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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON WEDNESDAY, 8TH JUNE,
2011 AT THE NHIF BUILDING AUDITORIUM, NAIROBI**

Berhanu Dinka	-	The Presiding Chair, Ethiopia
Ronald Slye	-	Commissioner, USA
Tom Ojienda	-	Commissioner, Kenya
Gertrude Chawatama	-	Commissioner, Zambia
Ahmed Farah	-	Commissioner, Kenya
Margaret Shava	-	Commissioner, Kenya

(The Commission commenced at 9.50 a.m.)

(Opening Prayers)

The Presiding Chair (Commissioner Dinka): Ladies and gentlemen, I would like to go through the rules and procedures as we do every morning. The witness will come here and take an oath to tell the truth. The Leader of Evidence will then guide him or her through the testimony. Once that testimony is finished, the Commissioners will ask the witness whatever questions they might have to fill up certain gaps they may feel exist.

During this testimony, I would like to appeal to the audience to continue respecting the witnesses, as they have been doing since we started these hearings. They might hear new things they may not have heard before. They might agree with it. They may not like what they hear, but as you have done up to now, please, continue to respect the witness and the dignity of the process.

At the same time, I would like to tell the audience that the Commission's main duty is to record historical injustices and bring out, hopefully, the truth, from which justice, national reconciliation and national unity will, hopefully, at last emerge; also, so that the entire population in Kenya will understand what happened in Kenya and not in isolated areas, from reliable and truthful recorded information.

To the media, you can take still photographs while the testimony goes on but no flash lights or moving from your seats or from the corners you are allowed to occupy. You stay where you are and continue taking pictures. A video camera can, of course, continue working during the testimony as well.

Mobile telephone handsets should be switched off, so that they do not disturb the hearing process and the testimonies of the witnesses.

I think I have covered everything that I needed to say this morning. I would like to ask if there is any counsel present here to identify himself/herself.

Mr. Elijah Mwangi: Mr. Presiding Chair, Sir, my name is Elijah Mwangi. I appear, together with Mr. Kioko Kilukumi, for Mr. Njue, Messrs David Mutemi, J.K. Kaguthi, D.K. Mativo, J.P. Mwangovya, David Mwiraria, Benson Kaaria, Bethuel Kiplagat, John Gituma, James ole Serian, Gen (Rtd.) Kibwana, Maj. Philip Chebet, Lt. Murungi, who was discharged, Messrs James Stanley Mathenge, Joshua Matui, Joseph M. Ndirangu and P.N. Kingori.

The Presiding Chair (Commissioner Dinka): Are there any preliminaries that you may wish to raise at this point?

Mr. Elijah Mwangi: Yes. We have preliminaries to raise which I have expressed to the learned Leader of Evidence. I have not had a chance to speak with the learned Leader of Evidence, but she may have relayed this to the Hon. Commissioners. That is what she assured me.

Although the Commission gave us directions at the time when the Presiding Chair was Commissioner Slye that the proceedings are not judicial and not adversarial, increasingly, during the course of the proceedings, when our clients have been giving their testimony, from what we believe to be the case, and from the proceedings that have happened, it is our humble view that the Commission is departing from that position. I want to cite specific instances. During the testimony of Mr. Matui, there was an altercation between Commissioner Farah and the witness, where there was an effort by the Hon. Commissioner to impose his opinion on the witness. Fortunately, there was some level of intervention.

During the testimony of Maj. Philip Chebet yesterday, and generally through the testimony of yesterday, it appeared to us that remarks coming out of the Hon. Commissioners sort of betray a predisposition. I want to cite specifically, and with a lot of respect to my learned senior counsel, Mr. Ojienda. He made remarks towards Maj. Chebet about whether he was part of the black sheep or white sheep. When the witness was explaining what an “operation” is, while answering a question by one of the Hon. Commissioners, the learned Commissioner said to him, when he made reference to “executing a planned operation”, “I hope you are not saying ‘execution’ in terms of killing people”. The context in which these proceedings are proceeding, we thought it was very distasteful and, again, I say that with a lot of respect to the learned Commissioner, whom I have had advantage of voting for severally to be a Member of the Bar Association of Kenya.

During the testimony of the same Maj. Chebet, it did appear to us that the Presiding Chair of yesterday – I say this, again, with a lot of respect to Commissioner Shava – sort of suggested to him that he had contradicted his testimony about whether he sent reinforcements during the operation, which is the subject matter of this inquiry, or at least these hearings. Through our memory and our record, although we do not have the HANSARD, it was clear that the witness was clear in his mind, both before the questioning by the Hon. Commissioner and after, that he said he never sent any reinforcements during the operation. Towards the end of his testimony, the witness was a

bit intimidated, if I can be allowed to use that word, to a point where he got the impression that he could be held culpable for something. In fact, even after the sessions were concluded, he did express concern to us and, of course, we told him that we would raise his concern with the Hon. Commissioners.

Going further, during the testimony of Mr. Mwiraria yesterday, we were not impressed by the off-the-cuff remarks by Hon. Commissioner Ojienda again, that the witness' testimony contained a litany of selected amnesia. Unfortunately, this has been quoted widely in the print media and in the electronic media last evening. The Commissioner told the witness that he had a beautiful mind, and a lot of what you can call "untidy remarks" generally. He told him: "I hope you will remember these proceedings", in reference to what he thought was "selective amnesia".

Commissioner Chawatama also remarked that she could even remember the parting words of her late grandmother, who was 106 years old. Basically, and in our very humble opinion formed of those proceedings, the assurance, which we believe was given based on the mandate of the Commission, as we understand it in the statute and also in regulations that were actually published by the Commission is that the proceedings should be non-judicial, and they should not be judgemental, at least not in their conduct. The Commission can make recommendations, but it should not appear to judge persons at this stage or at any stage of its proceedings. The Commission should be impartial in the nature of its work. In our view, it should protect the integrity of the witnesses, and I believe that the witnesses are not just the victims, but any witness who appears before the Commission.

If it appears to the Commission that the witness is not telling the truth then, of course, the Commissioners have a right to draw their conclusions. Also, in the course of the proceedings, there is a strong suggestion, which is apparent, and which you have shared with the learned Leader of Evidence, that there is evidence of witnesses who have either not given evidence or who have given evidence which, of course, our clients are not privy to, but which is fully believed already or substantially believed, and our clients' coming here is more to do with confirming what these other previous witnesses have stated.

This has actually happened. I have heard a Commissioner asking: "You were told by Acting DC, Tiema, that this is what happened. Can you confirm?" To us, that is also a departure from the actual conduct of the proceedings because if that witness has given evidence which is apparent to the Commissioner to be very true, and the Commissioner has already sort of reached a conclusion of some sort, then it is fair to give our client DC Tiema's statement, which we do not have, and DC Tiema's recorded testimony, so that the witnesses can be prepared to respond to such questions. It will be a fair question if there is prior knowledge or information of the perception the Commission got of his testimony.

What we are essentially saying is that our clients' rights in this non-judicial tribunal, are being treated unfairly, or at least that is the perception we have.

We believe that the Commission is not complying with some of its rules. I can cite Rule 9, under which you are supposed to protect the integrity of the witness. Some of the witnesses who have testified here have left with a bitter taste in the mouth. Of course, they are all compassionate about what happened. They are empathetic. I have not heard any one of them say that he does not care about what happened and so forth.

I think the Commission is supposed to be non-judicial, non-retributive and non-adversarial. It is supposed to foster healing and national reconciliation. It should never be the case of “we versus them”, where “we” are the victims and “them”, the persons who may have been in Government at the time these things happened. It is never supposed to be the case. This is repeated in the Commission’s Rules. So, based on that, we have a humble request to make. We would request that in the rest of the proceedings, to which we are going to be party or not party, the Commissioners, please, restrain yourselves.

