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### Public Hearing Transcripts - North Eastern - Wagalla Massacre (Nairobi) - RTJRC03.06 (NHIF Auditorium) (Joseph Muthui Ndirangu testimony)

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION ON FRIDAY, 3<sup>RD</sup> JUNE, 2011  
AT THE NHIF AUDITORIUM, NAIROBI**

**PRESENT**

<b>Ronald Slye</b>	-	<b>The Presiding Chair, USA</b>
Tecla Namachanja	-	The Acting Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Getrude Chawatama	-	Commissioner, Zambia
Margaret Shava	-	Commissioner, Kenya
Patricia Nyaundi	-	Commission Secretary
Simon Njenga	-	Presiding Clerk
Abdi Noor Dahir	-	Regional Co-ordinator

*(The Commission commenced at 10.20 a.m.)*

*(Opening Prayers)*

**The Presiding Chair** (Commissioner Slye): I want to welcome everyone to the hearings of the Truth, Justice and Reconciliation Commission (TJRC) this morning, Friday, 3<sup>rd</sup> June, 2011. We are continuing hearings we started yesterday, which were a continuation of hearings we began on 17<sup>th</sup> and 18<sup>th</sup> May, here in Nairobi. These hearings arise out of a series of hearings that the Commission held in the northern region of the country in April and May of this year.

I will be the Presiding Chair this morning as we have a witness carried over from yesterday, Mr. Joseph Ndirangu.

I would like to lay out a couple of ground rules for this morning's hearings. First, we would like to ask you to, please, turn off your cell phones. Do not keep them even on silent mode as they interfere with our sound system. If you need to take or make a phone call, please, leave the hall, so that you do not disturb others in the hall.

Secondly, we would like to ask you to, please, listen attentively and respectfully to the witnesses testifying today. This Commission was established to provide a safe space and respectful space for people to come forward and tell their stories and give their perspectives on historical injustices in Kenya from Independence until the end of February, 2008.

You may hear things that are new to you; you may hear things that are different from your understanding or your recollection. You may hear things that you completely agree with. Regardless of which category you fall into, we ask that you politely and respectfully listen to the witnesses.

Related to that, we did have a policy of not allowing still photography during the testimony of a witness but allow in video photography of witnesses. We are now going to change that policy but I want to explain the basis for the policy and the reason for the change.

As I said, we are set up to provide a safe and respectful place for witnesses. So, we do not want a situation where witnesses are distracted by photographers or by other people while they give their testimony. So, for still photography, we are asking that those of you with still cameras, you may take photographs under two conditions; that you do not use a flash and that you do not move from your current position. You stay seated or standing wherever you are, but you do not move around or in front or near the witness.

If we find that with this new rule, witnesses are being disturbed, we may re-visit the change of that rule.

The proceedings this morning will be the same as the proceedings that we have had throughout our hearings. The witness will be sworn in. The Leader of Evidence will then lead the witness in his or her testimony. After the Leader of Evidence has finished leading and questioning the witness, Members of the Panel may question the witness.

I would now like to ask for any counsel present to, please, identify themselves and identify whom they are representing.

**Mr. Kioko Kilukumi:** Mr. Presiding Chair and Commissioners, my name is Kioko Kilukumi. I appear together with Mr. Elijah Mwangi for the following individuals: Messrs. A.J. Njue, David Mutemi, J.K. Kaguthi, D.K. Mativo, J.P. Mwangovya, David Mwiraria, Benson Kaaria, B.A. Kiplagat, John Gituma, whose attendance has been dispensed with by this Commission; Messrs. James ole Serian, Gen (Rtd) Kibwana, Maj. Philip Chebet, Lt. Murungi Kaaria; Messrs. James Stanley Mathenge, Joshua Matui, J.M. Ndirangu and P.N. Kingori.

Those are the individuals we represent.

**The Presiding Chair** (Commissioner Syle): Thank you, counsel. Is there any other counsel present?

**Mr. Harun Ndubi:** Yes, Mr. Presiding Chair, Sir. My name is Harun Ndubi. I appear for the Wagalla Victims Association. I am with Sala and Abdirishad Salat.

**The Presiding Chair** (Commissioner Syle): Thank you. Is there any other counsel present? There seems to be no other counsel present.

Mr. Kioko, before we began yesterday, we had a conversation about the request to get documents from the Government. You had indicated that as of yesterday, it was your

understanding that the request for those documents was pending with the Attorney-General. I am wondering whether you have any new information on that request?

**Mr. Kioko Kilukumi:** Thank you. I followed the issue of the documents with the Office of the President once more, and I was told that the Attorney-General was not available, and that the matter had been referred to the Solicitor-General. So, hopefully, we are going to get those documents in due course. As soon as we receive them, we will table them before this Commission.

**The Presiding Chair** (Commissioner Slye): Thank you, counsel. We also asked about documents referred to by some of your clients. Have you been able to secure any of those documents?

**Mr. Kioko Kilukumi:** I secured the documents referred to in the statement of Amb. Bethwel Kiplagat and I have supplied that to the Chief Executive Officer (CEO) of this Commission. The other documents that were referred to were a report and Mr. Matui's statement, which we produced before this Commission yesterday. I have complied with the directives of this Commission.

**The Presiding Chair** (Commissioner Slye): Thank you, counsel. We appreciate that you have been co-operating with us by giving us those documents. I would like to now ask if there are any other prominent issues that we need to deal with before proceeding with yesterday's witness.

**The Commission Secretary** (Ms. Nyaundi): Originally, we had slated the hearings for yesterday and today, but based on our progress yesterday, we are proposing to revise it, so that the Commission can hold its hearings until Tuesday. I have shared the list with my senior learned friend, Mr. Kilukumi. The proposal is to hear Mr. Joseph Ndirangu today, together with Gen. Kibwana, Brig. Chebet and Amb. Kiplagat. The order is Mr. Joseph Ndirangu, Gen. Kibwana, Amb. Kiplagat and then Brig. Chebet. We propose that on Monday, we will hear James Stanley Mathenge, David Mwiraria, Joseph Kaguthi and A.N. Njue. On Tuesday, we shall hear Lt. Muriungi, Benson Kaaria, Amb. Mutemi and P.C. James ole Seriani.

Mr. Presiding Chair, Sir, you will notice that we have dispensed with the appearance of Mr. Mwangovya through Mr. Kilukumi, who had even indicated yesterday to the Commission that his voice was not very good. We had a discussion with Mr. Kilukumi and agreed that he need not testify before the Commission, but that if the Commission deems it necessary, we shall submit questions to him, which he can respond to in writing.

**The Presiding Chair** (Commissioner Slye): Thank you, Leader of Evidence. That schedule is accepted by the Commission. I would like to advise members of the public and members of the Press, that depending on how quickly we move through these witnesses, we may actually be sitting beyond Tuesday of next week as well.

I would now like to ask the Hearing Clerk to bring in the witness of yesterday afternoon and swear.

*(Mr. Joseph Muthui Ndirangu took the oath)*

**The Commission Secretary** (Ms. Nyaundi): Mr. Joseph Ndirangu, I will request you, just for purposes of our record, to restate your names.

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, Sir, I am Joseph Muthui Ndirangu.

**The Commission Secretary** (Ms. Nyaundi): Mr. Joseph Ndirangu, before we adjourned yesterday, you were speaking about the radio signal that had come in from Wajir to the Provincial Police Officer indicating that a decision had been taken to carry out an operation. We had continued with the discussion and we were where you were informing us of the communication between you, as the Provincial Special Branch Officer, and the District Special Branch Officer. Can you confirm that position?

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, first, I would like to report that my health condition that I reported yesterday is still persistent with me. Therefore, I appeal for tolerance in case of any hiccup or anything that might affect my voice or my chest, because I am still suffering.

I stated yesterday that communication in the North Eastern Province at the time was very poor, because we depended very much on radio calls. Most of the information, especially on secret matters, was coded. It was not just transferred like that. It was coded to give security to the message because there were interceptions from neighbouring countries. Also, some people had some gadgets for intercepting communication between the security forces on the ground.

**The Commission Secretary** (Ms. Nyaundi): Mr. Joseph Ndirangu, could you confirm that at that time, the District Intelligence Officer was Kibere? Was this the person you would have been communicating with in Wajir from Garissa?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Commission Secretary** (Ms. Nyaundi): So, for clarity of our record, is it the position that between the 9<sup>th</sup> and the 13<sup>th</sup> – because of the challenges of communication – you were not communicating with Mr. Kibere?

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, Sir, as I reported yesterday, there was lack of communication between the Provincial Headquarters and Wajir due to some reasons best known to the people on the ground. That was with regard to information on matters pertaining to this operation. On other matters, we were corresponding well. As a result of lack of information flowing in, the PSC organized for a team to visit Wajir, excluding the chairman, who was the Provincial Commissioner. That was on 13<sup>th</sup>.

**The Commission Secretary** (Ms. Nyaundi): So, when you talked to the District Special Branch Officer, Mr. Kibere, you discussed issues other than the ongoing operation?

**Mr. Joseph Muthui Ndirangu:** In an operation like that one which has been carried out, we would have expected reports on a daily basis or even at intervals any time that anything happened. After the surrounding of the 381 male adults, they were supposed to interrogate them. During the interrogation anything could have cropped up. They would have possibly acquired a firearm, ammunition or information given as to who was responsible for the series of attacks in the area, but this was not forthcoming. So, as far as the interrogation was going on, we were not briefed on it up to this day that we were to go for a fact finding mission.

**The Commission Secretary** (Ms. Nyaundi): The message arrives on the 9<sup>th</sup> that a decision has been made to carry out an operation. You have said the message was sent directly to the Provincial Police Officer. You get to hear of it. Who else was with you in Garissa when this message was delivered and whom you know had news that a decision had been made to carry out an operation?

**Mr. Joseph Muthui Ndirangu:** When the DSC met at around 3.00 p.m., at Wajir, the people I mentioned, that is the KIC team plus other officers from the headquarters, the PSC and other officers from the province were in the air. We were in the air between Mandera and Liboi. So, we could not get the information. As we flew from Liboi to Garissa, it was around 6.30 p.m. After arriving in the evening at Garissa, we dispersed. The residents went to their respective houses and some went to the offices. Then we were to converge again for an evening meal that evening, so that we could prepare for the next day because the tour was for the whole province and not one particular district. We could wake up in the morning and then hear the Garissa team had also our version now as the provincial team.

**The Commission Secretary** (Ms. Nyaundi): You have spoken of this on page 2 of your statement. My question to you is: you are saying that a message was channeled to the PPO, Mr. Aswan, while you were in Garissa before you went for the dinner. This is on the top of page five. So, while you were in Garissa, you say that at least you heard from the PPO that the DSC had met and they were going to carry out an operation. So, my question to you is - because there you say you congregated at the PC's house, as you said, to get together and organize for the next day - when you received the news from the PPO and he is briefing you that the DSC has made a decision to carry out an operation, who else was there either from the PSC or the delegation from Nairobi? Were those people there also briefed by the PPO on the developments in Wajir?

**Mr. Joseph Muthui Ndirangu:** The briefing from the PPO was on individual lines. We did not make it a security meeting or a meeting at that time because we were congregating for a meal. Therefore, it was relayed to us on individual lines. So, he told me about the signal that had come from Wajir calling for reinforcement and that there was an attack somewhere in Griftu. I think he could have done the same to---

**The Commission Secretary** (Ms. Nyaundi): That is all I needed to know. How was the message conveyed? Did he just walk up to you and tell you individually or were you all seated at the table and then he shared?

**Mr. Joseph Muthui Ndirangu:** No, it was not a meeting because obviously the people who were in that dinner were not all security men. There were other people. Therefore, this was conveyed to us individually.

**The Commission Secretary** (Ms. Nyaundi): That is why my question to you is: after the PPO has spoken to you as an intelligence man and says there is going to be an operation, did you as the boss to the person in Wajir try and communicate to Mr. Kibere and, for instance, tell him that, “Mr. Aswan tells me that you were at a meeting yesterday and you have decided to carry out an operation”. Did you send a message to Kibere and tell him: “Inform me what is happening in Wajir?”

**Mr. Joseph Muthui Ndirangu:** I said yesterday that we arrived in Garissa at around 6.30 p.m., and we dispersed and then we were to congregate again. Therefore, it was already night time and offices had been closed.

**The Commission Secretary** (Ms. Nyaundi): But did you communicate with him on 10<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** On 10<sup>th</sup>, I communicated with him. In any case, they had already met as a DSC. So, whatever message they had relayed to the province was a communication from the team and not from an individual. So, what he was to do in the morning was either confirmation or to refute that, but he confirmed that they had met and they had reached that angle and they had asked for reinforcement because they were not able - with the people on the ground and the logistics as well - they were not able to cope with the whole area.

**The Commission Secretary** (Ms. Nyaundi): That was between you and Mr. Kibere?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Commission Secretary** (Ms. Nyaundi): On 11<sup>th</sup>, did you seek out Mr. Kibere and tell him: “We had a conversation yesterday. I have not heard from you, what is happening?”

**Mr. Joseph Muthui Ndirangu:** Normally, in an operation like that one, he was supposed to communicate the progress and also to say what had transpired. He did now mention on 11<sup>th</sup> as to what they had received; the reinforcement and the operation was going to be carried out the same day. He also called back to say the operation was in progress.

**The Commission Secretary** (Ms. Nyaundi): On 11<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** On 10<sup>th</sup>.

**The Commission Secretary** (Ms. Nyaundi): On 9<sup>th</sup>, you received it at night. On 10<sup>th</sup>, you received a confirmation, is it not? 10<sup>th</sup> would be the next morning after the dinner in Garissa. 11<sup>th</sup>, would be the next day, now two days into Garissa. Did you have a conversation with Mr. Kibere?

**Mr. Joseph Muthui Ndirangu:** Already the operation had been carried out because the operation was carried out on 10<sup>th</sup>.

**The Commission Secretary** (Ms. Nyaundi): Mr. Joseph Muthui Ndirangu, what I am trying to do, and this is useful for us, is to determine whether within the respective units, because you said it was the PC and the DC--- That is another line of communication. Special Branch is another line of communication and the police operations is another line of communication. Then the other member of the PSC is the army which would be another line of communication. So, we are only concerned with the line of communication between the Special Branch; that is, you and Mr. Kibere. You have confirmed that you spoke on 10<sup>th</sup> the next morning. What I am seeking to confirm is: Did you speak with Mr. Kibere on the day after that? 10<sup>th</sup> he has confirmed they have sought reinforcement. Did you have a further conversation with him on 11<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** The communication was done on daily basis.

**The Commission Secretary** (Ms. Nyaundi): Between you and Mr. Kibere?

**Mr. Joseph Muthui Ndirangu:** Between Mr. Kibere and the province. In case he was not there, there was somebody else he left in charge to communicate.

**The Commission Secretary** (Ms. Nyaundi): His assistant?

**Mr. Joseph Muthui Ndirangu:** Yes.

**The Commission Secretary** (Ms. Nyaundi): So, we can assume that at least as far as the Special Branch is concerned, you spoke on 10<sup>th</sup>, 11<sup>th</sup>---Well not "spoke" because you said there was no more, but that there were signals within the Special Branch on 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup>.

**Mr. Joseph Muthui Ndirangu:** I would like to clarify that there is the communication whereby instructions are given. There is also a verbal communication or one to one communication. This one to one communication continued coming in equally with any other development. We continued talking up to 13<sup>th</sup> morning before we organized this fact-finding trip. The only thing that was lacking was the details concerning the operation. That is why part of the PSC was forced by circumstances to fly to Wajir on a fact-finding mission concerning the operation. It is not other intelligence matters or other developments in the district.

**The Commission Secretary** (Ms. Nyaundi): This will be my final question on this particular issue. If you were not receiving communication on the operation, what was Kibere communicating to you between 10<sup>th</sup> and the 12<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** Other than the operation, there were other intelligence issues coming in and I cannot remember which ones they were. But there was daily reporting either to say they had received information or an intelligence report concerning this, so that we could also seek some advice or confirmation to that. They could report that they had nothing, that they did not get anything throughout the 24 hours ever since we spoke or ever since we spoke after the morning briefs. They are supposed to brief the province every day or whenever an incident occurs.

**The Commission Secretary** (Ms. Nyaundi): On 9<sup>th</sup> and 10<sup>th</sup>, he has confirmed there is an operation ongoing but on 11<sup>th</sup> and 12<sup>th</sup>, he is not telling you anything about the operation. But he is telling you about other developments and other intelligence in Wajir. Do you recall you as the Provincial Special Branch Officer, did you then tell Kibere, “thank you, very much for telling me about these other things? About this operation”, because I imagine as the PSC, you must have asked one another: “Have you heard anything about the operation?” Did you then, as the Provincial Special Branch Officer, ask Mr. Kibere: “Thank you for the other information, but can you give me information about the operation you are conducting?”

**Mr. Joseph Muthui Ndirangu:** I am not very sure, but we could ask that and they would tell us: “No, we have got nothing material to report.” What was required in the operation was either the identification of the people who were carrying out the attacks, on those who were killing, or the surrender of arms. That was the main aim of collecting these people as per their meeting on 9<sup>th</sup> at 3.00 p.m.

**The Commission Secretary** (Ms. Nyaundi): So, Mr. Joseph Muthui Ndirangu, when you say information was not forthcoming, what you are saying is that in terms of the objectives of the operation, no names were coming as to who had guns and no firearms had been surrendered. So, you were getting that information from Wajir saying we have not received any names, these people have not surrendered guns?

**Mr. Joseph Muthui Ndirangu:** We used to get information that: “We have not achieved anything” as per what they had told us. As per their intention, they had not got anything material.

**The Commission Secretary** (Ms. Nyaundi): While you were in Garissa before you proceeded to Wajir, would it be correct to state that at that time you had not received reports on people dying?

**Mr. Joseph Muthui Ndirangu:** We had not.

**The Commission Secretary** (Ms. Nyaundi): Had you received reports on the number of people who were at the airstrip?

**Mr. Joseph Muthui Ndirangu:** We had already known the number of people. They were 381.

**The Commission Secretary (Ms. Nyaundi):** While you were in Garissa, you got information?

**Mr. Joseph Muthui Ndirangu:** Yes, that information had come.

**The Commission Secretary (Ms. Nyaundi):** Had you received information of what was going on outside the airstrip?

**Mr. Joseph Muthui Ndirangu:** Other than the normal intelligence network, there was nothing else.

**The Commission Secretary (Ms. Nyaundi):** Had you, for instance, received information that the roofs of the grass thatched houses were being removed in search of firearms? Had you received that kind of information?

**Mr. Joseph Muthui Ndirangu:** There was some information that was on the material day that the operation was carried out that there was a house that was burnt during the operation.

**The Commission Secretary (Ms. Nyaundi):** So, that would be on 10<sup>th</sup> when you received information that a house had been burnt?

**Mr. Joseph Muthui Ndirangu:** Yes, that is when we got it.

**The Commission Secretary (Ms. Nyaundi):** When you now leave on the 13<sup>th</sup>, could you, please, tell us who else was in your team?

**Mr. Joseph Muthui Ndirangu:** The team was comprised of myself, then we had a colonel in charge of the battalion that was based in North Eastern. There was the Acting PPO because the PPO had already left for leave. There were three of us because the chairman of the PSC was a bit busy. We agreed that we go and then we come up with our findings.

**The Commission Secretary (Ms. Nyaundi):** So, in terms of the person in charge of the army, that would be Lieutenant Muriungi?

**Mr. Joseph Muthui Ndirangu:** No, Mr. Presiding Chair, Sir. By then, it was Lieutenant Colonel Muhindi.

**The Commission Secretary (Ms. Nyaundi):** The person from the PPO was?

**Mr. Joseph Muthui Ndirangu:** The person who was acting as the PPO was Mr. Gatuku, who has since died.

**The Commission Secretary** (Ms. Nyaundi): You went three of you?

**Mr. Joseph Muthui Ndirangu:** We went three of us plus the pilots.

**The Commission Secretary** (Ms. Nyaundi): You then flew to Garissa and you say in your statement on page 5 that the DSC met you at the air force airstrip?

**Mr. Joseph Muthui Ndirangu:** Yes, we met---

**The Commission Secretary** (Ms. Nyaundi): This is different from the Wagalla Airstrip?

**Mr. Joseph Muthui Ndirangu:** It is different. This is a tarmacked airstrip whereby the military plus the Government officials land. So, that is where we met on arrival.

**The Commission Secretary** (Ms. Nyaundi): This is the morning of 13<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** It was not really morning because we were a bit late in Garissa. It must have been in the afternoon because we also had lunch there.

**The Commission Secretary** (Ms. Nyaundi): When you say the DSC, that means you met?

**Mr. Joseph Muthui Ndirangu:** Yes, we met Mr. Tiema. The District Special Branch Officer (DSBO) was not there. He had gone to Garissa to attend to a child with a problem. We also met Mr. Wabwire, the Officer Commanding Police Division (OCPD).

