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### Public Hearing Transcripts - North Eastern - Wagalla Massacre (Nairobi) - RTJRC06.06 (Aberdares Hall KIC) (Amb Kiplagat Testimony)

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION ON MONDAY, 6<sup>TH</sup> JUNE, 2011  
AT THE ABERDARES HALL, KENYATTA INTERNATIONAL  
CONFERENCE CENTRE, NAIROBI**

**PRESENT**

<b>Getrude Chawatama</b>	-	<b>The Presiding Chair, Zambia</b>
Margaret Shava	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya
Ronald Slye	-	Commissioner, USA
Berhanu Dinka	-	Commissioner, Ethiopia
Tom Ojienda	-	Commissioner, Kenya
Elijah Mwangi	-	For witnesses
Harun Ndubi	-	For Wagalla Massacre

*(The Commission commenced at 10.30. a.m.)*

*(Opening Prayers)*

*(The Presiding Chair (Commissioner Chawatama)  
introduced herself and members of the panel)*

**The Presiding Chair** (Commissioner Chawatama): Our sessions today are a continuation of the sessions that we held in the northern region. Last week, you saw witnesses who appeared before us at a different venue. The witnesses that we have summoned to assist the Commission with information which came to them by virtue of the different positions that they held in Government, continue to testify before this Commission for the next few days.

For those witnesses, who have been summoned at this stage, the hearing is used more of an investigative tool with significant probing and questions by the Leader of Evidence and the Commissioners. We are not a court of law. None of the witnesses who are appearing before us are accused persons. None of the people who are appearing before us are on their defense. The persons who are giving evidence before us are here because we have provided a platform for them for truth telling.

The testimonies which you have heard and which you continue to hear are considered highly relevant and necessary, and will help this Commission to come up with a complete and accurate historical record of injustices within our mandatory period.

I would like to find out if there is any counsel available. Could counsel, please, put themselves on record and inform us who they are representing today.

**Mr. Elijah Mwangi:** Thank you, Presiding Chair and Commissioners. My names are Elijah Mwangi together with counsel Mr. Kioko Kilukumi who is not present today, we will continue to represent, Mr. Njue, Mr. David Mutemi, Mr. J.K. Kaguthi, D.K. Mativo, J.P. Mwangavio, David Mwiraria, Benson Kaaria, Bethwel Kiplagat, John Gituma, James ole Serian, General Kibwana, Major Philip Chebet, Lt. Col. Muriungi, Messrs. James Stanley Mathenge, Joshua Matui, J.M. Ndirangu and P.N. King'ori. Those are the people we represent. As Mr. Kilukumi informed the hon. Commissioners, he is not available today and tomorrow because of other engagements.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much, counsel. Do you have any preliminaries before I set out the ground rules?

**Mr. Elijah Mwangi:** Yes, there is actually one matter which we had raised with the CEO of the Commission. There is a witness who testified before the Commission on Thursday and Friday last week, Mr. Joseph Muthui Ndirangu. It was reported in the *Daily Nation* which was published on Saturday that he recommended that those who were involved in the operation, the subject matter of this session, be punished and neither he or do we as his counsel have testimony to that effect. What he remembers saying is that most of the officers who were involved in the operation, administrative action was taken against them and he also suggested that on his part, he may have been moved to a different station because of that.

We have requested the CEO to liaise with the HANSARD and confirm this to be the position.

On his behalf, we would like to request the hon. Commissioners to direct the person who reported this item on Saturday, 4<sup>th</sup> June, 2011, to confirm, if, indeed, it is confirmed that it is not a correct version of what the witness said, he should publish an apology and, of course, ensure that he reports correctly what he hears in the Commission for the purposes of the witnesses who also have their own constitutional rights.

**The Presiding Chair** (Commissioner Chawatama): CEO, do you have any comments on the issue that has been raised?

**The Commission Secretary** (Ms. Nyaundi): Thank you, Presiding Chair and the Commissioners. What I had discussed with the counsel is that until we go through the HANSARD, it would be difficult for us to offer any opinion. However, I have already talked to the Commission staff who was recording the proceedings to go through the testimony of the witness and then we will be able to advise the Commissioners on exactly what was said on that day.

**The Presiding Chair** (Commissioner Chawatama): For the purpose of clarification, I think we will go by what the Leader of Evidence has said. We will wait for the persons from the HANSARD to supply us the information but there is a sense in which what counsel has said, I think according to my recollection that you maybe right. But let us wait for the confirmation after which the Commission will give direction to our friends

from the media. But all the same, our friends from the media should know that it is very important for them to report accurately. There is a lot of talk about what were seen as very serious atrocities that took place at Wagalla. There is also a lot of talk about the blackout on information. At this stage, it is very important when the TJRC is sitting that you report correctly. So, we will wait for the HANSARD and then we will give direction.

Let us now lay ground rules that we should adhere to during this proceeding. Those of you who have cell phones, please, switch them off. If you need to take an important call, and you know what time that call is coming, please, step outside and answer it.

For our friends from the media, I think we relaxed the rules on photography. All you need to do is to place yourself in a strategic place where you can take photos, but we said that the use of the flash is not allowed.

With these few ground rules, we can now proceed.

**The Commission Secretary** (Ms. Nyaundi): With regard to the order in which we shall be hearing today's and tomorrow's and likely Wednesday, witnesses, I have discussed with counsel for the witnesses appearing before the Commission and we are making this proposal to the Commission, that we start with Amb. Kiplagat, then Brig. Chebet, Mr. Mwiraria and Mr. Kaguthi for today.

Then tomorrow, we will begin with Messrs. Mathenge, Njue, Kaaria and P.N. King'ori. Then, on Wednesday, we will have Amb. Mutemi and P.C. James Ole Serian.

Commissioners, we have had some challenge at the Secretariat with one witness, Lt. Colonel Muriungi. You will remember the first time I said that I did not know that he was Mr. Ikiaria. It now looks like we have confused Mr. Muriungi with Lt. Col. Muhindi who served in the PSC in Garissa. I have asked the research unit to confirm that this is the position, and that is why we have not slated Lt. Colonel Muriungi. We hope that by the afternoon we will be in a position to confirm whether, indeed, Lt. Col. Muriungi needs to testify before the Commission.

**The Presiding Chair** (Commissioner Chawatama): Thank you for the clarification and I am glad that you have been liaising with the counsel and agreeing on the list and the list will change from time to time. I know you have set out that we might hear four witnesses today, but from experience that might not even be possible. So, again, we beg for your indulgence. If you have been called to testify, it is very difficult to hurry a witness. So, just bear with us. If we did not hear you on the appointed day, we shall inform you on the day on which you will appear.

Leader of Evidence, I take it that once you have sorted out that little bit of confusion, the information will be communicated to us and to counsel.

Leader of Evidence, you may proceed.

*(Amb. Bethwel Kiplagat took the oath)*

**The Commission Secretary** (Ms. Nyaundi): Commissioners, I would like to bring to your attention that the Bible was not raised when the oath was being administered. I do not know whether in those circumstances the oath was properly administered.

**The Presiding Chair** (Commissioner Chawatama): For the purposes of our records, could we have the oath properly administered with the raising of the Bible?

**Amb. Bethwel Kiplagat:** I thought I had raised it, but never mind.

*(Amb. Bethwel Kiplagat took the oath again)*

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

**Amb. Bethwel Kiplagat:** Bethwel Kiplagat.

**The Commission Secretary** (Ms. Nyaundi): What are you currently doing and where are you currently staying?

**Amb. Bethwel Kiplagat:** I am the Chairman of the TJRC, but at the moment, I have stepped aside for the purposes of the Tribunal.

**The Commission Secretary** (Ms. Nyaundi): And you reside in Nairobi?

**Amb. Bethwel Kiplagat:** Yes, I do.

**The Commission Secretary** (Ms. Nyaundi): Amb. Kiplagat, there is a statement dated 24<sup>th</sup> of May, 2011 that you have presented to the Commission in response to the summons inviting you to furnish the Commission with evidence. I request you to present that statement now.

**Amb. Bethwel Kiplagat:** Thank you very much. I would have to make a few preliminary remarks if you permit me to do so. I would like to state here that the events that happened at Wagalla Airstrip on that fateful day, 8<sup>th</sup> February, 1984, can only be described as tragic, where human lives were lost. It was, indeed, a great loss to the families. But that loss was, not only to them alone, but it was a loss to the community and our country. That loss was the loss of the whole of humanity.

But let us not forget that there were incidences beforehand that preceded this particular incident where trail of death was meted out on innocent population. So, in that region of our beloved country, there are widows, widowers, orphans of Ogadenians, Ajurans, Murules, Gabras, and also Government officials who were operating in that area. I have spent a very big part of my life not in destroying life, but in saving and protecting lives. I have done it at great risk to my own life. I have travelled to the bushes of Mozambique in search of peace and managed to meet and contact, and discuss with the rebels who were in the bush, the option of finding a peaceful solution.

**The Presiding Chair** (Commissioner Chawatama): Sorry, Amb. I would allow for some preliminaries but we are not asking you to defend yourself and the works that you have done.

The works that you have done for your country are works that are known to the citizens of Kenya. I would prefer that we go straight into the statement that you have submitted to us and should we then have an opportunity later and you still wish to continue with the preliminaries, then we will go ahead with those.

**Mr. Harun Ndubi:** Madam Chair, with great apology. I have just come in. I was before a judge in the High Court. My name is Harun Ndubi appearing for Wagalla Massacre victims. Just to be on record that I am now present.

**The Presiding Chair** (Commissioner Chawatama): Counsel, the record reflects that you are now present and we thank you very much for your presence.

**Mr. Harun Ndubi:** Madam Chair, I apologize again. I know I have just stepped in. I know Amb. Kiplagat has started his statement. But I had some preliminary remarks to make if you will permit me to do so now very briefly regarding the proceedings because they might help in terms of how my clients, the victims, have perceived these proceedings so far and hopefully shaped the direction the proceedings are going.

**The Presiding Chair** (Commissioner Chawatama): Counsel, can I just disturb you for a few minutes.

Amb. Kiplagat, can you give us some indication of how long the preliminaries that you wish to raise are and then we will give some direction on how we are going to proceed?

**Amb. Bethwel Kiplagat:** My preliminary will be less than five minutes.

**The Presiding Chair** (Commissioner Chawatama): So, we shall proceed and you will finish giving his preliminaries after which we will take a break from Amb Kiplagat and come to your counsel for your preliminaries and then we shall continue with the testimony.

**Amb. Bethwel Kiplagat:** So, I can continue with the preliminaries because I think it is important. It does, in fact, have a bearing on what we are doing now.

For over two decades, I worked tirelessly on the Sudanese and the fruit of that labour was the signing of the Sudan Comprehensive Peace Agreement (CPA). In July, the Southerners will be celebrating their independence. During the time of the war itself, a number of us and as a leading person, we were able to persuade the parties in conflict to stop using landmines. They abolished the use of anti personnel landmines. In fact, I was the Chairman of the Committee that worked on removal of landmines in Southern Sudan

and the Sudanese People's Liberation movement was the first non-Governmental actor to sign the Ottawa Convention on the abolition of landmines.

Coming closer home, and this is why I want to link this up, is also Somalia. As you know, northern Kenya is very much related to Somalia. When I came and even before I was appointed as Ambassador to Paris and London, before that I had worked in normalizing and bringing better relations between Somalia and Kenya knowing that the conflicts and the difficulties of North Eastern Province had a direct bearing on our relationship with Somalia. When I came back home as a Permanent Secretary, we worked on it and that culminated in the first state visit of our Head of State to Somalia. The two Heads of State, headed out so well that they issued a very important declaration in terms of recognizing and accepting the common borders.

I had the privilege to be appointed the Chairman of the Somali Peace Process (SPP) which, as you know, ended up in the formation of the Transitional Federal Government (TFG). Things have not gone very well, but the Constitution that we worked on is still there.

Madam Presiding Chair, concerning the conflicts in the region, Kenya, Sudan and Ethiopia, I had the privilege of working with the IGAD in the establishment of the early warning and early response mechanism. As we speak today, an organization that I founded, the Africa Peace Forum, has got 23 monitors in the northern part of Kenya and they are working, as it were, to prevent a situation like the one that happened in Wagalla. So, these are some of the backgrounds which I have tried to focus on.

Madam Presiding Chair, as you rightly said, I am not here to defend myself, and I am very happy with that. It was unfortunate that the first letter of summon, in fact, indicated that we are supposed to come and defend ourselves. But I am grateful that I was told that this was verbally withdrawn. I would like to have it in writing so that I can have it in my records.

Therefore, Madam Presiding Chair, I want to share with you what I know and what I have been able to gather concerning the incident in Wagalla. I will depend mostly or solely on the documents that I have been able to gather and the reason for doing so is that the events that took place happened long time ago – 27 years ago – and trying to jog my memory---

**Mr. Harun Ndubi:** I am sorry, Madam Presiding Chair. I thought that in terms of your earlier direction, that seems to be the right place for him to take a break so that I can make my presentation?

**The Presiding Chair** (Commissioner Chawatama): We thought for the purposes of the testimony flowing, that we will continue---

**Amb. Bethwel Kiplagat:** Madam Presiding Chair, can I continue? This interruption does not help. Can I go through the document and then whatever he has he can make it at the

end? I will really be grateful if we can proceed that way. But if we are interrupted, we lose the flow and the momentum and I think I have some things to share with Kenyans and not only this Commission.

**The Presiding Chair** (Commissioner Chawatama): We will allow you. I realize that as well, that for the purposes of your testimony to flow, you be allowed to speak. So, counsel, we will come back to you.

Thank you.

**Mr. Harun Ndubi:** Madam Presiding Chair, my only difficulty – and I am not being pushy here – is that in the court where I was, I just put off some matters to 2.00 O'clock and I know that Amb. Kiplagat, who is a *Mzee* I respect and is my friend, may take much longer. I do not think that my intervention is controversial and neither is it impuning on him; it is a two-minute comment and information that I wanted to put to the Commission from my client and then that would be sufficient.

**The Presiding Chair** (Commissioner Chawatama): Counsel, I have conferred with my fellow Commissioners and we think that it is best that Amb. Kiplagat is allowed to give his testimony. Before he is questioned by the Leader of Evidence, you will have an opportunity. I hope you are not in a hurry to get back to court and that this is okay. So, we will continue with the Ambassador.

**Mr. Harun Ndubi:** I oblige, Madam Presiding Chair. Thank you.

**Amb. Bethwel Kiplagat:** Thank you, Madam Presiding Chair. From 1978 to the end of 1983, I served as the Kenyan Ambassador to Paris and London. I was posted back home to take over the position of Permanent Secretary (PS), Ministry of Foreign Affairs. By virtue of my position, I joined the Kenya Intelligence Committee (KIC). My responsibility in that Committee was to present reports analysis on what was happening internationally which had a direct bearing on Kenya's foreign policy. Immediately after taking over as PS, a familiarization tour was arranged for some members of the Kenya Intelligence Committee to North Eastern Province (NEP) from 8<sup>th</sup> to 10<sup>th</sup> of February, 1984, covering all the districts of NEP namely Garissa, Wajir and Mandera. The objective of the tour was, and I quote:-

“To give the members of the KIC an opportunity of touring the province to acquaint themselves with the opportunity to see projects and problems faced by the civil servants and general public as a whole and make recommendations to improve the situation.”

I have quoted the relevant document. The delegation arrived in Wajir mid-morning on 8<sup>th</sup> of February, 1984 and departed early on that same day. The full list of the delegation is also included in the report. Altogether, there were 29 delegates comprising of five members of the KIC, 16 province-based officials from the Provincial Administration, police and military personnel and, finally, specialists covering the following areas: Land adjudication, finance, aerodrome engineering, transport and communication, post and



telecommunication. The leader of the delegation was the then PS, Ministry of Internal Security, Mr. James Mathenge, who is here with us. We were and I was surprised that when the list of those called to testify to this Commission was published, it did not include Mr. Mathenge, who was our leader nor did it include other members who were in that delegation. We wondered what criteria were used for the selection of those who were summoned to appear here. Each District Commissioner briefed the delegation relating to the objective of the tour as stated above, which included welfare of the civil servants and the people, the security situation and the development. The Secretary of the KIC, who will not be testifying, took notes in all the meetings that we had and, out of this, compiled a report with the recommendations. The meetings held with the district officials had no mandate to make decisions, particularly with regard to security operations. This is due to the fact that there were members who did not belong to any security committees either locally or nationally who were part of that delegation. From the report, it is noted that the delegation included experts in finance, land, water, aerodromes, telecommunication, amongst others. Furthermore, it is important to note that the operational chain of command for district security operations does not involve the KIC.

During the tour, the delegation was briefed, Madam Presiding Chair, the delegation was briefed by each of the districts that I have named above with regard to the prevailing situation in their respective districts. In the case of Wajir, the following was captured; and I use that word “captured” in the report among other comments. This is what the Acting District Commissioner said. The Acting District Commissioner briefed the KIC on the security situation in the district and said that the tribal clashes between the Degodia and the Ajuran had slightly improved. In my view, the statement did not constitute any indication of an urgent need for action.

Following this tour, a report was produced – and I have given you the reference – that had a long list of recommendations which directly responded to the objectives of the familiarization tour and also reflected the composition of the delegation which included specialists. These recommendations included the following, among others. I had given just a list there but I request that I quote some of the important recommendations as it appears in the document itself.

One of the recommendations is that the board appoints one irrigation scheme. This scheme which was once flourishing under the FAO and was producing a lot of food had been abandoned due to the worsening security situation between Ethiopia and Somalia. It was directed that it should be immediately rehabilitated and people made to go back. Then on land, the Director of Land Adjudication explained that the problem that might crop up in adjudicating the small farms along River Daawa held by a few individuals--- It was advisable to shelve the proposal for the time being. On water, the Ministry of Water Development should make further attempts to find water away from Takaba Trading Centre, where efforts to find water have so far failed. This should be taken up with the Ministry of Water Development.

On the development of airstrips, efforts should be made to make all the airstrips in the province all weather. I am just summarizing on some of these things. On drought, it was

noted that drought throughout the province was getting worse and livestock were likely to start dying. Famine relief was also needed and action was being taken to ensure that no one starved. On branding of cattle and cattle fields, the exercise should be carried out in consultation with the Ministry of Agriculture and Livestock Development. That was important for identification. On the other hand, cattle sales should take place in view of the threat of drought. On slaughter house for Garissa, efforts should be continued to put pressure for a slaughterhouse to be constructed in the province. Emphasis should be laid on development so that the province becomes sufficient in food production. This can be achieved through introduction of irrigation projects along the Tana and Daawa Rivers. Then it talks of settlement schemes and education - a national high school and a technical school should be started in the province aimed at promoting integration against isolation of the province as it appears at present.

With regard to Somali language, officers from other provinces working in NEP should learn the Somali language so that they are closer to the people in the effective development of the area. Even the suggestion of an inducement allowance was made for those who learn the language. So, these are some of the recommendations. As you can see, they do tie very clearly with the purpose or objective of that trip.

Madam Presiding Chair, that is really the purpose of that trip. We came back and made those recommendations. The reports and the minutes of that meeting were sent to all members of KIC; Members of PAC, NEP and District Commissioners Garissa, Wajir and Mandera. The reason why I am citing this is because if anyone had any objection that their briefs or their concerns had not been captured, they would have informed the Secretary.

Madam Presiding Chair, let me now come to Wagalla and, here again, all I have done is collected documents. I was not involved but I have been able to gather some documents which, I believe will be of enormous help to the Commission and to this country. The following information regarding events that preceded the Wagalla incident is based on the following documents and they are the PAC Minutes of 26<sup>th</sup> January, 1984; 9<sup>th</sup> February, 1984 - Special District Security Committee, Wajir, Minutes; 15<sup>th</sup> February, 1984 - PAC Minutes; 16<sup>th</sup> February, 1984- PAC Minutes; 17<sup>th</sup> February - 1984, PAC Minutes; 24<sup>th</sup> February, 1984 - PAC Minutes; 27<sup>th</sup> February, 1984 - Report Regarding Wagalla and 24<sup>th</sup> May, 1984 - KIC Minutes on the tour of NEP. These documents show a series of events which took place over the months leading to special meetings and the action taken on 9<sup>th</sup> February, 1984. Clearly, it would seem that the incident of the attack on Yakho on 9<sup>th</sup> February at around 0600 hours where six people lost their lives was the trigger that prompted the Acting District Commissioner to call a special meeting of the District Security Committee on the same day, 9<sup>th</sup> of February, at 3.00 p.m. That was because the previous day on the 8<sup>th</sup> of February when the District Commissioner briefed the delegation, he said – and I am repeating – “Tribal clashes between the Degodia and Ajuran have slightly improved.” This is contained in the Minutes of the KIC on the tour of NEP.

Furthermore, Madam Presiding Chair, in earlier meeting at the PC's office on 26<sup>th</sup> of January, it was reported: "Tribal tension between the above Degodia, Garre and Ajuran warring tribes in Wajir is quiet so far." This is in the minutes of the NEP Security Committee Meeting held on 26<sup>th</sup> January, 1984. The Acting District Commissioner, Wajir, who was the Chairman of the District Security Committee called for an urgent meeting on 9<sup>th</sup> February, 1984, at 3.00 p.m. in his office. The meeting was attended by Acting District Commissioner, Mr. M.M. Tiema; the OCPD, Mr. Wabwere; Mr. S.M.G. Kibera, a member; Mr. W.W. Mudogo, a member; DCFOBN 82 AF Major--- I do not understand what all this means. Mr. W.W. Situma was a member. Please, note that I was not present at this meeting.

Madam Presiding Chair, in the opening statement, the Chairman informed the members:-

"The purpose of calling for this meeting was to review the security situation to keep ourselves well informed of the situation as at now in the district- and I underline the words "in the district" - especially the security situation developing in Giriftu, where, one, on 3<sup>rd</sup> February, 1984, between 0300 hours and 0400 hours, ten Degodia bandits armed with firearms attacked the Ajuran Manyatta at Tula and rounded up everybody in that Manyatta. Before they left, they shot dead Yusuf Ali Omar, an Ajuran aged about 50 years and injured Ali Abi Jarsa, Nuria Abdow Hussein, Burtula Ali Omar and Kartuma Abdullahi, who were undergoing treatment at Wajir Hospital. The said bandits made away with 6 camels."

"And, today, that is, 9<sup>th</sup> February, 1984 at about 0600 hours, an Ajuran Manyatta at Yakho was again attacked by ten Degodia bandits who were armed with firearms and who rounded up everybody in the Manyatta and shot Ahmed Ibrahim, Bie Hassan Mohamed Sori, C. Abdi Huka and B. Tome Itho – burnt to death in her hut – E. Muhia Hassan, F. Habib Hussein; all of whom were female adults."

The total number shot dead in this incident was six, and all were Ajurans. Three camels were shot dead and three huts burnt.

I continue with the quote:

"The following were injured: A. Abdikarim Ibrahim and B. Abdiaziz Mohamed, both were admitted at Wajir District Hospital."

The Committee, therefore, resolved the following:-

"An immediate joint operation of the Kenya Police, the Kenya Army and the Administration Police be mounted to be commanded by OCA COY 7KA to spread all over the district to look for and arrest brutal killers of the incident as per this. Since the killers' identification will be difficult as they, killers, would mingle with their relatives, sympathizers and harbourers, it was resolved that all Degodia tribesmen be rounded up and interrogated with a view of identifying the killers' for prosecution."

