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Public Hearing Transcripts - North Eastern - Wagalla Massacre (Nairobi) - RTJRC02.06 (NHIF Auditorium) (Joshua Peter Matui testimony)

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON THURSDAY, 2ND JUNE, 2011
AT THE NHIF AUDITORIUM, NAIROBI**

PRESENT

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

(The Commission commenced at 9.50. a.m.)

(Opening Prayers)

The Presiding Chair (Commissioner Slye): Good morning. I want to welcome all of you to the continuation of our hearings, here in Nairobi, which commenced on 17th May, and 18th May. Those hearings were in turn, a continuation of hearings of the Commission held in the northern region of the country in April and May.

*(The Presiding Chair (Commissioner Slye)) introduced himself
and other members of the Commission)*

I would like to first lay down a couple of ground rules. I would like to ask everybody in the hall to please turn off your cell phones, even if they are in silent, because they can still interfere with our sound system. So, we will appreciate if you can turn them off. If you need to take or receive a call, please, leave the hall to do so.

Secondly, this Commission was set up to provide a safe space for witnesses to speak, to tell their stories and to tell their truths. So, we ask that when individuals are testifying, you please listen politely and attentively. Some of the things you may hear may differ from your own recollection, or your own perspective on events. Some of the things you may hear, you know nothing about. It may be new information to you and some of the things you hear may confirm some of the assumptions; some of the knowledge that you already have. Regardless of where you fit into those three categories, we ask you, please, politely listen attentively to the testimony of the witnesses.

Additionally, we would like to ask those of you, including members of the press, who are with still cameras to not take photographs of witnesses during their testimony. You may take photographs before and after their testimony. But we ask you not to take photographs during their testimony.

The way the proceedings here will occur is that first, a witness will be sworn to tell the truth. The Evidence Leader will then lead that evidence in his or her testimony, and then members of the Commissioners' panel may ask additional questions to that witness.

I would like to know whether there are any counsel present. If so, could they identify themselves and who they are representing?

Mr. Kioko Kilukumi: Madam Acting Chair and Commissioners, my name is Mr. Kioko Kilukumi; together with Mr. Elijah Mwangi, we appear for the following persons: Mr. A.J. Njue, David Mutemi, J.K. Kaguthi, D.K. Mativo, J.P. Mwangovia, David Mwiraria, Benson Kaaria, Amb. B.A. Kiplagat, John Gituma, James Ole Serian, Gen. Rtd. Kibwana, Major Philip Chebet, Lieutenant Murungi, Joshua Matui, J.M. Ndirangu, and P.N. Kingori.

The Presiding Chair (Commissioner Slye): Thank you, counsel. Are there any other counsel present? I see no other counsel present.

I would like to deal with a few preliminary issues. At our last hearing on 17th May, and 18th May, there were a number of individuals, or two individuals, whom we had summoned; Mr. Mwiraria and Mr. Kaguthi, who were not present. We had asked that they provide to the Commission documentation of the reason for not being present. We were told that they were, I believe, seeking medical attention; could I ask the Evidence Leader if we had received that information?

The Commission Secretary (Ms. Nyaundi): I confirm that by a letter dated 24th May, counsel for both Mr. Mwiraria and Mr. Kaguthi have forwarded documents confirming that his clients had seen a doctor. There is a medical sheet dated 24th May, from Dr. Wachira of the Aga Khan University Hospital confirming that Mr. Joseph Kaguthi attended there on 17th May. There is also a medical sheet dated 23rd May, from Dr. E. Nyanjui, confirming that Mr. David Mwiraria attended treatment on 17th May, 2011.

The Presiding Chair (Commissioner Slye): Thank you, Evidence Leader. There were also counsel for witnesses, Mr. Kioko. One of the reasons stated was that his clients wanted additional time to retrieve official documents, including minutes, related to the issues that this Commission is investigating, so that they could better prepare themselves for the testimony. So, Evidence Leader, I want to ask if we have received from any of those clients or anyone else, any additional documentation, since our last meeting.

The Commission Secretary (Ms. Nyaundi): The counsel for the witnesses did furnish us with statements for his clients, which have been availed to the Commission. In addition, he did copy us his letter dated 18th May, 2011, addressed to the Permanent Secretary for Provincial Administration and Internal Security, requesting minutes to be availed to him. We are in receipt of that letter.

The Presiding Chair (Commissioner Slye): Clients' counsel, have you received a response to that letter yet; the letter of 18th May?

Mr. Kioko Kilukumi: Commissioners, I have not received a written response to my letter. However, I made a follow up with the Legal Officer, Mr. Charles Ondiek, who works in the Office of the President. He informs that those were classified documents, and they were in the process of declassifying them for the purposes of availing them to this Commission.

The process of declassification has reached the door-steps of the Attorney-General. It is the Attorney-General who delayed in giving his final approval. Reportedly, he was out of the country and that was why he could not deal with this particular request. The latest information according to an in-house lawyer is that the Attorney-General would be communicating to them by close of business today. As soon as those documents are availed to us, we will table them before the communication.

The Presiding Chair (Commissioner Slye): Mr. Kioko, related to that, I want to thank you and your clients for having submitted statements to the Commission, and submitted them in a number of days in advance to give us time to review them. So, we appreciate that.

We note that in some of the statements, some of the witnesses have referred to specific official documents. It appears you do not have possession of them; I want to ask though, if those individuals who have those documents can avail them to the Commission because they are now officially referred to in our records.

Mr. Kioko Kilukumi: I can confirm to the Commission on the statements that have been made by my clients. There is reference and in particular, the statement of Amb. Kiplagat, there is extensive reference to minutes, and has in possession whatever minutes he makes reference to in his own statement.

However, the request from the Commission listed a number of minutes, which they wanted copies, and my letter also requested those minutes to be available. So, what is referred to in the witness statement, the witness will be able to make that available to the Commission.

The Presiding Chair (Commissioner Slye): Thank you, Senior Counsel; we have seen the letter that you wrote and appreciate that you took traction from specific dates of minutes that either we have or we know exist.

With respect to the documents referred to in witness statements, including Amb. Kiplagat's statement, we prefer, and actually require that documents that were referred to before this Commission be given to the Commission seven days in advance. So, I believe we will be hearing him tomorrow. We would like, if possible, to get those documents before he testifies as a witness tomorrow.

Mr. Kioko Kilukumi: Mr. Presiding Chair and Commissioners, we will comply with that.

The Presiding Chair (Commissioner Slye): Are there any other preliminary issues that we need to deal with before moving on to the first witness?

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, with your kind permission, we had summoned a number of witnesses. Upon receiving statements from Mr. Kilukumi, I have had a discussion, and I wish to make a formal application--- We have agreed that we can dispense with the testimony of Mr. Gituma but request that he avail himself, if need be, for additional statements. However, we will not require him to testify.

Mr. Presiding Chair, Sir, you will also notice that I did not include in the list of persons whom we will be hearing, Lt. Colonel Murungi. I received a statement made by Ikiara, and I did not know that they were one and the same person. Mr. Kilukumi now informs me that it is Lt. Murungi. I will, therefore, be praying that we slot to hear him. One of the witnesses, James Stanley Mathenge, has made a request that he had a prior engagement and is not available tomorrow. We have spoken with Mr. Kilukumi and said he can be heard on Monday. Subject to Lt. Murungi's availability, I will, therefore, be praying that we hear Mr. Mathenge and Lt. Murungi on Monday.

The Presiding Chair (Commissioner Slye): Assuming my fellow Commissioners have no objection, I think we are amenable to that change.

Mr. Kioko Kilukumi: Mr. Presiding Chair and Commissioners, I confirm that, that is our discussion with Patricia Nyaundi. But I would also seek your further direction. All the people who were summoned, and whom I represent are present before you. I am seeking your direction, whether they must sit throughout, or they can come tomorrow, for those who are required to testify tomorrow and those who are required to testify on Monday, to come on Monday. Whatever direction you give, we will comply with it.

The Presiding Chair (Commissioner Slye): Thank you, Senior Counsel. First of all, we want to appreciate you and your clients for showing up today.

I know that the list of witnesses, I believe was given to you, perhaps, yesterday, or even last night at very short notice. We appreciate that all of your clients have appeared. Those who are not listed for today are not required to be here. They obviously, as any member of the public, may stay and listen to the testimony but they are not required to be here. We have just asked those who are on the list for today's hearing to be present during today's proceedings.

Could I then ask the Hearing Clerk to bring and swear in the first witness?

(Mr. Joshua Peter Matui took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Matui. I will now request that you, please, stand by your microphone.

Please, tell the Commission, your full names for purposes of the record.

Mr. Joshua Peter Matui: My names are Joshua Peter K. Matui.

The Commission Secretary (Ms. Nyaundi): What is your current occupation?

Mr. Joshua Peter Matui: Currently, I am a farmer and formerly a retired Permanent Secretary. At one time, I was District Commissioner, Wajir District.

The Commission Secretary (Ms. Nyaundi): I have with me two statements that you recorded. One, you recorded on 15th April, 2011 at the Commission offices and the second statement was recorded on 23rd of May, 2011.

I now invite you to present the statement that you recorded on 23rd of May.

Mr. Joshua Peter Matui: Madam Acting Chair and Commissioners, I wish to report that I was invited to travel to Wajir to attend public hearings, but I was unable to do so, because the Commission has not made prior arrangements for my travel.

When I failed to do so, I came to the office to collect my letter. I opted to give a statement because there were no arrangements for me to travel to Wajir.

That statement is brief. I wrote it as far as I could remember, since it was a long time ago. I left Wajir many years ago.

In my statement, I have stated I was posted to Wajir as a District Commissioner in October, 1982. When I arrived there, I found a district which was in turmoil due to clan conflicts and clashes. When I enquired why they were fighting and why people were stealing each other's livestock, and killing each other, I was told that primarily, the clashes were due to watering facilities, grazing facilities and even parliamentary seats. I was told initially even after Independence, Wajir District used to have three constituencies. Wajir West used to be predominantly occupied by Ajurans, Wajir North was for Degodia and Wajir South was for Ogaden.

In my statement, I could not recall the third clan; that is Ogaden. But over the years, the Ajuran seat - that was Wajir West, was taken over by Degodia.

That infuriated the Ajuran. I also realized that there were very many illegally acquired firearms among the clans. You could easily get firearms from neighbouring countries and each clan, more or less, had its own organized groups which had guns. I found out that there had been a systematic campaign by the Government to talk to the clans to surrender the illegal firearms because those were the ones which were making the people to fight and steal from each other.

I would like to mention that even before I went to Wajir, which I did in October, 1982, one District Officer had been killed in Wajir and transported to his home district – that is in Kisii – and when he was brought for burial, I was District Commissioner for Kisii. So, I went and found a district already in turmoil. The Provincial Administration used to campaign by holding public *barazas* using clan elders but it was a very tedious work because the clan elders would undertake to the Government and tell them that, actually, they would cease fights. However, within a very short time, you would hear that very many people from one clan had been killed. As we transported those ones to Wajir District Hospital, we would hear a revenge on the other side. In fact, we were advised later on by leaders that there was no point of taking the dead to Wajir District Hospital for post mortem because, already, we knew that they had died of gun wounds. We also knew that if the bodies were taken to Wajir District Hospital – and Wajir Town, being a cosmopolitan town because that is where people from all the clans were settled – then tempers would flare up within the township. So, those leaders advised us that if we hear that ten people have been killed in Buna, Eldas or Griftu for that matter, they should be buried immediately and that there was no point of taking the bodies to Wajir Town.

There was an incident either in Buna or Eldas – I cannot recall where – where five women were killed and out of the five women, two of them had babies. When those babies were collected, they were found suckling their dead mothers. I think it was as a result of that episode that I told the local people and I asked them whether they have ever heard of babies suckling dead mothers. I asked them: “Why are you killing each other? If it is stealing, you could steal livestock from each other but surely, spare the lives.” I recall that, at one time, the elders said that they will administer an oath which would bind the two clans – the Degodias and the Ajurans – to a peaceful coexistence. I briefed my Provincial Commissioner and asked him whether he could attend the ceremony - a peace-searching or oath-taking ceremony – which he did. He came with the whole Provincial Security Committee. It involved slaughtering of seven virgin lamb kids. It was said that seven elders from one side would hold the lambs and then some elders from the other clan would slit open the throats just once with a very sharp knife and then the lamb would be let loose. It would jump around splattering blood and then, definitely, it would die either on the right side or on the left side. We were told that if the elders from both sides were genuinely after peace or if they were genuinely true to what they were seeking, then the seven lambs would die on their right side. For sure, those seven lambs went and died on the right hand side and there was jubilation. The people said: “We have now started peace.” I recall that for some time, there was relative peace; and I say the word “relative peace” is important because I do not recall at any time when there was complete peace. So, there was a lull; I mean, there was relative peace and I think it was on account of that, that I asked my Provincial Commissioner whether he could now allow me to proceed to take my annual leave for 1982 because before I left Kisii, I had not taken my annual leave and part of my 1983 annual leave. He accepted and, so, I proceeded on leave. I cannot, for sure, say the actual date when I started my leave. I proceeded to my home area – I come from Mukaa District in Kilome – and continued enjoying my leave.

I left my then District Officer I – one Pakia Ng’ondo – whom I had been with for some time and he was conversant with the area but he was transferred to the Treasury, Nairobi,

because he used to get cerebral malaria attacks. So, he was transferred on health grounds to Nairobi. Then, another officer was posted to replace Mr. Ng'ondo. That officer, Mr. Manasseh Tiema, of course, went to Wajir as an Acting District Commissioner. I think you have had the advantage of meeting him and he has given his statement.

In my first statement, I emphasized that I was not in Wajir when the Wagalla Massacre happened, but I was recalled almost immediately after the episode. When I arrived there, I did not find the person who was physically on the ground as the operation was being mounted and as it was being carried out because that officer, Mr. Tiema, had immediately been suspended. I found another officer who had been posted, a Mr. Godfrey Mate, who was acting as the District Commissioner.

In my first statement, I had written or stated that when I went back to Wajir, I found there had been skirmishes between the Degodia and the Ajuran. The then District Security Committee, which is normally comprised of the District Commissioner as a chair, District Special Branch Officer as a member and the Officer Commanding Police Division as a member--- So, I found that because the primary objective of maintenance of law and order at a district is vested at that District Security Committee, I found out that the Committee had organized an operation which entailed rounding up of male Degodia adults. But why round up male Degodia adults? It was because that clan's response to surrendering of firearms had been very minimal. Whereas the Ajuran had surrendered quite a good number of firearms, the Degodia had surrendered very few and yet, they had continued to attack the Ajuran. It reached a point where the Ajuran were turning back to the Government and asking the Government: "You appealed to us to surrender firearms; we did surrender most of the firearms but our opponents have surrendered very few and they have continued to inflict hell on us. You either protect us now, our lives and property, or you return our firearms." So, Commissioners, put yourselves into the shoes of the District Security Committee; they were being challenged by the Ajuran and they had to do something; first, to encourage through coercion, the Degodia to surrender firearms and stop killing the Ajuran. So, I was told, and I stated in my statement, that male adult Degodia were gathered at Wagalla Airstrip which was newly constructed but it was not being used. So, male adults were gathered there purposely to be interrogated as to why or as to whether they knew those who had killed. I recall there were two events in early February - I think one was on 3rd and another one was on 6th and there was another one on 9th. The one of 9th is where one male and I think, five women were killed. So, the District Security Committee rounded up those men and detained them at the Wagalla Airstrip for the purpose of asking them whether they knew the killers or the murderers – the people who had done those heinous acts – and, secondly, whether they had firearms and, if they had, whether they would voluntarily surrender them. If they did not have firearms, whether they knew their fellow men had firearms. It would have, definitely, been easier because majority of them had been gathered there. One would say, "yeah, I know, for example, Mr. Ahmed has got a gun", and Mr. Ahmed would be found. I think that was the purpose of the District Security Committee to gather those people there.

Earlier on, I had stated that it was on 4th at the airstrip, but later on, I recalled that it was on the 3rd. That was when the Acting District Commissioner visited the site to be briefed

about the on-going operation. This bit that I am stating now, I was told by some of the survivors. They told me that when they saw the Acting DC arrive in his official Land Rover, because they knew it because it was a unique caravan Land Rover – they literally thought “their saviour” had arrived and, more so, because for those three days, they had not been fed or given water. So, I think it was human that when they saw the District Commissioner appear, they thought that their saviour had come. But after the Acting DC had been briefed, he started moving away and, then, those survivors told me that, that was when people – those suspects – panicked. They stood up to draw the DC’s attention and their standing was misinterpreted by the security officers to have been an affront, they wanted to escape or they wanted to attack the DC. So, the security officers had to restore the *status quo* and shield the DC from any possible attack.

I had said that what happened at that brief moment of confusion can best be described to the Commission by those who were at the site. I was not there and I cannot, for sure, say what actually happened. I was, however, told that after that episode, some suspects died and, of course, the information was flushed to Nairobi to their local hon. Members of Parliament. Of course, the information was flushed to them and some high ranking Government officers went to Wajir and it was during the briefing that it was decided that the substantive District Commissioner be recalled. It took some time but I was eventually traced through a signal which required me to report to Moi Airbase for an aircraft to take me to Wajir. I went to Moi Airbase on that day that I was required to be there, but I arrived a little bit late only to find that the normal supplies transport battalion plane had already left for North Eastern Province. I then rushed to the Office of the President, where I asked the Office of the President to make immediate arrangements for my travel to Wajir. That was done very fast and I flew to Wajir *en route* Garissa for further briefing by my Provincial Commissioner.

I had also stated that immediately I was recalled, I was there very briefly; I think I was there for about two to three weeks and then because I had been scheduled to accompany some other District Commissioners to go for further training in Britain, I left. I went to the United Kingdom and during my stay there, which was, I think, about 10 to 12 weeks, the person whom I had found in Wajir is the one I left Acting District Commissioner. While I was away, the Government had appointed an investigation team which, I think, was headed by a former PC, Mr. Etemesi, to establish what had actually happened. I was told that, that team revealed that 57 people had died.

Mr. Presiding Chair, and Commissioners, in my first statement, I had said that I would have wished to attend the hearing and during which period I would state very clearly that I was not on the ground when the Wagalla operation took place and how it was conducted. I did not know how many people had been gathered. That is what I had stated in my earlier brief statement which, I think, is at your disposal.

I was summoned by this Commission to appear before it today, 2nd June, 2011, to provide information on the events that occurred in Wajir in 1984 leading to the Wagalla Massacre. *Per se*, I would have confined myself to events starting January, 1984, but I thought and I pleaded with the Commission that it allows me to give the background

information on the security situation leading to the security actions which were taken by the District Security Committee in Wajir. I feel that if I confine myself only to events that occurred in Wajir in 1984, the Commission will not get the picture of what had been happening in the district in as far as security matters were concerned and as such, I pleaded with the Commission to be patient to hear and know some background information on the insecurity and the clan sectional clashes or conflict between the Degodia and the Ajuran from November, 1982. That is, more or less, the same time I reported there, although I reported there in early October. From November, 1982, up to 1984, and particularly regarding the immediate events which led to the mounting of the security operation which led to the Wagalla Massacre. This information, I said, is contained in a letter dated 27th February, 1984 which I wrote to the Provincial Commissioner, Garissa, titled: "Report Regarding the Recent Operation which Resulted to Rounding up of Male Degodia Adults at Wagalla Airstrip from 10th February to 13th February."

Briefly, the clan conflict between the Garre and the Ajuran which started sometime in March, 1983, had ended on 14th November, 1983, after a joint elders meeting held in Moyale. However, during the series of elders meetings before the Moyale meeting of 10th November, 1983, the Garre had admitted that the Degodia had been fighting the Ajuran under cover of the Garre. The Ajuran, therefore, sensed that part of the suffering they had encountered had been inflicted by the Degodia. In retaliation on the same date – that is 10th November, 1983 – the Ajuran armed bandits--- Commissioners, you will recall that I had said that every clan appeared to have its own armed people. So, after the Moyale meeting, where it transpired that although the Garre had been fighting with the Ajuran, they realized that the Degodia had been fighting the Ajuran through the Garre. So, immediately after the Moyale meeting that same evening, the Ajuran armed bandits or people attacked a group of 18 Degodia *manyattas* at places called Chipida and Itole Roba – and that was West Eldas – and they killed a male adult, injured another and made away with very many camels – 2,000 – which had not been recovered as at 27th February. As at the date I wrote this report, the 2,000 heads of camels had not been returned by the Ajuran, although they had undertaken to return them so as to appease the Degodia.