**The Commission Secretary** (Ms. Nyaundi): This discussion that you had with them, did you have it at the airstrip or did you move to his office?

**Mr. Joseph Muthui Ndirangu:** No, we had the meeting--- I am sorry, the meeting was at the airstrip.

**The Commission Secretary** (Ms. Nyaundi): In some offices?

**Mr. Joseph Muthui Ndirangu:** Yes, they had some offices there.

**The Commission Secretary** (Ms. Nyaundi): So, you proceeded into an office?

**Mr. Joseph Muthui Ndirangu:** We went to the office of the air force. That was where we held the meeting.

**The Commission Secretary** (Ms. Nyaundi): How long did you have a meeting?

**Mr. Joseph Muthui Ndirangu:** It was not so long because we just asked them to brief us on to what was on the ground. They looked panicky and you could tell from their faces that there was something wrong. That was the time they disclosed that the DAC had gone to Wagalla Airstrip and there was a stampede. Some prisoners tried to escape through the wire fence; some of them were coming towards the DC and his team with stones and, as a result, there was fire. We fired at them and 13 people died.

**The Commission Secretary (Ms. Nyaundi):** So, just to confirm, this was Tiema? Who else did you say was with Tiema?

**Mr. Joseph Muthui Ndirangu:** The Deputy OCPD. The DSBO had gone to Garissa.

**The Commission Secretary (Ms. Nyaundi):** Was Mudogo there?

**Mr. Joseph Muthui Ndirangu:** Elijah Mudogo was there.

**The Commission Secretary (Ms. Nyaundi):** Now, in terms of ranking, I want to believe that Lieutenant Colonel Muindi was senior to Mudogo?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Commission Secretary (Ms. Nyaundi):** And Mr. Gaturuku would be a senior to the OCPD?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Commission Secretary (Ms. Nyaundi):** And you would be senior to the deputy to the DSBO?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Commission Secretary (Ms. Nyaundi):** And the purpose of your mission was to come and get information that up till then had not reached you?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Commission Secretary (Ms. Nyaundi):** So, Mr. Joseph Muthui Ndirangu, you are now dealing with your juniors. They are meeting you at the airstrip. By this time, you are aware the operation is not where you have camped. Is it so? Were you aware by the time you were at the airport on 13<sup>th</sup> February, that the operation was at Wagalla Airstrip?

**Mr. Joseph Muthui Ndirangu:** I stated earlier on that we were very much aware of where the prisoners were, but this was a team that was dealing with the prisoners and they came to brief us on what was going on, because we were not satisfied with the silence that had existed since the operation had taken place. They came to brief us at the

airstrip. This was not the first time that the briefings were done at the airstrip, because that was where the armed forces were. It could be done at the DC's place.

**The Commission Secretary** (Ms. Nyaundi): So, when they told you that people had been shot at and it was likely there had been deaths, did you seek to go to the airstrip and confirm this for yourselves?

**Mr. Joseph Muthui Ndirangu:** We attempted to; we wanted to go to the field and see for ourselves but they discouraged us completely. Being an operation area, where people live with guns, one had to take care of themselves. You cannot force yourself into a place where you can also endanger your life.

**The Commission Secretary** (Ms. Nyaundi): What exactly did they tell you to discourage you?

**Mr. Joseph Muthui Ndirangu:** They told us the field was not good, and if we went there, we could also escalate the violence that had already been experienced. At the same time, the people who were there had already made the place worse. The place was not conducive for us. I have said earlier on that at that moment, they looked panicky. In the first place, they were not the ones who invited us to Wajir. We went on our own and, therefore, they were guilty of having not communicated to us on what was going on, on the ground.

**The Commission Secretary** (Ms. Nyaundi): Mr. Joseph Muthui Ndirangu, the way you are speaking, the thought that comes to my mind is that at your level, you felt that your juniors were not as forthcoming with information as you would have expected of them. These were your juniors and you had made a decision, as their superiors, that there was a certain level of information that was necessary for you. It was, therefore, important for you to really lay the basis on which you were persuaded that it was the right decision for you not to go to the airstrip, especially if you were of the view that you were dealing with people who had panicked. They were not the ones who had invited you. You had gone there on your independent mission and there was certain information that you were looking for.

My understanding, and you have repeated it, is that the people were condoned. Firearms were not with those people; so, they were not in a position to expose you to any risk. It was not them who had the firearms. I think that if my boss comes to me and says: "You are not forthcoming with information and we want to find out about the operation", if I am dealing with my junior, I would go to where the actual thing is. I just need to understand from you what it was exactly that Mr. Tiema told you that persuaded three senior provincial officers to terminate the fact finding mission at the airstrip and go back to Garissa.

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, Sir, and your fellow Commissioners, I have stated that this was an operation area which had been going on for quite some time. It was an area that had been under emergency laws. This was an area

where operations were carried out. There is some extent to which you can deal with your juniors. You have already known that people can also turn against their seniors on realizing that they are likely to be put in danger. Therefore, one has to consider the viability or security of that particular individual, because you can be shot at and then they conclude that you were doing this or that. On the other hand, we had gone on a fact-finding mission, and these were the people we were to get the facts from. They had come and all of them had briefed us. They discouraged us from going. They told us that maybe our presence would also make those people try to escape, or come to us in the way they had done in the past; that was on 12<sup>th</sup>.

After they had discouraged us completely from going there, we overflowed the place. They had already confirmed that 13 people had already been killed when the stampede occurred, but they had contained the situation. They also told us that in the process, at that particular time, they had recovered some firearms and ammunition, whose number they did not give us.

**The Commission Secretary (Ms. Nyaundi):** So, you overflowed the Wagalla Airstrip on 13<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** We did that and it was in the afternoon, but a bit late. I could not exactly tell how many hours the aircraft took from Garissa to Wagalla, but we arrived late. We had to be assisted to land by the military people who were on the ground through some spotlights; some vehicles enabled us to land safely.

**The Commission Secretary (Ms. Nyaundi):** So, you were not overflying so that you could have an aerial view? You did not look down and see what was happening there?

**Mr. Joseph Muthui Ndirangu:** We did that.

**The Commission Secretary (Mrs. Nyaundi):** So, when you looked down from the aeroplane, what were you able to see at the airstrip?

**Mr. Joseph Muthui Ndirangu:** As a person, I only saw the security men's cordon along the fence. I saw some clothes and fabrics hung on the fence, but I did not see human beings, that is, those who had assembled there. When we talked in the aircraft, most of us confirmed the same, but there was only one who said he saw some people, but we had already passed the airstrip.

**The Commission Secretary (Ms. Nyaundi):** On page six of your statement in the second paragraph, you say that on 14<sup>th</sup> February, 1984, 16 bodies were discovered, and the people may have died from dehydration, and a total of 29 people were reported dead. Is it within your knowledge that postmortems were ever conducted to establish the cause of death of the people whose bodies were discovered during this operation?

**Mr. Joseph Muthui Ndirangu:** No, not at all.

**The Commission Secretary** (Ms. Nyaundi): So, when you state in your statement that these persons may have died from dehydration, what is the basis of this statement?

**Mr. Joseph Muthui Ndirangu:** This was what was repeated to us from the ground.

**The Commission Secretary** (Ms. Nyaundi): That was the information that you received from the DAC?

**Mr. Joseph Muthui Ndirangu:** Yes.

**The Commission Secretary** (Ms. Nyaundi): I have here minutes, and they will be presented to you, of a meeting that was held on 15<sup>th</sup> February, 1984. Someone will project them for us on a screen. Just wait for that.

*(The minutes were projected on a screen)*

**The Commission Secretary** (Ms. Nyaundi): I do not know whether you can see that, or we should make it larger?

**Mr. Joseph Muthui Ndirangu:** Make it larger.

**The Commission Secretary** (Ms. Nyaundi): I think I can give you my copy since my eyesight is okay. That was a meeting on 15<sup>th</sup> February, 1984. It is a PAC meeting and those present were Mr. Kaaria as the chair, Lieutenant Colonel Muindi, Mr. Gaturuku, yourself and Mr. Njue as the secretary. You can confirm that?

**Mr. Joseph Muthui Ndirangu:** Yes, I can confirm this. We held this meeting thereafter.

**The Commission Secretary** (Ms. Nyaundi): Minute 20/84 states that you had actually gone for a fact-finding mission and the second paragraph-- I believe you gave this information and it looks like the briefing that you got from the PAC.

**Mr. Joseph Muthui Ndirangu:** Pardon?

**The Commission Secretary** (Ms. Nyaundi): My reading of those minutes is that this was the report that the fact-finding mission was giving to the PAC.

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair and Commissioners, this report is dated 14<sup>th</sup>. It is about another tour and not the fact-finding mission that we had undertaken without the PC. This report mentions the PC, who had gone there in the company of the Chief of General Staff.

**The Commission Secretary** (Ms. Nyaundi): So, this is not about your mission but it is about another mission?

**Mr. Joseph Muthui Ndirangu:** This was another visit.

**The Commission Secretary** (Ms. Nyaundi): Okay. Do you have the date when that mission was conducted?

**Mr. Joseph Muthui Ndirangu:** According to these minutes, we went there after they had gone after they had visited. This was a meeting after the PC also had visited the place accompanied by the DCIO, the CGS and a representative from the Police Commissioner's office. I was not in this tour.

**The Commission Secretary** (Ms. Nyaundi): But you were here during this meeting?

**Mr. Joseph Muthui Ndirangu:** Yes, and that is why my name is appearing. Let me clarify that I might have been in this meeting, but I do not recollect well.

**The Commission Secretary** (Ms. Nyaundi): Okay. I suppose that the minutes will be useful in terms of making us remember. I can see that on page 5, they are signed by the secretary; so, we can safely assume that they are the correct record of 15<sup>th</sup> February. You can see they are signed by Njue as secretary.

Now, let us go back to page 2 of those minutes and the second paragraph states:-

“Worse still, the DAC had overwhelming information that the Degodia tribesmen were scheming a plan to assassinate some leading leaders in the province who included senior civil servants. Judging from the previous events in Garissa in 1980, the DAC, Wajir, decided to round up Degodia male adults in all possible areas from Togadisho, with the aim of asking them to surrender any illegally owned firearms and to give names of persons in possession of such illegal firearms. The rounding up was carried out on 10<sup>th</sup> February, 1984, soon after the killing of Ajuran defenseless civilians. Yesterday, when we were talking about the role of Special Branch, we had agreed that you gather intelligence and get various components of the service. The question I have is that this overwhelming information reported in the minutes, was it gathered in the minutes?

**Mr. Joseph Muthui Ndirangu:** The information was gathered through the intelligence network and other organs. The military may have some information and the OCPD too. That is why we had to meet and exchange ideas, either to confirm what the Special Branch had or the Special Branch people to confirm what the others had. That is why we met to deliberate as PSC on what we had gathered, to come up with a product that could be forwarded to the province.

**The Commission Secretary** (Ms. Nyaundi): The PSC's concerns were discussed at the PSC. During that meeting, you were saying that the PSC had overwhelming information and you as the PSC were discussing it?

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

**The Commission Secretary** (Ms. Nyaundi): Can you confirm that if PSC was of a different view and there was no such threat, it would have been reflected in the minutes?

**Mr. Joseph Muthui Ndirangu:** There might be such kind of a reflection from the minutes. That was a long time ago and I cannot recall the contents of the report. Unless it is read to me I would not remember. I would like to state that PSC stamps what they have defined. The minutes they came up with after the discussion are refined. They would also report the same in the meetings. So, they would refer to that in the minutes. We could go by what they had and the information they collected from other areas which could have a relevance to this. This could also have been repeated by another person in the province.

**The Commission Secretary** (Ms. Nyaundi): We have minutes showing that PSC met. I am unable to determine the pattern and it is the practice in any meeting that usually, you handle all the issues under that minute. For instance here, the issue is about communication from the Chairman 2084. We can assume that if that is what happens and minutes are recorded, the Chairman reported to PSC that PSC had overwhelming information that the Degodia tribesmen were scheming to assassinate some leading leaders in the province.

**Mr. Joseph Muthui Ndirangu:** That report was repeatedly given by one of the witnesses who gave evidence yesterday. We also got reports to that extent. There is one that they had sent a letter to a police post in Anjaro threatening that if the bandits were followed out of the country, they would also narrow it a bit. I remember there is one area where they attacked a town or were holding security forces at their base. That was just a confirmation of what was going on in the area. They were not depending on one incident or two. There were several incidences that had occurred in the past. They had compared this one with the Diadebe issue where a DO had also been killed. We could now compare because the Garissa case was not their baby, but ours. It was an incident in Garissa but not in Ulgi. That is why they were using a comparison.

**The Commission Secretary** (Ms. Nyaundi): So, one can say that as far as PSC was concerned on 15<sup>th</sup> February, we were dealing with very serious security issues?

**Mr. Joseph Muthui Ndirangu:** That is true, Madam Chair. That affected one district at that time although there were other issues relating to Garissa and Mandera as well.

**The Commission Secretary** (Ms. Nyaundi): Minute 2184 again reiterates what is in your statement. This must be similar to the briefing that you received at the airport. Page 3 of the minutes says that at the end of the interrogations on 13<sup>th</sup>, seven firearms had been surrendered. That is correct. In the end, when the rest of the people were released, three among them were detained as their release was considered a threat to security.

**Mr. Joseph Muthui Ndirangu:** We were discussing this issue as it had originated from the ground and we confirmed it.

**The Commission Secretary** (Ms. Nyaundi): Minute 22 is about something that must have been of great concern to you as PSC because you discussed the disarming of the Degodia Somali Administration Policemen and the Kenya Policemen. You can confirm that is in Minute 22.

**Mr. Joseph Muthui Ndirangu:** I can confirm it. That is what we discussed. It had originated from the district. Having heard information that the Degodia Clan were scheming a plan to assassinate senior civil servants using our own security plan, PSC decided to disarm the Degodia men, some 52 Administration Policemen and some seven policemen. The 52 policemen were all from the Degodia community.

**The Commission Secretary** (Ms. Nyaundi): Was there fear that the people would be sympathetic because of what had happened in Wagalla?

**Mr. Joseph Muthui Ndirangu:** I would say so, Madam.

**The Commission Secretary** (Ms. Nyaundi): Seeing that you were making that decision since you were in the Intelligence, one could say that the information you had received was credible and justifiable?

**Mr. Joseph Muthui Ndirangu:** I would say that the minutes came from the members. So, they did it as they found it to be right at that moment. However, if you read the second paragraph of that minute, you will see that there is something that we came up with.

**The Commission Secretary** (Ms. Nyaundi): That is the point. The PSC is giving you its opinion and you were required to make a decision?

**Mr. Joseph Muthui Ndirangu:** Yes, we were required to make a decision.

**The Commission Secretary** (Ms. Nyaundi): Your position as the PSC is that you had confidence in these officers and that is why in minute 2384, the decision you are making as PSC is to transfer the APs and police officers.

**Mr. Joseph Muthui Ndirangu:** We had to come up with that because the other officers who knew that these people had been disarmed would not work with them in a cordial way. They would feel that they were dehumanized and yet, they were staying with the same people. So, they had to be transferred to other areas so that they could work in confidence just like they were working before.

**The Commission Secretary** (Ms. Nyaundi): You will allow me to read part of Minute 2384. This one says: "Transfers of the affected policemen, APs and the Kenya Police to safe places. The PSC considered the fate of the men who had been disarmed and felt that they should be transferred out of Wajir District to save their faces. However, the order does not look as if it was for the 52 APs and seven police officers.

The 52 Administration Policemen and another 48 Administration Policemen should be transferred from the district as follows: Twenty six of those who had been disarmed and 24 of the other 48 Administration Policemen; altogether to be transferred to Mandera District. As far as possible, the 26 of those who had been disarmed, each should go to a different station from the other.”

The remaining 26 of those who had been disarmed and the other 46 Administration Policemen were to be transferred to Garissa and to be deployed as in the case of Mandera. That is the correct reading of those minutes.

Let us go to Minute 2484, AOB which is at the bottom of page 4. You say that PSC was of the unanimous view that the events in Wajir had been so disturbing. I assume that we are referring to the Wagalla Airstrip. “Noting that the Degodia tribesmen had become aggressively hostile, it was important for PSC to take stern action in order to bring the wanton killings of innocent people to an end. It was particularly serious when the Degodia tribesmen were known to be scheming a plan of extinguishing some prominent leaders. However, PSC cautioned the Wajir DSC and, indeed, other DSCs that every precaution at their disposal must be taken to ensure that no persons die in the hands of the authority as this can have serious impact.”

Were you able to determine, at one time, who the civil servants who were being targeted were?

**Mr. Joseph Muthui Ndirangu:** Those were Administration Policemen and they were to be dealt with by the administration. So, the organs those people were attached to were the ones to make transfers and that must have been carried out.

**The Commission Secretary (Ms. Nyaundi):** The people who were being assassinated, probably through intelligence, were you able to tell whether it was person “A”, “B” “Z” or “X”?

**Mr. Joseph Muthui Ndirangu:** The intelligence coming in did not point to any particular individual. If it was a police post, it was a police post. But if it was not so, then everybody they could come across. In most cases, the senior people would have been those of high ranking like the threat that was directed to a police post. There was a sergeant in charge of that police post and he is the one who was addressed about it.

**The Commission Secretary (Ms. Nyaundi):** So, we can say when Minute 2084 speak of some leading leaders in the province, that includes senior civil servants?

**Mr. Joseph Muthui Ndirangu:** Leading leaders in the province could only start from the PC downwards. Senior civil servants could be the ones who were commanding certain junior officers.

**The Commission Secretary (Ms. Nyaundi):** You were in the intelligence. I hoped that you had better information than other people. Somebody who was in the intelligence,

those who were defined as leading civil servants, did you identify them or was it as vague to you as it is in these minutes?

**Mr. Joseph Muthui Ndirangu:** Senior civil servants could start with the PC coming downwards and at the district level, you start with the DC and the DO. At the divisional level, we start with the DO.

**The Commission Secretary** (Ms. Nyaundi): Are you able to confirm that the information you have was that senior civil servants, including the PC, yourself and the provincial office were targets of those assassination attempts?

**Mr. Joseph Muthui Ndirangu:** Senior civil servants are those at the PSC level.

**The Commission Secretary** (Ms. Nyaundi): So, the information you have is that those officers - and we can give them names – were there to assassinate them?

**Mr. Joseph Muthui Ndirangu:** I said earlier that I do not have the names of the people targeted. However, all the messages that came in from intelligence circles indicated senior civil servants. That could also have included a Minister because we had a Minister who came from that area. It could also have included other people who were not living there. In any case, the target was not an individual. It must have been directed to people who wanted their presence to be felt. In any case, they knew that the PC is a guarded person and they do not just move anyhow even at their leisure time.

They do not move anyhow or go to public places where they can meet these kinds of people. So, they would go to anybody when they found the chance. Like the assassination in Garissa, they went to a bar where they had already gathered information or intelligence that civil servants usually went to that bar. They knew exactly that this was the time that civil servants went to that bar. Armed people also have their own intelligence gathering before they attack.

**The Commission Secretary** (Ms. Nyaundi): My final question Mr. Joseph Muthui Ndirangu; when people were held at the Wagalla Airstrip, were firearms recovered in the course of the interrogation? That is what we have in the minutes. This interrogation, at least, based on Minute 2084, was also organized because of the plot to assassinate senior civil servants.

**Mr. Joseph Muthui Ndirangu:** This interrogation was mainly aimed at getting the firearms from the Degodia people who had been assassinating the Ajurans. It was not for the whole province. It was not aimed at the civil servants. It was aimed at getting information to identify those bandits who were killing others and also to disarm the Degodias who had shown no interest or reluctance in surrendering arms. This Wagalla issue was not connected to the civil servants, although reports had already filtered in of such threats against senior civil servants and others.

**The Commission Secretary (Ms. Nyaundi):** Thank you, very much, Mr. Joseph Muthui Ndirangu. The Commissioners will ask you questions.

**The Presiding Chair (Commissioner Slye):** Thank you, Leader of Evidence, and thank you, Mr. Joseph Muthui Ndirangu. I wanted to just check with you; I know that your throat has been bothering you and so, I want to ask whether you would like a brief recess or whether you would like to continue with the testimony.

**Mr. Joseph Muthui Ndirangu:** I would like to continue with the testimony.

**The Presiding Chair (Commissioner Slye):** Thank you, for that, but please, let us know if you would like a break at some point. I now ask my fellow Commissioners if they have any additional questions for you and I would like to start with Commissioner Dinka.

**Commissioner Dinka:** Thank you, very much, Mr. Joseph Muthui Ndirangu, for your testimony. You have been very detailed and you have been very useful to the Commission in its search for truth and to record the injustices that have taken place. We have been talking about what happened at the Wagalla Airstrip and you remember the people who were collected were 381 and then a number had been killed, but there was this firing which was commanded by the police chief against those people who were there, but no one has so far mentioned how many were wounded. What is your information on that one?