Please, note that this meeting took place after the departure of the delegation of which I was a member, and that departure was in the early afternoon of 8<sup>th</sup> February, 1984. The pertinent minutes which shed light on the decision made by the Wajir District Security Committee (DSC) are under Minute No.16/84 - General Security Situation. From the documents of the meeting of the Provincial Security Committee, it would seem that the decision of the Wajir DSC was not communicated to the Provincial Security Committee (PSC) nor what happened afterwards. The concern of the Provincial Security Committee is contained in the minutes of the meeting of 24<sup>th</sup> February, 1984, held at the PC's Office and reference is given there: "Wajir Death Incident." It says:-

"The PSC noted with great concern of the nasty incident at Wajir where 25 persons of Degodia tribe lost their lives at Wagalla Airstrip. The PSC could not comprehend why the DSC decided to give the authority uninformed of the incident until when the PSC visited Wajir on Monday, 13<sup>th</sup> 1984. The PSC demanded a detailed written report on what went wrong and why the report was kept secret to the DSC alone. The DSC responded and sent a report regarding the recent operations which resulted to surrounding up of male Degodia adults at Wagalla Airstrip from 10<sup>th</sup> to 13<sup>th</sup> February, 1984."

There is reference of that document. This is also referred to in a meeting between the Special Joint PSC/Garissa DSC held in the PC's office on 14<sup>th</sup> February, 1984, where:-

"Members were told that the purpose of the joint PSC/DSC meeting was mainly to caution the DSC to plan their security arrangements in good time to avoid any situation where we may be caught up by an impromptu security situation such as the 1980 Garissa incident or the current Wajir situation resulting from the tribal conflict between the Degodia and the Ajuran tribesmen in which the Degodia are aggressively hostile."

In the report, the DSC, Wajir, included the pertinent background information relating to the build-up of prior incidences over the past month which led them to take this action.

As stated in the report:-

"A brief background report on the security and sectional clashes between the Degodia and the Ajuran from November 1982 may be helpful, one, to have a better view of the events leading to the mounting of the operation."

There is the reference to the quotation and let me go through it. It says:-

1. Tribal clashes between Garre and Ajuran, March 1983 to the 10<sup>th</sup> November, 1983.
2. Ajuran attack two Degodia Manyattas and kill one male adult and made away with over 2,000 camels.
3. On 11<sup>th</sup> November, 1983, Degodia revenges by killing five women and stole hundred heads of cattle at Kilile.

4. On 29<sup>th</sup> January, 1984, raping and beating of an Ajuran woman where the assailants were strongly believed to be Degodia.

5. On 31<sup>st</sup> January, 1984, at Eldas Trading Centre, a house of an Ajuran woman was broken into at night and Kshs2,240 stolen. On 3<sup>rd</sup> February, 1984, Tula Manyatta attacked near Giriftu and one Ajuran, Yusuf Ali Omar, was shot dead. On 6<sup>th</sup> February at Giriftu Trading Centre, an Ajuran Manyatta was attacked, occupants beaten and Degodians made away with four camels. On 9<sup>th</sup>, as we have already stated, at Yakho Manyatta, six people were killed; one male, five women, two were injured, nine camels shot dead and the house was burned down. Following these events, an emergency meeting of DSC was held on 9<sup>th</sup> at 3.00 p.m.--"

It is good to re-quote because I am just quoting:-

"---resolved to mount an operation to disarm the Degodia. Records indicate that the exercise of disarmament of the clans had been going on since the tensions and conflicts started. From the reports, the Ajuran had surrendered more arms than the Degodia. Because of the tension, the Government had launched a campaign to disarm the conflicting parties and by 21<sup>st</sup> of January, the Ajuran had surrendered 26 firearms and eight from the Degodia. The Ajurans were blaming the Government for no protection of life and property after surrendering firearms. They, therefore, demanded protection from the Government. The DSC had to act swiftly to restore public confidence."

It was deemed fit in the meeting: "The only convenient place to gather all those rounded up was agreed to be at the Wajir Civilian Airstrip." These are the minutes of the North Eastern Province Special Meeting held at the PC's Office on 14<sup>th</sup> February. The report further says:-

"On 12<sup>th</sup> February, 1984, the Acting DC accompanied by the OCPD went to Wagalla Airstrip to assess the situation. On seeing the Acting District Commissioner, people started fleeing in all directions but a majority of them ran towards a section of the fence which was broken. Others armed themselves with stones and were moving towards the Acting DC, who was standing. As people started fleeing, the security men tried to stop them. They were ordered to stop fleeing but they ignored the orders. The OCPD, seeing that the people would all escape and had now turned to be a rioting mob, ordered the security men to open fire to those who were fleeing."

The background provided by the DSC does not refer to any recommendation or instructions provided by any delegation or meeting on 8<sup>th</sup> of February, 1984.

In conclusion, as this Statement has indicated, Madam Presiding Chair, my visit to Wajir on 8<sup>th</sup> February, 1984, was as a member of a delegation with the objective to give the members of KIC an opportunity to tour the province and acquaint ourselves with the opportunities to see projects, problems faced by the civil servants and the general public as a whole and make recommendations to improve the situation. The final report, including recommendations were made, and they are in line with these objectives. None of the recommendations involved a disarmament operation in Wajir and, indeed, the DSC

documents do not refer to any recommendations from the meeting of 8<sup>th</sup> of February, 1984. Kindly, note that the events that occurred in Wagalla in February, 1984, occurred after the departure of the delegation and that my portfolio did not include internal security.

Madam Presiding Chair, the document I have referred to clearly show that the decision, planning and execution of this operation were not part of any meeting that I or the team from Nairobi attended. I believe that this record shows clearly that any allegation linking me to the planning or execution of this incident is clearly false and unsubstantiated by any factor. I have provided this information in good faith and in support of the mandate of the Truth, Justice and Reconciliation Commission (TJRC) in establishing an objective and factual record of events.

Thank you, Madam Presiding Chair.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much, Amb. Kiplagat. As earlier stated, I will give counsel not more than five minutes to make his submissions, after which the Leader of Evidence will then question the witness. Thank you.

**Mr. Harun Ndubi:** Thank you very much, Madam Presiding Chair. I am grateful for this opportunity. I speak for and on behalf of the Wagalla Massacre Victims and survivors through their network, Truth Be Told and other supporters. I would like to thank Amb. Bethwel Kiplagat for emphasizing the fact that his Commission is about finding the truth, and that indeed, the truth is the basic object of this Commission so that the ghost of the past can be put to rest. The Commission is bound to find or seek the truth; the witnesses are expected or actually do owe a duty to the Commission to tell the truth and, more importantly, the victims expect the truth. Unfortunately, from so far the testimony that has been given by various witnesses – and this is subjective of the judgment of my clients – there seems to be a perception that has been created that some witnesses or a majority, especially those highly placed in Government, are providing the sort of information that is either in the nature of absolving them as individuals or absolving Government from culpability of the events that led to the massacre and the massacre itself. On account of which I have instructions to request you to apply the powers under the law – the powers you have under the Statute and the rules – to do various things. One is to subpoena documents, statements, information and all other material that is within Government offices publicly. The reason is that, and this was stated here by my senior, Kioko Kilokumi, who is representing various witnesses, who said he had written to the Government and had not received any response. The object of the public subpoena is important to show the Government and the public that this Commission is actually serious in seeking the truth.

Secondly, Madam Presiding Chair, there is a precedent before that there is need for this Commission to request the Attorney-General, as the legal advisor of Government, to probably declassify various intelligence information and reports so that that will release the witnesses to be able to speak truthfully, candidly and frankly. There is precedent to

that and I speak with a measure of personal experience that I participated as *amicus* in the Akiwumi Commission, which was inquiring into tribal clashes previously and another one, Goldenberg Commission, which was actually sitting in this very room plus the other to inquire into various things. The Attorney-General then de-classified information to enable intelligence officers and other Government officers to testify and deliver documents related to intelligence collection, intelligence assessments and various information in that regard. Because with the declassification of these documents, the witnesses will be free to refer to them and hand them over to the Commission as well as be truthful.

Failure to do so, unfortunately, Madam Presiding Chair, the perception that this Commission is being used by the Government and senior officers to cleanse themselves will continue to persist and that is not helpful to the people of Kenya and to the country. We, as victims, require that the truth is candidly and frankly told so that the people who were responsible of culpable may be sanctioned, because we expect that after the truth is out, there will be sanctions. But more importantly other than the sanctions, we expect that there will be reparations to the victims and, perhaps, in a broader way, we expect that there will be restoration of the dignity of the individual; the dignity of the communities and the dignity of the country as Kenya as a whole. But if we are going to find a situation like it seems to us; that information is lacking and the co-operation of the Attorney-General and the Government is merely minimal, other than, perhaps, by providing logistical support to the Commission--- In our mind and our eyes as victims, there is no substantive support to the Commission by the Attorney-General and the Government and especially focusing on the Office of the President. We are not as confident as we were when we offered to continue working and supporting the Commission. We are not withdrawing that support or co-operation as the Wagalla Massacre Victims and Survivors Network, but we would like to ask the Government to take this Commission far more seriously than it seems and the honorable Attorney-General takes that cue and supports this forthwith.

Madam Presiding Chair, that is the statement I was asked to make to the Commission by my clients. Thank you very much for the indulgence.

**The Presiding Chair** (Commissioner Chawatama): Counsel, thank you very much for bringing certain facts to our notice. But at this stage, I would like to ask the Leader of Evidence to address some of the things that counsel has brought up because you have been responsible in gathering documents and in making approaches to various Government offices. So, could you, please, just share with us the efforts that the Commission has made thus far?

**The Commission Secretary** (Ms. Nyaundi): Thank you, Madam Presiding Chair. I would like, first, to appreciate the support that counsel Harun Ndubi has availed to the Commission and as a person who has worked at the Commission. Indeed, when they came forward, I was happy that the Commission had crossed the bridge and like other truth commission processes across the continent, was now enjoying the benefit of support

of civil society, especially with our hearings in the northern region and in Mt. Elgon, we have had the benefit of support from the civil society, and that continues today. So, I think it is important that, that goes on record.

Madam Presiding Chair, with regard to how well we have worked with the Government, some of the individuals that we summoned, the summons were effected through Government and, so, there has been assistance in tracing and locating some of the witnesses. Like Senior Counsel Kioko Kilukumi, the Commission has also faced the frustration of calling for documents and not getting them on time or at all. So, that has been a challenge and we are glad that the counsel representing the affected persons has joined the Commission in requesting for this very vital support and direction can be made on that regard.

Commissioners, I trust that we are aware that according to the schedule of the Commission, we shall have a thematic hearing on massacres. It is my expectation that during those hearings, the Government shall give its official position on events such as those that occurred at the Wagalla Airstrip and other incidences that have been pointed out by witnesses. At this stage, I do not feel the Government cannot redeem itself. I am confident that, at least, for the thematic hearings, the Government shall come and give its official position.

The witnesses that we are handling now are giving their positions. They are giving evidence as people who held certain positions in Government. It would be reasonably expected that by virtue of the positions they held, they would have certain information. I appreciate the support that has been given to the Commission through Mr. Ndubi and the clients that he represents.

**The Presiding Chair** (Commissioner Chawatama): I think to save time, I will ask one of the Commissioners to---

**Mr. Elijah Mwangi:** With your permission, Madam Presiding Chair, I would like it to go on record that through Senior Counsel, Mr. Kilukumi, a formal request was made to the Office of the President for supply of specific documents, majority which actually came from this Commission. Definitely, once received, we will be more than happy to hand over such documents. I think an update was given to the Commission last week about the position. I am aware that he is still following up with the relevant office.

I did not hear my learned senior's perception or submission that the Commission is being used to cleanse anybody. I thought it was a bit unfair coming at a time when my clients are giving whatever information they have for the learned counsel to suggest that anybody is coming here for cleansing. It is proper to say that my clients are giving--- I do not know why he feels that the truth is not coming out and my clients are giving that information based on the summons and the request by the Commission. It is not fair to jump to conclusions even on behalf of one's client. No one can take the mandate of the Commission to make its own conclusion at the right time.



Our clients have given statements and they are ready to answer questions put to them by the Commissioners and the Leader of Evidence. I do not see this process as being adversarial. From what I see, it is inquisitorial. So, I do not want to start answering allegations and counter-allegations from one counsel to another. It is best left in that civil sense.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much, counsel. The Commission appreciates the efforts your team has made in availing us certain documents that we asked for. You and I belong in the court room where things are very different, but you have graciously come to terms with the fact that this process is necessary and you have conducted yourselves in a way that the Commission appreciates and you have become officers of the Commission. We thank you for that.

**Commissioner Slye:** I will make two brief comments. Mr. Ndubi's comments are appreciated and useful to this Commission. They are based on conversations he has had with his clients - victims of the Wagalla massacre concerning their perception of the testimony they have heard to date. The perception is based on people who testified last week and not anyone testifying today or this week.

Secondly, that perception is very important. This Commission, like all Truth Commissions, is a victim-centered Commission. Actually under legislation, we are required to be victim-centred. Without giving my views about the accuracy of that perception, I think it is important for us, as a Commission, to be aware that the victims, for good reasons, are less than satisfied with what they have heard so far. This is something difficult that this Commissions faces.

Everyone comes here wanting to really understand why atrocities such as these ones occurred. Some of the answers that people want may not come forward. However, there are other questions that are answered. It is important for us to take into account that observation. I hope that will make us reflect on what we are doing here, that is, what the purpose of this Commission is and the whole transitional justice process in Kenya.

**Commissioner Shava:** I would like to remind us that this process is a conversation. In a conversation, the participants must be allowed to freely state their views which could include facts and perceptions. I believe that this is the only way in which we are going to capture all the different truths. That is what this forum is for. Capturing all these different versions of the truth is what is going to help us arrive at one uncontestable truth which is the purpose of this Commission. So, I would just like to thank the views expressed by the counsel because they are helping us understand as we go through the process what it is the people are thinking and what they believe--- This is very important in helping us arrive ultimately at the truth of what we are inquiring.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much. I hope, counsel, you are feeling a little bit more settled than earlier. I would like to assure you that we will exercise the powers we have. If we need to *subpoena*, we will *subpoena*. We have traded at a pace. We have found that people have co-operated with us. We have

moved from a place where some people actually said that Wagalla Massacre did not happen to now having admissions that Wagalla Massacre happened. We thank you for your contribution.

We shall continue now. The Leader of Evidence will ask the witness questions. Once she is through, I will ask my fellow Commissioners to ask the witness any questions they might have.

**The Commission Secretary** (Ms. Nyaundi): Amb. Kiplagat, is the summons by the Commission the first time you have been asked about the meeting at Wajir on 8<sup>th</sup> February, 1984?

**Amb. Bethwel Kiplagat:** That is the summon I had. I am not sure, but what I have on my record is the one that is---

**The Commission Secretary** (Ms. Nyaundi): Yes, the summons by the Commission. Is that the first time you have been asked whether you were in Wajir on 8<sup>th</sup> February, 1984?

**Amb. Bethwel Kiplagat:** This is the first time.

**The Commission Secretary** (Ms. Nyaundi): Not by the Commission or by any other individual?

**Amb. Bethwel Kiplagat:** Not by any other individual.

**The Commission Secretary** (Ms. Nyaundi): No one else has ever asked you whether you were in Wajir?

**Amb. Bethwel Kiplagat:** No. I mean there are people who have asked me that in the media, but not a formal Commission or a Tribunal.

**The Commission Secretary** (Ms. Nyaundi): When you were asked by the media, what was your response then?

**Amb. Bethwel Kiplagat:** At the beginning, I said that I was not sure. I had not gone there. However, I had to check and I corrected that position. That is why I have said in my statement that trying to rely on my memory is not good enough. That is why I have gone into documentation.

I have no query. I was there and that I can confirm.

**The Commission Secretary** (Ms. Nyaundi): I would like to show you excerpts from an interview you had with Roy Gachuhi. This was carried on a Saturday newspaper, *Nation* on 29<sup>th</sup> May, 2010. Someone will beam it up for us so that we can refresh our memory.

*(The excerpts were enlarged and shown on a screen)*

A direct question was put to you by Mr. Roy Gachuhi, and I have highlighted it in the copy that you have. He says: “Alright. Wagalla. Did he visit Wajir on the fateful day when hundreds, possibly thousands, were massacred by the Kenya Army?” In your response, you said: “Ministry of Foreign Affairs--- I was a member of the National Security Committee. This Committee was chaired by the Vice-President of the Republic. We met at a national level for the purpose of exchanging information. My role was to inform the Committee on what was going on at the Horn of Ethiopia.

When it comes to operations, there are other committees that handled them. We went to North Eastern Province on a fact-finding and familiarization tour. This is about 30 years ago. I had just returned from London in January. In February, we went to Garissa, Mandera and Marsabit. Anywhere else, I am going to confirm. As a Committee, we were not involved in operations. This was left to the Provincial and District Security Committees. There was no meeting in Wajir of the National Security Committee (NSC).”

Now that is what appeared in the media. So, you are confirming that on 29<sup>th</sup> May, 2010 when that question was put to you, your response was that there was no meeting of the NSC in Wajir?

**Amb. Bethwel Kiplagat:** I have stated here that there was no meeting of the Kenya Intelligence Committee (KIC). When I was giving this interview, I was mixing up the NSC and the KIC. There was no meeting of the KIC at Wajir on 8<sup>th</sup> February.

**The Commission Secretary (Ms. Nyaundi):** But there was one in Garissa, Mandera and Marsabit according to this.

**Amb. Bethwel Kiplagat:** Sorry to say that this is why I went back to dig out the documents and that is what I am relying on. We were briefed in each of these places. The Secretary to the KIC compiled the minutes of our tour and that is what I have referred to.

**The Commission Secretary (Ms. Nyaundi):** I just need a confirmation that there was a meeting. At that time, you could remember that there was a meeting of the NSC in Garissa, Mandera and Marsabit?

**Amb. Bethwel Kiplagat:** I would like to repeat again that it was a delegation that went there and we met with the District Security Committee. In Garissa, we met with the Provincial Security Committee which gave us views on the objectives of our tour. That is what was used for writing the report.

**The Commission Secretary (Ms. Nyaundi):** You then had an interview with the *Daily Nation* on 6<sup>th</sup> February, 2010. In May, you had an interview with Emeka Mayaka Gekara of the *Daily Nation* and it is reported that he asked you a direct question which I have highlighted so that you get it easily.

“A visitors’ book at the Wajir DC’s Office where the meeting took place listed Mr. Kiplagat as one of the attendees, but the TJRC Chief says that he never attended the meeting sanctioned by the NSC.” Your response is: “I was never involved. I had just come from London and as the Foreign Affairs PS, the matter was not in my docket.”

So you were clear that you had not attended any meeting. Is that what this would suggest?

**Amb. Bethwel Kiplagat:** As you can see here, it is talking about the NSC, but I can say “No”. We attended a briefing meeting at all the district headquarters where we were briefed by the DCs. In my preliminary remarks, I said that trying to rely on one’s memory about things that happened 30 years ago is very unreliable. That is why I went out of my way to get the documentation. I made it clear that I was with the team that went on a familiarization tour to North Eastern Province.

**The Commission Secretary** (Ms. Nyaundi): Therefore, when you were told that your name appeared on the list in the Wajir DC’s Office, what we see here is not a denial that you were in Wajir, but you attended an NSC meeting?

**Amb. Bethwel Kiplagat:** I have repeated again that I had to go back and search so that I can rely on documentation rather than on my memory. I would like to request that whenever you want to ask me a question, please, refer to what I have presented today. I have taken an oath and this is what I have presented to you.

We are here to gather as much information as we can to determine the truth.

**The Commission Secretary** (Ms. Nyaundi): Amb. Kiplagat, you will appreciate that there has been a long narrative of what happened in Wagalla. Some of that has been informed by what people understood you to mean or what you said. I am sure that you understand that this Commission has a broad mandate to come up with an accurate picture.

If you were reported in the media stating that you were not in Wajir and today with the benefit of documentation, you are saying that you were there, it is important for the Commission to understand if there is any discrepancy in your statements.

**Amb. Bethwel Kiplagat:** There is no discrepancy and I have stated it. We were in Wajir, Garissa and Mandera. Let that be the position.

**The Commission Secretary** (Ms. Nyaundi): Part of the challenge with the Wagalla story is that those who are thought--- I will show you a clip by KTN which had a series on their programme *Jicho Pevu*. You were among those who were interviewed. At that time you were the Chairman of the Truth Commission. Assuming that as Chair of the Commission, you would be as forthright as you could possibly be. You do recollect that interview, I suppose?

As we wait for that to be organized, you said that you were invited to sit on the KIC by virtue of your position as the PSC. Can you tell us what was the structure and composition of the KIC?

**Amb. Bethwel Kiplagat:** I think you can get this information from the Government. Things must have changed.

**The Commission Secretary** (Ms. Nyaundi): You served on KIC. I am asking you to tell this Commission when you were invited to serve in the KIC what was your understanding of the structure and the mandate of the KIC?

**Amb. Bethwel Kiplagat:** The KIC was a meeting point where we exchanged intelligence information on what was happening. My role was to present reports of what was happening in the world.

**The Commission Secretary** (Ms. Nyaundi): What was the membership of the KIC while you sat on it?

**Amb. Bethwel Kiplagat:** But I think this is a list we can get. One can go to the documentation and get the actual list. If you like, we can go and look for it because things have changed and I need to go back.

**The Commission Secretary** (Ms. Nyaundi): Amb. Kiplagat, I will appreciate if you share with us what the composition of the KIC was when you sat. Who else did you sit with?

**Amb. Bethwel Kiplagat:** I am ready to furnish you with the list as it was. I do not want to make a statement here and then discover that I have left somebody out.

**The Commission Secretary** (Ms. Nyaundi): Did it consist of DCs?

**Amb. Bethwel Kiplagat:** No. There were no DCs at the national level.

**The Commission Secretary** (Ms. Nyaundi): So, who sat on the KIC at the national level?

**Amb. Bethwel Kiplagat:** This is what I am telling you that I will get you the official list so that I do not leave anyone out. I want to be accurate. I want to depend on documentation rather than what I can remember.

**The Commission Secretary** (Ms. Nyaundi): We have received information through other witnesses that have testified before the Commission that the membership comprised of PSs. Is that correct?

**Amb. Bethwel Kiplagat:** As I said, it would help you if we can get the actual list. However, it did not involve all the Permanent Secretaries. I can assure you of that. Let us get you the list.

**The Commission Secretary (Ms. Nyaundi):** Who was the Secretary of the KIC?

**Amb. Bethwel Kiplagat:** At that time the Secretary was Mr. Mwongovia, but again, we can confirm.

**The Commission Secretary (Ms. Nyaundi):** What was his position in the Government?

**Amb. Bethwel Kiplagat:** I do not know. Here is his boss and he can tell you what his position was.

**The Commission Secretary (Ms. Nyaundi):** So, he was in the Office of the President, Ministry in charge of Internal Security?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary (Ms. Nyaundi):** Who was the Chair of the KIC?

**Amb. Bethwel Kiplagat:** The Vice-President. But again let us get you the list so that you know each position. I think we can do that without any difficulty so that you have an accurate list.

**The Commission Secretary (Ms. Nyaundi):** Amb. Kiplagat, I feel I must assure you that I will not require you to say anything other than what was within your personal knowledge. If you have looked at the list of witnesses, there may be people who will have information that you do not have. So that we move ahead, you can simply state that that was not within your personal knowledge.

You stated that in your understanding the Committee would deal with intelligence issues. When Gen. Kibwana testified, and I believe you were present, he informed us that your role was purely advisory.

**Amb. Bethwel Kiplagat:** That is correct.

**The Commission Secretary (Ms. Nyaundi):** Who was the beneficiary of your advice to the KIC?

**Amb. Bethwel Kiplagat:** The Government of Kenya and the people of Kenya.

**The Commission Secretary (Ms. Nyaundi):** I want to imagine that your advice was targeted. Who was the beneficiary of the briefs that you prepared?