We definitely know that you have heard the whole episode. It could have prejudiced your position. We would plead with you because we would not want to believe that a conclusion has been made at any stage before we see your final report. This is a very respectful request. We are not trying to be unfair to anybody. We said we have been more than happy and willing participants in this process. In fact, I do not think you have ever had to arrest anybody to attend these proceedings. We always feel we are actually working actively for the cause of the Commission. If I can only disclose in a limited sense, we asked our witnesses to say what they believe happened and tell the Commission frankly and fully what they know. We told them: “Prepare your statements. We will not prepare your statements for you.”

So, based on that and in conclusion, so that the Commission can get on, the remainder of our witnesses will honour the summonses. They will give evidence but we shall apply for transcripts of the HANSARD for all the hearings that have taken place in connection with the Wagalla Massacre proceedings, and for all the evidence our clients have given to the Commission, and those which they are going to give. Of course, you cannot give that evidence which has not been given to you but, as it comes out, we will request a transcript of it. We were advised by the learned Leader of Evidence that this is being worked on although not very expeditiously; but there is particular interest for our clients of the testimony which has been amplified over and over again by virtually all the Commissioners – the evidence of Acting DC, Mr. Tiema. We would request expeditious supply of the transcripts of his testimony and the written statement he gave to the learned Leader of Evidence and the Commission, to which we have not had access.

It is our view that he had a strong impression on the Commission and actually Commissioners have been citing him as a point of reference. If I can be allowed to use that evidence, I will appreciate. Probably only one or two Commissioners have not cited him verbatim, or tried to impress our clients on what he said to be true and so forth. We would also pray, in due course, in line with our right to represent our clients, that the Commission recalls former Acting DC, Tiema, for cross-examination because it appears – subject to seeing the transcript of his evidence – that he made adverse reference to some of our clients. It is in their interest, definitely, if he has already made such a strong

impression on the Commissioners, for us to question him on some of the matters he raised, based on the documents available and on the statement he gave.

We believe that although we have not had a chance to cross-examine any witness, our clients' rights are affected in an adverse sense. Under Section 28 of the Act of this Commission, legal representation does not require us to just sit, listen and take note of what is happening. We have a right to examine a witness who appears to have influenced the Commission's understanding of the proceedings.

More importantly, we would request that we be given documents which are adverse to our clients' interests. Reference has been made to some documents dated January, 1984, which are specifically adverse to our clients. Before they testify, let them be given these copies. We make this request because none of our clients was present when former Acting DC, Mr. Tiema gave his testimony. If he had recorded a statement in which he suggested that some decision was made by him together with other people who are going to be summoned subsequently, it is only fair that they be called.

We assure the Commission that we are committed to the mandate of the Commission. The witnesses who are coming have an obligation to come. So, we shall not impede the proceedings. Whatever they have recorded, they shall be at liberty to answer questions that the Commissioners may ask them. We are happy with the way the proceedings are going, save for what we have explained.

We make this request with a lot of respect for the Commissioners, some of whom I have never met before this session. I will be happy to actually see and meet them, and I do not want this to be understood to be a belligerent behaviour on the part of our clients. Definitely, we are just acting in their interest. Under our Constitution, we are entitled to fair trial or fair consideration in any tribunal. We cannot be limited under any circumstances. We cannot even be limited by the TJRC Act, or the rules of the Commission, and we say this with a lot of certainty, for sure.

That is all we have to say in our preliminary issue.

The Presiding Chair (Commissioner Dinka): Thank you very much, Counsel. Before I give the floor to the Leader of Evidence to say something about your request, I would like to say something.

As we said from day one, this is not a court of law. It is a truth seeking forum, where people are given the opportunity to come in and be at ease and comfortable with the procedure, the situation and tell their stories. That has been done, from our point of view. The other thing I would like to emphasise is that there is no defendant here. Everyone who appears before this Commission is a witness. The integrity of witnesses has been protected as far as we can see, and we will continue to protect them.

Counsel, we appreciate your co-operation with the Commission. You have expressed commitment to the mandate of the Commission. You have also expressed commitment to

continue to co-operate with the Commission. I assure you that the Commission will maintain its impartiality, as we have been doing up to now, until the end. Of course, the issues that you have raised have been noted.

I would like the Leader of Evidence to make comments on your request about the HANSARD transcripts, and on some of the documents that you have requested. Before I do so, let me give the floor to Commissioner Slye to say something.

Commissioner Slye: Let me echo what the Chair has just said. First of all, I want, on behalf of the Commission, to express appreciation to Counsel for your co-operation and commitment to this process. The same appreciation is also extended to your clients – many of the witnesses who have appeared before us since last week and this week, and even a few weeks ago. As you rightly said, Counsel, the purpose of this process is to provide a safe space for individuals to come forward and tell their truth. That is what went into our thinking in creating the rules of the process that you see being implemented here today. Having said that, part of what this Commission is about is truth, another part of what it is about is justice, and another part of what it is about is reconciliation. Those three functions have a very complicated inter-relationship.

Some of the concerns that you have raised, without going into specific issues, may reflect more of purpose on our part, of probing witnesses and probing their testimonies. Since we do not allow cross-examination by any individual other than members of the Commission, it is incumbent upon us, in protecting the rights of all the witnesses here that we make clear to them the sort of evidence that may have been presented to us, so that they may respond to that evidence. In fact, it is the sort of thing that I suspect you, as Counsel, would want to do, if this was a court of judicial proceedings.

So, in our testing of witness' evidence, which is something we have done with all witnesses, regardless of predisposition to particular individuals in the hall who were in the media or somewhere else one might be, we test evidence for internal consistency, we test it with respect to statements that others have made before some public hearings, and we test it with respect to documentary and other evidence that we might have before us. To the extent that this is not coming across, I would apologize for that. However, what we are trying to do in our questioning, in our probing and in our testing is not to prejudge anybody.

It is not to say that because witness 'X' said this, we are asking you whether you agree with witness 'X' or not. That does not mean that the Commission, or an individual Commissioner, agrees with witness 'X'; we are interested to know that somebody has claimed whatever sort of action happened. For instance, we may be told that you were present when a certain thing happened, and we would want to give you an opportunity to confirm or deny it, or say that you do not remember, or say that it did not happen, or whatever the thing may be. So, that is something we will continue to do. We do it not just because we are trying to ascertain the truth for ourselves, but for exactly some of the values that you have been expressing to us about protecting the interests of your clients – giving them an opportunity to speak.

So, I just want to say again how much we appreciate your participation and how much we appreciate your commitment to this process, both you and your clients. I also appreciate how you have raised these issues to us; in a way that is respectful and non-confrontational.

You have made reference to some of the witnesses being concerned when they left here – that they might be in fear of prosecution or some other sort of process. While it is true that this Commission has the power to recommend prosecution, I also want to remind the clients that, here they need not fear because there is a provision which caters for such fears, which says “both testimony and information given to this Commission---“

If I may be very clear, I am not a Kenyan lawyer. So, I am not in a position to give legal opinion upon what the language contained in this provision may or may not mean. So, with that caveat, that seems to me to include documents given to this Commission, and any other information given to this Commission, which cannot be used in criminal or civil proceedings, and also in any other proceedings that would involve a fine or other sort of penalty. Again, I do not have the exact language on what it means.

