

Seattle University School of Law

Seattle University School of Law Digital Commons

I. Core TJRC Related Documents

The Truth, Justice and Reconciliation
Commission of Kenya

6-7-2011

Public Hearing Transcripts - North Eastern - Wagalla Massacre (Nairobi) - RTJRC07.06 (Aberdares Hall KICC) (David Mwiraria Testimony)

Truth, Justice, and Reconciliation Commission

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/tjrc-core>

Recommended Citation

Truth, Justice, and Reconciliation Commission, "Public Hearing Transcripts - North Eastern - Wagalla Massacre (Nairobi) - RTJRC07.06 (Aberdares Hall KICC) (David Mwiraria Testimony)" (2011). *I. Core TJRC Related Documents*. 81.

<https://digitalcommons.law.seattleu.edu/tjrc-core/81>

This Report is brought to you for free and open access by the The Truth, Justice and Reconciliation Commission of Kenya at Seattle University School of Law Digital Commons. It has been accepted for inclusion in I. Core TJRC Related Documents by an authorized administrator of Seattle University School of Law Digital Commons.

**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY, 7TH JUNE,
2011, AT ABERDARES HALL, KENYATTA INTERNATIONAL
CONFERENCE CENTRE, NAIROBI**

PRESENT

Margaret Wambui Shava	-	The Presiding Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Ronald Slye	-	Commissioner, USA
Gertrude Chawatana	-	Commissioner, Zambia
Tom Ojienda	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya
Tom Chavangi	-	Leader of Evidence
Elijah Mwangi	-	Counsel

(The Commission commenced at 9.55 a.m.)

The Presiding Chair (Commissioner Shava): Welcome to this session. This is a continuation of the sessions we held in the northern region. The Commission has also completed hearings in part of the western region, Mount Elgon, and will be proceeding back to the Western region after these hearings. We have had several witnesses and we have several in front of us. Before we proceed, I would like to state our ground rules. Whoever has a mobile phone, please, switch it off so that you do not interrupt the proceedings. We are requesting that we give the witnesses who are testifying the respect they deserve so that they can say what they have come to say. You may hear things which you agree with and which reflect your own experiences. You may also hear of things which you disagree with. However, we ask you to respect the testimony of the witnesses. We ask those with cameras to take photos from where they are seated and not to move around. They should not also use flash cameras.

Counsel, do you have any issues to raise?

Mr. Elijah Mwangi: Thank you, Madam Presiding Chair. There was the issue of Joseph Muthui Ndirangu who had erroneously been misreported in the *Saturday Nation*. I had a word with Mr. Tom Aziz and he has something to say about it. We had asked for a clarification of a report in the *Saturday Nation* of 4th June. He has confirmed that there was an error in the report. I will leave him to state that to the Commission.

Mr. Tom Chavangi: I had a chance of going through the HANSARD and realized earlier on that Commissioner Rye asked for recommendations from Commissioner Ndirangu. In one of the recommendations, it is stated that the officers who were serving in Wajir then were disciplined to the extent that he was immediately transferred from that region because he could no longer work in that region. So, that is where the journalist got that information. It is upon the journalist to come and clarify

what he wrote in the *Daily Nation* because for us and for Ndirangu, it said that they were disciplined. So, it was further interpretation by the journalist.

The Presiding Chair (Commissioner Shava): We have seen that our report reflects the true picture. We have the true picture by the HANSARD. The journalist who produced the story should be asked to clarify because that seems to be his own interpretation. It was not the report as stated. Does that satisfy you, counsel?

Mr. Elijah Mwangi: That leaves us hanging in the air because he is here to report what is happening in the Commission. He is, therefore, amenable to your directions. So, we would like that rather than pass on the buck to us, in a manner of speaking. Mr. Muchiri Karanja, who published the item should be requested to publish a clarification and apology so that the matter is not left there.

The Presiding Chair (Commissioner Shava): Counsel, we have stated our position. We have said that we are ready to avail a true copy of the records to the journalist to support your efforts in getting the correction published.

Mr. Muchiri Karanja: Appreciated.

The Presiding Chair (Commissioner Shava): I see that my senior has walked in. I will ask again if there is any other counsel here present and whether they would like to identify themselves and the clients they are representing.

Mr. Harun Ndubi: Good Morning, my name is Harun Ndubi for the Wagalla Victims and Survivors Association as well as the Truth be Told Network.

The Presiding Chair (Commissioner Shava): Thank you. Do you have any other preliminary remarks that you want to raise?

Mr. Harun Ndubi: I had a conversation with my clients regarding the matter you have been dealing with. I think we are happy with the trend because in the tail-end of your conversation, you said that it is not a life and death matter. A conversation with journalists would be helpful rather than to gag anybody or give directions that are in the nature of sanctions. For the media to report accurately about what happened is something that is in the interest of everybody rather than give insinuations that may not be advanced to an individual when they are not. I do not think from the report I read that there is anything that is terribly objectionable to Mr. Ndirangu or any other interests.

The Presiding Chair (Commissioner Shava): Thank you, counsel. Before we proceed, I will introduce a Commissioner who has just walked in and was tied up with other issues; this is Commissioner Farah.

(Rtd. Brigadier Phillip Chebet took the oath)

Mr. Tom Chavangi: Thank you Brigadier Chebet. I will lead you in questions that you will be responding. You did a statement to the Commission about your knowledge during the Wagalla incident. Before we proceed further, kindly, state your name for the record to the Commission.

Rtd. Brigadier Phillip Chebet: I am Brigadier (Rtd) Philip Chebet.

Mr. Tom Chavangi: What do you do?

Rtd. Brigadier Phillip Chebet: Upon my retirement, I am just a businessman in Nakuru.

Mr. Tom Chavangi: Thank you. Could you now present the statement to the Commission?

Rtd. Brigadier Phillip Chebet: I remember it was early 1984 when I was posted to the 7th Kenya Rifles.

I reported in January, 1984 and found that the unit was in North Eastern Province on operation. My company was stationed in Garissa at the Battalion Headquarters. I was in charge of the operational headquarters in Dujis in Garissa District and a Member of the Garissa Security Committee. It was early 1984 when we were instructed by Headquarters, Kenya Army to prepare to receive members of the Kenyan Intelligence Committee who were to visit the province later that month.

The Commanding Officer asked me to be in charge of their security and also the necessary escort. I remember they arrived on 8th February and the tour of the province commenced. The Committee visited the district headquarters to include Wajir. I remember that in all district headquarters, the District Commissioners gave a brief on the general security situation, on the development issues that were being undertaken to alleviate poverty and sufferings in their respective districts. The Committee was also to conduct visits to some of the development projects. On completion of their tour, the committee left for Nairobi and after two or three days, the unfortunate case of Wagalla occurred. I do not remember, to the best of my ability, whether there was any mention of an impending operation during the brief visit by the district commissioners in Wajir by the Kenya Intelligence Committee. At the time of the incident, I was in Garissa with my family. In response to the summons by the TJRC to attend this Commission, I want to state that I was not a member of the Wajir Security Committee and, therefore, not aware of any security operation that took place at the Wagalla Airstrip in February, 1984.

In 1980, I was not the Commanding Officer and not an Officer Commanding any of the seven units of the Kenya Rifles and thus, not aware of any operation at Bulagaratasi in November 1980. Hon. Commissioners, that is what I can state.

Mr. Tom Chavangi: Thank you. In your statement, you said that you reported to 7th Kenya Rifles based in North Eastern Province. Do you remember the exact date when you reported?

Rtd. Brigadier Phillip Chebet: I remember it was in early January but I cannot remember the exact date. I was only a month old in the unit.

Mr. Tom Chavangi: Thank you Brigadier. There are a few questions I will ask so as to understand the operations of the military. When you said company, what do you really mean by that word?

Rtd. Brigadier Phillip Chebet: Companies make up a battalion. Therefore, a company is smaller than a battalion.

Mr. Tom Chavangi: What about a platoon?

Rtd. Brigadier Phillip Chebet: A platoon is smaller than a company. Platoons make up a company.

Mr. Tom Chavangi: What about a Coy?

Rtd. Brigadier Phillip Chebet: A coy makes up a company.

Mr. Tom Chavangi: In terms of hierarchy, which one is the biggest? There is company, battalion and then platoon?

Rtd. Brigadier Phillip Chebet: A battalion is the biggest, the company and then the platoon.

Mr. Tom Chavangi: You also stated that you were in charge of Garissa District Security Committee. Was it the military security committee or the general district security committee?

Rtd. Brigadier Phillip Chebet: In my statement, I did not state that I was in charge. My responsibilities were in the military sector in Garissa District and I was also a member of the district committee of Garissa.

Mr. Tom Chavangi: Your statement reads: I was in charge of Garissa District Security Committee. I am asking you: Were you in charge of the security committee that we know of the military?

Rtd. Brigadier Phillip Chebet: There is an amendment that I later on raised. I was in charge of Garissa District Security Committee in terms of the military and a member of the security committee.

Mr. Tom Chavangi: Thank you Brigadier. You also said that your company was stationed in Garissa at the Battalion Headquarters. Does that mean that the Battalion Headquarters was in Garissa?

Rtd. Brigadier Phillip Chebet: Yes, the Battalion Headquarters was in Garissa.

Mr. Tom Chavangi: You have also stated that the Commanding Officer asked you to be in charge of the security or of the escort of the KIC team. Who was this Commanding Officer?

Rtd. Brigadier Phillip Chebet: The Commanding Officer was Lft. Col. Muhindi at that time.

Mr. Tom Chavangi: He is the one who directed you to be in charge of the security?

Rtd. Brigadier Phillip Chebet: Yes.

Mr. Tom Chavangi: Why would the Military be in charge of security and not the police? You realize that this was a KIC team composed of civilians and to some extent some Military officers and very senior Government officials. Why not the police? That duty was given to the Military.

Rtd. Brigadier Phillip Chebet: First of all, the KIC came on a Military aircraft and usually landed in the Military airstrips. We had the capability, as the Military, to escort them with the necessary equipment which we had at the time. Also, you should take note that North Eastern was an operation area and I am sure it is even still an operation area up to now. The Military was also in charge of some of the security operations in North Eastern at the time.

Mr. Tom Chavangi: So, does it mean that the police had no capacity if you say that you had the capacity?

Rtd. Brigadier Phillip Chebet: They had the capacity, but we were tasked as part of the District Security Committee.

Mr. Tom Chavangi: And this task was given to the Military then by who?

Rtd. Brigadier Phillip Chebet: Directed from the Army Headquarters to be in charge of the security and so, the Commanding Officer gave me that responsibility.

Mr. Tom Chavangi: When you say Army Headquarters, you mean the headquarters in Nairobi?

Rtd. Brigadier Phillip Chebet: Yes.

Mr. Tom Chavangi: Are you aware of the specific person who gave those directions?

Rtd. Brigadier Phillip Chebet: I am not aware because I was given the directive by the Commanding Officer.

Mr. Tom Chavangi: When you arrived in Wajir, you have stated in your statement that the DC made a brief on the general security situation. What briefing did you receive from the DC about the security issues; specifically on security?

Rtd. Brigadier Phillip Chebet: As an accompanying officer, I used to accompany them all the way. I used to attend some of these meetings or the briefings and I heard the DC brief the visiting team about the general security in the district and also about development projects. That is what I heard.

Mr. Tom Chavangi: In his briefing, he did not mention anything about the tension between the Degodias and the Ajurans or did he just say that the situation is calm?

Rtd. Brigadier Phillip Chebet: I remember the DC saying that it was calm. The district was generally calm at that time.

Mr. Tom Chavangi: You also said in your statement that the DC gave you a brief about development issues. You know very well as a Brig. in the Army that for the DC to give a statement on development issues, some pertinent officers must be in that conference room. Were there any officers from the respective Ministries from that particular district?

Rtd. Brigadier Phillip Chebet: I cannot remember, but the DC talked about those development projects. I do not remember exactly whether there were some members of the other Government agencies.

Mr. Tom Chavangi: You have also said in your statement that you visited development projects. If you can recall, what are these development projects that you visited?

Rtd. Brigadier Phillip Chebet: Yes, I remember after the briefing, the DC took the KIC to tour some of these projects. I remember two or three places which we visited or took the team and one was a borehole which had stalled. There was a problem with the engine and I remember when the team got there, they were asking the question why they had not repaired the engine so that the locals could benefit from the water yet it had already been drilled and the community was not benefiting. I remember it was directed that the engine should be repaired so that water could be pumped. Another place which we went was the KPLC generating station where there were two or three generators, one was functioning or two and it was directed that the other one be repaired. The other one was the police lines for the welfare of the police and the APs. There was a project which was going on and the houses had not been fully completed and also the perimeter fence for the security of the police lines. Those are the three or four projects that I remember the team visited when they were in Wajir.

Mr. Tom Chavangi: Those were the only development projects that you visited in the whole of Wajir District?

Rtd. Brigadier Phillip Chebet: That is what I can recall.

Mr. Tom Chavangi: No other development projects like irrigation schemes and educational centres?

Rtd. Brigadier Phillip Chebet: Irrigation scheme was the only one which we visited while we were in Mandera and while in Garissa.

Mr. Tom Chavangi: If I take you a little bit back, and excuse me for that, for how long did you serve in this region?

Rtd. Brigadier Phillip Chebet: Usually, the units are deployed for six months. So, I was there for close to six months.

Mr. Tom Chavangi: That is how the structure is. If a unit is deployed, it serves for six months?

Brig. Philip Chebet: That is what they usually do on rotational basis.

Mr. Tom Chavangi: So, when did the KIC finalize its visit to the northern region?

Rtd. Brigadier Phillip Chebet: I remember it took about three days, namely, 8th, 9th and they left on the 10th. They left about 10.00 a.m. or 11.00 a.m. of 10th.

Mr. Tom Chavangi: How did you get to know about the Wagalla Massacre? You said that three days later is when you heard about the Wagalla Massacre. How did you get to know about that information? Who told you? Was it an informal sitting or a formal sitting? Were you in Garissa or in Nairobi when you were told about the Wagalla Massacre?

Rtd. Brigadier Phillip Chebet: I was in Garissa when I heard about the unfortunate incident in Wagalla. My Unit is part of the whole battalion and so, we used to know what is going on, but I recall that the actual operation had filtered through our normal communication in the Military that there was an ongoing operation. That is from about 10th, 9th around there. But about the actual operation or the deaths which occurred; I heard it from the Commanding Officer or from our channel of communication on about the 13th.

Mr. Tom Chavangi: So, personally, you heard about this thing called the Wagalla Massacre on the 13th?

Rtd. Brigadier Phillip Chebet: Yes, I heard about it on the 13th.

Mr. Tom Chavangi: And yet at that time, you sat in the DSC of Garissa?

Rtd. Brigadier Phillip Chebet: Yes, I was a member of the DSC.

Mr. Tom Chavangi: Yet information came to you three or four days later about a massacre that took place in a neighbouring district?

Rtd. Brigadier Phillip Chebet: Yes.

Mr. Tom Chavangi: Thank you Brig. Chebet. I believe you have this document written "Secret", the Minutes of the Special North Eastern Province Security Committee held in the PC's office on Wednesday 15th February, 1984. I want to take you to the Minutes dated 15th February, 1984, then two pages thereafter where Minute NO.15 of 1984: "Immediate Remedial Action." I can read very fast that, so that you understand what I am talking about. "The PSC can foresee the danger of major conflict between Degodia tribesmen and Ajuran on one hand and bitter feelings of Civil Servants on the other hand. The PSC, therefore, feels that beside exhaustive investigations into this incident being carried out, the following measures should in addition be taken." I will take you to measure No.5 – "Continuous operation should be stepped up with increased reinforcement of ---" Then I will turn you to Minute No.16 of 1984, which is several pages after what I have read. Just turn seven pages. I

will directly go to D where it says: “One Army Platoon from Garissa also reinforcing the ongoing operation.” Were you aware of this one Army Platoon?

Rtd. Brigadier Phillip Chebet: Yes, as a member of the DSC Garissa, I was aware.

Mr. Tom Chavangi: You were aware of this One Army Platoon that had to go and reinforce the operations in Wajir? So why were they going to reinforce operation? What were the reasons for the PSC to seek for reinforcement into Wajir yet we have an able team of armed officers also in Wajir? Why would they seek reinforcement from Garissa and Mandera?

Rtd. Brigadier Phillip Chebet: I remember that after the unfortunate incident, the fear of some was that reprisal from the community might step up or might escalate and they needed some troops to stabilize the situation. Also, take note that the operation was still ongoing in the mopping up of the arms which were in the possession of the locals. So, that was one of the aims of reinforcing the police in that region. It was just to stabilize the situation and not for any other operation. This is precisely what they were doing.

Mr. Tom Chavangi: So, this reinforcement was sought after the incident?

Rtd. Brigadier Phillip Chebet: It was sought after the incident.

Mr. Tom Chavangi: Were you aware of the KIC programme in the northern region?

Rtd. Brigadier Phillip Chebet: I was not aware of it. The only thing is that we got to know that they were coming and we were told where they were visiting, mostly district headquarters. So, I was not aware, but I got to know when I went to the ground to receive them.

Mr. Tom Chavangi: So, you are saying that when you received them is when you got to know about their itinerary in the whole of the region?

Rtd. Brigadier Phillip Chebet: Yes.

Mr. Tom Chavangi: Just to jog my memory, were you in charge of intelligence also in Garissa?

Rtd. Brigadier Phillip Chebet: I was not in charge of intelligence. I was in charge of security operations.

Mr. Tom Chavangi: For operations to take place, do you need intelligence?

Rtd. Brigadier Phillip Chebet: Yes, we need it.

Mr. Tom Chavangi: So, if we presume that there was prior information as to movement or rounding up of individuals in Wajir that was known to your operations, would we be wrong? If we make a presumption that you had intelligence to the extent that some people were supposed to be rounded up in Wajir and that is why there was need for reinforcement a few days later, will we be making a wrong presumption?

Rtd. Brigadier Phillip Chebet: It is true that you need intelligence for you to have a successful operation, but for the case of Wajir, I am not aware. But that is why the DSC has got an intelligence man to brief and give information on the situation before you launch any operation. So, in the case of Wajir, I do not know whether they were given any intelligence input.

Mr. Tom Chavangi: During that time, who was the highest ranking Army Officer in the North Eastern Province then?

Rtd. Brigadier Phillip Chebet: I think the highest in rank was my Commanding Officer because he was in charge of the operations in North Eastern at the Rank of Lieutenant Colonel.

Mr. Tom Chavangi: So, that is Lft. Col. Muhindi?

Rtd. Brigadier Phillip Chebet: Yes.

Mr. Tom Chavangi: So, you are saying that he commanded the Armed Forces in all the districts, for instance, Wajir, Mandera and Garissa?

Rtd. Brigadier Phillip Chebet: That is true.

Mr. Tom Chavangi: And when you were serving in 1984, were you at the rank of Brig.?