**Amb. Bethwel Kiplagat:** It depended on what I had received. If it was on a matter related to commerce, then the Ministry of Commerce would be the beneficiary. If it was a matter of security, then the security arm would be the beneficiary.

**The Commission Secretary (Ms. Nyaundi):** So, when the KIC was giving advice, to whom was it giving its advice in your understanding of the structure?

**Amb. Bethwel Kiplagat:** The advice was given to the relevant Government organ. This was done by the Office of the President. If it was security related, they would pass it to security. If there was an outbreak of a disease, that would go to the relevant Ministry; that is, the Ministry of Health.

**The Commission Secretary (Ms. Nyaundi):** You have furnished the Commission with a number of documents and we want to formally admit them onto our record. I will go through them and you will confirm it is a complete list.

There are Minutes of the Special DSC which was held in Wajir on 9<sup>th</sup> February, 1984. Is that correct?

**Amb. Bethwel Kiplagat:** Yes, that is correct.

**The Commission Secretary (Ms. Nyaundi):** A Report on the tour of the North Eastern Province which is a one-page document begins from 8<sup>th</sup> Wednesday to 10<sup>th</sup> Friday. Is that correct?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary (Ms. Nyaundi):** There is a list of persons going on a KIC tour of North Eastern Province attached to the programme.

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary (Ms. Nyaundi):** There is a brief to KIC on a tour of North Eastern Province between 8<sup>th</sup> and 10<sup>th</sup> February, 1984.

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary (Ms. Nyaundi):** There is a report of the KIC tour of the North Eastern Province dated 24<sup>th</sup> May, 1984.

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary (Ms. Nyaundi):** There is a report regarding the recent operation which resulted to rounding up of male Degodia adults at Wagalla Airstrip dated 27<sup>th</sup> February, 1984.

**Amb. Bethwel Kiplagat:** Correct.

**The Commission Secretary** (Ms. Nyaundi): There are minutes of the meeting of the PSC, North Eastern Province held on 26<sup>th</sup> January, 1984.

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): There are minutes dated 15<sup>th</sup> February for a meeting held on 14<sup>th</sup> February, 1984, Special PSC?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): There are minutes dated 16<sup>th</sup> February, 1984 for a meeting held on 14<sup>th</sup> February, 1984, Special Joint Garissa DSC.

**Amb. Bethwel Kiplagat:** I need to check my notes.

**The Commission Secretary** (Ms. Nyaundi): There are minutes dated 17<sup>th</sup> February, 1984 of a meeting held on 15<sup>th</sup> February by the PSC in North Eastern.

**Amb. Bethwel Kiplagat:** It is possible.

**The Commission Secretary** (Ms. Nyaundi): So, we will admit it. Then there are minutes dated 24<sup>th</sup> February, 1984 of a meeting held on 23<sup>rd</sup> February, 1984. Commissioners, I am praying that we do admit those documents.

**The Presiding Chair** (Commissioner Chawatama): Those documents are so admitted.

**The Commission Secretary** (Ms. Nyaundi): Amb. Kiplagat, you will confirm that the programme about the trip to North Eastern Province is entitled “Kenya Intelligence Committee”?

**Amb. Bethwel Kiplagat:** That is true.

**The Commission Secretary** (Ms. Nyaundi): What this suggests is that there was a tour of the KIC to the northern region between 8<sup>th</sup> February, 1984 and 10<sup>th</sup> February, 1984. According to that argument, you began with meeting the PSC and the DSC Wajir at 9.00 a.m.

**Amb. Bethwel Kiplagat:** I do not have the time.

**The Commission Secretary** (Ms. Nyaundi): It is there in the programme. The PSC that is being referred to is the Provincial Security Committee.

**Amb. Bethwel Kiplagat:** The PSC stand for the Provincial Security Committee.



**The Commission Secretary** (Ms. Nyaundi): Likewise, the DSC stands for the District Security Committee?

**Amb. Bethwel Kiplagat:** Correct.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Amb. Kiplagat.

Ambassador Kiplagat, I want us to refer to the brief. There is a document you have there; a brief to the Kenya Intelligence Committee (KIC) on a tour of North Eastern Province between 8<sup>th</sup> and 10<sup>th</sup> February, 1984. Do you remember who gave you the brief? Was it just a document you were given in your folders or someone read it out to you?

**Amb. Bethwel Kiplagat:** It was not read out to me, it was given to me; rather it was given to us. I collected it and I do not remember where we got it at that time, but this brief was given to us.

**The Commission Secretary** (Ms. Nyaundi): Would you remember, Amb. Kiplagat, whether you got it before you left Nairobi or when you arrived in Wajir?

**Amb. Bethwel Kiplagat:** I believe we must have got it before leaving.

**The Commission Secretary** (Ms. Nyaundi): Okay. Thank you very much ambassador. We will only be guided by what we see in writing.

**Amb. Bethwel Kiplagat:** Fine.

**The Commission Secretary** (Ms. Nyaundi): So, the brief that you were receiving prior to leaving Nairobi was - If we look at the first line, the purpose and intention of the brief was - to enlighten members of the KIC on various problems affecting security and efforts made to deal with the situation. Is that correct?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, I have looked at this document and it is a nine-page document. I do not know whether in the recent past, you have had time to read it, at least, before you gave it to the Commission?

**Amb. Bethwel Kiplagat:** Yes, I have read it.

**The Commission Secretary** (Ms. Nyaundi): You have read it?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): Would you agree, Ambassador Kiplagat, that the focus of this brief was really on security?

**Amb. Bethwel Kiplagat:** When a team is going to any region there is a security brief that is given. I believe even in the United Nations, there would be a brief that is given on security. Even if you are going for a meeting to do with agriculture or health, that is what you are given and that is the background information. I think what is important is the purpose of the trip and what the outcome was.

**The Commission Secretary** (Ms. Nyaundi): Yes, Ambassador. We are coming to you as the person who can furnish the Commission with information. So, apart from this brief that you have availed to the Commission, do you have any other brief?

**Amb. Bethwel Kiplagat:** I do not have any other! Whatever I have given you is what I have.

**The Commission Secretary** (Ms. Nyaundi): Can we safely conclude that prior to leaving Nairobi, this is the only brief that you were furnished with for purposes of the trip?

**Amb. Bethwel Kiplagat:** As of now. If we discover later on that there are others, then of course; but as of now, this is what I have.

**The Commission Secretary** (Ms. Nyaundi): According to what you can remember—

**Amb. Bethwel Kiplagat:** I do not have anything else.

**The Commission Secretary** (Ms. Nyaundi): Thank you. Ambassador, is it correct also to state that the purpose of briefs is also to give you an understanding of the mission? Is that a good purpose of a brief?

**Amb. Bethwel Kiplagat:** I think it depends on what the brief is all about. There is a brief to give you, as I said, particularly what the political situation is or what is going on in terms of security. That would be one brief, but as we went on to the ground, we were now given specific briefs related to the objective of the mission.

**The Commission Secretary** (Ms. Nyaundi): Yes, sir. But when you left Nairobi, the organizers of the trip, in order to prepare you for the trip and the issues that you will be coming across, prepared this brief to help you understand the issues that you would be finding on the ground.

**Amb. Bethwel Kiplagat:** In order to understand the situation on the ground.

**The Commission Secretary** (Ms. Nyaundi): Yes, sir. And because you were the intelligence committee---

**Amb. Bethwel Kiplagat:** We were more than an intelligence Committee, as I have listed. If you look at the whole list, it was not just the intelligence committee; it was an inclusion of experts from other ministries and parastatals.

**The Commission Secretary** (Ms. Nyaundi): Thank you Ambassador. I think part of what I would be doing is, with the benefit of the documents that you have provided, would be sharing my understanding. So, some of the questions that I will ask you would help me understand better the documents that you have furnished the Commission.

When I look at this document, it says that it is a brief, not an inter-departmental Committee, but to the KIC members. It would be correct; therefore, to say that, likely this brief was not given to everyone on the delegation because it was addressed to the KIC members?

**Amb. Bethwel Kiplagat:** That, I think we have to check with my colleagues. I believe this was given to all those who were going up there.

**The Commission Secretary** (Ms. Nyaundi): Okay. But we do agree that the people addressed are the KIC members, on the face of the document, if we do not go by our memory, but by the document?

**Amb. Bethwel Kiplagat:** We are not going by memory! I remember also the report itself, when it finally came out, it was given to all those who attended the meeting.

**The Commission Secretary** (Ms. Nyaundi): Yes, Ambassador, the brief was prepared for members of the KIC prior to leaving Nairobi and that is why it is titled; "Brief to KIC."

**Amb. Bethwel Kiplagat:** I think by this afternoon, my colleague will be able to tell you whether it was given to everybody. He was the secretary of the committee. I believe it was given to everybody who went on that trip.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. So, with that we can move on from this point? One can state that a brief was prepared for the KIC prior to their departure from Nairobi for the tour of the Northern Region. That would be correct, at least, from the face of this document?

**Amb. Bethwel Kiplagat:** Yes, from that document.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. Now, there is a document that lists the persons who were members of the tour. And, as you have said, not everybody on the list was a member of the KIC. Now, we will go through them and you will confirm whether in your recollection or in your understanding, these would have been members of the KIC and whether or not they accompanied you on the trip; Mr. J.S. Mathenge, Permanent Secretary (PS), Administration. Was he a member of the KIC?

**Amb. Bethwel Kiplagat:** Yes, he was.

**The Commission Secretary** (Ms. Nyaundi): And he came to Wajir?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): Mr. J. Muliro, PS, Department of Defence, was he a member of the KIC?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): He came to Wajir?

**Amb. Bethwel Kiplagat:** That one I do not know. I cannot remember whether he came or not.

**The Commission Secretary** (Ms. Nyaundi): You cannot remember?

**Amb. Bethwel Kiplagat:** Yes, I cannot remember.

**The Commission Secretary** (Ms. Nyaundi): Of course, Ambassador Kiplagat; Mr. Mwiraria, PS, Member of KIC. Did he come to Wajir?

**Amb. Bethwel Kiplagat:** Yes, he came.

**The Commission Secretary** (Ms. Nyaundi): Mr. J. Gituma, PS, Information and Broadcasting.

**Amb. Bethwel Kiplagat:** He was a member, but I do not know whether he came or not. But he was here!

**The Commission Secretary** (Ms. Nyaundi): But he was a member of the KIC?

**Amb. Bethwel Kiplagat:** Yes, he was a member.

**The Commission Secretary** (Ms. Nyaundi): Okay. How about Mr. P.K. Njiinu, the Commissioner of Police and Member of the KIC?

**Amb. Bethwel Kiplagat:** He was the Commissioner of Police and a Member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Did he come?

**Amb. Bethwel Kiplagat:** I am not sure whether he came.

**The Commission Secretary** (Ms. Nyaundi): You cannot recollect?

**Amb. Bethwel Kiplagat:** I think I need to confirm.

**The Commission Secretary** (Ms. Nyaundi): In fact, we do have the visitors' book that gives that list. Brig. Kibwana, he confirmed that he sat in the KIC. Mr. Gachuhi, Deputy Secretary, Directorate of Intelligence. Was he also a member of the KIC?

**Amb. Bethwel Kiplagat:** He was not a member.

**The Commission Secretary** (Ms. Nyaundi): He was not a member of the KIC. Mr. Mwangovia, Deputy Secretary, Office of the President. Was he a member?

**Amb. Bethwel Kiplagat:** I remember he was the secretary, but I do not know whether he was a member.

**The Commission Secretary** (Ms. Nyaundi): He was secretary of the KIC!

**Amb. Bethwel Kiplagat:** I do not know whether he was a member. I am trying to check whether he was a member or not.

**The Commission Secretary** (Ms. Nyaundi): He sat in as a secretary.

**Amb. Bethwel Kiplagat:** I am trying to check whether he was gazetted or not.

**The Commission Secretary** (Ms. Nyaundi): Mr. Kamenchu, Deputy Secretary, was he a member?

**Amb. Bethwel Kiplagat:** No! He was not a member.

**The Commission Secretary** (Ms. Nyaundi): He was not a member, but he came to Wajir?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): He was Deputy Secretary Ministry of Finance? Did you have a representative from the Ministry of Finance who sat at the KIC, in your recollection?

**Amb. Bethwel Kiplagat:** The Permanent Secretary was a Member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): The Permanent Secretary would have been a member of the KIC?

**Amb. Bethwel Kiplagat:** He is a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Okay. Mr. G. A. Okumu, chief Aerodromes Engineer, Transport and communication. Was he a member of the KIC?

**Amb. Bethwel Kiplagat:** No!

**The Commission Secretary** (Ms. Nyaundi): But he came to Wajir?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): Mr. Kinyanjui, Director of Land Adjudication. Did he come to Wajir?

**Amb. Bethwel Kiplagat:** If his name is on the list, then he must have come.

**The Commission Secretary** (Ms. Nyaundi): We will check. There is a Mr. Macharia, Deputy Secretary, Treasury.

**Amb. Bethwel Kiplagat:** He was not a member.

**The Commission Secretary** (Ms. Nyaundi): He was not a member of the KIC. How about Mr. Kibera; his position is not given, was he a member?

**Amb. Bethwel Kiplagat:** I do not think so.

**The Commission Secretary** (Ms. Nyaundi): Mr. Magaka, Treasury and External Aid.

**Amb. Bethwel Kiplagat:** He was not a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): He was not a Member of the KIC. Mr. Kaguthi, Senior Assistant Administrative Secretary, Office of the President. Was he a member?

**Amb. Bethwel Kiplagat:** He was not a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Mr. Kigura, Kenya Posts and Telecommunications, was he a Member of the KIC?

**Amb. Bethwel Kiplagat:** No! He was not a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Mr. Kaaria, Provincial Commissioner, North Eastern Province.

**Amb. Bethwel Kiplagat:** He was not a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Mr. Aswan, Provincial Police Officer (PPO), North Eastern Province?

**Amb. Bethwel Kiplagat:** He was not a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): But he was in Wajir?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): Mr. Ndirangu, Acting Provincial Special Branch officer, North Eastern Province.

**Amb. Bethwel Kiplagat:** He was not a Member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Lieutenant Muindi, Commanding Officer, 7KA, Garissa?

**Amb. Bethwel Kiplagat:** He was not a Member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): How about Mr. Lang'at, District Commissioner, Garissa?

**Amb. Bethwel Kiplagat:** He was not a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Mr. Muturi, Officer Commanding Police Division (OCPD)?

**Amb. Bethwel Kiplagat:** He was not a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Mr. Joe, District Special Branch officer?

**Amb. Bethwel Kiplagat:** He was not a member of the KIC.

**The Commission Secretary** (Ms. Nyaundi): Ambassador Kiplagat, again relying on your memory, of the people whom we have said were members of the KIC, apart from the PS, Treasury, who else was a member of the KIC, whose name is not on this list?

**Amb. Bethwel Kiplagat:** As I have repeated, I would like to give you an accurate list, and that one we can do. There is no problem.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. At this time, when you served in the Government, I know it is the position now, but in 1984, did we have provincial offices? For example, we would have had a Provincial Water Engineer, or a Provincial Director of Education, a Provincial Medical Officer of Health. Is that how the government was structured or everything was managed from Nairobi?

**Amb. Bethwel Kiplagat:** There were provincial directors, whether it was education, roads---

**The Commission Secretary** (Ms. Nyaundi): Health, roads, transport?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): And, at this time, at the district level, was the Government structured in a way that we would have had a district water engineer, or a District Education Officer?

**Amb. Bethwel Kiplagat:** In some places there were and in others there were not. May I clarify here that I had served the Government for only five years?

**The Commission Secretary** (Ms. Nyaundi): Yes.

**Amb. Bethwel Kiplagat:** And I did that while I was abroad. So, when I came here, I was really new. We can acquire information about the structures of Government from those who worked for the Government for a long time, and they can give you the details as to what was pertaining at that time.

**The Commission Secretary** (Ms. Nyaundi): Thank you ambassador.

**Amb. Bethwel Kiplagat:** I would be very grateful really, not to go into whether somebody was there or not.

**The Commission Secretary** (Ms. Nyaundi): That is okay. So, because we are relying on you as a source of information, you have said that you are aware that at the provincial level, we had various Ministries represented. We just want to record it accurately, whether according to your understanding of Government at that time, there were various officers deployed to the respective Ministries at the district level.

**Amb. Bethwel Kiplagat:** I do not think we can depend on my understanding. The former PC who was in Garissa is here and he can tell us - because the structure may be there but the people are not there. He can confirm to you who was representing other Ministries at the Provincial Headquarters. I oblige, kindly.

**The Commission Secretary** (Ms. Nyaundi): Thank you Amb. Kiplagat. I do not want the names of individuals.

**Amb. Bethwel Kiplagat:** No! I am talking even about the positions. I think that can be furnished to you by the people who were directly involved. And, he is right here; may be, when he gives his testimony, he can give you all that information about the structures and so on.

**The Commission Secretary** (Ms. Nyaundi): Thank you Amb. Kiplagat. Therefore, what you are confident to say, because it appears in the documents in your possession, is that there were district commissioners, at least, in Wajir, Mandera and Garissa?

**Amb. Bethwel Kiplagat:** There was a District Commissioner for Wajir District.



**The Commission Secretary** (Ms. Nyaundi): Thank you. The acting District Commissioner appeared before this Commission and he confirmed that he hosted a delegation from Nairobi on the 8<sup>th</sup> February, 1984. He also confirmed that you were a member of that delegation. He agrees with you and states that he did make a presentation to the delegation on that day. Do you have a recollection of Mr. Tiema making a presentation?

**Amb. Bethwel Kiplagat:** I do not know. The only recollection I have is what is captured in the final minutes of our tour.

**The Commission Secretary** (Ms. Nyaundi): Yes. So, when you were in Wajir, Mandera and Garissa, you met the district commissioners. Is that right?

**Amb. Bethwel Kiplagat:** Correct!

**The Commission Secretary** (Ms. Nyaundi): In fact, the meetings were held in the office of the District Commissioner and the District Commissioner addressed the members of the delegation?

*(Amb. Kiplagat nodded his head)*

Thank you Ambassador. The record can record that you nodded your head.

**Amb. Bethwel Kiplagat:** But I am not so sure!

**The Commission Secretary** (Ms. Nyaundi): In agreement and not otherwise.

**Amb. Bethwel Kiplagat:** I think the minutes will be there to show whether he did.

**The Commission Secretary** (Ms. Nyaundi): We had availed a copy of this document to your counsel; I do not know whether they still have it with them.

**Amb. Bethwel Kiplagat:** Which one is that?

**The Commission Secretary** (Ms. Nyaundi): Ambassador Kiplagat, Mr. Tiema informed us that they had been advised by the Provincial Commissioner to prepare a brief that they would then give to the members of the KIC, who were coming to Garissa. That is the document he furnished us with and he said that was the brief he presented.

In that document, you will see that he starts by speaking about the various divisions of Wajir. Wajir West, Wajir East; and then speaks about the conflict between the Arjuran and the Degodia and he also goes into great lengths about what must have been interesting to you, the conflict at the border between Somalia and Ethiopia. He also speaks about water, language, education and involvement of the locals. I would ask you to just take your time and go through that document and confirm that those are the issues in that brief.

He also suggests a number of long-term and short-term solutions.

**Amb. Bethwel Kiplagat:** Do you want me to take time to read through this document?

**The Commission Secretary** (Ms. Nyaundi): Yes, flip through it.

**Amb. Bethwel Kiplagat:** I flip through it or I read it?

**The Commission Secretary** (Ms. Nyaundi): Go through it, Ambassador.

*(Ambassador Kiplagat read the document)*

**The Commission Secretary** (Ms. Nyaundi): I think counsel, in future, if documents are given to you, please, share the documents with your clients in order for us to save time.

Can we give the witness a few minutes to go through the document? So, we will take a break for ten minutes and then we will be back.

Thank you.

*[The Commission temporarily adjourned at 12.25 p.m.]*

*[The Commission resumed at 12.50 p.m.]*

**The Presiding Chair** (Commissioner Chawatama): Leader of Evidence, I believe the Witness has had sufficient time to peruse the document. Can you please proceed?

Thank you.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. You have looked at the document?

**Amb. Bethwel Kiplagat:** Yes, I have looked at it.

**The Commission Secretary** (Ms. Nyaundi): So, again, Ambassador, that document is dated 1<sup>st</sup> February, 1984?

**Amb. Bethwel Kiplagat:** Yes, it is.

**The Commission Secretary** (Ms. Nyaundi): And, it is titled, “Wajir DSC brief to KIC”, during its visit to Wajir District, on 8<sup>th</sup> February, 1984. Is that correct?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): So, that is why when the acting DC then and Chair of the DSC, Mr. Tiema came, he informed us that he had given a brief and this was the brief to the KIC. Ambassador, can you confirm that it is signed by Mr. Tiema, as the acting Chair of the Wajir DSC?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): That is right. Ambassador, again, 27 years ago, did anyone other than Mr. Tiema address the delegation in Wajir, on the 8<sup>th</sup> of February, 1984?

**Amb. Bethwel Kiplagat:** I do not recall.

**The Commission Secretary** (Ms. Nyaundi): You do not recall. In any event you would have remembered the different sources of information on the tour?

**Amb. Bethwel Kiplagat:** What I do remember is what I have gone back to and searched, but I do not recall exactly where we were given the various documents.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. Now, I have looked at this document and the first paragraph states: “The Wajir District Security Committee members have the pleasure of welcoming the KIC members to the district and hope that your short stay in the district will be enjoyable and fruitful to both parties.”

That is correct. It is in writing and we do not even need to rely on memory, but we can assume that during the presentation of this brief, the acting DC and Chair of the DSC was addressing KIC members?

**Amb. Bethwel Kiplagat:** He was addressing the delegation because we were all in that room.

**The Commission Secretary** (Ms. Nyaundi): Yes. And as far as he was concerned, the delegation was the KIC.

**Amb. Bethwel Kiplagat:** The delegation was sponsored and organized by the KIC.

**The Commission Secretary** (Ms. Nyaundi): And members of the KIC were present?

**Amb. Bethwel Kiplagat:** Members of the KIC and others were present.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. We are keen to confirm that members were there in their capacity as members of the KIC.

**Amb. Bethwel Kiplagat:** And other members as well.

**The Commission Secretary** (Ms. Nyaundi): In the same way that Commissioners are present at this Truth, Justice and Reconciliation Commission hearing?

**Amb. Bethwel Kiplagat:** They were present specifically for the objective of the tour. Those others who were present were there in order to fulfill the objective of the tour as I have read it to you.

**The Commission Secretary** (Ms. Nyaundi): We will go back to the build-up of this meeting, Ambassador.

**Amb. Bethwel Kiplagat:** That is okay.

**The Commission Secretary** (Ms. Nyaundi): The minutes dated 28<sup>th</sup> January, 1984, for the meeting held on the 26<sup>th</sup> January, 1984. I will refer you to page four of those minutes. That is the meeting of 26<sup>th</sup> January, 1984, and the minutes are dated 28<sup>th</sup> January, 1984.

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): Minutes Six is headed “KIC Tour of North Eastern Province.”

**Amb. Bethwel Kiplagat:** 26<sup>th</sup> of January, 1984?

**The Commission Secretary** (Ms. Nyaundi): The meeting was held on 26<sup>th</sup> January, 1984, by the Provincial Security Committee (PSC), page four of those minutes; Minute 6/84.

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): KIC tour of the Northern Region.

**Amb. Bethwel Kiplagat:** That is all right.

**The Commission Secretary** (Ms. Nyaundi): And, it says that the chairman confirmed the dates of the KIC Tour of the province as 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> February, 1984, and the itinerary is spelt out there, which we can confirm is the same as the itinerary that you received as the member of the KIC, prior to your departure from Nairobi?

