first letter that says that you pleaded not guilty to count one of the breaks out of the police lines for which you were reprimanded. Is that the correct position? For count two, which was conduct to the prejudice of good order, this is the one for which they say you were dismissed. What I have not seen is a charge letter. Was there a charge letter?

Mr. Abdinassir Falir Bashal: That is the only letter I was given. It was a dismissal letter.

The Presiding Chair (Commissioner Chawatama): You got a letter in which you were told that you were being charged with count one and count two.

Mr. Abdinassir Falir Bashal: That was the dismissal letter.

The Presiding Chair (Commissioner Chawatama): You are telling us that you were not given an opportunity to exculpate yourself?

Mr. Abdinassir Falir Bashal: Yes. I was not given a chance to defend myself.

The Presiding Chair (Commissioner Chawatama): You described the offences as petty. Would you know what sanctions such an offence could have attracted?

Mr. Abdinassir Falir Bashal: In the police force, there are standing orders where if you commit an offence against them, you are charged and discontinued from your normal duties.

The Presiding Chair (Commissioner Chawatama): In your letter to us, you say that you were unfairly dismissed. Were you not satisfied with the procedure that was taken?

Mr. Abdinassir Falir Bashal: Yes.

The Presiding Chair (Commissioner Chawatama): Today, you have not heard about your appeal?

Mr. Abdinassir Falir Bashal: Yes. I am still waiting for feedback from the Commissioner of Police.

The Presiding Chair (Commissioner Chawatama): Thank you so much.

Mr. Abdinassir Falir Bashal: I also thank the Commissioners.

(*Mr. Subow Farah Shurue took the oath*)

The Presiding Chair (Commissioner Chawatama): Please, identify yourself.

The Commission Secretary (Ms. Nyaundi): Please, tell the Commission your full names and where you stay.

Mr. Subow Farah Shurue: My name is Mr. Subow Farah Shurue and I live in Masalani.

The Commission Secretary (Ms. Nyaundi): You recorded a statement with the Commission.

Mr. Subow Farah Shurue: Yes. I submitted a report.

The Commission Secretary (Ms. Nyaundi): We want to talk about that report. You said that in the month of *Ramadhan* in 1998--- We want to talk about what happened to you and some members of your family.

Mr. Subow Farah Shurue: It all happened in the month of *Ramadhan* on the third day. It was early in the evening when people came to my house with guns. They killed my children. There was a girl who was shot in the stomach. Owing to that, I was beaten and suffered a lot. Those people were in office. That is the much I can tell. They were Government officials. My child died. I brought one of my daughters to hospital but until today she has a problem.

These were the problems I suffered, and it caused me a lot of pain. All this was done by Government agents. This happened in a very short time; I lost a son; I have a daughter who is alive but, who is facing a lot of physical pain. That is what brought me here; it is what I came to tell you.

The animals ran helter skelter; some were eaten by hyenas as people fled. All that I can say about those who did this is that they were all in uniform. I am seeking justice for my child, who was killed; my son who was killed. I came here to ask for justice. Whenever I remember it--- It is a painful experience; it is what I came here to tell you.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Shurue. I want to ask you some questions. What were the names of your children?

Mr. Subow Farah Shurue: Yes I can tell you that my son was called Farah Adow, the daughter is Mario Dow, and she is still alive and the bullet marks are still on her.

The Commission Secretary (Ms. Nyaundi): What was the age of your son?

Mr. Subow Farah Shurue: He was 28 years old when he was killed.

The Commission Secretary (Ms. Nyaundi): How old is your daughter right now?

Mr. Subow Farah Shurue: I do not remember it exactly. I am not in a healthy state of mind, but I think she is between 14 and 15 years of age. I am not okay mentally.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Shurue. If you feel you want us to stop, please let us know. Can I continue?

Mr. Subow Farah Shurue: Yes, continue.

The Commission Secretary (Ms Nyaundi): You said that there were security officers who came to your house. Would you be able to describe their uniforms?

Mr. Subow Farah Shurue: They were these normal police uniforms, I can describe them. I cannot tell the colour; all I can tell is that they were the large outfits.

The Commission Secretary (Ms. Nyaundi): When they came to your house did they say anything? Did you hear them say anything?

Mr. Subow Farah Shurue: They did not talk to me. They did not talk to us.

The Commission Secretary (Ms. Nyaundi): When they came to your house, did this happen in any other house in the neighbourhood?

Mr. Subow Farah Shurue: When the shooting started, people ran away and I was the only one who remained there with the dead body of my son.

The Commission Secretary (Ms. Nyaundi): Have you ever had a discussion with other people and maybe people have told you what was happening at that time, or why the police were attacking people?

Mr. Subow Farah Shurue: No, I have not discussed it with anybody. What gave me the impression that they were police was the uniform.

The Commission Secretary (Ms. Nyaundi): Did you ever find out whether they had attacked other homes?

Mr. Subow Farah Shurue: I used to hear it; I heard of some cases.