Rtd. Brigadier Phillip Chebet: No, I was in the rank of a Major.

Mr. Tom Chavangi: Was there a brother of yours of the rank of a Major in Wajir? Not you real brother, but your fellow officer of the rank of a Major?

Rtd. Brigadier Phillip Chebet: Definitely, because any Unit or Company is commanded by a person with the rank of a Major, so there was a Major in Wajir and Mandera.

Mr. Tom Chavangi: For us who do not understand the operations of the Army, was it not probable for the Commanding Officer to assign you to move the KIC into Wajir and then hand over to your brother who is of the same rank, so that he could continue with that team to Mandera and then hand over to a brother who is a Major there? Why was it that it was only you who was assigned to move around the KIC yet there were officers of the same rank in these other jurisdictions?

Rtd. Brigadier Phillip Chebet: I think that was the wisdom of my Commanding Officer and he saw it fit for me to be in charge of this team that was from Nairobi. I do not think there was any other reason. He saw it fit and that is why he gave me that mission.

Mr. Tom Chavangi: What it means then is that the Commanding Officer realized your capacity and had a lot of trust in you and probably you were more equal than others.

Rtd. Brigadier Phillip Chebet: Not really because all of us have the same training, but perhaps he wanted me to see more of the Province because I was newly posted to an operation area. He perhaps wanted me to see Wajir and Mandera.

Mr. Tom Chavangi: I will still take you back to the document written “Secret”, the Minutes of 16th February 1984, where there was a joint meeting between the PSC and the DSC in the PCs office on 14th February, 1984, beginning at 11.50 am. It is dated 16th February; Minute No. 18 of 1984. What was the purpose of that meeting?

Rtd. Brigadier Phillip Chebet: After the Wagalla incident, we were called for a joint PSC/DCS meeting for an update of what had happened. As the Minutes say, we were cautioned on the issue of proper planning of any future operations to avoid abrupt planning and not taking into consideration all matters that will lead to a success of an operation. That was the main aim of the PSC/DSC joint meeting on that day.

Mr. Tom Chavangi: Was it usual for the PSC and the DSC to have joint meetings? Was it a usual occurrence?

Rtd. Brigadier Phillip Chebet: It was not often that the PSC and the DSC met, but because we were closely located with the PC, the PSC found it fit for us to have a joint meeting at the time, but usually we did not have such meetings.

Mr. Tom Chavangi: In the same Minutes, you have stated in the second last paragraph and I will read: “The CIO 7 KR briefed the joint PSC/DSC about his meeting with all the security personnel in the presence of the DSC and in particular pointed out to them that the Government expected 100% loyalty from us all and any black sheep in our midst will not be tolerated.” This was your statement Brigadier, and I presume that the CIO 7KR was you.

Rtd. Brigadier Phillip Chebet: That was not me. That was Lieutenant Colonel Muhindi and it is nearly 28 years ago. So I cannot remember that. I was in that meeting but it is a long time and I cannot know why he said that.

Mr. Tom Chavangi: In the same meeting that was held in Garissa, the Chairman stated that you should not be caught unawares next time and made reference to the Wajir incident. What do you think of that statement that you should not be caught unawares next time? Was the reference by coincidence?

Rtd. Brigadier Phillip Chebet: I cannot remember very well why they said that, but according to me, he might have been referring to the operations that had been planned suddenly by the DSC in Wajir and the outcome was not successful. He might have been saying that we should not be caught having not properly prepared for the operation and that was the main aim of that meeting. We were told to be planning in advance.

Mr. Tom Chavangi: As a Brigadier one star General, when your Chairman says that you should not be caught unawares, what does he mean? Considering that this was an operational zone and an emergency area and something like the Wagalla incident had

taken place, then he refers to not being caught unawares next time. You, as a Military man, what immediately comes to your mind when you are told that?

Rtd. Brigadier Phillip Chebet: If you are caught unaware in any operational situation, it means that you might not have known what is coming. The committee in Wajir might have been caught unaware of what happened later on. Taking into consideration everything when you are planning, perhaps they did not plan in totality to the final execution of an operation.

Mr. Tom Chavangi: You were in charge of security and you provided security for these gentlemen and you said that as an operational person, you also received intelligence. Did you go as an advance party or did you accompany the team as it moved?

Rtd. Brigadier Phillip Chebet: I remember we left with the PC and the PSC from Garissa to Wajir. We did not go in advance to any other place because we boarded the same aircraft after that with the PSC and the other members less a few others. We were quite a number, so we had an extra aircraft and we were hopping from one place to another. We went from Mandera to Liboi and back to Garissa together.

Mr. Tom Chavangi: That means you had prior intelligence of the security of the region to the extent that you were convinced that you can actually travel with the team without you being an advance party?

Rtd. Brigadier Phillip Chebet: We have troops on the ground in Mandera. I had a Platoon in Liboi and Garissa was my base, so I had liaised with them and I was sure of the safety and security.

Mr. Tom Chavangi: So that means that there was prior intelligence between the 8th and 14th February as to what was going to happen in the various districts? That intelligence was in your stead?

Rtd. Brigadier Phillip Chebet: In such movements we do not need intelligence unless it is an operation. So for the KIC to come, we did not need any intelligence.

Mr. Tom Chavangi: How do you manage a movement in an operational zone without intelligence? Do you just go without anybody feeding you information on the movement like what to expect when you reach Wajir or Mandera?

Rtd. Brigadier Phillip Chebet: This group from Nairobi was hopping from one airstrip to another. So there was no ground movement except when we were visiting the development projects. So their safety was guaranteed from one airstrip to the other. We had troops in the landing zones.

Mr. Tom Chavangi: Why mount a military security for a civilian team? You are saying that there was no threat to this team and then you mount such a huge security to protect them as they move around. Why did you not you leave it to the police to do that?

Rtd. Brigadier Phillip Chebet: I have stated that North Eastern Province was an operation area and I am sure that it is still an operation area now. Anybody going there has to be guaranteed of his security, safety and comfort and it was my responsibility and that of the DSC to make sure that this group was secure and that they were comfortable whenever they were going to sleep.

Mr. Tom Chavangi: How many planes did you use?

Rtd. Brigadier Phillip Chebet: The group that came on board included a Buffalo Air Force Plane and we also had an aircraft in NEP. So there were two aircrafts.

Mr. Tom Chavangi: So as you were moving, you were also in the line of duty?

Rtd. Brigadier Phillip Chebet: Chebet: Yes.

Mr. Tom Chavangi: Who were the other officers in your company? Did you move as a Company or a Platoon as you were escorting these gentlemen?

Rtd. Brigadier Phillip Chebet: There was no movement of troops. I was the only one and the Commanding Officer who were in uniform.

Mr. Tom Chavangi: So, from the Army, it was Lieutenant Colonel Muindi and Major Chebet. When the Wagalla incident was reported to you three days later, were there any casualties from the Armed Forces?

Rtd. Brigadier Phillip Chebet: I do not remember whether there were any deaths; we did not have any.

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

Mr. Harun Ndubi: I wish to take my leave. I have some urgent matter to deal with in Mombasa, but there is a Counsel coming, Mr. Ishmael Nyaribo, who passed through the courts and he will be coming to sit in for me. I should be back on Thursday.

The Presiding Chair (Commissioner Shava): Thank you, very much Counsel. We wish you a productive trip. Thank you very much, our witness this morning. Our Commissioners will now ask you some questions.

Commissioner Dinka: Brigadier Chebet, thank you very much for your testimony. How long did you serve in Garissa?

Rtd. Brigadier Phillip Chebet: I reported to the Unit in January and we relocated back to Nairobi in June. So it was about six months.

Commissioner Dinka: You only served for six months in Garissa and then you returned back to Nairobi. Who was representing the Commanding Officer whenever he was absent from the post in the 7th Kenya Rifle?

Rtd. Brigadier Phillip Chebet: Normally, when you are deployed in an operation area, you are expected to stay there for the duration of your tour. In the event of a need for the Commanding Officer to leave the operation area, he usually delegates authority and command to the second in command. So the second in command is supposed to be in charge.

Commissioner Dinka: Have you ever served as the second in command in Garissa?

Rtd. Brigadier Phillip Chebet: I did not serve as second in command.

Commissioner Dinka: So, you never sat at the Provincial Security Committee representing Lieutenant Colonel Muhindi?

Rtd. Brigadier Phillip Chebet: No, except for the time I sat in the joint PSC/DSC meeting and that is the only time I attended.

Commissioner Dinka: I want to ask you a question which is related to your visit to Wajir with the KIC team. When you escorted them, you sat with them at the DCs office when the DSC met together with the PSC and the Acting District Commissioner gave you a briefing. Have you ever seen a copy of that briefing letter?

Rtd. Brigadier Phillip Chebet: I attended most of the briefings as an accompanying officer and I only saw that brief when I was summoned for this hearing. I had not seen it before.

Commissioner Dinka: The briefing note was prepared one week before your arrival on 1st February 1984. We know from the PSC meeting Minutes which you participated in as the Garissa District Military Security Committee where the Provincial Commissioner was briefing you after you came back that the situation in Wajir was very tense.

And when you went to Wajir on 8th, the entire briefing paper that Mr. Tiema was kind enough to give the Commission when he appeared here was focusing totally on security issues. Would you agree with that?

Rtd. Brigadier Phillip Chebet: Yes, the briefings which we were given by the acting DC, Wajir, at that time dwelt mostly on the security situation but I do not know why it was not in my evidence. But immediately after that, we had this tour to those other developmental projects.

Commissioner Dinka: Development projects such as housing for administration police, boreholes, perimeter fences for security and all that! Would you say that is directly a matter of security necessity? Like housing for the APs, perimeter fences around the airstrips or around the headquarters, around the military bases or police bases, are these not security issues? Why do you need perimeter fences if you do not have security concerns?

Rtd. Brigadier Phillip Chebet: Lady Chair and Commissioners, I said in my evidence that one of them was the borehole, KPLC which was a generating station is

not a security thing. The police lines were for the welfare of the civil servants and the perimeter fence was for their security.

Commissioner Dinka: Very good. You as the team of KIC went and visited those projects which were not mentioned in the briefing of Mr. Tiema?

Rtd. Brigadier Phillip Chebet: That is right!

Commissioner Dinka: Normally, you have your own military intelligence line at the district and the provincial level and then you have the Special Branch which is basically civilian and police. Do you share information with each other?

Rtd. Brigadier Phillip Chebet: Lady Chair and Commissioners, I am not able to answer that because I was an operational officer and whatever we were getting was a brief from the Special Branch or from whatever intelligence channels for our operation matters. Even we did not have a military intelligence man in that committee. It was only on operational matters.

Commissioner Dinka: In the District Security Committee where you sat, you mean you have only the Special Branch who share intelligence with you but you do not have, at the 7th Kenya Rifle, a military intelligence officer or division or section?

Rtd. Brigadier Phillip Chebet: Lady Chair and Commissioners, the intelligence which comes down to us is usually passed from other intelligence agencies and also the military. In the case of a battalion or a company, they are given intelligence reports through the normal military channels. I think the former Chief of General Staff gave and expounded on that. So I am not in a position to give that.

Commissioner Dinka: Okay! How do you undertake military operations without having adequate military intelligence or civilian intelligence on the situation where you are taking the operation?

Rtd. Brigadier Phillip Chebet: Chair, I think I have a problem with hearing. There is a problem with the public address system. I cannot hear you.

Commissioner Dinka: Can you hear me?

Rtd. Brigadier Phillip Chebet: Now I hear you.

Commissioner Dinka: My question was: How do you undertake military operations if you do not have a military intelligence unit in your company or battalion?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I did not deny that we do not have, but I am not privileged to say that.

Commissioner Dinka: Oh, I see. Okay. I accept that. My final question to you is, when Mr. Tiema was briefing you, if you look at page 6 of his briefing note---

The Presiding Chair (Commissioner Shava): Can you not hear? You cannot hear? We seem to be having a technical problem with the sound. The sound is not coming through the speakers. Is it better now?

Commissioner Dinka: I am sorry, it is on page 8, the last paragraph 3. In one of his solutions, he suggests a concerted and ruthless effort should be embarked on by the Kenya Government to instill patriotism in Kenyan Somalis living in this province. They should be made to understand that Kenya is the best of these three countries. When he talks about concerted and ruthless effort, what did you understand by that, Brigadier?

Rtd. Brigadier Phillip Chebet: Commissioners I am not following you. There are quite a number of interruptions---

Commissioner Dinka: Of Mr. Tiema's briefing note to you!

Rtd. Brigadier Phillip Chebet: Can you assist me again on that?

Commissioner Dinka: I beg your pardon!

Rtd. Brigadier Phillip Chebet: Can you restate your question again?

Commissioner Dinka: What did you understand by the phrases concerted and ruthless effort should be embarked on by the Kenya Government, the objective being to instill patriotism in Kenyan Somalis living in this province? What did you understand by the word "concerted and ruthless effort"?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, sorry, I cannot be able to give an answer to that because I am not aware of that. This is what I am reading now and I cannot recollect what he meant by this.

Commissioner Dinka: Thank you very much. I have no more questions for you, Brig.

The Presiding Chair (Commissioner Shava): Yes, Prof. Slye!

Commissioner Slye: Thank you, Brigadier. First, I want to ask you about some of the Government structures that we have been talking about both in your professional capacity but within your professional mandate to try and get your understanding on what the functions of some of these bodies were and what their relationships were. The first one I want to ask you about is the Kenya Intelligence Committee (KIC), the organization you hosted or you helped host. What is your understanding of their functions, not specifically but more generally within the structures of governance?

Rtd. Brigadier Phillip Chebet: Commissioners, I am not really aware of their mandate and their functions but I know that they deal with the strategic issues of this country.

Commissioner Slye: So you say that they deal with the strategic issues of the country. Is it your understanding that it is the main body which does that or there are other bodies that they do that with?

Rtd. Brigadier Phillip Chebet: I am aware that there is what we have been told here; that the Kenya Security Committee, which is I think the highest in the country.

Commissioner Slye: But if you understand your country correctly, if you were to think about the body that you had first looked up to in terms of intelligence mandate, one of the bodies would be the Kenya Intelligence Committee. Is that correct?

Rtd. Brigadier Phillip Chebet: I should think so!

Commissioner Slye: I realize I may be moving even further beyond what you may have knowledge about but you just made reference to the Kenya Security Committee. We have also been told and we have seen documents referring to the National Security Council or National Security Committee. So I guess my first question to you is: To your knowledge, are those three bodies the same; the National Security Council, National Security Committee and the Kenya Security Committee?

Rtd. Brigadier Phillip Chebet: I think that is beyond me.

Commissioner Slye: Okay. Do you have any knowledge about any of those bodies because you just said you have heard about the Kenya Security Committee here? In your operations within the military, did you ever come across references to the National Security Council and the National Security Committee or the Kenya Security Committee?

Rtd. Brigadier Phillip Chebet: Lady Chair and Commissioners, let me not commit myself to that again. Thank you.

Commissioner Slye: Now we are moving more into the matter before us. Just help me understand the lines of authority that exist when you have a company like yours located in a district, in your case in Garissa, but obviously, exist in another district, what is the line of authority or relationship between your company and the District Security Committee, the Provincial Security Committee, or the PPO? Do any or all of those have some authority to direct movement or action by military forces?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, it was earlier alluded that the military can, and is called to assist the civil authority in the maintenance of law and order. That is in internal security operations. This is exactly what the military does when it goes to such areas. Such bodies or committees like the DSC and the PSC have the authority but they cannot order the military to carry out the operation. They request the military to assist them. I am sure that is what happened in the case of Wajir. The military was requested to assist in carrying out this operation.

Commissioner Slye: I want to keep that hypothetical at the moment. If you were in command of the company, the DSC requested you as the commander of the company that the company goes and does something on the security operation, is it within your

authority to do that or do you have to get authority or authorization from your superiors to do that?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, in the event of such a thing, if I am a member of the DSC, I have no authority. I have to request and tell the CO or the Commanding Officer because as the company commander, I have to talk to my CO and tell him, “Sir, there is an operation which is coming up and they have requested us to participate. Can I go ahead with it?” Then he can give his directions.

Commissioner Slye: And so the Commanding Officer of the battalion would have tried to do that. He himself would not have to go to any higher authority. Is that correct?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, when we deploy in such operation areas, we are given the mandate from the Army headquarters and all operational orders are written and you have the full authority as the Commanding Officer unless it is something which you deem that it is beyond your capacity as the Commanding Officer, so you can now go to your higher command, the Army Commander. But if it is within your limit, then you can carry it out.

Commissioner Slye: And the move is sought for in written operational orders or how is it done? I did not quite follow that.

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, it is usually a written order!

Commissioner Slye: So the written order is a general order saying that 7KA Battalion, you are to assist the various security committees operations that the Northern Eastern Province has requested, or were they more specific? Is that the 7KA Battalion was to assist in this particular or specific operation?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, it is usually a general operational order touching on external borders and also within internal security. So you are governed within that order to participate in internal security operations.

Commissioner Slye: I think you will correct me if this is an erroneous assumption that the commander of the 7KA Battalion, presumably you, would have had operational orders that were brought to help in the security operation to disarm individuals and related to the Wagalla massacre. Is that correct?

Rtd. Brigadier Phillip Chebet: That is correct.

Commissioner Slye: Okay! Thank you. We now move to the action after the Kenya Intelligence Committee, and I just want to make sure and clear my mind about what you had testified to. You were present at the joint meeting on February 8, the DSC, PSC and the KIC, when DC Tiema presented the brief on security and other issues. Is that correct?

Rtd. Brigadier Phillip Chebet: Yes, that is correct!

Commissioner Slye: I know you have been asked this question before but I wanted to try and get more clarity on it. I know it is 27 years later. But can you remember anything specific about what he did say or what anybody else said about the conflict between the Degodia and the Ajuran?

Rtd. Brigadier Phillip Chebet: Maybe, Chair and Commissioners, I am trying to jog my mind but it is a long time. But usually, in any situation like that of Wajir, Garissa, Mandera, usually the District Commissioner or any other would brief of any conflict or anything which is touching on the security of that district. So I presume that the DC touched on such issues.

Commissioner Slye: Ok. And then their briefing paper of 1st February, which my colleague Commissioner Dinka had asked you about, you have had time to look at it a little bit. Is that correct? Have you been able to read that?

Rtd. Brigadier Phillip Chebet: Yes, I have gone through it.

Commissioner Slye: I am not going to ask you specific questions other than these. First, I note that it reads as though it is notes for him in a talk; that he will give a briefing talk to the media. It says: "The Wajir DSC members have the pleasure of welcoming the Kenya Intelligence Committee members to the district and hope that your short stay in the district would be enjoyable and fruitful to both parties." It reads as though this was written for him to present to that meeting. In terms of jogging your memory, can you confirm or can you say that this either does or does not reflect what he might have said before that meeting?

Rtd. Brigadier Phillip Chebet: I might not be able to really authenticate it now but perhaps he said so.