I think the drafters of the legislation, just as we put together the rules, in doing that, were really trying to institutionally create a safe place for people to come forward and tell their truth. I would read that language as providing an incentive to individuals to come forward and share information with this Commission. I know that some have done that, or they have come here with the intention of doing just that.

So, that is all I would say at the moment.

The Presiding Chair (Commissioner Dinka): Leader of Evidence, would you like to say something?

The Commission Secretary (Ms. Nyaundi): Yes.

The Presiding Chair (Commissioner Dinka): Please, proceed.

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, Sir, in the conversation that we had with the learned Counsel yesterday, I requested him to talk to his clients and see that they are also more forthcoming with information, so that the Commission is not put in a position where it feels like it has to push people to the limit to get them to state what they know. One can make a reasonable assumption that by virtue of their position, certain information would be within their knowledge. I made this request because it was my observation that some of the witnesses were not as forthcoming with information as they should have been. Therefore, it is important for the Commission to know that, in my discussions with Messrs Mwangi and Ismail, I have requested them to speak to the clients – those who are yet to testify – that they should be forthcoming with the aim of availing the truth to the Commission. That has been my experience with some of the witnesses; we have had to push them.

With regard to them not having the benefit of some of the witnesses, we did invite the bulk of them to our hearing in Wajir, in the northern Kenya region. They made a choice not to be present at those hearings. They would have benefitted from being present at those hearings. Our schedule for Nairobi, again, was published and Mr. Tiema testified here in Nairobi. So, I think it is useful for the Commission to also have that understanding; that they had been invited where other witnesses were speaking.

With regard to availing information, as Mr. Mwangi has correctly stated, I did indicate to him yesterday that a challenge that we are facing as a Commission is that the persons responsible for production of the HANSARD have not been as current as we would have wanted them to be. I, however, offered him the recorded version of our proceedings; the audio. If he confirms that, that would be acceptable to him even as we work towards getting the typed proceedings, that can be availed before the end of business today, because that is ongoing, and we can give him the record of our proceedings up to when we shall adjourn this afternoon. If he confirms that it will be useful, we will give him the entire recording from when we began - 17th April until today. If he wants to confine himself to Mr. Tiema, that record will be available.

I want to confirm to the Commission that I have with me the statement that was recorded by Mr. Tiema. I am willing to give it to Mr. Mwangi right now. Unfortunately, it has my handwriting on it, but I can give him the copy that I have with me right now and make arrangements to avail to him a clean copy, if it will assist him with the proceedings this morning.

Thank you, Mr. Presiding Chair.

The Presiding Chair (Commissioner Dinka): Thank you very much, Leader of Evidence.

Commissioner Chawatama: I just want to confirm with the Leader of Evidence, firstly, on the statement from Mr. Tiema. Am I wrong to think that this was the statement that was given to the tribunal, meaning that it was a statement that their client, Amb. Kiplagat, would have had and could have easily availed to them?

Also, on the recordings, are these copies of the recordings so that we are keeping the original?

The Commission Secretary (Ms. Nyaundi): What is happening is that there are several recordings of our proceedings. The HANSARD is recording and goes to the team that is transcribing, and there is the audio version that is being managed by the Commission. So, that is readily available. What is not readily available is what is being transcribed. I confirm that Mr. Tiema did not record a statement with the Commission. The statement that we had in our possession was a statement that he had recorded for the benefit of the tribunal. He came with it and indicated to me that he had recorded this statement for use during the tribunal that is investigating Amb. Kiplagat.

Commissioner Shava: I would also like to appreciate the Counsel's remarks and the spirit in which they have been delivered. That is the spirit in which we have taken them. I would, however, like to remind Counsel of why this Commission was formed. We have had a trend in this country of saying let bygones be bygones and that is what led to the near destruction of our country at the end of 2007. Rights of Kenyans have undeniably been violated by those in power, but more often than not, no one has been held accountable. This Commission was formed at a time when this country came to that realization that we can no longer try and suppress these kinds of incidences and their results. This is why the Commission was mandated to look into these violations and make findings as to what happened, how it happened, why it happened and who caused it to happen. The rationale of the process is that only by acknowledging and revealing the truth can we have justice. Without justice we cannot have reconciliation. So, the evidence of witnesses is being recorded and it will be corroborated or otherwise through research and investigation. The conclusions will be made as to such testimony. A report will be public and widely available. The court of public opinion will enter its own verdict on the history of our country and the roles that all of us have played. Although our report will be public, before we publish it, preliminary findings will be made available and comments will be invited. So, at that stage, your input will also be invited. Let me just say also that should any recommendations lead to legal process in a court of law, then obviously normal judicial process will follow, including the right to cross examination. So, I think that Counsel should rest assured that all rights within the Laws of Kenya, including constitutionally protected rights of his clients will be observed.

The Presiding Chair (Commissioner Dinka): I think we should stop there. Mr. Mwangi, regarding the records of Mr. Tiema's meeting with us, you could finalize with the Leader of Evidence later, or do you want to give us your views right now; whether or not you accept?

Mr. Elijah Mwangi: I would like to react to some of the comments. We have no problem with receiving the recorded version of the proceedings while the HANSARD is being prepared, because it is only logical that if it is not available, it is also not available to the Commission; we also are happy to receive the Acting D.C., Tiema's statement. For the record, we did not have it. As the Leader of Evidence has stated, it was not given to the Commission. I think there were proceedings happening between the Commission and one of its former--- As you will realize, we have about 19 witnesses and not all of them are interested in those proceedings. So, we did not have possession of it or, at least, if Amb. Kiplagat had possession of it, the others did not. I believe it is good for that to go on record.

With respect to the Leader of Evidence's statement that we should have gone to Wajir or followed the proceedings, we really were not aware--- The summons were coming essentially at different times. I do not believe that if everything is happening in the country, you go there for your own information. Not everybody is capable of doing that. I think only one or two persons who were subsequently summoned were able to attend the hearings in Wajir. The ones who were here, as I am made to understand, received the summons at different times when the date for the Nairobi hearings was published. They

readily came and asked when we were instructed. I do not think it is sufficient that there was a newspaper item. I think they would not have anticipated that Mr. so-and-so would testify on this and that issue. They would have had that advance notice. I do not think it is possible to anticipate that kind of thing.

Now, I appreciate Commissioner Shava's comment, although it is a bit weighty. I would just say that our client's rights are not limited to what the Commission will recommend. They are alive at all times. So, I would request that, that is not lost on the Commission and that we do not have to sit and do nothing as our client's instructors and wait only for the recommendation and the due process. We have to raise these issues otherwise, we are an idle participant in these proceedings. I think we would have to raise these issues. Actually, we have a right; it is not even a privilege that is available to us. It is a right and we are willing to assert it at any point in time.

The Presiding Chair (Commissioner Dinka): Thank you very much. I believe now we have exhausted those preliminary issues that have been raised and may continue. Your issues have been noted and the recordings can be delivered to you by the end of business.

Mr. Elijah Mwangi: With your permission, I did not hear any final position on the request to have the Acting D.C., Tiema, availed for cross examination.

Commissioner Chawatama: Chair, I think there are a lot of issues that Counsel has raised and we have addressed some of them. But I also think that for the purpose of this process and, maybe, other truth processes that will follow, it is best that we reduce something in writing. You cannot expect us to react to everything as we are sitting here. So, if that is acceptable to the other Commissioners, maybe, let us reduce some of the things that we have said in writing and we shall address that issue. Probably, that will be easier. We cannot have a situation of sitting in Kenya and not seeing any rulings from the Commission. I think that will help the process.

The Presiding Chair (Commissioner Dinka): With that I now call upon the Leader of Evidence to call the first witness.