The Commission Secretary (Ms. Nyaundi): Did you ever hear whether those police officers were ever found, arrested and charged in court?

Mr. Subow Farah Shurue: No, I did not hear anything. In the days that followed I was busy treating my child; that is nursing my daughter.

The Commission Secretary (Ms. Nyaundi): Did you report this incident, maybe, at the police, or to the DC?

Mr. Subow Farah Shurue: No, I did not make any report, because the next morning I took my daughter to hospital.

The Commission Secretary (Ms. Nyaundi): You have said that there was a witness called Abdi Butho Shurie?

Mr. Subow Farah Shurue:: Yes, he is there.

The Commission Secretary (Ms. Nyaundi): Could we contact him for more information?

Mr. Subow Farah Shurue: Yes, you could contact him.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Shurue. Please wait, the Commissioners will ask you a few questions.

The Presiding Chair (Commissioner Chawatama): Thank you very much for sharing your testimony with us. We are really sorry for the loss of your son. The Commissioners will now ask you a few questions for clarifications.

The Acting Chair (Commissioner Namachanja): Mr. Shurue, it is unfortunate what happened to your family. I know that as you say you lost your son, and the remaining one is in pain, has been in pain, and we are sorry for that. I hope that before we leave, if you could allow, we would like to speak to your daughter, who is in pain, so that we see whether we could refer her to any hospital or how she can be assisted.

Mr. Subow Farah Shurue: It is good for you to say that, but my daughter is in Masalani. I came from there yesterday but I was not told to bring her. The fact of the matter is that you will see all the marks and I am sure she has problems.

Commissioner Dinka: Mr. Shurue, thank you very much for coming, and narrating this heart rending story. I join my colleagues in expressing my sorrow at your loss of your son, and I hope that in due course, your daughter will find some relief.

I have two simple questions; number one, did these people come straight to the house and start firing, or was the firing from the outside towards your house? Secondly what was going on outside in the rest of the village? Were there some bandits or some poachers that the police were chasing, or this was just a self-contained attack on your own house?

Mr. Subow Farah Shurue: All that I know is that it was a continued shooting; what happened was that it all started in my house. The son was carrying the sister, and then we heard the shot and I saw him fall down and then they started hitting me at the back with the butt of a gun. When they decided to leave was when I saw them. It was so traumatizing and I could not tell exactly what they were. They were big men; it did not start from elsewhere but just in my household.

Commissioner Slye: I want to add my voice to that of my fellow Commissioners; my sympathy to you for your suffering. One question, are you able to remember what language the individuals were speaking, the men in uniform who came to your house?

Mr. Subow Farah Shurue: No, I cannot remember; we did not even talk.

Commissioner Slye: They did not say anything?

Mr. Subow Farah Shurue: They did not say anything; they hit me two, three times with the butt of the gun, and then kicked me. That was when I looked at them and saw the uniform and that was all.

Commissioner Shava: *Mzee* Shurue, I add my voice to that of my fellow Commissioners and empathise with your situation and the continuing pain that you and your family are going through. I would like to ask you one question: How were you earning your living before this incident, and how do you earn your living now?

Mr. Subow Farah Shurue: I was a poor man. I used my wealth to educate my son, the one who was killed. I have a few goats, from which I derive my livelihood. It is these goats that help me to keep my household alive.

The Presiding Chair (Commissioner Chawatama): *Mzee*, you have mentioned that you took your daughter to the hospital; were you given any medical records by the hospital?

Mr. Subow Farah Shurue: I am not educated; I did not know the importance of this. I brought her back from the hospital, and I discarded all the papers. At that particular moment I did not have the presence of mind to remember keeping such records.

The Presiding Chair (Commissioner Chawatama): I think when you were asked the age of your daughter you said you could not remember and you mentioned the fact that you do not have a healthy state of mind.

Mr. Subow Farah Shurue: I do not remember.

The Presiding Chair (Commissioner Chawatama): On the issue of the healthy state of mind, was this as a result of the incident that took place?

Mr. Subow Farah Shurue: It started with what happened to me; I do not get sleep normally and it all started when my son died. I lost memory and it was out of that experience that I got this problem.

The Presiding Chair (Commissioner Chawatama): On behalf of the Commission, I would like to thank you most sincerely for testifying before the Commission. We see your pain; we share your pain but we thank you all the same that despite the pain you found it possible to share not only with the Commission, but also with many Kenyans the

experience that you went through. We wish you peace for the rest of your days here on earth. I wish to hand over to the Leader of Evidence to direct us on how we are going to proceed.

The Commissioner Secretary (Ms. Nyaundi): Commissioners, with your kind permission I am requesting that we adjourn until 3.00 p.m. This is our last witness; I am praying, therefore, that we adjourn until 3.00 p.m.

The Presiding Chair (Commissioner Chawatama): The hearing is adjourned until 3.00 p.m. when we will be back.

(The Commission adjourned at 11.45 a.m.)