Commissioner Slye: Ok. So if I understand the position correctly, as far as your memory can assist, it is possible that this is, in fact, what he said before that meeting but you cannot remember. Is that fine? In terms of the development issues, you mentioned the three visits to a borehole, the KPLC generator and police lines or telephone lines or electricity lines connected to one of these. Was the reason for taking the Kenya Intelligence Committee to look at those three different projects or issues in order to inform them so that they could then do something to assist, in this case, the DC in addressing those issues? Was that your understanding of why those particular sites were visited?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I think the purpose as earlier alluded to by other witnesses here is that the primary objective of the KIC was to visit and acquaint themselves with the security situation and development which perhaps was being undertaken. I am sure when you see somebody you expect something to be done. In the case of these visits to this borehole and so forth, they wanted to know what can be done to alleviate or do something about it so that it could benefit the others.

Commissioner Slye: Some witnesses have testified that the major purpose of the KIC visit was on development. The rationale that I am suggesting would make sense; that is, that you were to focus primarily on development issues and view some development projects that we have some problems with. We are informing you of them and we would like you to help us with them.

The other alternative or scenario would be a major progress of the visit that when one visits an area, and we as a Commission actually have those experiences, we visit a particular community and both see things that are directly related to the purpose of our visit but we see other things as well. I am trying to understand if in your mind the visit by the Kenya Intelligence Committee to these projects was specifically because that was a major purpose of the visit or whether maybe it was a supplementary purpose of the visit.

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, according to my understanding, that was the major purpose of their visit and also supplementary to acquaint themselves with what was going on in the province.

Commissioner Slye: If that was the major purpose of the visit, then one would think that the borehole, the generator and the police lines would be something they would discuss so that they could do something about the same. Is that correct?

Rtd. Brigadier Phillip Chebet: Yes, that could be but also, there must have been a reason why they wanted to do that. They had the discretion to visit some of these places, if they wanted to, and acquaint themselves with those projects.

Commissioner Slye: I am not sure again that this really is directly within your knowledge in terms of the sequence of things, and I do not know whether you have the documents and you have been able to look at them, but there is their May 24th Minutes of the visit of the KIC. Obviously, this was a document that I assume was not sent to you. At the time, it was sent to what appears to be the seven members of the KIC, but reading through the document, I cannot find any specific reference to any development project within Wajir much less the specific development projects that you mentioned in reference to irrigation schemes in Mandera, police and AP lines and sewage lines in Mandera. Really, there are a number of pages on solutions to the *shifita* menace which has a number of specific recommendations in terms of administration police lines, police stations, communication, development, settlement schemes and water development, all as a solution to the *shifita* menace. I am not sure whether there is anything you can say but I guess what I am suggesting is the impression you might have had on the ground with respect to the purpose of the visit and specifically, the purpose of the visit to these three projects. It does not seem to be borne out by the documentation concerning what the KIC did to that information. I see may be you and your counsel were trying to find the document.

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I do not have that document.

Commissioner Slye: That is okay. I did not anticipate you would have seen the document back in 1984. I think you would only have speculation on its content. I just wanted it to be put on record that I cannot find any reference – maybe you and your

counsel, you can see if you can find in this document any reference to those three places you said the KIC visited during their visit in Wajir. If there is direct reference, then I would like the record to be corrected but at the moment, I see no reference to any of those. In fact, I do not see any reference to any development project in Wajir District. There are more general comments and no specific projects in Mandera and maybe Garissa. I think that is the end of my questioning. Thank you.

The Presiding Chair (Commissioner Shava): Commissioner Farah!

Commissioner Farah: Brig. Chebet, welcome to TJRC hearings. Thank you for the evidence you have given so far. I have a few questions for you. Brigadier, you said the KIC visited boreholes, police and Administration lines, telephone lines and the perimeter fence in Wajir. Just for my memory, can you tell the Commission where the borehole was located?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I remember we took them just outside Garissa Town. It was just about some three four kilometers from Wajir Town.

Commissioner Farah: Wajir and not Garissa?

Rtd. Brigadier Phillip Chebet: Wajir!

Commissioner Farah: But you do not know in which direction? There is the road that goes to Isiolo from Wajir Town, there is the road that goes to Mandera North and there is the road that goes to Moyale westwards. Which direction, please?

Rtd. Brigadier Phillip Chebet: It was the road towards Mandera, if I am not wrong.

Commissioner Farah: Thank you very much. You do not know how many kilometers?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I think it is about three to four kilometers. It is not very far.

Commissioner Farah: And you cannot remember the name of the location?

Rtd. Brigadier Phillip Chebet: I cannot remember.

Commissioner Farah: I will not blame you. It is a long time ago. In your statement, you said clearly that the Kenya Army headquarters or rather the CO 7KA instructed you to receive the members of KIC who were to visit North Eastern Province. After you received the information from the Kenya Army headquarters, presumably you got it in the form of a signal or a message.

Rtd. Brigadier Phillip Chebet: We receive through a message.

Commissioner Farah: So that was clear that authorization was coming from the Kenya Army headquarters, and not even your brigade headquarters or divisional headquarters but directly from the Kenya Army headquarters. Because the visiting

team was high powered, you were told, “CO 7 KA, receive this delegation and take care of their security in their tour of North Eastern Province.” Is correct or not?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I think Commissioner Ahmed Farah was in the military at that time and he knows that we did not have a brigade at that time. So, we were directly under the Army Commander.

Commissioner Farah: I was in the Navy. Therefore, I did not know you did not have a brigade headquarters at that time. Anyway, the Army headquarters were the bosses and they directed you. Who sent that message to you from the Army headquarters, is it the Army Commander himself?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, when we receive such stuff from the Army headquarters, it is the Army Commander who does that through his officers, perhaps, not him directly.

Commissioner Farah: But the Army Commander sanctioned for the Kenya Intelligence Committee to be taken care of by the 7KA? Can you tell the Commissioners who did that and the breakdown of 7KA, how many companies, where were they located and which company was in Nairobi, which company was in Garissa, Mandera, Wajir and who was commanding them? Just shed some knowledge to the Commissioners.

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, we had a company in Wajir under a major, the late Mdogo.

Commissioner Farah: You normally call them company a, b, c. Please, just refurbish our minds.

Rtd. Brigadier Phillip Chebet: Company A was in Wajir under the Late Maj. Mdogo and I think we had, if I am not wrong, C Company in Mandera and my company, which was D, was in Garissa.

Commissioner Farah: Who was commanding C Company in Mandera?

Rtd. Brigadier Phillip Chebet: I cannot remember, Sir. It is a long time. I think it was Maj. Kamau.

Commissioner Farah: Thank you very much. That is very helpful. And who was commanding the rear company 7KA in Langata? You do not know?

Rtd. Brigadier Phillip Chebet: It is a long time.

Commissioner Farah: Good. Who was the battalion 2 i/c, a certain major whoever it is!

Rtd. Brigadier Phillip Chebet: I cannot remember.

Commissioner Farah: But there was a major in Garissa who was the battalion 2 i/c?

Rtd. Brigadier Phillip Chebet: No, Sir. The 2 i/c was back in Langata.

Commissioner Farah: So the 2 i/c was in the rear in charge of remnants that were remaining in Nairobi? Were you acting as the 2 i/c in the operational area in the front line?

Rtd. Brigadier Phillip Chebet: Not according to operational command or authorization.

Commissioner Farah: So Muhindi was in charge?

Rtd. Brigadier Phillip Chebet: He was in charge but any time, because I was with him, he could tell me to be in charge of any situation when he was not within but I was not the 2 i/c.

Commissioner Farah: The 2 i/c remained behind in the rear. Was it the normal procedure or was this a unique thing?

Rtd. Brigadier Phillip Chebet: That is the normal procedure.

Commissioner Farah: Thank you very much. You said North Eastern Province was an operational area then and you added even, "I believe it is still an operational area." Can you explain to the Commission, what is an operational area?

Rtd. Brigadier Phillip Chebet: An operational area is where there is some insecurity which can be of national interest which can affect the stability of the nation. Since 1963, immediately after independence up to now, I think it has not been degazetted as an operational area after the *shifta* and even up to now. I do not know since I have been out of military. I am sure they are still operating in that region.

Commissioner Farah: Thank you very much. What Kenyan laws were enforced if you may remember or which are still in force that make the area an operational zone?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I am aware there are laws but I cannot go straight to that. I am aware of that but I cannot divulge.

Commissioner Farah: So you are still not sure whether those laws are still in force up to today or not?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I do not know whether the new Constitution has repealed it but it can be referred to.

Commissioner Farah: You said that the army was deployed in an operational area in North Eastern Province to render, in your own words, support to civil authorities? Correct?

Rtd. Brigadier Phillip Chebet: That is correct.

Commissioner Farah: Could you explain how the Army would support the civil authority?

Rtd. Brigadier Phillip Chebet: In the event of any internal security operations, the Army is called in or the Armed Forces is called in. Because they do not have powers to arrest and detain, they work together with the police. They do not have the powers to arrest. That is why we support them. That is what is called “assist the civil authority in the maintenance of law and order”.

Commissioner Farah: Good. In fact, you have just said, therefore, that at the time of arresting the Degodia men from the various areas, your troops would not go and get hold of them. There would be police officers in front of you, flashing the police identification to arrest the civilians. All you do was just being behind the police to support them and give them security. Is that correct?

Rtd. Brigadier Phillip Chebet: That is correct.

Commissioner Farah: That is what has been happening throughout the entire period that you remember that you have operated in North Eastern Province?

Rtd. Brigadier Phillip Chebet: That is correct.

Commissioner Farah: In the incident of Wagalla, did the military actually not arrest people without the police?

Rtd. Brigadier Phillip Chebet: I am not aware of that.

Commissioner Farah: I will tell you the reason why. There was some earlier evidence that was given to the Commission that the police did not have transport. They did not even have vehicles. Therefore, the people who went out to Elben, Embus, Griftu and all those areas which have been mentioned were military men and military vehicles. They went and rounded up the men, collected them in their vehicles and brought them to Wagalla Airstrip. The Commission has been told that. Is that true or not?

Rtd. Brigadier Phillip Chebet: I am not privileged to say that because I was not on the ground.

Commissioner Farah: If you do not remember because it is a long time---

Rtd. Brigadier Phillip Chebet: Can I say something here; what does “assist” mean? You can assist in material and in men but not taking part in the actual. We do what they call cordon and search. We cordon and the police do the search and the operation.

Commissioner Farah: When we were doing hearings in North Eastern Province, we were told by witnesses that it is even military men who burnt houses in Bula Jogoo, who got hold of people out of their houses and took them there. We were told that the police manpower was so small that they could not cover from Habaswein all the way

to all those areas. That is what we were told. I am just telling you. If you do not remember, just say so.

Rtd. Brigadier Phillip Chebet: I do not remember that because I was not on the ground. I was in Garissa.

Commissioner Farah: Okay. The KIC tour in North Eastern Province, do you have a reason why they did not start with Garissa which is the headquarters and then come to Wajir and then to Mandera? Why did they fly directly from Nairobi to Wajir?

Rtd. Brigadier Phillip Chebet: I am not privileged to say that because I do not know their itinerary. They planned it like that. They came to Wajir but we ended up in Garissa.

Commissioner Farah: Agreed, you ended in Garissa because in Garissa, things were very calm. In Wajir, the security was very hot.

Rtd. Brigadier Phillip Chebet: I do not think so because North Eastern in general was hot. Even in my district, it was not all that peaceful.

Commissioner Farah: I agree. However, my fellow Commissioner a while ago asked you whether you got a briefing from Mr. Tiema and that briefing suggested that the security situation was very bad. Was it bad in Wajir than in Mandera and Garissa?

Rtd. Brigadier Phillip Chebet: I do not remember so.

Commissioner Farah: The DC, Mr. Tiema, said that the situation was calm. What do you understand by the word “calm”?

The security situation was very calm in Wajir at the time you visited even though you were given a brief which said contrary to the word calm. Anyway, I have still not understood why the Commanding Officer of 7KA would give you the responsibility of providing security to KIC and the necessary assistance when you were alone; no troops with you, not even a platoon, and you were in the same aircraft with them. He was also present. Therefore, I have still not understood what security and necessary escort role you were playing.

Rtd. Brigadier Phillip Chebet: Usually when such delegations of such magnitude come, we, as the military, give them the best we can in terms of providing them with the accompanying officers. Okay, I might have said escort but to me now, it can even be accompanying officers.

Commissioner Farah: By escort, all along I was meaning that you had a platoon or two to be escorting these people.

Rtd. Brigadier Phillip Chebet: No, that is not so. I can now say it was possibly accompanying persons. However, escort in terms of when we landed in Liboi, we had to go for a distance and so we provided escort. Also, when we were in Garissa, we went across the bridge to inspect the road going to Bura which was under

construction. It was a distance. We went four kilometers away and they needed escort. Even when we were in Mandera and Wajir, we had escort.

Commissioner Farah: My point is, you could have remained in Garissa where your company was and presumably Liboi was under your control. Lt. Col. Muhindi would have accompanied the KIC team and then you would have joined them at Liboi and taken them across the bridge to Garissa and what have you. Why did you have to go in the plane with the KIC to accompany them to Wajir?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I think I have answered that question earlier. I said it was the wisdom of the Commanding Officer for me to accompany the team.

Commissioner Farah: Thank you for that information. Mr. Ndirangu gave us evidence that reinforcements were requested by Wajir and it was availed. Some other evidence we received was about two platoons sent from Garissa and 45 men were also sent from Mandera all coming to Wajir. Was all that reinforcement not for the Wajir operation or are you contradicting Mr. Ndirangu that this was much later after the operations?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I do not remember us giving up for the purpose of that operation; the Wagalla issue. I do not remember and there was no platoon from my company. I do not know whether there was a platoon or anything from Mandera, Moyale or wherever for the purpose of that operation. There was nothing like that.

Commissioner Farah: Anyway, Mr. Ndirangu told us that on the evening of the 9th when the delegation came from Liboi, at night they got information that reinforcement was required. The only people who could provide reinforcement were the Army because the police did not have vehicles and manpower.

Rtd. Brigadier Phillip Chebet: May I say something on that; perhaps Mr. Ndirangu was referring to the police who were not under our command and not the military. There was nothing and I can confirm to this Commission that there was no extra personnel, to the best of my knowledge, from either Garissa, Moyale or wherever. The platoon or the company which was in Wajir was sufficient for that operation.

Commissioner Farah: I just want to ask you a question this time to help you. The Provincial Security Committee (PSC) meeting Minutes of 15th of February said that the PSC confirms that the PSC carried out an operation in Wajir and the PSC feels that that operation was necessary. If the DSC carried out an operation in Wajir which ended up in many deaths, why would you later on or the PSC later on approve of the operation and even call it a success?

Rtd. Brigadier Phillip Chebet: I do not think there was any approval after that. Already the operations had been carried out and the outcome had happened. So there was no other approval. I do not remember whether there was any approval in the PSC. I only attended one joint meeting between the PSC and the DSC and there was nothing. It was only reinforcing the issue of proper planning of operations.

Commissioner Farah: Let me just read it to you. This is on 15th of February, PSC meeting Minutes.

“Min/No.1384 – It is in the light of this incident--- Besides the Degodia tribes were becoming aggressively hostile and the situation was reaching alarming proportions something had to be done to quell it.”

Yet, you say in the meeting with the DSC the security situation was calm. I just want to prove to you that it was not.

The second paragraph says:-

“The PSC further noted with disgust that on 3rd February 1984, four Degodia armed bandits were killed---” All the incidents which occurred in Wajir show the district was not calm.

Then:-

“Confirmed reports said that the Degodia were planning to extinguish some civil servants by assassinating them. In the light of these incidents and particularly the incident of 9th February that prompted the DSC Wajir to arrive at the decision that all Degodia tribesmen around Wajir Town and as far afield as Griftu and areas around Wajir and a little away from Wajir Town in various directions should be rounded up and thoroughly interrogated with two main purposes.”

The PSC is confirming. When I say approving, I mean they are appreciating that the DSC actually did the operation.

Rtd. Brigadier Phillip Chebet: May I refer you to page one or two whatever is written there. On the list of those who were present there, my name does not appear. So I do not know anything.

Commissioner Farah: I agree. I was just asking you whether you were in Garissa in the DSC which was jointly meeting with the PSC and sometimes the security situation was very current in your mind. I was just asking you for your opinion. Is that not contradicting?

Rtd. Brigadier Phillip Chebet: Take note of the heading – Minutes of North Eastern Special PSC Meeting. It does not say PSC/DSC meeting. So I was not there and do not know anything.

Commissioner Farah: Thank you. I do not have further questions to this witness.

Commissioner Ojienda: Thank you very much, Brig. Chebet, for your intelligent testimony. I want to ask you very simple and straight forward questions. What did or does an operation include? We heard about the word “operation” severally. We have also heard responses from other people as well who have testified before this Commission. I want you in your own words, as a leader of the OC of 7KA, to tell us what an operation includes. Give us the full tenure of an operation.

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, an operation entails or has got some areas. First, there must be a situation which mitigates an operation or something to be taken to mitigate against that situation. So, it entails, planning and execution. After execution, you come back and reassess that situation whether you have mitigated against it and how successful it has been. So, there must be a situation and then have a planning process to it and coming out of that operation, you do an assessment.

Commissioner Ojienda: When you say “execution”, I hope you mean “execution” and not “execution”.

Rtd. Brigadier Phillip Chebet: Not the killing; executing your plan.

Commissioner Ojienda: Implementing?

Rtd. Brigadier Phillip Chebet: Implementation of that plan.

Commissioner Ojienda: So, Brig. Chebet, clearly the Wagalla Massacre, I know you were not there. You said you were not there. The Wagalla Massacre fits your description of an operation?

Rtd. Brigadier Phillip Chebet: To my knowledge, I think it is. According to what we have been told, it was an operation.

Commissioner Ojienda: You said in your testimony that to undertake an operation or to be able to read a situation as you have said, you need intelligence. Is that right?

Rtd. Brigadier Phillip Chebet: That is right.

Commissioner Ojienda: Therefore, any witness who says otherwise will not be telling the truth?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I do not understand the question properly.

Commissioner Ojienda: You said that an operation would be undertaken without intelligence is an understatement. Is that right?

Rtd. Brigadier Phillip Chebet: It is an understatement because in any operation, it can be undertaken even without intelligence when you are on the ground and seeing it. You assess it yourself and carry out the operation. However, when it needs forward planning, you perhaps require intelligence. When on the ground as the commander, you sit and can even take an immediate action.

Commissioner Ojienda: When the KIC visited the region, you were tasked with taking them round. You were an intelligence officer and you were present with them during the tour. Is that right?

Rtd. Brigadier Phillip Chebet: I was not an intelligence officer. I was only an Officer Commanding. I was only escorting or as he rightly corrected me, I was an accompanying officer. I was also organizing for their escorts when they needed it.