On the following day, that was on 11th November, the Degodia revenged by killing one male adult and five women and stole over 1,00 head of cattle at a place called Kilkil near Eldas. I had said that was the most heinous single massacre and tempers of both clans shot sky high. The Degodia made two other raids in the Ajuran *manyattas* purposely to steal livestock, but their loot was intercepted and recovered by our security forces and returned to the Ajuran. Although the Ajuran elders had promised to return the 2,000 stolen camels, they had not done so. This, obviously, had continued to anger the Degodia, who had been heard saying that until the Ajuran returned their stolen livestock, they will never reconcile with them.

In an attempt to diffuse the tribal tension between the two warring clans, a series of public *barazas* were held and addressed by the District Security Committee at Wajir Town, GriftuGriftu, Eldas and Buna. Both the Ajuran and the Degodia elders held

separate meetings at Wajir Town during which they searched amongst themselves the cause of insecurity.

Mr. Presiding Chair and Commissioners, I would like to say that even the clan elders, at one point, were confused as to who was actually perpetuating those killings, because amongst themselves, they would say: “There would be no further killings,” and yet, after a day or two, there would be an attack. So, they held a meeting at Wajir Town to ask amongst themselves who could be perpetuating that. I remember one clan elder telling me that those could be people from outside who were to continue perpetuating some insecurity or, could be, they were killing and stealing livestock for their own benefit. So, that was the purpose of the meeting in Wajir. The elders from both sides held another meeting at the Wajir Court on 22nd November, 1983, and made a solemn agreement by swearing – while lifting the Holy *Qur’an* – that they would end the clan clashes. During the swearing ceremony, however, it was evident that the Degodia were rather hesitant to lift the Holy *Qur’an* as they wanted the Ajuran to commit themselves to return the 2,000 camels they had stolen. The Holy *Qur’an* swearing temporarily appeared to have solved the problem for some time, although intelligence reports had it that the Degodia were still determined to revenge, especially after the November and December onset of rains.

To prevent clan conflict flare ups again, campaigns for surrender of firearms by all clans and especially the Ajuran and the Degodia, were intensified through, of course, the District Security Committee. Hon. Maalim Mohamed, the then Minister of State, led the surrender of illegal firearm campaigns on 16th November, 1983, when he addressed a leader’s meeting followed by a big public *baraza* in Wajir Town in which he appealed to the two clans to end hostilities and gave them 10 days to surrender all the firearms. By the end of the 10 days grace period on 27th December, 1983, the Ajuran had surrendered 11 firearms whereas the Degodia had surrendered only one rifle. The Provincial Commissioner, North Eastern Province, leading his Provincial Security Committee, came to Wajir and addressed a big public *baraza* at Buna and extended the grace period for surrendering of the firearms by 10 more days; that was to end on 21st January, 1984, during which period the Ajuran surrendered 15 more firearms and Degodias surrendered an extra seven, thus making the total number of firearms surrendered by Ajurans to 26 and eight from Degodias.

The 1984 events leading to the Wagalla Security Operation as the appeal to surrender the illegal firearms continued to be made through public *barazas* and clan elders’ meetings and as the response continued to be poor, the Wajir District Security Committee (DSC) realized that there were certain individuals among the warring clans who had been discouraging the clans from surrendering their firearms. Consequently, the DSC decided to take appropriate measures to speed up surrendering of firearms as it was evident that as long as there were illegally acquired firearms with the people, security would not be guaranteed. Consequently, four people were arrested and detained under the Preservation of Public Security Act – I do not know whether it is Cap. 57, or something like that. That move, unfortunately, annoyed the Degodia, who commenced a series of crime waves directed against the Ajuran, firstly and, later, to the established authority as follows:

On 29th January, 1984, near Eldas, an Ajuran woman who had travelled from Wajir Town and alighted four kilometers before reaching Eldas was raped, beaten unconscious and left for dead by two unknown people who emerged from the bushes and on enquiring about her clan, ruthlessly attacked her. The criminals were strongly believed to be the Degodia. Two days after that, that was on 31st January, 1984, at Eldas Trading Centre, a house of one known Ajuran woman who was a medical attendant was broken into by armed bandits who stole Kshs2, 240 and some cigarettes. Then, almost immediately or on the same day, the theft of five camels near Griftu by a group of armed bandits who were believed to be the Degodia was reported. On 3rd February, 1984, at Tula *Manyatta* near Griftu Trading Centre one Ajuran man, Mr. Yusuf Ali Omar, aged 50 years was shot dead, four others were injured and six camels were stolen by armed bandits strongly believed to be the Degodia. On 6th February, 1984, an Ajuran *manyatta* near Griftu was attacked by three armed bandits who beat up the occupants and stole four camels. Three days after that, that was on 9th February, 1984, the Dhyako *Manyatta* Massacre was reported.

As if the above five crime incidents I have narrated by the Degodia bandits who had refused to surrender their illegally held firearms were not serious enough, a gang of ten armed bandits attacked the above named *manyatta*, that is Dhyako, and mercilessly killed six people - one male adult and five helpless and poor women, injured two other people, shot dead three camels instead of stealing them and burnt down all the houses therein. That was the height of insecurity by the Degodia bandits against the Ajuran.

I have said it is important for the Commission to note that the above six crime incidents of killings, attacks, theft against the Ajuran by the Degodia caused a lot of tension within the district. The Ajuran were openly blaming the Government for its failure to offer them protection for their lives and their property, especially after they had heeded the Government's appeal to surrender their firearms, which they would have used to protect themselves against the Degodia instigated criminals. The Degodia appeared completely unconcerned. Indeed, one Degodia woman was reportedly overheard saying that the work of the Ajuran would be to bury their dead as long as they continued milking the stolen camels from the Degodia. Those attacks and utterances really annoyed the Ajurans, who were convinced that, indeed, worse things were likely to befall them.

The DSC had no option but to act swiftly to restore public confidence. The DSC then held a meeting at 3.00 p.m. – note that that was immediately after the Dhyako Massacre – under the chairmanship of the Acting District Commissioner, Mr. Tiema. The DSC decided to do the following: One, mount a joint Kenya Army, Kenya Police and Administration Police operation under the command of Officer Commanding “A” Company 7th KA, Wajir.

Mr. Presiding Chair and Commissioners, you will recall that I had said that although the DSC is usually comprised of the District Commissioner, the OCPD and the District Special Branch Officer, in North Eastern Province, the Army Officers are members. It was unanimously agreed by the DSC that the operation should include rounding up male adult Degodias from the areas predominantly occupied by the Degodia. That was from

Griftu, Eldas, Buna, Dambas, Elben, Habaswein and Bula Jogoo in Wajir Town. A total of 381 people were gathered at Wagalla Airstrip the following day; that was on 10th February, for interrogation as to, first, whether they knew who the murderers of the people who were killed on 3rd and 9th February at Tula and Dhyako *Manyattas*, respectively. Secondly, whether they had firearms and if so, whether they could voluntarily surrender them. Thirdly, if they did not possess firearms, whether they knew people who had the firearms.

In a nutshell, the purpose of the male Degodia adults to be assembled there was to ease interrogation and to reveal those who had firearms or those who had committed the crimes I have narrated. The suspects had been transported in vehicles to the airstrip from where they were grouped into subsections to ease interrogation. Some of the people would admit that they had firearms and they would be released by the security personnel to go and show them where they had hidden the firearms, only to turn out to have been playing tricks. Only two firearms and 16 rounds of ammunition were recovered from the operation.

On the third day since the suspects had been gathered at the airstrip, that was on 12th February, 1984, the Ag. DC accompanied by the OCPD and the DSPO went to the airstrip to assess the situation. As the trio arrived at the site, the suspects stood up and started fleeing in all directions, with the majority fleeing towards a section where the perimeter fence had been broken. Others armed themselves with stones and were moving towards the Ag. DC. As the people started fleeing, the security personnel tried to stop them. They were ordered to stop fleeing, but they ignored the orders.

The OCPD, seeing that the people who were in lawful custody were escaping and had now turned to be a riotous mob, ordered the security personnel to open fire to those who were fleeing, with a view to restraining them from escaping. When everything calmed down, it was discovered unfortunately, that 13 people had been fatally shot within that short time of confusion.

The DSC then decided that as the people were no longer revealing any useful information, they were to be released the following day; that was on 13th February, 1984. As they were being released and transported to wherever they had been collected, it was found that 16 other people had died of natural causes, thus bringing the number to 29 whose bodies were immediately disposed by dumping them far from the Wagalla Airstrip.

Another event related to the operation was stripping of houses at Bula Jogoo in Wajir Township in order to check whether there could have been firearms hidden within the roofs. People who were found in those houses had been given notices to strip grass off their huts. Those who complied did not have their houses burnt, but those who disobeyed the orders had their huts burnt to prevent criminals from getting shelter within Wajir Township.

Unfortunately, despite the operation, crime persisted. Although Wagalla Operation was called off on 13th February, 1984, armed bandits who were strongly believed to be Degodia, continued to cause insecurity within Wajir District. Indeed, it had been known that the Degodia armed bandits had sworn to severely revenge against the Ajuran, Ogaden, and senior civil servants within the district, especially during the April, 1984 rains when ground movement of security personnel would be greatly hampered. In the meanwhile, during the month of February, 1984, as the Wagalla Operation was still fresh, the following crimes were committed against the Ajuran and Government institutions.

1. On the night of 21st or 22nd February, 1984 at a place ten miles east of Bunna towards Ajawa, the Degodia bandits attacked an Ajuran *manyatta* and killed five people. They injure one person and stole 150 goats and camels. They destroyed all the houses. Only one child survived the massacre.
2. On the night of 22nd, 23rd February, 1984, an attack to Ajawa AP Camp where 20 armed bandits held siege the AP camp from 11.30 p.m. to 1.00 a.m. Two houses were broken into and property and cash were stolen. That was a direct confrontation with a Government institution and was interpreted to mean the beginning of systematic revenge against the established lawful authority.
3. On the same night, there was another attack on an Ajuran *manyatta* near Ajawa wells by a group of 20 armed people. Definitely, this must have been the same group which took siege of the AP camp. The owners of the *manyatta* cheated the bandits that they were Garres and not Ajurans. The four people who had been abducted there were warned to move away from Ajawa Training Centre as the bandits had declared war to that centre.
4. On 23rd February, a letter had been given, addressed to the AP Sergeant who was in charge of the Ajawa AP camp by one Mr. Lore Mohamed Abdallahi, a leader of the Degodia group of bandits. He threatened the AP Sergeant that he should relax his determination to hunt down Degodia bandits as he had done so in the night of 22nd and 23rd February when they attacked a *manyatta* near Ajawa Well and that the sergeant should wait for a reply from him as his group would destroy Ajawa Training Centre. The motto for the bandit's leader was, "The Fire is now Burning". This meant that worse things were yet to happen.

The above is a summarized version of the report which I had submitted to the PC, North Eastern Province on 29th February, 1984 to update him on the operation which resulted in the rounding up of the male Degodia adults at Wagalla Airstrip from 10th February to 13th February.

At this juncture, I would like to say that when I inquired from the Ag. DC--- When I received a signal from the PC, it gave an impression that the PC and the Provincial Security Committee was not being updated on a daily basis by the District Security Committee. I asked the Ag. DC whether or not he was updating the PC. He confided in me that things were happening so fast that they had forgotten to update the PC on a daily

basis. No wonder then, the PC asked me to give a report with details of the security events which led to the Wagalla Operation.

I hope I have highlighted the events that occurred not only in Wajir in 1984, but within Wajir District during the greater part of 1983 as necessary background information for one to understand that security situation in Wajir District then forced the Wajir District Security Committee to mount a security operation which led to the Wagalla Massacre. The Commission should, however, take note of the fact that although I was a DC for Wajir in 1984 during the Wagalla operation, *per se*, I was on official leave and was only called back after the horse had bolted out of the stable and even during the time investigation was being done by a Government appointed team which came up with the Etemesi Report and which indicated that 57 people had died. At that time, I was in the UK for a course.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Matui. I will ask you a few questions for clarification. You said that prior to your coming to Wajir, you had been in Kisii and a DO was killed in Wajir. I assume you attended the burial before you reported. Would you remember the name of the DO who was killed?

Mr. Joshua Peter Matui: I think his name was Mr. Matoke. He was recently recruited and he had not even earned his first month salary.

The Commission Secretary (Ms. Nyaundi): Were you informed of the circumstances under which he had been killed?

Mr. Joshua Peter Matui: When the body was brought to Kisii, it was brought by the Deputy PC, who will also appear before you. When I inquired, I was told that the DO was going out on an official function to attend a public *baraza*. His vehicle was attacked five kilometers from Wajir.

The Commission Secretary (Ms. Nyaundi): You said that you arrived and found a district that was in turmoil. Civil servants were being attacked more often than not. What exactly was the situation even as you proceeded on leave?

Mr. Joshua Peter Matui: As I applied for my leave, there was relative peace compared to what used to occur on a daily basis. I recall my PC telling me that the security situation appeared to have cooled down and I could take my leave. He told me to keep my ears open because we were waiting for the President's visit. There was relative peace and not absolute peace.

The Commission Secretary (Mrs. Nyaundi): Did you proceed on leave before the Minister came to Wajir or was it after?

Mr. Joshua Peter Matui: I cannot recall. Madam, you will take note that it is now almost 28 years ago; I cannot recall. I could have been there or I had started my leave.

The Commission Secretary (Ms. Nyaundi): Would the Minister attend a rally in your absence as the local DC?

Mr. Joshua Peter Matui: I would definitely attend. But as I proceeded on leave, I left somebody acting as the DC. When acting, you have full powers bestowed on that office. If I had not started my leave, I must have attended the meeting. If I was on leave, then the Acting DC must have attended. He was the host anyway.

The Commission Secretary (Ms. Nyaundi): You do not remember attending a meeting with a Minister? I assume this is something you could remember.

Mr. Joshua Peter Matui: I cannot recall nor deny. That happened 27 years ago.

The Commission Secretary (Ms. Nyaundi): By the time you were proceeding on leave, had the issue of illegally acquired firearms been resolved?

Mr. Joshua Peter Matui: It had not been resolved. It was a continuous exercise.

The Commission Secretary (Ms. Nyaundi): By the time you were proceeding on leave, were there still tensions among the communities?

Mr. Joshua Peter Matui: Yes, there was still tension.

The Commission Secretary (Ms. Nyaundi): Was the tension at a level that would cause you, as administrators, to have security concerns?

Mr. Joshua Peter Matui: Primarily, the task of the Government is to provide security for its citizens and their property. It was the Government's concern to provide security and that was why the District Security Committee did not sit back. It took actions it thought would entail those people surrendering their firearms. However, even the clan elders said that they did not know why there were those perpetual attacks. One clan leader said that could be those people were causing insecurity for their own benefit. Perhaps, there were people being hired from outside. At that time, you could get firearms from our neighbours at almost a throw away price.

The Commission Secretary (Ms. Nyaundi): While you were there as the DC, did you at any one time feel overwhelmed? Did you feel that, that was an impossible assignment that you had been given?

Mr. Joshua Peter Matui: I never felt overwhelmed. In any case, even if I felt overwhelmed, who else did I expect the Government to post there? That was part of Kenya and the Government of Kenya's presence had to be felt in all the areas. I knew that Government officers had to be posted there and they had to work whether they wanted or

not. But definitely, North Eastern Province was a difficult area to work in. I think the officers who worked there immediately after independence or even during my time--- I think it was a bit cooler. Previously, you used to hear of Government vehicles being blown off by mines. Our roads were mined then and Government officers would be blown to pieces.

The Commission Secretary (Ms. Nyaundi): Precisely and that is why at the time you were serving there, we had emergency laws operating. You can confirm that this is the reason you would have a representative of the Army sitting in the District Security Committee and the Provincial Security Committee?

Mr. Joshua Peter Matui: Precisely so.

The Commission Secretary (Ms. Nyaundi): Did you enjoy your Christmas vacation when you were on leave or did the Christmas of 1983 find you in Wajir?

Mr. Joshua Peter Matui: I was really enjoying my leave. It was to avoid the hustle of office work. I was doing my small farming. Of course, during news time, I would gather near my radio because I wanted to update myself with what was happening not only in North Eastern Province, but the whole country. I still do that today.

The Commission Secretary (Ms. Nyaundi): So, we can confirm that on the latter part of December, 1983, you had already proceeded on leave?

Mr. Joshua Peter Matui: Definitely; by December, I was on leave and the whole of January. Immediately after that operation, that was when I received a signal urgently recalling me to report on duty.

The Commission Secretary (Mrs. Nyaundi): You were also the Chair of the District Security Committee and you must have taken an active role in restoring security in the region. Did you make it an objective to try and recover those illegally acquired firearms?

Mr. Joshua Peter Matui: As I had stated, the Government knew that for as long as there were illegally acquired firearms within the community, there would be no peace. One of my duties was to encourage people to surrender firearms.

The Commission Secretary (Ms. Nyaundi): What was the response like? Did you form the impression that different clans responded differently?

Mr. Joshua Peter Matui: I had already formed that opinion. I even stated it in my statement that the Ajuran were being convinced easily by the Government to surrender their firearms, unlike the Degodia who were difficult. We recovered eight firearms from the Degodia and 26 from the Ajuran.

The Commission Secretary (Ms. Nyaundi): When Mr. Tiema appeared before the Commission, he said that one of the measures that was taken in order to encourage the

Degodia to surrender their firearms was then to detain identified leaders of the Degodia. Did that happen when you were in Wajir or was it during the time of Mr. Godo who came in to act after you? You have also mentioned that you are aware that a number of leaders were detained under the Preservation of Public Security Act.

Mr. Joshua Peter Matui: When I went back, I was told by the Ag. DC, Mr. Godfrey Mate, that during my stay, the Government had to detain four leaders from the Degodia clan. The purpose was to entice the fellow members to surrender firearms. However, it would appear that, that annoyed them the more. I remember four people were arrested. Unfortunately, I cannot recall their names.

The Commission Secretary (Ms. Nyaundi): Would you be saying that you did not enforce your powers under that Act to detain individuals for the purpose of getting firearms?

Mr. Joshua Peter Matui: During my time, the District Security Committee had not arrived at that particular decision. It was arrived at when I was on leave. Definitely, it was one of the actions taken to try and curtail--- If you realized that there were some leaders who were discouraging their fellow men from surrendering firearms, and then the law says that you grab them first to interrogate them, that would send fillers to the rest to surrender their firearms.

The Commission Secretary (Ms. Nyaundi): Mr. Tiema told us that another action that was taken was to block access to watering points. Were you given this brief by the person you found in office?

Mr. Joshua Peter Matui: No, I do not recall, because I would have minuted it in the report that I briefed my PC. It would have been unfair to block communities from accessing water. The animals would suffer and die.

The Commission Secretary (Ms. Nyaundi): Mr. Tiema told us that he reported on 24th January, and you likely proceeded on leave on November or early December. So, between that time, the District Security Committee found it necessary to detain four elders and block access to watering holes? As an experienced administrator, would you say that the situation was mild then? What circumstances obtained in Wajir at that time for the District Security Committee to have taken that action?

Mr. Joshua Peter Matui: Well, could be the situation had deteriorated to warrant the District Security Committee to come up with, among other decisions, that one of curtailing livestock from the Degodia community accessing water. If that happened, it must have been very temporary. They knew that, that would lead to the death of the livestock and yet, that is the predominant occupation of the community there.

Let me say that those were officers on the ground. They must have assessed the situation. If that was the decision they made, well, I would say they were right because they were on the ground. I was not there.

The Commission Secretary (Mrs. Nyaundi): Before you proceeded on leave, did you hand over a handing over report to Mr. Godo?

Mr. Joshua Peter Matui: I do not remember whether I wrote a handing over report, but most likely I did. My DO1 having been with me, he more or less knew what had been happening and how I had been operating. Had he been from another district or the PC's office, I would be required to write a handing over report. I found my DO1 there and so, he knew the culture and activities of the people within Wajir District. I do not deny but most likely, I must have written something highlighting the areas he would concentrate on. I cannot recall. If I would be given access to the DC's office in Wajir, I would definitely know.

The Commission Secretary (Ms. Nyaundi): When Mr. Tiema arrived on 24th January, he thought he would be relying on Mr. Godo for a situational analysis of the security situation in Wajir. Mr. Godo would be his primary source of information when he arrived on 24th January?

Mr. Joshua Peter Matui: Definitely so.

The Commission Secretary (Mrs. Nyaundi): I want you to clarify how you worked within the Provincial Administration. Even as you grappled with the security situation in Wajir, what were the communication lines? Which Ministry were you housed within?

Mr. Joshua Peter Matui: Normally, the DOs, DCs and the PC fall under the Office of the President. My immediate boss was the PC who was in Garissa.