**Amb. Bethwel Kiplagat:** It must be and it is what I have here.

**The Commission Secretary** (Ms. Nyaundi): And when you look at the Minutes, they confirm?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, would it be correct to state that, up till the time that the Acting DC, Mr. Tiema stood up to address you, the understanding was that this was a KIC tour?

**Amb. Bethwel Kiplagat:** That is--- I would not know. The only thing is---

**The Commission Secretary** (Ms. Nyaundi): If we were to rely on, Ambassador, the documents that we have, assuming we did not have the benefit of your appearance: if we went by the documentation that we have, we would be looking at a programme detailing a tour and it is for the KIC; there is a brief, it is for the KIC, there is a list of participants, it is for the KIC, there are minutes of the PSC preparing and they are preparing for the KIC. A brief has been prepared by your host and it is for the KIC and you are hosted at Wajir. Based on the documentation that we have up to this point, without the benefit of your appearance, Ambassador, of course, it would be correct to state that the meeting we are talking about is a KIC visit to the DSC in Wajir?

That is correct, without the benefit of your appearance.

**Amb. Bethwel Kiplagat:** No! It is not correct in terms of the objective of that trip, because the objective, as clearly stated, indicates that we were going there for development. We were going to look at the situation as a whole.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador and, those objectives were spelt out in the report that was prepared on the 24<sup>th</sup> May, 1984?

**Amb. Bethwel Kiplagat:** Correct.

**The Commission Secretary** (Ms. Nyaundi): Thank you. So, we are going back as at 1<sup>st</sup> February, 1984. That is my question to you. As at 1<sup>st</sup> February, 1984, before we cross over on to 24<sup>th</sup> February, 1984, at least, to Wajir. We have the minutes of 26<sup>th</sup> January, 1984, we have the programme that you were given, we have a list of the people who went and we have the brief that was given to you. And, all those are saying; “KIC Tour.” That is correct, ambassador?

**Amb. Bethwel Kiplagat:** The KIC Tour, I think it is repetition. Definitely, this was a KIC sponsored tour to look at the prevailing situation in terms of development and the welfare of the people on the ground. That is what it is! It is a KIC sponsored tour and that is why we went with experts from other departments. And, so he would have had the list to show that there are other people coming and not just the KIC. There must have been communication from the PC to inform them of the purpose of the trip.

**The Commission Secretary** (Ms. Nyaundi): And, the communication from the KIC is reflected in the briefs that are prepared before you arrive. That would be correct, Ambassador, is it not so?

**Amb. Bethwel Kiplagat:** I repeat again, I think there are two types of briefs. This could have been the brief on the security situation.

**The Commission Secretary** (Ms. Nyaundi): Addressed to the KIC, Ambassador?

**Amb. Bethwel Kiplagat:** Addressed to the KIC to inform them about the prevailing security situation in the country. However, the purpose of the trip, saying that: “please prepare yourself; give us your recommendation concerning the objectives of the trip.” I think this is very well reflected in the final Minute of the KIC tour of North Eastern Province.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. What we wanted to confirm---. There are two issues: there is before the trip, what the understanding of the trip was and there is a report after the brief. Those are two separate documents and, in terms of increasing my understanding, where I am with you Ambassador is, prior to the meeting when you go back and you are receiving the brief on the report. There is information that has gone out to the DSC and the PSC and it is originating from the Office of the President, and that information is that the KIC shall tour Wajir, Garissa and Mandera between the 8<sup>th</sup> and the 10<sup>th</sup>. That is accurate?

**Amb. Bethwel Kiplagat:** That is accurate!

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador.

**Amb. Bethwel Kiplagat:** But I repeat again, the KIC sponsored the trip because there were other people who were in that delegation and they remained as a delegation throughout.

**The Commission Secretary** (Ms. Nyaundi): Thank you Ambassador. So that we do not have to revisit it, you can confirm that in the communication, prior to your arrival in Wajir on the 8<sup>th</sup> February, based on the documents that you want to guide us with, there is nothing to say that it was a KIC sponsored tour; there is nothing to say that it is an inter-departmental tour. That is accurate based on the documents, not on your recollection?

**Amb. Bethwel Kiplagat:** Not on my recollection either, but on the purpose and I am sure each district commissioner---

**The Commission Secretary** (Ms. Nyaundi): Ambassador, I ask that we go through----

**Amb. Bethwel Kiplagat:** Let me finish!

**The Commission Secretary** (Ms. Nyaundi): I want to help you, Ambassador; allow me to help you.

**Amb. Bethwel Kiplagat:** Okay. Thank you.

**The Commission Secretary** (Ms. Nyaundi): So, Ambassador, let us look at the programme.

**Amb. Bethwel Kiplagat:** Okay.

**The Commission Secretary** (Ms. Nyaundi): Let us look at the programme that you were given and, it is in writing. We will only look at the documents in writing. Kenya Intelligence Committee, tour of North Eastern Province.

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, on that document, based on what is in writing, please point out to me what would show that this was a KIC sponsored trip to look at developments and other such things?

The tour of North Eastern Province by the Kenya Intelligence Committee (KIC) based on what is written, please, point out to me what would show that this was a KIC sponsored trip to look at developments.

**Amb. Bethwel Kiplagat:** It shows here that they went to Mandera, Takaba, Liboi, Hulugho and so on. There are possibilities that there were other projects. For example, on 10<sup>th</sup> Friday they visited ADC farm in Garissa. In Bura there was a road project and a transmitter station. It shows that programmes related to development were included.

**The Commission Secretary** (Ms. Nyaundi): We shall start from the heading of the document. What does it say?

**Amb. Bethwel Kiplagat:** It is the Kenya Intelligence Committee. I do not think that you can look at only the programme without looking at the delegation and without looking at the final report.

**The Commission Secretary** (Ms. Nyaundi): It is important for us to understand; when you left Nairobi what was the purpose of the trip? We are now looking at the membership of the delegation. There is a list of 24 and there is another one of 29 members. It is the list of 24 members that we had used earlier to confirm who was on the trip.

**Amb. Bethwel Kiplagat:** Let me also check the list of 29 members.

**The Presiding Chair** (Commissioner Chawatama): Counsel, it would help if your client responds to the questions being asked by the Leader of Evidence because it is step by step and that will help the Commission understand. So, allow for the step by step method. Whatever document the Leader of Evidence refers to is the one that we have.

**The Commission Secretary** (Ms. Nyaundi): I have now seen the document that has 29 people. We could look at them both. There is a list of 24 and the one for 29 members. It is usual that if you are going to a place to seek for information, the people you would be

inviting are the people giving you that information. For instance, if we wanted to find out about cows we would go to a dairy farm and we would be talking to the dairy farmer. Assuming that your objectives were to be met by the people you met, that would be a good guide to us. That is why I had asked you whether in your understanding, the various Ministries were represented at the provincial level and also at the district level.

**Amb. Bethwel Kiplagat:** They are normally there.

**The Commission Secretary** (Ms. Nyaundi): That is true. We can hope that that was the position in 1984. Let us look at the list of 24 members. Are you able to confirm that No.1-17 are people who came with you from Nairobi?

**Amb. Bethwel Kiplagat:** I cannot confirm but it is likely.

**The Commission Secretary** (Ms. Nyaundi): For instance, Mr. Kinyanjui, the Director of Land Adjudication was an officer from Nairobi; Mr. Macharia in Treasury was also from Nairobi; Mr. Kibera, we do not know where he came from so we will not make an assumption; Mr. Mayaka – External Aid was from Nairobi; Mr. Kaguthi was from Nairobi; Mr. Kihura of KP&TC was from Nairobi. From the list of 29 people, it looks like from number one to 14 were all from Nairobi.

**Amb. Bethwel Kiplagat:** That may be the case but I think we can confirm from the list.

**The Commission Secretary** (Ms. Nyaundi): You have the list. There is a list of 24 members and that of 29 members. From the list of 24, we have confirmed that up to No. 17 are people who joined you from Nairobi. On the list of 29 members we have confirmed that up to No.14 are people you came with from Nairobi.

**Amb. Bethwel Kiplagat:** That is to be confirmed.

**The Commission Secretary** (Ms. Nyaundi): It is in black and white. Even to assist us, if it was standard government procedure that if you are based at the province or at the district, then the title would be “District Officer or District Water Engineer, District KP&TC”. So, can we then confirm that the members of the delegation, and we want to believe that this list is exhaustive, the names are from No.18 to No.24 and on the list of 29 this would be No.15 to 29? I have had the benefit of hearing other witnesses who have guided me on the composition of both the Provincial Security Committee (PSC) and the District Security Committee (DSC). I just want to ask you whether you are aware of the composition of the membership of the PSC and DSC at that time?

**Amb. Bethwel Kiplagat:** I am not aware except from what I have read for you in the minutes.

**The Commission Secretary** (Ms. Nyaundi): We could look at the minutes of 26<sup>th</sup> January to get direction on what the membership of the PSC would have been. The minutes are dated 28<sup>th</sup> January. The Provincial Commissioner (PC) would be the chair,



the Provincial Police Officer (PPO) was a member, there is a representative from the army, the acting provincial special branch officer and the deputy PC would be the secretary.

Let us go to the list of 24 members; No.18 is the PC as the chair, there is the PPO, the acting provincial special branch officer and Lieutenant Muhindi, Commanding Officer 7KR who is the same as the one in the minutes of 26<sup>th</sup> January. We also have the DC Garissa, who according to the testimony we have heard, would be the chair of the DSC Garissa. There is also the Officer Commanding Police Department (OCPD) Garissa and there is the DSBO who would also be a member of the DSC Garissa. On the list of 29 members and this is attached to the report, beginning with number 15, we have the PC who is the Chair of the PSC North Eastern, the PPO, the acting PSBO, Mr. Muhindi, Mr. Lidambitsa – acting DC in Garissa, Mr. Muthuri OCPD Garissa, Mr. Joel – District Special Branch Officer, Garissa, Mr. Lekolol - Chair DSC Mandera, Mr. Njoroge – OCPD, Mr. Oluoch – DSBO Mandera and Major Kamau – Kenya Army Mandera. We also have Mr. Tiema who would be the chair DSC Mandera, Mr. Wabwire – member, Mr. Kibere – Member and Major Mudogo – member.

My understanding is that as you went for that tour, at the district level you met the PSC and the DSC. Is that accurate?

**Amb. Bethwel Kiplagat:** Yes, but with other people there. I do not know in other places but definitely as we travelled around, we had the experts from the Ministry of Finance, Ministry of Lands and so on. I also want to say that there were other experts with us in all the meetings.

**The Commission Secretary (Ms. Nyaundi):** You carried these experts to meet with the PSC and the DSC?

**Amb. Bethwel Kiplagat:** That was so in order to assist us with the objective of the trip.

**The Commission Secretary (Ms. Nyaundi):** The only reason is that all the experts are based in Nairobi?

**Amb. Bethwel Kiplagat:** Let me say that at the meeting itself, it is very possible but I do not have documentation to show that there may have been reports coming from other experts based at the district level.

**The Commission Secretary (Ms. Nyaundi):** So, we are only relying on the documentation that we have. This documentation informs us that of those who were slated to attend, I am assuming that No.1-17 were people who ought to have travelled. We have confirmed that others did not attend like Mr. Muliro but he is on the list. Also Mr. Gachuhi did not attend but he is on the list. So, No.1-24 is a list of people who ought to have been on the trip?

**Amb. Bethwel Kiplagat:** The list of those who travelled are on the list of 29 members. That list is from the Office of the President.

**The Commission Secretary (Ms. Nyaundi):** The Government is not in the business of making unnecessary trips, so if you could have a useful discussion, you could have held it in Nairobi because the experts you met with are based in Nairobi but you went to Wajir, Mandera and Garissa because there was a purpose.

**Amb. Bethwel Kiplagat:** It is clearly stated “familiarization tour for members of the KIC and secondly to look at the welfare”. If we are remaining with documents let us stick to them. That is the only thing that will help us.

**The Commission Secretary (Ms. Nyaundi):** What I am doing is getting a justification of not holding the discussion in Nairobi. As you said, if the objective is to get the welfare of people who are in Garissa, it explains why you went to Garissa. So, we will get to the report. I am requesting that you allow me to lead you.

When I look at this list, based on the experts you were relying on, I cannot fail to see that they were all from Nairobi. Is that correct?

Is it possible that Mr. Kinyanjui was ordinarily sitting in Garissa?

**Amb. Bethwel Kiplagat:** These are experts from Nairobi.

**The Commission Secretary (Ms. Nyaundi):** So, would I be correct in saying that it would have been possible for you to have had a meeting in Nairobi with your experts?

**Amb. Bethwel Kiplagat:** Again if you look at the documents you can see that we visited ADC farm to acquaint ourselves with what was going on. We visited road projects and transmission stations. In the final report, what came out were the recommendations and financial implications. That is why we had officers from the Ministry of Finance.

**The Commission Secretary (Ms. Nyaundi):** We will get to the report but I am still on the list. I would not be wrong if I was of the view that the experts who dealt with issues outside of security were all based in Nairobi?

**Amb. Bethwel Kiplagat:** They went there for a purpose.

**The Commission Secretary (Ms. Nyaundi):** If the intention of the Kenya Intelligence Committee was to get the views of the Director of Land Adjudication only, this could have been done in Nairobi.

**Amb. Bethwel Kiplagat:** Not necessarily.

**The Commission Secretary (Ms. Nyaundi):** If for instance you wanted a view on aerodromes you would have gotten it from Mr. Okumu in Nairobi.

**Amb. Bethwel Kiplagat:** Not necessarily. He can go there and see what is going on.

**The Commission Secretary** (Ms. Nyaundi): But it would have been more convenient to go into a boardroom and request to hear about aerodromes.

**Amb. Bethwel Kiplagat:** Not necessarily.

**The Commission Secretary** (Ms. Nyaundi): That you had a particular interest and that is why you moved with these people to Wajir, Mandera and Garissa.

**Amb. Bethwel Kiplagat:** We had an interest in the familiarization tour and also to acquaint ourselves with the problems in North Eastern Province in terms of development and the welfare of the people.

**The Commission Secretary** (Ms. Nyaundi): As part of your familiarization, we have seen that in the confirmed list of the people that you met from 8<sup>th</sup> to 10<sup>th</sup> February, we have the PSC for North Eastern, the DSC for Garissa, the DSC Mandera and DSC Wajir. These are the people that you met at the respective stops and they briefed you.

**Amb. Bethwel Kiplagat:** The District Commissioner (DC) is in charge of all the others. He is the coordinator of development and administration of a district. He is not just the chairman of the DSC. He has other functions. This is applicable also to the PC.

**The Commission Secretary** (Ms. Nyaundi): The only documents that we have of the presentations that were made to you is the one given to us by Mr. Tiema who was the Acting DC. He signed that he is giving it to the KIC as the chairman of the DSC and DC Wajir. The briefings that you received as you went round were from the chairs of respective DSCs and the PSCs.

**Amb. Bethwel Kiplagat:** That is from the members who were there and not necessarily from the DC or PC.

**The Commission Secretary** (Ms. Nyaundi): We can now go to the report. On page 2 it talks about the meeting with the DSC Mandera. That is the title. Based on the documents that we had we can confirm that this delegation met with the DSC and not just anyone in the district.

**Amb. Bethwel Kiplagat:** That is true.

**The Commission Secretary** (Ms. Nyaundi): Let us assume that this report was comprehensive of the discussions that were held. So, we are looking at page 36, the first line says: "New Mandera District Headquarters." Are you there?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): The report says that the acting DC briefed the committee on the security situation in the district. Tribal clashes between the Degodia and the Ajuran had slightly improved. The Degodia were reluctant to surrender firearms. The Ajuran who surrendered more firearms feared that they might be victimized. All together 34 firearms had been surrendered of which the Ajuran surrendered 28. The other thing that you discussed in Wajir was the fencing of police divisional headquarters. Those are the two issues that were picked up in Wajir.

Many witnesses have come before the Commission and have spoken about the meeting on 8<sup>th</sup> February, 1984. Amongst them was the Acting DC, Mr. Tiema. Mr. Tiema informed us that he shared this brief with the KIC and based on the evidence of Mr. Matui who was the substantive DC. He shared with us a report dated 27<sup>th</sup> February, 1984. What Mr. Tiema and Mr. Matui informed us is that the KIC was given incidents that had occurred in the recent past and that in particular they were informed that on 29<sup>th</sup> January, 1984 near Eldas an Ajuran woman was attacked by a group of men who beat her and raped her. She identified them as Degodia. A similar event occurred in the same area again. Mr. Tiema told us, and Mr. Matui confirmed, that the KIC were told of those incidents that occurred on 29<sup>th</sup>, 1<sup>st</sup> and 3<sup>rd</sup> February, 1984. In all those incidents the Degodia were the aggressors and the Ajuran were the victims. As a person who was in the boardroom on 8<sup>th</sup> February, 1984 do you recollect the Acting DC giving you that brief?

**Amb. Bethwel Kiplagat:** I cannot recollect. The only things that I am looking at are the Minutes that were captured.

**The Commission Secretary** (Ms. Nyaundi): Regarding the meeting with the DSC, it is true that the DC briefed the committee on the security situation in the district. He said that tribal clashes between the Degodia and Ajuran had slightly improved and that the Degodia were reluctant to surrender firearms. Do you remember those issues being discussed?

**Amb. Bethwel Kiplagat:** I do not remember. I am using the Minutes to recollect.

**The Commission Secretary** (Ms. Nyaundi): Based on the minutes, we can see that the discussion says that the Ajuran who surrendered more firearms feared that they might be victimized. The words of Mr. Tiema and Mr. Matui were that the Ajuran felt exposed and needed Government protection. Would you as the Permanent Secretary, Ministry of Foreign Affairs together with other PSs and the PC of the region hear a section of Kenyans saying that they require Government protection and not respond to it?

**Amb. Bethwel Kiplagat:** Again from the documents, the PSC in the Minutes of 26<sup>th</sup> did indicate that the situation in Wajir had improved.

**The Commission Secretary** (Ms. Nyaundi): Please, do not take me to the Minutes. I would like if we could stick to the report. Is it conceivable that high level officials like

yourself who sit on the intelligence committee and you hear Kenyans saying they want Government protection; is it conceivable that you would have said nothing?

**Amb. Bethwel Kiplagat:** What is captured in the Minutes for the meeting in Wajir where it says that the situation had improved? Also in the Minutes of the PSC it does give a similar indication.

**The Commission Secretary (Ms. Nyaundi):** We can confirm that the same Minutes say that the Ajuran who surrendered more firearms fear that they might be victimized. In the recent past, I have also been in a position where I detail things that must be actioned. My understanding is that when something has been handled, you do not need to action it. Is that your understanding?

**Amb. Bethwel Kiplagat:** I do not understand you.

**The Commission Secretary (Ms. Nyaundi):** We have meetings and we will come up with resolutions, but in some meetings, you were able to say, that it is finalized. As you leave the meeting, the matter is resolved so it will not be actioned.

**Amb. Bethwel Kiplagat:** If you are making a proposal that you want to do the following, then it should be reflected in the Minutes. Whatever that has to be done must be mentioned.

**The Commission Secretary (Ms. Nyaundi):** In the report, there is the fencing of police divisional headquarters. The Provincial Police Officer (PPO) wanted the divisional police headquarters and the police lines fenced off as they are at present exposed. He should submit an estimate of the cost and the type of fence proposed. The PPO was supposed to submit the cost and the type of fence. For example in Liboi Border Post, the Ministry of Public Works should give the latest estimate so that it can be decided whether to build it in phases if the cost of the project is too high. In Takaba Airstrip, the construction of the same by the Ministry of Transport and Communication was going on well, so no action was to be taken. Regarding land adjudication, the Director of Land Adjudication explained the problems that might crop up in adjudicating the small farms along the river owned by a few individuals. So, it was advisable to shelve the proposal for the time being. That means there was no action.

Let us now go to the meeting of the DSC where the Acting DC briefed the committee on the security situation in the district. He said that tribal clashes between the Degodia and Ajuran had slightly improved and the Degodia were reluctant to give up arms.

So, we now go to the meeting with the DSC. The Acting DC briefed the Committee on the security situation in the district. He said that the situation of the tribal clashes between the Degodia and the Ajuran clans had slightly improved. The Degodia were reluctant to surrender their firearms. The Ajuran, who surrendered more firearms, feared that they might be victimised. All together, 34 firearms had been surrendered, of which the Ajuran

had surrendered 28. There was no action because the situation had been handled. Is that so, Amb. Kiplagat?

**Amb. Bethwel Kiplagat:** As given here, the situation had improved.

**The Commission Secretary (Ms. Nyaundi):** The situation had been handled?

**Amb. Bethwel Kiplagat:** No, it had been improved.

**The Commission Secretary (Ms. Nyaundi):** The situation had been improved but in terms of the Degodia, who felt that they were being victimised, there was no need for action because the situation had been handled, if we go by the pattern. I see that on all the matters that were pending, there was action to be taken. On the next page, the document says:-

“AP houses which were not completed should be completed as a matter of urgency. The DS/F was instructed to take up the matter and get funds to complete them. Action DSF; allowances of security personnel; action.”

So, this is what was going on, according to the report. Everything that was pending was being acted upon. It was only the things that had been finalised on which there was no action.

**Amb. Bethwel Kiplagat:** Which ones were those?

**The Commission Secretary (Ms. Nyaundi):** Repair was being acted upon. On land adjudication, at the bottom of page four, the report says:-

“The Director of Land Adjudication explained the problems that might crop up in adjudicating the small farms along the River Doa owned by a few individuals. It is advisable to shelve the proposal for the time being.”

So, the proposal was being shelved. No one was going to pick it up. There was no action to be taken on it. The construction of the airstrip by the Ministry of Transport and Communications was going on well, according to schedule. No one had to act it. Was that so?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary (Ms. Nyaundi):** The report goes on to say:-

“Purely on the same understanding, a site has been identified around the Gari Hills at Ashabito. The deciding factor is water. However, the process of moving the headquarters there should be a slow process. There was no action on this one because we depended on water; we have identified that it would be a slow process. So, there was no action on it.”

On the meeting with the DSC, the report says: “The DC briefed the Committee on the security situation in the district”.

You had been briefed. So, there was no action. Was that so?

**Amb. Bethwel Kiplagat:** Well---

**The Commission Secretary** (Ms. Nyaundi): He said that the tribal clashes between the Degodia and Ajuran had slightly reduced. No action. There was nothing to be done.

He said that the Degodia were reluctant to surrender firearms. No Action.

He further says that the Ajuran, who surrendered more firearms, feared that they might be victimised. That was a fact. You were not the Secretary. He did not mark it to anyone on the 24<sup>th</sup> of May, because there was nothing to be done on that day. Was that so?

**Amb. Bethwel Kiplagat:** Very well.

**The Commission Secretary** (Ms. Nyaundi): All together, 34 firearms had been surrendered, of which the Ajuran had surrendered 28. So, there was no action to be taken after the 24<sup>th</sup> of May, 1984. Was that not so?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. Now, there are Minutes you furnished us with, and we would like to have an understanding of the working between the PSC and the KIC. These are the Minutes for the meeting of the Provincial Security Committee (PSC) held on 23<sup>rd</sup> February, 1984. I will refer you to page three, Minute 27/84, which continues on page four:-

“---but according to these Minutes, the PSC has received a schedule of KIC meetings.”

Is that true?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, looking at this schedule, would it be correct to state that the PSC had scheduled to hold its meetings one week before the KIC, on a monthly basis?