**Mr. Joseph Muthui Ndirangu:** I would assume that the people who were reported to have died through dehydration would have been the ones who were wounded and perhaps were not noted because I learnt later on from the DSC that these people were made to lie down. They were grouped at one place. They were at a place lying down and, therefore, they did not possibly know that these people were dying. But as they were sorting them out, they discovered that there were some people who had died quietly. I assume, and it is my opinion, that they could have been the people who had been shot because no wounded people were reported.

**Commissioner Dinka:** No wounded people were reported?

**Mr. Joseph Muthui Ndirangu:** Not that I could remember during the briefing that we had.

**Commissioner Dinka:** That was just out of curiosity. My question to you would mostly concentrate on the channel of reporting and communication within this Special Branch. You are the head of the Province or the deputy head of the Provincial Special Branch. You have your representative at the district level. Do you have any representation below that?

**Mr. Joseph Muthui Ndirangu:** The District Special Branch Officer is given supporting people and these are officers. By then they were policemen who were transferred to that

district according to the need, if the strength at the Provincial level could permit. These were the people who were working in divisions in the district and also some in the camps.

**Commissioner Dinka:** In other words, outside of the district capital there are members of the Special Branch who report to your representative in Wajir, in the district capital?

**Mr. Joseph Muthui Ndirangu:** That is true.

**Commissioner Dinka:** Then the report comes to you from your representative at the district capital. Is that the case? Those guys feed him but he reports directly to you?

**Mr. Joseph Muthui Ndirangu:** They did report directly to the Province. The District Special Branch Officer coordinates the activities within his district and unless it is a special report; a very sensitive report that can be relayed to the province for further clarification or further details, those officers working under him cannot bypass him.

**Commissioner Dinka:** Very good, but he does report to you every day practically sending Situation Reports (SITREPs) and things like those?

**Mr. Joseph Muthui Ndirangu:** He does report daily.

**Commissioner Dinka:** Sometimes, definitely he would send you one SITREP, sometimes two to three SITREPs depending on what is happening in the area. How often? Is it weekly, monthly or bi-weekly that he would do some kind of a round up and more analysis and recommendations and things like that for you?

**Mr. Joseph Muthui Ndirangu:** The reports are supposed to be submitted to the province on a daily basis, but you will appreciate that the North Eastern Province, being an operation area and the distance, the vastness of the province, the reports would reach the headquarters maybe in a week's time. Those are written reports. The SITREPs of urgent incidents or events would be relayed through a signal, but they are rare. They are not very common. But they would report sketchily to say that this has happened and then the actual report would follow in a written form and that is the report that the province studied and compared with other reports in the other areas. The person on the ground does not interfere with the report. The report should come the way it was written by one of his officers.

**Commissioner Dinka:** It will not be filtered?

**Mr. Joseph Muthui Ndirangu:** He can only make a comment and the comments are to his understanding, in accordance with that report.

**Commissioner Dinka:** Whatever he gets from the field from his subordinates or your people, would he share them with the DSC?

**Mr. Joseph Muthui Ndirangu:** He would share some of them. Some of the reports would be shared and some might not be shared because there might have been a repetition of what has been going on but the reports that are necessary to be shared, the other bodies will share them. That is why they are to meet on regular basis.

**Commissioner Dinka:** In other words, he chooses and picks what he shares with the DSC and what he does not share with them?

**Mr. Joseph Muthui Ndirangu:** Depending on the gravity of a report.

**Commissioner Dinka:** Does he have a guideline which directs him to share reports and intelligence of this nature and not to share reports and intelligence of that nature? Does he have that or he uses his discretion?

**Mr. Joseph Muthui Ndirangu:** The subordinates will submit anything from the field. They can submit reports which do not have any security value. Such reports, he does not need to take them to other members. But anything that has material, he will forward. He will share the reports with several of them because they will come from different people. He will have his report and not reports that come from individuals. He will make a summary that will be shared with the other members of the DSC.

**Commissioner Dinka:** Then, when they meet under the chairmanship of the DC, the DSC I assume, they will all exchange information. That is namely, the Army, the Police, the Special Branch and the DC himself. They exchange the information they have on security issues, development issues and other issues of that particular district. Is that correct?

**Mr. Joseph Muthui Ndirangu:** That is true.

**Commissioner Dinka:** Now, I am coming back to the relationship between you and your Special Branch Officer at the district level. Would he be sending only the ones he receives from his own representatives or people in the field or would he also add what he has heard within the DSC meeting?

**Mr. Joseph Muthui Ndirangu:** In case the DSC meets, they prepare minutes just like the minutes I have been reading here, and those are the minutes that will be forwarded to the province by him and the other teams send to their respective offices.

**Commissioner Dinka:** When you get your information from your representatives from all over the districts - there are three districts in North Eastern - in SITREPs daily and also, say, weekly when you get larger reports with analysis, what do you do with it?

**Mr. Joseph Muthui Ndirangu:** After receiving these DSC reports, normally, the PSC meets.

**Commissioner Dinka:** I am talking about your office receiving the report of your man, say in Wajir.

**Mr. Joseph Muthui Ndirangu:** After receiving the DSC reports, we study them and bearing in mind that other members of the PSC have received their reports, we discuss them and each one of us will communicate to his own boss in Nairobi. I would communicate what I have and if it is an issue that requires urgent action, I will communicate with the Director of Intelligence in Nairobi. Then the PC will do the same to the PS in charge of Internal Security. The PPO will do the same to the Commissioner of Police.

**Commissioner Dinka:** Actually, if something happened in district “A” and your man sends you something important, the report for that day, you will also - if you consider it important enough - send it to your director immediately?

**Mr. Joseph Muthui Ndirangu:** It depends on the degree of the information that I have received. If it is information that I have received on a daily basis, not at a DSC meeting, this is a report from my officer suggesting that an issue has taken place at a place or is likely to take place at a place, I would call and brief other members of the PSC. In doing that, I will also communicate with my director. After that, we can decide whether we meet to deliberate on the issue or we wait for the DSC to bring us minutes of their meeting.

**Commissioner Dinka:** Before the Wagalla incident happened, before 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup>, say two months earlier, had you received from your man in Wajir any indication that something big was afoot?

**Mr. Joseph Muthui Ndirangu:** We had been receiving reports suggesting incidents and also suggesting what might happen in a certain area. We had received those reports and we had shared them with the other members and equally submitting those reports in a summary form to my director.

**Commissioner Dinka:** I would like you to let us know, when you reported to the PSC, which is chaired by the PC with all of you being present, what you received from your representative giving certain indications that there could be trouble and you had to be cautious in this and that probably even suggesting some measures and so forth, what the PSC did in order to resolve these problems in time, so that they would not explode like they did in Wagalla.

**Mr. Joseph Muthui Ndirangu:** You remember what the other witness said. The briefing of the PSC is for other members to take action within their lines of operation. In so doing, several *barazas* would be held. Like in these incidents that were occurring, several *barazas* would be held in areas that are likely to be affected or affected already, with a view of trying either to reconcile or defuse the tension.

**Commissioner Dinka:** As a senior intelligence officer for the province receiving your reports from different districts, from your intelligence representatives, do you remember any recommendations that you might have made to the PSC in terms of taking certain measures to ameliorate the situation in Wajir that your man had been reporting to you from time to time; the developments that could have indicated that things were not going in the right direction?

**Mr. Joseph Muthui Ndirangu:** The Provincial Special Branch Officer does not take action.

**Commissioner Dinka:** I did not say that, I said: Had you made suggestions to the PSC as to what should be done, namely, the kind of recommendations that should be taken?

**Mr. Joseph Muthui Ndirangu:** This comes from the deliberations. Anything that is supposed to be done comes from the deliberations of the reports presented to the Committee, not as an individual recommending anything. They would deliberate the information received from any part and then come up with a resolution, but not as an individual making recommendations of this nature or any nature.

**Commissioner Dinka:** Yesterday you mentioned about getting rid of reports every week or something like that. Were you referring to the SITREPs or the periodical weekly/monthly reports?

**Mr. Joseph Muthui Ndirangu:** All of them have a lifespan. The SITREPs have a lifespan. The reports that come to the province or to the district Special Branch office have their lifespan and are destroyed after that lifespan expires. They are destroyed immediately after. Then the list of the destruction is submitted to the province. The province will do the same because they will also destroy records which have outlived their usefulness.

**Commissioner Dinka:** What about at the Nairobi Headquarters level?

**Mr. Joseph Muthui Ndirangu:** In Nairobi Headquarters, I think they also have the same lifespan.

**Commissioner Dinka:** Which is much longer, right? Normally, 30 or 40 years. That is all I have for you. Thank you, very much.

**Mr. Joseph Muthui Ndirangu:** Thank you, Sir.

**Commissioner Farah:** Mr. Joseph Muthui Ndirangu, thank you, very much for giving us a lot of information. However, I have one or two questions to ask you just for clarification. I am trying to reconcile myself with the rapid evolvement of events in Wagalla. I would like us to journey together. I just want you to start on 8<sup>th</sup> February, 1984, where the KIC came and you held a meeting in the boardroom of the DC's office. After that the KIC team, of which you were accompanying as a member of the PSC, left

for Takaba airstrip which was under construction. After that you went and had a night at Mandera. Am I correct so far?

**Mr. Joseph Muthui Ndirangu:** You are correct, Sir!

**Commissioner Farah:** Now, on the morning of 9<sup>th</sup> February, you woke up in Mandera to be briefed by the DC, Mr. Lekoolool, but in Wajir a lot of things were happening. Presumably before noon, information was received at Yako that Degodia tribesmen had killed five women and one man. The DC received that information. Because this is in your statement, I just want to know that in the morning of 9<sup>th</sup> you woke up in Mandera. As you were being briefed by Lekoolool, did the DSC transmit that information to you?

**Mr. Joseph Muthui Ndirangu:** No, the report was not transmitted to us.

**Commissioner Farah:** Thank you, very much. You came to know about it later?

**Mr. Joseph Ndirangu:** In the evening at 5.00 p.m.

**Commissioner Farah:** Therefore, I do not know where you had lunch. Presumably, you had lunch at Mandera, but you flew to Liboi. Is that true or not?

**Mr. Joseph Muthui Ndirangu:** That is true.

**Commissioner Farah:** And at Liboi, of course, you inspected a border post which was being built. At 3.00 p.m., the DSC held a meeting according to your statement, which you will come to learn later. That is the time when a decision was made to collect all the Degodia male adults as far afield in the district as Habaswein, Griftu, Eloboe, *et cetera*. I do not have to go through those details. Is that true or not?

**Mr. Joseph Muthui Ndirangu:** Yes.

**Commissioner Farah:** So, you now take off from Liboi and arrive in the evening at about 6.00 p.m. at Garissa. Is that correct or not?

**Mr. Joseph Muthui Ndirangu:** That is true!

**Commissioner Farah:** Is that the stage at which you learnt that the operation would be done, when you now landed and the members came from their houses for you now to come together in the PC's house for dinner? At what stage did you learn that the DSC had already made the decision to mount the operation? That is one question. At what time was the reinforcement request made?

**Mr. Joseph Muthui Ndirangu:** I stated earlier on about the communication problems in North Eastern Province, especially at that time. This could have been relayed through the radio. We did not have the radio with us. We were in an aircraft. From the aircraft, we landed at Liboi. There was what we had come to do, which we did. We had lunch there. From there we flew to Hulugo and overflew some other areas.

I came to learn of this incident as we congregated at the PC's place. It was already late and the offices had already been closed. My office was closed. I did not go to the office.

All other offices had been closed. There was no direct communication from my house to Wajir.

**Commissioner Farah:** The decision to mount this operation from a far field to all those areas you have mentioned required a lot of resources, including quite a number of vehicles, among other things; it really required pre-planning. Is it not? It is not something you decide at 3.00 p.m. where you sit, plan and vehicles move; because the operation started at around midnight on the 9<sup>th</sup>. All the vehicles were in position collecting people. The reinforcement had already been received from the neighbouring districts. These were Mandera and Garissa. If communication itself was so difficult at that time, how come the mounting of the operation was so efficient? Unless there was a pre-decision made in Wajir on 8<sup>th</sup> together with all the PSC, KIC and DSC. Once the decision was made and these people left, everything was going according to plan. Reinforcements were coming and then at midnight, BANG!

**Mr. Joseph Muthui Ndirangu:** That opinion is wrong. It is technically wrong because there was no such decision made at Wajir. I had reported that at Wajir things were reported as calm. The security situation was calm. There was no problem that could have made us take any decision. That is one. The other one is that it was a general briefing of everybody, not the security personnel who were briefed by the DSC or the DC, because the DC was acting on behalf of the team. The operation was carried out on 10<sup>th</sup> not on 9<sup>th</sup>.

**Commissioner Farah:** Mr. Joseph Muthui Ndirangu, we have information that it was the midnight. They were going away on the 9<sup>th</sup> and coming in on 10<sup>th</sup>.

**Mr. Joseph Muthui Ndirangu:** The release of the reinforcement was done after we arrived in Garissa. After arrival at around 6.30 p.m., we dispersed. Each one of us went to their own houses; those of us who were living in Garissa. The PPO received the information and he requested for the reinforcement. However, the actual operation was carried out on the 10<sup>th</sup> not 9<sup>th</sup>. So the suggestion that it was carried out on the midnight of 9<sup>th</sup> is wrong. It was not because the reinforcement was coming from Mandera and from Wajir. At that time, travelling at night was prohibited. So, they could not have been driving at night at that particular time because of the operation problems.

**Commissioner Farah:** So, the operation was started at midnight of 10<sup>th</sup> and beginning of the morning of 11<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** I am not definite on time, but it was on 10<sup>th</sup> not 9<sup>th</sup>.

**Commissioner Farah:** Reinforcement, therefore, came from Garissa and Mandera on the daylight of 10<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** I am not very sure of the definite time that the reinforcement came. In any case this was now not my side, it was on the side of the people concerned with the logistics and also the personnel. My personnel had been stationed at one particular place. They were stationed at Wajir in various areas. However, they were not involved in the operation, other than the man in charge of the district.

**Commissioner Farah:** It is in your statement that on the 9<sup>th</sup> February, at 3.00 p.m. the DSC met and decided to do the operation that you came to learn would be done later in the evening, maybe at your dinner time. You also said that reinforcement was requested for and approved. Is that correct?

**Mr. Joseph Muthui Ndirangu:** What I have said in my statement is that I learnt of the operation from the PPO. The PPO had already concurred with them and hence the calling for reinforcement.

**Commissioner Farah:** So, it is the PPO who approved the operation? I mean, the DSC decided to do it, but they had to inform their bosses. In this case, the boss was the PSC. So it is the PPO who said, “go ahead”?

**Mr. Joseph Muthui Ndirangu:** We had not met as the PSC at that particular time at night. I said earlier on in my statement that we could not have held a critical committee meeting with the other people whom I would call civilians or those working in other departments or other ministries because those were the terms we were using at that time. So, we did not hold either a PSC or any meeting with the KIC members who were there to suggest what would be done. In any case, the PPO was acting on behalf of all of us. When we met in the morning, we had to concur with what he had done because he had already done it. It was already in the process.

**Commissioner Farah:** This was on the morning of the 10<sup>th</sup>?

**Mr. Joseph Muthui Ndirangu:** On the morning of the 10<sup>th</sup> now!

**Commissioner Farah:** You mentioned that it was not possible to get information from Wajir DSC on the 10<sup>th</sup>, 11<sup>th</sup> and on the 12<sup>th</sup>. And then you said on the 12<sup>th</sup>, PSC learnt that Degodia men had been killed at Wagalla Airstrip and then you decided to fly to Wajir on 13<sup>th</sup>. That was you, the PC and somebody else, I think the military man. When you arrived at the airstrip, did you think about visiting the Wagalla Airstrip site to assess the situation of the men who were killed there the previous day? Do you now, as you sit there, feel like you received adequate information, or would you have preferred to have visited the site?

**Mr. Joseph Muthui Ndirangu:** I have stated earlier on that we arrived at the airstrip, which is an operation area, and the Commissioner asked a question and having been a military man he knows the operations and how they are carried out. Having known that the area was an operation area, we could not have forced ourselves to go to the site because anything could have happened. You are dealing with armed people and in North Eastern Province at that time. People used to sleep with guns. There was no question of taking the guns to the armoury. They would sleep with the guns because it was an operation area. Anything could happen to anyone. Therefore, we were discouraged from going to the site.

At the same time, I had said earlier on that the PC did not accompany us to Wajir. It was only me, Col. Muindi and the Acting PPO plus the pilot who flew to Wajir. We were discouraged from going there. So, for our own security, we decided not to go to that place. We directed that these people be allowed to go to their homes. We asked that they

be escorted in the same manner they had been brought in, which meant they should be driven back home.

**Commissioner Farah:** Thank you for that good answer. Now, this is my second last question. Both you and Mr. Matui indicated earlier on that the situation was relatively calm on the 8<sup>th</sup> of February, 1984 and the brief was shared with the KIC on the same day. In your own opinion as a senior Special Branch officer, why was the operation decided on 9<sup>th</sup> February, 1984 at 3.00 p.m. after only five women and one man had been killed while in previous times there were ten or 20 people killed and there was no operation of that proportion mounted? What is your opinion?

**Mr. Joseph Muthui Ndirangu:** The situation here was that there were sporadic incidents. There had also been such a killing before of five people; one man and five women again. It appeared to the DSC that this was a continuous thing and having realized that the Ajuran had already been disarmed, repeated incidents from one community against the other communities were recurring. Therefore, they thought of stopping these kinds of incidents or attacks and it had been reported in the minutes of 15<sup>th</sup> as to why the operation was carried out. I would go by that PSC Report. My opinion would be based on that PSC Report.

**Commissioner Farah:** Thank you, very much, Mr. Joseph Muthui Ndirangu. Bear with me, my last question now! In the last page of your statement, you stated that a small committee appointed by the Office of the President was tasked with the investigation to establish circumstances leading to the tension in Wajir and the subsequent death of Degodia males at Wagalla Airstrip. Now, a team like this, when it comes, it normally comes to the Provincial Headquarters, calls on the PC and then goes to the District and carries out investigations. I know John Etemesi, the PC of Eastern Province at that time was the Chairman. Who were the other members and where are their reports?

**Mr. Joseph Muthui Ndirangu:** When this team came, I can remember Colonel Rimu, a lieutenant and a captain. However, I cannot remember all the names. When they came to the province they met us before they proceeded to Wajir. They met us, as the Provincial Team, and then from there they proceeded to Wajir.

When they came back, the report was not supposed to be submitted to us. It was supposed to have been submitted to their appointing authority. If a copy was given to us, I do not remember having seen it because I was also transferred. I did not stay so long in the province. After that, I was transferred. But before I left, I do not remember seeing the Etemesi Report. Therefore, I am not able to say or produce that report before you. If there was that report, then the Office of the President has it because it was the appointing authority.

**The Presiding Chair (Commissioner Slye):** Thank you, very much, Mr. Joseph Muthui Ndirangu. You have been very candid, forthcoming and co-operative. Please, finish off the rest of the questions with the other Commissioners.

**The Acting Chair** (Commissioner Namachanja): Mr. Joseph Muthui Ndirangu, I would like to join my fellow Commissioners in thanking you for the useful information that you have shared with us.

I would just like to ask you two questions for my own understanding. The first one is: What is the operational relationship between the Special Branch of the police and the military intelligence in situations of insecurity such as what you were confronted with in the northern region?

**Mr. Joseph Muthui Ndirangu:** Madam Chair, the relationship between the Special Branch and the military was centred on the PACC. They could share reports, the report they had received on their operational areas, operational aspects, and reports we have received regarding either an operation or regarding the intelligence concerning the operation or anything of the nature, and also the reports from other officers, we could share it at the PACC. The PACC was the centre of everything, the centre of all the information received from other agencies, unless there was a special report that could be shared between the intelligence and the military at the provincial level, or at district level. A special report would also be shared between the two, for operational purposes, but not for any other thing. It would be reported at the DACC or the provincial level when they meet, and also the success of possibly the information.

**The Acting Chair** (Commissioner Namachanja): So, there was no bilateral relationship between the two units at all?

**Mr. Joseph Muthui Ndirangu:** The relation between all the organs working in one area was very co-ordial. We were exchanging information and intelligence as it came in from all the angles, because that could build anything that is either material for the operation or material for anything else. But the operational aspect of everything or the operation of all the officers was very co-ordial from the top down to the ground level.

**The Acting Chair** (Commissioner Namachanja): How about during operations, like what happened in Wajir? What would be the relationship between the two institutions?

**Mr. Joseph Muthui Ndirangu:** Like the operation in Wajir, this was DACC whereby the military was involved. Now the DACC supplies information, if they have any information. The DSBO or the special branch is to supply the information, what they have, what they get, what they have gathered. After that, they could share now so as to come up with one code. Whatever they decide that would be acted upon. But there is no way that one individual or two individuals would come up with an operational aspect. The DSBO and the military intelligence would come up with an operational order, or take action in an area.