The Commission Secretary (Ms. Nyaundi): The communication on issues arising in Wajir would be between you and the PC?

Mr. Joshua Peter Matui: Yes.

The Commission Secretary (Ms. Nyaundi): Are you familiar as to who would the PC, give any report in the Office of the President?

Mr. Joshua Peter Matui: Yes, I am aware. At that time and I would imagine up to today, PCs were reporting directly to the Permanent Secretary, Office of the President or the Permanent Secretary in charge of Provincial Administration and Internal Security. I also know that PCs had the privilege of talking directly to the President.

The Commission Secretary (Ms. Nyaundi): Do you remember the date you arrived back in Wajir and who received you in your office in Wajir?

Mr. Joshua Peter Matui: I cannot recall the date, but I know I was received by Mr. Godfrey Mate. He was sent there immediately Mr. Tiema was suspended.

The Commission Secretary (Mrs. Nyaundi): As you assumed your office, did Mr. Mate hand over a report to you or you never fully assumed the office?

Mr. Joshua Peter Matui: He briefed me verbally and the most important brief he gave me was the one I wrote to the PC on 27th February. If you get that report, you will find that in my last statement, I said that it was the whole truth as narrated by the then Ag. DC. So, actually, what I wrote in that letter was what Mr. Mate had told me.

The Commission Secretary (Mrs. Nyaundi): I actually need to confirm the primary source of your information that is very detailed and useful to the Commission. Was it from the Ag. DC or you also got a briefing from the PC's office?

Mr. Joshua Peter Matui: Yes, when I came to the Office of the President and they chartered a plane for me, I was advised by the Office of the President to travel to Wajir en route Garissa for a bit of briefing by the PC which I did. If I can recall, he told me that there was insecurity in Wajir during my absence and the DSC had mounted an operation which led to some commotion in Wagalla and that was why the Government thought it wise to recall me. He told me to proceed to my station which I did. I found Mr. Mate there. I was with him for one or three days, during which time I found a signal. That was when I asked Mr. Mate whether or not he had been briefing the PC on a daily basis. He was asking us to make a detailed report as to what had led to the Wagalla Operation and how it was conducted. Mr. Mate told me that he had been told by Mr. Tiema that things were happening very fast that they were unable to instantly brief the PC.

I think I was with Mate for either two or three days during which time I either found a signal or the signal arrived immediately I reported. That was when I asked Mr. Mate if they had not been briefing the Provincial Commissioner (PC) on a daily basis; because it appeared he was asking for a detailed report from us as to what actually happened and, what led to the Wagalla Operation and how the operation was conducted. He told me, he was told by Mr. Tiema that things were happening so fast that they were unable to instantly brief the PC. So, what I covered in that report, I would say, even when I passed at Garissa to see the PC, he did not have those details and that was the reason why he sent me a signal demanding for a detailed report, which I did provide.

The Commission Secretary (Ms. Nyaundi): So, are you confirming that Mr. Mate also told you that he had received information from Tiema? Did Godo tell you that he had had a discussion with Mr. Tiema, before Mr. Tiema left?

Mr. Joshua Peter Matui: Yes, he told me that he had a discussion with Mr. Tiema before Mr. Tiema left.

The Commission Secretary (Ms. Nyaundi): Now, in the briefing that you were given, were you advised that the civil servants from the Degodia Community were also detained at the airstrip?

Mr. Joshua Peter Matui: I was aware that some civil servants were detained for some time, but I think they were later released. In fact, when I reported, I recall a certain teacher came to my office and he was briefing me and he was breaking down every time he was narrating to me what had happened. So, I know some civil servants who happened to be from the Degodia community were gathered at the airstrip.

The Commission Secretary (Ms. Nyaundi): You had no contact with Wajir and you were receiving reports; you have informed us that you received a report from Mr. Mate and there was also a teacher. In terms of just trying to understand what exactly had happened, did you, maybe, have consultations with members of the community of Wajir just to get a sense from them as to exactly what had happened in the operation?

Mr. Joshua Peter Matui: The information that I got, more or less tallies with what I made in my report; that, the Degodia male adults had been gathered and they were being interrogated as to whether they knew those who had committed crimes; those crimes which followed each other in February and, secondly, whether they knew people with firearms because very few firearms had been surrendered by the Degodia clan. So, the information I got from the Community was more or less what I had put in my report to the PC and more or less what I have already told the Commission.

The Commission Secretary (Ms. Nyaundi): There is a question behind me; I do not know what it is all about.

The Presiding Chair (Commissioner Slye): Excuse me; I would like to remind photographers not to take photographs while the witness is testifying. So, you may take photographs before or after the witness gives testimony; not while he is testifying or during the testimony of the witness.

Thank you.

The Commission Secretary (Ms. Nyaundi): Sorry for that. So, in your discussions with the people who were informing you, did you ever get an instant report of what had happened away from the airstrip within Wajir? Did you get information and specifically, were you informed that women were raped by security forces?

Mr. Joshua Peter Matui: I regret to tell the Commission that that never came to my mind and I was not told that women were raped. Otherwise, I would have stated it in my report.

Thank you.

The Commission Secretary (Ms. Nyaundi): Sorry! You have also mentioned in your statement of May 23rd, 2011, that you submitted a report to the PC. Can you confirm that it was the PC of North Eastern Province not Garissa, just for clarity of record?

Mr. Joshua Peter Matui: Yes, I had submitted a report to the PC North Eastern Province who was based at Garissa.

The Commission Secretary (Ms. Nyaundi): And then on page three of that statement, you kind of detailed the events that led to the Wagalla Security Operation. Of course, we appreciate that this is a report you were given, you were not on the ground. But in those six or seven incidents recorded there, repeatedly you state that the criminals were strongly believed to be from the Degodia Clan. Did the person who was giving you this report furnish you with the basis of their belief? Did they give you information as to how it was that they formed the opinion that attackers were from the Degodia community?

Mr. Joshua Peter Matui: Well, since there were two clans which had been fighting, the Ajuran and the Degodia, it would have been difficult for the Ajuran armed bandits to attack *manyattas* or houses belonging to the Ajuran. So, it was logically and obviously being concluded that the attackers must have been from the other clan which had been conflicting with the Ajuran.

The Commission Secretary (Ms. Nyaundi): But you said earlier that there were other communities or clans within Wajir. Would you be in a position to confirm that sufficient investigations have been undertaken to confirm that it was not Ajuran attacking Ajuran or the Ogaden attacking Ogaden or Garre attacking Ajuran?

Mr. Joshua Peter Matui: I think enough investigation had been done. It was established that those were the two clans who had been conflicting. As I had stated earlier, late 1982 and earlier 1983, the Ajuran had been fighting with the Garres and stealing livestock from each other and killing each other. That led to the elders' meeting which eventually ended up in the Moyale Joint Airbus meeting; that is where the conflict between Garres and the Ajuran ended. Then during their discussion, the Garres actually confided to Ajuran that although we have been fighting, some activities were being done by the Degodias. That is what infuriated the Ajuran and during that same evening they attacked the *manyatta* where they stole so many camels, 2, 000. I would say that the loss of 2, 000 camels, all of them from the Degodia clan really angered the Degodias.

As for the Ogadenians, there has never been an occasion when the Ogaden clan had clashed with Ajuran or the Degodia.

The Commission Secretary (Ms. Nyaundi): Mr. Matui, are you saying that we can safely assume that as far as the illegal firearms in Wajir were concerned, the position was that the only clans in possession of the firearms were the Ajuran and the Degodia? That was the conclusion on the matter?

Mr. Joshua Peter Matui: You will recall I had said that even the Minister of State; hon. Maalim Mohammed came to Wajir and appealed to all clans to surrender the illegally acquired firearms, and he particularly appealed to the Ajuran and the Degodias to stop hoarding hostilities. That definitely did not mean that there were no people from the Garre and the Ogaden who had firearms. But they could have firearms and if they were not using them to attack other clans, I hope that they were just keeping them for their own protection and that of their livestock.

The Commission Secretary (Ms. Nyaundi): So, the person who gave you this information, as from page three and four of your statement, might they have also furnished you with information of the investigations that might have been undertaken and the results of those investigations to identify these individuals who had been carrying out these attacks?

Mr. Joshua Peter Matui: If you recall, one of the purposes of rounding up the Degodia people was to seek information; whether they knew those people who caused those insecurity incidents at the *manyatta*.

The Commission Secretary (Ms. Nyaundi): So, at that time the idea was, we are not very sure who it is, but we think it is the Degodias, so we collect anybody we think is a Degodia and interrogate him.

Mr. Joshua Peter Matui: That was the situation.

The Commission Secretary (Ms. Nyaundi): Now, you have given us details here and the dates, beginning on 29th January. The second incident was on 31st January and the third does not have a date, but I assume it was before the 3rd of February and there was another incident on the 6th, February, 1984. Now, when Mr. Mate gave you the briefing, did he inform you that on the 8th February, 1984, there had been a delegation from Nairobi that had been hosted at the District Commissioner's (DC) office by the District Security Committee (DSC)? Did Mr. Mate inform you that between 6th February, which was the date of the last incident, and the 9th February, there was an attack on a *manyatta*? Did he inform you that on 8th the DSC had hosted a delegation from Nairobi?

Mr. Joshua Peter Matui: He did not specifically tell me but, I would imagine the reason why he did not tell me. It was because that delegation from Nairobi was touring the whole of North Eastern purely on development issues. The delegation did not come to Wajir alone, it went first to Mandera, and then to Wajir and Garissa. Normally, the DC as the co-ordinating office links all the Ministries. So, if a team from Nairobi comprised of officers from all the Ministries, toured North Eastern and Wajir, the person who was required to brief that team was the DC. Security being one of the items, I am sure the DC might have mentioned the security situation generally of Wajir District.

The Commission Secretary (Ms. Nyaundi): So, Mr. Matui, we can confirm that even in passing, Mr. Mate did not mention to you that there had been a delegation on the 8th February, 1984, at the Wajir District Commissioner's office?

Mr. Joshua Peter Matui: I would not deny that; he might have briefed me but this particular case he was briefing me particularly on the security operations. Definitely, he must have visited Wajir District during my absence and they would have first gone to the DC's office, signed the visitors' book and then they were generally briefed. Even somebody proceeding to Mandera, he would call on the DC Wajir and then the DC would brief him generally.

In fact, I recall, the first time I was posted to Mandera, on 13th October, 1976, to be precise, I was bitter that I had been posted from Kitui to Mandera specifically to a certain division and I was eager to go and report to my station and start settling down. So, I reached Wajir very late, it was 9.00 p.m.; then I passed at Wajir Secondary School where I was dropping somebody whom I had given a lift and I was eager to proceed to Fino Division then I was told, “by the way, you know you have risked your life. You have arrived at Wajir at 9.00 p.m. at night, you cannot proceed”! I told that teacher that I would proceed. He told me: “If you play, I will report you to the local DC. You cannot proceed!”

Anyway, I have brought this example because when somebody is proceeding to Mandera, he would call on the DC Wajir because it is en-route, then he could be given a preview on the security situation because most of the times vehicles used to move in convoys. And the DC is a person who has got all the information regarding security and even regarding development issues. So, if it was a team from Nairobi, comprised of various officers from other Ministries, they must have been briefed by the DC in his capacity as the Chairman to the DSC. I will not deny, Mr. Mate did mention to me that, “by the way, recently we had visitors from Nairobi”.

He could have mentioned it to me, but then I did not see any point of me reporting it because it was not related to security, neither was it related to the Wagalla Operation *per se*.

The Commission Secretary (Ms. Nyaundi): Thank you, very much, Mr. Matui. You have said in your statement that when you arrived, you were told at the PC’s office that the people you left there did not know what they were doing. So, you came and you received the briefing from Mr. Mate and you also said in your statement that a number of elders you spoke to told you: “If you were here, this would not have happened.” On reflection, what do you think are the issues that were mishandled during the Wagalla Operation?

Mr. Joshua Peter Matui: Okay. Let me first correct you, I did not mention the person who told me that the people you left behind did not know what they were doing. That was not my PC, who was a deputy secretary in the office of the President. This is because when I went to Moi Airbase, I thought I would find the plane there. Only to find the plane in the signal, the one I would have used was the normal buffalo plane, which usually takes food to our army people. So, when I found that it had left at 8.00 O’clock - I think I arrived at Marsabit at around 11.00 p.m. having travelled all the way from Kilome. I met a deputy secretary who was attached to the Provincial administration, and he asked me: “Mr. Matui, you have not left?” I told him that I had been to Moi Airbase and I missed a chartered plane. Then he told me to go and see another officer so that we proceed because the people I left behind did not know what was happening. But the people told me: “Okay, Bwana DC, if you would have been around, we know this would not have happened.”

In all sincerity, I think something went wrong during the operation. The operation was not done professionally. Firstly, what I would say is that, if I were there, I would have

insisted that those suspects be fed and be given water. I would have insisted on that! Normally, if you are going to be hanged and if you will be hanged at 11.00 O'clock or 2.05 p.m, you are normally given lunch. So, as the Chair, I would have insisted that those people be fed as they are being interrogated. But I was not there!

The Commission Secretary (Ms. Nyaundi): Do you think it was the best thing to do, look for people and say: "The Degodia, let us go to the airstrip."? Is that an action that was reasonable according to you?

Mr. Joshua Peter Matui: Hon. Commissioners, I have said, I was not on the ground. The DSC must have considered the situation and they must have arrived at a conclusion that it might be easier to interrogate people when they are gathered around, so that, if for example, Mr. Matui has got a firearm, instead of the security people going out to look for Ms. Nyaundi, then Ms. Nyaundi will be around and then she will be told that we know you have got a gun, please bring it. I am sure the intention of the DSC was right, but the last moment is what caused the problem. The thing was not conducted very professionally.

The Commission Secretary (Ms. Nyaundi): When you heard that persons were stripped naked and were asked to lie down on the ground, in your judgment as an administrator and substantive DC for Wajir, did you reflect on that? In your opinion, was this the right thing to have been done?

Mr. Joshua Peter Matui: I did question myself, but I did not ask the members of the DSC. I questioned my conscience and being aware that usually February is a very hot month in Wajir, taking into consideration that the soil was white; I would imagine the amount of heat which was being absorbed by those naked bodies. But as I said, I never even had an occasion to meet the whole DSC so I never asked why they thought it proper to strip the suspects. But, those were the people on the ground and, perhaps, they had better ideas.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you, Sir. My understanding is that the majority of the people at the airstrip professed the Muslim faith. Did you determine how the bodies of the persons who had died were disposed off? Was there respect of the Muslim faith for those who had died at the airstrip in the disposal of their bodies?

Mr. Joshua Peter Matui: In my brief, I have said that those 29 bodies were dumped somewhere far from Wagalla. It is my understanding that there were no Muslim rites observed. That is what I was told.

The Commission Secretary (Ms. Nyaundi): Because you were able to form an opinion on the properness or impropriety of that operation, were there standing operating guidelines that existed that probably, when you were carrying out operations as administrators, you would refer to or it was just left to your individual discretion?

Mr. Joshua Peter Matui: It was left to the individual discretion of the DSC. But, of course, they were being guided by the laid down laws of Kenya.

The Commission Secretary (Ms. Nyaundi): Just one final question. I only say this because you said that on arrival, people said, “had you been here, this could not have happened”. I think there is an appreciation by the people who were there of your judgment. One of the witnesses, who appeared before us in Wajir, by way of recommendations, mentioned that probably part of the problem in the Northern Region and in Wajir specifically, around the Wagalla incident, is that none of the high level decision-makers was a resident or came from that region. In your view, do you think the fact that the people who were making decisions and the people who were deciding that these were the Degodias versus the Ajuran were not themselves from that community? Do you think it made a difference the fact that the administrators had been taken from other parts of the country and they were administering the Northern Region?

Mr. Joshua Peter Matui: I do not think so, because I would imagine at that time, there must have been civil servants from that community who were discharging their duties elsewhere in Kenya and they need not have been posted to Wajir *per se* or even to North Eastern. This is because if you are a Kenyan civil servant, you sign that you are liable to be posted anywhere, and I am sure that if the DC would have been somebody from the North Eastern province, he would not have allowed insecurity to persist and he would have used all the instruments to maintain peace. So, I do not think what happened did happen because the members of the DSC were from upcountry.

The Commission Secretary (Ms. Nyaundi): Do you think it would help as a policy if we ensured that you had active participation of people from that region in leadership at that level?

Mr. Joshua Peter Matui: Sorry, I would add that the local leaders and, I started by saying local leaders and elders were part and parcel of the Government team, which was going from place to place holding public meetings. So, we would allow clan elders to address the people.

You can recall I mentioned that there were elders at Eldabona or Eledas where they slaughtered seven lambs; they were appealing to their fellow people to stop further killings. And there is no wonder that is why at one time, they came and held a meeting at Wajir Town to brainstorm among themselves. They wanted to find out actually who were the brains behind the insecurity. This is because as leaders, we agreed that we were going to stop insecurities but then they persisted. That is why we said, could be these armed people, perhaps, had been hired, and our volatile borders being so close, it could have been possible.

The Commission Secretary (Ms. Nyaundi): Thank you, very much, Mr. Matui. The Commissioners will now ask you questions.

Mr. Joshua Peter Matui: Thank you, very much. I am already getting thirsty.

The Presiding Chair (Commissioner Slye): Thank you, Leader of Evidence and thank you, Mr. Matui. I know you have been testifying for approximately two hours and I suspect that you, and others, are thirsty and may have other needs to be attended to you. So, I think it would be proper to take about a ten minute break and then we reconvene to continue your testimony.

Thank you.

[The Commission adjourned for a short break at 12.04 p.m.]

[The Commission resumed hearings at 12.30 p.m.]

The Presiding Chair (Commissioner Slye): Thank you and welcome back to this hearing in Nairobi. This hearing is a continuation of hearings we started on 17th and 18th May, here in Nairobi, which in turn is a continuation of hearings that the Commission held in the Northern Region of the country, in April and May of this year.

I would like to ask the Leader of Evidence if there is any former issues that we need to deal with, otherwise, we will move on to continue with the testimony of this witness.

The Commission Secretary (Ms. Nyaundi): Thank you, Chair. There is a counsel for the witnesses of the Wagalla Massacre who is present and I am praying that he be reflected on the record. He will introduce himself.

The Presiding Chair (Commissioner Slye): Sure! That is in order. Is there any other counsel present?

Mr. Harun Ndubi: Thank you, Chairman. Good afternoon! I had been to the High Court, and then I went down to Kenyatta International Conference Centre (KICC) only to realize that the hearings were here. My name is Harun Ndubi, for the Wagalla Massacre victims.

The Presiding Chair (Commissioner Slye): Thank you, Mr. Ndubi. We are sorry for the confusion about the location of these hearings.

Are there any other counsels here that would like to be placed on record? Okay. Then I think we will continue with the testimony of Mr. Matui.

First of all, I want to thank you for coming here to testify before the Commission during a good part of this morning, candidly answering questions as asked by the Leader of Evidence. We very much appreciate the information that you provided here this morning and the one that you provided in the witness statement to the Commission. So, just on behalf of the Commission, I want to thank you for that.

I would like to ask whether any of my fellow Commissioners have any additional questions for you. I would like to start with Commissioner Shava who is at my right.

Commissioner Shava: Thank you, very much for your evidence, Mr. Matui. I may have a few questions for you. The first thing I want to ask you is whether you are aware of the Etemesi Commission of Inquiry.

Mr. Joshua Peter Matui: Yes, I am aware. On that day, Mr. Etemesi had been tasked to investigate what happened, but I have never seen the report. I know it came out with the number of people who died as a result of the operation as 57 people. That is the figure I was given by the Acting DC and it is the same figure I reflected in the statement. Otherwise, I have never seen the report.

Commissioner Shava: Thank you for that answer. In your testimony, you gave a lot of weight to the advice of the officers on the ground. You feel that they were best placed to assess the situation and give advice. With that in mind, and knowing that this high level delegation--- That visit was planned well in advance. What recommendations did you prepare for that delegation?

Mr. Joshua Peter Matui: Sorry! Which delegation are you referring to please, Madam Commissioner?

Commissioner Shava: The Kenya Intelligence Committee (KIC), the DSC and the PSC; the meeting on the 8th of February, in Wajir in your absence. However, from the records that we have seen, it was planned a year before, between yourself and the acting DC you left on the ground, and the one who later came, Mr. Tiema; what recommendations did you prepare for this visit?