**Amb. Bethwel Kiplagat:** That one, I do not know.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, we are looking at the Minutes. Let us look at page three, the schedule for KIC meetings for 1984. On page four, it is shown that there was going to a meeting on 31<sup>st</sup> January, 1984. Was that so?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): The PSC members agreed to hold their meetings on 23<sup>rd</sup> February, 1984.” Was that true?

**Amb. Bethwel Kiplagat:** It is in the schedule.

**The Commission Secretary** (Ms. Nyaundi): So, according to this schedule, the PSC would have held its meeting on 23<sup>rd</sup> February, and the KIC would have held its meeting on 28<sup>th</sup> February?

**Amb. Bethwel Kiplagat:** Yes, according to the schedule.

**The Commission Secretary** (Ms. Nyaundi): We can assume that at this meeting, although I can see that the PSC---. They had the benefit of your schedule of meetings?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): So, they were to have a meeting on 23<sup>rd</sup> February, 1984. You were to have yours on the 28<sup>th</sup>. They would have had theirs on the 27<sup>th</sup>, you would have had yours on the 3<sup>rd</sup> of April, 1984. Was that so?

**Amb. Bethwel Kiplagat:** Yes, it was that way on the schedules.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, the last part of Minute 27 says:-

“The PSC directed that the DSCs should adjust their meetings to come a week before PSC’s meetings.”

That would be accurate. Is that in the minutes?

**Amb. Bethwel Kiplagat:** Yes, it is in the PSC minutes.

**The Commission Secretary** (Ms. Nyaundi): What we are seeing then is that the meetings of the DSC fed the meetings of the PSC, which in turn fed the meetings of the KIC. Is that accurate?

**Amb. Bethwel Kiplagat:** I think we had better check on that one. What was the communication between the DSCs and the National Security Committee? Communication went from the DSCs to the PSC. Then from there---



**The Commission Secretary** (Ms. Nyaundi): Ambassador, what I am requesting is that we base our conclusions on the documents that we have, and we can correct it when we get additional documents.

**Amb. Bethwel Kiplagat:** Yes, but we cannot refer---

**The Commission Secretary** (Ms. Nyaundi): Based on the documents that we have, the PSC was asking the DSCs to adjust their meetings to come a week before the PSC meetings. Is that accurate?

**Amb. Bethwel Kiplagat:** That is okay.

**The Commission Secretary** (Ms. Nyaundi): And the PSC had adjusted its meetings to a week before the KIC meetings. Is that correct?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): One can, therefore, conclude that the three organs were related. Is that correct?

**Amb. Bethwel Kiplagat:** Yes, they were related through the Office of the President, but there were two organisations at the headquarters. There is the Kenya Security Committee (KSC) and the Kenya Intelligence Committee (KIC). So, this is where we need to make--  
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**The Commission Secretary** (Ms. Nyaundi): Ambassador, you will allow me to lead and if I forget, you will remind me to ask you to share with us the connection between the KIC and the KSC.

**Amb. Bethwel Kiplagat:** I would rather not give you that, but the experts are here.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Ambassador. So, based on this schedule, we can assume that the KIC met on 28<sup>th</sup>. It also met on the 3<sup>rd</sup>. It met on the 2<sup>nd</sup>, up to the 3<sup>rd</sup> of January, 1985. We can also assume that the KIC had the intention of meeting once every month, from January, 1984 to January, 1985, except that there was an emergency. Was it the practice? You have shown us that at least the DSC and the PSC kept Minutes. Did the Kenya Intelligence Committee keep Minutes?

**Amb. Bethwel Kiplagat:** Yes, there were Minutes kept.

**The Commission Secretary** (Ms. Nyaundi): There were Minutes kept and, therefore, on top of the report that was circulated on the 24<sup>th</sup> of May, 1984, there would be Minutes of meeting of 8<sup>th</sup> February, 1984?

**Amb. Bethwel Kiplagat:** Every meeting would have Minutes.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, for instance, were you the Permanent Secretary (PS), Ministry of Foreign Affairs, until 3<sup>rd</sup> January, 1985?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): Therefore, you would have been attending those meetings?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): And you can confirm that for all the meetings you attended, there were Minutes?

**Amb. Bethwel Kiplagat:** Yes, there were Minutes.

**The Commission Secretary** (Ms. Nyaundi): There were Minutes by Mr. Mwangovya?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, you said that one of the actions that you took immediately you assumed that office of PS was to arrange a visit between the Head of State, Kenya, and the Head of State, Somalia?

**Amb. Bethwel Kiplagat:** It was to organise for a state visit to Somalia.

**The Commission Secretary** (Ms. Nyaundi): Who was in that trip?

**Amb. Bethwel Kiplagat:** I cannot remember who was on the list.

**The Commission Secretary** (Ms. Nyaundi): At least you were on it?

**Amb. Bethwel Kiplagat:** I was on it. The President was on it. The list is there. If one goes to the archives, he will find it.

**The Commission Secretary** (Ms. Nyaundi): That is all right. You are confirming that our President was on it?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): And that would be Daniel arap Moi?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): Is it safe to assume that if you went with our President, you met the Somali President?

**Amb. Bethwel Kiplagat:** Meeting in what way? Talking with him or seeing him or greeting him?

**The Commission Secretary** (Ms. Nyaundi): My assumption is that if our President crosses our border into another country, his eyes must fall on his equal, under whatever circumstances.

**Amb. Bethwel Kiplagat:** That is why we went for a visit. We were invited. So, I shook hands with him.

**The Commission Secretary** (Ms. Nyaundi): So, you shook hands with the President of Somalia in the presence of our President?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, we would like you to shed light. We appreciate that you have directed us that this information is available. What was the agenda of that trip?

**Amb. Bethwel Kiplagat:** The agenda of the trip was to normalise relations between Kenya and Somalia.

**The Commission Secretary** (Ms. Nyaundi): When was this? Was it in 1982 or 1983 or 1984?

**Amb. Bethwel Kiplagat:** I think it was in 1986, but we can check the dates.

**The Commission Secretary** (Ms. Nyaundi): We can check the dates but you were appointed PS, Foreign Affairs, in 1982?

**Amb. Bethwel Kiplagat:** I was appointed in September, 1983.

**The Commission Secretary** (Ms. Nyaundi): So, when you say that you arranged for it immediately you were appointed PS, my assumption is that it would have been in the first year or second year of your term as PS.

**Amb. Bethwel Kiplagat:** No, it was not in the first or second year. It was around 1986. Let us confirm the dates but, definitely, it was not in 1983 or 1984.

**The Commission Secretary** (Ms. Nyaundi): While you were the PS, Foreign Affairs, you sat on the KIC and, according to this schedule, one can assume that when you met on the 31<sup>st</sup> January, you would have received the minutes or a briefing--- I am looking at the minutes that you have furnished us with of the PSC. It was their practice at each meeting, to acknowledge receipt of minutes. For instance, Minute 32/84 of the meeting on 23<sup>rd</sup> February, whose Minutes are dated 24<sup>th</sup> February, at page five, shows that it was the PSC's practice to acknowledge the Minutes of Garissa, Wajir and Mandera DSCs, these

being districts within the PSC's jurisdiction. I am, therefore, assuming that, as the KIC, when you met, part of what you would be doing would be confirming receipt of Minutes.

**Amb. Bethwel Kiplagat:** We never received Minutes from the PSCs.

**The Commission Secretary** (Ms. Nyaundi): As the KIC, did you receive briefs from the PSC?

**Amb. Bethwel Kiplagat:** The brief was given by the relevant institutions concerning what they had. For example, the Head of Prisons would give us his brief. The Minister for Finance would give his brief. The Office of the President would give us a general brief, and I would give my brief.

**The Commission Secretary** (Ms. Nyaundi): But given the way the PSC had structured its Minutes, they were for your benefit?

**Amb. Bethwel Kiplagat:** The Minutes never came to the KIC. There was no time if we received Minutes of all the provinces as the PSCs were dealing with the districts.

**The Commission Secretary** (Ms. Nyaundi): I was just seeking to understand this: Would the PSC inform the PS, Internal Security?

**Amb. Bethwel Kiplagat:** The PS, Internal Security, would receive reports from every corner of the country, everyday.

**The Commission Secretary** (Ms. Nyaundi): Sitting in the KIC with you, he would be the one who would deliver?

**Amb. Bethwel Kiplagat:** He would not deliver everything. He would decide on what he wanted to share with us.

**The Commission Secretary** (Ms. Nyaundi): So, what we can take from this structure is that the PSC was giving itself time to communicate to its PS, who would then communicate to you at your meetings?

**Amb. Bethwel Kiplagat:** The PS would decide what to communicate to us. That was why we would have to check the Minutes to establish what information the PS, Internal Security, had given to the KIC during those dates, but I do not have those Minutes.

**The Commission Secretary** (Ms. Nyaundi): In fact, KIC was national. So, you would not just be receiving information from the northern Kenya region but from the whole country?

**Amb. Bethwel Kiplagat:** We would get a report of what they considered to be essential for us to know what was going on in the country, in terms of security.

**The Commission Secretary** (Ms. Nyaundi): During this trip, you arrived in Wajir. After you were done with Wajir, you went to Takaba, but you had a night stop in Garissa?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): Mr. Ndirangu, an Acting Special Branch Officer, informed us that on the 9<sup>th</sup> of February, 1984, he received information, through the PPO, Mr. Aswani, that there had been an operation that had commenced in Wajir. A decision had been made at 3.00 p.m., and there was a request for reinforcement. That was on the 9<sup>th</sup>. He said that he received this information while he was going for dinner. On the 9<sup>th</sup> of February, 1984, did you accompany the rest of the delegation to a dinner at the house of the Provincial Commissioner, NEP?

**Amb. Bethwel Kiplagat:** I would not recall that. I do not remember. I may have gone, I may not have gone.

**The Commission Secretary** (Ms. Nyaundi): Do you remember whether after your trip to Wajir, you went to Garissa or did you go back to Nairobi?

**Amb. Bethwel Kiplagat:** I am sure that from Garissa, we came directly to Nairobi.

**The Commission Secretary** (Ms. Nyaundi): According to your programme, you were to have gone to Wajir. You had lunch and then proceeded to Mandera?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): You had a night stopover in Mandera. On the 9<sup>th</sup>, you were to leave for Takaba, Liboi and Hulugho. You were to have lunch at Liboi, and a night stopover in Garissa?

**Amb. Bethwel Kiplagat:** That is correct.

**The Commission Secretary** (Ms. Nyaundi): Were you part of the official programme or did you pull out at some stage?

**Amb. Bethwel Kiplagat:** I was in the delegation.

**The Commission Secretary** (Ms. Nyaundi): So, you had a night stop in Garissa on the 9<sup>th</sup> of February, 1984. Did you have a dinner at the house of the PC, NEP?

**Amb. Bethwel Kiplagat:** I do not remember whether we had dinner or we did not.

**The Commission Secretary** (Ms. Nyaundi): So, we will rely on the memory of Mr. Ndirangu, who appears to have seen you at the diner.

Before we leave Wajir, apart from the DC's office--- You have told us that while in Mandera, you took time to visit other places. Is that what you did for all the regions?

**Amb. Bethwel Kiplagat:** That would depend on the report on where we visited. Also, I would not be able to recall where else we visited – whether we changed the plan or went along with it.

**The Commission Secretary** (Ms. Nyaundi): The Commission will call a witness, and we will invite you to that hearing. His name is Mohamud Ali Ahmed. He is one of the persons who were detained by the DSC. In his statement, which was furnished to us this morning, he states that while at the police station, they received a group of visitors, led by the PC, NEP, Mr. Kaaria, and the OCPD, Wajir. He states that he recollects you being there. Do you have a recollection of going to the--- We are actually informed that this statement may have come into your possession at the tribunal. Is that correct?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): So, do you have a recollection of having gone to the police station?

**Amb. Bethwel Kiplagat:** I do not, but we can confirm.

**The Commission Secretary** (Ms. Nyaundi): Therefore, you would have no recollection when Mohamud says that you specifically asked: “*Hawa ni nani?*” meaning “who are these?” to which the OCPD responded “*Hawa ni Degodia ambao tulishika juzi*”, meaning “these are Degodias we arrested recently”. Do you have any recollection of that?

**Amb. Bethwel Kiplagat:** No, I do not.

**The Commission Secretary** (Ms. Nyaundi): The witness will come to say this. So, it is important that you understand it. This witness said that you asked the OCPD: “*Nyinyi mnaangalia hawa kwa nini, si muwamalize?*” which translates to: “Why are you looking after these people? Why do you not finish them?” Do you have a recollection of that?

**Amb. Bethwel Kiplagat:** I would never say a thing like that.

**The Commission Secretary** (Ms. Nyaundi): The witness says that your identity was revealed to him by the other police officers. So, just by way of confirming that, regardless of whatever information the Commission gets after today, your position will be that you did not go to the police station in Wajir.

**Amb. Bethwel Kiplagat:** I have said here that I am not sure whether we went there or not; this is what we want to check; but it is not true that I uttered those words.

**The Commission Secretary** (Ms. Nyaundi): But you invite the Commission to check whether the delegation went to the police station?

**Amb. Bethwel Kiplagat:** Of course; absolutely.

**The Commission Secretary** (Ms. Nyaundi): Thank you. The other information that we have received is that as the PS, Foreign Affairs, you received a protest note from 19 foreign missions in the country. Do you have a recollection of this?

**Amb. Bethwel Kiplagat:** I do not remember that.

**The Commission Secretary** (Ms. Nyaundi): You do not remember 19 heads of foreign missions protesting?

**Amb. Bethwel Kiplagat:** I do not remember.

**The Commission Secretary** (Ms. Nyaundi): My assumption is that it is not a common occurrence for foreign missions to protest.

**Amb. Bethwel Kiplagat:** Did the 19 come to our office?

**The Commission Secretary** (Ms. Nyaundi): There is an allegation that you received protest notes from them.

**Amb. Bethwel Kiplagat:** I do not remember that.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, again, this will be useful to the Commission. During your tenure, was it the practice of foreign missions to frequently protest to us?

**Amb. Bethwel Kiplagat:** Not frequently, but whenever they had an issue. This is a diplomatic practice. If you want to protest, you can protest.

**The Commission Secretary** (Ms. Nyaundi): Would you have any recollection of any protest that you received while you were the PS, Foreign Affairs?

**Amb. Bethwel Kiplagat:** The only protest I received was when Matiba was detained. The particular embassy wanted to know whether he was receiving all the things that he needed. The embassy also wanted to know his health situation, and I furnished it with that information.

**The Commission Secretary** (Ms. Nyaundi): The information we got was that soon after the incident in February--- Just looking at the minutes and even the report, drought and famine were matters of great concern at that time in the northern Kenya region, was it so?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): The information we received was that agencies that sought to provide medical and food relief were unable to access Wajir.

**Amb. Bethwel Kiplagat:** I am not aware of that information.

**The Commission Secretary** (Ms. Nyaundi): We have been informed that, in particular, AMREF, who were trying to deliver food, were completely unable to do so, and that you received that information.

**Amb. Bethwel Kiplagat:** No, I did not receive such information.

**The Commission Secretary** (Ms. Nyaundi): We were told that this was the basis upon which 19 foreign missions presented you, as the PS, Foreign Affairs, with a protest note.

**Amb. Bethwel Kiplagat:** I do not recall that.

**The Commission Secretary** (Ms. Nyaundi): You do not recall, but you invite the Commission to confirm it?

**Amb. Bethwel Kiplagat:** Please, do.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, just to be clear, you are not saying that you did not receive the protest notes. You are only saying that you do not recall?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, we have heard that the northern Kenya region, including Wajir, was an operation zone, and that emergency laws were operating. What, in your understanding, did this mean?

**Amb. Bethwel Kiplagat:** Emergency laws are emergency laws.

**The Commission Secretary** (Ms. Nyaundi): What did that mean for the inhabitants of that region?

**Amb. Bethwel Kiplagat:** I really would request those who were dealing with security to give you the details of what emergency laws were being put into practice at that time.

**The Commission Secretary** (Ms. Nyaundi): But we would say that there was escalation of insecurity?

**Amb. Bethwel Kiplagat:** That must have been the reason.



**The Commission Secretary** (Ms. Nyaundi): What this would mean also is that the army would play a central role in preservation of security, or the army would have a role to play in the preservation of security?

**Amb. Bethwel Kiplagat:** As we were told the other day, the military has a role to play everywhere, and there was a specific situation in the North Eastern Province.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, there is a clip I had intended to show you. As our officers prepare to show us that clip, I have just one question. When did the documents that you have furnished the Commission with come into your possession and how?

**Amb. Bethwel Kiplagat:** I would like to keep that to myself.

**The Commission Secretary** (Ms. Nyaundi): It would be of benefit to the Commission because the Commission has sought them. Your Counsel had sought them. It may be useful to the Commissioners. We will know who to approach for these documents. That is the only reason as to why I am asking you this question. Is that information you can share with us?

**Amb. Bethwel Kiplagat:** I think you can now access all the information. I think it will be available to you.

**The Commission Secretary** (Ms. Nyaundi): While you were the PS, Foreign Affairs, part of your responsibilities was to brief newly appointed ambassadors?

**Amb. Bethwel Kiplagat:** That is correct.

**The Commission Secretary** (Ms. Nyaundi): You would also have regular meetings with the serving ambassadors. I see it happening even today. Ambassadors who were serving would be recalled and updated?

**Amb. Bethwel Kiplagat:** Yes, every one or two years.

**The Commission Secretary** (Ms. Nyaundi): And as the PS, you would be charged with the responsibility of briefing and counselling them?

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): One of the witnesses who appeared before the Commission, Mr. Kamenchu, was also one of those who accompanied you to Wajir. He stated that when he was appointed an ambassador you gave them certain advice and that, specifically, you advised them that “we should treat our people well”, and that you referred to the Wagalla incident. Do you have a recollection of that briefing?

**Amb. Bethwel Kiplagat:** I do not have recollection, but he has reminded me. I must have told them to treat everybody equally.

**The Commission Secretary** (Ms. Nyaundi): In fact, his recollection was that you advised them on how to communicate issues to none Kenyans who inquire into matters. Do you have a recollection of you giving them that counsel?

**Amb. Bethwel Kiplagat:** I do not have any such recollection.

**The Commission Secretary** (Ms. Nyaundi): You do not recollect advising them to protect the image of the country?

**Amb. Bethwel Kiplagat:** That is something we would normally do.

**The Commission Secretary** (Ms. Nyaundi): That is standard?

**Amb. Bethwel Kiplagat:** Yes, that is standard, but not protecting the wrongs that are done.

**The Commission Secretary** (Ms. Nyaundi): Commissioners, my apologies. There is a clip by *KTN* which I wanted to show the Ambassador. There appears to be a technical hitch. So, I ask that we be patient. It is the last thing in dealing with the witness.

As we wait for the clip, Ambassador, when you say that part of what you went there to do was to determine the problems faced by civil servants, were you able to determine what those problems were?

**Amb. Bethwel Kiplagat:** This is reflected in the final report and recommendations, which are there.

**The Commission Secretary** (Ms. Nyaundi): In the final report?

**Amb. Bethwel Kiplagat:** Yes, the final report termed “the Minutes of the KIC”.

**The Commission Secretary** (Ms. Nyaundi): This is on page 10?

**Amb. Bethwel Kiplagat:** There is a list of recommendations that were made concerning the welfare of the civil servants.

**The Commission Secretary** (Ms. Nyaundi): Ambassador, are you referring to page 10?

**Amb. Bethwel Kiplagat:** It is covered all over, and not just on one page.

**The Commission Secretary** (Ms. Nyaundi): It is like the clip is coming.

*(A clip by KTN was replayed for Amb. Kiplagat)*

Ambassador, I do not know whether you were able to follow that clip.

**Amb. Bethwel Kiplagat:** Not very clearly.

**The Commission Secretary** (Ms. Nyaundi): The sound was not as good as it should be. But it is an interview you had with the KTN crew. Based on your responses, it appears that the questions that were put to you were whether--- You deny participating in any massacre or the planning of any massacre. Are those the questions that were put to you?

**Amb. Bethwel Kiplagat:** I do not remember if they asked me that question. If they, indeed, asked me then I would have answered it that way, but I did not hear the question.

**The Commission Secretary** (Ms. Nyaundi): Okay. We will just play it back so that you listen to what it is that you were saying.

**Amb. Bethwel Kiplagat:** That is clear, but whether the question was put to me is what I did not hear.

**The Commission Secretary** (Ms. Nyaundi): Is it your understanding that all along, when you have been asked, the thinking has been that you issued an order, directed or planned what happened at the Wagalla Airstrip?

**Amb. Bethwel Kiplagat:** I had never done that.

**The Commission Secretary** (Ms. Nyaundi): I beg your pardon?

**Amb. Bethwel Kiplagat:** I never directed or planned.

**The Commission Secretary** (Ms. Nyaundi): That is why I am asking: Is that your understanding?

**Amb. Bethwel Kiplagat:** It is not my understanding; I never planned.

**The Commission Secretary** (Ms. Nyaundi): So, when you were denying, based on the newspaper reports that we had for 29<sup>th</sup> May, 2010--- There again you say that this was an operational issue.

**Amb. Bethwel Kiplagat:** Yes.

**The Commission Secretary** (Ms. Nyaundi): So, is your statement that you were not an operational man?

**Amb. Bethwel Kiplagat:** I am not in charge of operations.

**The Commission Secretary** (Ms. Nyaundi): But do you consider yourself a policy man?

**Amb. Bethwel Kiplagat:** Policy on foreign affairs, yes.

**The Commission Secretary** (Ms. Nyaundi): In KIC, do you consider yourself a policy man?

**Amb. Bethwel Kiplagat:** Advisory on foreign policy.

**The Commission Secretary** (Ms. Nyaundi): But you sat in the KIC?

**Amb. Bethwel Kiplagat:** That is right.

**The Commission Secretary** (Ms. Nyaundi): The KIC is an advisory body?

**Amb. Bethwel Kiplagat:** That is correct.

**The Commission Secretary** (Ms. Nyaundi): That means that people bring you issues and you offer counsel.

**Amb. Bethwel Kiplagat:** We share information.

**The Commission Secretary** (Ms. Nyaundi): Now, Ambassador, I am going to ask you a question. As someone who sits in an advisory body, you have moved with experts from Nairobi. You are seated with the PSC and DSC and they are telling you that Ajurans need the protection of the Government, did you or anyone else on the KIC give advice, counsel or direction?

**Amb. Bethwel Kiplagat:** At that very moment, this was the responsibility of the PSC to give whatever advice that they had to give. We did not give advice.

**The Commission Secretary** (Ms. Nyaundi): So, on the meeting of 8<sup>th</sup> February, 1984 when the issue was raised you made it clear that, that is the business of the PSC and DSC?

**Amb. Bethwel Kiplagat:** Not that we made it clear, but the District Security Committee had told us that the situation had improved. You can see it from his own statement. That is why in my submission I have said that there seemed not to be anything requiring immediate action. This is because the indications are very clear; the relationship has improved.

**The Commission Secretary** (Ms. Nyaundi): Yes, but they also said that whereas--- The District Commissioner (DC) , Mr. Matui, when he read his statement to us said that it was relative improvement, but in that region it still meant that there was no peace. The other thing he informed us is that at that meeting, the KIC was told that there had been incidents on 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup>. According to the report you were receiving as the KIC, one community is being victimized on account of the Government requirement that they

surrender arms. In fact, in the minutes of the DSC that you have read out to us, for 9<sup>th</sup> February, it appears that the Government had to make it clear that it was protecting the Ajurans. So, my question based on presentations made to us by Tiema is: When as a member of the KIC you heard that the Ajuran felt that they were being victimized, did you give counsel or direction? Did you hear any other member of the KIC give counsel or direction?