(Mr. Joseph Kaguthi took the oath)

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

Mr. Joseph Kaguthi: Thank you, Presiding Chair and Commissioners. Can I be allowed to say a word?

The Commission Secretary (Ms. Nyaundi): Your name first.

Mr. Joseph Kaguthi: My name is Joseph Kaguthi.

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

Mr. Joseph Kaguthi: I am from the County of Nyandarua. I also do some business in Nairobi.

The Commission Secretary (Ms. Nyaundi): So, currently, you are a businessman?

Mr. Joseph Kaguthi: A small businessman in Nairobi and Nyandarua.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Kaguthi. You have recorded a statement with the Commission dated 25th May, 2011, in response to summons that was served upon you. I now invite you to present or read out that statement to the Commission.

Mr. Joseph Kaguthi: Thank you, Chair. Can I be allowed to say a word or two on preliminary?

The Presiding Chair (Commissioner Dinka): Yes, you may, but do not go too much far afield. You may have just two minutes.

Mr. Joseph Kaguthi: Less than that, Mr. Chair. First, I want to associate myself with the statements on the deaths in Wagalla, stated by my seniors, the Permanent Secretary for Foreign Affairs then and the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs, to the extent of the pain and regret that we lost so many lives on that day. I want to associate myself because it is painful to lose lives. Lives lost anywhere should be regretted.

Secondly, I want to thank the Commission for having allowed Mr. J.S Mathenge to be a witness or so. He had not been summoned. But on my firm recommendation because he was my boss at a very senior level, I thought that I could not represent him. I persuaded him and he did graciously accept to come. I am very happy for that.

Finally, I do appreciate Commissioner Shava's apology yesterday that I have been queuing for four days and for you to recognize that for four days I have been queuing here, I was very happy and went home saying: "Yes, I was not wasting my time. It is because of the agenda which is there." So, I appreciate.

Presiding Chair and Commissioners, I will repeat. My name is Joseph Kaguthi. The statement I am making is on the information that I was requested when I received the summon on 25th May, 2011. My statement reads:-

"Reference is made to your summons dated today, 25th May, 2011. In 1984, I was a Senior Assistant Secretary in the Office of the President. A team of senior Government officers and other public officers toured North Eastern Province. At that time, the Government policy and practice was that development supports security and vice versa. My role in the team was to provide co-ordination and administrative support on the team while on the ground.

On the specific issue of Wagalla Massacre, my information would have come to me by accident, considering my seniority then and functions in the tour. Much as I would have wished to be of help to the Commission, in their pursuit of truth and justice, no information about Wagalla came to me during that tour. Kindly allow me to humbly suggest that since the Permanent Secretary in the then Ministry of Provincial Administration and Internal Security is in Kenya and to me is in good health and, additionally, willing to appear before the Commission, I consider it logical and prudent to recommend that the Commission invites him.

A couple of months back, I took a media position that I should not represent my boss when he is around. This leads me to my final point and this is to seek the Commission's indulgence. Please, protect me. I have, on Wagalla Massacre, been portrayed publicly as a Provincial Commissioner in North Eastern Province, a member of the Kenya Intelligence Committee and as a retired officer who handled security matters function in 1984, that included Wagalla Massacre. I have tried on my own to clarify and correct this false public representation that has given the impression that I was at the top position of responsibility in 1984. I believe the Commission has the responsibility and power to protect me at this point in time.

Commissioners, please, just note the following: Years after 1984, I managed to scale up the Civil Service ladder through five civil service promotions and appointments to become a Provincial Commissioner. The ranks which I went through include promotion to Under Secretary, Senior Undersecretary, Senior Deputy Secretary and finally, Provincial Commissioner. I never served as a Provincial Commissioner in North Eastern Province. I was never a member of the Kenya Intelligence Committee. While making this plea to the Commission, I do not blame both the media and the public perception, because Joseph Kaguthi has had some high profile public assignments for 27 years after the 1984 issue. Without appropriate clarification by the right authority, I will continue to suffer. I believe that this Honourable Commission is the only forum that can clarify that impression decisively and legally.

Finally, I am now retired. I have never reserved my time and effort in serving the people and nation of Kenya. For the better of my life in this world, I have been on a co-ordinating function that protects life and property and promotion of their wellbeing in both the Government and civil society sectors. Some like initiating the National Campaign against Drug Abuse were risky and dangerous to my life, personally.

I want, in that vein and spirit, to assure you of my cooperation in your effort to zero in on truth and justice.

Signed, Joseph Kaguthi on 25th May, 2011.”

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Kaguthi, especially for paragraph 8 of your statement, where you are assuring the Commission of your co-operation and support as it seeks to zero in on truth and justice.

Now, you say that you were a Senior Assistant Secretary of Administration in the Office of the President in 1984?

Mr. Joseph Kaguthi: Correct.

The Commission Secretary (Ms. Nyaundi): When did you join the service?

Mr. Joseph Kaguthi: In 1973.

The Commission Secretary (Ms. Nyaundi): At what rank?

Mr. Joseph Kaguthi: District Officer.

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

Mr. Joseph Kaguthi: I served in Western Province after a short induction from 1973 to 1978. I then came to Nairobi in early 1978, all the way to June, 1980. I was posted to the Office of the President and promoted as Senior Assistant Secretary.

The Commission Secretary (Ms. Nyaundi): So, from DO in 1973, in 1978 you were promoted to be a Senior Assistant Secretary?

Mr. Joseph Kaguthi: I jumped some grades. I was appointed as DO III in 1973. In late 1976, I was promoted to be a DO II. In 1979 I was promoted to DO 1. In 1980 I was promoted to Senior Assistant Secretary in the Office of the President.

The Commission Secretary (Ms. Nyaundi): So, up till 1979, you were in Western Kenya?

Mr. Joseph Kaguthi: From 1978, I was in Western Province. I served in Kakamega and Bungoma.

The Commission Secretary (Ms. Nyaundi): Your first appointment in 1973 you were in Western?

Mr. Joseph Kaguthi: I was appointed as a District Officer in the Republic of Kenya and posted to Western. I served in Kakamega from 1973 to early 1975. I had a short brief in the District Headquarters in Bungoma and then posted to Tongaren (Bungoma Settlement) all the way to 1978. I was then posted to Nairobi Area, in Nairobi Province, from early 1978, where I served to around June, 1980 when I was promoted again now to the Office of the President as Senior Assistant Secretary.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Kaguthi. When I read your statement, I got the impression that likely you would be very useful to the Commission in terms of understanding the hierarchy, at least, within the Office of the President. I get the sense that you started, as you say, from the very bottom as DO III and worked your way –

in your own words, you worked up the Civil Service – and rose to the very top to be a PC.

Mr. Joseph Kaguthi: I want you to have no doubt. I have served in that process and I will be able to help in whatever the Commission will require me to do.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Therefore, I am imagining in terms of Provincial Administration, there are elders and chiefs. But if we could start from the DOs, before the District Officer, you would have the Divisional Officer. Is that correct?

Mr. Joseph Kaguthi: No. You are appointed an Administrative Officer. Those who are posted to the field services are posted as District Officers. Those who are posted to the Ministry headquarters are posted as Assistant Secretaries. Those who are posted to the embassies--- I did not serve in that cadre and so, I do not have a lot of details on that classification. Some of those who are posted to the field were kept in the PC's office. They are called Administrative Officers. But those who go to the districts are either DO II or DO III. But, again, those who go to the divisions are Divisional/District Officers.

The Commission Secretary (Ms. Nyaundi): Thank you. That is extremely useful in terms of understanding the structure. Let us deal first with those in the field. We say you are posted as a DO. What would be the next rank from that?