**The Acting Chair** (Commissioner Namachanja): On 12<sup>th</sup> April, 1984, the Minister of State Office of the President, the late *ole* Tipis, made a Ministerial Statement on the Wajir incident, and he had only two findings. One of the two findings was that the

general security situation in Wajir District was politically motivated. Leaders had involved themselves in divisive political strategies, planned on ethnic consideration.

Was the security situation in Wajir politically motivated as was claimed by the then Minister? If so, did this report benefit from your own ground intelligence?

**Mr. Joseph Muthui Ndirangu:** Well, I would say it was just like the other colleague of mine who had given evidence earlier on said. In the past, the Degodias had driven the Ajuran from pastoral areas and put them to a small place in order to defeat the Ajuran candidates, and it happened. It happened that a Degodia Member of Parliament was elected in an Ajuran dominated area, and that was the late Mohamed Khalif.

They also maintained a seat in their Degodia dominated area in Wajir East. So, you can say the politics played here is that there is political interference in the whole affair, and again this inter-tribal cleansing or inter-tribal attacks would suggest the same. It is not really aimed at me and you attacking one another, like the criminals do; they attack at random. This is a planned thing and it has some political manoeuvres in it.

**The Acting Chair** (Commissioner Namachanja): So, if the conflict had a political angle, was this considered when you were looking for lasting solutions to this conflict?

**Mr. Joseph Muthui Ndirangu:** I think it was considered and that is why the Minister of State in the Office of the President, hon. Maalim Mohamed, had toured the area to try to reconcile the tribes and the politicians who were agitating for whatever they were agitating for, and also the provincial administration plus elders, were holding meetings every now and then. To my surprise, those kinds of efforts were not forthcoming very well, especially from one community that was attacking the other community.

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

**Commissioner Shava:** Mr. Joseph Muthui Ndirangu, I also have a few questions for you. The first question I would like to ask you is: You stated that your line of reporting would be directly to the Director of Intelligence. Is that correct?

**Mr. Joseph Muthui Ndirangu:** That is true.

**Commissioner Shava:** Was the Director of Intelligence at that time a member of the KIC?

**Mr. Joseph Muthui Ndirangu:** That is true.

**Commissioner Shava:** So, from what you have told us between yesterday and today, in terms of the update that you were getting on the situation in Wajir, you were not satisfied with the quality of information, and decided as a team to go to the ground and check for yourselves; the Director of Intelligence would be aware of this?

**Mr. Joseph Muthui Ndirangu:** That is true.

**Commissioner Shava:** So, in which case, the KIC would have been aware of this?

**Mr. Joseph Muthui Ndirangu:** I am not in a position to confirm that because the communication between the PS and the Director was beyond my capacity.

**Commissioner Shava:** In the course of our reading and documentation, we have come across something called Police Incident and Investigation Report with regard to this incident. Could you, please, describe to us what that kind of report looks like?

**Mr. Joseph Muthui Ndirangu:** I did not get you correctly.

**Commissioner Shava:** This incident and investigation report; we have come across something like that being reported in the minutes in September, 1984. I just wondered whether you could help me understand such a report. What was the content of such a report?

*(There was a technical hitch)*

Sorry, there was a technical problem. I am saying that we have come across something referred to as Police Incident and Investigation Report; you have previously described to us what a situation report looks like, saying that it is very brief. You have talked about Police Incident and Investigation Report. What were the contents of these reports?

**Mr. Joseph Muthui Ndirangu:** This means that it is an incident that has been reported; an incident that has occurred in a place, and then it is reported. Then an investigation is started or an investigation is directed in order to come out with what transpired in the Commission, either to come up with a suspect or at least with a picture of what might have transpired before this incident. We investigate in order to find out what transpired, because the investigation may come up with a suspect or establish what had transpired prior to the incident.

**Commissioner Shava:** So, it's quite a thorough kind of a report?

**Mr. Joseph Muthui Ndirangu:** Yes, it would come up with that.

**Commissioner Shava:** Such a report, for example, in the case of Wagalla, who would have written it?

**Mr. Joseph Muthui Ndirangu:** Normally, it is the police. The OCPD would write that report. It would originate from the station concerned to the OCPD and then the OCPD would write to the PPO. He could also direct an investigation, for example, to be done by the OCPD at the ground level. The OCS can also direct an investigation be carried. So, it depends on the gravity of the report itself.

**Commissioner Shava:** My colleague had asked about the Etemesi report which was authored by the Office of the President. So, what we were saying is that the police had their own mechanism for investigating and coming up with a report on this incident. So, in your knowledge, was there such a report on what happened at Wagalla that was issued by the police?

**Mr. Joseph Muthui Ndirangu:** Well, several visits were made to Wagalla and you remember that this team that was appointed by the OP was now senior to the people on the ground. It was now senior than the Commissioner himself, because it had come from a different office. So, the report they would come up with was independent; it was completely independent. This is because the policemen were involved in this operation. Therefore, possibly, somebody would think there could be cover ups. That is why this independent team was appointed consisting of Mr. Etemesi, who was a PC elsewhere, Colonel Tirima, was a colonel in charge of the unit. He was from the DOD. There was also a major or captain. So, it was a cross-section Committee. Therefore, we believed it could come up with a true report to the appointing authority. Out of that, they would also give out their recommendations, and how such an incident could be avoided in future.

**Commissioner Shava:** Was such a report written by the police?

**Mr. Joseph Muthui Ndirangu:** Not that I remember of. I would only remember that the PCIO visited the area and I do not know whether he wrote a report to that effect. The people who were involved in the operation were the general police. There is also another arm of the police for investigation purposes, and that is the CID. But I remember the PCIO had been detailed and directed to carry out an investigation.

**Commissioner Shava:** You said that you were shortly thereafter transferred out of the area. Do you remember the date or even the month?

**Mr. Joseph Muthui Ndirangu:** I cannot remember. It was not immediately after. I stayed for a while.

**Commissioner Shava:** You also said to us that when you had this meeting in the Air Force offices at Wajir, you then ordered that the people should be removed from the airstrip and transported back. Is that correct?

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

**Commissioner Shava:** Witnesses have reported to us that not only the people who were alive were transported, but also the dead and seriously injured people, were being transported in military vehicles, among others. Are you aware of this?

**Mr. Joseph Muthui Ndirangu:** I am aware that the dead bodies were disposed of.

**Commissioner Shava:** My last question; you said in your statement that a total of 29 people were reported dead, the operative word being “reported”. You were transferred

out of the area. I am sure that you have probably seen thereafter reports and listened to media like everybody else; 29 people were reported dead. Today, in your view, is that an accurate number?

**Mr. Joseph Muthui Ndirangu:** That is the report that I received before I left. But I heard that the Etemesi report came up with 57. But the actual report that we had received from the ground at that particular time before that team was appointed was 29 plus another one who died in the hospital. That makes a total of 30.

**Commissioner Shava:** Are you of the opinion today that the actual number of people who died as a result of that incident stands somewhere between 30 and 60? Do you think it could be higher?

**Mr. Joseph Muthui Ndirangu:** No, Madam Chair. The investigating team that was appointed came out with the report not very immediately, not on the same day that these people were disposed of; it was thereafter. They had gone to the ground. It was between 30--- I am sure of those which were disposed of, and also the ones that were reported by the investigating team which was led by Mr. Etemesi.

**Commissioner Shava:** Well, I hope that the report that this Commission is going to come up with will help to clarify that issue. Thank you, very much.

**Mr. Joseph Muthui Ndirangu:** Thank you, very much.

**Commissioner Chawatama:** Thank you, very much for your testimony. It will help us and also the people of Wajir. What we gathered when we went there were a lot of “why” questions. I find your testimony helpful because of the gaps that I observed in the investigations. Could you be brief and tell us the type of training you underwent?

**Mr. Joseph Muthui Ndirangu:** In the first place, I trained as a policeman. I also trained as an officer in the Criminal Investigation Department (CID). Before I joined the intelligence organization, I had trained both locally and abroad.

**Commissioner Chawatama:** Was the gathering or surrendering of the firearms a continuous exercise in Wajir?

**Mr. Joseph Muthui Ndirangu:** Appeals were made now and then for the firearms to be surrendered. This is because the illegal firearms held by civilians were the ones used against other civilians. It was so frequent in the entire province. It was not Wajir alone, although it appeared to be notorious. In Mandera, I clearly remember that there were attacks between the Murrules and the Garres. The attacks were also in Garissa although not as prevalent as in Wajir.

However, this is a continuous exercise since the time of the *shifita* menace in North Eastern Province. It appears like after the two Governments came to a compromise, the local militia who were attached to *shifita* activities came back and joined their own

clansmen. Those from Somalia who were fighting for secession of the whole province went back to Somalia and engaged themselves in fighting in Ogaden in Ethiopia.

**Commissioner Chawatama:** Did you have an estimation of the number of firearms that were in Wajir?

**Mr. Joseph Muthui Ndirangu:** Not at all unless I go on the ground and count the firearms that were surrendered.

**Commissioner Chawatama:** I may not get the numbers right, but the Ajuran surrendered 26 firearms. I asked you that question because there seemed to be some satisfaction that a number of firearms had been collected from them. The Degodia surrendered six firearms and there seemed to be some dissatisfaction that they did not surrender sufficient firearms. What would have satisfied you that sufficient firearms had been received and so the exercise should stop?

**Mr. Joseph Muthui Ndirangu:** May I correct the sentiments that we were satisfied. We were not satisfied that the Ajuran had surrendered all the firearms that they had. We looked at the exchange of fire between the two. From the response by the Ajuran, we took it that they had surrendered what they had and even if there were two or more guns remaining, that would be judged by the response from the offended community. That is why they were crying to the Government that they had been disarmed and were now helpless hence the frequent attacks against them.

**Commissioner Chawatama:** Of the firearms that were surrendered, did anybody keep a correct record of the type of firearms and their sources?

**Mr. Joseph Muthui Ndirangu:** Yes. That was done by the police. Any firearm surrendered was deposited with the police armoury. The firearm surrendered is either kept by the police or the Administration Police, but mainly by the police.

**Commissioner Chawatama:** So, the police kept the firearms and they have a proper record of the firearms and the sources from whom those firearms were obtained?

**Mr. Joseph Muthui Ndirangu:** It depends with the duration. I am testifying after 27 years. So, the records of the firearms could also be available or not available. But I know that all the firearms surrendered would have a register or record to that effect.

**Commissioner Chawatama:** Would the record also include the names of the people from whom these firearms were recovered?

**Mr. Joseph Muthui Ndirangu:** If they were surrendered voluntarily by an individual, the name would appear there. If they were recovered through an exchange of fire, then, obviously the circumstances of such a recovery would also appear there.

**Commissioner Chawatama:** Coming to the airstrip, there was a gathering of 381 men. The intelligence, definitely, had knowledge and input of this?

**Mr. Joseph Muthui Ndirangu:** No, Madam Chairlady. This was a roundup. They were surrounding the community. I do not know how they were identifying the community because these people look alike and they speak the same language. They share the same religion. I do not know how they were doing that, but they were surrounding one community, that is, the Degodia.

**Commissioner Chawatama:** So, because they look alike, it is very difficult to pinpoint a *shifita* amongst them. That is what you are saying?

**Mr. Joseph Muthui Ndirangu:** Just like any other crime, one cannot pinpoint and say this is a criminal unless there is evidence directed to that person. I do not know how the security forces--- I cannot say, because I was not there. I do not know how they were differentiating the Ajuran from the Degodia unless they were possibly asking them for their names or IDs.

**Commissioner Chawatama:** I was just sympathizing with you on the difficult task of trying to establish who did what in that province since everybody looked alike.

The reason I asked you the first question on your input as a person in the District Security Committee (DSC) is because I want to understand how you arrived at the suitability of the airstrip as a place to confine people.

**Mr. Joseph Muthui Ndirangu:** May I make a correction. I was not a member of the DSC. I was a member of the Provincial Security Committee (PSC).

**Commissioner Chawatama:** I said your person, that is, you, had representation there. You may have asked your person the suitability of keeping people at the airstrip. If you did not, just answer in the negative.

**Mr. Joseph Muthui Ndirangu:** I said yesterday that that was left entirely on the operation team. They found the place to have been suitable for them to keep those people because they could not fit in a police station or anywhere else that was secure for them and spacious enough to carry out interrogations.

**Commissioner Chawatama:** Did you think of the suitability of this place in terms of the basic needs of the people that were held there? For example, going to the toilet or sitting in the shade? Was that something that crossed your mind?

**Mr. Joseph Muthui Ndirangu:** I think the basic needs like water and some other things were provided for by the DSC because there was a water bowser in the district that was used. It was confirmed that it was there. I do not know the arrangement they had for these people with regard to toilets. We did not visit the place to see how it was.

**Commissioner Chawatama:** In your statement, you referred to the persons who were confined as prisoners. Looking back, would you call them persons who were there to assist with investigations?

**Mr. Joseph Muthui Ndirangu:** I think I did not refer to them as prisoners. I referred to them as suspects.

**Commissioner Chawatama:** Would you like me to remind you, Sir? Leader of Evidence, please refer to the correct page and read out what the statement says.

**The Presiding Chair** (Commissioner Slye): The last paragraph of page five of the statement you submitted to the Commission states:-

“The DSC met us at the airstrip from where we learnt that 13 people had died from gunshots on 12<sup>th</sup> February, 1984 when the prisoners attempted to escape from lawful custody when the Acting DC and his team visited them at the Wagalla Airstrip.”

**Commissioner Chawatama:** Were these prisoners or were they people who were helping you with investigations?

**Mr. Joseph Muthui Ndirangu:** In my opinion, these were people who were to assist the DSC to get to the people who were involved in the attacks that had taken place. They were also to assist the DSC to get the illegal firearms held by the attackers or bandits.

**Commissioner Chawatama:** You visited Wajir on the 13<sup>th</sup>.

**Mr. Joseph Muthui Ndirangu:** That is true.

**Commissioner Chawatama:** I also believe that the 381 men held at the airstrip did not have any firearms on them.

**Mr. Joseph Muthui Ndirangu:** They did not.

**Commissioner Chawatama:** In my mind, there were a number of security persons there who were armed. The DSC had also called for reinforcement. Did you not have enough men to beef up security at the airstrip in order to allow you to find out a more meaningful fact-finding of what really happened?

**Mr. Joseph Muthui Ndirangu:** The reinforcement was called from other districts in order to comb up the area they had intended to cover. The district did not have the manpower to enable them comb the whole area. The district is very vast and yet they wanted to cover areas that they knew there was a concentration of the clans they wanted to surround.

It is at the airstrip that there was concentration. We had people surrounding them. At this point, they could not be having guns because they would have been removed from them.

I said earlier on that the report that reached us is that seven firearms were recovered during the operation. It was either recovered from them or--- I suggest that it was recovered from them. We had people to surround them. If they wanted to escape, since they were scattered all over, they would overpower an individual and then go beyond the fence.

**Commissioner Chawatama:** It is that overpowering that I had in mind when I asked the question. You saw panic when you spoke to your juniors. What did you read in that panic?

**Mr. Joseph Muthui Ndirangu:** They panicked when they saw us because in the first place, they did not call us. We went there on our own. We were dissatisfied because they did not submit to us information on the progress of their interrogation.

**Commissioner Chawatama:** The concern of the Commission is that you did not take steps towards establishing for yourselves what really happened so that that trip would have been a bit more meaningful.

Were you informed of what caused a stampede? What is it that triggered the incident that followed the visit of the DC?

**Mr. Joseph Muthui Ndirangu:** As I said earlier, we were relying on the report. Personally, I was relying on the reports of the day and the other officers were relying on the reports from the people on the ground. The DC and his team visited the place where they had gathered.

The report I received was that, when the DC went there some of the people who had gathered there tried to escape and others ran towards the DC with stones. The Kenyan law states that anybody arrested cannot be left to escape and whoever will be held responsible for any escape will be charged or he will be dealt with legally. Therefore, they were trying to prevent the escape of these people and that is when they opened fire as the people tried to escape through the barbed wire fence.

**Commissioner Chawatama:** Now, you have made me think that there was an actual arrest of the 381 people. Was that an arrest? You have said that according to the laws here in Kenya, if somebody who had been arrested escapes, action must be taken. So, are you saying that the 381 persons who were gathered at the airstrip were arrestees?

**Mr. Joseph Muthui Ndirangu:** I would say, anybody who had been deprived off the liberty and is held against his will, is arrested.

**Commissioner Chawatama:** Thank you so much. I will go back and read my box. Thank you.

**The Presiding Chair (Commissioner Slye):** Thank you, Mr. Joseph Muthui Ndirangu. I also have a few questions for you. I wanted actually to pick it up from where my

colleague was just asking you. I am trying to understand what sort of legal authority framework was in operation and what were your superiors doing? You heard me yesterday mention that it was an operational area and that, today North Eastern or the former North Eastern Province is still an operational area. Can you explain to us what it means to be “an operational area”? What does it mean to be “a designated operational area”? Do any laws apply? Are they the same laws that apply to the rest of Kenya or they are different laws, *etcetera*?

**Mr. Joseph Muthui Ndirangu:** The operational area is an area whereby there is a bit of insecurity. Prior to Independence, there was a move to have North Eastern secede to Somalia and, I think that is how this operation came about. This was because the Kenya Government did not accede to the demands of the people from either North Eastern Province or Somalis that the province belonged to the Somalia state. Therefore, that is how it came up. When the hostility of secessionism which is associated with the *shifita* activities or *shifita* menace ceased, the then tribes turned against each other or clans against other clans. This was done, either for the perpetrators to enrich themselves - because it was just like what is happening in Turkana today. The attackers or the raiders raid some animals either for sale or consumption. But most of the animals which were stolen in the area were escorted either out of the province to other countries or somewhere else.

So, an operational area is not like any other area; it is different. During the old days, the area was under emergency laws. That is, the North Eastern Province. But now it is not the way it used to be as the situation has dramatically changed.

As my colleague, the first witness stated, even the development there has improved. Although it is not equal to other areas, it is not the way it used to be before because initially, there were landmarks and other things whereby several government vehicles and equipment were destroyed and several civil servants killed. This was as a result of an accumulation of so many events.

**The Presiding Chair** (Commissioner Slye): So, Mr. Joseph Muthui Ndirangu, if I understand you correctly, in 1984, this being an operational area, in your words, emergency law would apply? I understand you are not a lawyer, but maybe this is something you can answer. Would you know whether normal criminal laws of Kenya would apply to an area like that, when you apply emergency law?

**Mr. Joseph Muthui Ndirangu:** The criminal laws apply there and that is why we have magistrates in the province. The two witnesses who testified before me happen to have been the magistrates by their appointment.

**The Presiding Chair** (Commissioner Slye): So, if that is the case, as I understand it - correct me if this is an incorrect assumption. That in 1984, an individual in Wajir, who was illegally in possession of a firearm, could be arrested and prosecuted for that possession, just like he could, in any part of Kenya. Is that correct?

**Mr. Joseph Muthui Ndirangu:** That is correct, Chair.

**The Presiding Chair** (Commissioner Slye): Okay, thank you. Just today, in reference to the holding of the individuals at the airstrip, you made a distinction - I had just read in your statement the use of the word “prisoners” and, the airstrip was not a gazetted place where one could legally hold a prisoner and you said that there were individuals who had been held for screening and interrogation. Therefore, they were not required to be held at a place that had not been gazetted. Is my understanding or memory of what you testified correct?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Presiding Chair** (Commissioner Slye): So then, in your understanding, how long could an individual be held for screening or interrogation?

**Mr. Joseph Muthui Ndirangu:** It depends with the people carrying out the interrogation. But it should not exceed certain days. By then there was a limitation for somebody to be held - not to exceed some days. I am not able to remember, as you have said, I am not a lawyer though I knew those limitations then. But today I cannot go and say this should be like this or like that. But there was a limitation of how many days one could be held for interrogation.

**The Presiding Chair** (Commissioner Slye): I am a lawyer, but not a Kenyan lawyer. But my memory and - I want to say that it is a charged memory - if I remember correctly, individuals cannot be held for 28 days before being brought before a judge? Is that term right to you?

**Mr. Joseph Muthui Ndirangu:** I said earlier, Mr. Chair, I cannot remember the exact days. But I know there is a limitation of the number of days that one would be held before he is taken to court, released from custody or from where he is held.

**The Presiding Chair** (Commissioner Slye): So, let us not try to pinpoint what the numbers of days are. In that understanding, could the District Commissioner (DC) or the District Security Committee (DSC), in your view, hold individuals in an airstrip in the way the people were held in Wagalla? So, whatever that period of time is, those are the days you will have the authority to hold the individuals. If I am correct, twenty eight days or twenty days, whatever the period, is allowed for detention before being taken before a judge. Is that right?