Commissioner Ojienda: Before the 8th of February 1984, do you recall when the KIC last visited the North Eastern region?

Rtd. Brigadier Phillip Chebet: I cannot remember because I only went to the North Eastern Province in January of that year. I reported to my unit in January 1984 so I was not aware of any other visit.

Commissioner Ojienda: In your time in North Eastern, did the KIC regularly visit the province?

Rtd. Brigadier Phillip Chebet: Not to my knowledge. If they came, I would have been there because I was on the ground. Therefore, they did not come.

Commissioner Ojienda: That is very helpful. So, there must have been very compelling reasons that made the KIC to visit Wajir on 8th of February 1984. That is not for you to answer. My question would be; when you were asked by Prof. Ron Slye whether you understand the difference between KIC, KSC and NSC, you were ambivalent in your answer. I would want to ask you that question again. What do you not understand between the KIC, the NSC and the KSC?

Rtd. Brigadier Phillip Chebet: In my time in the military, unfortunately, I did not participate in any preparation or any planning----

Commissioner Ojienda: I am not asking about your participation.

Rtd. Brigadier Phillip Chebet: I am coming to that. To my knowledge, I know that there is that KIC I got to know at that time. I have come to know now that there was a Kenya Security Committee which sits in Nairobi. So that is what I know.

Commissioner Ojienda: And the NSC?

Rtd. Brigadier Phillip Chebet: I am not aware of that.

Commissioner Ojienda: You are not aware of the National Security Committee?

Rtd. Brigadier Phillip Chebet: I am aware of it now after this Commission.

Commissioner Ojienda: Is it that you are not aware or that you do not want to disclose, Brig. Chebet?

Rtd. Brigadier Phillip Chebet: I am not aware. I suspect perhaps there is a meeting which is headed by the President because that is a national thing---

Commissioner Ojienda: Ooh, you “suspect”?

Rtd. Brigadier Phillip Chebet: I suspect now.

Commissioner Ojienda: Then you now expect that it is headed by the President?

Rtd. Brigadier Phillip Chebet: I think so or the Vice-President or somebody like that.

Commissioner Ojienda: So, do you suspect that the NSC is the top ranking organization or committee or does it--- Between the KIC and the NSC, which one do you suspect is the overall decision making body?

Rtd. Brigadier Phillip Chebet: Let me not commit myself to that, Sir. I do not know.

Commissioner Ojienda: You do not want to commit yourself?

Rtd. Brigadier Phillip Chebet: Let me not commit myself to that.

Commissioner Ojienda: Let us move to the next question. I want to ask you something you know and which you do not suspect; that is on the Minutes of 16th February 1984 after the incident of the Wagalla Massacre. That was the joint meeting between the PSC and the DSC. You were part of that meeting as a member of the DSC. Do you have those Minutes?

The meeting ended at 12.30 p.m., on that day. There was one agenda. There is reference on the second page to the CO7KA. You were the OC 7KA. If you can read the last bit of the second last paragraph, what does it say? I just want to have it in your own words.

Rtd. Brigadier Phillip Chebet: It says:-

“The Commanding Officer briefed the joint PSC/DSC about his meeting with all the security personnel in the presence of the DSC and in particular pointed out to them that the Government expected 100 per cent loyalty from us all and any black sheep in our midst will not be tolerated.”

Commissioner Ojienda: Who are the black sheep? Were there any white sheep? Make me understand, please.

Rtd. Brigadier Phillip Chebet: I wish the Commanding Officer was here. I cannot commit myself to that, please.

Commissioner Ojienda: In your understanding, what kind of security situation would have led to the branding of certain Government officials as black and others as white?

Rtd. Brigadier Phillip Chebet: Perhaps the Commanding Officers knew or had information that some members of the security forces were not loyal or were sympathetic in one way or another to anybody. I do not know. So I cannot commit myself. I think Liet-Col. Muhindi can be able to comment on that.

Commissioner Ojienda: What would you have described yourself at that time?

Rtd. Brigadier Phillip Chebet: 100 per cent loyal.

Commissioner Ojienda: White?

Rtd. Brigadier Phillip Chebet: White.

Commissioner Ojienda: Okay. Thank you. In your tours you said that the KIC team hopped from airstrip to airstrip; that was from Wajir, Garissa and Mandera.

Rtd. Brigadier Phillip Chebet: Correct.

Commissioner Ojienda: Then you said they inspected one dis-used borehole?

Rtd. Brigadier Phillip Chebet: Sure.

Commissioner Ojienda: Was that all about development in North Eastern?

Rtd. Brigadier Phillip Chebet: I do not know why the District Commissioner took them to that borehole only. I think there was one other but I cannot remember very well. We went to the power generating station for the KPLC, the borehole and this police line.

Commissioner Ojienda: Brigadier, you may not remember but you must surely wonder whether this was a development tour at all. Do you not wonder now?

Rtd. Brigadier Phillip Chebet: I am not wondering because that is what the document says.

Commissioner Ojienda: Was it security or development? Which one came first? Just be honest on that.

Rtd. Brigadier Phillip Chebet: That leaves the Commission to determine by itself. To me, it was both security and development.

Commissioner Ojienda: Security first?

Rtd. Brigadier Phillip Chebet: It was a joint meeting. It was a conglomerate of all people who had some stake in development of that region.

Commissioner Ojienda: Of the borehole? Thank you.

Lastly, Brig. Chebet, and this is instructive, in your own words, you said all operations are sanctioned by the Army headquarters. Is that right?

Rtd. Brigadier Phillip Chebet: Not right, not all are sanctioned. This is because you can determine on the ground and as the commander on the ground, you judge.

Commissioner Ojienda: Can I re-phrase my question or what you said? You said that all operations are known to the Army headquarters. Is that right?

Rtd. Brigadier Phillip Chebet: They are known even after you have carried them out through communication. We communicate what we have done or the military has done through the normal chain. So you can carry out an operation and thereafter, inform them of what you have done depending on your assessment on the ground. Does it require the authorization from the Army Commander? Crossing the borders would require authorization but if it is within your limits which have been given, I have said there are orders which are written prior to going to such an operation area. It guides you on rules of engagement and everything.

Commissioner Ojienda: Where must authorization come from if not from the Army?

Rtd. Brigadier Phillip Chebet: It depends with where you are. If it is a brigade, the Brigade Commander gives the authorization. If you are directly, it is the Army Commander. The Commanding Officer is your commanding officer.

Commissioner Ojienda: Where the Army was involved like in the case of the Wagalla Massacre, who would have given the authority?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, it was not the Army involved. The Army was a company which is part of a battalion. So a battalion was in North Eastern Province.

Commissioner Ojienda: It was a company which was part of a battalion?

Rtd. Brigadier Phillip Chebet: Sure.

Commissioner Ojienda: Was that company part of the Kenya Army, Brig. Chebet?

Rtd. Brigadier Phillip Chebet: I was answering your question. It was not the Army. It was the company which was---

Commissioner Ojienda: And I am asking you whether that company was a company of the Kenya Army.

Rtd. Brigadier Phillip Chebet: Sure, Sir, it is.

Commissioner Ojienda: You are very helpful. Thank you very much.

Commissioner Chawatama: Brigadier Philip Chebet, I want to get this right.

Rtd. Brigadier Phillip Chebet: Correct, Madam Presiding Chair.

Commissioner Chawatama: Thank you very much for making yourself available to this Commission. Thank you very much for your testimony. I sat here listening to you and throughout the hearings that we have held in Kenya and in Nairobi, I wanted the task of the DSC demystified. I am still waiting.

Before you served in Garissa, did you serve in any other district and had the privilege and honour of sitting in the DSC?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair, I had not.

Commissioner Chawatama: You also informed us that you went back to your family. So I am assuming that your family moved with you when you went to Garissa. Is that true?

Rtd. Brigadier Phillip Chebet: I did not say that.

Commissioner Chawatama: Mmm?

Rtd. Brigadier Phillip Chebet: I did not say that.

Commissioner Chawatama: I see.

Rtd. Brigadier Phillip Chebet: I went to report to my unit which was in an operation area in Garissa from Nairobi.

Commissioner Chawatama: So, you did not take your family with you?

Rtd. Brigadier Phillip Chebet: No.

Commissioner Chawatama: It is an important question especially for the people of North Eastern Province because when we went there, one of the things we learnt is that none of the civil servants and people such as yourself who go to serve in that area take their families because it is a hardship area; there are no health facilities, there are no schools for their children and their roads are so bad. They spare their families from such hardships.

I thought I heard you say that you went back to your family and how you then relocated back to Nairobi. That is why I asked you that question. Did you get a brief about the place you were going to before you arrived in Garissa?

Rtd. Brigadier Phillip Chebet: Usually when you report to an operation area like that or you are taking over, you are given a brief of your unit and what you are undertaking. So, I got it from my deputy at that time.

Commissioner Chawatama: Having got your brief, what was your first impression of the areas to which you were posted?

Rtd. Brigadier Phillip Chebet: The brief gives you what you expect in such an area. I got it and I knew what was there, especially the insecurity situation in my district and the other adjoining districts.

Commissioner Chawatama: That is very good. You have now led me to my next two questions. What exactly were your duties or functions?

Rtd. Brigadier Phillip Chebet: As I had earlier said, the military is usually, in such areas, to assist the civil authority in the maintenance of law and order. So, when the military was being and is being deployed in such an area, then it means there was a breakdown in law and order. Insecurity issues were prevalent. That is why the military was being deployed in such an area.

Commissioner Chawatama: I see. You rightly said that the whole of the northern region was an operation order. You also then stated that your brief was not just restricted to Garissa but it was the whole North Eastern Province. So, what in your brief was said about Wajir? Can you remember?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, I cannot remember very well. It is a long time.

Commissioner Chawatama: We have a document that I looked at, I cannot tell you to look at it now, but there were almost 14 incidences that were listed from November 1983 to about 6th of February 1984 of what was happening in Wajir. So, as a person who was charged with the responsibility of security and comfort of KIC delegation, and, having informed us that you had men on the ground in Wajir from whom you would rely for certain information, did you bother to find out what was obtaining on the ground in Wajir before taking your very important visitors there?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, that was not really my responsibility to find out what was going on the ground.

Commissioner Chawatama: Brigadier, please, when you say that you were charged with the security of people, you cannot now turn around and say it was not your responsibility. What was your role? What did you see as your role when you were accompanying the delegation of the KIC?

Rtd. Brigadier Phillip Chebet: I did not deny that it was not my role and responsibility to ensure that they are safe, secure and comfortable. That is what my responsibility was. I am saying that we had accompanying commander on the ground whose troops I could not be able to mobilize. In the event of them visiting anything outside Wajir Town, it was the responsibility of that company commander on the ground to provide the troops or the police if they were there to ensure that they go to inspect those places and come back safely.

Commissioner Chawatama: I would like to hear from you. Were you very shocked when you received, as the DSC, the request for reinforcement?

Rtd. Brigadier Phillip Chebet: I was not shocked because that is part of our responsibility to provide reinforcement. However, you could have other questions beside that.

Commissioner Chawatama: My question is based on the fact that as you have put it, you were in Wajir and you were told that the situation was calm. Now, a few days later, you are receiving a request or a request is being discussed in your meeting for reinforcement. How did you receive such news? Was it with a sense of shock or you were not shocked because this is something you anticipated?

Rtd. Brigadier Phillip Chebet: In the military, we obey orders. Being shocked is not part of us. You obey and you give what they have requested for. I was only the custodian of my company and my other troops. The overall command and responsibility was for the Commanding Officer. The Commanding Officer was in the PSC which authorized the troops to be moved. So, I was not shocked.

Commissioner Chawatama: Do you know who obeyed the command to fire when men were at the airstrip in Wagalla having spent two days or three days without food and water; dehydrated, hungry and some very sick? Who gave the order to fire? And the persons who obeyed, is that their function to obey orders like that?

Rtd. Brigadier Phillip Chebet: I do not know. I have said I was not on the ground and I do not know who gave the orders to fire whether it was the police boss or---

Commissioner Chawatama: Had you been the officer there and your Commanding Officer gives you the order to fire since you obey orders, is that something you would have done?

Rtd. Brigadier Phillip Chebet: A Major would not have been ordered at the time to fire. I was a Major and there would be other junior officers on the ground. Perhaps a platoon commander and I do not know how he would have reacted to that. However, he would have obeyed an order.

Commissioner Chawatama: I think what is pleasing about your response; we are coming closer and closer to identifying who should bear the responsibility of the deaths that occurred at the airstrip. Whether it was by omission or commission, it is now becoming clear.

Thank you so much.

The Presiding Chair (Commissioner Shava): Thank you, Brig. Chebet. I feel rather disturbed by your testimony because it has not been consistent. You have, for example, said that you never served as the second in command or the 2i/c in answer to a question from Commissioner Dinka. You later said that where it was at the discretion of the Commanding Officer as to whether you could deputize because the formal deputy, if I can call him that, was in Langata. You will agree with me that there was inconsistency in what you have said. That is not the only inconsistency I have detected. It disturbs me because I am getting a sense that there is a game of cat and mouse going on. As the previous speaker said, we are here to discover the truth about where the responsibility lies for those deaths. This half of the room comprises people who suffered from those deaths. We are not here to trivialize the issue by passing the buck and creating firewalls. So this is why I feel disturbed by your testimony.

You also said that there was no movement of troops. You said it was just yourself and the CEO who moved. Later, you said in assistance to civil authority, you provided vehicles and personnel whereby the military would cordon and the police would search.

So, I am not sure what weight we are going to give to your testimony, particularly bearing in mind that this is not where it ends. We do have documentation. We do research and we do investigations. So, this is your opportunity to say what you know because you will be judged on what it is that you say and the weight that we give your evidence.

Having said that, you gave us three examples of the development projects that were examined and one of which was to do with the police lines because you said this was about the welfare of the police. Will it be a surprise to you that information in our possession shows that it was actually about a security issue; and that the police themselves were insecure and had received threats and that is why it was important to fence that police station?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, you want me to reply to the earlier statement you made about the issue of the deputising and then the movement of the troops?

The Presiding Chair (Commissioner Shava): If any clarification, it will be appreciated.

Rtd. Brigadier Phillip Chebet: The issue of a second command in the military is an appointment and not just being picked on the ground. So, I was not an appointed deputy to the Commanding Officer (CO) on the ground. I was Officer Commanding--
-

The Presiding Chair (Commissioner Shava): I think that is what I said in my statement. I said that the formal 2i/c was not there. But you also pointed out that the CO could actually in his discretion appoint somebody to act even if this was not the substantive person. Was that not the correct understanding?

Rtd. Brigadier Phillip Chebet: Yes, Madam Presiding Chair and Commissioners. As I said, the CO would sometimes leave for Nairobi for official duties, but he would say: "I am going, please, in case of anything, do the necessary and contact me or something like that." I had no authority to sanction anything which was beyond my responsibility without going to him or asking him.

Secondly, about the movement of the troops, I do not know whether there were any movement of our troops. However, what I said is that when such an operation is called for, the military would come to assist in form of even providing vehicles to be able to move. So, in the case of Wagalla, I am not aware because my vehicles did not move from Garissa for that operation. That is my position.

There was another issue, Madam Presiding Chair.

The Presiding Chair (Commissioner Shava): I said that the reason why it was required to fence the police lines was because the police themselves had received threats and also prominent personalities in the area had received threats to their lives. So, the situation in terms of insecurity was such that even those who were supposed to be providing security themselves felt threatened. So, the fencing of the police lines

was not a development issue. It was a security issue. Did you know this or are you surprised to hear this?

Rtd. Brigadier Phillip Chebet: Madam Presiding Chair and Commissioners, in any security installation, there must have been a perimeter fence. Not everybody would be able to move in and out. I am sure when that police line was being constructed, they were supposed to have put a perimeter fence, but it had not been done at the time. So, I do not know whether there were any threats to these policemen, I am not aware of that. But I am aware of the team that went to the police lines. They were asking why it was not completed for purpose of security of the police themselves. That is exactly what I have said.

The Presiding Chair (Commissioner Shava): There was a question that was asked earlier with regard to the extent or limit of the authority of the CO. The fact that orders given to CO would be in writing, what would be the format of this written document? We have earlier heard about police signals. We are not technical people in those areas in terms of the security forces, but did that order come in terms of telegraph? How would it come? What was the format of that order?

Rtd. Brigadier Phillip Chebet: In the event of being deployed to such areas, there is what we call operational orders which are written. You are given that order from whichever level of command. So, out of that, you could operate using those operational orders. That is exactly what my CO at the time in 1984 got. Other issues might have been touched in that operational order.

The Presiding Chair (Commissioner Shava): Such an order would be issued from the battalion headquarters or Army Headquarters?

Rtd. Brigadier Phillip Chebet: In the event of a battalion being deployed out, it is from the Army Headquarters. When you receive it as battalion commander, you issue the same extract whatever you troops need to know down to the platoon level.

The Presiding Chair (Commissioner Shava): So that Lt. Colonel Muhindi's operational orders would have come from Army headquarters and he would then cascade them downwards throughout the battalion that was posted there, including the other companies posted in Mandera, Wajir and the other places?

Rtd. Brigadier Phillip Chebet: That is true.

The Presiding Chair (Commissioner Shava): You have clarified to us the meaning of operation. We now to understand a bit better what an operation entails.

One of the things that it entails is after the operation, there is reassessment of the situation to weigh the success or otherwise of the intervention. Is this the reason why the Chief of General Staff was in Wajir on 15th and did you accompany?

Rtd. Brigadier Phillip Chebet: I am not sure why he went there. I think the situation was really bad. Whatever happened in Wagalla, perhaps, even the Commander-in-Chief would have found it fit to be there. So, I did not know why he went there. I did not go to Wajir with him.

The Presiding Chair (Commissioner Shava): Finally, Brig. Chebet, you have said that the military was in charge of security areas in the issue within the context of lending aid to civil authority. You were a member of the District Security Committee (DSC) in Garissa between January and June 1984. Your counterpart as was referred to the Leader of Evidence, your brother officer was in Wajir, where this massacre took place. You yourself were based at the Provincial Headquarters and just because of that proximity to the centre of this provincial web, you had an advantage, I believe in terms of access to the provincial structure. You have told us that you, yourself, were the Officer-In-charge of Operations. We have been told by previous witnesses and documentation support this, that the authority to go ahead for the operation to begin in Wajir was given in Garissa on the 9th. The people who needed to be informed were also informed.

So, I just have two questions for you. Given that background, would you agree that an officer such as yourself in the position in which you were, whether it was you or anybody else, such officer would be clearly in the know about the Wajir operation both before and as it rolled out?

Rtd. Brigadier Phillip Chebet: I was not aware of any impending operation in Wajir. I was aware when it had commenced that was, perhaps, 10th, 11th and 12th. We had some vivid information that something was going on in Wajir, but the issue of really knowing what happened on the ground, I am not aware. What was going on the ground was vested on the Officer Commanding and the DSC who were on the ground.