Mr. Joshua Peter Matui: Madam and the hon. Commissioners, as far as I can recollect, the Acting DC did not tell me that, as the District Security Committee, they had met to prepare to receive the team from Nairobi. I am sure even the DSC Wajir had not been informed to prepare for the brief. But what I know is that, the team which visited North Eastern was not even comprised of KIC; it was a conglomeration of officers drawn from very many ministries in Nairobi. They had planned to go to North Eastern to assess development issues and to find out how the civil servants there were operating. The most important thing is that the team which came was definitely not comprised of KIC *per se*. It was a team from Nairobi drawn from various Ministries; some members of whom happened to have been members of the KIC.

The Kenya Intelligence Committee (KIC) came to find out the security situation and how the civil servants were operating. The team which came did not comprise of KIC. It was a team drawn from various Ministries.

Commissioner Shava: There were testimonies from other witnesses who said that there was one meeting held in the District Commissioner's (DC's) office. A meeting that was

held by this group that you describe, given that there were members of the KIC present and the District Committee, what would you term that meeting that took place?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I would like to state as follows: When officers from Nairobi visited North Eastern Province, definitely, they must have been accompanied by the Provincial Commissioner (PC) with his team which proceeded to Wajir. Before they came to Wajir, they had gone to Mandera. In Wajir, they must have been briefed on various development aspects. I am sure that the DC must have covered an aspect of the security situation. In fact, in all sincerity, I would think that the security aspect must have been one of the items because it is known that if there is no security, development would be minimal. So, I do not think that the team from Nairobi did not come to advice the District Security Committee (DSC) on how they should conduct operations. Already the DSC, by virtue of their academic and professional training, they already knew how to conduct a security operation among other issues. The DC coordinates development in all other departments. I think the members of KIC were about four or five. The fact is that it was not a full KIC team. It only happened that people who formed the delegation were members of KIC. Before they went to Wajir, Mandera and Garissa they must have been briefed in general terms.

I understand that some of the things which are being implemented by the Government are as a result of recommendations of that big delegation from Nairobi. Even some of the developmental aspects which are being implemented by the current government were conceived and recommended by that team from Nairobi.

Commissioner Shava: You seem to have very good knowledge of how such meetings are run and what the outcomes would be. Could you, for purposes of clarification, explain to us when you say that there were four or five members of KIC present, who these members?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I may not recollect the names of the members but I believe most of those who attended the meeting were witnesses. I know for sure about Mr. Bethwel Kiplagat as a member of KIC. He had gone there in his capacity as the Permanent Secretary, Ministry of Foreign Affairs. I understand also that Hon. Mwiraria was also a member. I am still convinced that they did not go there in their capacity as members of KIC. They went in their capacity as Permanent Secretaries. That is all I can say on that.

Commissioner Shava: The other question that I want to ask you with regard to this visit; it was a very high level delegation and a very large one for that matter. Was this a normal kind of visit to host?

Mr. Joshua Peter Matui: It was normal. Even the DSC would have hosted a larger delegation than that. So, it is normal.

Commissioner Shava: So, it was in no way unusual that you took your leave at that particular point in time when that delegation was coming?

Mr. Joshua Peter Matui: That is far from the truth. As I had said, I was posted to Wajir from Kisii and I had not taken my 1982 leave because before I went to Kisii I was in Bungoma. I proceeded to Wajir before I took my annual leave for 1982. Up to the end of 1983, I had not taken my leave and I told the Provincial Commissioner that I deserved my leave. In any case, if I could not have taken my leave, I could have forfeited it. There is an impression that I was conveniently sent on leave. No. It was not a compulsory leave. I had applied for my normal 1982 and part of 1983 annual leave which I am entitled to. In case an impression had been given to the Commission that I was conveniently removed, whoever gave you that information gave you the wrong information.

Commissioner Shava: With that clarification, we move on to my final question; you had stated that you understood what happened at the airfield from accounts given to you by survivors. That implies that you are able to have that kind of conversation from somebody who had gone through the terrible things that people went through on that airfield. How would you assess your relationship with the people of Wajir before and after the massacre?

Mr. Joshua Peter Matui: I would say that my relationship with the people of Wajir before the massacre was cordial. Even after the massacre it was still very cordial. Definitely, when you are discharging some duties, you are bound to offend one or two people. You cannot please everybody. During my tenure as the DC in Wajir, I did not have any cause to be overly worried. I was also a District Magistrate I and maybe some people who I may have imprisoned or fined could have a grudge towards me but if there were any, they did not have the courage to tell me. So, my stay in Wajir was not hectic and I do not have any cause to be worried.

Commissioner Dinka: Thank you, very much, Mr. Matui, for your testimony. It was very detailed and very enlightening. I have a few questions that I want to pose to you to fill some gaps on what we have been saying. You came in October, 1982, and you took your leave in December, 1983; the arrival of KIC team was supposed to have taken place in November, 1983. The directive from the PC to DCs of Wajir, Mandera and Garissa to prepare briefings went out either late October or early November. So, you must have been in office. Do you remember having prepared that briefing before the visit?

Mr. Joshua Peter Matui: I do not recall. It is a long time ago, since 1984, but one thing is certain: If the PC had communicated to the DCs to prepare appropriate briefs to the team from Nairobi, I can say for certain that I must have prepared it. If that letter found me in the office, I must have prepared it. If it came after I had started my leave, I am sure the acting DC must have complied with the instruction from the PC.

Commissioner Dinka: You said that you do not remember the exact date of your departure for leave but you also said that it was sometime around the end of December. That is why I assumed that if it was around the end of October or beginning of November, then it must have found you in office in Wajir. Do you remember any

elements that were requested for you in particular, to prepare in that briefing paper for the KIC delegation?

Mr. Joshua Peter Matui: I do not recall.

Commissioner Dinka: Was there any representative from the department of development in that delegation?

Mr. Joshua Peter Matui: Unless I am shown the list of delegates, I cannot recall anybody from there, but I imagine that there must have been somebody from the Ministry of Planning and National Development.

Commissioner Dinka: When my colleague was asking you about the KIC members who came, you appeared to know quite a bit about how it operates and its structures. How familiar are you with that structure?

Mr. Joshua Peter Matui: I must admit that I am not very conversant with the structure of KIC. That is Kenya Intelligence Committee which is far flanked from me. Being a DC, I would not have known about its structures.

Commissioner Dinka: When the Commission Secretary was asking you about people being cut off and being prevented from reaching the water points in Wajir, you said that is not part of the briefing that you received from the Ag. DC when you came back, did they tell you anything about the situation at Wagalla Airstrip where people were congregated and the issue of supply of water and food to them or the lack of it?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I recall and for sure he did not mention to me that those people were not given food and water. He did not mention that but I got that information from some of the people who were at Wagalla Airstrip.

Commissioner Dinka: You mentioned that some people admitted that they had firearms and would lead security personnel to show them where they had hidden them only to turn out to have been playing tricks. Did you find out why they were playing those tricks?

Mr. Joshua Peter Matui: I did not find out.

Commissioner Dinka: I am asking you because we have been told by one or two eye witnesses who told us that these are people who were almost out of their minds. So, they were claiming that they have arms hidden so that the security people would take them out to drink water. That is why they were doing those tricks.

Mr. Joshua Peter Matui: If you have been told that way, then perhaps it was so. Personally, I would have said that if it were me having stayed sometime without water and food, I would look for an excuse to at least stand up and stretch my legs as I lead the personnel to show them where I had hidden my gun knowing that I do not have one.

When I heard that some of them were doing some tricks, I concluded that they must have been looking for an opportunity to just walk out.

Commissioner Dinka: I am asking that question because Mr. Mati should have briefed you about that and it should have been included in your report to the PC. The last question is about the briefing that you received from Mr. Mati. When people were released on 15th February, from the airstrip, they were taken in lorries. When they jumped in those trucks, we have been told that most of them who had been wounded, exhausted and dehydrated were left in the bush in the desert where an Italian lady called Analina and others went around collecting them and taking them to hospital. They also buried the dead. Did you receive that kind of report from Mr. Mati and did you report it to the PC?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, it was reported to me that since the suspects were no longer volunteering any useful information, it was decided that the operation be called off. So, people were carried in lorries and returned to their various places. That is what I was told.

Commissioner Dinka: In other words, you did not hear anything about the efforts of that Italian lady and her Kenyan colleagues collecting bodies and burying the dead and even taking the injured to hospital?

Mr. Joshua Peter Matui: I was not briefed but I came to realize that the lady had a TB *manyatta* in Wajir. She went out and tried to rescue those people who had been returned. She carried some bodies and buried them within her premises. That one, I was told.

Commissioner Dinka: My final question is: you mentioned that while you were on leave the District Security Committee dumped some bodies somewhere far away from Wagalla. What is meant by that word “dumping”? Were they buried or just left in the open field?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I was told that they were dumped. That is open for anybody to interpret the word “dumping”. I think there is a difference between dumping and burying.

Commissioner Dinka: Thank you, very much. I do not have any more questions.

Commissioner Farah: Mr. Matui, you were posted to Wajir in October, 1982 from Kisii District, could you tell the Commissioner how you were managing Kisii District and if it was different from your management of Wajir District?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, the work of a District Commissioner (DC) in any district is more or less the same although various areas have different problems. I would imagine that I executed my duties appropriately when I was DC in Kisii. Kisii had its own unique problems and also when I went to Wajir, I found unique problems. It is true that in Kisii the main work was actually implementation of development projects, whereas in Wajir, the main work was trying to restore security

because security is a prerequisite for development. I have said that when I went to Wajir, I still found clashes; even when I left, they were still there and I am sure they continued. Various districts have various problems and an administrator is trained to handle each case as it comes up.

Commissioner Farah: The laws which you were using and the manner in which you were handling people in Kisii was totally different from the laws that you were using in Wajir and the manner in which you were handling people. Is that correct?

Mr. Joshua Peter Matui: I thought the Kenyan laws cover the whole country. So, there are no different laws for different areas except if there are unique problems in a certain area. A law could be promulgated to address those unique problems. Otherwise, generally, the Kenyan laws serve all the areas within the boundary of Kenya.

Commissioner Farah: I just want to refresh your memory. Wagalla Massacre happened in Wajir in 1984 but prior to that, there was the incident of Garissa Gubai. I think you must have heard about it. It happened in Garissa in 1980, but much later in 1989, there was also the Galmagalla Massacre which also happened the same way. The manner in which the military, under the auspices of the Provincial Security Committee and District Security Committee and the whole administration of justice was more or less like administering collective punishment. Could you, please, confirm to us that when you arrived in Wajir you found that this province is handled differently and that when a bandit kills people in the bush they do not go for him but they collect people in the town, gather them in one place until they produce that bandit who could be miles and miles away?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I think that each situation in each district is dealt with differently. If the people on the ground found it convenient to round up people so as to achieve their objective, it is something that had been agreed and it was being implemented.

Commissioner Farah: Just agree with me that there is no other district in the whole of Kenya where a bandit or robber commits a crime then you collect the people of that town and gather them in a field until they produce the bandit or robber. Just agree that this was unique to North Eastern Province.

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, without repeating myself, when I said that each situation is dealt with or considered on its own merit, is that not enough? People on the ground are trained adequately and are told that within the existing laws, implement or achieve the objective of your mission. If they found it easier to deal with people by gathering them around for ease of getting information then it had to be implemented. They thought that if someone is said to have a gun and then a lorry is sent all the way to Ngorari to fetch that person, I think they found it convenient to gather these people for the sake of ease of getting information from them; I think they were entitled to their own decision.

Commissioner Farah: I was not asking you whether they were entitled or not but I was asking you whether it was procedural or not. For example, if somebody commits a very heinous crime in Kawangware the Kenyan security system has a way of investigating where the criminals are and go for them instead of gathering all the residents of Kawangware and assembling them in a big field and questioning them as to the whereabouts of the criminal. Just admit that it was not a normal procedure because you admitted that after you returned from leave, on 3rd, 6th and 9th, Tula, Yaho, Eldas and Griftu were the places where the people were killed by the Degodias. So, why did the security forces, with their intelligence mechanism, not go to that place where the crimes were committed and look for the criminals even in the bush or *manyattas*? So, why bring people from Habaswein, which is not even a Degodia area, to Wagalla Airstrip then question them? If you could be on duty could you have done that?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, if I were there and discussed the issue with my colleagues dealing with security and came to the conclusion that gathering those people would be the most cost effective way of achieving our objective, I would have done the same but I was not there. I think this Commission has had an advantage of interrogating the then acting DC; and that question should have been directed to him.

Commissioner Farah: Let me come back to what my fellow Commissioner asked you. Originally, the PC, Mr. Benson Kaaria, wrote to you a letter where he said that the Kenya Intelligence Committee will come to Mandera on 28th, Wajir on 29th and go to Garissa on 30th November. From the dates, it shows that you were not only the substantive DC but you were present in Wajir. Having checked again and reconciled the dates, you were also present at the *baraza* where Mr. Hussein Maalim addressed the people and appealed to both Degodias and Ajurans to hand over their weapons. That was on 16th December. So, I am asking: in that letter you were told the KIC is coming and you should arrange accommodation and prepare a brief for them. You prepared a brief because you said that if you were there, you could have written it. We have the brief and in it Mr. Tiema signed on your behalf. I will read a small section of that brief to you. It says:-

“A concerted effort should be embarked on by the Kenya Government to instill patriotism in Kenyan Somalis living in this province. They should be made to understand that Kenya is the best of the three countries; Somalia, Kenya and Ethiopia. They should be discouraged from having any dealings with Somalis in Somalia unless it is on a legal and official terms. We know our locals have a tendency of listening to Radio Mogadishu rather than Voice of Kenya. Even when the Voice of Kenya plays patriotic songs the locals do not listen to such songs. We discourage them by quietly jamming the Mogadishu Radio.”

That was the feeling of the District Security Committee before the KIC arrived in Wajir. That was in February, 1984. Mr. Tiema signed it on your behalf. At that time you were on leave but you were the author. Let me come back to the issue of collective punishment. Is it not true that after the killing of a woman and two men supposedly by Degodia bandits, the collective punishment commenced by security team?

Mr. Joshua Peter Matui: You said that I was the author of that report and then it was signed by Mr. Tiema. Why did I not sign it? How could I have been the author if I was on leave?

Commissioner Farah: Because the PC wrote you a letter to prepare that report for the visit which was cancelled later on and you left the report.

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I still have a bone of contention to pick with that report. If you say that I was the author but it was signed on behalf by Mr. Tiema, I think it was not correct. Perhaps, it would have been signed by the person whom I left acting and that was Mr. Gondo. This is a serious allegation that I was the author. I was definitely not the author. If there was a requirement from the provincial headquarters for a brief to be prepared by the DC, whoever was in that office had the power and the responsibility to write the report. In fact, I am surprised that it was not signed by Mr. Gondo. If it was Mr. Gondo who signed, I would have said that maybe I authored it then Mr. Gondo refined it but when you say that I was the author and then it was signed by Mr. Tiema, I do not accept that.

Commissioner Farah: Suppose you are not the author but it was produced by the District Security Team---

Mr. Joshua Peter Matui: Let it be clear that I was not the author of that.

Commissioner Farah: We have evidence from Mr. Tiema who tells us that you were actually the author. We have it on record; Mr. Tiema said that you are the one who authored it. But that does not matter now, what matters is that it was an official document.

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I think I need some protection. I still insist, and it is my contention that the purported report be corrected to read that I was not the author.

All right, your request will go on record that you were not the author but it will also go on record that it was a DSC document that was handed over to the National Intelligence Committee that went to Wajir on 8th February.

Let us now move to the issue of stripping of houses at Bulla-Jogoo. As a former senior administrator, would you say that it is normal for people to hide guns in the grass and branches of a Somali *herio* (grass thatched hut)?

Mr. Joshua Peter Matui: Mr. Presiding Chair, I have said that the decision was made by the DSC. If the DSC members thought that it was proper to do so, they were entitled to their own decision. I was not there.

Commissioner Farah: You were not there but you were told to report back to your station immediately. When you reported back and found that things had gone wrong, did it not occur to you that it was not normal? When you did not find guns, you just burnt the houses.

Mr. Joshua Peter Matui: Mr. Presiding Chair, I cannot answer that question. Had I been on the ground, perhaps the DSC would have come up with either the same decision or a different decision.

Commissioner Farah: Can I ask you a good question? Do you remember that earlier on, there was an incident where you were posted to Mandera because you did not like that posting, but you remember the dates so brilliantly? Could you remember the date on which you took leave and the date on which you resumed duty from leave? That is very important to the Commission. So, jog your mind a little bit.

Mr. Joshua Peter Matui: Mr. Presiding Chair, why should I jog my mind when records could easily be available from the Office of the President? I suggest that the Commission gets in touch with the Office of the President. Honestly, I cannot recall when I started my leave and when I resumed duty after I was recalled. I am telling you this with all sincerity.

Commissioner Farah: Finally, you said that the delegation that visited Wajir was not a National Intelligence Committee, but it was a developmental committee. We have a record of all the people who were there. There was no representation from the Ministry of Agriculture, or the Ministry of Water, yet it was a drought year. I am just wondering how a high-powered “developmental committee” like that one could go to North Eastern Province, which was facing drought, without representation from the Ministries I have mentioned, but have representation from the Aerodromes Department! What would somebody from the Aerodromes Department be going there to do?

Mr. Joshua Peter Matui: Mr. Presiding Chair, you will agree with me that I was not party to appointment of the delegation that visited Wajir. Perhaps, the co-ordinating office would be in a better position to state how they composed the delegation and why the Ministry of Agriculture, and other Ministries, were omitted from the delegation. Otherwise, I cannot answer that one.

Commissioner Farah: Thank you, very much for your co-operation. I have no further questions.

Commissioner Chawatama: Mr. Matui, I would like to thank you, very much for taking time to appear before us. I thank you so much for your testimony. I would just like to ask you a few questions. You went to Wajir in 1982. For how long were you there?

Mr. Joshua Peter Matui: Mr. Presiding Chair, I left Wajir in January, 1985.

Commissioner Chawatama: I would like to find out any notable development that took place in Wajir when you were the District Commissioner (DC), in terms of health facilities, education and manpower, including teachers, nurses and doctors. Was there any notable development that can serve as an eye witness that you were once in Wajir?

Mr. Joshua Peter Matui: Mr. Presiding Chair, I hope it is not being doubted whether I was the DC, Wajir. In any case, it is a long time ago but I remember that the Kenya Power and Lighting Company installed a big generator there for production of electricity. I recall that we started Wajir Girls Secondary School. I recall that we started tree planting projects within institutions. Those are the things I can recall off-head, 27 years later.

Commissioner Chawatama: I was of the view that it was also very important that, apart from what you described as the “chaos,” that you found, you also managed to have something positive on our record, namely some of your achievements. That is why I asked that question. There was no mischief, and there was no doubt that you were the DC.

Looking at your statement, dated 23rd May, 2011, at page three, there is a list of six points you said may have led to what occurred at Wagalla Airstrip. Of all the six points, it is what one clan, namely the Ajuran, was supposed to have done. However, when you started off your testimony, you talked of clashes between two clans. Why is it that the Ajuran clan is mentioned in the six points, as almost the innocent clan whereas the Degodia clan is shown as the one that was to blame for everything that occurred? I ask this because I am worried about the investigations based on your statement and the statements that we have had from others. For example, you earlier said that there was an issue of the 2,000 camels. Why is that and other killings not listed with the six points?

Mr. Joshua Peter Matui: Mr. Presiding Chair, the summonses I got required me to give information regarding the events of 1984, which led to the mounting of the security operation. The issue of the 2,000 camels related to events of 1983.

Commissioner Chawatama: So, there was only one clan which evidently always caused problems and the others just suffered at the hands of one clan? That is the nature of my question.

Mr. Joshua Peter Matui: Mr. Presiding Chair, investigations carried out by officers on the ground revealed that the perpetrators of crime incidents were people strongly believed to belong to the Degodia.

Commissioner Chawatama: My second question is on the Wagalla Airstrip incident. We have seen and heard that the people there were referred to as “prisoners”. You have said that they were trying to flee from lawful custody. I am trying to understand whether that was an airstrip or a gazetted place where one could lawfully detain persons.

Mr. Joshua Peter Matui: Mr. Presiding Chair, Wagalla Airstrip had recently been constructed for use by civilian aircraft. Of course, it was an open ground. I would

imagine that the DSC must have looked for a place where they could assemble those people. If you are assembled somewhere, and you are told not to move, I do not know what those assembled there would be called – I am not a lawyer – particularly if they are confined in one place. I do not know how they would be addressed. I used that word for lack of an appropriate word. In fact, I would be grateful if I could know which word I should have used.

Commissioner Chawatama: Counsel will assist you with that. My last question to you is this: Do you think the person who gave an order for persons to be fired upon should be held responsible for the lives that were lost?