**Mr. Joseph Muthui Ndirangu:** As I had said earlier, it depends with the people carrying out the interrogation, provided that they do not exceed the time limit allowed in the law. The place of holding people is decided by the people on the ground because it could be to their convenience. But with regard to the place to do screening, it can be done anywhere where they reserve to hold the people in their custody. It could be anywhere to their convenience and satisfaction; that would be the best place. Then from there, after

screening, they take them to their respective gazetted places where they would either be taken to court or they would be detained if the emergency law still applied.

**The Presiding Chair** (Commissioner Slye): I think you are going to have a similar understanding. It stands that there was discretion to hold individuals for a period of time but that discretion was limited by whatever the legal limit was with respect to detention of individuals before appearing in court. I think that is what you are saying. Then I am moving specifically to what happened at Wagalla. To your knowledge, was there any record kept of individuals who were rounded up and brought to the airstrip?

**Mr. Joseph Muthui Ndirangu:** As far as I can remember, Mr. Presiding Chair, Sir, there was a report suggesting that those people who had been held at Wagalla had their identity cards held up by the security forces. But I do not know whether they were released or a list of each one of them was prepared. But it is normal that any persons held somewhere, there could be a list somewhere, but I understand that most of the identification cards were held up.

**The Presiding Chair** (Commissioner Slye): When you say that the identification cards were held up, do you mean that their identification cards were confiscated or they were crashed?

**Mr. Joseph Muthui Ndirangu:** I think the identification cards were held up as the operation continued because that was the key element or the tool for identification and that they were the Degodia as they were rounding up one community, not every community.

**The Presiding Chair** (Commissioner Slye): So, I am clear in my mind. What you mean is that when the individuals were rounded up and brought to the airstrip, it is your understanding that the identification cards were taken from them and held by the authorities?

**Mr. Joseph Muthui Ndirangu:** I think they were held up during the identification process. Possibly, they were returned to them or not. I am not very sure on that.

**The Presiding Chair** (Commissioner Slye): Okay. I guess if there were arrests and people who were detained, they could have been compiled by whom? Who were on the ground that would have gotten control of that procedure?

**Mr. Joseph Muthui Ndirangu:** The people who were conducting the operation were mainly the police because they were the ones to arrest the individuals. Unless those who were arrested by the army, for example, a foreigner, then they could keep them. But they could hand over such prisoners to the police for normal charging and everything else.

**The Presiding Chair** (Commissioner Slye): So, we do not know what happened; whether the police would have compiled such a list of those who were detained?

**Mr. Joseph Muthui Ndirangu:** I do not know.

**The Presiding Chair** (Commissioner Slye): Yes! You do not know whether that happened, but would that be, to your mind, a normal or reasonable procedure?

**Mr. Joseph Muthui Ndirangu:** The procedure is like that.

**The Presiding Chair** (Commissioner Slye): Okay then. On the side, the individuals who died and the bodies that were transported, do you know whether any list was kept of those individuals and where they were transported to after the operation?

**Mr. Joseph Muthui Ndirangu:** Other than the total figure that was given to me, there was no list.

**The Presiding Chair** (Commissioner Slye): The reason why I ask this question is that you probably can imagine many of the people who lost their loved ones during those days, still up to this day do not know whether their loved ones were buried or they were dumped. So, one of the things that we would like you to assist us in is to help those individuals in finding out where their loved ones were buried. Given that situation, do you have any recommendation of a person we shall approach and who might have that sort of information?

**Mr. Joseph Muthui Ndirangu:** I think that kind of information could be found from the ground where the operation was carried out.

**The Presiding Chair** (Commissioner Slye): Would that be that there are some people no longer with us, but who would be the police, the military, the National Security Intelligence Services (NSIS), Office of the President? Help me understand where we shall first go to try and find that information.

**Mr. Joseph Muthui Ndirangu:** I think if the list still exists, which could probably depend on its lifespan, it could be found with the police because they are charged with the responsibility of such people who had been gathered somewhere. The then District Security Committee could have compiled a list and it could be found in any of the police stations; if not with the police, then the DCs' office, but not with the military. Obviously, the military were involved in supporting the operation, but they could not have gone to those details. The details can be found with the Regular and Administrative Police.

**The Presiding Chair** (Commissioner Slye): Okay. That is a very helpful recommendation. In terms of the emergency laws that were applied in an operational area, I gather that the DSC was allowed to engage in what one might call today collective punishment. That was the idea of rounding up all members of a community without any concrete evidence of suspicion of a wrong doing but, with some suspicion of wrong doing among some of them, not all of them. Is that a correct understanding?

**Mr. Joseph Muthui Ndirangu:** I did not get you correctly.

**The Presiding Chair** (Commissioner Slye): The question is about an operational area and emergency law. I assume, and actually others have testified to this effect, that it was allowed to engage in what we would call today a collective punishment. That is rounding up all members of the community without any concrete evidence to suggest that any particular individual had engaged in wrong doing; in this case, protecting murder suspects who were summoned and who had illegal firearms. Was that authorized or considered a normal procedure to round up an entire community with the hope that over time, the actual suspect would emerge from that group that had been rounded up? Is that right and would that be sort of a normal procedure in respect then?

**Mr. Joseph Muthui Ndirangu:** In this particular case which you are referring to, they had a mission to achieve and they knew who their target was. That is why they did not collect the whole community. They had a mission to achieve and that is why they collected only the Degodia people who were terrorizing the other communities. It was not the entire community that was living in the area; they had their own suspects within the community and they had sufficient ground to believe that if they collected them, they would have achieved their goals. And true to it, they recovered seven firearms.

**The Presiding Chair** (Commissioner Slye): So, if I understand you correctly, it is your view and your estimation that there were 381 Degodia men who were rounded up. So, if I understand you correctly, you are saying that each of those 381 individuals, there was evidence that they were engaged in wrong doing? That, there was some evidence to suggest that they either had illegal firearms or they were protecting somebody with an illegal firearm or somebody who had been engaged in the attacks that had happened in the previous two to three weeks; is that correct?

**Mr. Joseph Muthui Ndirangu:** They had sufficient grounds to believe that the 381 Degodia men were covering the attackers. But they were not specific to know them. Therefore, they were to get the firearms from them because they were covering the culprits. If they were not covering them, then obviously, those people would have been reported and be removed by the security people. If they ever reported and identified them; that, “this is the person”, they would not have gone to the 381 persons; they would have gone to the actual persons, because that was what they were looking for.

**The Presiding Chair** (Commissioner Slye): There was some evidence to suggest that there were illegal firearms or they were protecting somebody with illegal firearms who had been engaged in the attacks that had happened in the previous three weeks? Is that correct?

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, Sir, in the 381, there was evidence on the ground to believe that the Degodia men were covering the attackers but they were not able to know who it was. So, they had to get that information from them. If they were not covering them, then those people would have been reported and subsequently removed from them by the security people. If they could have reported that such persons were the attackers, then the whole community would not have been affected. That was

what the security forces were looking for. Also, the firearms were being held by individuals who were among them.

**The Presiding Chair** (Commissioner Slye): I think I now understand it. Let me repeat it to make sure that we have the same understanding. There was evidence that a man from a particular ethnic group engaged in attacks. There was specific evidence that it was perceived as a normal reasonable procedure to round up all the men of that particular ethnic group in order to identify who the individual or individuals were who engaged in those attacks. Is that consistent with your understanding of what the authority or the procedure was then?

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, Sir, your statement is too long to comprehend.

**The Presiding Chair** (Commissioner Slye): I am sorry; I apologize. I am a law professor so, sometimes my sentences are a little bit too long. To simplify, if there is suspicion that a man of ethnic group “X” has committed murder but you do not know who he is, it was reasonable or allowed to round up all men from ethnic group “X” in order to interrogate all of them and screen all of them for whatever limited legal period was, in furthering of that investigation? Is that correct?

**Mr. Joseph Muthui Ndirangu:** I think it was reasonable for them, having tried all other means, to get the firearms or get the people who were committing those crimes. So, they were only trying to see whether that could be one of the ways that could direct them to the people who held illegal firearms or the criminals who were attacking those who had surrendered illegal firearms to the authorities. So, they had reasonable ground to believe that they could get something. As I had said earlier, out of that operation, they got seven firearms and that is written in the minutes.

**The Presiding Chair** (Commissioner Slye): Let me ask you or repeat here some of the information we have received from a number of different witnesses in terms of what happened during those four days. We had a number of individuals who were there during those four days and people who were not held but came and visited the site, including Mr. Elmi, Minister, who testified a few weeks ago. Nobody is exactly clear on the numbers but from the witnesses, the numbers range from about 1,000 to 5,000. I know you were not there or you were there quite briefly; could you authoritatively assert that there were not that many people and from what you saw, it was a few hundred like 381 or was it possible that there were many people there at that time?

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, Sir, I would say that I would be confused just like you because I was not there. I would depend on the figures that were given to me. The individuals who were giving such erratic numbers have their own interests. Every individual who is testifying before you has an interest of some kind. The interest that every individual has is vested in coming up with whatever allegations that were made. These are the figures that I was given and are maintained or secured in government offices if records have not been destroyed. If the Etemesi Report suggested

57 and the suggested report from the ground was 30, that is, including the man who died in hospital, the difference is that big. So, the average could be based on the figure given by the Etemesi Report because it was immediate and he went to the people on the ground and not the District Security Committee (DSC) or the people who were involved in the operation like the military and the police; he went to the people outside the limitation. So, he came up with a report that I would say is not biased in any nature. It is a true report because he was not interested. The team did not have any interest because they were not suspects or the people who carried out the operation. So, the average should be between 30 and 57 but not more than that. At the same time, regarding the figure of 1,000, we should go to the census because this will let us know whether that number of males could be near to that. There was a census report in 1979 and there are those records which can give us the actual range. Is it possible that you could gather 4,000 men at one place and bearing in mind that not all of them were found because some could have taken off from their homes? So, all of them were not arrested.

**The Presiding Chair** (Commissioner Slye): We all recognize that all individuals testify and have their own interest in a lot of things. Another witness, Mr. Elmi, also said to us that there was no food or water given to individuals. He recounted stories where there was a source of water running and a young man was going for it but the security officers got him, dragged him and beat him up and did not allow him to get the water. Again, I understand that you relied upon the official government report but do you have any independent knowledge in terms of your visit to the area, what you saw, what people told you directly during those four days about whether individuals were given food or water?

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, Sir, I did not go to the people in person. I relied on the information given. Food was there because there were relief supplies and we were told that the security team got food from the relief kitty. There were water boosters in the district and also from the military. The only thing that I cannot testify on is whether they were given food to eat, but what I know is that food was moved from the store, or whether they were denied water as claimed. I can only rely on what I was told by the Government Officers. If I had seen the Etemesi Report, I would also go by it because the Etemesi team went to the people themselves.

**The Presiding Chair** (Commissioner Slye): I want to ask you some questions. I want to take you from that period in 1984. We are sitting here today in retrospect as we try to reflect upon what happened during that period. By your estimation, anywhere from perhaps, 30 people to 57 people died during that operation. The official records, as you rightly pointed out, indicate that seven firearms were acquired. In your view, was that an efficient operation? Was it a worthwhile operation, given the number of firearms that were recovered?

**Mr. Joseph Muthui Ndirangu:** Mr. Presiding Chair, Sir, let me say that in an operation, you may get something or not. So, even getting seven firearms was a success for them in that one operation because there were some operations which were carried out and nothing was recovered. That does not only happen in that area but also in other areas. Even in Nairobi here, operations are carried out but they do not get what they are aiming

at getting. Therefore, getting seven firearms plus a number of ammunitions which have not been mentioned was a success to that team that was on the ground.

**The Presiding Chair** (Commissioner Slye): That would be your assessment. I am not interested in what you think the people at that time might have thought but you should be analyzing the history of the situation. You would conclude that the operation was a success because seven firearms were recovered. Did I understand you correctly?

**Mr. Joseph Muthui Ndirangu:** That it true.

**The Presiding Chair** (Commissioner Slye): Given that 57 individuals died, some of them by exposure and some of them by being shot when they were trying to flee, let us assume that so many individuals who died or shot were completely innocent because they did not have firearms and did not know where firearms were. If that were the case, in your view, do you think the Government today should either apologize or compensate those individuals and their families?

**Mr. Joseph Muthui Ndirangu:** Chair, I think that is beyond my capability. I am not able to comment on that. I think the Commission would come up with what should be done.

**The Presiding Chair** (Commissioner Slye): You are right. We will but I am asking for your advice to us; whether you think we should recommend that the Government apologizes or compensates individuals for the losses they suffered during that operation.

**Mr. Joseph Muthui Ndirangu:** Chair, I do not want to get into that because it is beyond my capability.

**The Presiding Chair** (Commissioner Slye): You have spoken in great detail and very helpfully about communications work back then; the lines of authority, the responsibility of different institutions and so on. I also asked, given the experience you have, which recommendations would you make to us in terms of changing institutions, changing operational policies if any, to make it less likely that the loss of life that occurred during that operation would not happen again. Is there anything that you think we should recommend in terms of the intelligence services, for example? You also spoke about the lack of access to information at that time. So, is there anything you would like to share with us that we should recommend to make those institutions work better?

**Mr. Joseph Muthui Ndirangu:** The first and foremost, is to study the existing laws that govern the place with a view of changing those ones which are obsolete. As you stated regarding intelligence, the person who was on the ground, disciplinary action was taken against him because that is the way he should have done things. He should have informed the province of what was taking place irrespective of what they had agreed on. I assume that they had agreed on that because the Provincial Commissioner (PC) was not informed, the Commanding Officer was not informed and also the Provincial Police Officer (PPO) was not informed. Therefore, it might have been collusion amongst themselves. I think that most of the officers who were directly involved in that operation,

disciplinary action was taken against most of them. I am not able to state clearly as to what disciplinary action was taken against them but disciplinary measures were taken against them. That could have also been one of the reasons that made me move out of the province. I would not have continued feeling secure and proud of my work with such kind of an incident. To answer your question, we should study the current laws governing the entire country and remove obsolete laws that are punitive and replace them with those ones that are good for everybody. People involved in various areas are governed by the laws of the state and they follow them. Everybody in the civil service, including the military, follow the laws whether it is an Act of Parliament or any law. That would be my recommendation.

**The Presiding Chair** (Commissioner Slye): Thank you, Mr. Joseph Muthui Ndirangu; we appreciate your suggestions and recommendations. On behalf of the Commission, I want to thank you for finding time to spend with us since yesterday. We have kept you for a very long time. I know that your throat has been bothering you and I hope we have been able with enough water and dealt with any discomfort that you might have felt. I want to thank you for being candid, forthcoming and willing to come here and testify before this Commission.

**The Commission Secretary** (Ms. Nyaundi): Mr. Presiding Chair, Sir, with your kind permission, there are documents that we received this morning and I was requesting that even as we break for lunch, there are some issues arising from those documents that I would like to seek clarification from Mr. Joseph Muthui Ndirangu. So, I was requesting that immediately after lunch, we could commence with him just for clarification of those before we could take the next witness.

**The Presiding Chair** (Commissioner Slye): Would you want to do it now or do you think it would be appropriate to do so after lunch?

**The Commission Secretary** (Ms. Nyaundi): I would appreciate if I could do it now.

**The Presiding Chair** (Commissioner Slye): Mr. Joseph Muthui Ndirangu, are you still comfortable enough to answer additional questions from our Evidence Leader?

**Mr. Joseph Muthui Ndirangu**: Mr. Presiding Chair, Sir, I might be exhausted but I would not mind if we could resume after lunch.

**The Presiding Chair** (Commissioner Slye): Then, we will take lunch break and we will resume with just a few additional questions for you. We will reconvene at 2.45 p.m.

I want to thank the members of the public, again, for their co-operation. I also want to thank the members of the press. Some photographers came in late before we announced that we had relaxed our rules in terms of photography. You may take photographs of the witness during testimony, so long as you do not use a flash and so long as you do not get up and move about. We appreciate your co-operation with that. If we find that the

application of those rules further disturbs the witness or the Presiding Chair of the Commission, then we might change them.

*[The Commission adjourned temporarily at 1.40 p.m.]*

*[The Commission resumed at 3.25 p.m.]*

*(Technical hitch)*

**The Commission Secretary** (Ms. Nyaundi): Mr. Joseph Muthui Ndirangu, on page 3 of those minutes, the second paragraph, I believe that was the judgment of the PSC on the operation that had been concluded, it says:-

“In the course of the interrogations four firearms were surrendered by some of those who were being interrogated. This was, indeed, commendable since the interrogations were yielding the desired results, although the unfortunate incident regarding those who died in the entire process is regrettable.”

Mr. Joseph Muthui Ndirangu, the question I had then was that on 14<sup>th</sup> February, the meeting that began at 8.30, was it the opinion of the PSC that the operation was commendable?

**Mr. Joseph Muthui Ndirangu:** I think the remarks came up as a result of the recovery of the firearms and ammunitions.

**The Commission Secretary** (Ms. Nyaundi): That was through the operation. Was it the opinion of the PSC that the operation was commendable?

**Mr. Joseph Muthui Ndirangu:** As it is listed here in these minutes, that is how it was.

**The Commission Secretary** (Ms. Nyaundi): Okay. Minute 1584 on the same page, the PSC, again, is making observations and says that there is a danger of major conflict between Degodia tribesmen and the Ajuuran. I do not know whether you can remember, but was this likely as a result of the operation that had happened?

**Mr. Joseph Muthui Ndirangu:** If you read the first sentence, you will see that the PSC foresaw the danger because of the threats that had been noted in the past. There had been threats against civil servants and the Ajuurans.

**The Commission Secretary** (Ms. Nyaundi): That minute says that there was need for immediate remedial action?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Commission Secretary** (Ms. Nyaundi): The first one, because of time, says:-

“We address civil servants and warn them against unescorted safaris by armed personnel and unnecessary movement.

2. Considered transferring all Degodia and Ajuran Kenya policemen should the situation so warrant.

3. Maintain an extra vigilance in the event of Degodia bandits striking in retaliation.

4. DSC, Wajir, to be on alert and ensure that there is no unnecessary movement.

5. Continuous operation should be stepped up with the increased reinforcement.”

Can you see where the continuation of those minutes is? Minute 1584 is talking about remedial action. On the page you are looking at, you should also have Minute 1684. Is it not? If I can have your bundle, then I can help you.

Can you see page 4?

**Mr. Joseph Muthui Ndirangu:** Yes.

**The Commission Secretary (Ms. Nyaundi):** You can confirm that there is minute 1684 somewhere on that page?

**Mr. Joseph Muthui Ndirangu:** I can confirm that.

**The Commission Secretary (Ms. Nyaundi):** We were talking about the immediate remedial action, point No.5, on top of page 4. It says:-

- (a) One hundred extra men already drawn from Mandera to assist; 45 extra men drawn from Garissa to assist in this operation; one Army platoon from Moyale also reinforcing the troops on the ground and one Army platoon from Garissa also reinforcing the ongoing operation. The operation must be carried out with minimum harassment to anybody, but must leave no stone unturned.

Is that accurate?

**Mr. Joseph Muthui Ndirangu:** Since it is a minute of what we discussed, I would confirm as it is.

**The Commission Secretary (Ms. Nyaundi):** Thank you. Would you recollect whether the extra men from Mandera, Garissa and the platoons from Moyale and Garissa then proceeded to Wajir?

**Mr. Joseph Muthui Ndirangu:** I am unable to confirm that because I cannot remember. In any case, after the deliberations at the PSC, the matter was left to the people concerned. That would be the PPO, Provincial Administration because of the APs and also the military because there was a platoon involved here.

**The Commission Secretary (Ms. Nyaundi):** You can also look at Minute 16 and 17.

Mr. Joseph Muthui Ndirangu, looking at these minutes of 14<sup>th</sup> February, at 8.45 a.m., can one say that this was the first meeting of the PSC after you had confirmed the situation on the ground?

**Mr. Joseph Muthui Ndirangu:** That is true.

**The Commission Secretary (Ms. Nyaundi):** At the first meeting of the PSC, there was no condemnation of the operation in Wajir by the PSC?

**Mr. Joseph Muthui Ndirangu:** According to the minutes referring to every incident, I would confirm that what is contained is the deliberation between the PSC members. That is what came up because it is signed.

**The Commission Secretary (Ms. Nyaundi):** If the PSC were in anyway concerned or felt that the operation had been carried out without their authority and knowledge, it would have been in the minutes of 14<sup>th</sup> February, this being the first meeting?

**Mr. Joseph Muthui Ndirangu:** I think we did not say that there was no authority. We said that the DSC, which had the authority to do what they did, had met at 3.00 p.m. after the incident was reported from Griftu and they called for reinforcement. The first person to get the information was the PPO, who did concur and told us later individually. That was my statement and I still stand by that statement.

**The Commission Secretary (Ms. Nyaundi):** Yes, in fact, I recollect. But the question I am now asking is if, as the PSC, you had not sanctioned this operation or disapproved of it, you would have said so on 14<sup>th</sup> February?

**Mr. Joseph Muthui Ndirangu:** We could not have approved because already, it had happened and action had already been taken.