Mr. Joseph Kaguthi: If you are posted as DO--- During my time, there were three grades of DOs. There was Job Group H, which is DO III, Job Group J, which is DO II and Job Group K, which is DO I. How they are deployed depends on the discretion of the Provincial Commissioner in that particular province and the weight and complexity of the function they are being assigned.

The Commission Secretary (Ms. Nyaundi): Then after you rise to DO 1, Job Group K, in the field what would be your next rank if you were to ascend?

Mr. Joseph Kaguthi: That is DC II. You leave the divisions and are given a district. If you are in the Provincial Headquarters, you are a PA to the PC. When I was joining, we had the post of substantive Deputy, but I think they were only two in the country at that time.

The Commission Secretary (Ms. Nyaundi): Deputy to the PC?

Mr. Joseph Kaguthi: Yes, but it fizzled out.

The Commission Secretary (Ms. Nyaundi): That one would be higher in rank to the PA?

Mr. Joseph Kaguthi: No, it is the re-organization which was there.

The Commission Secretary (Ms. Nyaundi): But they are at the same level?

Mr. Joseph Kaguthi: Yes, he is a substantive DC. It could be DC II, DC 1 or Senior DC depending on the way the Office of the President has deployed that particular cadre.

The Commission Secretary (Ms. Nyaundi): But seated in the Office of the PC?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Now, in the field again, you have risen from DO 1, Job Group K, to DC II, Job Group L?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Okay. Then you have DC 1?

Mr. Joseph Kaguthi: That is Job Group M. Job Group N is Senior DC.

The Commission Secretary (Ms. Nyaundi): So, after you have worked your way to Senior DC, what would be next?

Mr. Joseph Kaguthi: If you are in the field?

The Commission Secretary (Ms. Nyaundi): Yes.

Mr. Joseph Kaguthi: Provincial Commissioner.

The Commission Secretary (Ms. Nyaundi): Now, we want to follow the same trail. We have followed it in the PCs office up to the level of Personal Assistant (PA) to the PC. Would there be any other progression there apart from becoming the PC?

Mr. Joseph Kaguthi: In the field operations?

The Commission Secretary (Ms. Nyaundi): You have said that in the field operations, you rise from Senior DC to become the PC in terms of progression?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): But now you had said that at the same time there are those who are stationed in the PC's office and the initial posting would be as an Administration Officer. Then, when they progress from Administration---

Mr. Joseph Kaguthi: Correction! Do not mix the field in the Province with the districts. Those in the provinces are Administrative Officers, depending on the size of the province and complexity or the way the PC has organized his office. You will get an Administrative Officer 1, Administrative Officer II and Administrative Officer III. But if

there is a DC or senior person he is called a PA to the PC and so, he is senior to the Administrative Officers (AOs).

The Commission Secretary (Ms. Nyaundi): I am not saying that this was the situation in Garissa, for instance because we are dealing with the northern region. Let us use Western where you worked. The PC's office is in Kakamega. If somebody is posted there and sent to the PC's office, they would be sent there as AO III?

Mr. Joseph Kaguthi: Depending on their level. Supposing you are posting a DO 1 from Bungoma to the PC's office in Kakamega, he could be the AO1.

The Commission Secretary (Ms. Nyaundi): Precisely. But the lowest rank of the AO would be AO III.

Mr. Joseph Kaguthi: They can even be four officers, but that is just like an operation and not by appointment. By operation I mean that if you have four officers of DO cadre, one would be for this and that. Therefore, you could even have four, but we do not have the designation AO IV.

The Commission Secretary (Ms. Nyaundi): Yes, but your appointment letter would say you are posted to the PC's office as AO III, is it not?

Mr. Joseph Kaguthi: If you are posted to the PC's office then you now fit into the scheduled duties of that office.

The Commission Secretary (Ms. Nyaundi): Okay. The highest level when you ascend the ladder of AOs at the PC's office would be AO 1?

Mr. Joseph Kaguthi: You can also be PA.

The Commission Secretary (Ms. Nyaundi): You have said that PA is the equivalent of DC?

Mr. Joseph Kaguthi: You can be promoted from a DOs cadre to the DCs cadre, but when you are in the Provincial headquarters you are called PA.

The Commission Secretary (Ms. Nyaundi): PA to the PC but you are actually--- If you were in the field you are DC?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Thank you very much. From PA in terms of ascension, if you were to be elevated, your next title would be PC?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Now, you say that there are those who are in the Ministry. Is that correct?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): So, when you are posted to sit at the Ministry, what would be your designation or entry level?

Mr. Joseph Kaguthi: Assistant Secretary. When you use the word “posting” I sympathize because you do not have the nomenclature for them. You can get a senior DC being posted to the Ministry as an Administrative---

The Commission Secretary (Ms. Nyaundi): Precisely! What I needed to learn from you is in terms of how these offices are structured. That would be extremely useful. I am assuming someone has just been recruited and is going to the Ministry as an Assistant Secretary. Now, as they progress, assuming that they are only progressing within the Ministry, what would be their next level from Assistant Secretary?

Mr. Joseph Kaguthi: Senior Assistant Secretary.

The Commission Secretary (Ms. Nyaundi): And then as we continue with the progression?

Mr. Joseph Kaguthi: Under Secretary.

The Commission Secretary (Ms. Nyaundi): As they progress?

Mr. Joseph Kaguthi: Deputy Secretary. There was that cadre from 1983 to 1986 of Senior Under Secretary, but it was phased out by the 1987 schemes of service. So, there were three cadres under Assistant Secretary and then, Senior Assistant Secretary, Under Secretary, Deputy Secretary and then a few Senior Deputy Secretaries.

The Commission Secretary (Ms. Nyaundi): Finally?

Mr. Joseph Kaguthi: From that rank is Permanent Secretary.

The Commission Secretary (Ms. Nyaundi): Thank you. That is extremely useful. In terms of, again, the ranking--- This Provincial Administration, as we are discussing it is housed within the Office of the President?

Mr. Joseph Kaguthi: No, they are deployed in the entire Government system. The Assistant Secretaries, after they are recruited by the Public Service Commission are handed over to the Office of the President which trains and deploys them.

The Commission Secretary (Ms. Nyaundi): If you are serving as an Assistant Secretary or any of these at the Ministry, within the Office of the President--- We want to discuss the ones within the Office of the President.

Mr. Joseph Kaguthi: They are very few. The rest of the Administrative Officers serve the entire Government.

The Commission Secretary (Ms. Nyaundi): Actually, I understand that. We could have an Under Secretary in the Ministry of Health and Ministry of Education.

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): That is clear. Now, in terms of the relationship between--- I can see here we have the PS as the highest ranking officer and the PC as the highest ranking officer here. In terms of job groups, where is the PC and where is the PS?

Mr. Joseph Kaguthi: At that time, we had three ranks of Permanent Secretaries. The PC was on Job Group R and the PSs in the Ministries were in Job Group R.

The Commission Secretary (Ms. Nyaundi): I beg your pardon. "I" for ink?

Mr. Joseph Kaguthi: "R" for reconciliation.

The Commission Secretary (Ms. Nyaundi): Okay. So, the PSs were in Job Group R and the PCs were at Job Group R. In terms of work relations like, for instance, the PC and the PS, Office of the President – there is this hierarchical relationship – was the PC answerable to the PS? I am assuming that the PC was housed within the Office of the President.

Mr. Joseph Kaguthi: That is correct and the PS, Provincial Administration and Internal Security was one job group higher than the other PSs.