The Presiding Chair (Commissioner Shava): The fact that you only knew of this between 10th and 13th or so, would you characterise that as a failure on your part or the part of the institution of the Army?

Rtd. Brigadier Phillip Chebet: I do not believe there was failure.

The Presiding Chair (Commissioner Shava): Once you received the information, even if it was late, what is that you did with it?

Rtd. Brigadier Phillip Chebet: I was under a Commanding Officer. So, that one depends on the Commanding Officer. I was under his authority.

The Presiding Chair (Commissioner Shava): So, you are telling us that you did nothing!

Finally, just for the record, do you stand by your statement to this Commission that, you only learnt of the operation in Wajir after it was underway and when it was completed?

Rtd. Brigadier Phillip Chebet: I still stand on that; that, I got to know about it, when it was already underway. I had no prior knowledge. After whatever happened, it was knowledge to anybody.

The Presiding Chair (Commissioner Shava): Thank you very much for your testimony, Brig. Chebet. We have no further questions. I see the Leader of Evidence signalling.

Mr. Tom Chavangi: Thank you, Madam Chair. If you indulge me, Commissioners, I have one burning question for the witness.

The Presiding Chair (Commissioner Shava): Leader of Evidence, please, proceed.

Mr. Tom Chavangi: Brig. Chebet stated that he was aware of the re-enforcement from Garissa. My question to him is that we have information that women were raped as a result of that operation, during the Wagalla Massacre operation itself. We also have information after the reinforcement was received in Wajir, women were raped by armed officers. Was he aware of that information, him being at the provincial level, though he was junior to Lt. Colonel Muhindi?

Rtd. Brigadier Phillip Chebet: Commissioners, I am not aware of that. I want to state that in my term of command in any capacity, the issue of rape is not there. I do not remember of any time of such thing; we used to teach and tell our soldiers, such a thing is grievous. In the event that anything like that happened, I am not aware. If it happened, then it was a bad thing.

The Presiding Chair (Commissioner Shava): Thank you, Brig. Chebet for your condemnation of the act of rape. I would just add that since very many women were raped, there was an institution failure on the part of the army, despite the fact that it denied that ever happened.

Thank you very much for your testimony. Thank you for your patience. You have been with us for many days waiting to testify and we appreciate that. We also appreciate your testimony.

I am conscious that people have been sitting here since before 9.00 a.m. and they need a health break. I am also conscious that there are witnesses waiting to testify. So, perhaps, Leader of Evidence, you will give some guidance on how you would like to proceed.

Mr. Tom Chavangi: Thank you Presiding Chair. Considering the fact that most of these witness and some members of the public have been here since 8.00 a.m., it would be advisable to have a health break of about one and half hours. It is 12.15; we can have a health break for about 15 minutes---

The Presiding Chair (Commissioner Shava): I think it will be appropriate at this stage for everybody to have a longer break, so that we can have a fuller session in the afternoon without breaking it up again.

Mr. Tom Chavangi: So, we can start at 2.00 p.m.

The Presiding Chair (Commissioner Shava): Yes, these proceedings are now adjourned. We will reconvene at 2.00 p.m.

[The Commission temporarily adjourned at 12.15 p.m.]

[The Commission resumed at 2.10 p.m.]

(Mr. David Mwiraria took the oath)

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

Mr. David Mwiraria: My name is David Mwiraria.

The Commission Secretary (Ms. Nyaundi): What is your current occupation and where do you stay?

Mr. David Mwiraria: At the moment, I have a part time job as Chairman, Kenya Wildlife Service. The rest of the time, I am a farmer based in Meru.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. David Mwiraria. I have with me, a statement that you recorded in response to summons as you state here, in response to a letter of invitation dated 30th March. I now ask you to read out that statement.

Mr. David Mwiraria: Could I make some preliminary remarks which will put my statement in perspective?

The Commission Secretary (Ms. Nyaundi): Please, go ahead.

Mr. David Mwiraria: Madam Presiding Chair and Commissioners, I want to associate myself with the remarks of my former classmate and colleague, Amb. Bethwel Kiplagat in saying that the Wagalla Massacre was a very unfortunate, embarrassing incident in which there was loss of life which was, perhaps, unnecessary; an embarrassment to Kenya as a nation.

The second point I want to make is that I was approached by a newscaster from *Citizen Television*, I think her name is Belinda Obura, sometime early this year, and asked to comment on my association with Wagalla Massacre because my name was included in a book. My first reaction was: "Sorry, I cannot comment about a story in a book I have not read." So, she told me the title of the book which I bought and read it. When she came to my home, later, I gave her a statement. In that statement, after I had read the book, I noticed that in the book, I was supposed to have been a member of a team which visited Wajir DCs office on 8th February. The implication in the book was that it was during that meeting that the KIC took a decision, in fact, planned and authorised the Wagalla Massacre.

I want to say that even though human memory is rather selective and chooses things it wants to remember, I could not remember discussing anything during our tour of North Eastern which had anything to do with a security operation or, leave alone the Wagalla Massacre. So, that made me wonder if the book is talking about the same meeting. I remembered I had been a member of a party that visited North Eastern Province under the Chairmanship of James Mathenge who was PS, Office of the President. But his name was not included in the type written list, which was published

in the book. So, that again, gave me doubt as to whether the book is talking about the same visit.

I could recollect vaguely only two items from that visit under James Mathenge, namely; the farming along the Daawa River. I was very impressed and surprised that the Somalia people were such good farmers.

The second item which I remembered also fairly vaguely were the buildings built in Liboi on sifting sand on very poor foundation that had huge cracks. But besides those two items, I could not remember anything else. So, I concluded that the book is talking about a different visit from the one under Mathenge, because whatever I could remember had nothing to do with Wagalla.

It is on the basis of that, I am going to give you my statement.

Madam Chair, in the letter which I received from the CEO, TJRC reference TJRC/M/L/OU/Vol.1/018, I was informed that this Commission had identified me as a potential witness who may have useful information as a member of the KIC in 1984, and asked me to make a statement providing any information on the Wagalla within my position or knowledge.

Here is my statement. I heard about the Wagalla massacre the day after the event, when I was a member of the team of civil servants visiting North Eastern Province to assess the conditions under which the civil servants were operating in the area and identify development or requirements of the province. Here, I must say I made a mistake in the next sentence. It was not two days, but some days after the event when we visited the PC, North Eastern Province and asked him what had actually happened. His reply was that the whole episode was a result of a military operation and he did not elaborate.

I do know that the Office of the President, PS in charge of Internal Security had appointed a team to investigate the massacre. But I was moved to the Ministry of Education as Permanent Secretary and I did not get any further information on the matter. Upon transfer to the Ministry of Education, I stopped being a member of the KIC. The KIC did not discuss at any time before the date of the massacre, any issue which could have in any way have led to the massacre.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. David Mwiraria. I would ask you a few questions and then Commissioners may also seek further clarifications from you.

But to get us going, Mr. David Mwiraria, you have mentioned an interview you had with the *Citizen Television* newscaster and just so that we confirm that the one we have on our records is the same one you are talking about, I would ask them to play it for us.

(A TV clip was played)

Why is it that both the Governments of President Daniel arap Moi and that of his successor, President Kibaki, never consented to numerous requests to establish a Commission of Inquiry into the Wagalla Massacre? Both Governments have been accused of failing to seek justice for the Wagalla victims. The cover up began immediately after the attack and has continued to this day, but there is one thing that both Governments have had in common; the Amos Wako factor.

Kenya's secret history continues tomorrow.

Belinda Obura for *Citizen TV*.

(Tape recording ends)

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

Mr. David Mwiraria, is that the interview that you mentioned?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): And just for clarification, that interview by *Citizen TV*, was it this year or last year? Can you remember when you were interviewed by Belinda Obura?

Mr. David Mwiraria: I cannot remember the date, but it was shown this year.

The Commission Secretary (Ms. Nyaundi): Were you interviewed this year?

Mr. David Mwiraria: I cannot remember.

The Commission Secretary (Ms. Nyaundi): Were you interviewed while you were the Minister for Finance?

Mr. David Mwiraria: No.

The Commission Secretary (Ms. Nyaundi): Were you interviewed while you were the Chair of the Kenya Wildlife Service (KWS)?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): So, when were you appointed Chair of the KWS?

Mr. David Mwiraria: In August, 2008.

The Commission Secretary (Ms. Nyaundi): Were you interviewed before we promulgated the new Constitution?

Mr. David Mwiraria: I do not want to guess.

The Commission Secretary (Ms. Nyaundi): I can see that in the interview, you were definitely in an office and not in your house. Can you remember where the interview was held?

Mr. David Mwiraria: I think the interview was held in my office at the KWS.

The Commission Secretary (Ms. Nyaundi): In your office at the KWS; I am trying to think of something significant that will help you---

Mr. David Mwiraria: Remember the date?

The Commission Secretary (Ms. Nyaundi): Yes; even the month.

Mr. David Mwiraria: I just cannot remember. I am sorry.

The Commission Secretary (Ms. Nyaundi): It would be correct to state that the word you used during the interview was that you categorically deny? I just want to confirm that my understanding of English is the same as yours. "Categorically" would mean something like "absolute?"

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): A level of certainty?

Mr. David Mwiraria: Complete certainty.

The Commission Secretary (Ms. Nyaundi): Okay. What were you being categorical about; that you have never been to Wajir?

Mr. David Mwiraria: I was being categorical about having been to Wajir at the meeting which authorized to arrange the Wagalla Massacre.

The Commission Secretary (Ms. Nyaundi): My recollection of that was that, in fact, you were being categorical that you are now have not been to a meeting but in that particular sentence, that you have not been to Wajir either a day or two or three before the Wagalla incident. That is what you were being categorical about?

Mr. David Mwiraria: That is what I was being categorical about and, as I said, it is because after reading the book, the list of the people given did not include Mathenge, who had been the leader of delegation I could remember I attended. The only two items I could remember even in the Mathenge trip were the farming at Daawa River and Liboi, both in Mandera and Garissa.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. David Mwiraria. I was just confirming from the list that I have and Mr. Mathenge is listed on top of that list and it is the same list that was shown during that documentary.

Mr. David Mwiraria, this is a question that has---

Mr. David Mwiraria: Could I correct one impression? I said that I based my comments on the list in the book. I had not seen the list you have; I have not even seen it up to today. But what I saw is what is in the book which I left with somebody, but I am sure that since you are Commissioners, you must have that book as a required reading. If you look at it, you will see that Mathenge does not appear.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. David Mwiraria. When you looked at the book, did it indicate that you were--- Did it show that you were indicated as having been in Wajir on 8th February, 1984?

Mr. David Mwiraria: Yes, it did.

The Commission Secretary (Ms. Nyaundi): Is that what you understood that entry to mean?

Mr. David Mwiraria: Yes, it did.

The Commission Secretary (Ms. Nyaundi): Okay. And did you, during that interview, clarify that you had been to Wajir, but to look at development projects?

Mr. David Mwiraria: I did not, because I did not know that by then. I could not remember that.

The Commission Secretary (Ms. Nyaundi): But when you saw the entry; 8th February, 1984, and your name was alongside, on that day that you were having the interview, did you remember this must be the trip that was led by J.S. Mathenge? Did you remember that on the day that you were having the interview?

Mr. David Mwiraria: I thought I said that the only thing I could remember about the Mathenge interview was the visit to the farms on River Daawa and Liboi, where there were cracked houses built on shifting sand. Now, if I had remembered, I would not have denied. I wanted to be very candid about it.

The Commission Secretary (Ms. Nyaundi): Because in the interview, you said, you “categorically” deny ever having been in Wajir and I just want to be clear that when you saw your name in the book, you also--- So, I am trying to confirm that when you saw your book on that day; when you read the book, did you remember that, that could be the time when you went to look at things in Liboi with Mr. Mathenge? Did that come to your remembrance?

Mr. David Mwiraria: Let me repeat myself again. I said the only two items I could remember about the trip with Mathenge was the visit to the farms around River Daawa and Liboi.

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

So, did you share that with Belinda? Did you tell her: “I cannot remember attending a security meeting, but I was in Wajir with Mr. Mathenge looking at things in Liboi?”

Mr. David Mwiraria: I did not.

The Commission Secretary (Ms. Nyaundi): One of the issues – and I hope you can help us because the Commission is also trying to get this – in your own assessment, how do you think the delayed truth as far as the Wagalla incident is concerned; how do you think the fact that information was delayed--- Do you think that has contributed in any way to the passion within which Wagalla is discussed? On the various gaps in information and the various gaps in knowledge, in your own assessment, what has been the role of delayed truth?

Mr. David Mwiraria: Well, I think it is unfortunate that these things were delayed this far. I think human beings do forget and I am not alone in this. So, whatever I have said because of my forgetfulness is regrettable. But let me say that I thought that immediately after the Wagalla Massacre, a team was appointed to look at it and write a report. I think the team was under Etemesi, who must be still around who could shed more light on this. But agreeing with you, of course, now it is very late because even when you want evidence, you cannot get accurate evidence because it is from failing memories.

The Commission Secretary (Ms. Nyaundi): Thank you very much. I just wish to test your memory on what you recollect of that meeting on 8th February, 1984 at Wagalla. Because of time and the fact that you had the benefit of listening to Amb. Kiplagat yesterday, can we assume that the accurate position is that prior to your leaving Nairobi, you also did receive a brief – and I think you have copies on that desk--- There is a brief that has a programme and the names of individuals travelling. Would you recollect having received those documents?

Mr. David Mwiraria: I think it is really such a long time ago and I just cannot remember.

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

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): Amb. Kiplagat confirmed yesterday that you were a member of the Kenya Intelligence Committee (KIC). Is that accurate?

Mr. David Mwiraria: That is absolutely correct.

The Commission Secretary (Ms. Nyaundi): That is absolutely correct. And since this brief is to members of the KIC, we assume that if people were performing their job correctly, they would have furnished you with the program for the tour; they would have also furnished you with a list of people in the delegation and also with the brief. Is that not correct?

Mr. David Mwiraria: That is correct.

The Commission Secretary (Ms. Nyaundi): Thank you. With the benefit of this brief, you then attended a meeting at the Office of the Wajir DSC on 8th February? Do you recall being in the office of the DC in Wajir?

Mr. David Mwiraria: Quite honestly, I would not even tell you what the office looked like because these are old memories.

The Commission Secretary (Ms. Nyaundi): We are informed that you flew from Nairobi in a Buffalo Aircraft. I would assume that, at least, you would remember that. Did you board the same plane with Amb. Kiplagat and Mr. Mathenge?

Mr. David Mwiraria: I went in the same plane.

The Commission Secretary (Ms. Nyaundi): So, hopefully, we can assume that you landed with them in Wajir?

Mr. David Mwiraria: I landed with them and I went for meetings, but you are asking me whether I remember.

The Commission Secretary (Ms. Nyaundi): Yes. So, we are assuming that you went for a meeting where there was the DC, Wajir. He has mentioned to us that you were among the people when he gave a brief.

Mr. David Mwiraria: Okay.

The Commission Secretary (Ms. Nyaundi): Then you would have been there?

Mr. David Mwiraria: Yeah.

The Commission Secretary (Ms. Nyaundi): Would you roughly gauge how long you sat in the Office of the DC? Your program stated that you were to have arrived by 9.00 a.m., had a meeting until lunch and then proceeded to Mandera. Do you recollect, probably while you were in Wajir, boarding a plane twice; boarding it to Wajir and then boarding it again to Mandera? Do you have that recollection?

Mr. David Mwiraria: No.

The Commission Secretary (Ms. Nyaundi): Do you remember, maybe, that you slept in Wajir?

Mr. David Mwiraria: You mean boarding it from Nairobi?

The Commission Secretary (Ms. Nyaundi): Yes, boarding it from Nairobi and you then came to Wajir.

Mr. David Mwiraria: And then from Wajir to Mandera?

The Commission Secretary (Ms. Nyaundi): Yes, do you remember that?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): And do you remember whether that happened on the same day?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): Did you meet the DSC in Mandera at night? This is where you were going to places like Liboi and what not. I do not know whether my understanding of the region is correct.

Mr. David Mwiraria: I think Liboi is in Garissa.

The Commission Secretary (Ms. Nyaundi): Okay. So, could we confirm that the day you were in Wajir is the same day you were in Mandera, based on that program?

Mr. David Mwiraria: Yes, I think that is correct.

The Commission Secretary (Ms. Nyaundi): And can we just assume - and even Amb. Kiplagat was very useful and advised us to be guided by what is recorded unless, of course, your memory will serve you differently – that you arrived at Wajir at 9.00 a.m. and left at lunch time, which we will assume was at 1.00 O'clock, unless your memory can shed light on that?

Mr. David Mwiraria: No, I am afraid I cannot.

The Commission Secretary (Ms. Nyaundi): Let us be guided by the programme. So, that would mean that you were in the office of the DSC for four hours, based on the programme?

Mr. David Mwiraria: Well, that would not give us very much time for lunch; so that we have lunch and leave at 2.00 p.m. I do not know.

The Commission Secretary (Ms. Nyaundi): Yeah, we are going by the programme. Then, again, that would cause us to assume that at least in Wajir, you did not go to see any development projects?

Mr. David Mwiraria: I cannot remember.

The Commission Secretary (Ms. Nyaundi): Okay. And, in fact, that would be confirmed by the report that was later filed on page 36 in writing of that document that you are holding in your hands. It is the report.

Mr. David Mwiraria: On page 36?

The Commission Secretary (Ms. Nyaundi): Yes, it is on page 36. Could you look at it? Just a minute; can you see that at the top left corner, the one that is written “36”?

Mr. David Mwiraria: Yeah. I have two versions.

The Commission Secretary (Ms. Nyaundi): So, you can see the second paragraph; “Wajir District Meeting with the DSC?”

Mr. David Mwiraria: Okay.

The Commission Secretary (Ms. Nyaundi): You can see that?

Mr. David Mwiraria: Yes, I can see it.

The Commission Secretary (Ms. Nyaundi): Yes, and actually you are saying that your recollection is that when you arrived in Wajir, you did not leave the office? You sat there until you left for lunch?

Mr. David Mwiraria: I said I cannot remember---

The Commission Secretary (Ms. Nyaundi): We will thank the secretary of the KIC, who we have been informed, compiled a report which will guide us on what must have happened. So, gladly, we will be limited to confirming. You can see that there were two issues that the secretary, from the meeting in Wajir, forwarded in the report as the work that the KIC had done while in Wajir. The first one says:-

“The Acting DC briefed the Committee on the security situation in the district. He said the tribal clashes between the Degodia and the Ajuran had slightly improved. The Degodia were reluctant to surrender firearms; the Ajuran, who surrendered more firearms fear that they might be victimized. All together, 34 firearms had been surrendered, of which the Ajuran surrendered 28.” That is the correct reading?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): The second issue that was put for the report of the KIC for the meeting in Wajir and not in Mandera and in Garissa, was fencing of Police Divisional Headquarters. The Provincial Police Officer (PPO) wanted the divisional police headquarters and police lines fenced as they were exposed. He should submit an estimate of the cost and the type of fence proposed. That is accurate?