**The Commission Secretary (Ms. Nyaundi):** Yes, but for sure, if it was an operation that in your judgment was one that left a lot to be desired, you would not, in Minute 13, page 3, second paragraph, have stated that this was, indeed, commendable!

**Mr. Joseph Muthui Ndirangu:** As I said earlier on, I will go by the minutes, because I was a member of that committee that deliberated on all these contents.

**The Commission Secretary (Ms. Nyaundi):** Thank you, Mr. Joseph Muthui Ndirangu. Later on, on the same day, 14<sup>th</sup> February, according to the order of the documents - these are just before the minutes you are looking at - there is a meeting again on 14<sup>th</sup> February, at 11.50 a.m. Have you seen that?

**Mr. Joseph Muthui Ndirangu:** I have it.

**The Commission Secretary** (Ms. Nyaundi): Again, the quorum is the members of the PSC, chaired by the PC and the members of the DSC, I believe this is Garissa, Mr. Lindambisa and Major Chebet, Uthuri and Joel. Is that accurate?

**Mr. Joseph Muthui Ndirangu:** It is true.

**The Commission Secretary** (Ms. Nyaundi): On Minute 1884, there is counsel; communication from the chairman. That is the first paragraph, fourth sentence. It reads:-

“The Chairman welcomed and told them that the purpose of the joint meeting was mainly to caution the DSC to plan their security arrangements in good time, so as to avoid any situation where we may be caught up by an impromptu security operation such as the 1980 Garissa incident or the current Wajir situation resulting from the tribal conflict between the Degodia tribesmen and the Ajuran tribesmen, in which the Degodia are aggressively hostile.”

Just conceding that this is 27 years later and you do not know because you have not seen those minutes--- But was there a meeting between the PSC and DSC, Wajir?

**Mr. Joseph Muthui Ndirangu:** That was a meeting held to caution the other DSCs because that incident had already occurred and we had known what had transpired. Therefore, we were cautioning other DSCs to take measures in their respective districts to avoid the recurrence of such incidents.

**The Commission Secretary** (Ms. Nyaundi): So, these minutes were going to be circulated to the other DSCs after the meeting?

**Mr. Joseph Muthui Ndirangu:** No! Every DSC had its unique way of operation in its own area. Therefore, we were cautioning them because there was an incident where the six people were killed in Garissa. The DO had already been killed and there were skirmishes in the district. That was to brief them because we had already been to Wajir. There were visits even by the Chief of General Staff (CGS) in the previous brief that we had already given.

**The Commission Secretary** (Ms. Nyaundi): So, after the Wagalla incident, there was a similar counsel to the DSC in Wajir?

**Mr. Joseph Muthui Ndirangu:** There were some minutes that you had given to me this morning, regarding a visit to Wajir, where the PSC, PC, CGS and somebody from the Commissioner's office visited the area. That was one, but there was another to caution this district. We cannot pass minutes of a district to another district. The districts have their own way. That was a meeting between the PSC and the DSC for Garissa. It was a brief for Garissa.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Mr. Joseph Muthui Ndirangu. All I had wanted to confirm was that at some point, as the PSC, you did give counsel to the Wajir DSC on how operations ought to be conducted.

**Mr. Joseph Muthui Ndirangu:** In the meetings between two different groups, obviously, you will have the counsel and directives given, getting the views of the junior members, because they were junior members to us.

**The Commission Secretary** (Ms. Nyaundi): Thank you, very much, Mr. Joseph Muthui Ndirangu. That is all.

**The Presiding Chair** (Commissioner Slye): Thank you, Ms. Nyaundi and Mr. Joseph Muthui Ndirangu. I would like to ask whether any of my fellow Commissioners have any additional questions that they would like to pose to you.

Mr. Ndirangu, I want to thank you on behalf of the Commission for your willingness to appear before us for a good part of the afternoon yesterday, this morning and today afternoon. We very much appreciate the amount of time you have taken, the candor in which you have approached this Commission and we also recognize that you came here while you were not feeling well. So, we appreciate your willingness to be here. So, thank you, very much for giving us the evidence. Hearing Clerk, escort the witness back to his seat and swear in the next witness. Thank you.

*(Gen. Joseph Raymond Kibwana took the oath)*

**Mr. Tom Chavangi:** Kindly, for the record, state your name again to the Commission.

**Gen. Joseph Raymond Kibwana:** My name is Joseph Raymond Kibwana.

**Mr. Tom Chavangi:** You did a statement which was given to the Commission which statement enumerates your knowledge about the Wagalla Massacre that took place in 1984. Kindly present your statement before the Commissioners.

**Gen. Joseph Raymond Kibwana:** I will read the Statement. I am Rt. Gen. Joseph Kibwana and I am writing this statement in response to the summons by the Truth Justice and Reconciliation Commission (TJRC) dated 3<sup>rd</sup> May, 2011 to provide information on:

- (a) A security operation that took place in Wajir at Wagalla Airstrip in February, 1984.
- (b) A District Security Committee meeting on the 8<sup>th</sup> of February, 1984 at the District Commissioner's office in Wajir.

To the best of my recollection, I hereby state:

- (a) The security operation at Wagalla Airstrip, February, 1984: I was neither involved in the planning, execution or supervision of the said operation in any capacity whatsoever. I have, therefore, no information to provide to the TJRC on this issue.

- (b) The District Security Committee on 8<sup>th</sup> February, 1984: I did not attend any District Security Committee on 8<sup>th</sup> February, 1984 at the DC's office in Wajir and neither would I have been eligible to attend such a meeting as I was not a member of the said DSC.

I was, however, a member of an Inter-Ministerial Government delegation which had travelled from Nairobi on a tour of the North Eastern Province that paid a courtesy call on the DC Wajir on 8<sup>th</sup> February, 1984. The DC is normally the co-ordinating authority for the district during such visits and would be the focal point of contact.

The objective of our tour was to acquaint ourselves and also inspect the development projects of the NEP with particular emphasis on infrastructure, the famine situation, the security challenges across the border areas and general welfare. In this regard, we had among us representatives of the Ministries of Lands, Transport, Roads, telecommunications, Office of the President and the Treasury.

Out of the 29 strong delegation, only five of us were members of the Kenya Intelligence Committee. I recall among other issues that were addressed by the DC during this meeting was the security situation in Wajir which was reported to have improved. No mention was made of any intended security operation and neither would that have been the appropriate forum to discuss such operational matters.

The brief was then followed by a tour of the selected development projects, for example, the power generating station, the police lines and boreholes. Thereafter, we proceeded with the rest of our programme visits to other areas of NEP.

This, my Lord Commissioners, is all that I have to say.

**Mr. Tom Chavangi:** In your statement, you have categorically said that you paid a courtesy call on the DC, Wajir, on 8<sup>th</sup> February, 1984. As a team, where exactly did you meet the DC, Wajir?

**Gen. Joseph Raymond Kibwana:** In his office.

**Mr. Tom Chavangi:** In your statement, you also say that one of the issues that were addressed by the DC then were issues to do with security challenges. What were the security challenges that the DC enumerated in that meeting?

**Gen. Joseph Raymond Kibwana:** North Eastern Province was an area that had been troubled by numerous incidents of banditry. Wajir was one of the areas that was also part and parcel of the then internal security challenges which arose mainly out of the intra-ethnic conflicts. The DC, therefore, in his brief, covered the general security situation of the entire Wajir District.

**Mr. Tom Chavangi:** In your statement, you mentioned that: “There were five of us who were members of the Kenya Intelligence Committee (KIC).” Could you kindly mention the names of these five members of the KIC that accompanied you to Wajir?

**Gen. Joseph Raymond Kibwana:** The members were Amb. Bethuel Kiplagat, Hon. Mr. David Mwiraria, Mr. J. Gituma was the Permanent Secretary and Mr. J. Muliro was also the Permanent Secretary. There was also a representative of the Director of Intelligence.

**Mr. Tom Chavangi:** In your statement, you also mentioned that when you met the DC as a team, that was not an appropriate forum to discuss such operational matters. In your estimation, where or what would be an appropriate forum to discuss such matters?

**Gen. Joseph Raymond Kibwana:** It would not have been appropriate for the non-members of the security organizations, for example, the members of the telecommunications companies; those members would not have been cleared to attend a security meeting.

**Mr. Tom Chavangi:** We shall now move slightly away from your statement so that the Commission can clarify a few issues. When were you appointed as Director of Military Intelligence?

**Gen. Joseph Raymond Kibwana:** In October or November, 1982.

**Mr. Tom Chavangi:** As Directorate of Military Intelligence, what are your core duties? Is it the only directorate within the military or there are other directorates that deal with military intelligence apart from the one that you are heading?

**Gen. Joseph Raymond Kibwana:** That was the only directorate responsible for military intelligence.

**Mr. Tom Chavangi:** In terms of that position that you were holding then, what were your core duties?

**Gen. Joseph Raymond Kibwana:** To provide military intelligence to the commanders.

**Mr. Tom Chavangi:** I am assuming that as a brigadier then, you were a one-star general. So, were these commanders your superiors or juniors?

**Gen. Joseph Raymond Kibwana:** They would be my superiors, the commanders being: the service commanders and the Chief of General Staff.

**Mr. Tom Chavangi:** In terms of reporting the intelligence that you have, do you report directly to the CGS or the CIC?

**Gen. Joseph Raymond Kibwana:** To the CGS and the service commanders.

**Mr. Tom Chavangi:** So, the first point of reporting is the CGS?

**Gen. Joseph Raymond Kibwana:** You are correct.

**Mr. Tom Chavangi:** And then they will go to the service commanders?

**Gen. Joseph Raymond Kibwana:** That is right.

**Mr. Tom Chavangi:** For laymen like us who have never served in the military, who are these Service Commanders?

**Gen. Joseph Raymond Kibwana:** Commanders of the Kenya Army, the Kenya Air Force and the Kenya Navy.

**Mr. Tom Chavangi:** So, first this information goes to the CGS, then it trickles down to the service commanders?

**Gen. Joseph Raymond Kibwana:** Precisely.

**Mr. Tom Chavangi:** You did accept that there was a trip you made as a member of KIC to Wajir as the Director, Military Intelligence then. What was your brief? What were you supposed to go and do in Wajir?

**Gen. Joseph Raymond Kibwana:** I went there in my capacity as a member of the KIC. Therefore, we were working on the agenda of the KIC.

**Mr. Tom Chavangi:** Would you be kind enough to share with us the agenda of the KIC?

**Gen. Joseph Raymond Kibwana:** Yes. We had planned this trip to go and acquaint the members of the KIC on the situation in North Eastern Province covering the entire spectrum of development, security, economic, political and the general welfare of the personnel.

**Mr. Tom Chavangi:** This trip was planned for you to go and assess the issues arising from the agenda. Who organized for the trip?

**Gen. Joseph Raymond Kibwana:** The KIC Secretariat.

**Mr. Tom Chavangi:** When you say the KIC Secretariat, what does that mean? Is it headed by somebody or is it within a certain Ministry or department?

**Gen. Joseph Raymond Kibwana:** Within the Office of the President, there is a secretariat that provides the support to the KIC and the secretary of the KIC comes from the secretariat.

**Mr. Tom Chavangi:** From the statement that we got from the previous witness, Mr. Ndirangu, he stated that the District Security Committee (DSC) requested for reinforcement which was communicated to your team by the PPO, Aswani, to the Provincial Security Committee (PSC), which communication also was communicated to the team that came from Nairobi. Were you aware of this communication?

**Gen. Joseph Raymond Kibwana:** No, there was no communication and that would not have been the chain of command or chain of communication. I believe if Mr. Ndirangu did say so, it might have been an oversight.

**Mr. Tom Chavangi:** So, what would be the right channel of communication or giving command?

**Gen. Joseph Raymond Kibwana:** The DSC would report to the PSC and the PSC would report to the Office of the President.

**Mr. Tom Chavangi:** In this meeting that took place, of which you also attended on the 8<sup>th</sup> of February, 1984, at the District Commissioner's office, you said that security issues were also discussed. Just to, probably, give a hint or insight into this discussion that you had on issues of security, what specific issues were discussed with regard to Wajir as a town?

**Gen. Joseph Raymond Kibwana:** As far as Wajir was concerned, the brief was specific that the security situation had improved and that the conflicts had mainly been between the Ajuran and the Degodia.

**Mr. Tom Chavangi:** That is what was discussed in that meeting that you attended?

**Gen. Joseph Raymond Kibwana:** That is what was briefed to us. As I said, it was not a meeting. It was a brief from the DSC to the delegation.

**Mr. Tom Chavangi:** So, probably, for understanding and maybe for civilians, for me, you have to be in a meeting to be briefed. So, I do not understand when you say you were briefed, then it was not a meeting. Just a clarification on that.

**Gen. Joseph Raymond Kibwana:** My understanding of a meeting is that there is a dialogue and discussions between those who were conducting the meeting and the audience. In our case, we received the briefings from the DC on the situation obtaining in Wajir in areas of security, development, the famine situation and the welfare of the civil servants and the *wananchi* of Wajir.

**Mr. Tom Chavangi:** So, that means it was just a brief and no questions asked by your team. You packed your bags and left for Mandera?

**Gen. Joseph Raymond Kibwana:** There could have been questions or clarifications sought from the members of the delegation.

**Mr. Tom Chavangi:** Just to take you a little bit further from the meeting of 8<sup>th</sup>, after the Wagalla Massacre, the then CGS, Gen. Mulinge was at Wajir Airstrip on 15<sup>th</sup> February, 1984. What informed his visit? Did you give him a brief of this massacre? Probably, you might not know this, but did he come to know about the massacre on his own motion? What made him go to Wajir?

**Gen. Joseph Raymond Kibwana:** I believe he was tasked by the authorities to investigate the reported incidents that had occurred in Wajir

**Mr. Tom Chavangi:** Does it mean then that the CGS goes to such places without being informed or being told by the persons in charge, for example, the Directorate of Military Intelligence? Is he just directed from another place to go and yet the Directorate of Military Intelligence is here to gather information and inform him on what to expect on the ground?

**Gen. Joseph Raymond Kibwana:** The CGS would have received daily briefings from his service commanders and also from the Director of Military Intelligence.

**Mr. Tom Chavangi:** So, did part of your briefing to the CGS touch on the Wagalla Massacre because this was after they left?

**Gen. Joseph Raymond Kibwana:** We arrived in Nairobi two days after the event. The CGS must have learnt of the Wajir incident through the chain of command of the army much earlier than my arrival in Nairobi.

**Mr. Tom Chavangi:** Under the Armed Forces Act, for the military to engage locally, there has to be a request from the civilian authority. You, as the former CGS and brigadier in 1984, was that request sought from the civilian authority to participate in this operation?

**Gen. Joseph Raymond Kibwana:** The military always acts in support of the civil power. It was presumed that process was followed at the level that this operation was going to be conducted.

**Mr. Tom Chavangi:** We have heard from testimonies since yesterday that the northern region was an operation zone. Was it right for the military to be in an operation zone as opposed to other forces of this country like the Administration Police or the Regular Police? Why was the military brought in? Was the situation so bad that the military had to come in? I thought the work of the military is to defend our boundaries, but not to get into local conflicts.

**Gen. Joseph Raymond Kibwana:** The military personnel is deployed throughout the country. Whether the area is peaceful or not, the deployment of the military is dependent upon the strategic assessments made. As of today, I think the only province that does not have the military deployed there is Nyanza Province.

**Mr. Tom Chavangi:** From your experience, is it right for the military to engage in local issues, and from our readings we know that the military is supposed to defend our borders as opposed to engaging in local conflicts? So, was it right for them to have been engaged in these processes? Does it mean then that the police force and the Administration Police were weak or incompetent at that particular moment?

**Gen. Joseph Raymond Kibwana:** I want to emphasize again that the military undertakes internal security operations only at the request and in support of the civil power. The military will never wake up any morning and decide that there has been trouble in Korogocho, let us go and quell that trouble. It will always have to be at the request of the civil authority.

**Mr. Tom Chavangi:** So, that means then the military will share intelligence with civilian authorities for that operation to move on smoothly? The intelligence that you have, you will need to share it with the civilian authorities for your operation to move on smoothly?

**Gen. Joseph Raymond Kibwana:** Civilian authority is a vague concept. Maybe we should say the District Security Committee (DSC) because civilian authority could be anybody else. In this particular case, the military would be entitled to share any information with the appropriate members of the DSC.

**Mr. Tom Chavangi:** My next question is about the KIC. Were you a nominated member of the KIC or were you representing a member of the KIC when you were headed to Wajir?

**Gen. Joseph Raymond Kibwana:** I was a member of the KIC because of my appointment as the Chief of Military Intelligence. I, therefore, went to Wajir as a *bona fide* member of the KIC.

**Mr. Tom Chavangi:** During that time when you served as Director, Military Intelligence, did you rely on your officers on the ground or was it you to go to the ground so that you could collect and collate this information?

**Gen. Joseph Raymond Kibwana:** Information would normally flow from the field, be analyzed at the headquarters and passed on to me. But as you well know, regular visits to acquaint commanders with the situation and the environment on the ground are an essential element of military command.

**Mr. Tom Chavangi:** After the Wagalla Massacre, there was an incident report that was produced by the police investigators. You, as the Director, Military Intelligence, did you at any given time come across the incident report?

**Gen. Joseph Raymond Kibwana:** I do not recall whether I received that report directly, but I was a recipient of all the police daily reports.

**Mr. Tom Chavangi:** But you do not recall having ever received that report or you cannot just remember?

**Gen. Joseph Raymond Kibwana:** I cannot remember.

**Mr. Tom Chavangi:** Since you were the Director, Military Intelligence then, and you were being fed from the bottom by your officers, are you aware that a few days before the Wagalla Massacre the army surrounded a village called Bulla Jogoo and ordered the residents to vacate their homes?

**Gen. Joseph Raymond Kibwana:** No, I was not aware of that.

**Mr. Tom Chavangi:** And also the army is reported to have forcibly removed them and took them to the airstrip?

**Gen. Joseph Raymond Kibwana:** No, I was not aware of that.

**Mr. Tom Chavangi:** Commissioners, I do not have any further questions.

**The Presiding Chair** (Commissioner Slye): Thank you, Leader of Evidence and thank you, Gen. Kibwana. I would like to ask whether any of my fellow Commissioners have additional questions.

**Commissioner Dinka:** Gen. Kibwana, thank you, very much, for your testimony. I have a few questions to clarify that I am not completely comfortable with. As head of Military Intelligence, what was your assessment of the security situation in the North East say between mid 1983 and the first few months of 1984?

**Gen. Joseph Raymond Kibwana:** The North Eastern Province has been plagued with insecurity right from the time of independence. The situation in 1983 was the same. The situation is the same up to today. You might have read this morning that a military truck was blown by a mine in the same North Eastern Province.

**Commissioner Dinka:** So, your assessment as head of the Military Intelligence at that time was that it was a province in chaos and turmoil? Is that it?

**Gen. Joseph Raymond Kibwana:** Yes.

**Commissioner Dinka:** You have been a member of the KIC. Before the trip on the 8<sup>th</sup> of February, 1984, had you been in any other KIC delegation to that province?

**Gen. Joseph Raymond Kibwana:** No. That was the first visit of the KIC, but not my first visit as a military officer.

**Commissioner Dinka:** I am talking about KIC.

**Gen. Joseph Raymond Kibwana:** That was the first visit of the KIC.

**Commissioner Dinka:** Does KIC go on similar visits to other provinces?

**Gen. Joseph Raymond Kibwana:** I cannot recall, but I know it was within its mandate to visit and acquaint itself with the environment in the whole country.

**Commissioner Dinka:** I take it then that there was a situation in the northern environment that actually necessitated the first visit by the delegation of the KIC.

**Gen. Joseph Raymond Kibwana:** Yes, Sir. There had been incidents or concerns about the border areas and it was found necessary that the members of KIC visit and have first-hand information on the security, socio-economic situation and general development of that area.

**Commissioner Dinka:** The Provincial Commissioner of North Eastern Province wrote to the District Commissioners under him on 16<sup>th</sup> November, 1983, regarding the forthcoming visit of the KIC delegation in which among other things, he requested the DCs to prepare comprehensive security briefs to assist KIC to develop long-term solutions to the problems of *shiftas* and banditry in the region. So, it is purely security, military and political issues that are contained here. It is not really issues like irrigation or provision of clean water. It is not focused on development. The focus remains security, political and military. Within it, people could expand it into some development issues. Basically, the task of the KIC delegation at that time, from the PC's point of view, was security. Would you say that is right?

**Gen. Joseph Raymond Kibwana:** The conventional wisdom then, and I believe even now, is that development without security is just a mirage.

**Commissioner Dinka:** That is why it was necessary to establish or restore security in the northern region?

**Gen. Joseph Raymond Kibwana:** Precisely.

**Commissioner Dinka:** Secondly, before the KIC delegation left for Nairobi, there was a brief on the northern region security situation prepared by the secretariat for the benefit of the members of the delegation. If I read the first paragraph to you, it says:-

“The purpose and intention of this brief is to enlighten members of KIC on various problems affecting security and the efforts made to deal with the situation.”