The Commission Secretary (Ms. Nyaundi): The PS for Provincial Administration and Internal Security would now be at Job Group S?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): So, administratively, the PC is answerable to his PS?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Now, you have said that in 1984 you were a Senior Assistant Administrative Secretary in the Office of the President.

Is it then correct to say that the position of Senior Assistant Secretary was assigned to function? So, you would have Senior Assistant Secretary, Finance and Administration and so on.

Mr. Joseph Kaguthi: Affirmative.

The Commission Secretary (Ms. Nyaundi): So, apart from you as a Senior Assistant Secretary in the Office of the President and your docket was administration, how many other Assistant Secretaries were there and what was their docket?

Mr. Joseph Kaguthi: We had departments in the Office of the President at that time. We had the security schedule and you would have a Senior Assistant Secretary in that schedule depending on the way the PS has re-organized the Ministry. We had finance.

The Commission Secretary (Ms. Nyaundi): Just so that I am with you, we had Senior Assistant Secretary, Administration; Senior Assistant Secretary, Security?

Mr. Joseph Kaguthi: Yes. We had Senior Assistant Secretary, Research. We also had Senior Assistant Secretary, Finance. We had somebody who was equivalent to that, but who was covering the relationship between personnel and accounts. We had some who were also posted to other departments of the Office of the President to help in the administration of those departments.

The Commission Secretary (Ms. Nyaundi): As the Senior Assistant Secretary, Administration, what were your specific functions?

Mr. Joseph Kaguthi: Again, there were several Assistant Secretaries of Administration.

The Commission Secretary (Ms. Nyaundi): Please, listen. What did your job entail?

Mr. Joseph Kaguthi: Are you referring to 1984?

The Commission Secretary (Ms. Nyaundi): When you assumed the position of Senior Assistant Secretary, Administration what were your specific functions?

Mr. Joseph Kaguthi: Between 1980 and 1984, I served under two permanent secretaries. Each permanent secretary would come and re-organize a schedule of duties, assignments depending on the way they would see, so and so is most suited here. When I came in I think I served in the schedule of the chiefs and assistant chiefs' welfare, discipline and related matters. I cannot now recall when the shift or the revision of schedules came because every time a new officer was posted the PS would re-organize the work schedule. But I handled that. At one stage, I handled lands when it was a department in the Office of the President. I handled parliamentary business. It kept on changing.

The Commission Secretary (Ms. Nyaundi): Maybe we can zero in on 1984. What were your specific duties?

Mr. Joseph Kaguthi: In 1984, I had that function of the chiefs and assistant chiefs' welfare, discipline and related matters like the administrative units where you are dividing the location and you are harmonizing requests that are coming from the field. At that time, I was handling State functions. At that time, I was also doubling as the Personal Assistant to the PS. But quite frankly, in the headquarters, you are given assignments sometimes from meetings where you are asked to handle something.

The Commission Secretary (Ms. Nyaundi): What did State functions entail?

Mr. Joseph Kaguthi: From 1982 I handled State functions. I was answering to the Under Secretary who was later promoted to be Deputy Secretary. The main pre-occupation with State functions, which sticks to my mind, is where we had a very active President in terms of touring functions. One of the functions was that, if, for instance, the President was going to Marsabit and then to Lodwar and Turkana, what do you do? You require the Office of the President to harmonize, so that you are able to get what the leaders of Marsabit are requesting. The DC there will get the leaders in an organized manner and get what they are requesting to the President. At that time, we had bad drought so you get their memorandum. If there are issues which the Ministries should advise, then you have the Ministries. After that, a request is made to the President stating the views of the Ministries and recommendations. They will also show the commitment of the people. That is prepared and given to the President so that he is informed. By the time he is arriving there, the request is there. I remember that very well because he announced that the Government would get Kshs4 million to purchase livestock before they died of drought. We went to sleep in Lodwar. I had done the process of Marsabit and I would also do the process for Lodwar.

The Commission Secretary (Ms. Nyaundi): What I am getting is that part of your responsibility was to deal with the logistics and prepare the ground for meetings for State functions. Would you be responsible for making sure there is movement from point "a" to "b" or that really would be the function of State House?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Your function, if I understood you, would be to ring the District Commissioners and say, "His Excellency the President will be visiting Marsabit, could you forward to me the issues in Marsabit?" They would reduce them in a way that you would present them. This is my question: Would you present them to the Under Secretary or directly to the PS in your capacity as the Personal Assistant to the PS? I look like I need a lot of help in understanding.

Mr. Joseph Kaguthi: It is true because you are receiving a whole lecture on the institution of how the government machinery operates. Look at it this way, the SAS, Nairobi will not deal with the DC. The PC will be the Master of Ceremonies when the

President is in the field. After all, that is his representative. So, he is the one who is presenting that brief to the headquarters and yours is, again, connect the headquarters and the headquarter Ministries.

The Commission Secretary (Ms. Nyaundi): So, you as the SAS would communicate to the PC?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Then your assumption is that the PC is communicating to his District Commissioners; the DCs send back information to the PC, the PC relays it to you directly as the SAS?

Mr. Joseph Kaguthi: Not necessarily always the PC. You can deal with his Personal Assistant depending on the way the assignment is in that particular province. All correspondence to a Ministry is addressed to the Permanent Secretary. All correspondence moving out of that Ministry is again for the Permanent Secretary. You are just a support kind of---

The Commission Secretary (Ms. Nyaundi): That is extremely useful. Just in terms of me understanding, let us use the trip to Marsabit. I assume your PS informs you that the Head of State is travelling to Marsabit. At that time, would there be a situation where he is informing you directly or is his communication to you going through certain channels?

Mr. Joseph Kaguthi: Sometimes I would get it from the Under Secretary.

The Commission Secretary (Ms. Nyaundi): Let us deal with the Marsabit one.

Mr. Joseph Kaguthi: Sometimes I would get it from the Under Secretary who is in charge of administration or the DS who is in charge of administration depending on that-- - because once the President's schedule has come, whoever has it will initiate the process.

The Commission Secretary (Ms. Nyaundi): As I said, when I saw your statement, I thought you would really clarify how things are flowing within the Office of the President. So, if we go back to Marsabit, the President has his schedule, he was going to Marsabit. You receive information and in your own words, you now prepare the briefs. That is what you did for the Marsabit trip. So, I assume you must have received instructions. Where did you get the instructions from? Who gave you the instructions?

Mr. Joseph Kaguthi: Do not over split hairs. How does the Government work in that environment? If the President has a schedule and it has come, it could land at the DS or the Under Secretary. Then the President will tour this particular province. Sometimes it will come from the Provincial Commissioner saying that they have confirmed with the President that he will tour this and this area. I will be setting the brief on this and this. It can come through the Under Secretary when they were discussing other matters, the Deputy Secretary or the PS will just raise it with you on the intercom.

The Commission Secretary (Ms. Nyaundi): So, it is not rigid?

Mr. Joseph Kaguthi: No. You are going as if it is militarized--- This is not a combat kind of operation.

The Commission Secretary (Ms. Nyaundi): So, you have prepared the brief on that one and you did that as the Personal Assistant to the PS?

Mr. Joseph Kaguthi: As Senior Assistant Secretary, it is the general administration which is preparing it.

The Commission Secretary (Ms. Nyaundi): We have been told quite a bit about another structure which the Office of the President interacted with. This was the Kenya Intelligence Committee. Gen. Kibwana and Mr. Mwiraria informed us that this was an advisory body. Is that your understanding of the KIC?