Mr. David Mwiraria: I read the same.

The Commission Secretary (Ms. Nyaundi): You read the same. Now, when I look at this report, I note a pattern that matters that were pending were actioned and those on which action could be taken or which could not be resolved, no action is marked. That is my reading of the report. Therefore, for the meeting in Wajir on the two issues for action, it is the fencing of the Police Divisional Headquarters that was actioned; PPO North Eastern Province. That is accurate?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): Now, the other issue, that is the security situation, was not actioned?

Mr. David Mwiraria: According to the Minutes, nobody was expected to take any action?

The Commission Secretary (Ms. Nyaundi): My reading, based on the rest of the report and the understanding that I have got of the events in Wajir, was that the matter

had already been actioned. The matter had already been actioned; this report was circulated – if you could go to the top page – on 24th May, 1984. That is accurate?

Mr. David Mwiraria: Yes, that is correct.

The Commission Secretary (Ms. Nyaundi): Mr. David Mwiraria, would you have a view other than the one that I am suggesting; that, by 24th May, 1984, the issue of insecurity as had arisen during the meeting, had already been actioned? Would you have a different view from that?

Mr. David Mwiraria: When you say, “had already been actioned”, that implies that somebody took action. But my understanding is that events took place between our meeting and the time this report was written.

The Commission Secretary (Ms. Nyaundi): Precisely; and that is why I am saying that by the time the report is being written, the issue had been actioned. The secretary is not marking it to anyone for their action. That is what this document suggests unless, of course, your memory---

Mr. David Mwiraria: No, I do not want to try and read the memory of Mwangovya (?) or his intentions, because there are several other Minutes which have not been actioned.

The Commission Secretary (Ms. Nyaundi): And we could go through them, so that we could establish---

Mr. David Mwiraria: On the same page, the Minutes on the new Mandera District Headquarters, nobody was supposed to take action?

The Commission Secretary (Ms. Nyaundi): Where is it? Yes, but just by way of example, Mr. David Mwiraria, we could take some time and analyze probably, why no one was going to take action - “New Mandera District Headquarters: A site has been identified.” So, there is no need for action. Is it not?

Mr. David Mwiraria: Yeah.

The Commission Secretary (Ms. Nyaundi): The deciding factor is water. Is it not?

Mr. David Mwiraria: Yeah.

The Commission Secretary (Ms. Nyaundi): So, since nobody can create water, there is no action. However, the process of moving the headquarters there should be a slow process. So, it has already been defined how it is you will move to the headquarters. So, there is really no action; there is no identification.

I have another good example in the previous page on land adjudication. It is marked page 34. The director of land adjudication explained the problems that might crop up in adjudicating the small farms along River Daawa owned by a few individuals. That was the river that you saw and that was during your trip to Mandera or sometime

there. It is advisable to shelve the proposal for the time being. So, again, it is not being actioned because a decision has been made to shelve it. Is it not?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): On the Takaba Airstrip, just below that, it says: “The construction of the airstrip by the Ministry of Transport and Communication was going well.” So, again, with that one, you see there is no need for action. I do not see whether there is anything there that would have required action that was not actioned.

Mr. David Mwiraria, I think the action that had been taken was that an operation had occurred. So, for that reason, there was really no need to action.

Mr. David Mwiraria: I would have looked at it slightly differently in that from what we hear, security was a common problem in the area; it had people who were dealing with it. So, I would have thought that by not putting anybody here, the assumption here was that the DSC and the PSC were on top of things, but this is only my view.

The Commission Secretary (Ms. Nyaundi): Thank you. In fact, you take me to the next point; we can go to page 41 of that document now dealing with the security issues; “Long term solutions to the Shifta Menace.” Arising from the meetings with the DSC and the PSC, my assumption is that you understand this to be basically security outfits. That is accurate, is it not?

Mr. David Mwiraria: Security?

The Commission Secretary (Ms. Nyaundi): Outfits; their agenda when they meet is to deal with security issues at that level?

Mr. David Mwiraria: Sure.

The Commission Secretary (Ms. Nyaundi): So, this report is saying: “Arising from your meeting – that is the KIC – with the PSC and DSC, the following were agreed---” That is accurate? That is the correct reading?

Mr. David Mwiraria: It is the correct reading.

The Commission Secretary (Ms. Nyaundi): “As recommendations for a lasting solution to the *Shifta* Menace and should be implemented.” My question, because you have just said that security belonged to someone else and were not being Minuted, at that time in the northern region, was there a greater issue of concern other than what is referred to here as the *Shifta* Menace?

Mr. David Mwiraria: It really depends on---

The Commission Secretary (Ms. Nyaundi): No, your own understanding; that time you were a Government official sitting in the KIC discussing security issues. Was there something of graver concern in the northern region other than the *Shifta* Menace?

Mr. David Mwiraria: As I said, it depends on who is looking at it.

The Commission Secretary (Ms. Nyaundi): According to you, Mr. David Mwiraria, when you were looking at it, was there something of greater weight than the *Shifita* Menace?

Mr. David Mwiraria: Maybe not.

The Commission Secretary (Ms. Nyaundi): Maybe not. That is just according to you because we will not ask you to comment on other people's views. So, one of the issues that was discussed relating to the *Shifita* Menace was close administration. This is a security issue and it is actioned. Is it not?

Mr. David Mwiraria: Yeah.

The Commission Secretary (Ms. Nyaundi): The other issue that was discussed was police stations because it was actioned. Is that correct?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): The other issue that was discussed was communication - actioned. Page 42 is not clear what that was, but it is actioned. The other issue that was discussed was development and it is actioned?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): The other issue; settlement schemes is actioned. The other issue – and all these are security with regards to *Shifita* Menace – water development; it is actioned. Education, as a security issue is also actioned. Somali language as a security issue is actioned. Border trade as a security issue is actioned. Border liaison offices – but we will look at the other report – is cut off but we can confirm. Research - this was also shown in the report - we can confirm that it was actioned and even yesterday, Amb. Kiplagat informed us that he was following up a report with Muriuki. Public Security Act, Cap.57 - actioned. Is it not?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): So, we go back to page 36; because now we have seen that security issues, including those relating to the gravest issue - those that were found to be pending were actioned.

Mr. David Mwiraria, my own reading of these minutes is that it would be safe to state that the understanding was that, as far as KIC was concerned, the issue of the Ajuran who surrendered more firearms fearing that they might be victimized had been auctioned?

Mr. David Mwiraria: Well, I think we are reading from the same text.

The Commission Secretary (Ms. Nyaundi): Yes.

Mr. David Mwiraria: But I do not agree with you that, that Minute is only dealing with security because you went through that communication would help security; development would make people better off---

The Commission Secretary (Ms. Nyaundi): Actually---

Mr. David Mwiraria: Settlement schemes would make people better off. Water development---

The Commission Secretary (Ms. Nyaundi): Mr. David Mwiraria, please, look at page 41 on; “Long Term Solutions.” That is the heading.

Mr. David Mwiraria: To the *shifta* menace?

The Commission Secretary (Ms. Nyaundi): Yes. We are in agreement. That is how the document reads?

Mr. David Mwiraria: That is correct.

The Commission Secretary (Ms. Nyaundi): And the paragraph immediately after that is saying; “Arising from the Minutes with PSC and DSC---” That is correct?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): And then bullet one, bullet two, bullet three and it goes on until bullet 12 on page 44?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): Mr. David Mwiraria, it is important for us to confirm that these issues were discussed within the context of the *Shifta* Menace and not stand alone development issues, based on this report. Unless, of course, you are saying your memory---

Mr. David Mwiraria: I do not want to try and rely on my memory. I said that my memory has failed me. But is it not possible that the Minutes include security as well as development? Because, after all, what was the cause of the *Shifta* Menace? I think it was a desire of the people of NEP to be allowed to join their brothers and sisters in Somalia. Now, if you, as a Government, kept them without development, surely, that desire would get even stronger. So, how do you bring them back? Give them development, and this is where the KIC was coming from. So, all these items really should be looked at as a way of getting the Somalis of NEP to feel Kenyan and not part of the greater Somalia.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. David Mwiraria. And that was your thinking in 1984?

Mr. David Mwiraria: Yes.

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

What were the key responsibilities of your Ministry of Home Affairs?

Mr. David Mwiraria: Our key responsibility as a Ministry was to look after the police, prisons and the National Museums. Those were basically the main items.

The Commission Secretary (Ms. Nyaundi): Is it your Ministry that housed what Kenya refers to as detention centres? It is your Ministry that was charged with the responsibility of gazetting detention centres - prisons, police stations---

Mr. David Mwiraria: Prisons were under the Ministry.

The Commission Secretary (Ms. Nyaundi): Okay. On detention centres, do you recall that would fall under your Ministry?

Mr. David Mwiraria: I would believe so because detention centres were related to prisons.

The Commission Secretary (Ms. Nyaundi): Okay. Had you, by the time you were a Minister, gazetted Wagalla Airstrip as a place that people could be detained or held after lawful arrest?

Mr. David Mwiraria: Quite honestly, I do not remember. In fact, when I agreed that there were detention centres, I did so because I know some of the people who were detained without trial were being detained inside prisons and it is for that reason that I said maybe, there were detention centres. But you could not gazette an airfield to be a detention centre.

The Commission Secretary (Ms. Nyaundi): Precisely. And neither would you have gazetted it to be a place to hold people for interrogation?

Mr. David Mwiraria: No. An airport has got very special functions.

The Commission Secretary (Ms. Nyaundi): When you began your testimony this afternoon, you referred to the incident at Wagalla as a massacre. What about this incident making you to refer to it as a massacre?

Mr. David Mwiraria: That is the common name and I am not inventing it.

The Commission Secretary (Ms. Nyaundi): No. But I assume that a man as learned as you, even if you walked into a room and people were referring to a dog as a goat, you would be quick to tell them that this is not a goat, it is a dog. So, just based on that assumption, that you have a fine appreciation of the English language, why is it that you have referred to this as a massacre?

Mr. David Mwiraria: Let me deny that I have a fine appreciation of the English language. I use it and I did not learn it at the university because I studied mathematics. So, whatever English I have is through usage. But the truth of the matter is that I

understand what a massacre is; the killing of innocent people. The newspaper reports I have got indicated that Wagalla was a massacre.

The Commission Secretary (Ms. Nyaundi): You said that, at least when I heard you on the *Citizen TV* interview, that days after the incident--- Was this before you went back to Nairobi or was it while you were on the tour? You said that some days after the incident, you visited the PC. In your recollection, was that as part of the tour to North Eastern Province or was it after you had come back to Nairobi?

Mr. David Mwiraria: I think it could not have been during the tour because it ended on 10th before the Wagalla Massacre.

The Commission Secretary (Ms. Nyaundi): So, after 10th you came back to Nairobi. According to the fourth line, you said; “we visited the PC”.

Mr. David Mwiraria: I must admit there that maybe, my memory failed me again. I do not think we did that. Not before. I left Home Affairs and went to Education in April.

The Commission Secretary (Ms. Nyaundi): So, you were in northern region in February and then in April, you were transferred to education?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): That is fine but at least, the records are helping us that on 8th you travelled to Wajir and Mandera. On 9th you went back to Garissa. I think you were here when Mr. Ndirangu testified before the Commission. He told us that on the evening of 9th you went back to Garissa and the PC hosted a dinner for the delegation. Mr. Ndirangu mentioned to us that the PPO informed him that the DSC in Wajir had met at 3.00 p.m., agreed to hold this operation and the DSC had sent a message to the PPO requesting reinforcement and the PPO had already released the reinforcement. You say; “I heard about the Wagalla Massacre the day after the incident.” Would a day after be on the night of 9th or the morning of 10th?

Mr. David Mwiraria: When did the Wagalla Massacre happen?

The Commission Secretary (Ms. Nyaundi): People were rounded up from the night of 9th.

Mr. David Mwiraria: I do not think I heard about it then. I heard about it after arrival in Nairobi. My statement there might be inaccurate.

The Commission Secretary (Ms. Nyaundi): Well, in your statement, you cite two occasions. One is the day after the event and the second time you say; “some days after” and you visited the PC. You were using the plural and you said; “we asked him what actually happened”. His reply was that the whole episode was a result of a military operation and he did not elaborate.

This is important because the Commission is trying to put together a record. As one of the people who had the initial report, it would be extremely important for the Commission just to get a sense of when information flowed.

So, Mr. David Mwiraria, do you have a recollection of being at the dinner that was hosted by the PC, North Eastern?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): Do you have a recollection during that dinner hearing a conversation about an ongoing operation in Wajir?

Mr. David Mwiraria: Certainly not.

The Commission Secretary (Ms. Nyaundi): Do you have a recollection of conversations that were held during the dinner?

Mr. David Mwiraria: Quite honestly, how many of us can keep---

The Commission Secretary (Ms. Nyaundi): You will not be able to say with certainty. At least, you would not be one of the people who would say that the matter was not discussed at dinner because you would say; "I cannot remember?"

Mr. David Mwiraria: If it was discussed at dinner, it was not within my earshot.

The Commission Secretary (Ms. Nyaundi): But you were saying that you have no recollection?

Mr. David Mwiraria: As I said in my report, anything concerning the Wagalla or any operation that could have resulted to it, was discussed--- I believe that my mind would not have failed me.

The Commission Secretary (Ms. Nyaundi): And you are right, Mr. David Mwiraria because your mind has not failed you. Your mind tells you that a day after the event, you heard about the incident and that some days after the event, you visited the PC. We are trying to get the connection between your mind that is telling you that you got this information a day after the event and that you visited the PC. So, we are trying to get you to a situation where you share with us the things in your mind.

Mr. David Mwiraria: I am afraid that on the conversations at dinner, I cannot remember anything that can help you.

The Commission Secretary (Ms. Nyaundi): Can you remember about the first time when you heard about the incident? Where were you?

Mr. David Mwiraria: I think it is something from the media.

The Commission Secretary (Ms. Nyaundi): So, if we went and looked at the newspapers of 10th February, 1984 we would see a story on the operation at the airstrip?

Mr. David Mwiraria: Once again, I said that a day after we were already back in Nairobi when this thing was reported. I really cannot be more helpful than that.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Gen. Kibwana also informed us that he received news of this incidence when he arrived in Nairobi. I do not know if you stretched your memory, you would be able to tell whether you were in the presence of Gen. Kibwana in Nairobi and when you heard about that incident?

Mr. David Mwiraria: I am afraid that I am not able to.

The Commission Secretary (Ms. Nyaundi): But you vaguely remember that you were in Nairobi. At least, now we have dispensed with the first time. We hope the second incident will be easier to recollect. I will try and help you.

Mr. David Mwiraria: That is going to be even more difficult.

The Commission Secretary (Ms. Nyaundi): I have this imagination that I can be of help. Allow me to try.

Mr. David Mwiraria: Please go ahead.

The Commission Secretary (Ms. Nyaundi): You say that you visited the PC, North Eastern Province, Mr. Kaaria. You can remember that?

Mr. David Mwiraria: Yes, I can. I remember talking to him. Whether I visited him or he visited me, I do not know. I cannot remember now.

The Commission Secretary (Ms. Nyaundi): Can you remember whether it was in his office or house? Since it was a visit, you must have gone to where he was.

Mr. David Mwiraria: It could have been much later.

The Commission Secretary (Ms. Nyaundi): Much later than 10th February?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): Is it even after he had stopped serving as PC?

Mr. David Mwiraria: No. He was still the PC.

The Commission Secretary (Ms. Nyaundi): Was it in his place of work in Garissa? Maybe, it is possible you went there on other assignments. What I have here, and I have given your lawyers, is a copy of the annual report prepared by the DC, Wajir District. On page 55 of that report--- Let it not bother you. This will not help us on what I wanted to ask you.

When you visited him later, was it while you were the PS, Home Affairs or you had moved to the Ministry of Education?

Mr. David Mwiraria: I cannot remember with certainty. But after moving to Education, I did visit North Eastern.

The Commission Secretary (Ms. Nyaundi): And this issue may have formed part of your discussion?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): I am about to conclude, Mr. David Mwiraria. When you visited KIC as Mr. David Mwiraria, did you consider it a very important visit? Did you think the role as you got onto the plane? Did you consider what you were going to do in Wajir of national importance?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): You were going to deal with weighty issues?

Mr. David Mwiraria: We were going to deal with two issues which were important. The most important being how we could bring development to North Eastern Province.

The Commission Secretary (Ms. Nyaundi): Do you think that had been communicated to the districts you were visiting?

Mr. David Mwiraria: It is the Office of the President which organized that. To the extent that they prepared a programme and arranged transport and the people on the ground, I thought they had done a good job.

The Commission Secretary (Ms. Nyaundi): Your sense is that what you were doing was of great national importance and even to the districts that you visited?

Mr. David Mwiraria: Yes.

The Commission Secretary (Ms. Nyaundi): I have had an opportunity of looking at the annual report prepared by Mr. Mativo. He was the then DC. It is dated 1st June, 1985. It is addressed to the PC and also copied to the PS, Administration, Office of the President. My sense is that this was an important document. When I went through it, I noticed that they, for instance, on page 7 have listed the important projects that were undertaken within that region from 1983 to 1984. They also state what each Ministry had done. On page 9 they state the achievements.

Given the importance of what the KIC had done in Wajir, there is no acknowledgement of the support that you had rendered them during this period. Apart from your names in the visitors' book, I see no mention of the contribution KIC had made towards pushing development within Wajir District. Would you have any comment on that?

Mr. David Mwiraria: The KIC as a body would not push development matters in different areas. I think you were told that KIC is basically an advisory body. It looks at all the intelligence coming in and advises Ministries on what needs to be done. For that reason, even if information was sent to the district, it would have gone through Office of the President, the PC, and then to them. That is why they have written it this way. Look at any Ministry's report. They do not say thank you to the Treasury because it has given them the money. They report how they have spent the money and what projects they have implemented. Normally, there is little appreciation although Ministries may be doing things for them.

The Commission Secretary (Ms. Nyaundi): I appreciate that explanation. It is only that the witnesses who have sat where you are sitting have, at least, given me the impression that the KIC trip was organized to kind of drive development. The impression I got is that development had more or less stalled and the KIC trip really was structured to refocus the mind of the Government on the development of the northern region.

My understanding of that trip is that KIC, as an advisory body that collects intelligence as has been set out in the report beginning with page 41, was really looking at security and how it impacts on development. Is that correct?

Mr. David Mwiraria: That is correct.

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

Commissioner Farah: Mr. Mwiraria, at the time the KIC visited Wajir you were the PS, Office of the Vice-President and Ministry of Home Affairs. Is that true?

Mr. David Mwiraria: It is true.

Commissioner Farah: Who was the Minister at that time?

Mr. David Mwiraria: That was the current President, His Excellency Mr. Mwai Kibaki.