Mr. Joshua Peter Matui: Mr. Presiding Chair, if he was executing his lawful duty, it would be for his employer to decide what to do with him.

Commissioner Chawatama: Do you think that firing at a crowd that is not armed using excessive force is right?

Mr. Joshua Peter Matui: Mr. Presiding Chair, that question could appropriately be answered by the person who issued those orders. I am entitled to my own opinion.

Commissioner Chawatama: What is your opinion, Sir?

Mr. Joshua Peter Matui: Mr. Presiding Chair, I think he saw people fleeing, and he had not finished with them. Was he not entitled to restrain them from fleeing?

Commissioner Chawatama: Thank you, Sir. In my vocabulary, we also have warning shots fired in the air.

Thank you.

The Acting Chair (Commissioner Namachanja): Mr. Matui, thank you so much for appearing before this Commission. When a crime is committed, the victims, survivors and their family members are left with questions. Among the questions are: What happened? How did it happen? Why us? In cases of the dead, what happened to the bodies? Behind you, Sir, are some of the survivors of the Wagalla Massacre; victims and family members who lost their dear ones. I am sure that your coming here to respond to some of those questions gives them some relief, for they have been living with those questions for over 27 years now.

Thank you also for affirming some of their testimonies. Indeed, when we were having the hearings in Wajir, some of the family members, after the Wagalla Massacre, never got to bury their dead. We now understand that the bodies were dumped in the bushes, and that was the reason as to why they never got buried.

Thank you also for at least affirming that things went wrong during the Wagalla Massacre. I have no more questions for you.

Mr. Joshua Peter Matui: Thank you.

The Presiding Chair (Commissioner Syle): Mr. Matui, I have a few and final questions for you. First, I wanted to clarify the issue of the authorship of the briefing paper that I was discussing with my colleagues. As he rightfully pointed out, it is a briefing paper that is dated 1st February, 1984, which, as you pointed out, was not the time when you were present in Wajir, and it was not signed by you. It was signed by Mr. Tiema. I understand that you were concerned about what the record may show, and it correctly shows that you were not the author of that document. Your signature is not on the document. So, our work will also reflect that.

Secondly, in the statements that you submitted to us you referred to the report that you wrote on 27th February. That is in your 23rd May statement that you submitted to us on the meeting of the DSC of 9th February. In both of those cases, you provide some very helpful details in terms of what you reported and what was discussed in that meeting. I am asking you whether you were able to look at that report and look at notes or minutes related to that DSC meeting of 9th February in order to compile the statement you submitted to us.

Mr. Joshua Peter Matui: Yes, I had a glimpse of that report. In fact, when I wrote my first statement, I did so from my head. That was why I had to use the words “as far as my memory could serve me”. I have since seen the report, and that is why I have indicated that the information I have submitted is from the report I submitted to my Provincial Commissioner, when he asked to be briefed on the events that led to the operation.

The Presiding Chair (Commissioner Syle): Was it from that report that you were able to refresh your memory on 9th February meeting, or was it something in other documents that you were able to view for that part of your 23rd May statement to us?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I have not had the advantage of seeing any other document except that one.

The Presiding Chair (Commissioner Syle): Is your report of 27th February a document you currently possess?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I got that report from another person, who will also be appearing before you. The Commission should be able to get that report from the Office of the President. I will, in fact, not be surprised if it turns out to be one of the reports that a Senior Counsel attached to this Commission had sought from the Office of the President.

The Presiding Chair (Commissioner Syle): We will appreciate a number of avenues to receive additional documentation to complement what we currently have. If you have a copy of that report, would you be willing to share that information with the Commission?

Sometimes one finds it easier to get a document directly from an individual rather than wait for the machinery of Government to work and release the document to him.

Mr. Joshua Peter Matui: Mr. Presiding Chairman, Sir, I do not know why the Commission is finding it difficult to get those documents. I am sure that they will be availed to you.

The Presiding Chair (Commissioner Syle): In the mean time, would you be willing to share with us the copy that you have?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, more or less, what I have covered here is almost word for word. I have not tried to paraphrase it.

The Presiding Chair (Commissioner Syle): Is that then a “yes”? Since we already have the information, would you be willing to hand over the report or is that a “no”? You are saying that the information we have should be sufficient?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, if the Commission completely fails to get it from the Office of the President, through the Senior Counsel, I will give it to the Commission.

The Presiding Chair (Commissioner Syle): We will very much appreciate that. I just want to remind you, and others, that under our rules, we require the documents referred to by witnesses to be submitted to this Commission seven days in advance. We allow people to submit requests to submit things sooner than that or later than seven days in advance. In our rules, the counsel should have shared with you the documents or facts referred to here. You have referred to that document in your testimony. So, we should have had that document before your testimony, but since we do not have it, we would like to get it as quickly as possible after your testimony. So, we appreciate your willingness to do that.

I would like to ask one specific question with respect to your earlier statement that you submitted to us – your 15th April statement – which you said was based upon memory and not upon being able to see this document. You referred to something we understand you did not have knowledge of. This was during the Wagalla Massacre. But you referred to a visit of high-level Government officials from Nairobi on, I believe, 12th or 13th of February. I can actually read what you said here as follows:

“High ranking Government officials from Nairobi visited Wajir to assess the situation, and it was during that meeting at the Ag. DC’s Office that it was decided that the operation be called off; those who had been gathered at Wagalla Airstrip be returned to their respective home areas, and that the substantive holder of the post of District Commissioner, Wajir, who had been on leave, be recalled immediately to resume office.”

First of all, is that still your correct understanding of what happened?

Mr. Joshua Peter Matui: Yes.

The Presiding Chair (Prof. Syle): Are you able to recall who were part of that delegation that came and decided to call off the operation?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I am sorry, I cannot recall but the records in the DC's Office, particularly the Visitors' Book, will indicate that.

The Presiding Chair (Commissioner Syle): So, I gather that when preparing your February, 27th report, you were told about this delegation but you cannot remember, irrespective of whether you were told, who those individuals were? Is that correct?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, that is correct. I cannot recall the officers who came, but I was told that high ranking officers from Nairobi arrived immediately, and that they were the ones who came up with the decision that the operation be called off, and that the substantive holder of the Office of the DC be recalled. But I cannot recall who they were.

The Presiding Chair (Commissioner Syle): Thank you. That is helpful. There is something on which I want to get your position. You are seen to challenge the idea that the visit from Nairobi on 8th February, before the operation, was, in fact, a visit of the Kenya Intelligence Committee. If I recall correctly, you said that there were members of the Kenyan Intelligence Committee on that delegation, but it was not a trip of the Kenyan Intelligence Committee. It was a development tour. Do I understand you correctly?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, you got me right.

The Presiding Chair (Commissioner Syle): On what basis do you say that? The reason as to why I ask you this is that the February, 1st, briefing paper that my colleague referred to, clearly states that there was going to be a visit of the Kenya Intelligence Committee. Minutes of the Provincial Security Committee (PSC) also clearly talk about a visit of the Kenyan Intelligence Committee. They do not refer to that trip in any other manner. They do talk about the trip not only being interested in security but also development, as you have said. But, at least, in all the documentation we have seen, the trip was a trip of the Kenyan Intelligence Committee. If you have information suggesting otherwise, could you, please, share it with us?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, that clarification could be sought from the Office of the President, or the office which deals with the composition of the Kenyan Intelligence Committee. According to my knowledge, it was not the Kenya Intelligence Committee, but some members of the Kenya Intelligence Committee were in the delegation. Unless the membership of the Kenya Intelligence Committee had been enhanced, how could it have included so many Ministries? I am sure that there is a document giving the composition of the members of the Kenya Intelligence Committee. I am sure that that document will be readily available to the Commission, if you inquire from the Office of the President.

The Presiding Chair (Commissioner Syle): So, do I understand that you are certain that this was, in fact, a Kenya Intelligence Committee visit or some other visit? Is that right? You are directing us to look somewhere else for that information. Is it still clear to you that this, in fact, was not a visit of the Kenya Intelligence Committee, but was a visit by another body, whether *ad hoc* or a permanently constituted body?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, that was, and still is, my conviction, unless the membership of the Kenya Intelligence Committee had been changed.

The Presiding Chair (Commissioner Syle): So, if I understand you correctly, based upon the individuals that were present at that meeting of February, 8th, you make the assumption – reasonable assumption, perhaps – that it was not the Kenya Intelligence Committee, but it was something else, because included in that delegation, according to you, were people who, from your understanding, were not normal members of the Kenya Intelligence Committee.

Lastly, I want to ask you a sort of broader and more hypothetical question. With respect to your understanding and the understanding of the District Security Committee members, I want you to confirm that it is your view that the DSC would have the legal authority to round up all members of a particular community and hold them in a place, in this case, for up to four days; and that was the sort of thing that, if the people on the ground, as you said, thought it would be useful, you could authorize and it would be implemented. Is that correct?

Mr. Joshua Peter Matui: It is correct.

The Presiding Chair (Commissioner Syle): I know you said that had you been involved in the operation, you would have done it differently. You said that you would have provided food and water to those individuals but, given the understanding that that would have been within your discretion, it would have been okay, in terms of the authority granted to you, not to provide those individuals with food and water for four, five or six days, or for however long they might be held?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I am sure that no authority would have authorized the District Security Committee to hold people for some days without food. I am sure that no authority would have given such orders. It was purely a decision of the District Security Committee.

The Presiding Chair (Commissioner Syle): What I am asking is this: If the District Security Committee, in its wisdom, decided that it would be useful to detain these individuals for a number of days and not provide them with food and water, is that something that would be within their authority to do?

Mr. Joshua Peter Matui: Mr. Presiding Chair, I think it was within their discretionary powers.

The Presiding Chair (Commissioner Syle): We have also heard in this case as well as in other cases, that households/huts were burnt. Was that also something that, if the people on the ground thought would be effective, they had the authority to order; for example, all the huts of a particular community were to be destroyed or burnt? Is that something they could do?

Mr. Matui: Mr. Presiding Chair, Sir, I have said it was within their discretionary powers to do so, and they decided to do so.

The Presiding Chair (Commissioner Syle): Thank you. We have also heard about rapes and torture of women, not only in the place we are dealing with now, but also in many other places. Is that something that would be within the authority of the District Security Committee to authorize, if it was felt that that would be an efficient way to engage in an investigation and something like this?

Mr. Matui: Definitely, not rape.

The Presiding Chair (Commissioner Syle): What is the authority that you think would not allow officers to rape, but all these other things would be allowed? What is the limit, if any, to the authority that the District Security Committee had in this sort of situation? You have indicated that rape would be stepping over a line, and I am trying to understand where the line is that should not or could not be stepped over.

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I do not seem to have understood you. I am sorry.

The Presiding Chair (Commissioner Syle): Sure! I apologize. You have indicated that there was a number of things within the discretion of the DSC in terms of rounding up people and in terms of withholding food and water from those people. You have also made it clear that it was not within their authority to direct individuals to rape women. My big question is: Where is the limit of the authority of the District Security Committee? You have given examples of what they could do and what they could not do. I am wondering where the line is between detaining individuals for four or five days without food and water, and raping women of a community? This is because one of them is on one side of a line and the other one is on the other side. Was there a Government directive that indicated what would be allowed? Were there laws that stated one was a right thing and what was not? Where was the authority that said one could be done and the other should never be done?

Mr. Joshua Peter Matui: Mr. Presiding Chair, I do not know where the line would be drawn but, for sure, according to me, you can use limited actions to try to get information from an individual. It depends on the extent to which you extend those actions as you try to extract information from the person. For sure, rape is so outrageous that nobody in authority would authorize any other person to use it as one of the methods to be used to extract information.

The Presiding Chair (Commissioner Syle): I appreciate that you, as an individual, feel that raping women would be going too far. If I understand you correctly – correct me if I have misunderstood you on this one – that would still be within the discretion of the DSC, but you, as the DC, would never have authorized something like that, because you find it to be inherently wrong. Am I correct to say that if there was another DC, he could have authorized such a thing? Let us say I was the DC. What would stop me from ordering something like that? Is there a law which stops me from ordering something like that? Is it my superiors? Is it a directive that I cannot afford to give? How do I know what the limit of my authority is?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, I am sure that there is no sane District Commissioner, or any other person, who would order any other person to use rape as a way of extracting information. If there were, indeed, rape cases, they could have been perpetrated by individuals who were trying to extend their animalistic behaviour to those women. Otherwise, I cannot imagine that any DC or OCPD would tell his security personnel: “Go and torture women as you extract information.” However, sometimes we have wayward officers, and even civilians. We have got cases of rape but there is nobody who can say that he was ordered by his superiors to rape women. So, those were just wayward officers who went to that extent. I am sorry.

The Presiding Chair (Commissioner Syle): No! No! Thank you. I have one last question. If we have the information that women were raped, and that some officers either encouraged or authorized those rapes, in your mind, those individuals, clearly, were violating the law and could, and should, be prosecuted for those rapes and things related to those rapes. Is that correct?

Mr. Joshua Peter Matui: Mr. Presiding Chair, Sir, the law is very clear. If you commit an offence, you suffer the consequences.

The Presiding Chair (Commissioner Syle): Would that include assaulting women? We have reports of women being raped and assaulted while the men were held at the airstrip. Would that be considered an offence? Is that something they would be allowed in such an operation?

Mr. Joshua Peter Matui: Mr. Presiding Chair, assault is also an offence.

The Presiding Chair (Commissioner Syle): That is the assault of the women, but the assault of the men at the airstrip would be legally authorized. Is that correct? We have been told by witnesses of officers stripping individuals naked, walking over them, hitting them with rifle butts, punching them and throwing rocks at them.

Mr. Joshua Peter Matui: Those were just wayward officers who went to that extent.

The Presiding Chair (Commissioner Slye): But the assault of the men at the airstrip would be legally authorized. Is that correct? We have been told by witnesses of officers stripping individuals naked, walking over them, hitting them with rifle butts, punching and throwing rocks at them. If it turns out that those things are true, is it your view that those would be illegal acts by those individuals?

Mr. Joshua Peter Matui: I would say that if the culprits are found, then they will be paraded before the court of law. If they are found guilty of those offences, then they should be dealt with appropriately.

The Presiding Chair (Commissioner Slye): Thank you, Mr. Matui. My very last question is a more open ended one. We are not only trying to understand what happened in the past, but we would also like to make recommendations for the future to prevent or make less likely the sort of event that happened at the Wagalla Airstrip and the surrounding community in 1984. I am wondering whether you have any recommendations for this Commission with respect to institutional reforms, training and any other sort of ideas that you might have, that given your understanding of what went wrong based upon the report and interviews you did back in 1984, that you think we should recommend to the current Government to implement. One thing that I would like you to specifically address is what I take to be the wide discretion that seems to exist at the district level. It certainly existed back in 1980; I do not know whether it is still the case today. If it is still the case today, is that something that you think should be changed so that there is less discretion and more guidance or are there other suggestions that you would like to present to this Commission?

Mr. Joshua Peter Matui: Definitely, I will recommend that the officers be given more training on how to handle suspects. The discretionary powers, of course, should also be curtailed. I think officers should be taught how to treat suspects. First and foremost, they should understand that a suspect is human, just as they are. You should not act in a way that will be too injurious to the person. That is why I said that the operation seems to have had some weaknesses somewhere. If officers, not only civil servants but even all over, could be given more and wider training, perhaps, we would avoid such cases.

The Presiding Chair (Commissioner Slye): Thank you, Mr. Matui, for those recommendations. Thank you also for sitting here all morning up to now. I know that it has been a long morning for you. We appreciate you having taken the time and the openness in which you have approached this Commission. It is something that is not only helpful to us as we do our work, but also to the people of Kenya as we work with them to try and understand the historical injustices of the past, with the aim of making sure that such injustices do not happen in future. I would like to ask the Hearing Clerk to escort the witness back to this seat.

I think the Commission will now take a break for lunch. We will come back at 3.30 p.m. and resume the hearings. I want to thank members of the public also for patiently sitting

here and listening to the testimony with respect, as I had asked you in the beginning. I appreciate your co-operation with that.

Thank you, very much.

(The Commission temporarily adjourned at 2.02 p.m.)

[The Commission resumed at 2.30 p.m.]

The Presiding Chair (Commissioner Slye): Welcome back for the afternoon session. We are sitting in the afternoon of June 2nd, 2011, here in Nairobi. I want to welcome the witnesses and the members of the public. I want to reiterate the rules that I had mentioned in the beginning of the session this morning:

1. We would like people to turn off their cell phones.
2. We would like those with still cameras not to take pictures while the witness is testifying
3. We ask everyone to respectfully listen to the witnesses and their testimonies.

I would like to ask the Leader of Evidence if there are any preliminary matters that we need to deal with.

The Commission Secretary (Mrs. Patricia Nyaundi): I am informed by Counsel Kilikumi that Mr. Matui has a document that the Commission had requested and he would like to produce it to the Commission.

The Presiding Chair (Commissioner Slye): Is Mr. Matui here? Mr. Matui, you could describe the document for record purposes and then we will accept it into the Commission's evidence.

Mr. Joshua Matui: When I was here in the morning, I said that most of what I presented as my statement, I had picked it from a report that I had made on 27th February. This is a letter I had addressed to my Provincial Commissioner and I would like to give it to the Commission.

The Presiding Chair (Prof. Syle): Thank you, Mr. Matui. The document then will be so admitted.

The Commission Secretary (Mrs. Patricia Nyaundi): Seeing that we have just seen the document, maybe the Commission will advise Mr. Matui that we may be contacting him if there is need for clarification.

The Presiding Chair (Prof. Syle): I think that as we review that document or other documents that we will receive, we may contact you again for clarification if that is okay and there could be a possibility of testifying again. If you would be willing to co-operate with us in respect to both follow up questions or testimonies, we will appreciate that.

Are there any other preliminary matters? Can I then ask the Hearing Clerk to please swear in the next witness?

(Mr. David Kiilu Mativo took oath)

The Commission Secretary (Mrs. Patricia Nyaundi): Thank you. Please state your name for the record.

Mr. David Mativo: My name is David Kiilu Mativo.

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

Mr. David Mativo: I stay in Machakos and I am a small farmer.

The Commission Secretary (Ms. Nyaundi): Kindly confirm that you did serve as a District Commissioner in Wajir.

Mr. David Mativo: I was posted to Wajir District sometime in December 1984 but I actually took over in January 1985.

The Commission Secretary (Ms. Patricia Nyaundi): For how long did you serve in Wajir?

Mr. David Mativo: I served from the end of 1984 to 1987.

The Commission Secretary (Mrs. Patricia Nyaundi): Which month of 1984 did you take over?

Mr. David Mativo: I was posted there in early December but I took over from Mr. Matui in early January.

The Commission Secretary (Mrs. Patricia Nyaundi): I believe you sat through Mr. Matu'si testimony in the morning?

Mr. David Mativo: Yes.

The Commission Secretary (Mrs. Patricia Nyaundi): We thank you for coming and the reason you are here is that the Commission is required to gather as complete a picture as possible of certain incidents that have occurred. The reason you are here as you have indicated is that you took over from Mr. Matui, so we have very brief questions for you.

During your tenure as the DC in Wajir, did you host any team from Nairobi that was investigating the incident that had occurred beginning of 9th January?

Mr. David Mativo: No, I did not.

The Commission Secretary (Mrs. Patricia Nyaundi): During your tenure, did you host anybody who was inquiring into what happened at the Wagalla Airstrip?

Mr. David Mativo: No.

The Commission Secretary (Mrs. Patricia Nyaundi): During your tenure, did you hold any meetings with the members of the community to discuss what had happened at the airstrip?

Mr. David Mativo: No.

The Commission Secretary (Mrs. Patricia Nyaundi): When you took over, what is your understanding that what had happened at the airstrip was a matter that had been finalized and you took over the Office of the District Commissioner on a clean slate?

Mr. David Mativo: When I was posted to Wajir and I passed through the North Eastern Provincial Commissioner's in Garissa, I was told to go with a clean mind and dwell on development alone and that I should not dwell on the past.

The Commission Secretary (Mrs. Patricia Nyaundi): When you arrived in Wajir and you had a clean mind, what was your assessment of the security situation in Wajir?

Mr. David Mativo: During that time, the district was very quiet and everybody was co-operating. I cannot remember any incident which could feature in security apart from normal day to day reporting of bandit sightings. There was nothing serious to report about the security matters.

The Commission Secretary (Mrs. Patricia Nyaundi): Therefore, it would be correct to state that during your tenure, one did not discuss Degodia, Ajuran or Ogaden but only spoke of Wajir District?

Mr. David Mativo: Nobody talked to me about the clans of the district.