Again, the main focus is on security. It is interesting to note that the KIC delegation visits the DC's office on the 8<sup>th</sup> of February, together with the PC and the Provincial Security Committee. In the middle of the night of the 9<sup>th</sup>, this rounding up situation comes into being. It could be completely coincidental, but you said that there were other members who were not members of the Security Council, therefore, security issues could

not have been discussed. The Commission has been told by some witnesses that actually, the operation took place on the basis of the understanding that was reached at the meeting which was attended by the delegation of KIC. Could you, please, enlighten us on that?

**Gen. Joseph Raymond Kibwana:** Let me state here very clearly and for the benefit of the Commissioners because there has been misreporting on our visit; our visit had nothing to do with the subsequent events. In any case, we would not have had the authority to order an operation. The KIC is an advisory body. It has no powers to order or implement any operation.

**Commissioner Dinka:** The testimony that the Commissioners heard does not say that the KIC delegation gave instructions or directives to that effect. It just says there was an understanding reached. It is on that basis that the DC took steps which he did at 3.00 a.m. in the morning of the 10<sup>th</sup>.

**Gen. Joseph Raymond Kibwana:** My belief is that the mis-perception was on the witness who said it, but not on the DC. On the day of the visit, the situation was calm, so that matter would not have arisen at all. But, I suppose the ordinary *mwananchi* there would want to tie up our visit with the subsequent Wagalla incident. That was a very unfortunate misconception by the *mwananchi* who said it.

**Commissioner Dinka:** This testimony actually did not come from an ordinary *mwananchi*. It came from the person who was Acting DC at that time; on 15<sup>th</sup> February, that is one week after the visit of the KIC. After the Wagalla Massacre happened, the PC had a session with the Provincial Security Council (PSC) at which he told his security council that the visit of KIC delegation was extremely successful and must be an annual event. You spent only a day and a half in total. I am sure some of you could be miracle workers, but not even much miracle could be done in a day and a half. Why was he so generous with his accolades?

**Gen. Joseph Raymond Kibwana:** I want to assure the Commissioners that the time that we spent there was enough for us to focus on the areas that we had gone to inspect and visit. We were able to see irrigation schemes, power stations and boreholes. We were also able to visit infrastructural developments that were there. It must be remembered that we were flying and, therefore, we were able to hop from one place to another.

**Commissioner Dinka:** Finally, to your knowledge, has there been any other KIC delegation visit to that region since then?

**Gen. Joseph Raymond Kibwana:** I am not aware.

**Commissioner Farah:** Gen. Kibwana, I will ask you a few questions. My first question, for the benefit of the Commissioners, is that you said that the military operates in support of the civil authority. That of course means that the Provincial Security Committee and the District Security Committee are of assistance. Looking at the scale of the operation in Wagalla, would it have been normal for the OC, Wajir Army Camp and the OC, Airforce

Camp to deploy their men, vehicles, assets and resources to as far as Bute, Buna and everywhere else and also go as far as Bulla Jogoo and burn houses, eject men of the Degodia clan from the village and lead them to the airstrip without the knowledge of the Chief of General Staff, the Army Commander and higher echelons of authority?

**Gen. Joseph Raymond Kibwana:** The chain of command as you well know, Maj-Gen. Farah, would be that the OC would report to his CO, who was then based in Garissa. From the testimony given here, it is apparent that there was a delay in informing the Commanding Officer and, therefore, there would have been a chain reaction in as far as the reporting system, or the process, going up the higher echelons up to the service headquarters was concerned.

**Commissioner Farah:** Thank you, very much. This means, therefore, that, as Mr. Ndirangu earlier on alluded, starting from the DAC of which the OC, Army Camp, was a member, there was a disconnection of communication until actually after the 12<sup>th</sup> of February, when quite a number of men had died at the airfield!

**Gen. Joseph Raymond Kibwana:** Yes, I think the delay in information communication was both laterally and vertically. I was in the region but I never got to hear of the Wagalla incident until I landed at the Moi Airbase. Therefore, one can safely assume that these delays both occurred vertically and laterally; they must have occurred at all levels of command.

**Commissioner Farah:** Thank you, very much, for that information. Then in that case, could it have been the OC, Wajir Army Camp, and his counterpart in the Air Force who, due to their overzealousness, supported their District Security Committee members of which the Acting DC was the chairman? At 3.00 p.m. on the 9<sup>th</sup> of February, they decided they would carry out this operation; they went ahead and did so without actually the knowledge of even you, a brigadier, a high ranking officer and Chief of Military Intelligence! You did not know about it?

**Gen. Joseph Raymond Kibwana:** Yes, indeed, Commissioner Farah. This actually happened.

**Commissioner Farah:** Thank you, very much. That is very good information from you, General, and I am very happy about it. I will take you back to 15<sup>th</sup> February, 1984. At that time, you had returned to Nairobi; it was the day when Gen. Mulinge, who was the Chief of General Staff, was going to Wajir. Please, tell the Commission whether you had really thoroughly briefed him and told him that this operation was supported by the military due to the overzealousness of those OCs and not with permission from him and you and, therefore, a big mistake had been committed?

**Gen. Joseph Raymond Kibwana:** I want to say that both the Army Commander and CGS were fully briefed; in fact, immediately, I requested information from the commander on the ground and that led to their subsequent visit to the area in question.

**Commissioner Farah:** The Commission got information that on the morning of 15<sup>th</sup> February, 1984, when General Mulinge visited the airstrip, he was extremely furious at the army general's mess to the extent that he was almost "swallowing" everybody around him. He was so furious because his men were utilized in carrying out a massacre without his permission. Is that so?

**Gen. Joseph Raymond Kibwana:** I can only take your word as I was not there, but it was understood, or I can understand why he would be infuriated.

**Commissioner Farah:** Did that later on affect the relationship between the military and what you term "civil authority" in the way of PACs and DACs? Was there any new instruction given that if there was anybody to carry out an operation, permission had to be sought from above, and if that was said, how far above was permission to be sought?

**Gen. Joseph Raymond Kibwana:** I think there has been improvement in operational procedures. As I speak here, the Constitution itself says that the military are no longer allowed to carry out any combat operation in Kenya without the approval of Parliament.

**Commissioner Farah:** This is just speculation, but at the same time I want to get your opinion. Could it have been that because of your high rank in Wajir, you motivated the OCs to do what they did?

**Gen. Joseph Raymond Kibwana:** Commissioners, I went to Wajir in civilian clothes. Very few of the soldiers knew me. I had spent much of my military life in the navy and they could never have recognized me.

**Commissioner Farah:** Thank you, very much, Gen. Joseph Kibwana. I think that is all I have for you. I think I will allow the other Commissioners to follow up with other questions.

**Commissioner Shava:** Gen. Kibwana, I want just a few clarifications. Your written statement speaks of five members of the Kenya Intelligence Committee being on the trip, but I think when you spoke I counted six including yourself. Could you help me with that? You talked of Amb. Kiplagat, David Mwiraria, J. Gituma, J. Muliro, a representative of the Director of Intelligence and yourself. So, was there five or six of you?

**Gen. Joseph Raymond Kibwana:** Commissioners, let me just refresh my mind by reading from the list that you also have a copy of. The delegation consisted of Mr. J. Mathenge, who was the Permanent Secretary, Provincial Administration, Mr. B. Kiplagat, who was the Permanent Secretary in the Ministry of Foreign Affairs, Mr. D. Mwiraria, who was the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs, Mr. J. Gituma, who was the Permanent Secretary, Ministry of Information and Broadcasting, Mr. Murimi represented the Directorate of Intelligence and myself. Of course, we had Mr. Mwangovya who was the secretary to the KIC.

**Commissioner Shava:** Thank you. So, that would be six of you plus the secretary. Is that correct?

**Gen. Joseph Raymond Kibwana:** A correction. I am not sure whether Mr. Murimi, who represented the Director of Intelligence, would normally have been classified as a member of the KIC.

**Commissioner Shava:** But he was basically there representing the office of the person who worked there?

**Gen. Joseph Raymond Kibwana:** That is correct, Madam.

**Commissioner Shava:** And you have described it as an inter-Ministerial Government delegation which was quite large. I think it was made up of about 29 members. Also, there were six members of the KIC, yet you have told us that the trip was organized by the secretariat of the KIC. Why would that be so if less than a quarter of the delegation comprised of members of this committee?

**Gen. Joseph Raymond Kibwana:** I think the KIC had the logistical means of organizing a trip of this magnitude, and would have been the best placed organ within the Office of the President to have been involved in the organization, including determining who was going to come on the trip.

**Commissioner Shava:** Then to move on to one question involving the KIC, one witness has said to us that the hierarchy in terms of these security committees would be the PAC, the KIC and the Office of the President, but you have told us that the KIC was not part of that structure. It would be the DAC, the PAC and the Office of the President.

**Gen. Joseph Raymond Kibwana:** After PAC, the next body was the GSC. I want to state again that the KIC was an advisory body.

**Commissioner Shava:** Thank you for that clarification. What was done with the advice of the KIC? What were the mechanisms and channels for utilizing this advice?

**Gen. Joseph Raymond Kibwana:** The secretary to the KIC would extract any recommendations made by the KIC and circulate them to the relevant Ministries for implementation or comment. That was the procedure obtaining at that time.

**Commissioner Shava:** And you have described it as an inter-Ministerial Government delegation which was quite large. I think it was made up of about 29 members. Also, there were six members of the KIC, yet you have told us that the trip was organized by the secretariat of the KIC. Why would that be so if less than a quarter of the delegation comprised of members of this committee?

**Gen. Joseph Raymond Kibwana:** I think the KIC had the logistical means of organizing a trip of this magnitude, and would have been the best placed organ within the Office of

the President to have been involved in the organization, including determining who was going to come on the trip.

**Commissioner Shava:** Then to move on to one question involving the KIC, one witness has said to us that the hierarchy in terms of these security committees would be the PIC, the KIC and the Office of the President, but you have told us that the KIC was not part of that structure. It would be the DAC, the PAC and the Office of the President.

**Gen. Joseph Raymond Kibwana:** After PAC, the next body was the GSC. I want to state again that the KIC was an advisory body.

**Commissioner Shava:** Thank you, for that clarification. What was done with the advice of the KIC? What were the mechanisms and channels for utilizing this advice?

**Gen. Joseph Raymond Kibwana:** The secretary to the KIC would extract any recommendations made by the KIC and circulate them to the relevant Ministries for implementation or comment. That was the procedure obtaining at that time.

**Commissioner Shava:** I have a question now with regard to the visit of the Chief of General Staff (CGS) on the 15<sup>th</sup>, which has also been asked by my colleague. I will ask for your indulgence to try and clarify it in my own mind. You have stated that the CGS would get daily briefings from the Directorate of Military Intelligence (DMI), but that when the CGS visited Wajir, you were already back in Nairobi; surely, that would not absolve the DMI of the responsibility to brief the CGS?

**Gen. Joseph Raymond Kibwana:** Yes, indeed I briefed the CGS. We discussed the issues and we agreed on the way forward; one of the ways we thought would unearth the truth was to set up a board of inquiry. Also, he thought that his personal visit would add weight to it.

**Commissioner Shava:** Thank you, very much. Then, now a final question. We have had a look at the briefing that was given to the team by the DIC in Wajir; if you look at the last page, it states: "You have said that it was not a meeting in the sense that you understand meetings because it was a briefing that was given and there may have been questions, exchanges or comments." It says that: "One of the recommendations of this briefing was to deal with persons known to associate with armed bandits firmly by use of the preservation of public security, North Eastern Province and Contiguous District Regulations of 1966, Cap.57 of the Laws of Kenya and other related laws." Now, bearing in mind the way in which the operation rolled out at the Wagalla Airstrip, do you recall any discussion around this particular item of the briefing?

**Gen. Joseph Raymond Kibwana:** No, I am afraid I cannot recall but that particular regulation allowed the security forces to detain bandits or persons suspected to be harbouring bandits for some considerable time.

**Commissioner Shava:** Indeed; did this recommendation elicit any comments from any members of the delegation?

**Gen. Joseph Raymond Kibwana:** This Act had been in operation since 1966 and, therefore, as far as operations were concerned, it was the normal way.

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

**Commissioner Chawatama:** General, thank you, very much for making yourself available before this Commission to testify. You said that the trip that the inter-Ministerial group undertook was to acquaint themselves with the situation in North Eastern Province in relation to issues of development, political welfare of personnel, economic and security; you also said that issues of security could not be discussed in great details because the group was such that there were others who were not part of intelligence. Did you think that there was a serious enough situation in as far as security was concerned for you to break up into groups so that those who were entitled to discuss issues of security then discussed them?

**Gen. Joseph Raymond Kibwana:** No, Madam Commissioner. The briefing that was given, and I believe it is minuted correctly, indicated that the situation in Wajir was improving and was calm. It was, therefore, not necessary for us to break into groups of those who were security cleared and those who were not in order to get detailed briefings of the situation obtaining then.

**Commissioner Chawatama:** Even at that point you said that this was merely a brief and a brief is just being told what was obtaining and you did not think of giving any counsel as a result of the brief. So, you said absolutely nothing?

**Gen. Joseph Raymond Kibwana:** I want to again emphasize that the situation in Wajir was as normal as the situation in North Eastern Province (NEP) would have been expected to be at that time. At no time did we have any indication that an incident would occur where the Ajurans and Degodias would flare up in a conflict that had not been detected by the intelligence people on the ground. We believed that the assumption was right at that time, that the situation was as near normal as was expected.

**Commissioner Chawatama:** Let me read out part of the brief on that. It says: “Although the area is temporarily calm, hostility between the Ajuuran and Degodia, who co-operate with the Bura, continued. In response to the Government’s appeal of surrendering illegally acquired arms, the Ajurans have surrendered a considerable number of arms and ammunitions while the Degodia and other tribes were initially reluctant.” Did that sound alarming bells?

**Gen. Joseph Raymond Kibwana:** No. The issue of arms or illegal arms still exists to date in the NEP.

**Commissioner Chawatama:** My next question is that I think my concern arises from the fact that I am a judge in the High Court, and I exercise judicial discretion. The discretion that is exercised by the District Security Council is something that I have never ever in my 20 years on the bench heard of. The discretion is so wide that they can virtually do anything that they want. So, if persons such as yourselves, who were highly ranked, did not find it necessary when you visited Wajir to give some counsel, then that is very worrying.

**Gen. Joseph Raymond Kibwana:** I think I agree with your sentiment, but again, I must emphasize that NEP was not a normal province and the security situation was governed by the legal notice of 1966.

**Commissioner Chawatama:** It was not a normal province but it was a province of normal people. I think there was a question that was asked whether it was right for the military to engage themselves in local conflicts. I recall that the response was that if the military is requested--- I would like to know, when arriving at the decision that the military should intervene, what is it that they take into consideration?

**Gen. Joseph Raymond Kibwana:** The main concern will be direct threat to the national security and law and order. The commander on the ground would assess the situation and make a judgment as to how much that situation would threaten the very survival of the Republic.

**Commissioner Chawatama:** I am trying to settle something in my mind because from what I have heard and probably what I saw, it was not a civil government dealing with its citizens. It was almost war. Please, explain to me what Wagalla, in your own understanding was all about, if not war?

**Gen. Joseph Raymond Kibwana:** The Wagalla incident has been hyped on to make it appear that a civilian government was trying to fight its people. There is no government, and certainly not the Kenya Government, that would engage the armed forces in fighting its own people; whatever happened in Wagalla was an attempt to restore law and order in an area that had never known peace. It was true that the *Shifra* War had ended but peace had not yet returned in the NEP.

**Commissioner Chawatama:** Looking back, General, would you then agree with me that the amount of force that was used was very excessive and Wagalla should not have happened?

**Gen. Joseph Raymond Kibwana:** It is difficult for me to talk on the amount of force used, because, as it has been said, half of the casualties died of dehydration or natural causes. Therefore, if we look at those who perished during the disturbance, it will be difficult to say whether there was excessive force used or not, because out of the 381 people, only 13 were reported to have died of bullet wounds; that number is too big, but, unfortunately, in attempts to control a security situation, casualties are one of the outcomes.

**Commissioner Chawatama:** Thank you, very much, General, and the civilians were learning every day that the warfare was growing by the numbers and every single day, they would live and learn. Thank you, very much.

**The Presiding Chair** (Commissioner Slye): Thank you, General. First, I want to get a general sense of the structures that we have been talking about here. We have been focusing on the KIC but you also referred earlier on to the KSC, which is the Kenya Security Committee (KSC). Can you explain what the different membership is of those two committees and what is the relationship between those two bodies?

**Gen. Joseph Raymond Kibwana:** The KSC is a national body mandated to deal with security issues at the national level. The KIC is the advisory body to the KSC.

**The Presiding Chair** (Commissioner Slye): Can you explain the difference in the membership? Who would be the members of the KSC and who would be the members of the KIC?

**Gen. Joseph Raymond Kibwana:** The KSC would be at the Cabinet level and the KIC would be at the Permanent Secretaries level.

**The Presiding Chair** (Commissioner Slye): Okay. So, then how would those two bodies interact? Would they meet or communicate regularly? What was the operational relationship between those two?

**Gen. Joseph Raymond Kibwana:** Their charters provide for regular meetings and they deal mainly with the strategic issues relating to the entire national security environment; that is to say economic, political and social aspects that would impinge on national security.

**The Presiding Chair** (Commissioner Slye): So, the charter of the KSC provided for that. Is that right?

**Gen. Joseph Raymond Kibwana:** Yes, that is right.

**The Presiding Chair** (Commissioner Slye): What was the operational relationship between the KSC and KIC? Was it normal for them to meet regularly, once a week or once a month?

**Gen. Joseph Raymond Kibwana:** Each of these committees would meet separately. The KIC would normally meet once a month. The KSC would meet at the same time.

**The Presiding Chair** (Commissioner Slye): How often would they communicate with each other, or was that communication to be done through a third party? Did they have regular meetings, or was there a representative of KIC who was a member of the KSC?

**Gen. Joseph Raymond Kibwana:** The minutes of the KIC would form the basis of the discussions of the KSC.

**The Presiding Chair** (Commissioner Slye): Would it be unusual for a member of the KIC to attend a meeting of the KSC and vice-versa?

**Gen. Joseph Raymond Kibwana:** Yes, it would be unusual. The only exception that was regular was that the Head of the Public Service would attend both if he wished.

**The Presiding Chair** (Commissioner Slye): And the Head of the Public Service was a member of which of those two bodies?

**Gen. Joseph Raymond Kibwana:** Of both.

**The Presiding Chair** (Commissioner Slye): So, that was the only member who was common to the two committees. Do you remember any situation where other members of the KSC were present at the meeting of the KIC or vice-versa?

**Gen. Joseph Kibwana:** No, I cannot remember.

**The Presiding Chair** (Commissioner Slye): In terms of the role of the military intelligence in relation to the fact that the NEP was an operational area subject to emergency laws or operational framework unlike the rest of Kenya—Did the fact that it was an operational area mean that the role of military intelligence was different for that province? Was it the same with all the other provinces?

**Gen. Joseph Raymond Kibwana:** The role of the military intelligence was the same throughout the Republic.

**The Presiding Chair** (Commissioner Slye): So, the fact that it was an operational area, and the fact that emergency law thrived did not affect in any way the way military intelligence operated in that province compared to others?

**Gen. Joseph Raymond Kibwana:** No, Sir.

**The Presiding Chair** (Commissioner Slye): A province that had a lot of infiltration from neighbouring countries, banditry--- What we seem to piece together seems to suggest a tendency to engage military operations in the province. Had you explained the difference on the ground between operations in that province and in the other provinces?

**Gen. Joseph Raymond Kibwana:** At independence, Kenya had suffered threats from Somalia and, therefore, a lot of focus was directed to the NEP, that being the province bordering the Republic of Somalia. That explains the concentration of military deployments in the NEP.

**The Presiding Chair** (Commissioner Slye): So, if there was a higher deployment of military personnel here, would it be correct to say that in terms of the military intelligence, a disproportional amount of your resources in terms of gathering intelligence would focus on that province as opposed to any other province?

**Gen. Joseph Raymond Kibwana:** That would be correct.

**The Presiding Chair** (Commissioner Slye): Could you say a little bit more about how that intelligence would have been gathered? Who would you rely upon on the ground in terms of the intelligence that made its way up through your chain of command to your level?

**Gen. Joseph Raymond Kibwana:** My Lord Commissioners, I am not prepared to answer that question even though you might want the information, but all I can say is that the military intelligence would come from human intelligence sources, electronic intelligence sources and other sources of intelligence.

**The Presiding Chair** (Commissioner Slye): I am sorry. Maybe I should have framed my question more carefully. I am not asking you to reveal sensitive intelligence sources. I guess I am more interested in the general categories of intelligence, and more specifically the human intelligence source, which I assume to be intelligence gathered by military personnel on the ground. Would it also come from administrative personnel or civilians on the ground? That is what I am looking for.