**Amb. Bethwel Kiplagat:** I did not hear any member that gave counsel. I think, again, the reports that are recorded are right here. The PC's own reaction, which I have read, shows that they were surprised by the decision of the District Security Committee (DSC). They were not informed. I think I read that Minute.

**The Commission Secretary (Ms. Nyaundi):** Before the meeting of 23<sup>rd</sup> February, there is the meeting on 14<sup>th</sup> February. In fact, there are two meetings, but we will start with the meeting at 8.45. I believe these are Minutes that you had and have looked at. On 14<sup>th</sup> February, in fact, Mr. Ndirangu has informed us that he left Garissa and went to Wajir to observe the situation and came back on 14<sup>th</sup> for a meeting. We will just go straight to page 3 to deal with the issue of whether PSC was surprised and not informed. This is on 14<sup>th</sup> February. It reads:-

“We have information that this is around the time people were being released from the airstrip. Mr. Ndirangu, a member of the PSC has been to Wajir for additional information.”

This is before 23<sup>rd</sup> February. What the PSC is saying in the second paragraph, on page 3 is:-

“This was, indeed, commendable since the interrogations were yielding the desired results, though the unfortunate incident regarding those who died in the entire process is regrettable.”

Ambassador, with the benefit of those Minutes of 14<sup>th</sup> February, the meeting at 8.45 and also Minute 1584, at the bottom of page 3, the PSC is now seized of the matter on 14<sup>th</sup> February. Minute 1584 says what action to be taken. People have been at the Wagalla Airstrip. In paragraph 5 they say: “Continuous operation should be stepped up with the increased reinforcement of 100 extra men from Mandera, 45 extra men from Garissa, platoon from Moyale and platoon from Garissa.” That is accurate Ambassador?

**Amb. Bethwel Kiplagat:** Well, it is in the Minutes.

**The Commission Secretary (Ms. Nyaundi):** Therefore, Ambassador, one cannot say that on 23<sup>rd</sup> February, that record means that the PSC did not know that something was happening at the Wagalla Airstrip. Is it not, Ambassador?

**Amb. Bethwel Kiplagat:** I think that the chairman of the PSC will be speaking and he can explain what happened between that date and the time when he raised the issue. I was not there.

**The Commission Secretary (Ms. Nyaundi):** Thank you, Ambassador. It is because you made that statement and I was now drawing your attention to the fact that there had been a meeting on 14<sup>th</sup> February. Therefore, the question I am asking you is: If there had been a meeting on 14<sup>th</sup> February, it would not be right to say that by 23<sup>rd</sup> February, the PSC did not know what was going on in Wajir.

**Amb. Bethwel Kiplagat:** That I cannot say. Maybe, they did not get all the information they needed and they got it later.

**The Commission Secretary (Ms. Nyaundi):** Thank you, Ambassador. As we agreed, we will only look at the documents. The documents show that on 14<sup>th</sup> February, the PSC had sent somebody to Wajir and had come back. The PSC had enough information to take action to scale up the operation. Is that not so, based on the documents?

**Amb. Bethwel Kiplagat:** They may have had more information and that is why he comes up now with a new request. That is why he says: “I want a detailed report of what has happened.” I think it would be right to ask the Chairman of the Provincial Security Committee (PSC) to give you what happened and what it is that changed his mind.

**The Commission Secretary (Ms. Nyaundi):** But I think for you, as a member of the KIC who have been portrayed as having a level of responsibility, it may be useful to appreciate that the correct position is that the PSC were not in the dark until 23<sup>rd</sup> February, 1984.

**Amb. Bethwel Kiplagat:** On 23<sup>rd</sup> they went there and came back. But in their Minutes they are raising doubts that they did not have all the information.

**The Commission Secretary (Ms. Nyaundi):** But as you say, you were not at the meeting and you can only rely on the documents.

**Amb. Bethwel Kiplagat:** It is up to them to tell you what it is that they heard later, which prompted them to write a very strong letter and say that they wanted a full detailed report of the incident.

**The Commission Secretary (Ms. Nyaundi):** Thank you, Ambassador. You have said that you were in Wajir on 8<sup>th</sup> February. Did you go to Wajir on any date after 8<sup>th</sup> February?

**Amb. Bethwel Kiplagat:** That I do not remember, but I must have gone.

**The Commission Secretary (Ms. Nyaundi):** Did you, as a Member of the KIC, go back to the northern region?

**Amb. Bethwel Kiplagat:** I do not recall.

**The Commission Secretary** (Ms. Nyaundi): Are you aware of any member of the KIC who went back after 8<sup>th</sup>?

**Amb. Bethwel Kiplagat:** I am not aware.

**The Commission Secretary** (Ms. Nyaundi): Commissioners, I have one final question. Ambassador, we have information that prior to your departure from Nairobi, there was a body then referred to as the KSC.

**Amb. Bethwel Kiplagat:** Kenya Security Committee?

**The Commission Secretary** (Ms. Nyaundi): Yes. The membership of the KSC was who and who?

**Amb. Bethwel Kiplagat:** That I do not know. Is it KIC or KSC?

**The Commission Secretary** (Ms. Nyaundi): KSC. Would you be guided by the wisdom of Brigadier Kibwana; that the membership of the KSC principally was Ministers and the membership of the KIC was Permanent Secretaries?

**Amb. Bethwel Kiplagat:** I think these are things we can verify by re-confirming and looking at the documents.

**The Commission Secretary** (Ms. Nyaundi): So, you are unwilling to be guided by the wisdom of General Kibwana?

**Amb. Bethwel Kiplagat:** I think we can confirm it.

**The Commission Secretary** (Ms. Nyaundi): What we are informed is that in January 1984, the National Security Council held a meeting in Nairobi. Are you aware of that meeting?

**Amb. Bethwel Kiplagat:** No, I am not.

**The Commission Secretary** (Ms. Nyaundi): We are also informed that the National Security Committee resolved that the North Eastern PSC studied and forwarded recommendations as to how the Degodia would be disarmed. Are you aware of that communication?

**Amb. Bethwel Kiplagat:** No, I am not.

**The Commission Secretary** (Ms. Nyaundi): There is information that on 25<sup>th</sup> January, the PSC met in Garissa under the chairmanship of Mr. Benson Kaaria to consider the requirements of the NSC and that on 25<sup>th</sup>, Mr. Tiema was given the responsibility of

carrying out an operation in Wajir. We are informed that subsequent to that, the KIC accompanied by the PSC visited Wajir on 8<sup>th</sup> February, where they were briefed on the security situation in the district during their North Eastern Province tour. Did that happen?

**Amb. Bethwel Kiplagat:** A brief generally and it is there in the Minutes.

**The Commission Secretary** (Ms. Nyaundi): Then, on 9<sup>th</sup> February, the Wajir DSC convened at the DC, Wajir office under the chairmanship of Tiema. That meeting resolved to carry out an operation with the objective of disarming the Degodia.

**Amb. Bethwel Kiplagat:** I think you have the Minutes.

**The Commission Secretary** (Ms. Nyaundi): We have the Minutes. The operation once authorized begun in earnest on 10<sup>th</sup> at 2.00 p.m. and involved the Police, Administration and Armed Forces. We have that in the minutes. The operation covered Elben, Dambas, Butehelu, Eldas, Giriftu and Bula Jogoo. The only thing you are unable to confirm is the meeting of the NSC in Nairobi prior to your tour.

**Amb. Bethwel Kiplagat:** Yes, the National Security Committee.

**The Commission Secretary** (Ms. Nyaundi): You confirm that you were not a member of the NSC and so you cannot deny or confirm that meeting?

**Amb. Bethwel Kiplagat:** No, I am not a member.

**The Commission Secretary** (Ms. Nyaundi): Commissioners, those are all the questions that I have.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much, Leader of Evidence. We shall break for lunch.

**Mr. Elijah Mwangi:** Presiding Chair, I had a submission to make that arose during the examination by the Leader of Evidence. I have just been given a copy of a statement by somebody called Mahamud Ali Ahmed, supposedly recorded or received yesterday from the Leader of Evidence. What I take exception to, with all due respect to the Leader of Evidence, who is my senior, is that a witness who has not even testified before this Commission--- His statement which I have just received now is being given to the witness and quoted in extention??? as if it is more true and solid than the evidence he has been giving under oath. I am requesting for direction. If there is specific and adverse evidence being given, which has been received and is to be put to the witnesses who we represent, we would request for advance???copies of these documents. This is because the impression I am getting now is that contrary to the directions we received on 17<sup>th</sup> May, that every witness gives evidence according to what they know and the information they have, there appears to be what we can call preferred witnesses or statements, which my clients need to have in advance. They are to be given to them and are to make



comments about these statements. We did not have the benefit of the clip in advance. I believe it is only fair, if these witnesses are going to give evidence or information to the full extent which they wish to give, to have advance information of this nature. I just heard a remark from the Leader of Evidence that Mr. Kiplagat will be invited when this witness gives evidence. So, it suggests that this witness is very important and very much preferred to the evidence of Amb. Kiplagat, who is actually giving evidence on oath. We would want these directions because there seems to be a slight or systematic departure from the directions received on 17<sup>th</sup> May. Unfortunately, I am saying this after Amb. Kiplagat has already answered the questions, but out of courtesy, I did not want to unnecessarily interrupt the process as preferred by the Leader of Evidence.

**The Presiding Chair** (Commissioner Chawatama): I will ask the Leader of Evidence to respond.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Chair. As I had indicated, the document was given to us this morning. Before I put any questions to Amb. Kiplagat, I confirmed that he had received it through the tribunal that is investigating him. When he confirmed that is when I put the questions to him. If he had confirmed that he had not seen the statement, then I would not have referred to it. It is simply on the basis of the fact that he confirmed that he had seen it before today and he was aware of its existence. I am confirming that it is the truth. We only got that statement today. If Amb. Kiplagat had said that he had not seen it, I would not have shown it to him.

The other documents that I have shown Amb. Kiplagat, are statements that he made himself. I was careful to ask him whether he recollected making these statements. For the newspaper articles, he confirmed and explained. For the clip, we were both in agreement that it was not audible, but he said that he heard what he had said, but I did not rely much on the clip, having taken the position that it was not very audible. I, therefore, in fact, had to change the questions that I would have put to him. Therefore, I feel that under the circumstances, the Commission has not in any way moved away from any of the commitments that it had made to any of the witnesses.

**The Presiding Chair** (Commissioner Chawatama): In listening to the Counsel, I think what he is also saying is that he felt a little bit ambushed about the fact that he was not informed that we were going to show the clip. Are we going to share everything that we have? Is that our intention and practice or are we merely going to ensure that the rules of natural justice and unfairness apply and that we are not restricted by the rules of evidence? He felt a little bit ambushed. How are we going to handle that?

**The Commission Secretary** (Ms. Nyaundi): Chair, I will admit that I had not shared the statement of Mahamud Ali Ahmed with Counsel and I do apologize for that. But, again, I received that statement this morning. You will remember that when we were having hearings on Friday, the last information I heard was that Amb. Kiplagat would be appearing on a later date. So, I also learnt rather late that he would be appearing. However, I would say that my thinking was that if the witness was aware of the document, he did not appear to be shocked by it. I hope no offence has been done, but

because the Counsel has been very helpful, if that is his feeling, I would like to apologize to him and Mr. Ismail. It is just that I was looking at the bundle of documents that I had received this morning. I do not know if a witness's own words cannot be put to them. For instance, in the clip, these are his own words. That is the position that I had taken.

**The Presiding Chair** (Commissioner Chawatama): I think in terms of the statement, the Leader of Evidence had laid down sufficient grounds before by asking the witness whether he was aware of this document, which he responded that he was aware of. There were sufficient grounds to show that, in fact, this document is before the tribunal. So, the production of the same did not take this particular witness by surprise. So, I think with that in mind, I do not see that there was any harm that was done. But in future, what we have should be shared with Counsel in the same way that they are sharing with us. Thank you.

We will break for lunch and return at 4.00 p.m.

*[The Commission temporarily adjourned at 2.45 p.m.]*

*[The Commission resumed at 4.15 p.m.]*

**The Presiding Chair** (Commissioner Chawatama): Welcome back. We continue with the session. Leader of Evidence, are you through with your questioning of the witness?

**The Commission Secretary** (Ms. Nyaundi): Thank you, Chair. The final thing will be to request that the newspaper page, *Saturday Nation* for 29th May, 2010 be admitted to the record of the Commission. Likewise, the newspaper story of 6<sup>th</sup> February, 2010, be admitted into the record of the Commission.

**The Presiding Chair** (Commissioner Chawatama): The documents are so admitted.

**The Commission Secretary** (Ms. Nyaundi): In addition, I have had a discussion with the Counsel and I can confirm that we will be dispensing with the evidence of Lt. Muriungi.

**The Presiding Chair** (Commissioner Chawatama): An observation was made earlier that the witness, Amb. Kiplagat, gave a revised statement. So, could we have the additional parts? Now, it is an opportunity for the Commissioners to ask the witness any questions.

We will start with Commissioner Farah.

**Commissioner Farah:** Amb. Kiplagat, I will start the questions from the Commissioners. First, I want you to tell us when you were appointed the Permanent Secretary for Foreign Affairs.

**Amb. Bethwel Kiplagat:** I was appointed in 1983, around September or October.

**Commissioner Farah:** Up to when were you working as the Permanent Secretary, Ministry of Foreign Affairs?

**Amb. Bethwel Kiplagat:** I worked until December, 1991.

**Commissioner Farah:** You were a member of the KIC all that time?

**Amb. Bethwel Kiplagat:** Yes.

**Commissioner Farah:** How often were the KIC meetings in those eight years?

**Amb. Bethwel Kiplagat:** At least once a month.

**Commissioner Farah:** Who is the chairman of the KIC?

**Amb. Bethwel Kiplagat:** The Vice-President.

**Commissioner Farah:** It was who at that time?

**Amb. Bethwel Kiplagat:** I think it must have been Kibaki at that time, but we better check because it changed. But the most important thing is the office.

**Commissioner Farah:** It was the Office of the Vice-President, but it is good also for the Commission to know who actually was holding the office in that period that you were Permanent Secretary. Therefore, the KIC was reporting to the Kenya National Security Council?

**Amb. Bethwel Kiplagat:** I do not think we were reporting to anybody. The Kenya Intelligence Committee (KIC) was an advisory committee.

**Commissioner Farah:** Advising who?

**Amb. Bethwel Kiplagat:** Advising the Government as a whole. We were advising each other and sharing information, but we can find the terms of reference of KIC. That should be in the Act.

**Commissioner Farah:** Are you trying to say that there was no linkage between the KIC and the National Security, which the Vice-President was the Chair?

**Amb. Bethwel Kiplagat:** Not directly.

**Commissioner Farah:** In your earlier testimony, you said that you, the members of KIC, visited Wajir on 8<sup>th</sup> February. Is that correct?

**Amb. Bethwel Kiplagat:** Five members from KIC.

**Commissioner Farah:** Because it is a high powered committee, obviously, for information purposes and assistance other people have to join in. But the main purpose as the documents have all proved was that the KIC was going for a tour of North Eastern Province.

**Amb. Bethwel Kiplagat:** I think it is fair to say that some members of KIC accompanied by others toured North Eastern Province.

**Commissioner Farah:** Assuming that you say that is the reason some members of KIC accompanied by other officials from Nairobi, and then joined by PSC and DSCs of the various districts--- Particularly in Wajir, of course, it was the PSC and DSC of Wajir. They visited Wajir, is it not?

**Amb. Bethwel Kiplagat:** As I have indicated in my statement, they were joined by other Provincial administrators. Some were members of the PSC and others were members of DSC.

**Commissioner Farah:** I will come to whoever accompanied you from Nairobi and joined you in the districts. But assuming what you had earlier on said, it was for familiarization/development tour. Is that correct?

**Amb. Bethwel Kiplagat:** It is better to read the actual statement because it is there. Do you want me to read it?

**Commissioner Farah:** Yes, please.

**Amb. Bethwel Kiplagat:** “The objective of the tour was to give the members of KIC an opportunity of touring the province to acquaint themselves with opportunities to see projects and problems faced by the civil servants and general public as a whole and make recommendations to improve the situation”. That is the objective stated.

**Commissioner Farah:** Yes, that is what is in the minutes. We will come to that later. What I am saying is that there were only, according to you, five members of the KIC.

**Amb. Bethwel Kiplagat:** Yes.

**Commissioner Farah:** How many other members of the KIC did not go on that tour and who should have gone on that tour?

**Amb. Bethwel Kiplagat:** Not that they should have gone, but I have said that we can establish the list. It is far much better to consult the official documents during that time to see who else was a member of KIC.

**Commissioner Farah:** You said very well that you have been a Permanent Secretary for Foreign Affairs for eight years. You have also told us that you have been a member of the

KIC for those eight years. Surely, even if those individuals changed because of reshuffles, the Ministries do not change.

**Amb. Bethwel Kiplagat:** As I said, there is nothing to argue about. Let us consult the actual documents during that time to see who the members of KIC were.

**Commissioner Farah:** Did it not occur to you later on after that visit, if that was your first visit and familiarization, that later on as you were Permanent Secretary and member of KIC, you must have been touring provinces other than North Eastern Province?

**Amb. Bethwel Kiplagat:** Surely, I must have not toured officially, but there might have been a conference at the Coast or Eldoret.

**Commissioner Farah:** For KIC?

**Amb. Bethwel Kiplagat:** No! Not for KIC.

**Commissioner Farah:** So, in those eight years where every month you had been meeting as KIC members, there was no other tour organized for you to visit any of the eight provinces of Kenya?

**Amb. Bethwel Kiplagat:** Not that I know of.

**Commissioner Farah:** So, this was a special visit?

**Amb. Bethwel Kiplagat:** You can say so.

**Commissioner Farah:** Now, assuming that it was for development, why was the District Development Committee, which existed at that time in all districts, neither met nor consulted?

**Amb. Bethwel Kiplagat:** I believe the District Commissioner is the Chairman of the District Development Committee.

**Commissioner Farah:** How about the District Steering Group?

**Amb. Bethwel Kiplagat:** I do not know whether there is a district steering group.

**Commissioner Farah:** It existed in those days.

**Amb. Bethwel Kiplagat:** I do not know.

**Commissioner Farah:** Okay. If it was about development, how come the Ministry of Agriculture was never represented, yet you visited an irrigation scheme, in your own words? How come the Ministry of Water was not represented in your delegation, yet there was drought and an acute need of water by the people of North Eastern? How come

the Ministry of Information and Broadcasting was never represented in the KIC, yet there was a brief on Radio Mogadishu and its propaganda, Ethiopia and all those things?

**Amb. Bethwel Kiplagat:** There are experts on the ground who may not have been recorded here, who would be representing those other Ministries. But let me again underline the fact that the District Commissioner (DC) is not only in charge of security, but also every aspect of development in his district. Therefore, he would be in a position to brief us and make those visits.

**Commissioner Farah:** If I may ask you, who authorized this trip of yours?

**Amb. Bethwel Kiplagat:** I think that is a question which? should go to the chairman. It was authorized and decided before I came, in 1983. But I do not have the documentation as to who decided that, that trip should be organized.

**Commissioner Farah:** The Acting DC, Wajir, at that time, Mr. Tiema, has already testified in front of this honourable Commission. Can I read a small section of his statement to you, just to jog your memory? He says: -

“On 8<sup>th</sup> February, 1984, the Kenya Intelligence Security Committee visited Wajir District, of which their visit I was informed by the Provincial Commissioner, North Eastern Province, namely, Mr. Benson Kaaria. As a result, we presented a brief as per the attached copy. On the same day, the said Kenya Security Intelligence Committee came by a military buffalo and landed in the FOB, which means, Forward Operational Base. To receive them were the DSC members, namely, the OCPD, Wajir, DCIO, DSPO, OC, Kenya Army in Wajir, and I, as the Chairman of the District Security Committee. From the FOB, we proceeded to my boardroom and I was the host. The meeting discussed the escalating insecurity in Wajir District. As a result of this meeting held on 8<sup>th</sup> February, 1984 with the KIC, PSC and DSC, we (meaning all of you) agreed that we mount a joint operation by Kenya Army, Kenya Police and Administration Police, under the command of the OC Army Company based at Wajir. It was further agreed that the operation mounted should cover all those areas periodically occupied by the Degodias and round up all male adults from those places which are Giriftu, Eldas, Buna, Dambas, Bula Jogoo, Habaswein and Elben. As agreed in the meeting of 8<sup>th</sup> February, 1984, the operation was to start on 10<sup>th</sup> February, 1984 and the men picked up to be assembled at Wagalla Airstrip, where they were to be interrogated as to:-

(a) if they knew who the bandits associated with the murder of livestock resulting in attacks were;

(b) those in possession of illegal arms; and,

(c) whether they themselves had firearms to surrender.”

Is that true or not?

**Amb. Bethwel Kiplagat:** I never heard of that and it is not in the Minutes of the KIC of 24<sup>th</sup> May.

**Commissioner Farah:** 24<sup>th</sup> May is very much later. This is the first hand man in Wajir who is telling us where the decision was made.

**Amb. Bethwel Kiplagat:** But I am also saying that the Minutes were those of the KIC tour to North Eastern Province.

**Commissioner Farah:** Okay. Mr. Kiplagat, when did you first hear about Wagalla Massacre?

**Amb. Bethwel Kiplagat:** I think I heard when I came back, but I do not remember the date when I heard about it. It was in the papers and also the Minister made a statement in Parliament.

**Commissioner Farah:** The Minister's statement in Parliament was very much later in March. I am talking about immediately you came back. When actually did you hear about it?

**Amb. Bethwel Kiplagat:** I cannot give you a date to say, "this is the date when I heard it".

**Commissioner Farah:** Being a very powerful Permanent Secretary of Foreign Affairs, what action did you take when you learnt about it?

**Amb. Bethwel Kiplagat:** First of all, I was not a powerful Permanent Secretary. I had just come and the responsibility and action was within the Office of the President.

**Commissioner Farah:** Was the Wagalla Massacre discussed in the March, KIC meeting?

**Amb. Bethwel Kiplagat:** That we have to consult the Minutes of the KIC meeting.

**Commissioner Farah:** How about April?

**Amb. Bethwel Kiplagat:** I can say we can consult those Minutes.

**Commissioner Farah:** Or even May, if we may put it that way.

**Amb. Bethwel Kiplagat:** Let me repeat. I think it will be good if we can check the Minutes of KIC for those months and then we can confirm whether they were discussed.

**Commissioner Farah:** Do you remember if the matter was discussed at the National Security Meeting or if the KIC reported the matter to the National Security Committee? I am talking about after the massacre.

**Amb. Bethwel Kiplagat:** I never sat at the National Security Committee.

**Commissioner Farah:** I am talking about whether you people reported the matter and whether it was discussed.

**Amb. Bethwel Kiplagat:** If you are reporting then you must be there, or a Minute has passed “please report.” But I am not aware.

**Commissioner Farah:** Again, this morning, the Leader of Evidence asked you--- Perhaps, let me ask you in a more straight way. Do you remember briefing the Kenyan Ambassadors in 1986 about the Wagalla Massacre?

**Amb. Bethwel Kiplagat:** I was reminded by one of the Ambassadors that I did in passing.

**Commissioner Farah:** Do you remember that in that meeting you said that the Wagalla incident was mishandled?

**Amb. Bethwel Kiplagat:** I have said in my opening statement that this incident was a great tragedy for the Degodia, families, this country and even the world.

**Commissioner Farah:** That is a later statement which you are making today. What I am asking is: Did you explain to the Ambassadors who were visiting then, how it was mishandled?