The Commission Secretary (Mrs. Patricia Nyaundi): Just for my own understanding, as the Commission began its work, we found many people who wanted to speak to us about what had happened at that airstrip and now this is 27 years ago. I am just wondering how it is that when you went in January of 1985, there was no mention to you by the community of this incident.

Mr. David Mativo: There was no reference at all. We were just concentrating on development.

The Commission Secretary (Mrs. Patricia Nyaundi): Did you go through the handing over report that you had received from Mr. Matui and did it make any mention of this incident having occurred during the period prior to your coming to Wagalla?

Mr. David Mativo: I do not remember but the handing over concentrated on staff and other Government operations. I cannot remember having read anything on Wagalla because at the time, it was not an issue.

The Commission Secretary (Mrs. Patricia Nyaundi): We have heard that there was an investigation that was headed by a Mr. Etemesi. Was there anyone who interviewed you or sought information from you regarding what had happened at Wagalla in February of 1984?

Mr. David Mativo: Nobody, Mr. Presiding Chair.

The Commission Secretary (Mrs. Patricia Nyaundi): Thank you, Mr. Mativo. The Commissioners will now ask you some questions.

The Presiding Chair (Prof. Syle): Thank you, Mr. Mativo. I would like to ask my fellow Commissioners if they have any additional questions for you.

Commissioner Shava: Thank you, Mr. Mativo. It appears that Wajir was quite uneventful during your time there apart from what you describe as normal bandit sightings. Perhaps you could illuminate us on what those might look like. Who were the bandits, were they armed, what was their intention, did you ever catch any and if you did, what did you do with them?

Mr. David Mativo: I said that there were sightings and you could hear from this side or the other side of two people who had been sighted carrying guns. Like any other place, that is a criminal activity so we would rush and see what was happening and if we apprehended them, they were taken to court. If we did not we told the villagers to be vigilant and inform us in case of any sightings of bandits.

Commissioner Shava: What was the nationality of the ones you caught and took to court?

Mr. David Mativo: They were mostly Somalis from across Somalia.

Commissioner Shava: Apart from these one or two bandits, you were mainly engaged in development activities. How do you understand the term development?

Mr. David Mativo: Development is activities that make a community improve economically.

Commissioner Shava: Were these activities going on well and smoothly with no interruption?

Mr. David Mativo: With my team of District Executive Committee, which comprised of all heads of departments, we could discuss under my chairmanship of District Development Committee all areas that were to be undertaken by different departments of the Government. Those were agriculture, health, water and so forth.

Commissioner Shava: My final question is in regard to the loud absence of any discussion on an incident that has traumatized the community up to today and has actually been described as possibly the worst case of human rights abuse in the history of Kenya. You say that there was absolutely no discussion and nobody discussed this incident with you. We have heard from witnesses that there was a Government policy to suppress such discussion and that in fact, it is only recently in the last five years or so when this discussion has been permitted by Government. What is your view on that kind of a statement?

Mr. David Mativo: During my time, I was not aware of any policy of suppression.

Commissioner Shava: Did you or your officers suppress or discourage that discussion?

Mr. David Mativo: Not that I know.

Commissioner Shava: Thank you. I have no further questions.

Commissioner Dinka: Thank you, very much, Mr. Mativo, for your testimony and for coming here to talk to us about your experience in Wajir. Before Wajir, were you a DC somewhere else?

Mr. David Mativo: No, that was my first posting. Before that I was a District Officer I in Eldoret, Uasin Gishu.

Commissioner Dinka: You were a District Officer I in Eldoret which is in the Rift Valley and you are going to a totally different region of Kenya as a District Commissioner with all kinds of District Officers under you. How come that before you left Nairobi the Ministry of Internal Security and Provincial Administration did not brief you on different aspects of what your work will consist of in your new post?

Mr. David Mativo: Normally when you are transferred to take over a district, you do not pass through the headquarters. You are instructed to report to the Provincial Commissioner of the district that you are being posted. It is only the Provincial Commissioner who will make a brief according to the situation of the district you are being posted.

Commissioner Dinka: When you went to the PCs office in Garissa, were you briefed by either the PC or his colleagues or any of the outfits in the provincial office about what

your tasks might look like in Wajir and about the recent past of Wajir? What happened in Wagalla was not only in Kenya but some of us read about it outside the country.

Mr. David Mativo: It was mentioned to me in passing and that is why the PC briefed me to forget the past and that the district was now quiet and that I should change the minds of the people to be development conscious. For your information, I organized District Agricultural Show in Wajir and although it is a sandy place, the show was successful.

Commissioner Dinka: I am sure that while you were in Eldoret, you must have read or heard over the radio or watched on TV some modicum of information on the situation in Wajir and Wagalla particularly and what had happened in the airstrip. When you got to Wajir, you had under your command all the relevant material like documents and files; were you not curious to read more and find out what really happened so that you learn from the history of that and so that you will not repeat it?

Mr. David Mativo: Not really. When you are posted to a district, there are other officers on the ground and if it is a matter of intelligence, there is an officer of intelligence and if it is a matter of security, there is a police commanding that division. There is nothing much to dig out in the files because you have everything on the table if you need to know.

Commissioner Dinka: That was my question. If you needed to know, everything was at your disposal, but I seem to get the impression that you are telling me that you did not want to know. Is that the case?

Mr. David Mativo: I was told and I read in the newspapers that there was Wagalla Massacre and when I went on the ground, that thing had completely died. I had senior members of staff from the community and they were not willing to discuss.

Commissioner Dinka: Maybe they had their reasons. Let me change my task instead of asking you if you had read more on the issue. Although people were quiet, they told us why they were quiet when we were listening to them in all the districts of the northern region. They could not talk about Wagalla, Bulla Karatasi or Malkamari and others, and in their minds it was not the law or the regulation. One could estimate that people who pass through that kind of horrendous experience need some kind of closure or assistance to their material or spiritual needs. What did you do in Wajir as District Commissioner to talk to the elders and people so that they could forget about this thing?

Mr. David Mativo: I could not talk to the elders to revive things which were not currently happening. I took over and continued with the new issues of development.

Commissioner Dinka: We heard what Mr. Matui has started in terms of development in Wajir and we have seen the development status Wajir is in. What did you do in terms of development while you were there?

Mr. David Mativo: In the so much talked about Bulla Jogoo, we had a development for old women. They had a shallow well where they were watering greens for their families. I then continued with what was happening in Wajir Girls High School. In the west, there was Bute Secondary School, in the east, there was Korofaraha Chief's Office and Wajiabo Health Centre. In the south, there was a trough for watering animals and a health centre. Those are just to mention a few, but it was a continuous development process that occupied us during my tenure.

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

Commissioner Farah: Mr. Mativo, thank you for your testimony. I just want to ask you one or two questions. You said that you got your posting orders in December of 1984 but you formally took over from Mr. Matui after he came back from the UK.

Mr. David Mativo: Long after he came from the UK.

Commissioner Farah: Where was he between the time he came from the UK and the time he came to hand over to you?

Mr. David Mativo: He was in the office.

Commissioner Farah: Before you took over from him, you passed through Garissa and you were briefed by the Provincial Commissioner. For the record of the Commission, who was the Provincial Commissioner?

Mr. David Mativo: It was the late Amos Bore.

Commissioner Farah: Did he brief you verbally or in writing?

Mr. David Mativo: He briefed me verbally.

Commissioner Farah: He told you to go to Wajir and take over from Mr. Matui and not to dwell on the past but concentrate on development. Why do you think he told you that yet there was a massacre that had happened in Wajir which was known all over the world?

Mr. David Mativo: I think he wanted me to have a fresh mind and stop discussing what had taken place and to bring change of development.

Commissioner Farah: To stop discussing what had taken place or to cover up what had taken place?

Mr. David Mativo: I cannot cover up what I do not know happened.

Commissioner Farah: Development is forward thinking but surely, you were going in January of 1985 and in February 1984 hardly nine months earlier, the massacre of large

proportions had taken place in Wajir. Having sat through the evidence of Mr. Matui this morning, we heard about bodies being dumped and not being buried with religious rites. So do you think it was normal to come to the district and not know what had happened; read the files, know what had happened and get a briefing from Amos Bore and go there being aware? How would you put a closure to a past and turn the people around to concentrate on development when you know very well that the issues were still burning in the hearts and minds of the people?

Mr. David Mativo: Nobody came to my office to talk about Wagalla. I cannot remember even of any leader. I remember having socialized with the late Ahmed Khalif, and other sitting Members of Parliament like hon. Abdi, but nobody wanted to bring up that issue of Wagalla.

Commissioner Farah: It was not really a big deal for you to try and find out a little bit just for your information and for your care so that it does not happen again?

Mr. David Mativo: I kept it somewhere in my mind and that meant being watchful of elements of such nature and they did not occur during my time.

Commissioner Farah: Having assumed office, did you read the files and really go a little bit further to know what was going on in the district?

Mr. David Mativo: When reading the files, you read subjects that are currently pending or those affecting the issues of that time. None of the issues that came involved Wagalla Massacre.

Commissioner Farah: It was adduced this morning in the evidence by witnesses who gave evidence before you that the matter of banditry did not end on the day the Wagalla massacre happened. Perhaps inter-clan conflicts and banditry still continued and yet the issue of security was still not a concern to you?

Mr. David Mativo: I was very concerned about it but I can assure you that unlike other times when invited for a meeting in Nairobi, I used to leave Wajir at 1 a.m., with no escort except my signaler and the driver. I used to take my breakfast in Isiolo and that is proof that the district was quiet and I had no fear of travelling at night.

Commissioner Farah: Even at the time the Wagalla Massacre was happening, there was still movement day and night?

Mr. David Mativo: Movements were there but there was nothing of security that could have prompted me to have such a kind of security operation.

Commissioner Farah: I am not talking about security operation but I am trying to get your feeling of what was going on and what would happen in future. Why was the issue of Wagalla not in the minds of people? Was it that there was fear to talk about it or did you come to put a closure to it?

Mr. David Mativo: There were elders and in North Eastern, there is nothing you can do without the involvement of elders. When they came to my office, we used to discuss many things and they would also tell me things concerning their clans, be it Degodia, Ogaden or Ajurans. Those were normal talks like any other District Commissioner would have, be it in Kiambu or Eldoret. So I did not find anything unique in Wajir.

Commissioner Farah: Therefore, from January 1985 onwards, no killings occurred at all in Wajir District?

Mr. David Mativo: No killings at all.

Commissioner Farah: Could it be that they were there but they were not reported to you?

Mr. David Mativo: If they were reported then they were normal criminal acts where the police took action but there was nothing of inter-clan clashes.

Commissioner Farah: Even the clan one is criminal but I will leave that one at that. You do not classify inter-clan as civil act but it is still a criminal act. Were there people arrested by your command as a DC for having discussed or talked about Wagalla?

Mr. David Mativo: I cannot remember.

Commissioner Farah: Not even people who went to the Wagalla Airstrip with reporters to try and trace where dead bodies were dumped. Was anybody who talked about Wagalla arrested or forbidden from talking about it?

Mr. David Mativo: Not that I know of.

Commissioner Farah: Having taken over the district, you read through the files; please tell me, did you see any reports and documents concerning Wagalla or did you put all the files aside and said: "I will just concentrate on development"?

Mr. David Mativo: There was no topic about Wagalla but there were other issues on departments. The District Commissioner being the coordinator of Government activities in the district, gets a lot of information from the officers heading different Ministries so I concentrated on that because those were the people to work with on development issues.

Commissioner Farah: I have been trying to see how I can rephrase the question of the closure of the Wagalla during your tenure. Can you please tell me why the silence because you arrive in the district and all of a sudden, a massacre of a large proportion is not talked about even by the leaders from the clans who used to come to your office? Did they not even mention in passing how serious Wagalla Massacre was to you?

Mr. David Mativo: Can I surprise you? I even did not go to Wagalla Airstrip but I could see it while going to Wajir West. My driver could tell me that this was the place where people were done this or that. I did not make an official visit to Wagalla Airstrip.

Commissioner Farah: If I put it to you that it was forbidden to talk about the incident that happened in Wagalla from 10th to 14th February, 1984 until recently. Maybe it was official Government policy or it was something that the District Commissioners and the PCs who were there said should not be discussed or talked about and anybody who talked about it was arrested, would I be wrong?

Mr. David Mativo: I cannot remember of such suppression. When the PC used to tell me to organize *barazas* for him to come and address while inspecting, monitoring and evaluating the projects we were doing, he was nicknamed *Bwana Amani* or Mr. Peace. I cannot remember of any talks apart from peace and I cannot remember my own staff telling anybody not to talk about Wagalla.

Commissioner Farah: Supposing we later on get proof of people who have been taken to court for having discussed or visited the Wagalla Airstrip and were dealt with, could it be that they were not brought to your attention or was it that you did not want to know about it?

Mr. David Mativo: For your information, I was the District Magistrate and if they were brought to the court, I would have vividly remembered but I do not have an idea of anybody being suppressed not to talk.

Commissioner Farah: Thank you, very much, for your cooperation and that was my last question.

The Acting Chair (Commissioner Namachanja): When you were posted and asked to go with a clean mind, dwell on development and forget the past, what did you interpret that to mean?

Mr. David Mativo: You know that the Wagalla issue was all over the newspapers and radios so there was nothing to hide about it. I think that when my boss told me not to dwell on the past, he meant that I should not go and revive issues that were non-existing and that is how I understood it.

The Acting Chair (Commissioner Namachanja): What would happen to somebody who would dwell on the past, for example, in Wagalla in Wajir area?

Mr. David Mativo: If one wanted to know more information about the incident, it was well and good and it was also well for those who were there and involved and said it.

The Acting Chair (Commissioner Namachanja): Did you not take this command as suppressing you to know about the past and what had happened to the people you were going to lead?

Mr. David Mativo: I have already sworn here and I am a very staunch believer in God. I was not briefed by anybody to suppress any talk.

The Acting Chair (Commissioner Namachanja): Is this partly the reason why as a DC, and having known what had taken place in Wagalla, you just passed? Did you not have any curiosity to know about this airstrip that had been talked about in relation to atrocities that took place there?

Mr. David Mativo: In official circles, I could get all the information of what had happened through my chiefs. I did not have any need to go asking people and those elders who used to come to my office used to tell me exactly what had happened. I had no burning issue to go out asking what had happened because I understand that immediately after that, the Government was serious and took action.

The Presiding Chair (Commissioner Slye): Thank you, Mr. Mativo. I just have a couple of brief questions. The first is: do you remember when you first heard about what we now call the Wagalla Massacre?

Mr. David Mativo: I cannot remember when it was but it was in the newspapers.

The Presiding Chair (Commissioner Slye): Was it before or after you were posted to Wajir?

Mr. David Mativo: Before I was posted to Wajir.

The Presiding Chair (Commissioner Slye): In response to my colleague, you seem to suggest that you could have found out information from other Government officials about what had happened which is why you did not go out and ask other people about it. Did you ask other Government officials about what had happened?

Mr. David Mativo: Not at the level you are thinking of. As colleagues in the Government, we could talk.

The Presiding Chair (Commissioner Slye): Based upon those conversations, what was your impression about what had happened in Wagalla and how successful or not that operation was?

Mr. David Mativo: I cannot say whether it was successful or not because the incident brought a lot of repercussions to some officers who were on the ground and also to those who were at the Wagalla airstrip. So, I cannot say whether it was successful or not but it was a bad incident.

The Presiding Chair (Commissioner Slye): It was a bad incident in what way?

The Presiding Chair (Commissioner Slye): You also said that the Government had sort of dealt with the issue and you just made a reference to individuals who were disciplined in some way.

Mr. David Mativo: Well, where people lose lives, it has to be bad because the role of Provincial Administration is to take care of property and lives of the people.

The Presiding Chair (Commissioner Slye): And then you also said that the Government had sort of dealt with the issue and you just made reference to individuals who were disciplined in some way or transferred. Could you elaborate a little more on that in terms of who was disciplined or transferred as a result of what happened at Wagalla?

Mr. David Mativo: No, I cannot because it was a long time ago. The incident happened when I went to the district.

The Presiding Chair (Commissioner Slye): Does that mean that you are not sure whether anyone was disciplined or you know that they were disciplined but you cannot remember exactly who was disciplined?

Mr. David Mativo: Not really!

The Presiding Chair (Commissioner Slye): But you are clear in your mind that people were disciplined. Is that correct?

Mr. David Mativo: Yes!

The Presiding Chair (Commissioner Slye): Okay. Mr. Mativo, you were here this morning when Mr. Matui was testifying. Is that right?

Mr. David Mativo: Yes!

The Acting Chair (Commissioner Slye): I asked him about the discretionary power that the District Commissioner and a District Security Committee would have in terms of their own authority. Was your understanding of that authority similar to theirs or was it different?

Mr. David Mativo: Authority in which sense?

The Acting Chair (Commissioner Slye): He had indicated that at the time when he was District Commissioner, the DC and the District Security Committee had a wider amount of discretion in terms of security operations so they could decide if they could round up all the Degodia men and bring them to the airstrip for about four days, and that sort of thing. So, the sense was, there is a pretty wider discretion or wide authority at the DC level with respect to security operations. So, I am wondering whether when you became DC your understanding of your powers was similar to that or whether things had changed by the time you arrived.

Mr. David Mativo: The District Security Committee is composed of well trained people in the sense that if he is an army officer, he is trained on his line. If he is a policeman, he is trained on his line and if it is the intelligence officer, he is trained on his line. There is nothing written that you should do this when this happens. So, it will depend on the circumstances on the ground. The same thing might happen in Wajir, another one might happen in Kiambu, but they are handled differently according to the circumstances on the ground.

The Acting Chair (Commissioner Slye): So, would I be correct to say that while you were the DC - you testified that it was peaceful during the time you were there - and it had not been peaceful, if the level of violence was similar to what we understand it was in 1983 and 1984, you could have engaged in an operation like what happened in February, 1984 in Wagalla?

Mr. David Mativo: Well, it depends on the indicators that are prevailing on the ground at the time of the incident. So I cannot say those who were on the ground were wrong because they were acting on indications within the district; the prevailing security situation. That is the one which dictates what action the officers should take.

The Presiding Chair (Commissioner Slye): I appreciate that and I am not asking you to second guess. The only thing I am trying to ascertain is that – to use your language - if the indicators on the ground when you were the DC were that there was such a level of inter-clan violence, and if the indicators on the ground indicated to you that you would need to do something with respect to that situation, not whether you would have thought it was wise to do it or not, would you have the authority to, for example, round up all the male members of a particular community and hold them for a number of days for interrogation?

Mr. David Mativo: The way I understand, it was accumulation of incidents prior to Wagalla Massacre. So, I think whatever action they took was accumulation of what had been taking place in previous months or years because we cannot come out of the blues, meet and say: “Let us round up a, b, c, d.” There must have been reasons for doing that.

The Presiding Chair (Commissioner Slye): If the circumstances required that, whatever that will mean, if I understand you correctly, you would have authority to do something like that. I understand from Mr. Matui, that the DSC at that time did have that authority. I am trying to ascertain whether there were any changes with respect to that authority or not. I am not trying to second guess whether they, in fact, did. I am trying to ascertain what authority you understood you had, whether it was similar to what Mr. Matui said he had or whether there had been some change that you were may be briefed about when you first came into that office.

Mr. David Mativo: I do not think there was any change at all.

The Presiding Chair (Commissioner Slye): Thank you. My last question is: as District Commissioner who was a member of the District Security Committee, did you ever file reports or engage in conversations with the members of the Kenya Intelligence Committee?

Mr. David Mativo: During that time, I was not there.

The Presiding Chair (Commissioner Slye): But during your tenure as District Commissioner, did any reports go from your office or from the DSC, to your knowledge, to the KIC?

Mr. David Mativo: There is no way, Mr. Presiding Chair. The District Intelligence Committee passes whatever you have seen to the Provincial Intelligence Committee, then the PSC sends that to the KIC. The KIC is at the national level. So there is no way the DSC can deal with the national committee without going through the PSC.

The Presiding Chair (Commissioner Slye): Okay, that is very clear to me now. Thank you, very much. I want to thank you again, Mr. Mativo, for appearing before this Commission and testifying before us. We very much appreciate your participation. Leader of Evidence, please, escort the witness back to the seat and bring in and swear the next witness. Thank you.

Mr. David Mativo: Thank you.

The Commission Secretary (Ms. Nyaundi): The next witness, Commissioners, is Mr. Ndirangu.

(Mr. Joseph Ndirangu took oath)

The Presiding Chair (Commissioner Slye): Thank you, Mr. Ndirangu. I wanted the Leader of Evidence to make sure that Mr. Ndirangu has a bottle of water in case he gets thirsty.