Mr. Joseph Kaguthi: I seek your indulgence on this question. I indicated that I was never a member of the Kenya Intelligence Committee because I was not handling the security schedule. Remember I did indicate that. I never handled the security schedule. I have articulated well that we had the finance schedule. Amb. Kamenchu came before this Commission and he was the Deputy Secretary in charge of finance. He had the Under Secretary in charge of finance, Senior Assistant Secretary in charge of finance. I was in administration. So, I suggest that unless you want me to speculate the issue of Kenya Intelligence Commission, I was not sitting in that.

The Commission Secretary (Ms. Nyaundi): You have stated that you were the Personal Assistant to the PS. Were you also the Personal Assistant to James Stanley Mathenge?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): What are the responsibilities of a Personal Assistant?

Mr. Joseph Kaguthi: He is a personal assistant. He is not so substantive. I will give an example. If the presiding chairman here wants something to be done, he will write a small note telling the PA to do so. So, he is the personal assistant.

The Commission Secretary (Ms. Nyaundi): Would you agree that a personal assistant can improve the efficiency of the substantive officer?

Mr. Joseph Kaguthi: Allow me to disclose a bit. As I left that schedule, one officer was keen to know how to deal with it. This is what I told him; the factors that he would require to know about the job of a PA. "If you know the functions of the boss, his style and find a way of adding value depending on how much he wants you to know, you will improve the output where you can."

The Commission Secretary (Ms. Nyaundi): The output of the boss?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): One of the outputs of your boss, we have heard was to lead this delegation that was going to Wajir in February, 1984. In your statement, you say your role was to provide co-ordination and administrative support. Did that administrative support include drawing up the programme and circulating it to the persons on the trip? Did it include preparing the brief?

Mr. Joseph Kaguthi: No.

The Commission Secretary (Ms. Nyaundi): Did that administrative support include compiling a list of the persons who would be on the delegation?

Mr. Joseph Kaguthi: No.

The Commission Secretary (Ms. Nyaundi): Did that administrative support or co-ordination include, once the list was finalized, calling the other members of the delegation and confirming with them that you are leaving on the 8th of February; you shall arrive in Wajir?

Mr. Joseph Kaguthi: No, that was done by the secretariat of the---

The Commission Secretary (Ms. Nyaundi): Did that administrative support include informing your PS that we have received confirmation that this trip is happening on this day; you are required to be at the airport on this day?

Mr. Joseph Kaguthi: You know---

The Commission Secretary (Ms. Nyaundi): These are just my questions. All you have to say is "yes" or "no".

Mr. Joseph Kaguthi: No.

The Commission Secretary (Ms. Nyaundi): What did the co-ordination and administrative support on this trip---

Mr. Joseph Kaguthi: Providing that administration support. You have noted that I stayed on the ground. On arrival, the DS, Security is the secretary in the meetings that are held. What is happening outside now when you are just about to go for lunch, there are those administrative functions which are done outside the transport like meals and accommodation. Those are the kind of things that I am referring to. You would come and sit in, but you are aware that---

The Commission Secretary (Ms. Nyaundi): There is something else you are going to do?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Did the administrative support, for instance, include saying we are going to the District Commissioner's office? From the District Commissioner's office, I will arrange for their transport to the airport. When they land in Mandera, I will arrange for their transport to the District Commissioner's office there. Is that what it entailed? Was that your function on this trip?

Mr. Joseph Kaguthi: I would not be the one organizing because it was organized earlier. But in the event of any member within that group having a bit of an issue, they already knew there was an assistant somewhere who would be able to link up with the others and facilitate the programme.

The Commission Secretary (Ms. Nyaundi): So, you made it your business to understand that this delegation is leaving Nairobi on this day, will arrive in Wajir, will proceed to Mandera and then return to Garissa, is it not?

Mr. Joseph Kaguthi: I cannot completely come to the details, but that programme was coming from the security schedule from the secretary of the KIC. At that time, we did not call it the way TJRC has pushed it very high. He is the Deputy Secretary, Secretary and in the schedule, he is referred to as just DSS.

The Commission Secretary (Ms. Nyaundi): That is Mr. Mwangovya?

Mr. Joseph Kaguthi: Yes. He was the DSS and then Amb. Kamenchu was the DSF. My boss was DSA. I was SASA. We were not addressing him as the Secretary, KIC. No, he was the Deputy Secretary, Security only.

The Commission Secretary (Ms. Nyaundi): You have said that there was a secretariat of the KIC. Where was it housed?

Mr. Joseph Kaguthi: The schedule is the secretariat. The schedule, DS, Finance is the person who is dealing with finance. DS, Security is the one who is dealing with the security schedule.

The Commission Secretary (Ms. Nyaundi): When I asked you: Did you prepare the programme, did you prepare the brief, you informed me no, that was done by the secretariat. So, now my question to you is that it seems the secretariat is something that you would recognize?

Mr. Joseph Kaguthi: I apologize. It is not the secretariat as such. The DS, Finance, was the secretary to the KIC; he links up with the security matters.

The Commission Secretary (Ms. Nyaundi): So, the DS, Security is the one who, working with the PS, would have drawn up the schedule. Between them, they would have defined what briefs were necessary prior to the trip. The rest of you were just informed to avail yourselves at the airport on a certain day and move along. What you are telling us is that at least, at that time, roles were clearly spelt out and you as the SAS Administration, would not have concerned yourself, if we go back to this trip of 1984, with certain issues because they were simply not in your docket? Like preparing the brief and drawing the programme. That was not in your docket?

Mr. Joseph Kaguthi: I was not involved.

The Commission Secretary (Ms. Nyaundi): I want us to go back and you just share your understanding of officers in the field. If we start with the DO, Job Group H, his roles are defined; is it not? Likewise, the DO 2; likewise, the DO 1; likewise, DC 1; likewise, the Senior DC and the PC. Their roles are spelt out, it is not?

Mr. Joseph Kaguthi: Spelt out by who? By the boss of the office?

The Commission Secretary (Ms. Nyaundi): So, under normal circumstances, unless DO 3 has instructions from the DC, you would not expect him to assume roles? No one just defined their job?

Mr. Joseph Kaguthi: They are defined by the schedule of duties.

The Commission Secretary (Ms. Nyaundi): I just wanted to understand in terms of all this ranking that there is, is it in your knowledge whether any of this was reduced in writing, so that, for instance, when I am appointed as a DO 3, I am very clear in my mind that this is my job? Nowadays, I have seen when we are employed, we are given what is referred to as job description that spells out my responsibilities in that office. Was that the position then?

Mr. Joseph Kaguthi: This is an administrative officer's cadre. There is a scheme of service. In that scheme of service, the DO 3 all the way to the Provincial Commissioner-- - It defines the kind of the general responsibility expected of that rank. National scheme of service--- When you are posted to the Ministry, the district or province, then you fit into the schedule of duties as assigned by the Provincial Commissioner or the District Commissioner. If you are posted to the Ministry, you will be assigned duties by the Permanent Secretary.

The Commission Secretary (Ms. Nyaundi): In terms of relationships between the PC and the DC, obviously as the name suggests, the DC is answerable to the PC?

Mr. Joseph Kaguthi: Correct.

The Commission Secretary (Ms. Nyaundi): This is just based on your understanding. If the DC acted outside of the instructions of the PC and not on trivial issues, but grave issues, what would be the result?

Mr. Joseph Kaguthi: That he broke the law?

The Commission Secretary (Ms. Nyaundi): Yes, and on a very serious matter.

Mr. Joseph Kaguthi: He broke the law?

The Commission Secretary (Ms. Nyaundi): Yes.

Mr. Joseph Kaguthi: He is a citizen. He must be dealt with by the law.