**Amb. Bethwel Kiplagat:** I did not have all the details, but, definitely, I was telling them that, that was not something that should happen.

**Commissioner Farah:** Did you ever hear of the Etemesi Report?

**Amb. Bethwel Kiplagat:** I heard of it.

**Commissioner Farah:** Do you know where it is?

**Amb. Bethwel Kiplagat:** I do not.

**Commissioner Farah:** Can you get it for us the way you got for us the other statements?

**Amb. Bethwel Kiplagat:** I do not think I can.

**Commissioner Farah:** Why is it that there were representatives from the Police Commissioner and Director of Intelligence in the KIC, yet they were not members?

**Amb. Bethwel Kiplagat:** Because of the nature of the tour and the meetings that we held in each district.

**Commissioner Farah:** So, security was high on the agenda?



**Amb. Bethwel Kiplagat:** Development. Again, we go back to the objective of the tour.

**Commissioner Farah:** But if it was development, you would not need the Director of Intelligence, because the Provincial Special Branch officer would suffice, yet they are not KIC members. As you said, KIC members were the Permanent Secretaries. In fact, the Police Commissioner is higher in the National Security Committee and, therefore, his representative was not required.

**Amb. Bethwel Kiplagat:** Again, it was a general briefing, including security matters as well. But the main emphasis was on welfare and development. I think this is very well reflected in the recommendations that I have attached, that are in the KIC minutes of the tour.

**Commissioner Farah:** Those are all the questions I have. The other Commissioners will, definitely, ask you more questions.

**Commissioner Slye:** Thank you, Mr. Ambassador. I want to start by acknowledging something that you said at the beginning of your testimony and you have just repeated a few minutes ago. I think I am correct in saying that out of all the individuals we have heard here in Nairobi with respect to this incident, you are the first, and I think the only so far, to express regret at what happened at Wagalla. You described it as a tragedy for the families and communities involved, Kenya and humanity. I think we appreciate that. I assume the people from Wajir who are here also appreciate that. I want to try and understand a little bit better, the functions of these different structures and organizations we have been talking about. You were a member of the KIC for eight years, if I understand correctly. That body met, by your estimation 12 times a year. So, that would be about 96 different meetings of the KIC that you would have attended, if you were out of the country or whatever. The first thing I want to understand in terms of that body is: I can understand that you cannot remember exactly everybody who was there because it was a while ago, but was it a body of seven, 20 or 100 people? Can you give us an estimate of how many people roughly would be in a room during those 90 plus meetings that you attended?

Things may have changed. So, it is much better for us to go back to 1993 or 1995 and see how many were there and whether there were changes throughout the year.

**Commissioner Slye:** So, if we had the information suggesting that they were seven members and that is what the documentation confirms, you would not take issue with that? Is that correct?

**Amb. Bethwel Kiplagat:** There will be documents to show whether there were three, five or seven.

**Commissioner Slye:** I am a little unclear on these lists. There was a list of 24 and another one of 29. Some of the individuals changed from one list to another. It appears that five to seven individuals on those lists were from the KIC. It would be significant if

they were only seven members of the KIC. If they were 20 members, then it looks like a different sort of trip. That is the reason I was asking you.

**Amb. Bethwel Kiplagat:** There were five that went there. We will furnish you with the numbers and I believe it was more than 10.

**Commissioner Slye:** You mentioned that the KIC was an advisory committee. My fellow Commissioner asked you about this. I want to make sure I understand the relationship of these structures. We were told by Gen. Kibwana, and I stand corrected on that, the relationship between the DSC and the PSC was similar to the relationship between the PSC and the KIC, which was similar to the relationship between the KIC and the KSC. First of all, I want to get your comment on whether that was your understanding operationally. I understand that the structures can say certain things, but how things operate in practice sometimes can be quite different. What I am interested in is what your understanding was during those eight years of attending those meetings about the relationship between that Committee and these other security committees?

**Amb. Bethwel Kiplagat:** I never recalled the National Security Committee reporting to KIC or the Minutes of that body being presented to KIC in the same way the Minutes of the DSC were being tabled before the Provincial Security Committee.

**Commissioner Slye:** So, in terms of Minutes, the relationship was maybe, different between DSC and PSC and PSC and KIC. Could you talk a little bit more about the relationship between PSC and KIC? The others have not really testified and about something called the NSC. Something was mentioned about the Kenya Security Committee. I do not know whether that is the same thing as the National Security Committee or whether those are two different bodies. That is very unclear on my mind.

**Amb. Bethwel Kiplagat:** Honestly, I think we can check on those to find out which are the security and intelligence organs that existed. I think we can establish that.

**Commissioner Slye:** Getting back to your perception of your role in the KIC, could you speak a little bit more about how you saw the relationship between the KIC and the PSC? So, that would be going down at the provincial level; and then the relationship between the KIC and whether it is the KSC or the NSC or both, or some other entity, but where information went up from the KIC.

**Amb. Bethwel Kiplagat:** The KIC had no direct relationship with the PSC. Where the information came through is the Office of the President. That was the Permanent Secretary in charge of internal security. So, he would gather information from all over Kenya and give as each one of us would give our reports. So, I would be presenting the reports from Ambassadors. Somebody else would report from the prison. Somebody else would give a report from finance and so forth. Those who were there---

**Commissioner Slye:** Maybe, you can help me make sense of some of the PSC Minutes that you were kind enough to share with this Commission. If you have them in front of

you, I would like to have you turn first to the January, 26<sup>th</sup>, 1984 minutes which are dated January, 28<sup>th</sup> but it is a PSC meeting held on Thursday, 26<sup>th</sup> January, 1984. If you look at the third page, there is number IV and it says: “X Minute 1999/83: Kenya Somali Border Meeting. While the PSC was still awaiting the reaction of the KIC on the recommendations of the Joint Kenya Somalia Border at Liboi on 1<sup>st</sup> November, 1983, the PSC felt that in view of the goodwill being shown by Somalia in disarming armed bandits along our common border, clearance should be given for the PSC to pay Somalia overtime visit. This time, the visit should include North Eastern and Coast---”

Then it indicated: “Action KIC”. Down below, number VII “X Minute 20083: Security Personnel Manpower Requirements.

The issue is still in abeyance and will continue to be pursued with the KIC.”

If you go down to number VIII “X Minute 201/83: Joint Kenya Ethiopia Good Neighbourliness Meeting.

It was confirmed to the PSC that the question of clearance by the KIC to hold the good neighbourliness meeting had been taken up and the answer was now being awaited and that action specifically refers to KIC.” Then if you move on to the Minutes of February, 24<sup>th</sup>, 1984, on page 2 of those Minutes, there is a small letter D X Minute 3/84 IV: Kenya Somalia Border Meeting, clearance was sought over the joint Kenya-Somalia meeting and the PSC is still waiting for the approval of and then it was action KIC.

If you go back to the first page of those Minutes, it is Minute 26/84 matters arising from the previous Minutes and sub-section (a) X Minute 3/84: Recommendations on Long Term Policy as a solution to the armed banditry activities--- This is a meeting of the Provincial Security Committee. The chairman informed the members that the PSC proposals have already been presented to KIC for the Government’s consideration in implementation.

Lastly, in minute 31/84 which is on the top of page 5, concerns transport radio, etc equipment for anti-bandit squad, vehicle escorts, joint bid to KIC.

It reads as follows:-

“The PSC reviewed that effective operations in the province have been ridiculed by lack of necessary equipment like radios and adequate vehicles. Consequently, the PSC directed the Provincial Police Officer in consultation with District Security Committees to compile a comprehensive joint requisition to necessitate the Committee to make a joint bid to the KIC.”

All of those suggest to me that at least, the PSC saw the KIC as the conduit through which, not only information was passed, but formal request for authority to act or formal request for equipment, to use that last one as an example. Am I misunderstanding these Minutes? Is there something else meant by this?

**Amb. Bethwel Kiplagat:** I think they may well be because any of these requests will come through the Office of the President, the PS in charge of security and that is where it will be handled. But it would be discussed at the KIC in general terms and then the decision given by the KIC.

**Commissioner Slye:** So, you are clear in your mind that the PSC never directly made requests like this to the KIC?

**Amb. Bethwel Kiplagat:** I do not recall any direct request from any of the PSC's to the KIC because there are eight of them. Here again, we have to check the Minutes, but I do not recall discussing a request of this kind.

**Commissioner Slye:** If I understand what you said before, you would look at those statements that I read and say that, in fact, what was meant there was that the PSC made those requests directly to the Office of the President with the idea that somehow, they would get back to the KIC. So, the PSC referred to the KIC, but what they really meant was the Office of the President?

**Amb. Bethwel Kiplagat:** That is right.

**Commissioner Slye:** The second set of questions I want to ask you involves the February, 8<sup>th</sup> meeting, the joint meeting of the DSC, PSC and KIC and you did not give us the Minutes to that.

**Amb. Bethwel Kiplagat:** There are no Minutes.

**Commissioner Slye:** If I understand you correctly, you said there were Minutes of that meeting. Have you been able to view the Minutes of the February, 8<sup>th</sup> meeting that you attended in Wajir?

**Amb. Bethwel Kiplagat:** I have not seen any Minutes for the 8<sup>th</sup> in Wajir or any Minutes of the other DSC's as well. I have said that notes were taken by the secretary and then, at the end, he compiled the Minutes of the Kenya Intelligence Committee trip to North Eastern Province.

**Commissioner Slye:** I think the May 24<sup>th</sup> document that you referred to is the Minutes summarizing the trip? It is my understanding that they are Minutes of the actual meeting. So, I just wanted to confirm that you have not seen those?

**Amb. Bethwel Kiplagat:** I have not seen those.

**Commissioner Slye:** Do you have any memory of what was discussed during that meeting of February, 8<sup>th</sup>?

**Amb. Bethwel Kiplagat:** I do not know.

**Commissioner Slye:** So, if Mr. Chairman tells us and to some extent, Commissioner Farah read to you part of this, but he also was a little more emphatic in his public testimony before us, he tells us that during that meeting that you attended, that the idea of rounding up all the male Degodia was, in fact, discussed--- Given his statement and if the Minutes of that meeting were to confirm his statement, you would not be able to contradict either the Minutes or his statement, given that you have no memory as you say, of what happened during that meeting?

**Amb. Bethwel Kiplagat:** I do not have.

**Commissioner Slye:** So, if we were to find that, then you would presumably agree with that description of the meeting?

**Amb. Bethwel Kiplagat:** I would have to look at the Minutes.

**Commissioner Slye:** Again Commissioner Farah asked you, when you first heard of Wagalla, you said when you got back, and I assumed you meant when you got back from the tour, he asked about the discussion of Wagalla at the KIC. He specifically asked you about March, April and May. I understand your memory is a bit cloudy with respect to this. Do you have any memory that the KIC discussed the incident at Wagalla at all, regardless of whether it was in March, April, May, two years later, 10 years later or what have you?

**Amb. Bethwel Kiplagat:** I do not.

**Commissioner Slye:** Do you recall that there was a directive that came from the KIC that was received at the PSC in March, 1984 indicating that security operations in the future should get the prior approval of the relevant Minister before they were undertaken? Do you have any memory of that?

**Amb. Bethwel Kiplagat:** I do not have.

**Commissioner Slye:** The evidence that we have suggests that there was such a directive that presumably would have been discussed at the KIC and then sent to the PSC and the PC. I think when we speak to him, we can ask him whether he was happy with that directive.

Let me ask you a more general question and let us move ourselves out of your role in all of this. The information that we have received suggests that there was an enormous amount of discretion that both the DSC and, by extension, the DC and the PSC and the PC, had a role to play with respect to security operations.

One concern one might have as a result of that is that operations like what happened at Wagalla would occur without a lot of input or knowledge of people further up the chain of command. Do you sense that those committees had that wide level of discretion with respect to security operations?

**Amb. Bethwel Kiplagat:** The policy and the Act would be able to give us precisely what they were supposed to do or not to do and that is available. As you know, this was not my docket. I was more in foreign affairs.

**Commissioner Slye:** I understand. If you do not know---

**Amb. Bethwel Kiplagat:** I really do not know.

**Commissioner Slye:** That is fine. If you were me, sitting here, not knowing much about the history of this country, I see a directive like that, what it suggests to me is that people at the level of the KIC were concerned about the level of discretion that was being exercised and that directive was aimed at trying to curtail that discretion to say that in the future, we want to be more involved and more informed about operations like the Wagalla operation. Would that be a reasonable conclusion, assumption or interpretation on my part?

**Amb. Bethwel Kiplagat:** I think you are right about that.

**Commissioner Slye:** My last other questions, the ones that I have asked a number of people in the series of hearings. As you know part of what we are to do is to make recommendations to the Government. We have had a number of people that have given us a variety of ideas of the type of recommendations we should make, not only with respect to Wagalla, but with respect to North Eastern and other parts of the country.

I want to ask you first about some specific ones. One, would you recommend that this Commission recommends that the Government apologizes for what happened at Wagalla?

**Amb. Bethwel Kiplagat:** I have said in my statement this was a terrible tragedy and I think the rest of us, Kenyans, should say “*pole*” to those people who suffered. As I have indicated in my statement, there are widows, orphans, widowers in northern Kenya who have nobody to fend for them. It would be up to us to sympathise and to say “*pole*” to them.

Whether the perpetrators were the Government, communities or individuals, people lost their lives and their loved ones. It was a terrible tragedy. I have committed my life to seeing such things do not happen again in our country. We do not want to see our people killing one another.

**Commissioner Slye:** Thank you. That is helpful. We could recommend that individuals who were responsible for Wagalla massacre apologize. However, at the end of the day, it is really up to them as individuals to decide whether to do so or not. Do you think at the institutional level, the Government should officially apologize because I believe they have not done so to date?

**Amb. Bethwel Kiplagat:** It is good to look at the total picture to see what kind of response the Government can make in that whole situation. We have to be very careful in what we do, so that we do not cause more problems. So, I think it is important to see the bigger picture.

**Commissioner Slye:** So, do I understand that you are not sure whether the Government should apologize? We will need to have a better understanding or a more sophisticated understanding of what the effect of that apology would be.

**Amb. Bethwel Kiplagat:** Not necessarily; I have not said so. However, we need to gather more information which will inform us on what we need to do.

**Commissioner Slye:** Let me ask that question in another way. What sort of information to your mind, would be sufficient to say that the Government should apologize?

**Amb. Bethwel Kiplagat:** Let us continue receiving a lot of these documents so that we determine the truth and the facts as they happened. It is possible that we will discover other documents which can throw greater light into this incident and know exactly what happened. So, I am being cautious. Let us gather all the information and then with all the wisdom, we see what is it that we can do in order to heal all the people and to heal northern Kenya.

**Commissioner Slye:** I apologize. Maybe, I am beating this horse a little harder, but let me ask a similar question in a different way. Let us take this as hypothetical. If we find that 57 people died and seven weapons were recovered--- Let us leave aside people harmed, people raped, people kept outside for five days in the heat and so on. So, let us just say what we know; that, 57 people died and seven weapons were recovered. That was done by the Government. We may not know exactly who from the Government did it, but it was done by the Government. Given that situation, would you suggest that the Government should apologize for the loss of lives?

**Amb. Bethwel Kiplagat:** It was a terrible loss of lives. The first thing is to determine who made the decision to carry out that operation. So far, we have not yet done so. I think it is absolutely essential to know which individual made that decision.

**Commissioner Slye:** I think we all agree with you on that point. Assuming that, that body was a Governmental---

**Amb. Bethwel Kiplagat:** Then the Government should apologize. First and foremost, we should ask ourselves: Who made the decision to carry out that operation?

**Commissioner Slye:** So, I understand that if it was a Government body that ordered the operation, then obviously, the individuals, the body involved and also the Government should apologize? To your mind we do not really understand yet who did order it or who was responsible. We need to keep our minds open with respect to where that specific

apology at a lower level should come from. But at the Government level, which the question is and particularly where---

**Amb. Bethwel Kiplagat:** For this case, let us wait. Collect more information and with hindsight, let us look at it and see what specifically we need to do. Something needs to be done; I am very clear in my own mind. As I said here, that was a terrible tragedy.

**Commissioner Slye:** Leaving the apology, we are required to make recommendations with respect to reparations. We have had a number of individuals, some of them who are here, others who could not be with us today, who have come before the Commission and talked about the personal losses that they suffered. Many of the women sitting here lost their husbands and some of them raped while others had their houses destroyed; their children were killed or tortured. Leaving aside, trying to figure out who specifically did what, do you think that this Commission should recommend some form of reparations? Would you be willing to share with us and maybe, even brainstorm with us here today about the form that, that reparation should take? There is the question about individual reparation as opposed to collective reparation. Given your experience in peace-making in the continent and trying to bring people together and trying to address conflicts--- Given that experience, what sort of recommendation would you give in terms of reparations to those individuals?

**Amb. Bethwel Kiplagat:** Again, we are just brainstorming here. Let us try and understand the culture of the people of that particular area. Do they have any method of reconciliation, healing and compensation? I believe through my involvement with the Somali Peace Process, I have learnt a lot. I know that in Somalia, when you have incidents of these kinds, then the leaders of the community will come together and the two communities will meet for a whole week or two weeks, resolve the problem and decide on what compensation needs to be paid. So, let us not only listen to the people, but let them come with suggestions and say this would be the best way. In my statement, I have said there are widows and orphans among the various communities of northern Kenya. What we need is the healing of the people. Unless we do so, I think this country will continue to have problems.

**Commissioner Slye:** That is very helpful. My last question is more at the institutional operational level. It really goes back to the Wagalla incident. Given your current understanding of what happened, do you have any ideas about what we should recommend to the Government in terms of institutional changes, structural changes, communication changes, legal changes, in order to minimize the possibility that something like this could happen after today?

**Amb. Bethwel Kiplagat:** That is a very good question. If I were to make some suggestions, it would be important for all of us to look at, first of all, the Constitution of Kenya as it stands today. Are there any elements within that Constitution which can assist us in making recommendations in terms of policy towards alleviating situations of this kind? So, that will be the first thing to recommend.



Secondly, because security Acts have changed and so on, let us study it and see whether there is any way we can improve on those provisions that are in the Security Act. I believe there is a Security Act. I have not looked at it recently.

From what I know, the Government has established peace committees in the districts. We need to see what is the role of these peace committees? What is it that they can do, so that we will have a global picture of the various structures that are dealing with peace and security in our country? Then out of that, we can make recommendations which I think will be better informed. Let us also get a team of experts who can look at all of these documents and consult because these are important issues. They should consult not too widely; they should consult with some experts, people who are involved in peace work and human rights and say where are we with this? Then we come up with something really substantive. We should start that tomorrow.

**Commissioner Slye:** Thank you. I have no further questions.

**Commissioner Ojienda:** Thank you very much Amb. Kiplagat, for your testimony. Just as a follow-up, you have been asked by Commissioner Slye whether you think the Government should give an apology and you have answered that, there is need to understand the underlying causes of the Wagalla massacre before a decision can be made and an unreserved apology can be given. I just want to quote from the HANSARD report particularly, the speech by the Minister. He said in Parliament, and this is in the record of Parliament, that the Wagalla operation was undertaken by the Army, the Police and the Administration Police. I think that is a common ground. Just as a follow-up question, if that were the case and these being security organs of the Government, should the Government apologize to the persons who lost their loved ones during this operation?

**Amb. Bethwel Kiplagat:** We are in the process of collecting information. We are doing that. I am not saying that the Government should not apologize; not at all. But I think we need, first of all, to determine the person or the institution that made the decision to carry out that operation. That I think is very vital. Secondly, for us to have a global understanding of what was going on there--- I do not want just an apology; It is not enough. We may have to do more after getting that information. Maybe, we can do much more. So I am expecting to do much more than just giving a simply apology.

**Commissioner Ojienda:** I am still on the same point. Do you consider security of the citizens of this country as a function of the Government?

**Amb. Bethwel Kiplagat:** It is a function of the State.

**Commissioner Ojienda:** I just want you to share with us. This is for purposes of understanding the wider role of KIC. What did you consider as intelligence?

**Amb. Bethwel Kiplagat:** I do not know how to define that. But let me speak about my own docket because what I was doing was to appraise and inform the Kenya Intelligence Committee of the events that were taking place in our region and the world as a whole. If

the conflict was going on as it was in Sudan, what was happening; I would just give that report and say this is where things are now. There has been a coup. This is my understanding. That was the kind of report that was given by the Ambassadors. There was nothing absolutely sort of top secret about it. Just an appreciation of what was going on. If, for example, we discover that Ethiopians are discussing with Somalis and they seem to be coming together, this would be important for the KIC.

**Commissioner Ojienda:** So, my understanding then is that when you went to North Eastern Province, you considered questions of security of the region. Is that right?

**Amb. Bethwel Kiplagat:** Not necessarily the big group. Again, I am coming back to the main purpose of that trip. Security, development and the welfare of the civil servants was included. To refer back to the recommendations; I think the recommendations do reflect that. Those recommendations came out of that meeting.

**Commissioner Ojienda:** From the records, when you left Wajir on the 8<sup>th</sup>, I see the programme went on up to the 10<sup>th</sup>. You have said that the massacre was tragic and it is, indeed, regrettable. Granted that the role of the KIC was to gather intelligence on all aspects of the lives of the people of Wajir or NFD as it was, including security; would you say that as a committee, you failed in your role to detect the possibility of a tragic event in the nature of a massacre, happening only two days after your departure from Wajir? Would you say so?

**Amb. Bethwel Kiplagat:** We were in the air travelling; it was a 12 hours journey, literally. We left about 2.00 p.m. The District Security Committee met at 3.00 p.m. and they decided on the operation. I was not in the know at all.

**Commissioner Ojienda:** Did you have intelligence on the operation? Were you told that there may be an operation by other people? I am not saying it was by your group, but by other people?

**Amb. Bethwel Kiplagat:** No.

**Commissioner Ojienda:** So, you then failed in omission because you were the KIC and you did not detect a massacre that happened two days after you left Wajir?

**Amb. Bethwel Kiplagat:** How would you detect it and there were five of us? There were five of us and it would depend on when the information came through. As I read the Minutes of the meeting of the PSC, even the PC was not in the picture until he travelled to Wajir.

**Commissioner Ojienda:** I think the PC will testify later. I am just focusing on the role of the KIC and the commissions or omissions that may have occurred. You have confirmed that you did not detect the massacre?

**Amb. Bethwel Kiplagat:** The KIC was an advisory and consultative body, where we shared information. When it came to the collection of intelligence, that was being done as it was reported here by a member that they collect information and pass it to the relevant bodies. I think that was very well captured by the person from intelligence. But you can see the information did not come to the members of KIC on a regular basis. It did not come to me daily. We only met and everything was collected by the Office of the President. I do mine; somebody does theirs - the person from prisons, the CID and each one of us present. There is a clear channel of how that intelligence is collected and passed on and I am not privy to the intelligence information.

**Commissioner Ojienda:** You definitely, therefore, place any blame on the DSC for the operation?

**Amb. Bethwel Kiplagat:** The only thing we can do is to look at those Minutes. The Minutes are very clear that the DSC met and made the decision. This is from the Minutes. I am not trying to imply anything else. If somebody else had told them to do so, they should have recorded to say, "So and So told us; therefore, let us carry out this operation." But from these Minutes of the 9<sup>th</sup>, it is very clear to me that the decision was done by the District Security Committee of Wajir.

**Commissioner Ojienda:** Thank you for that reply. You are confirming that as the KIC, you did not detect what was going to happen after you left?

Let me just find out from you; when you left Wajir, there was a book that was shown on the screen you mentioned and with names of people who visited. You said that the tour was not a KIC tour but it was KIC-sponsored. You said the Minutes should be corrected to reflect that it was KIC-sponsored. Was it by coincidence that only nine people signed the visitors book? If it was not a KIC visit, or meeting for that matter, only eight of the members from Nairobi signed the visitors book.