The Commission Secretary (Ms. Nyaundi): Please, state your name for the record.

Mr. Joseph Ndirangu: I would like to mention that I am suffering from a cold, a severe one, and therefore, my voice is a bit hoarse. I will not to be very, very clear in my testimony.

The Presiding Chair (Commissioner Slye): That is fine. Can I ask if you can just speak closer to the microphone? That might help us to hear you.

Mr. Joseph Ndirangu: Thank you, Mr. Presiding Chair. My name is Joseph Muthui Ndirangu.

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

Mr. Joseph Ndirangu: I stay in Laikipia District, Rumuruti Division, west of Laikipia County.

The Commission Secretary (Ms. Nyaundi): Mr. Ndirangu, you have furnished the Commission with your statement which is not dated, but it is signed by you. In that statement, you speak briefly on your tenure as the Provincial Special Branch Officer, North Eastern. I now invite you to read that statement to the Commission.

Mr. Joseph Ndirangu: Mr. Presiding Chair and the Commissioners, I was not a fully fledged Provincial Special Branch Officer but at the time of this incident, which I have been requested to testify in my summons, I was acting because the Provincial Special Branch Officer at the time of this incident was on leave. And here I state what I was.

I remember that in 1983, I was transferred to North Eastern Province from the Rift Valley as a Deputy Provincial Special Branch Officer. In February, 1984, I was the Acting Special Branch Officer in place of Mr. C. O. Okello, who was on his leave. During that period, several security incidents were reported from Wajir in which inter-clan raids between the Degodia, Ajuran and Garre were on the increase. Following such repeated clashes, a joint meeting was held in Moyale between the three warring clans on 10th November, 1983 in which the Garres accused the Degodia tribesmen of having attacked or raided Ajuran *manyattas* where human lives were lost and livestock stolen under the cover of Garres. In the same evening, unknown Ajuran bandits armed with firearms attacked several Degodia *manyattas* and made away with about 2,000 camels which were not recovered in spite of an extensive search and follow up by security forces. This incident took place in Tuliromba and Jipinda. During the raids, they killed one Degodia clansman and seriously injured one another.

In November, 1983, the Degodia took a revenge mission in which they killed one man and five women, all Ajuran, and made away with 100 livestock. The Degodia continued with their attacks against the Ajuran. However, in some cases, security personnel came to the rescue of the Ajurans. Several *barazas* were held in Wajir to defuse tension but the Degodia continued with their hit and run tactics unabated in spite of reconciliation efforts between the two clans conducted by Provincial Administration and elders. During the period, the Minister of State, Hussein Maalim Mohamed, toured the area to try to reconcile the two groups. He addressed *barazas* in which he appealed for surrender of firearms and offered a 10 day amnesty with effect from 16th December. The PC and his team visited the area again after 10 days and added another 10 day amnesty to surrender firearms. While Ajurans heeded to the call, the Degodia were reluctant. While the Ajurans surrendered 26 firearms, the Degodia surrendered only eight by middle of January, 1984. Efforts of disarmament continued. On the other hand, raids between the two warring sections of Somali communities continued within the *manyattas* and villages in which lives were lost and livestock stolen.

On 9th February, 1984, at Yako Manyatta in Griftu, a gang of 10 Degodia armed bandits raided a home in which they killed five women, one man and seriously wounded two more. They also shot dead three camels and burnt the entire *manyatta*. As a result, tension flared up between the two communities. While the Ajuran blamed the Government for disarming them at the expense of their aggressors who were killing them mercilessly, Degodias looked unconcerned. As a result, the District Security Committee met in a

special DSC held in the DC's office at 3.00 p.m. in which they resolved to conduct an operation to instill public confidence. They resolved to mount a joint operation between the Kenya Police, Army and Administration Police to round up the Degodia male adults for interrogation with a view to retrieve firearms and identifying the killers of the families plus other incidents. This one, I mean the past incidents which had been reported. The operation covered almost the entire district where there was concentration of Degodias. 381 male adults were apprehended and escorted to Wagalla Airstrip where they were confined. The operation was carried out on 10th February, 1984, after reinforcement was received from the neighbouring district. The message was conveyed to the PSC through the PPO, Mr. C. M. Aswani.

Then, the provincial team was composed of Mr. Benson Kaaria, C. M. Aswani (PPO), Lieutenant Colonel H.F. Muhindi who acted swiftly on the request of reinforcement before communication to other members of the PSC, who had accompanied a team of senior officers from Nairobi led by Mr. James S. Mathenge, the then Permanent Secretary, Provincial Administration and Internal Security. This team was composed of the following members: James Mathenge, Bethwel Kiplagat, David Mwiraria, J. Gituma, P. J. Kabatui and Brig. Kibwana, among others.

In another version now apart from the first version, on 8th February, 1984, the team described as KIC composed of four permanent secretaries mentioned above, two deputy secretaries and an assistant secretary and several other senior officers from other Ministries who were met at Wajir Airstrip by the PSC, North Eastern and the DSC, Wajir. While the PS headed the PSC members, the Acting DC, Wajir, M. M. Tiema led his team composed of the following: P.M. Wabwire who was the OCPD, Stephen M. J. Kibere who was the DSBO, and Maj. W.W. Mudogo who was the Kenya Army officer in charge of the company that was based at Wajir. The team proceeded to the DC's boardroom where they were briefed on development projects, security situation and civil servants' welfare. They were also given an overview of the general problem facing members of the public and their expectations.

During the briefing, Mr. Tiema expressed that although sectional clashes between the Degodia and the Ajuran was high in the past, the situation had slightly improved. However, the Degodia were reluctant to surrender firearms while the Ajurans had surrendered more firearms during the campaigns and were afraid that they might be raided or attacked by the Degodia. A total of 34 firearms had been surrendered with the Ajuran surrendering 28 to the authorities. On development projects, the Acting DC talked on improvement of water points and suggested that since the Government had a lot of money water could be tapped from Lake Victoria. He also talked on the improvement of civil servants' welfare while the OCPD urged for the fencing of Police Divisional Headquarters and police lines as part of security measures. From Wajir, the team flew to Takamba where the construction of an airstrip was ongoing after which they flew to Mandera for an overnight stay. On 9th February, 1984, the team was briefed by Mr. F. M. Lekool, the DC Mandera, and his DSC members. The brief was mainly centred on border security with both Somalia and Ethiopia.

Intersectional clashes between Murule and Garre were reported with both clans agreeing on accommodating one another. However, it was noted that Murule were surrendering their firearms to Somalia instead of Kenya which meant that some could surrender in Kenya but the majority to the other side. Nevertheless, a good number of firearms had been deposited with the Kenya Government. The irrigation scheme along the River Dauwa had been abandoned due to insecurity, affecting both Somalia and Ethiopia but the DC and his team encouraged farmers because it was a source of livelihood. Other development matters were discussed at length and concerned Ministries and departments were directed to take up the matter with the relevant office.

Thereafter, the team flew to Liboi from Mandera where the border control post was being built. The two sides; the old and the new one, were visited. In the evening, the team flew to Garissa from Liboi overflying several places in the district before landing in Garissa at about 18.30 hours (6.30 p.m.). In Garissa, all the guests from Nairobi proceeded to the PC's house while the local officers like the PPO and myself proceeded to their houses and offices. Thereafter, they converged at the PC's house for an evening meal. Before we congregated at the PC's house, the PPO received a message from Wajir relayed through the provincial radio room to the effect that a gang of 10 Degodia armed bandits raided a *manyatta* in Griftu where they killed five women and a male adult; owner of the home. Then they shot dead three camels and burnt houses. We informed him of the intention of mounting a raid to surround the Degodia men for interrogation and the required reinforcement. Before communication to the other members of the PSC and KIC, he agreed with the plan through a signal to the DSC and the OCPD. On 10th February, 1984, the Nairobi team was briefed on all aspects touching on the security situation, development projects, civil servants' welfare by the DSC, Garissa, after which the PC briefed the team from Nairobi; that is KIC, on everything in general affecting the province in one way or the other.

Recommendations and solutions, either long-term or short-term were suggested. Thereafter, the Nairobi team and other delegates accompanying them including the PPO, Mr. Aswani, left for Nairobi. At the time just before lunch, on 13th February, 1984, on observing that the DSC members were not reporting progress of the operation, members of the PSC, excluding the Chairman, flew to Wajir on a fact finding mission. The DSC met us at the airstrip. That included me, the colonel and the Acting PPO, who was Mr. Gaturuku, now the late. It was the three of us plus the pilot. The DSC met us at the Air Force airstrip from where we learnt that 13 people had died from gunshots on February 12, 1984, when prisoners attempted to escape from lawful custody. When the Acting DC and his team visited them at Wagalla Airstrip, the DSC members told us that the situation was volatile hence, opening of fire against escapees and those who were throwing stones at the DC and his team plus others who accompanied them. The DC and his team objected to our proposal to visit the scene and we concurred with them to have the victims released and taken back to their *manyattas*. We learnt from here that they had already met and they had resolved to have these people disposed of, that is released and go back home since they were not able to extract anything material as they had expected from them.

On 14th February, 1984, some 16 bodies were discovered and many may have died through dehydration. A total of 29 were reported dead and at that time, a local Italian nun was reported to have collected bodies from the buses and buried them at the Disabled Persons Centre; that is, the rehabilitation centre within the town. The DSC also reported that there was another victim of the operation who died at the hospital while undergoing treatment. An *ad hoc* committee appointed by the OP was tasked with investigations to establish the circumstances leading to the tension in Wajir. The team was led by Mr. John Etemesi, the Provincial Commissioner, Eastern Province. That is all I could remember by the time I was making this statement. I think it was either on or about 24th or 23rd of last month.

The Commission Secretary (Ms. Nyaundi): Thank you, very much, Mr. Ndirangu. I will ask you a few questions just to clarify and then the Commissioners may also ask you some questions. You have said you were the Acting Special Branch Officer. Just so that we understand, what is this branch of the police meant to do?

Mr. Joseph Ndirangu: Special Branch was an intelligence organization within the police and it was known as the Special Branch because it was a unit within the police. So it was entirely concerned with intelligence collection, collation and dissemination either at the District or at the Provincial level and then on to the headquarters.

The Commission Secretary (Ms. Nyaundi): And by virtue of the function of that department you start at the district level, the DSC and at the provincial level, the PSC?

Mr. Joseph Ndirangu: No. In my position I was the Acting Provincial Special Branch Officer and I could only fit in a provincial security committee but I could get materials from the DSC. But these are two different bodies; one for province and the other one for district.

The Commission Secretary (Ms. Nyaundi): At the district, there was the District Special Branch Officer to sit in the District Security Committee?

Mr. Joseph Ndirangu: That is true, Madam Chair.

The Commission Secretary (Ms. Nyaundi): As you have stated, the Provincial Special Branch Officer would sit in the Provincial Security Committee?

Mr. Joseph Ndirangu: That is true.

The Commission Secretary (Ms. Nyaundi): And while Mr. Okelo was away on leave you were therefore, the representative on the Provincial Security Committee?

Mr. Joseph Ndirangu: That is true, Madam Chair.

The Commission Secretary (Ms. Nyaundi): In your statement, on page one on the fourth paragraph, you stated that sometime, 3rd November, 1983, there was an attack by Degodias and they made away with 2,000 camels and there was an extensive search by

security officers and the camels were not recovered. Would you know when this report was received? Did you have that information?

Mr. Joseph Ndirangu: This is the report we received from the ground; that is Wajir, through our network that there was that attack and these camels had already been stolen. But we had already been informed of this meeting that was taking place in Moyale and we were aware not only of the meeting but also what ensued in that meeting. About these camels, I cannot remember the actual dates they were stolen but as I said, they were stolen and they were not recovered.

The Commission Secretary (Ms. Nyaundi): I was just curious because my understanding of camels is that they are rather huge and I was just imagining 2,000 camels and not being possible to trace them unless the report was received a month after the incident. And that is why I was curious to learn that as part of the intelligence you may have gathered on the incident, after how long did it come to your attention that 2,000 camels had been stolen?

Mr. Joseph Ndirangu: Madam Chair, Wajir District is bordering Ethiopia on the other side and these camels could have been stolen and then crossed the border and therefore, the search within the district could not bear anything. And once anything crosses the border, our security forces are not allowed to pursue beyond the border, even if they had seen them cross the border. Therefore, I would assume this is what had happened because nothing was recovered for quite some time.

The Commission Secretary (Ms. Nyaundi): You said that, "...sometime I believe in December". This is on page 2 of your statement, "a Minister of State, Maalim Mohamed attended a *baraza* and appealed for surrender of firearms". Were you present at that meeting?

Mr. Joseph Ndirangu: No, I was not there; my boss went. He is the one who accompanied them.

The Commission Secretary (Ms. Nyaundi): That is your boss from Nairobi?

Mr. Joseph Ndirangu: No, Mr. Okello.

The Commission Secretary (Ms. Nyaundi): He had not yet proceeded on leave?

Mr. Joseph Ndirangu: No, he had not.

The Commission Secretary (Ms. Nyaundi): Now, because you said you were with the Special Branch, I hope that this information may have been within your knowledge. You said that the Ajuran surrendered 26 firearms, the Degodia surrendered only eight. Is there a report anywhere on the investigations that had been undertaken that would have led you to believe that although eight firearms had been surrendered by the Degodia and 26 by the Ajuran, there possibly were other firearms within that community?

Mr. Joseph Ndirangu: These were the reports that were filtering in from our offices in Wajir and also from the DSC team because at the end of every month, they would submit some reports after they met.

The Commission Secretary (Ms. Nyaundi): I believe that whereas there is the DSC, there is also the structure, that is the District Special Branch Officer who is also reporting to you directly at the provincial office, is it not?

Mr. Joseph Ndirangu: That is true, Madam.

The Commission Secretary (Ms. Nyaundi): My question is whether as the Special Branch office you have a report on the intelligence you were gathering around this time on the presence of firearms within this region.

Mr. Joseph Ndirangu: These were reported on a daily basis as they occurred and also the rate at which they occurred. So it is not one report. The only one report is when we combined the whole operation in a month and then in another month. This one is covering maybe two or three months. That is the total collection for that particular period.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Ndirangu. I just sought to understand the workings of the Special Branch and therefore, the clarification I needed to know is that within the Special Branch, would you have maybe quarterly or annual reports that you would say, “we have been investigating as the District Special Branch Office, we have carried out investigations in this manner and our conclusion is that there are illegal arms? Their source is from such and such a place and they are held by such and such people”? Would there be such periodic reports?

Mr. Joseph Ndirangu: As I had stated before, there are daily reports and monthly reports. Daily reports are made when a firearm is recovered or surrendered voluntarily. At the end of every month, there would be a report saying, “the security forces have been able to recover this”. The sources of these firearms were never disclosed because obviously, it was common knowledge that they could have come from Ethiopia or Somalia. However, there were many firearms within the province.

The Commission Secretary (Ms. Nyaundi): My layman understanding of that unit is that you really would be the key source of information. At the district level, the District Special Branch Officer (DSBO) would be providing what is central to what we have heard today as to how many arms there were. Mr. Ndirangu, it is very important for us to know, these reports you are talking about are they available? Is it information that we could request and say we would like the reports for the period between January, 1983 to December, 1984 on the security situation in Wajir? Are these reports we could request for in that manner?

Mr. Joseph Ndirangu: As I said earlier, these are daily reports that are reported to Nairobi. We get information from the districts and then pass them to our head office. At the same time, the only report that can be found on a monthly basis are the minutes of the District Special Branch meetings. These are submitted to the province. You could also

find minutes of a special meeting held and they discussed the issue. It is passed to the province and it will communicate the same to other levels. However, there is no actual report that you would say is there. The end of the month report is a review of what happened within a period.

The Commission Secretary (Ms. Nyaundi): I just need to be very clear on this: supposing the PS, Internal Security asked, “Do we have a problem in Wajir?” what would be the source of the briefing that he would be given?

Mr. Joseph Ndirangu: If there was such a report asked for, we could go back to the reports we have been receiving on a daily basis and then compile that report. We would then forward it to the head office because the request could have come from there. There was no direct communication between the district or province with the outside departments other than the intelligence line. That is from the district to the province and then to the head office.

The Commission Secretary (Ms. Nyaundi): What was your experience in Wajir? You have mentioned a number of incidents that were occurring. Would you have information prior to the happening of these incidents or were you also just receiving reports that there was an attack on the 9th of February? Were there certain indicators you were getting that would tell you that tension was building up?

Mr. Joseph Ndirangu: There could be some reports suggesting that they had received information to the effect that such a thing was likely to happen. We could then advise the other agents that, “this is likely to happen, could you take precautions”. Out of that, tension was building up. It could be an attack between this community and the other community. It could be an attack on Government installation. It could be an attack on Government quarters or offices. We could pass that information to the people who are supposed to carry out the operation itself; that is the police and the army unit stationed in that particular area so that they take precautions.

The Commission Secretary (Ms. Nyaundi): How many individuals were in the Special Branch at the district level?

Mr. Joseph Ndirangu: I cannot remember the number that was there by then. However, the district is headed by the DSBO. Then there is his deputy who is of a lower rank than his and some members of staff depending on the area that is supposed to be covered. It could cover the entire district but, it may also not be able to, according to the strengths at that particular time.

The Commission Secretary (Ms. Nyaundi): I know that because of time you might not be able to tell us exactly how many officers were in Wajir. However, would you remember how many officers were in Garissa at the provincial office?

Mr. Joseph Ndirangu: At the provincial office--- The question is a bit vague.

The Commission Secretary (Ms. Nyaundi): Your officers at the Special Branch Office.

Mr. Joseph Ndirangu: Mr. Okello, was the head, I was his deputy and there was a Chief Inspector and an Inspector. We also had support staff.

The Commission Secretary (Ms. Nyaundi): You have led me to the next question; apart from the regular staff you also had civilians or informers who provided you with information?

Mr. Joseph Ndirangu: Not within the offices. However, just like any other organization that is vested with security, we would get reports from other people in the area. That is how the intelligence could get reports as well. They were not employed. Support staff were dealing with administrative matters in the office.

The Commission Secretary (Ms. Nyaundi): The reason I was keen to ask whether you had locals as part of your team - I believe you were here when Mr. Matui was speaking in the morning - was because of what he kept on telling us. On the report that he gave to the PC he kept saying, "it was believed to be Degodia", there was no certainty. It was just a belief or an assumption. I would want to assume that for the Special Branch, with local informers you would be able to get better quality information. My question then would be, as you were gathering information on guns and illegal firearms, raids and bandits, would this information be available to the Commission?

Mr. Joseph Ndirangu: Before a report is submitted to the province, it would be checked at the district level. That report would have come from an individual or two individuals. Before it is reported to an office, it had to be confirmed first. If it was not confirmed by a different independent person it should not even come out from that office. The next question would be, you have given me this report; is it confirmed?

If it is not confirmed and it reaches the district it will be sent back to the person who originated it to get it confirmed. At the same time, a brief would be given to other officers who are around without this person knowing that there is such a kind of thing so that they can confirm. This was being done and I think even today it is done.

The Commission Secretary (Ms. Nyaundi): I was just curious to know whether, as the Special Branch Office because you have told us the process, we would be able to get information that based on the intelligence you gathered within this period, you got very clear information that these were the guns within Wajir and they are held in these locations and maybe possibly in these *manyattas*.

Mr. Joseph Ndirangu: We could get such kind of information and then point out the homes. We would also carry out underhand secret investigations to establish whether Mr. Ndirangu holds 10 guns. We could also carry out investigations before we even pass that information to another authority.

The Commission Secretary (Ms. Nyaundi): Mr. Ndirangu, I just want us to be very specific with Wajir. In February 1984, did you have any reports by then? Had you gathered any information at the district level that you could present to the DSC or at the provincial level to present to the Provincial Security Committee (PSC) and say, “we have gathered intelligence that there are illegal guns and they are held in these places”? Is there such a report that you generated?

Mr. Joseph Ndirangu: Those reports were there but unfortunately, they could have been destroyed because they have a life span. Every report of intelligence organization has a lifespan. After that lifespan, the records must be destroyed. If they are not, the next person coming for inspection will detect them and direct for the destruction of the same. The life of a report for intelligence was three months. It took just three months and then they got destroyed.

The Commission Secretary (Ms. Nyaundi): On the 10th of February, when it was decided to round up 381 Degodias, was the position that the existing reports had been destroyed and were not available for the DSC so that they would then go to the homes where those illegal firearms would have been detected?

Mr. Joseph Ndirangu: I had stated here that the series of attacks were noted as from November, 1983 up to February. The report which was received had not been destroyed.