Commissioner Farah: Naturally, he was the Chairman of the National Security Council or whatever it was called to which the Kenya Intelligence Committee was reporting to.

Mr. David Mwiraria: He was the Chairman of the KIC. If I may give a little more information, I have heard people talk about the National Security Committee and the Kenya Security Committee. They are one and the same thing. I think it is people who are calling the same committee different names. To the best of my knowledge, Kenya has Kenya Intelligence Committee and Kenya Security Committee which could be changing names in the new Constitution to become National Security Committee.

Commissioner Farah: Can you tell us the relationship between Kenya Security Committee and Kenya Intelligence Committee?

Mr. David Mwiraria: Those two committees have got a very interesting relationship. Intelligence in the Kenya Government, at least, when I was there in those years, was given on need to know basis. This means that you would have the Director of Special Branch as the head of intelligence. There is information he would give to the KIC. There is information he would give to the Ministers who were members of the security committee which the KIC would not get. There is also information he would give to the President on a weekly basis which neither the Kenya Security Committee nor KIC would be given. I think it is important to make that distinction.

Commissioner Farah: There was illusion of power the way you have described it.

Mr. David Mwiraria: There was that division. Apart from knowing that KIC got information and sifted it and decided what will go to the Security Committee which is comprised of Ministers, that was really basically the relationship.

Commissioner Farah: In your statement you said that when the Wagalla Massacre occurred you came to know about it a day after which was either on 10th February, 1984 or 11th February, 1984. On 11th February, 1984 you were already in Nairobi.

You said that your memory failed you and you could not remember much, but you asked the PC and he told you that it was as a result of a military operation and he did not elaborate. Is it possible, as a senior PS at that time and then a senior Minister later on, for a military operation to be conducted without the knowledge of a Permanent Secretary particularly one who is a member of the KIC?

Mr. David Mwiraria: I think it is possible because when you face security situations--- I know in Kenya we talk a lot about the police killing people without allowing them to go to court and so on. Sometimes you get situations where a police officer is faced with armed gangsters who want to shoot him. If he takes action it is not because he has got command from his boss. So, I think from the story I have heard on Wagalla Massacre and what happened that day at the airstrip, it is quite possible that the officer in charge gave orders for his officers to shoot and did not get any directive from anywhere.

Commissioner Farah: Thank you, Mr. Mwiraria. I am talking about launching the whole operation where military vehicles went far afield to pick men of a certain ethnic group simultaneously from Habaswein all the way to Griftu which are 300 kilometres apart. That is what I was thinking about when I asked you the question.

Mr. David Mwiraria: I did not work with the Office of the President. That is a question Mr. James Mathenge should be able to answer when he appears before this Commission.

Commissioner Farah: What is the meaning of “Permanent Secretary in charge of Home Affairs”? I thought Home Affairs has to do with internal matters of Kenya which would have been in your docket?

Mr. David Mwiraria: Well, I said that in Home Affairs we looked after the police, prisons, museums, archives and so on. However, what you are saying is right, but a

President has the right and prerogative to decide what responsibilities he awards his Ministers. That is what we were given. That is what Mr. Kibaki was given when he was made Minister.

Commissioner Farah: When we heard of the evidence given by the military men, they told us that they were operating behind the police and therefore, the military could have come under Office of the President, but the police was under your docket. So, their operation would be of no concern to you as the PS in charge of Home Affairs?

Mr. David Mwiraria: They would be of concern certainly. However, let me make one point clear. Once a Ministry posts its staff outside the field, if they go to the districts they become answerable to the DC. If they go to the province they become answerable to the PC. If you send officers from the Ministry of Finance to the field, they must answer to the DC or PC in order to harmonize work, otherwise, you will have confusion.

Commissioner Ojienda: Thank you, Mr. Mwiraria for your testimony which I would describe as a litany of selective amnesia or is it sheer forgetfulness right from the beginning or the time you boarded the plane from Nairobi to Wajir. I just want you to get back your memory for the few questions I will ask you. I think you are quite to the point in your responses and that is very good.

As the PS for Home Affairs you were in charge of affairs concerning prisons and detention centres. What was the process of undertaking lawful detentions?

Mr. David Mwiraria: Well, this was really a preserve of His Excellency the President who ordered his Minister to take action. The action would be, if somebody is detained where do you put him? We had houses in prisons. I remember visiting one in Shimo La Tewa where somebody who had been detained without trial was put in, but I would not have been personally involved.

Commissioner Ojienda: What about the detention of people in an airstrip like Wagalla? What would be the lawful process of having such people confined and detained for some time? Who would give the authority?

Mr. David Mwiraria: Quite honestly, I did not come across something like that. That was something done locally and not to the attention of the Ministry.

Commissioner Ojienda: So, you were unaware of that aspect of that type of detention at the time?

Mr. David Mwiraria: Yes.

Commissioner Ojienda: Some witnesses alluded to the possibility that some members of the KIC may have known about the impending operation that caused the Wagalla Massacre. Were you one such member?

Mr. David Mwiraria: Certainly not.

Commissioner Ojienda: When you went for the tour, you were specific about River Daa. You remember that aspect?

Mr. David Mwiraria: Yes.

Commissioner Ojienda: That is not selective. You remember that very well.

Mr. David Mwiraria: That I remember well, but let me say this: Please give me permission to say that maybe my mind works that way. I remember things which either impress me or interest me. I can see several things the same day and I will remember two of them and not the others.

Commissioner Ojienda: I hope you will remember these proceedings. That is very interesting. So, if anything went on that did not impress, that you thought was not for the good, you would not remember?

Mr. David Mwiraria: We are talking about a long time ago. We have all been children and we have grown up. I bet, Professor, that there are issues in your youth which you remember and yet your youth was characterized by a lot of things. I am trying to get you understand that as a human being your mind may be selective. It is not selective amnesia. I do not know what the mind does, but at least mine does that.

Commissioner Ojienda: In your beautiful mind, at least, you have mentioned the Etemesi Report. It was compiled after investigations by Etemesi. Did you have sight of that report?

Mr. David Mwiraria: I did not. I only heard of the Etemesi Report when we started meeting as witnesses to this Commission.

Commissioner Ojienda: Let me just take you back and I think this is a good one. In all the things that you remember and all that you do not remember, you talked about development and the noble intentions that the then Government of Kenya had for North Eastern Province. Probably you can tell us what you did, as the Minister for Finance, when you finally came to power, to actualize the clear vision that you had in 1984, when you toured North Eastern Province?

Mr. David Mwiraria: Let me, perhaps, start a little earlier. When I was moved to the Ministry of Education - I may not remember everything now - within a year, I went on a tour of educational institutions in North Eastern Province. I visited secondary schools and nomadic boarding primary schools. I can remember visiting one primary and one secondary school, I do not remember whether it was in Lamu or Mandera in North Eastern Province. Now, because of the pressure which was coming in, I allowed that school and Garissa High School to have "A" levels, this was soon after. But after I became the Minister for Finance, we had a special programme to finance water and other projects in North Eastern Province.

Commissioner Ojienda: Thank you, Mr. Mwiraria. Those are certainly good things though they go back to 20 years ago as well.

Mr. David Mwiraria: No, I am saying, even more recently, I may not be able to remember the actual projects I financed ---

Commissioner Ojienda: Yes, but as a PS, Education, you go back and - I am glad that things you did are still in your memory. But let me just ask you, Mr. Mwiraria, you were the PS in the Vice President's Office, of course the Minister then was the current His Excellency the President. When you got the news of the massacre, what steps did you take as the PS, bearing in mind that we were told by Mr. G.G. Kariuki, the then Minister for Internal Security, that the PS was even more powerful than the Minister during that time? How would you describe this incident?

Mr. David Mwiraria: I think we need to get things clear. I was in the office of the Vice President, but the responsibility for Provincial Administration and Internal Security was in the Office of the President. So, I could not have poked my nose into some other PS' business. It was not allowed and it could not be countenanced.

Commissioner Ojienda: So, you felt nothing about the incident?

Mr. David Mwiraria: No, no, I think you are putting words into my mouth! I did not say I did nothing!

Commissioner Ojienda: How did you feel to be in Government and to hear, two days after your return that a massacre of the level of Wagalla had occurred? As a PS, remember you are in the Government and the same Government has been accused of the tragic events of the Wagalla.

Mr. David Mwiraria: I think I started off by saying that the incident was very unfortunate, it was embarrassing and that was my view even then.

Commissioner Ojienda: Thank you very much, Mr. Mwiraria.

Commissioner Chawatama: Thank you very much for your testimony. My fond memories as a child growing up, is what my grandmother told me and she died at the age of 106. You will excuse me I am a foreigner; maybe I have misunderstood a few things. Did I hear you say that you were PS in the Ministry of Home Affairs?

Mr. David Mwiraria: Yes.

Commissioner Chawatama: And that the police fell under your docket?

Mr. David Mwiraria: Yes.

Commissioner Chawatama: Here you have the regular and Administration Police. So, it is both the Kenya Police and Administration Police?

Mr. David Mwiraria: I cannot remember exactly, but I suspect the Kenya Police.

Commissioner Chawatama: According to our research and investigations, I have learnt that a member of KIC visited the police station at Wajir; do you recall visiting the police station?

Mr. David Mwiraria: No. I do not.

Commissioner Chawatama: As the PS, did you ever visit police stations and prison facilities?

Mr. David Mwiraria: Yes, I did.

Commissioner Chawatama: On this occasion, you do not recall going to the police station in Wajir?

Mr. David Mwiraria: I do not recall.

Commissioner Chawatama: You do not recall meeting people who were detained at the police station?

Mr. David Mwiraria: No. I do not recall.

Commissioner Chawatama: We have been informed that North Eastern Province was an operation area or zone, meaning therefore, that there were a lot of resources in terms of manpower and maybe other resources that were needed. Did you have any requests coming your way for more policemen?

Mr. David Mwiraria: I believe we did receive requests.

Commissioner Chawatama: One of the things that we have learnt from other witnesses is that part of the programme was also to look at the welfare of civil servants which included the police. What sort of reports did you hear from the police when you got to Wajir?

Mr. David Mwiraria: One thing which came out clearly was that the police did not get their uniforms renewed and they had not been paid their operational allowances for some time.

Commissioner Chawatama: As their PS, what action did you take?

Mr. David Mwiraria: After getting back, I should have put a request to the Treasury to give money for those items.

Commissioner Chawatama: Whilst in Wajir, specifically, under North Eastern Province, one of the things we learnt was that the morale of the civil servants, which included the police was very low. Were these your findings as well when you went there?

Mr. David Mwiraria: I think that came out at every district we visited.

Commissioner Chawatama: Who would be responsible or which Ministry would be responsible for the actions of the police?

Mr. David Mwiraria: The command came from our Ministry because that is where the Commissioner was located, but operationally they operated under the DCs and the PCs who were in charge of them.

Commissioner Chawatama: During your time as PS, did you have an opportunity to witness policemen being sued for the actions that they took?

Mr. David Mwiraria: I cannot remember.

Commissioner Chawatama: Did you get any information from the Attorney-General that some of the men under the Ministry which you were serving and the police had been sued?

Mr. David Mwiraria: I cannot remember, but people who serve in the uniformed forces like the Police, Army or the Administration Police, there are ways of punishing them without even taking them to court. They can be taken to a local or official police court where they can be sentenced. Following this they can either lose their jobs, be penalized, or pay damages for things they have destroyed.

Commissioner Chawatama: Who would pay the damages, the Government or the individual police officer?

Mr. David Mwiraria: The individual police officer would pay for his actions.

Commissioner Chawatama: I see. If a senior police officer ordered that people who are fleeing be shot at, who would bear the responsibility of this senior officer's order?

Mr. David Mwiraria: He would bear the responsibility depending on the circumstance under which he acted. But he would have to be investigated by the senior police who would then decide what cause of action would be taken.

Commissioner Chawatama: Did you know whether or not there were investigations - although I would not give you the name but I can give you the title - carried out on the OCPD? I have learnt so many acronyms, like DSC, I do not know what I will do when I get back to Zambia. Did you know whether the OCPD at the time of the Wagalla Massacre was ever disciplined?

Mr. David Mwiraria: I am afraid, I cannot remember, we would have to check that with the police.

Commissioner Chawatama: How many massacres occurred during the time you were PS in the Ministry of Home Affairs and the police, to some extent, were said to have been involved?

Mr. David Mwiraria: The only massacre I can remember is the one we are discussing.

Commissioner Chawatama: There was only one massacre! Surely, there are certain things that you ought to remember. For example, you ought to remember whether the OCPD was disciplined.

Mr. David Mwiraria: Unfortunately, I do not remember.

Commissioner Chawatama: It is very unfortunate that you do not remember because as a result of that massacre, there were so many killings and a lot of people lost their lives. There were many rapes that took place, many deaths of livestock occurred and a lot of people's lives were disrupted. Children could no longer continue with their education, businesses were lost; women lost marriages because after being raped no man wanted anything to do with them. Some of them were raped and those who were pregnant lost their children after rape. So, I am just trying to imagine what you mean when you tell us that you cannot remember these serious incidents. You cannot even remember whether a senior officer was disciplined?

Mr. David Mwiraria: Well, I do know that some officers were interdicted and others were, in fact, dismissed from work. Whether the OCPD, Wajir, was one of them, I just cannot remember.

Commissioner Chawatama: Well, thank you very much for your testimony and that was my last question.

Thank you.

Commissioner Dinka: Thank you very much, Mr. Mwiraria, for your testimony. I have some questions for you and my questions mostly revolve around the KIC. We heard yesterday from a number of witnesses that the KIC's provincial tours were very rare or they had never been done before they went to the Northern Frontier District or the North Eastern Province, in February, 1984. Is that your understanding as well?

Mr. David Mwiraria: For the short time that I was associated with KIC, yes.

Commissioner Dinka: You had been associated when you were the PS, Ministry of Home Affairs, until you went to the Ministry of Education as PS?

Mr. David Mwiraria: Yes, for two years.

Commissioner Dinka: So, for the two years you had been with the KIC, the Kenya Intelligence Committee did only one provincial tour and that was to the North Eastern Province?

Mr. David Mwiraria: Yes!

Commissioner Dinka: Okay. It is such a rare occasion. There must have been something that triggered it; that made it necessary for them to take this kind of trip. A very quick trip for one and a half days or two days; first it was planned for November, 1983 and then it was postponed to 8th February, 1984. What triggered it? What really happened and why was it necessary for them to travel?

Mr. David Mwiraria: I think it was the desire of the Government to try and resolve the issue of the *Shifita* menace.

Commissioner Dinka: Thank you very much. So, it was essentially to go and find out the *Shifita* situation on the ground; which is basically a matter of security, and then come back and advise the Government on what to do. Is that right?

Mr. David Mwiraria: Yes, but we were to look at the environmental requirements and that came out of the report which was presented to you.

Commissioner Dinka: That has been adequately taken care of by the Leader of Evidence and I do not want to go back to that. You also stated that the KIC's mandate or task was to collect intelligence or information, sift it and then pass it on to the national security committee to take appropriate action. How did you get your information? Did you have people on the ground or did you receive periodic reports from either through the DC or PC?

Mr. David Mwiraria: The Government had its special branch then, and currently the National Security Intelligence Service (NSIS), with personnel all over the country. They have heads in the districts and provinces where information filters from the bottom all the way up. But, as I said, this information is collected by the Director of Intelligence who decides what information he would give to the KIC and what information he would take to His Excellency the President. That is the way it operates.

Commissioner Dinka: Okay. Whatever he gets he transmits to you at KIC level where you then sift and send to the National Security Council?

Mr. David Mwiraria: The information also comes from other Ministries; for instance Foreign Affairs, Information and Treasury; all that is put together.

Commissioner Dinka: My next question is; we have seen from different documents that the Provincial Commissioner and the District Commissioner in Wajir had been talking about the degenerating situation in the North Eastern Province and, particularly Wajir and Mandera areas. Before you embarked upon your trip on 8th February, 1984, had you access to those reports and did it form part of your agenda on the trip?

Mr. David Mwiraria: I have not looked at the agenda and the programme which they were given, but I am sure it should have been. We should have received information.

Commissioner Dinka: Thank you. My next question flows from that. If you had received information about the situation on the ground in the North Eastern Province, particularly those districts that I have mentioned, you must have received reports, very quickly, on what had happened in Wagalla, through the same channels. You had gone, looked at whatever you had been briefed about, came back and soon after, two to three days later, a big blowup takes place in Wajir, particularly Wagalla.

Mr. David Mwiraria: I cannot remember how often the DSC used to meet. I think it used to meet once a month. So, in the monthly meeting that followed, we received information.

Commissioner Dinka: That was a very serious development that had happened in Wagalla; very tragic and of a national scale and probably even on the global scale. I was telling somebody the other day that I was not in this country, but I was at a level of people who could listen to radios and read newspapers. I was aware of what had happened in Wagalla, though I did not know the details as I do now. So, it was something that went beyond the frontiers of Kenya, in terms of information or news. As the Kenya Intelligence Committee, being the advisory body on security matters, particularly for the nation, did you have to wait for one full month to listen to the development when you were in the same town, you were meeting each other, or you were just telephone calls away from each other? Why did you not attempt to call some kind of an extraordinary meeting of the KIC?

Mr. David Mwiraria: I do not remember calling an extraordinary meeting, but we talked about what action needed to be taken. We needed to get full information and that is how the Permanent Secretary, Office of the President, had appointed a group to investigate the matter.

Commissioner Dinka: Okay, very good. It does not matter, even after one month, what did the KIC do?

Mr. David Mwiraria: I think the KIC just confirmed the action of the Permanent Secretary.

Commissioner Dinka: No! What did they advise? They are the advisory body, and here is something very tragic which had happened with national consequences, what advice did they give to the National Security Committee?

Mr. David Mwiraria: There I cannot say exactly what happened, but we would have advised that the matter be investigated quickly and a report be given.

Commissioner Dinka: Okay. My next question is: The Permanent Secretary in the President's Office had set up a committee to investigate what had happened. The committee completed its work, has the KIC ever been given an opportunity to have access to that report?

Mr. David Mwiraria: I do not recall, but as I said, I left the KIC within two months after the event.

Commissioner Dinka: Okay, so you really do not know whether the Etemesi Report was made available to the KIC as the advisory body to give the expected advice on security matters?

Mr. David Mwiraria: I do not know.

Commissioner Dinka: If the KIC had not received adequate or full report on the tragic events at Wagalla and they had not received or accessed the report of the committee set up by the PS, President's Office, what prompted them to actually issue a directive on 29th of March, 1984, telling the PC that no operation should be mounted without clearance from the KIC from then onwards? Why did they do that?

Mr. David Mwiraria: I do not know. But, I think James Mathenge should be able to give a correct answer to that question.

Commissioner Dinka: My last question is: for the KIC to send out a directive saying; “Do not mount any operation without our clearance,” does that not make the KIC a body more than an advisory organ, but an operational organ? I am just asking your view on that.