**Gen. Joseph Raymond Kibwana:** Yes, the human intelligence would come from both military and non-military sources.

**The Presiding Chair** (Commissioner Slye): Then the intelligence that you would collect would have been limited to threats to military installations in the area. Would it expand to threats to any Government facilities in the area or any unrest in the area? Would it include any three of those or some of those?

**Gen. Joseph Raymond Kibwana:** We would collect all sorts of intelligence and then it would be analyzed. We would pick up what in that intelligence would be useful to the commanders.

**The Presiding Chair** (Commissioner Slye): How was that information shared with civilian authorities?

**Gen. Joseph Raymond Kibwana:** The information would be passed on through the Director of Intelligence.

**The Presiding Chair** (Commissioner Slye): So, who would give it to the Director of Intelligence?

**Gen. Joseph Raymond Kibwana:** The Chief of Military Intelligence.

**The Presiding Chair** (Commissioner Slye): Who was you. So, your report would go to the CGS, the service commanders as well as the Director of Intelligence; that would be reporting to the civilian authority. Is that correct?

**Gen. Joseph Raymond Kibwana:** Yes.

**The Presiding Chair** (Commissioner Slye): If there was a threat and intelligence was collected from an area, how would the presence of a threat be communicated to the local people on the ground where that threat existed?

**Gen. Joseph Raymond Kibwana:** The officers on the ground were at liberty to exchange any intelligence information that was relevant in their field.

**The Presiding Chair** (Commissioner Slye): I have understood correctly how military people collect military intelligence in the field. They have the authority to share that intelligence with the local civilian population. They also report to you and then to the Director of Intelligence, who can take it to anybody whom he thinks he can share it with. Is it correct that there is a high level and a low level of military intelligence sharing?

**Gen. Joseph Raymond Kibwana:** That would be correct, but only on the basis of need to know.

**The Presiding Chair** (Commissioner Slye): Let me now shift specifically to the KIC delegation trip. You mentioned that the KIC secretariat organized the trip, because they were best suited in terms of logistics. Whose idea was the trip?

**Gen. Joseph Raymond Kibwana:** The idea was brought up among the members of the KIC but I cannot pinpoint exactly who brought it up.

**The Presiding Chair** (Commissioner Slye): The KIC thought that it would be useful to undertake the trip and the KIC secretariat helped to organize the trip. Is that correct?

**Gen. Joseph Raymond Kibwana:** That is correct.

**The Presiding Chair** (Commissioner Slye): In terms of the membership, and I am assuming that you and I have the same document--- I have two documents with a list of people on the trip. The first one is undated but seems to have been prepared in preparation of the trip. The cover page is titled: *The Kenya Intelligence Committee Tour of North Eastern Province* and it has a set of dates and times for the trip. On the second page, there is a list of 24 individuals and that is the one that has the brief to KIC. That is the first document. The second which, maybe, is the one that was taken away from you, has a covering letter dated 24<sup>th</sup> May, 1984 and it is addressed to, among other people, you, and it is entitled *KIC Tour of North Eastern Province*. On the second page, there is a list of 29 individuals. So, there is a discrepancy in terms of number of people on the trip.

You had mentioned in your statement that there were individuals from the Ministries of Lands, Transport, Telecommunications, Office of the President and Treasury but you also said that there was somebody from Roads. Can you remind me who the person from Roads was and is that a Ministry?

**Gen. Joseph Raymond Kibwana:** That would have been Engineer J. A Okumu from the Ministry of Transport and Telecommunications who, at the time, was serving as the Chief Aerodromes Engineer.

**The Presiding Chair** (Commissioner Slye): In your list, you have Ministry of Lands, Transport, Roads and Telecommunications. Would that be one person? Is that right? Those three categories, if I understand you correctly, would be referring to Mr. Okumu. Is that correct?

**Gen. Joseph Raymond Kibwana:** The Telecommunication representative was regarded as a parastatal and not a ministry, whereas the Transport and Communications Chief Aerodrome Engineer would have come from the Ministry.

**The Presiding Chair** (Commissioner Slye): I stand corrected because I see that we are looking at the second list and number 14 is from the Kenya Posts and Telecommunications. So, you would have No. 11 as Mr. Okumu and No. 8 as the Director of Land and Adjudication. I think it is right to say that all the documentation we have seen there was prepared before the trip and seems to heavily emphasize security as the focus of the trip. A number of people tried to emphasize to us that an additional purpose or a more important purpose of the trip was development and famine relief. If that were that case and it was the KIC that initiated the idea of the meeting, do you know why representatives from the Ministry of Livestock, Agriculture, Water and other Ministries would not have been included?

**Gen. Joseph Raymond Kibwana:** I do not know but I would assume that if they were not available, they would have their representations at the provincial and district level for sure.

**The Presiding Chair** (Commissioner Slye): Do you know whether individuals from those ministries were invited to go on that trip?

**Gen. Joseph Raymond Kibwana:** No, I would not say so.

**The Presiding Chair** (Commissioner Slye): I apologize because I have not had enough time to compare these two lists but one has 24 and the other one 29 names. Do you know why that is so? It appears that the pre-trip list has 24 names and the post-trip list has 29 names. Were there more people added to the list or do you know why there is a difference in the numbers of individuals?

**Gen. Joseph Raymond Kibwana:** I think there were additions and there were also drop-outs. I recall that my then Permanent Secretary, Mr. Muliro, was due to travel with us but eventually, he did not travel with us. But the reasons would be unknown to me at this stage.

**The Presiding Chair** (Commissioner Slye): I see that Mr. Muliro is number 2 on one of the lists and I am not sure I see him on the other. So, that means there are as many as six people that were, maybe, added on. My colleagues are providing me with some assistance and I guess that from 26 down to 29 are people in Mandera, Wajir and they would not have been in that original briefing list. So, that might explain the difference in the distribution.

General Mulinge engaged in a visit in connection to the Wagalla Massacre. Do you know whether, as a result to his visit, there was any report compiled related to what he found when he visited the area?

**Gen. Joseph Raymond Kibwana:** I am sure there was a report but his reporting chain was that he would go to the Minister and the Commander-in-Chief.

**The Presiding Chair** (Commissioner Slye): Remind me, who would be the Minister for that?

**Gen. Joseph Raymond Kibwana:** The Minister for Defence.

**The Presiding Chair** (Commissioner Slye): To your knowledge, was such a report ever compiled or you are just saying that if there was one, that is where it would have been?

**Gen. Joseph Raymond Kibwana:** I do not know whether it was compiled but he would certainly have briefed those two authorities upon his return.

**The Presiding Chair** (Commissioner Slye): Are you aware, as Head of Military Intelligence, that there was a major operation that happened in an area within your jurisdiction and involved members of the military? What sort of inquiries did your office make and what sort of analysis did you make in trying to understand what happened in Wagalla and to try to reform and remedy the chains of command and communication to make such an operation more efficient and less likely to happen?

**Gen. Joseph Raymond Kibwana:** First, let me correct the impression that there was a large scale military operation. The troops deployed during the incident were the regular troops who were based in that area. No additional troops were deployed or enforcements called. It was a normal operation and not a special operation that would attract the attention of the higher echelons of command.

**The Presiding Chair** (Commissioner Slye): Does that mean that military intelligence would not have any interest in, or jurisdiction over what you are calling normal military

operations as opposed to special military operations? I am trying to understand the relevance of that distinction.

**Gen. Joseph Raymond Kibwana:** I am trying to put it forward that the level of operation that you are talking about was the usual low intensity internal security operation that was at the time a regular feature of the military operations in that area. However, one would assume that after the Wagalla operation, then there would be more intensified intelligence gathering in order to try to identify those groups among the Ajurans and the Degodias that had initiated that conflict.

**The Presiding Chair** (Commissioner Slye): If I understand you correctly, are you saying that as a result of that incident, the office of military intelligence would have increased its activities in terms of getting information with respect to the conflict between the Ajurans and the Degodias? Is that correct?

**Gen. Joseph Raymond Kibwana:** That is correct.

**The Presiding Chair** (Commissioner Slye): Without revealing or endangering any particular sources, can you speak generally about what sorts of things you would have done or authorized to get that information?

**Gen. Joseph Raymond Kibwana:** I cannot recall exactly what went on.

**The Presiding Chair** (Commissioner Slye): Can you recall when the first time was that you heard about the Wagalla Massacre?

**Gen. Joseph Raymond Kibwana:** When we landed at the Moi Airbase on our return, I would have been briefed by the duty officer at the military intelligence.

**The Presiding Chair** (Commissioner Slye): What would that date have been?

**Gen. Joseph Raymond Kibwana:** That would have been on the 10<sup>th</sup>, I believe.

**The Presiding Chair** (Commissioner Slye): On the 10<sup>th</sup> of February, you would have been briefed on the initiation of that operation. Is that correct?

**Gen. Joseph Raymond Kibwana:** I would have been briefed on the outcome of the operation.

**The Presiding Chair** (Commissioner Slye): Although the operation started on the 9<sup>th</sup> or 10<sup>th</sup> and ended on the 13<sup>th</sup>, so it would have been difficult for you to have a briefing of the complete operation on the 10<sup>th</sup>?

**Gen. Joseph Raymond Kibwana:** The initial incident would have been received at the headquarters by then.

**The Presiding Chair** (Commissioner Slye): On the 10<sup>th</sup>, you would have received some briefing on the operation. Is that correct?

**Gen. Joseph Raymond Kibwana:** We arrived on the 10<sup>th</sup> I believe; so, I would have received the outcome of the operation.

**The Presiding Chair** (Commissioner Slye): The reason I am confused is because the operation ended on the 13<sup>th</sup>. So, if anyone was getting briefed on the outcome of the operation, then it would seem to me that would have happened on the 13<sup>th</sup> or more probably, on the 14<sup>th</sup> or 15<sup>th</sup>. This would suggest to me that if you were briefed on the 10<sup>th</sup>, it would have been just about the start of the operation. Can you recall what the briefing of the 10<sup>th</sup> consisted of?

**Gen. Joseph Raymond Kibwana:** No, I cannot recall but as you heard, during the reception at the PCs office, some information about the operation started filtering through. I cannot remember what date that was but I know that we left the following morning and therefore, I would have received the same information from my headquarters.

**The Presiding Chair** (Commissioner Slye): Mr. Ndirangu had testified that on the 9<sup>th</sup> while the delegation was in Garissa, there was a radio signal that came in from Wajir talking about an operation that was to be mounted. I believe your delegation spent the night in Garissa and would have returned to Nairobi on the 10<sup>th</sup>. Is that what you are referring to?

**Gen. Joseph Raymond Kibwana:** I cannot recall the dates but I know that it was when we got back to Nairobi.

**The Presiding Chair** (Commissioner Slye): The first time the Wagalla incident came to your attention was, maybe, on the 9<sup>th</sup> or the 10<sup>th</sup>. Did you have subsequent briefings later about what had happened there?

**Gen. Joseph Raymond Kibwana:** I would have briefings everyday on all incidents that had any military connotation and I would be briefed daily.

**The Presiding Chair** (Commissioner Slye): Is it right to say that in terms of day to day developments of that operation, you would have had reports coming in everyday about what had happened the day before or earlier in the day? Do you recall what the nature of those reports was or do you remember when those reports indicated the individuals had died during the operation?

**Gen. Joseph Raymond Kibwana:** I cannot recall the nature of the reports because the reports were countrywide.

**The Presiding Chair** (Commissioner Slye): Do you remember the first time you learnt that people had died during the operation?

**Gen. Joseph Raymond Kibwana:** No, I cannot remember but it would have been soon after the information was passed on to the upper chain of command.

**The Presiding Chair** (Commissioner Slye): Given that you cannot remember, this might be a slightly unfair question but do you remember how many people you thought had died during the operation?

**Gen. Joseph Raymond Kibwana:** The number that was given at the time was twenty nine.

**The Presiding Chair** (Commissioner Slye): I assume that as head of military intelligence, if a number like that came in that would be something that would have been vetted through military intelligence or something the military intelligence would have tried to confirm. Is that correct?

**Gen. Joseph Raymond Kibwana:** No, that initially would have been raw data which then would have required clarification.

**The Presiding Chair** (Commissioner Slye): Would your office initiate an inquiry based on the information coming in to try and understand what had happened?

**Gen. Joseph Raymond Kibwana:** Certainly, the officers in the field would have done their own follow up investigations and would have come up with some figures that would eventually have ended on my desk.

**The Presiding Chair** (Commissioner Slye): Would that information have come in as a basis for report to your office?

**Gen. Joseph Raymond Kibwana:** That information would have come up as a field intelligence report and would form the basis of my report to my superior headquarters.

**The Presiding Chair** (Commissioner Slye): Just to be clear, are you remembering that there was in fact, a report that your office compiled on the Wagalla Massacre that was then shared with the CGS, the service commanders and the Director of Intelligence?

**Gen. Joseph Raymond Kibwana:** I am saying that there must have been a report because that was the way of doing things.

**The Presiding Chair** (Commissioner Slye): My last few questions are similar to the ones I asked the previous witness and they do not necessarily draw upon your professional expertise, but your professional expertise may assist. The official story with respect to Wagalla is that anywhere from 29-30 to, let us say 57 which is the number a Minister had mentioned in Parliament a few months later, individuals were killed during that incident. Some died due to exposure and I think that number is around 16 and about 13 from being shot at the time of the incident when people got up and some apparently tried to escape.

While there are conflicting numbers, the highest number we have seen in terms of weapons that were recovered was seven weapons.

In your view, sitting here today with the benefit of hindsight to not try to put yourself back into the minds of 1984, but if someone was to come to you and say that we recovered seven weapons and regrettably, 57 people died, would you view that operation as a success?

**Gen. Joseph Raymond Kibwana:** I would rather not give my opinion; I would rather just let others give their opinions. I will keep my opinion to myself.

**The Presiding Chair** (Commissioner Slye): Your answer to this may then be the same but I would like to ask it anyway. You know that this Commission is tasked with making recommendations and one of the areas that we are specifically mandated to make recommendations is in the area of reparations. Given your knowledge of what happened in Wagalla, would you recommend that this Commission recommends reparations to the individuals of Wajir who suffered because of the Wagalla Massacre?

**Gen. Joseph Raymond Kibwana:** If you allow me, I would rather not make my personal views known.

**The Presiding Chair** (Commissioner Slye): Lastly, we are also to make more broad recommendations and for this, I would like to expand far beyond Wagalla but recommendations in terms of institutional reforms and legal reforms. I am wondering, given the depth and the breath of your experience in the military and the military intelligence, and without asking you to reveal any confidential or sensitive information, are there operational, legislative and institutional things that you think this Commission should recommend to make the office of military intelligence and more generally, the military more effective for the Kenyan people?

**Gen. Joseph Raymond Kibwana:** I do not have any recommendations to make. The structures have been refined over the time and as I mentioned earlier, even the Constitution itself has been recently amended to make it harder for the military to carry out combat operations within the country. I think those are enough safeguards in as far as safeguarding the rights of the people.

**The Presiding Chair** (Commissioner Slye): Do you think that it is a good thing that the military is more limited in what it can do within the country or is it something that might be harmful from the point of view of security and law and order?

**Gen. Joseph Raymond Kibwana:** I think it is a good thing to separate internal security problems from external security problems.

**The Presiding Chair** (Commissioner Slye): Why would that be a better way of going about the divisions of those tasks?

**Gen. Joseph Raymond Kibwana:** Within the current organization, we already have Regular Police and the Administration Police and those are quite capable of dealing with any internal security situation.

**The Presiding Chair** (Commissioner Slye): Does that mean then that back in the 1980s, the situation in Kenya was quite different where the capabilities of the Administration Police and the other police services really required the addition of the military in order to engage in proper functions of security in law and order?

**Gen. Joseph Raymond Kibwana:** Yes, but that was only in the troubled hot spots areas and, in particular, North Eastern Province.

**The Presiding Chair** (Commissioner Slye): Today in the North Eastern Province, things are different and so, there would not be such an incident, except for normal border actions that any military would engage in in policing the border?

Thank you, very much, General Kibwana. You have been very kind to sit here, listen and answer all our questions. I want to thank you for coming to this Commission and providing your statement and your testimony.

**Mr. Tom Chavangi:** With your kind permission Commissioners, I needed a few clarifications from the General before he steps down.

**The Presiding Chair** (Commissioner Slye): That is fine; go ahead.

**Mr. Tom Chavangi:** Thank you, very much, for your indulgence. When the General was asked by Commissioner Shava about the visit by General Mulinge, the CGS to Wajir and when the CGS got back to Nairobi, the General said that they had a discussion and the discussion was to the extent of setting up an inquiry. Could he please clarify whether it was a military board of inquiry or was it the Etemesi Inquiry?

**Gen. Joseph Raymond Kibwana:** Initially, the intention was to have a military inquiry but in the end, it was decided to have the Etemesi inquiry instead.

**Mr. Tom Chavangi:** Finally, Commissioners, the four witnesses that we have heard since yesterday, some of them have very vital information and you can clearly see that, that information is being held. I am not suggesting anything but would they be willing to appear before an in-camera hearing, so that we can share some of this information to the extent that they can even recommend to the Commission on some of the issues that you have been asking?

**The Presiding Chair** (Commissioner Slye): I think that's a question that is better left for us to engage with them privately to see whether they would be willing to do that.

I note that it is five thirty now and my understanding is that we are required to vacate this facility at six o'clock. So, Evidence Leader, I do not know whether you have suggestions for us about anything we can do with the thirty minutes that remain with us.

**Mr. Tom Chavangi:** Thank you, Presiding Chair. I have had a discussion with the CEO and we leave that decision to your discretion because Ambassador Kiplagat had indicated that he is ready to testify but we are limited by the conditions of this facility.

**The Presiding Chair (Commissioner Slye):** Ambassador Kiplagat, we acknowledge that you have been here the whole day and you have been here a lot of the day, yesterday. We apologize for the amount of time that we have taken. I think that it would be better for us to try and reschedule your testimony, given that we only have thirty minutes. Even if we were to start, it would spill over anyway. So, the panel would suggest that we engage with you to find a mutually convenient time in the next week or two when you can testify. We are already planning to sit on Monday and Tuesday and I do not know if those days are convenient but we are in Nairobi for the rest of this month. So, I think we can have our legal department contact you in respect to that. Again, I apologize that the hearings today went far longer than we had anticipated.

**Mr. Tom Chavangi:** The hearings for Monday and Tuesday will be held at KICC and in case of any changes, we shall confirm.

**The Presiding Chair (Commissioner Slye):** We will be sitting at KICC on Monday and Tuesday and I guess Major Chebet, who has been here and we had hoped that we would get to him today--- I am afraid that we will reschedule him for sometime next week and we apologize to him as well.

I would like to close by thanking all the witnesses that have testified here today.

**Mr. Bethwel Kiplagat:** Thank you, Chair. It is a bit difficult that this is the third time and I have spent the whole day today. It is unfortunate that next week, I may not be able to see you and I would like to finish with this statement which I have. The best thing I could do is go through it and, maybe, we can find time when you can lead me through with your questions.

**The Presiding Chair (Commissioner Slye):** I think Ambassador Kiplagat, given that we have less than half an hour before we are evicted from this place, I am not sure that is the best use of our time. If we have you go through your statement and then if you are not available next week, then it would be resuming two weeks later; so, we would really have to go through it again. I again apologize because I know that you have been here the whole of today in anticipation of testifying and we have required you to be here. I understand that if you are not going to be around next week, we will try to accommodate your schedule as much as we can. I hope that even though you were not able to testify, that it has been a useful exercise for you to hear the testimony of some of your colleagues and some of the other individuals who worked with you in Government. We appreciate your being here and on behalf of the Commission, I apologize.

I would like to thank all the witnesses.

**Mr. Kioko Kilukumi:** Thank you, Madam Chair and the Commissioners. On Monday and Tuesday, I am engaged in a murder trial that has been going on so, I want to seek to be excused from this Commission. My colleague Mr. Elijah Mwangi will be available but I thought that it is only fair that I mention it and that I do not just disappear.

**The Presiding Chair** (Commissioner Slye): That is perfectly fine, Senior Counsel, and we understand whatever arrangements you make with your clients. I am afraid I have to end this now and we will talk with you after the hearings so as to arrange a time suitable for you to testify.

I would like to thank the witnesses that testified here today and the members of the public who have sat through and listened to the testimonies and as we requested, they listened attentively and politely. We want to thank the Kenya National Commission for Human Rights for having facilitated the visit of the individuals from Wajir to be present at this hearing. We hope that this hearing has been useful and informative for them, as for all the people of Kenya. We also want to thank the media for having covered the hearings. I want to thank the still photographers for having put up with our previous rule of not allowing photographs and now very politely taking advantage of our rule, allowing them to take photographs without flash and without moving around.

The Master of Ceremony can now lead us in prayers and the Commission will be reconvening on Monday morning at KICC to continue with the hearings.

*(Closing Prayers)*

*(The Commission adjourned)*