The Commission Secretary (Ms. Nyaundi): We were told that the purpose of the operation was to recover illegal firearms and you have told us that you were gathering intelligence on who had firearms. Is it possible that whoever decided to carry out the operation did not enquire from the Special Branch where the firearms would have been obtained from? Is it possible that the Special Branch did not have the machinery to gather information on where the firearms were?

Mr. Joseph Ndirangu: No, the people who were carrying out the operation were at the district level and they were meeting every now and then evaluating the events which had been taking place. They were aware of what was going on. If I was in the office, I could have come up with the meetings that we had held between this time and 10th or even before. The DSC had met and in the meeting, that is where the intelligence, police and other security forces would have come up with a conclusion of what to do or what they had gathered. After evaluation, they would come up with the next course of action.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Ndirangu. It does not appear to make sense to me and as you say, this was not just an incident that happened out of the blues. In fact, Mr. Matui told us that from the time he reported in 1982, there had been attempts to get the surrender of the illegally acquired firearms. So even if we assume that this only began with Mr. Matui’s presence in the district, I am assuming that at the DSC offices with the Special Branch Officer there, there were daily reports, periodic reports, monthly reports and intelligence on issues including illegal firearms and these were being sent even to the provincial headquarters. What I need you to clarify to me is the position that by the 10th of February, 1984, when the decision was made to

roundup Degodia men in the airstrip, would it be accurate to say that even the Special Branch did not have information on where one was likely get firearms?

Mr. Joseph Ndirangu: You are not correct to state that because intelligence is found in communities and among people. We could receive reports from the Degodia, the Ajurans and the Garre and then compare them. We could also make a judgment as to who was nearer to the truth and who was not. The only thing is that it was difficult to know that such and such a *manyatta* was the one holding firearms. This is because these firearms were held by the so-called clan guards who were hiding in the bush. They were not at the *manyattas*. Although they could come to the *manyatta*, they used to stay in the bush. They were the inter-clan militias who were hiding in the bush. Therefore, it was not very easy to state that this is where you could get the firearms.

The Commission Secretary (Ms. Nyaundi): So, the intelligence you had was that there were some men in the bush who had firearms?

Mr. Joseph Ndirangu: That is the intelligence that continued to come up. I think even today, this intelligence comes up. These were criminal gangs hiding in the bush or staying amongst the other communities or clans. Every clan in North Eastern Province, starting from Garissa to Mandera, has militia who keep their security.

The Commission Secretary (Ms. Nyaundi): If as we have heard, the DSC decided to randomly pick Degodia males from various locations of Wajir, would you say that, that operation was conducted with the benefit of intelligence that had been available at the Special Branch Office?

Mr. Joseph Ndirangu: I would confirm that because the intelligence that was collected by our men in the field was shared between the other members of the security committee. Intelligence is not a monopoly of a few people. They also have their own network of collecting intelligence. They had already shared this. Most of the incidents that had been reported earlier on pinpointed to the Degodias although in the past, it pinpointed at the Garres against the Ajurans.

The Commission Secretary (Ms. Nyaundi): Yes, but you have said that these were people in the bush. The information we got is that people were collected on their way as they were walking. They were being asked, “Are you a Degodia? Get in to the vehicle.” Others were got from their houses. People were collected from far-flung locations and brought to the airstrip. Did that operation have the benefit of the intelligence brief that you had? My assumption is that if it did, then the priority would have been to look, as you say, in the bushes and not gather people including civil servants. We are told that civil servants were also brought to the airstrip.

Mr. Joseph Ndirangu: As I stressed earlier on, the intelligence collected from the field was shared between the other members of the security units. The intelligence that was shared was to confirm whether other Government arms or other arms in relation to security had similar reports. We had already reported what we had collected from the

field. The issue of people being picked, I cannot tell exactly what happened during the operation. I depended very much on what was coming from Wajir. By then, you will also appreciate that the means of communication was very limited. We were only using radios. These radios were subject to interceptions from across the border - both sides - and other people. Therefore, we were a bit selective in transmitting information through the radios.

The Commission Secretary (Ms. Nyaundi): Mr. Ndirangu, we will move to the next point. If you have submitted a report that guns are held by bandits, there is an operation and teachers and civil servants are rounded up as among the people to be interrogated, would you say that your report had been ignored?

Mr. Joseph Ndirangu: My explanation would be that if there were civil servants rounded up, I am not aware about that. This is because we were only told of the number of people who were collected. Since the police station was not able to hold the number, they decided to take these people to Wagalla Airstrip which was an open place and they could contain the situation. Other than the children and ladies who were not affected, we were not told of other classifications of people. I do not remember having been told of any civil servant having been taken to Wagalla for interrogation.

The Commission Secretary (Ms. Nyaundi): Actually, both Mr. Tiema and Mr. Matui confirmed that civil servants were at the airstrip and were released at some point. Therefore, they were included in the roundup. I assume that as a member of the Special Branch, you would be aware of the areas that are gazetted where persons can be detained.

Mr. Joseph Ndirangu: This was an operation. It was not a detention camp. It was a site sighted by these people who were holding the interrogation or operation. They selected that place. They found it to be suitable for them to screen them in an area that was viable for them.

Commission Secretary (Ms. Nyaundi): But it was not a gazetted---

Mr. Joseph Ndirangu: It was not gazetted because a gazetted place has been worked on for a purpose. This was not constructed for that purpose. It was an airstrip but we found it better. It was an open place but they had that discretion of doing it. I can remember during the Emergency in Central Province, people used to be collected and taken to some places. This was not necessarily gazetted places. When it came to the actual detention they could be taken to gazetted places because that was going to be long term. For screening and interrogation, they could be taken anywhere as long as they are able to contain those people.

The Commission Secretary (Ms. Nyaundi): Mr. Ndirangu, on page three you speak of a visit on 8th February, 1984, were you present at that meeting?

Mr. Joseph Ndirangu: I was.

The Commission Secretary (Ms. Nyaundi): Now, you have mentioned that there was a team described as the KIC. As a member of the Special Branch, what was your understanding of the mandate of the KIC?

Mr. Joseph Ndirangu: I am not in a position to state clearly what the mandate of the KIC was. This is because as you know, Government operations are ranked. I can only give the mandate of the province where I had reach. I do not know the other one. I am aware that the KIC is composed of several people. These people come from different Ministries, and mainly so, the PS. They discuss issues on matters related to development, security, welfare of members of staff in a certain area, especially in North Eastern, which is an operation area even today. People there do not enjoy like others. It is an operation area; long distances and travelling used to be a problem and I think it is even today. They had to take care of the morale. Coin that with development because security and development go hand in hand.

The Commission Secretary (Ms. Nyaundi): You say you have a better understanding of what goes on at the province, was your understanding of the working of the KIC similar to the PIC but at the national level?

Mr. Ndirangu: That is how it is.

The Commission Secretary (Ms. Nyaundi): So, maybe we can talk about the PSC - what you are more familiar with. What was the mandate of the PSC?

Mr. Joseph Ndirangu: It is concerned with the security of the province. They deal with issues which come up from the district level. They advise on issues that require immediate or long term approach. They also address issues at every district level which they discuss and come up with a solution. If there is a solution that is supposed to be conveyed back, they do so and advise the headquarters.

The Commission Secretary (Ms. Nyaundi): So, the Provincial Security Committee advises the District Security Committee then gives information to the national organ?

Mr. Joseph Ndirangu: If there is an issue that requires advice; if they ask for advice, the PSC would discuss the issue and advise them. At the same time they do not keep that information with them because it could be affecting another province. They communicate to the headquarters.

The Commission Secretary (Ms. Nyaundi): When PSC is communicating with the headquarters, with whom is it communicating?

Mr. Joseph Ndirangu: Once the PSC had done their minutes, they are submitted to say, like I would submit a copy to the Special Branch Headquarters. The PC would do the same to the PS. All of them then can discuss at the higher level of the PS, Internal Security office.

The Commission Secretary (Ms. Nyaundi): I assume the PS, in the same way that the PC has the PSC as a body he discusses security with, also has a body with which he or she would be discussing security matters.

Mr. Joseph Ndirangu This is the KIC. That is where the matter of KIC comes in. If it is a matter of security they would press that issue. They can also issue directives to the PSC and the PSC would do the same to the DSC.

The Commission Secretary (Ms. Nyaundi): I just want to get the chronology of events correctly. What happens is that on the 8th of February, this team you are referring to as the KIC arrives and you continue to say, “for a regional tour within the North Eastern Province”. When is the first time that you heard of the intended visit by this group?

Mr. Joseph Ndirangu: As the deputy to my boss, I only heard about it when he was about to go on leave. He told me that there was a programme of the KIC that had been postponed several times. We were supposed to have two at the province before around 1983, but unfortunately they kept postponing it. They had proposed to come. After he left, I gathered from the PC who was our chair that they were supposed to come on this date.

The Commission Secretary (Ms. Nyaundi): So you got that information in February, because that is when Mr. Okello proceeded on leave? In early February, you were informed that the KIC would be conducting a tour of the northern region?

Mr. Joseph Ndirangu: Yes.

The Commission Secretary (Ms. Nyaundi): Was their first stop in Wajir or did they go to another place first?

Mr. Joseph Ndirangu: The tour was intended to cover the whole province but in this particular case, the first stop was Wajir.

The Commission Secretary (Ms. Nyaundi): Okay. They flew directly from Nairobi to Wajir?

Mr. Joseph Ndirangu: They flew directly from Nairobi to Wajir and the PSC flew from Garissa to Wajir to welcome them.

The Commission Secretary (Ms. Nyaundi): Now, you say you then had a meeting with the DSC Wajir which was then shared by the Acting DC, Mr. Tiema?

Mr. Joseph Ndirangu: Which date?

The Commission Secretary (Ms. Nyaundi): On 8th February, 1984.

Mr. Joseph Ndirangu: We had a meeting in the board room that composed of all those who came and those who were present. There were other people who were not DSC or PSC members who were drawn from the local area. There were other people who came with the KIC. They came with a number of people. I am not very sure but they should range between 25 to 30 people.

The Commission Secretary (Ms. Nyaundi): From Nairobi?

Mr. Joseph Ndirangu: Yes, from Nairobi.

The Commission Secretary (Ms. Nyaundi): So, who gave the briefing to this group that had come from Nairobi?

Mr. Joseph Ndirangu: It was the Acting DC.

The Commission Secretary (Ms. Nyaundi): He is the only one who gave---

Mr. Joseph Ndirangu: He is the only one who gave a brief to these people.

The Commission Secretary (Ms. Nyaundi): Now, there is a document, I do not know whether you have had the benefit of looking at it. When Mr. Tiema was here he informed us that he read a brief, would you have a recollection of that?

Mr. Joseph Ndirangu: A recollection of the brief that he gave?

Commission Secretary (Ms. Nyaundi): Yes.

Mr. Joseph Ndirangu: Yes, he gave the brief of the security situation in the area. He also gave the brief of the civil servants' morale. He also touched on development issues and also the expectations.

The Commission Secretary (Ms. Nyaundi): There is a document that I have passed to you. It is dated 1st February, 1984, and titled "Brief to KIC"; can you confirm that?

Mr. Joseph Ndirangu: I remember he was reading from somewhere but this was not passed to all of us.

The Commission Secretary (Ms. Nyaundi): Okay. But you can confirm that, that document is signed by Mr. Tiema on the last page?

Mr. Joseph Ndirangu: Looking at the name, I would say yes. I am, however, not qualified to ascertain whether this is Tiema or not because I never received a letter or anything signed by him.

The Commission Secretary (Ms. Nyaundi): The last page has his name as the author of that document.

Mr. Joseph Ndirangu: The last page has. What I am saying is that by the name I can confirm, but I cannot confirm that it is him because I have never seen a document he has signed or authored. I remember he was reading a paper as he narrated issues.

The Commission Secretary (Ms. Nyaundi): As part of the discussions on that day, we have been told by Mr. Matui that prior to the arrival of the KIC and the delegation for Nairobi, there had been a series of attacks. Were those matters raised during that meeting?

Mr. Joseph Ndirangu: Yes, he raised them. He talked about the incidents, clustering them together, and said that the situation was not calm. This was confirmed by another member. Even the DSBO had confirmed that the situation was calm. We confirmed it from reports that were filtering in from the district. So, from my office we were able to tell how the situation was. The frequent and sporadic attacks between the two communities were not at low end.

The Commission Secretary (Ms. Nyaundi): What we heard from Matui is that the DSC was under pressure from the Ajuran to confirm that the Government was able to protect them. This is captured in the last paragraph, third line on page 2 of your statement. You said later on that even the operation the DSC decided to conduct was meant to restore public confidence in the area---

Mr. Joseph Ndirangu: Yes, that was the case. We had even been receiving reports of that nature that due to the incidents which were taking place, there were no arrests. The Ajurans were now claiming that the Government made them prey to the attacking clans because previously when they held the guns, they were not being attacked.

The Commission Secretary (Ms. Nyaundi): Is it something you discussed on 8th of January, the fact that Ajurans were feeling vulnerable? They were feeling that the Government was not being as protective as it ought to have been.

Mr. Joseph Ndirangu: I think this was covered by the exclamation that the situation was a bit calm by then. It was not as it was before. The DC could not go into every detail because this was a brief to several people. Some of them were security people while others were not.

The Commission Secretary (Ms. Nyaundi): You will allow me to belabour the point, but as at the 8th of February, was the feedback that you were getting as Government agencies that the Ajuran did not feel that the Government was as protective as it ought to have been?

Mr. Joseph Ndirangu: Please, repeat your question, Madam.

The Commission Secretary (Ms. Nyaundi): Between 2nd and 6th February, there were attacks. Was it at this time that the Ajurans were telling the DSC that they took away

their guns and made them vulnerable for attacks? You heard them say their guns were taken away and they were left exposed.

Mr. Joseph Ndirangu: This was a continuous complaint after they surrendered their guns. The campaign for them to surrender guns was spearheaded by the Provincial Administration, the Minister, Office of the President, Hussein Maalim Mohamed and the PC. They were being attacked more often than before.

The Commission Secretary (Ms. Nyaundi): Now beginning on page 2, you stated that when the operation commenced, there was a call for reinforcements. Who asked for these reinforcements?

Mr. Joseph Ndirangu: The DSC.

The Commission Secretary (Ms. Nyaundi): What in particular were they asking for?

Mr. Joseph Ndirangu: They were asking for more personnel because they were to cover a larger area and the men they had on the ground were not sufficient. They were not enough to cover the area.

The Commission Secretary (Ms. Nyaundi): So, these men were from the ordinary police or from other units?

Mr. Joseph Ndirangu: They could have been from other units such as police, Administration Police and military.

The Commission Secretary (Ms. Nyaundi): Mr. Ndirangu, are you aware whether the army, police and Administration Police did send these reinforcements?

Mr. Joseph Ndirangu: The reinforcement was sent.

The Commission Secretary (Ms. Nyaundi): Did the reinforcements include vehicles?

Mr. Joseph Ndirangu: Yes, because they were to cover Mandera and Garissa. They had to use vehicles.

The Commission Secretary (Ms. Nyaundi): Were these military vehicles or police vehicles?

Mr. Joseph Ndirangu: The military vehicles were well equipped than the police. There could be police, AP or military vehicles. The military used their own vehicles. They did not use the other vehicles. However, the police and others could use any of the vehicles available.

The Commission Secretary (Ms. Nyaundi): So, if the military were participating, they could use their vehicles?

Mr. Joseph Ndirangu: They mainly used their vehicles.

The Commission Secretary (Ms. Nyaundi): We have been given some information as to the rank and who commands operations. During the combined or a joint operation carried out by the Kenya police, army and AP, who would be the officer in charge of that operation?

Mr. Joseph Ndirangu: Going by the seniority, the army tends to take the upper hand. Sometimes where there was an operation like this one, the military men would carry their own operation. In a simple operation, the military would not get into the houses. They possibly cordon the area and the police and the AP could move in.

The Commission Secretary (Ms. Nyaundi): So, this request for reinforcement was made informally by way of the radio call?

Mr. Joseph Ndirangu: Yes, Madam.

The Commission Secretary (Ms. Nyaundi): Then it was acted upon?

Mr. Joseph Ndirangu: Yes, Madam.

The Commission Secretary (Ms. Nyaundi): So, at that time, there was no requirement, maybe, for having to introduce things in writing in order for a request like this to be approved?

Mr. Joseph Ndirangu: Since a request for reinforcement had been made through a signal, it was to be replied through the same form of a signal. As I said earlier on, it is an operation area, whereby there could be interception from other areas. Therefore, the signal would be drawn and then it would be coded, so that it could be passed to the other end.

The Commission Secretary (Ms. Nyaundi): When you heard there was to be an operation, what part did you play? Did you contact your colleagues at the district level maybe to know exactly what was going on or the kind of operation they were talking about?

Mr. Joseph Ndirangu: I had said earlier on that the report was received by the PPO, because most of the signals came through the PPO. As he received this report, he acted swiftly, before even we met to discuss this issue. Therefore, he was only telling us later on as the heads of the other departments after he had already acted.

The Commission Secretary (Ms. Nyaundi): So, would you be confirming that at least between 10th and 14th February, you did not get in touch with the District Security Branch Officer, Mr. Kibere?

Mr. John Ndirangu: I got that information on 10th in the morning as to the incident that had occurred, the requirements that were required and the reply that had already been received.

The Commission Secretary (Ms. Nyaundi): I believe there were the DSC, the PSC, the District Special Branch Officer, and the Provincial Special Branch Officer.

So, when the PPO informed you that there had been a request for reinforcements, and you knew that at the DC level, your officer would participate in this operation, did you initiate any conversation with him between 10th and 14th February to find out what was going on in Wajir?

Mr. Joseph Ndirangu: On 9th when this operation was discussed, we got the information late. The team from Nairobi, the PSCs and us arrived in Garissa late. However, the PPO had received it earlier. Since it was during the night, I could not have contacted my officer in Wajir, because we used to close the offices at 4.30 p.m. Therefore, I could not have reached him. In the morning, I spoke to him and he told me of what had transpired on the ground.

The Commission Secretary (Ms. Nyaundi): When he told you what had transpired, did you share this information with the other members of the PSC who were within Garissa?

Mr. Joseph Ndirangu: That information was communicated to us all by the PPO. So, there was no added information that we could have shared with them.

The Commission Secretary (Ms. Nyaundi): So, did you communicate with him on 11th February?

Mr. Joseph Ndirangu: After I learnt of the operation, we continued talking with him. However, he was just reporting that there was no progress and that they had not recovered any firearm. He did not say the details of the operation or the outcome of the interrogation. That was on 10th. The operation was carried out between 10th and 11th. On 12th, the situation was normal and there was nothing to report about. So, we were a bit concerned with the flow of information.

The Commission Secretary (Ms. Nyaundi): But your Special Branch Officer was in communication with you?

Mr. Joseph Ndirangu: They were all in communication with their respective offices. However, we were not getting the details concerning the operation which had already been carried out.

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, I am just informed it is heading to 6.00 p.m. I lost track of time. I seek your direction as to how much longer we can sit

The Presiding Chair (Commissioner Slye): It is my understanding that we cannot stay in the hall beyond 6.00 p.m. Is that correct? I would suggest if you have come to a point where you can stop your questioning and we can resume tomorrow, the better for us. If you can do that quickly, we can adjourn after you are ready. Have you reached such a point?

The Commission Secretary (Ms. Nyaundi): I request that we adjourn to tomorrow, but let Mr. Ndirangu confirm to us if he will be available tomorrow.

I have also received information that General Kibwana would like to be heard early tomorrow morning.

The Presiding Chair (Commissioner Slye): So, Mr. Ndirangu will be available tomorrow morning to continue with his testimony?

Mr. Joseph Ndirangu: I will, Mr. Presiding Chair.

The Presiding Chair (Mr. Syle): We will now adjourn for the day. We will communicate with the witnesses sometime this evening about the revised schedule of who will be testifying tomorrow.

I would like to thank the witnesses, Mr. Ndirangu, Matui and Mativo for having participated today. I would like to thank the counsel that are present, and most particular, I would like to thank the members of the public, including those individuals who have travelled all the way from Wajir to attend this hearing today. The Commission would like to thank the Kenya National Commission for Human Rights for having facilitated the travel of those individuals to Nairobi, so that they could listen and participate in this hearing.

Before we adjourn, I would request that we do two things; one is to observe a moment of silence on behalf of those individuals who lost their lives in Wajir during the period.

(The Commission observed a minute of Silence)

Finally, I request a volunteer to lead us in closing prayers.

(Closing Prayers)

(The Commission adjourned at 6.05 p.m.)