Mr. David Mwiraria: I have not seen the circular, so I do not know who signed it, whether it was signed by KIC or the PS, internal security---

Commissioner Dinka: It was sent from the KIC, through the Provincial Commissioner, to the President’s Office.

Mr. David Mwiraria: Well, definitely, the KIC took action. It acted on that information.

Commissioner Dinka: So, it cannot authorize operation then because they said, “do not mount any operation without KIC clearance”.

Mr. David Mwiraria: Well, as I said, I have not seen the letter.

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

The Presiding Chair (Commissioner Shava): Commissioner Slye!

Commissioner Slye: Thank you. Mr. Mwiraria. I want to start by picking up on something that you said in the series of interviews that we filled earlier today; sort of it is based on what you said in your testimony as well. Let me start by giving you the context that is behind my question. Part of the work of this Commission is to make recommendations to the Government and to other bodies on how to prevent occurrences like the Wagalla Massacre and other historical injustices that we are looking into. So, we both understand the causes of the events like the Wagalla Massacre, the incidents and their context, but also based upon that to try and make recommendations to fix problems and gaps.

In your interview, at one point, you talked about, as the PS in the Ministry of Home Affairs or elsewhere, not wanting to stick your nose into other things outside your docket - this is not a direct quotation from you. But I think this is because of the fear of being misunderstood. I wonder if you could elaborate a little bit more about that. When I heard some of the testimony that we have heard in the last few days, one of the things that I am struck by is what seems to be an extreme compartmentalization of functions and information. That sort of compartmentalization probably has its benefits and also its dangers, and one of the dangers is lack of knowledge or lack of accountability, the left hand not knowing what the right hand is doing.

I have just given a little bit of my own interpretation and I do not understand the statement you made. So, I am wondering if you could assist me or us in understanding what you meant by that statement.

Mr. David Mwiraria: Thank you very much Commissioner Slye. The Kenyan Commissioners who are here would understand what I meant. This country has gone through an era where we even used to get worried about speaking in public because you would say something and you would be picked up a few hours later and you could be detained or anything could happen. Now, it is in that context that I made the remark. Today, things have changed and under the new Constitution Kenyans can speak their minds and they do not have to worry about poking their noses into other peoples' affairs. I was talking about that time. So, really you can put that behind. The new Constitution gives us the right to speak, associate and to do whatever we want with anybody, and you can ask questions about anything. But, at the time we are talking about, it was a very different story.

Commissioner Slye: Thank you for that and as you know I am not a Kenyan so, I am continuing to learn about this country's history. I understand that there has been some significant change in terms of both willingness and ability of people to speak from 1980s to today. I guess, in the same vein, I wonder if in your view, that level of fear and self-censorship as well as maybe formal censorship--- In your view, how did that contribute to things like the Wagalla Massacre and maybe related to that, whether it contributed to what seems to be lack of effort by the responsible office, after the Wagalla Massacre, to do much in terms of inquiry, accountability and that sort of thing?

Mr. David Mwiraria: Thank you Commissioner Slye. I think it would be right to say that under the circumstances we are operating today, it would be very difficult to replicate the Wagalla Massacre. I think it is also true to say that, if anything happens similar to the Wagalla Massacre, there would be no reluctance in looking into it.

Commissioner Slye: So, that sort of situation, as I said before, we are trying to make recommendations on the potential changes and structures. So, I guess maybe you might need a little more time to reflect upon this. But given your understanding of what the Government was like back then and what the structures and the general practice was and then your understanding of what it is today and I recognize that you are less in Government today, so your knowledge is more limited. But given that there is that difference of knowledge, your knowledge from back in the 1980s and today, are there things that you see that have not been changed and they should be changed today?

Mr. David Mwiraria: I think you were right when you suggested that I may need a bit of time to think about it. This is because, honestly I need to look at our Constitution. I know a lot about it, I have read it several times, I would not mind thinking about it and putting something on paper for the Commission.

Commissioner Slye: Thank you very much. We very much appreciate and we look forward to receiving that. I would like to ask whether my fellow Commissioners have asked about my next area of question which is about the KIC. I just want to make sure that I understand, from your perspective what your sense of the KIC was and, if I understand you correctly, number one, information would come but not all intelligence information would necessarily go through. I understand that the KIC was in the Office of the President. But some would come to the KIC and KIC would sift through that information and make decisions about what information was more useful

and what was less useful and maybe what was more credible and what was less credible and pass that information to the Kenya Security Committee. Is that part of the KIC function, to understand that correctly?

Mr. David Mwiraria: Yes, there is that part of it.

Commissioner Slye: On the other side, I am not sure if you trust us, but I would like to come to what I would term as an operational side. I do not know if you were here yesterday when we were questioning Ambassador Kiplagat. You may want to know what he went through and if you would like I would point it to you, if you desire.

Mr. David Mwiraria: That was part of it.

Commissioner Slye: I am not sure if you have addressed this; yesterday we went through the Minutes of the Provincial Security Committee back then where it shows that they were waiting for clearance by the Kenya Intelligence Committee so that they could enforce certain things. There were some operational functions by the KIC and not necessarily as Commissioner Dinka had said about security operations. Is that your understanding as well?

Mr. David Mwiraria: Madam Presiding Chair, I think one of the reasons why the Ministries were brought together is to enable them exchange views. Under KIC it was not unusual to say that if it is something on foreign affairs we had to seek advice on how to do it. If we needed to collect certain information and the Ministry of Information was required to attend to an issue, they would also be given direction on what to do. So, I think it was a dual role.

Commissioner Slye: In your view, when the Provincial Security Committee said that they are waiting for clearance by KIC to present the proposal, you would understand that to mean that it was something that was waiting for a response from the KIC. Is that correct?

Mr. David Mwiraria: Yes.

Commissioner Slye: The reason I have asked that is; Mr. Kiplagat said that when the Minutes mentioned KIC they meant the Office of the President and not KIC. Do you have any comment on that?

Mr. David Mwiraria: Since the secretary of KIC and most senior members were all from the Office of the President that would be implied.

Commissioner Slye: Since most members of KIC were from the Office of the President, by giving information to KIC it was also going to the Office of the President but presumably, one could have gone directly to the Office of the President and not through KIC. It would be assumed and as you also mentioned, Special Branch information, some go directly to KIC or to the President depending on the nature of information?

Mr. David Mwiraria: Yes.

Commissioner Slye: I appreciate that the KIC and the National Security Committee as security bodies are similar but some have been hesitant to clarify this issue to us. Are you clear in your mind that those two bodies are the same?

Mr. David Mwiraria: When I served in KIC it was only one. So, I am assuming that in the new Constitution we have moved from KIC to National Intelligence Committee and National Security Committee which is bringing about the confusion.

Commissioner Slye: The other issue that I wanted to raise is that we have received a document that was prepared by the Government in the last couple of years. The document says:-

“The National Security Council held a meeting in Nairobi in January, 1984 where it was decided that all male Degodia be disarmed by force.”

Is this National Security Council the same as KIC or a Cabinet Committee?

Mr. David Mwiraria: It sounds as though the council is so different from a committee.

Commissioner Slye: Would you know what that council is or would you speculate about what that council might be?

Mr. David Mwiraria: I do not want to speculate but I am assuming that it is a council of Ministers under the President.

Commissioner Slye: I appreciate that and I also appreciate that you could speculate for us and we take it as that. Related to that, I think it was Gen. Kibwana who told us that the membership of the KIC was primarily or exclusively Permanent Secretaries and the security committee consisted of Ministers. Is that your understanding as well?

Mr. David Mwiraria: I am wondering whether Permanent Secretaries, accompanied by the Head of Intelligence, Chief of Police, Chief of the Armed Forces and various armed forces could be treated as Permanent Secretaries. I thought that would be a little more than just Permanent Secretaries. May I suggest that you could get more accurate information from Mr. James Mathenge because he was dealing with it on a day to day basis?

Commissioner Slye: I am sorry if I am pushing this case much but regarding the KIC, the reason why it was dominated by Ministers, is that it was ministerial body. Is that true?

Mr. David Mwiraria: It was more ministerial but the Chief of Intelligence and Army Commanders were also involved.

Commissioner Slye: Thank you. That is very helpful and now I have a clear picture in my mind about what these bodies were and their functions. I will be brief with my questions. You talked about lawful detention so I just want to make sure I understood what you were explaining to him; that lawful detention was the preserve of the President who would order a Minister to take action. By that did you mean that if an individual was detained, the detention was decided at the level of the President? Is that what you meant by that?

Mr. David Mwiraria: Yes, and it is the President who would tell his Minister to gazette that detention.

Commissioner Slye: That would then mean that the Permanent Secretary of Home Affairs, the Minister or any other person would then have authority to detain anyone or did that authority lie solely with the President?

Mr. David Mwiraria: I do not think anybody else had authority to detain. Not even the Minister.

Commissioner Slye: Thank you. You have mentioned what you remember happened in 1984 and that your memory is completely erased. That is understandable because it is 27 years ago. You have had the benefit of seeing some of the documents that we have to refresh your memory. You have also had an opportunity to speak with other individuals who were around at that time. I am wondering if you could tell us about that process and how that helped you, particularly regarding the conversations that you had with other individuals who were around at that time. How helpful was that in refreshing your memory?

Mr. David Mwiraria: Quite honestly, the only document that I have looked at before today contained Minutes of the meeting of May, 1984. We tried to get most of those other documents but we were told that they are still part of Government secrets and have not been released to the public. If I read some of the Minutes, I can remember some of the visits but not all of them. I must be very honest.

Commissioner Slye: Will meetings with other individuals help you to remember about the visits, the purpose of the visit and content of the visit?

Mr. David Mwiraria: Yes, they will.

Commissioner Slye: Would you mind sharing with us with whom you had those conversations?

Mr. David Mwiraria: We met a few times to brief our lawyers and individuals would make contributions which helped some of us remember some things that we had forgotten completely.

Commissioner Slye: When you met with lawyers to brief them you would all meet together and speak as a group?

Mr. David Mwiraria: Yes.

Commissioner Slye: I do not want to pursue this too much but I would like to know in terms of what you said about being on a development tour, the only document that you have been able to look at and review was the 24th May, 1984 Minutes. There are a number of documents which you have been able to look at and have informed your understanding of the purpose of the trip. Is it correct that the only document that you have been able to look at is the Minutes of 24th May, 1984?

Mr. David Mwiraria: That is the one I had looked at before I sat on this chair.

Commissioner Slye: So, it is on the basis of that document that you are coming to the conclusion that you came to?

Mr. David Mwiraria: On the basis of that document and the little that I could remember.

Commissioner Slye: The last question I have is more general and not necessarily about Wagalla Massacre. As the Permanent Secretary, Ministry of Home Affairs, the police were under your docket. Do you recall during that period whether there were ever any inquiries either initiated by you or others or any report on rapes by police or other Government security officials in any part of the country and not just North Eastern Province?

Mr. David Mwiraria: I do not recall any inquiries.

Commissioner Slye: Can you recall whether when you appeared the issue of rapes by police officers or rapes by Government officials came up? Did you remember anybody raising any such concerns?

Mr. David Mwiraria: Rape has been a concern of the Kenyan people over the years including that time. For some reason, it seems to be increasing. While I was a Member of Parliament we passed a law which enhanced punishment in order to try and deter rapists, but it is something regrettable and shameful.

Commissioner Slye: The reason I asked is that my information is limited. The first place the Commission visited was North Eastern Province and one of the things that was common, and we even devoted part of the day to women's only discussion, was the issue of rape. There were dozens of women who came forward and talked about how they were raped often by the Police, the Military or the Administration Police. You can imagine where a woman has been subjected to such an attack she might not even know who the person was rather that he was in uniform. The impression we got is that this was a big problem and the time period was long. It went back to the beginning of our mandate, that is, 1963 the time of the *Shifta* War to the present time. I am just trying to get sense, given all those activities were happening on the ground, how much of that would have trickled up to the level of the Permanent Secretary or a higher level of Government in terms of concerns and wanting to do something to try and prevent such an activity?

Mr. David Mwiraria: This came up and I know it was discussed in one of the KIC meetings, but the responsibility of containing it was given to the commanders of the Armed Forces.

Commissioner Slye: Thank you very much. We appreciate your appearance here today and your testimony. I also want to acknowledge, the way I did yesterday with Mr. Kiplagat, that your statement begun by recognizing that Wagalla Massacre was a tragedy. I guess my last question would be; do you think that the Government should apologize to the individuals of Wajir, particularly those who lost loved ones? Is that something that we should recommend to the Government?

Mr. David Mwiraria: Could I sleep over that one and give you the response in writing?

Commissioner Slye: Sure!

The Presiding Chair (Commissioner Shava): Thank you very much, Mr. Mwiraria. I just have a few questions for you. It has been a long day for you and for everybody here. Regarding the Etemesi Report, you said that you heard about it only recently when you started meeting witnesses summoned by this Commission. I wonder whether you have any knowledge about what actions were taken after Etemesi's Report.

Mr. David Mwiraria: I do not know. I was moved from that Ministry. I think the Permanent Secretary will be able to give you details.

The Presiding Chair (Commissioner Shava): When you moved to the Ministry of Education as the Permanent Secretary, is that when you ceased being a member of the Kenya Intelligence Committee?

Mr. David Mwiraria: Yes.

The Presiding Chair (Commissioner Shava): A previous member of the KIC has testified about a visit by the then President Moi to Somalia. Are you aware of that visit and if you could tell us when it took place and what was the purpose?

Mr. David Mwiraria: I am not aware of it.

The Presiding Chair (Commissioner Shava): You have been saying that your memory is not very good. I think I will differ with that. You seem to have remembered many things during the discussion. When I look at your statement, it is very brief and does not contain a lot of information. We have learnt more from you during the discussion. On 30th March, 2011 and 13th May, 2011 we received from your advocate notice of intention to appear. That was between April and May. I imagine that is when you were trying to recollect and put together your statement. Today, you seem to have corrected, through memory, a lot in that statement. For example, your statement says that you heard about the Wagalla Massacre the day after the event "when I was a member of the team of civil servants visiting North Eastern Province". Other than remembering that it was a day after the event, you also remember what happened when you were a member of a team that was visiting. Further down in that same bullet you talk about the two days after the event when you visited the Provincial Commissioner in North Eastern Province. You seem to be suggesting that you went away and came back. I am just wondering what it is that triggered your memory between the time you wrote the statement and the time you were speaking to us today.

Mr. David Mwiraria: Well, I would like to make two corrections. The first one is that you sent me an invitation on 30th March, 2011 which I received on 7th April, 2011 because it was sent through the District Commissioner, North Imenti who gave it to my Chief on 6th March, 2011 who then delivered it to my home on 7th March, 2011.

At that time, I was not thinking about the Wagalla Massacre because I did not even know you had invited me. Regarding some of the information I have, I said that we had meetings and I received the Minutes of the meetings. Those are the two main sources of information which have enabled me to remember.

The Presiding Chair (Commissioner Shava): That is quite understandable. My question is, between the time you put together this statement and the time of giving your oral testimony today, is there anything in particular that has triggered your memory particularly with regard to those two incidents that I mentioned? You said you heard about the Wagalla Massacre one day after, but you are now saying that it might have been three days later. You have said that it was two days after the event that you held discussion with the PC. Is there something that happened that made you remember the facts the way you are presenting them now as opposed to the way you presented them in a written statement?

Mr. David Mwiraria: I did not get the first part of the question.

The Presiding Chair (Commissioner Shava): If you look at your written statement on paragraph one, first sentence---

Mr. David Mwiraria: There is confusion about my being a member of the team. Wagalla Massacre was not reported while we were in North Eastern Province it was reported after we had come back the following day.

The Presiding Chair (Commissioner Shava): I will just leave that matter there because Commissioners had asked questions with regard to that. I would like to clarify to you that people were detained in the airfield on 10th and released on 14th. In fact, when you were there from the 8th until 10th people had started to die. So, these events were taking place when you were there and according to the information we have, the signal was given on 9th when you were at the PC's place. So, it took a period of time to happen and it was not a one day event.

My final question is that do aerodromes fall under the Ministry of Home Affairs?

Mr. David Mwiraria: No. Aerodromes were a responsibility of the Ministry of Communications.

The Presiding Chair (Commissioner Shava): Therefore, prisons and police would have been within your docket in the Ministry of Home Affairs?

Mr. David Mwiraria: Yes.

The Presiding Chair (Commissioner Shava): Mr. Mwiraria, you want to tell this Commission that at the time when there was a major operation involving the detention of thousands of people and involving the police and shortly thereafter resulting in the transfers of about 100 or more police officers, you were not aware of it?

Mr. David Mwiraria: I was not aware. That is a fact.

The Presiding Chair (Commissioner Shava): Thank you very much, Mr. Mwiraria. I have no further questions and I would like to add my voice to that of my fellow Commissioner in thanking you for your patience and perseverance in appearing before this Commission to testify. We are aware that you have been here for a number of days waiting to testify and we thank you for having done so.

I would like to ask the Commission Secretary to go through the list of remaining witnesses who are yet to give evidence so that we can decide what we will do with the time available to us.

The Commission Secretary (Ms. Nyaundi): We have Mr. Joseph Kaguthi, Mr. A. N. Njue, Mr. P. N. King'ori, Mr. Benson Kaaria, Mr. James Stanley Mathenge, Amb. Mutemi and P.C. Ole Serian. There is a document that came to our possession recently, that is, the Annual Report for Wajir District, it is indicative that the author of document is Mr. David Mativo who had testified last week. I have already requested his counsel whether it would be possible to call him just for purposes of confirming the report. He had indicated that we have to prepare summons for him to appear on Thursday morning. The proposal is whether we can hear Mr. Kaguthi today and then have Mr. Njue, Mr. King'ori and Mr. Kaaria tomorrow, then on Thursday we could listen to Mr. Mativo and Mr. Mathenge in the morning and in the afternoon hear Amb. Mutemi and Mr. P.C. Ole Serian.

The Presiding Chair (Commissioner Shava): I think I am guided by the views collected from my fellow Commissioners and the sense is that we will conclude for the day and begin tomorrow with Mr. Kaguthi.

The Commission Secretary (Ms. Nyaundi): The hearing will be at NHIF Auditorium tomorrow. This venue will not be available. So, for the rest of the week we will hold our hearings at NHIF Auditorium.

The Presiding Chair (Commissioner Shava): I would like to apologize to Mr. Kaguthi who has been attending and has been very patient. We ask you to continue to be patient and we will commence with you tomorrow morning. We are very sorry for the delay but we need to be thorough and give everybody a fair hearing.

I would like to thank the witnesses who appeared today. I would like to thank Brigadier Phillip Chebet and Mr. Mwiraria for their testimonies. I would also like to thank members of the public who have attended and have been patient and also complied by our rules. We would also like to thank the counsel and the media for their attendance here today.

(The commission adjourned at 5.05 p.m.)