**Amb. Bethwel Kiplagat:** I do not remember that book. We better get that book but the number of people who were there is contained in the Minutes of the KIC tour to northern Kenya, and they have listed all those who went to that meeting.

**Commissioner Ojienda:** Okay. The second point that I want to ask you and maybe, you want to clarify is: If this was, indeed, a meeting other than a security meeting, why were the local Members of Parliament not involved or asked to attend the meeting?

**Amb. Bethwel Kiplagat:** It is not always that we invite Members of Parliament. It is not always necessary.

**Commissioner Ojienda:** It was by pure coincidence that the massacre occurred after two days? This is because none of the members of the KIC was aware of the possibility of occurrence of that massacre. Is that true?

**Amb. Bethwel Kiplagat:** The only thing I can say is that I was not aware. There may be other members of the KIC who got information but I never got any information that there was an operation to be carried out or decided upon on the 9<sup>th</sup> and carried out on the 10<sup>th</sup>.

**Commissioner Ojienda:** Lastly, I want to ask you this question because you have acknowledged the tragic nature of the Wagalla Massacre, and because of the introductory speech you gave the Commission. You said that you carried out research and got information subsequent to the tragic events. In your introductory statement, as we talk about the massacre, I want to ask you one question. What do you think is the best way of acknowledging by the Government of this tragic occurrence? What is the best way that the Government can do to acknowledge the people who died or suffered in this incident?

**Amb. Bethwel Kiplagat:** I have indicated that I did not do the research. I looked at the relevant documents which you have, and I have said that we need to get more detailed information; maybe, this is where our investigators can go onto the ground and go through consultations, and find out what will be the best way to compensate the communities that have suffered.

**Commissioner Ojienda:** Lastly, I want to ask you another question. You served in the KIC before and after that event. Did the security situation in North Eastern Province (NEP) improve? Were there any measures that were taken by the Government in the manner that security was handled in NEP after the Wagalla massacre from the intelligence point of view?

**Amb. Bethwel Kiplagat:** I think I cannot answer that question, except to look back and see if there were any changes and improvements. I do not think there were massacres of that kind after that but I think we need to look at things.

**Commissioner Ojienda:** Are you saying that the security issues in NEP are handled in the same manner as they were handled before the Wagalla massacre?

**Amb. Bethwel Kiplagat:** I do not think so and I am not sure.

**Commissioner Dinka:** Ambassador Kiplagat, I thank you very much for your testimony. I have a few questions for you. One, as an old civil servant, I am very much interested in knowing the relationship between institutions. So, let me go over what you have said was the relationship between the KIC and the National Security Committee (NSC). I think the KIC and NSC are one and the same thing?

**Amb. Bethwel Kiplagat:** I do not know. I think we have to check and just confirm which one we are talking about.

**Commissioner Dinka:** You said that the KIC is made up mostly of permanent secretaries and others who do advisory work for the Government on a number of issues in their fields; and example is foreign affairs, which has no operational function?

**Amb. Bethwel Kiplagat:** Let me simply say that we should check the membership of KIC but it was not a permanent secretaries' meeting.

**Commissioner Dinka:** There were no Ministers among them?

**Amb. Bethwel Kiplagat:** There were some Ministers but we can confirm it.

**Commissioner Dinka:** Did you belong to the KIC or NSC?

**Amb. Bethwel Kiplagat:** I belonged to the KIC only.

**Commissioner Dinka:** There was no hierarchical relationship, or movement of paper, between the two?

**Amb. Bethwel Kiplagat:** No; I said I never saw any tabling of Minutes of the NSC in KIC. Each one of us from the various Ministries gave a report of whatever information they had; those who were getting information from the NSC had to give us information.

**Commissioner Dinka:** But the Minutes of the KIC did go to the NSC through the President's office, through the Permanent Secretary, Internal Security? At least there was that kind of linkage?

**Amb. Bethwel Kiplagat:** The Permanent Secretary, Internal Security, was a member of KIC and he was the leader of the delegation to northern Kenya.

**Commissioner Dinka:** So, he was also the chair of the KIC?

**Amb. Bethwel Kiplagat:** He was not a chair of the KIC. It was the Vice-President who was the chair of the KIC.

**Commissioner Dinka:** So, the Vice-President was the chair of KIC and also of NSC?

**Amb. Bethwel Kiplagat:** I do not know that. I think we will have to check.

**Commissioner Dinka:** In your experience, has there been a joint meeting of the two bodies; the KIC and NSC?

**Amb. Bethwel Kiplagat:** I do not recall any joint meeting of these two.

**Commissioner Dinka:** It seems to me that there was a kind of stonewall between different institutions, which is useful for denial. Another question that I have for you is: Before you departed, did the NSC meet in January and decide that the Degodia should be disarmed, and that the mode of doing so should be prepared and communicated by the Provincial Security Committee (PSC)?

**Amb. Bethwel Kiplagat:** I never heard of it.

**Commissioner Dinka:** Had you been briefed by the PSC in Garissa when you went there that such instruction existed?

**Amb. Bethwel Kiplagat:** No.

**Commissioner Dinka:** I am asking you this because in the Minutes of 28<sup>th</sup> of January, which are actually for the meeting of 26<sup>th</sup>, the Provincial Commissioner informed his Committee that the proposal for long-term solution of insecurity in the province had been prepared and circulated to the members of that PSC. So, when you went there, despite the fact that he told his Committee members this on the 26<sup>th</sup>, he had not briefed you on it?

**Amb. Bethwel Kiplagat:** Not at all.

**Commissioner Dinka:** Another interesting thing is that in the report of the KIC of the 24<sup>th</sup> May, which was written three months and two weeks after the Wagalla massacre, there is nothing about the Wagalla massacre, and the contents of your discussion with the PSC are not mentioned. Why was it sanitized? Do you have any idea?

**Amb. Bethwel Kiplagat:** Look at the purpose of that trip; it is what is reflected in the Minutes of 24<sup>th</sup>.

**Commissioner Dinka:** I am coming to the factors. In fact, it is interesting, if you look at these documents, what my colleagues have been citing--- Up to Wagalla, there is nothing in any of the documents that talks about the welfare of the people, development, education, health or anything like that. Even in the writings of the PSC and the meetings of the District Security Committee (DSC), there is nothing like that until Wagalla happened. Every paper that we see talking of development and so forth was prepared after Wagalla; that is after your visit to Wajir. Why is that so?

**Amb. Bethwel Kiplagat:** I would request that you look at the economic plans for development of Kenya and you will see---

**Commissioner Dinka:** No; I am not going to do that. I am talking about anything that happened before your visit, including the briefing paper done in KIC and the briefing that the DC gave the delegation in his office. These are all the right things that were going on back and forth between him and the DSC; even when the PSC was given instructions by the three DCs and their security committees to prepare comprehensive briefings for the KIC delegation. They talked of security matters, and mentioned places like Bute, but he never mentioned anything about development. So, all the development talk came after what had happened in Wagalla.

**Amb. Bethwel Kiplagat:** I do not agree with you because the delegation went purposely to look at the possibilities of development in northern Kenya; we came back and you can see the comprehensive recommendations that were made.

**Commissioner Dinka:** They were written three months and two weeks after the Wagalla Massacre.

**Amb. Bethwel Kiplagat:** But they were prepared from the trip when we went. Their information was collected by the secretary of that committee.

**Commissioner Dinka:** Okay. One of my colleagues asked you if the KIC, in your experience, had you ever visited provinces before the 8<sup>th</sup> of February, and you said “no”. Do you remember any kind of visit by the KIC to the provinces as a delegation, as you did to the northern region, or did the KIC go to the northern region after 8<sup>th</sup> February?

**Amb. Bethwel Kiplagat:** As you can see from this one, there were five of us who travelled to NEP. It was possible but I think I have to check whether other trips were organized for other members of KIC.

**Commissioner Dinka:** I am asking that because your other colleagues who were members of KIC said “no”.

**Amb. Bethwel Kiplagat:** I think it would be wise for me to say that I do not know. Let me put it that way.

**Commissioner Dinka:** I recall Commissioner Ojienda had asked you if the Government was responsible for the protection of its citizens and you said “yes”, which is a good answer. Now, when it came to apology, you said we should find out who did what, which is also good. I am going to ask you if failure to protect the people - it does not matter the culprit, or who did it--- According to Government figures, there were 57 deaths, property was destroyed, houses burnt and women killed and raped. Does that non-protection of its citizens not warrant an apology from the Government?

**Amb. Bethwel Kiplagat:** Let me repeat, it is very important that we determine who was responsible for the decision to organize and carry out that event. That must be done. Again, as I have repeated, let us look at the complete picture and see what recommendation we can make which might even go beyond an apology.

**Commissioner Dinka:** Criminal acts were committed by individuals, for which they are liable and there is no question about that. I am talking about the general, political and legal principle that the Government is responsible for the protection of the security of its citizens. In this case, it failed miserably. It has not done anything before to protect them, and to compensate them or apologize to them. Is there a need for the Government to do something while we search for the people who ordered atrocities to be committed?

**Amb. Bethwel Kiplagat:** I believe this is why the TJRC was set up. We can come up with proposals as to what needs to be done.

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

**Commissioner Shava:** Thank you, Amb. Kiplagat. I will refer to your preliminary remarks where you stated that you were not here to defend yourself, and this is the case, indeed. You drew attention to your role in the region and not in the country. Indeed, we want to assure you that this work is well known in Mozambique, Somalia and other countries. This information is all in the public domain. I would also like to thank you for the background that you gave, because it is important when trying to understand issues to know what the context was, and you drew our attention to the context in NEP at that time. We know that there were a lot of injustices which continued to exist in terms of lack of basic infrastructure and services and also massacres starting in 1980, according to our records. But it is important for us to focus on hearing about the issue that you described as a tragic event, which was the massacre at Wagalla, which affected the Degodia people exclusively. That is what we are talking about.

Let me take you back to the two newspaper clippings which have been admitted as evidence. There is the one of February 6<sup>th</sup>, 2010 and the one of May 29<sup>th</sup>. I want to clarify my own understanding of the NSC. I quote from this clipping where it says: “As Permanent Secretary, Ministry of Foreign Affairs, I was a member of the NSC. This committee was chaired by the Vice-President of the Republic and we met at a national level for the purpose of exchanging information.” From the other report of the February 6<sup>th</sup> newspaper, I quote: “But the TJRC chief says that he never attended the meeting sanctioned by the NSC of February 8<sup>th</sup> in Wagalla.” So, my question is: Which meeting in Wajir did the NSC sanction and for what purpose?

**Amb. Bethwel Kiplagat:** I think we need to make a correction. I was not a member of the Kenya National Security Committee. I was a member of the Kenya Intelligence Committee. So, I think we need to put that record straight. The meeting I attended in Wajir was one that was organized by the DC to brief us, the delegation, and the names of all those who were in that meeting are available. We were to make recommendations according to the objective of that trip.

**Commissioner Shava:** So, your clarification is that this is a misprint?

**Amb. Bethwel Kiplagat:** It should be; “Kenya Intelligence Committee” and not “Kenya National Security Committee”. I think we should correct that.

**Commissioner Shava:** Thank you for that clarification. Related to that question, in your testimony, you told us that you served as Kenya’s Ambassador to Paris and also in London. I am not sure how long you served, but I think a normal term would be in the region of four years?

**Amb. Bethwel Kiplagat:** All together, I was abroad for five years.

**Commissioner Shava:** And an Ambassador is the head of a foreign mission?

**Amb. Bethwel Kiplagat:** Yes.



**Commissioner Shava:** Which means that the officers serving in that embassy would report to the Ambassador?

**Amb. Bethwel Kiplagat:** Yes, but where you have an intelligence officer, he does not report to the Ambassador; he reports directly to the boss at the headquarters.

**Commissioner Shava:** Would such an individual report directly to Nairobi as well as to the Ambassador, or directly to Nairobi only?

**Amb. Bethwel Kiplagat:** Only to Nairobi. Any or all the reports, whichever they are, will go directly to the headquarters of the Kenya Intelligence.

**Commissioner Shava:** And was there any mechanism through which a certain officer would share intelligence with the Ambassador?

**Amb. Bethwel Kiplagat:** It depended on what he wanted to share. That was at his discretion.

**Commissioner Shava:** So, you were abroad for five years as an Ambassador and then in Kenya as a Permanent Secretary for Foreign Affairs for eight years; these were very weighty positions. What you have said to us so far implies that any knowledge that you have of the NSC is that such an organ existed but you do not have any further information despite the fact that you held all these positions for such a long time; correct?

**Amb. Bethwel Kiplagat:** I was so preoccupied with my own duties. Each one was running their own docket; if you ask me what the Ministry of Information and Communications was doing, I will not be able to tell you.

**Commissioner Shava:** There is the list of 29<sup>th</sup>, where we see the inclusion in this trip of the Chief Aerodromes Engineer. Why would such an individual be included in this trip soon after which a large number of persons were detained in an air field, where many lost their lives? Is there a connection between the inclusion of this Chief Aerodromes Engineer in the trip, and the confinement of people at the Wagalla air strip?

**Amb. Bethwel Kiplagat:** No, the recommendations came out of this trip about air strips throughout northern Kenya, and one can look at the Minutes; they are there.

**Commissioner Shava:** Indeed, they are there. They still leave a question in my mind. This was a joint operation between the police and the military. I will read from some information that we have which tells us that:

“The 844 squadron of the 82 Air Force based in Wajir, as operating base, was under the command of Maj. D.W. Situma, who is now retired, and Captain J. Mwangi, now retired. Credible evidence was obtained that the entire armed forces personnel in Wajir were committed to this operation. More troops were moved from Langata Barracks to Wajir to reinforce the existing force.”

We have heard testimony elsewhere that military vehicles were deployed over land in a wide area in NEP to collect individuals from the Degodia clan and bring them hundreds of kilometers to Wajir Airstrip. So, by any means this was a large operation. The inclusion of the Chief Aerodromes Officer in the trip, despite the fact that there was a military airfield in Wajir and its use was yet to be launched. So, there was this individual who was supposed to facilitate the use of that airfield to move all the personnel and the equipment?

**Amb. Bethwel Kiplagat:** I do not think so.

**Commissioner Shava:** There is a document in our possession, which I believe you submitted to us and it starts with the title: “KIC Tour of NEP”; then there is a programme and then the next page is the list of 24, and then a brief to KIC on the tour of NEP. Assist us by reading to us the first two sentences of the preamble?

**Amb. Bethwel Kiplagat:** It reads: “The purpose and intention of this brief is to enlighten members of the KIC on various problems affecting security, and the efforts being made to deal with the situation.”

**Commissioner Shava:** This brief, which was prepared on the fourth visit and probably availed to the KIC before the visit, states: “The purpose and intention of this brief is to enlighten members of the KIC on the problems affecting security and the efforts being made to deal with the situation.”

When we go to the end of that brief, we find the solutions proposed on pages 8 and 9. When I look through these five solutions proposed, I see only one, number three, which is not directly related to security, although it is indirectly related to it. It talks about building all-weather roads, particularly security roads, immediate permanent solutions coming from bilateral relations and disarming residents and *shiftas*, defusing tribal tensions and feuds through initiation of settlement schemes and dealing with persons known to associate with armed bandits firmly by use of the Preservation of Public Order Act in NEP and Contiguous Districts Regulations of 1966, and other related laws. Would you agree with me that from the heading of the brief and the solutions proposed that this trip would appear to have been related entirely to security matters?

**Amb. Bethwel Kiplagat:** I want to refer again to the Minutes of KIC tour which---

**Commissioner Shava:** That is not the question I asked you to answer. I am just asking you about this particular document before we move to any other.

**Amb. Bethwel Kiplagat:** This is a brief and these are the Minutes of the KIC. They were adopted. The document of 24<sup>th</sup> May is the one that was approved by the KIC and that was why it was sent out.

**Commissioner Shava:** Indeed, that is not my question. My question is: Looking at the brief that was prepared and sent to the KIC ahead of the visit--- I am not talking about the Minutes that were prepared nearly two months later, but the brief that was prepared directly before the tour of the KIC. Would you agree with me that when you look at this paper, it does not talk about development but security? This particular document is a brief prepared for the tour by the KIC – a tour which you said you were on. Does this document talk about security primarily?

**Amb. Bethwel Kiplagat:** Yes, it does and at the same time, I am repeating that you look at the delegation of 29 and inclusion of other experts; then you look at the recommendations and proposals that are predominantly on welfare and development. That was all we were able to gather from the visit; there is information that we were given; this is a document of the KIC.

**Commissioner Shava:** Why would the DSC prepare recommendations for the KIC?

**Amb. Bethwel Kiplagat:** These recommendations have to be passed through--- These are proposals that they were making; when they briefed us at the meeting itself, this is what they told us; it is in the document of 24<sup>th</sup> May.

**Commissioner Shava:** Kindly refer to the Minutes of the PSC meeting that was held on 28<sup>th</sup> January. If you look at page 3, Minute 201/83 reads: “It was confirmed to the PSC that the question of clearance by the KIC to hold a meeting had been taken up and an answer was being awaited” You have testified that the KIC was a consultative and advisory body. What was meant by this Minute?

**Amb. Bethwel Kiplagat:** This Minute, as I stated here, was that the request would go to the Office of the President and it would come to the KIC for information, which did not make a decision; but I think this is why we need to look at the Minutes of the KIC.

**Commissioner Shava:** When we come to the document which is the report by the KIC secretariat situated in the Office of the President, it is a report of the KIC tour to NEP. There are recommendations here to do with water and irrigation schemes and water works. My question is: In the absence in the delegation of officials of the Ministry of Water, who generated those recommendations?

**Amb. Bethwel Kiplagat:** I have said before that the DC is in charge of development in the district. I do not know whether there was a representative of the Ministry of Water and Irrigation, who generated this information, but the DC could have generated information related to water because he is in charge of the district.

**Commissioner Shava:** Why then would you carry along 15 persons from Nairobi, whom you termed technical experts if the DC was a jack of all trades?

**Amb. Bethwel Kiplagat:** The others who were included were not just being carried. They came with us and where there was a gap, the DC would ask them to look at, because they had gone for development. It was a familiarization tour as well.

**Commissioner Shava:** Finally, in the documents you have handed to us, are the Minutes of the special NEP security committee meeting held on 15<sup>th</sup> February. They are dated 17<sup>th</sup> February. If you turn to page 5, you will see a letter with a letter-head. It is dated 18<sup>th</sup> May, 2011 which was the date on which the TJRC launched its Northern Kenya hearings in Garissa.

This is a letter dated 18<sup>th</sup> May, 2011, which is the day - if I am not mistaken - that the TJRC launched the Northern Kenya hearings in Garissa. This is a letter from the office of the District Commissioner, Wajir East, Private Bag, Wajir. The letter is addressed to the Permanent Secretary, Provincial Administration and Internal Security, attention; Mr. Iringo. It says:-

**RE: PSC Minutes.**

It is from January to February, 1994.

It says:-

“Please, find provincial security committee Minutes from North Eastern Province from the dates 28<sup>th</sup> January, 1984, 15<sup>th</sup> February, 1994, 16<sup>th</sup> February, 1994, 17<sup>th</sup> February, 1994 and 24<sup>th</sup> February, 1994. It is signed by Jabula Otieno for District Commissioner, Wajir East.”

Those are the documents that were availed to us. Ambassador, how did you come to be in possession of this letter which is addressed to the Permanent Secretary, Provincial Administration and Internal Security?

**Amb. Bethwel Kiplagat:** As I said earlier, that is a question that I am not willing to answer.

**The Presiding Chair** (Commissioner Chawatama): Thank you. I join my colleagues in thanking you Ambassador for making yourself available to this Commission and for your testimony. I have only four questions. My colleagues have exhausted all the questions that I had. This is a follow up to the question that the Commissioner asked. You said that KIC was an advisory body. When you went to Wajir and found out that the burning issue in accordance with the brief was security and yet the KIC's agenda was development, did you correct the DSC as to why you were there so that they could do away with the brief?

**Amb. Bethwel Kiplagat:** We asked them to give us their brief according to their objective. Related to that was security because as you can see, this is mentioned in the report where it talks about the improvement of the situation.

**The Presiding Chair** (Commissioner Chawatama): In my mind, I am more persuaded to believe the persons you were going to meet. I know how civil servants work. They were told that there was a high powered delegation coming and they should prepare a brief. So, their burning issue was security. To start talking about development---Development was for the benefit of who?

**Amb. Bethwel Kiplagat:** This was development for – remember that this trip was prepared much earlier. However, as it says clearly, it was a familiarization tour for members of the KIC. All the members did not go and we were five members of the KIC. We were fully briefed on what we would do. We were to look at the development issues because the security issues, at least, in those two districts from the report we had on 28<sup>th</sup> if you look at the Minutes, there was an improvement in Wajir.

**The Presiding Chair** (Commissioner Chawatama): I did not want to go there because there are about 16 events from 10<sup>th</sup> November, 1983 right through to 6<sup>th</sup> February and all of them touch on security and how serious that issue was. However, I will not go there. The other worry I had is how the DAC, the PAC, KIC are so disjointed. One wonders when you expect transparency and accountability, how it works. Who does one hold accountable when the DAC is doing its own things, KIC is doing its own thing, and PAC its own thing? There is no coordination at the end of the day. Who does one hold accountable?

**Amb. Bethwel Kiplagat:** I think it is good to look at the structure and to look at the Acts again to see what lines of responsibility and communication there are. As you can see from the Minutes, the Provincial Commissioner, when he got the information, he went to Wajir. And not only that; he called for a special meeting to discuss about that incidence. On top of that, all the Minutes of the district security committees were submitted to the provincial security committee. So, the district security committee must be answerable to the provincial security committee. The PC is in charge of the province.

**The Presiding Chair** (Commissioner Chawatama): I think the other worry is that, as you have stated, we should go back, look at Minutes and collect documents. One of the witnesses, G. G. Kariuki, said that, sometimes, the Government destroys Minutes of sensitive security meetings. Do you have any comments on this assertion?

**Amb. Bethwel Kiplagat:** I really do not have. Whatever is relevant, we can try and collect it.

**The Presiding Chair** (Commissioner Chawatama): When you went to Wajir for development purposes, you indicated that part of the terms of reference was Takaba Water Project and Risas Water House. Do you know what became of those projects 27 years down the line? Would you be shocked to hear that nothing has been realized from those projects after those years and nothing has come up?

**Amb. Bethwel Kiplagat:** It would mean that we recommended.

**The Presiding Chair** (Commissioner Chawatama): Thank you for your time and your testimony. On behalf of Commissioners, we would also like to thank members of the public for your patience. Thank you for the respect you accorded the witnesses and for remaining quiet and not disturbing whilst giving his testimony. You did not disturb. We thank members of the media.

**Mr. Elijah Mwangi:** The matter of Joseph Muthui Ndirangu, the witness who gave evidence on Friday was attending a matter of confirmation on whether the matter is correct as far as his testimony is concerned and as reported in the Daily Nation on 4<sup>th</sup>.

**The Presiding Chair** (Commissioner Chawatama): I would like to give an undertaking that we go back to the HANSARD. We are here and the Director of Legal will make sure that he goes back to the HANSARD and collect the information needed. We will know about that tomorrow or the day after. Leader of Evidence, could you guide us whether we will be here tomorrow?

**The Commission Secretary** (Ms. Nyaundi): We will be here tomorrow.

**The Presiding Chair** (Commissioner Chawatama): We will adjourn until tomorrow 9.00 a.m.

*(Closing Prayers)*

*(The Commission adjourned at 4.00 p.m.)*