The Commission Secretary (Ms. Nyaundi): Was it a light thing if---

Mr. Joseph Kaguthi: No. To reach the level of a DC, there is quite a lot of preparation involved. There are certain examinations you are supposed to have passed. So, that is a very senior position of responsibility in this country.

The Commission Secretary (Ms. Nyaundi): So, the assumption is that even when you are asked to hold that position in an acting capacity, it is not a small job. Let us go straight to the point. We have a case here and I want you to share your wisdom with us. We have a case here of an acting DC. He is sent to Wajir in January. He is dealing with what he assesses to be a security situation. He hosts a powerful delegation; members of the KIC. We were told they were all Permanent Secretaries. We were informed he does not raise or inform these senior members that on the 2nd, there has been an attack on the Ajurans. On the 3rd, there was an attack on the Ajurans. On the 6th, there was an attack on the Ajurans. He is seated with senior Government officials, but he does not mention to them. His PC is also seated in that meeting and he does not mention to them that there is a crisis within his jurisdiction. He escorts them to the airport, then calls junior officers, the district security. Those are junior to the people who had been there on the 8th. He chairs a meeting and rounds up people at an airstrip. Yesterday, we were told by Mr. Mwiraria, it is not even a gazzetted detention centre. He carries out an operation; does not have the discipline to ring or communicate to his immediate boss that "I am carrying out an operation - I have rounded up 381 men. I have mobilized army officers and police officers. We have these people at the airstrip and my OCPD has shot some of them while they were approaching me". That is a serious thing to be done by a DC and without informing his PC, is it not?

Mr. Joseph Kaguthi: It is a serious matter.

The Commission Secretary (Ms. Nyaundi): It is a very serious matter. So, my question to you as someone who has this fine understanding of how the Provincial Administration works, what action should be taken against an officer such as this?

Mr. Joseph Kaguthi: You are coming to the crux of the matter. To start with, the role of a District Security Committee is to do the appreciation of the challenge confronting them. Remember that they are the people on the spot and the way they appreciate that problem, the information they have. The intelligence they have. They are seated. The aim of that sitting is that it is a team. They arrive at a certain conclusion and they say, “this is how we will execute this”. It is expected that each of them will also brief their superiors, not necessarily for clearance. I have been a Provincial Commissioner and I would not expect a DSC to always sit down and before they take that decision, they are talking to me on the phone. Therefore, I am barking at them and telling them that they should not do so. Depending on the intensity and seriousness of the problem, they can mount that kind of operation.

The Commission Secretary (Ms. Nyaundi): I want us to discuss the Wagalla Massacre. Let us go by the record. We have heard a number of witnesses. Even you, in your opening remarks, you have said it is regrettable that wrong decisions were taken. We now want to look at this from the 15th February, 1984. That is when we heard the PSC was meeting. The Provincial Commissioner, the boss to the Acting DC was chairing that meeting. You have demonstrated to me that you have an understanding of how administration runs. People do not cross certain lines. Looking at the Wagalla situation and your understanding of how provincial administration work out, where we are at is that the position of the senior officers in this matter is that they were not--- Let us take this step by step. I think that is better. In your view as someone who has worked through the ranks, was it proper for Mr. Tiema, with the benefit of the knowledge he had that there had been an attack on the Ajurans and not that this was the first one, but as recently as 2nd February, 3rd February and 6th February, was it proper conduct on his part not to raise this when members of the KIC were in his office? Was this proper conduct on his part?

Mr. Joseph Kaguthi: It depends on the---

The Commission Secretary (Ms. Nyaundi): No. Was it proper conduct for him not to raise it?

Mr. Joseph Kaguthi: It is the way he is appreciating the problem.

The Commission Secretary (Ms. Nyaundi): But you see, was it proper?

Mr. Joseph Kaguthi: For him not to raise it depending on his own understanding of the situation.

The Commission Secretary (Ms. Nyaundi): If people have come to him and said we feel the Government is not protecting us, you have disarmed us. You have taken all our guns. You have not taken all the guns from the Degodia. So, we are vulnerable. This team was here to assess the impact of insecurity on development. He has told us he read out a brief to them on security. Based on your understanding as an administrator, you have said here you have a distinguished career and, therefore, you must really understand what is good

and what is wrong. Based on your understanding how things ought to be done, was it correct of Mr. Tiema not to have brought this to the attention of members of the KIC who were in his region?

Mr. Joseph Kaguthi: I have not said that I had a distinguished career.

The Commission Secretary (Ms. Nyaundi): That is my judgment. I am imagining you had a distinguished career.

Mr. Joseph Kaguthi: My plea to the Commission is that I have been over-assessed. I have agonized on this particular matter because of the kind of pain that I get into when we talk about the number of deaths like this. I have tried to read any document that I could find, including Amb. Kiplagat's file to know what could have really happened. From the records, the brief covered that aspect.

The Commission Secretary (Ms. Nyaundi): Mr. Kaguthi, I want to help you. Mr. Tiema informed us that he mentioned it, but we would rather be guided by those who were at the meeting and they have no recollection of Mr. Tiema sharing with members of the KIC and you were also in the room. However, in your statement, you did not appear to have heard Mr. Tiema. So, that is why I have not asked you that question. But you also, I am sure, would tell us that Mr. Tiema did not say anything about recent attacks on the Ajuran within that week and a day before. So, assuming that the Commission would rather be guided by the majority who say repeatedly that they did not hear Mr. Tiema say that Ajurans were saying they felt vulnerable--- I am pleading with you if you could just say; "yes" or "no". My question is: As an administrator, did Mr. Tiema behave responsibly by not sharing this very vital information with members of the KIC? Did he behave responsibly?

Mr. Joseph Kaguthi: It is not right to condemn an officer who is not here with us. It is on record that he did brief the team about the Ajuran. It is on record. It is true. He did. It is on record. So, why should I join in condemning him? It is on record. If I cannot remember, can I go for the record? He briefed. He said it.

The Commission Secretary (Ms. Nyaundi): Assuming that he briefed the team that was there that the Ajurans are saying we are vulnerable and the team, in its wisdom, decided not to make a decision; they did not give him instructions on how to proceed.

The Commission Secretary (Ms. Nyaundi): My question is - I am pleading with you if you could just say; "yes" or "no" - as an administrator, did Mr. Tiema behave responsibly by not sharing this very vital information with members of the Kenya Intelligence Committee (KIC)?

Mr. Joseph Kaguthi: It is not right to condemn an officer. It is on record that he briefed the team about the Ajuran. It is true that he did. If I cannot remember, then I can go for the record.

The Commission Secretary (Ms. Nyaundi): Thank you. Assuming that he briefed the team that was there that the Ajurans were saying they were vulnerable, and the team, in its wisdom, decided not to make a decision, that is, they did not give you instructions on how to proceed, then did Mr. Tiema behave appropriately when he did not ask the team to give him guidance, and instead escorted them to the airport, on the next day called a meeting at 3.00 p.m. and unilaterally, without the benefit of the wisdom that the KIC and the Provincial Security Committee (PSC), who were in Wajir--- Did he behave responsibly when he allowed a high powered delegation to leave and then he met with junior officers the next day and decided to carry out an operation of this magnitude?

Mr. Joseph Kaguthi: I do not know whether you can allow me. Can I plead a bit that I be allowed to look at the wider picture of the situation, because saying “yes” or “no” is creating problems with me? Why I am pleading so, is that I have struggled to read anything that I could because it is not right to come to this Commission and give blank answers. I cannot recollect what was happening. The minutes of their meeting and the calling of that meeting are right. They were not wrong and they were the authority in the district in charge of security. So, to start with, they were not wrong in calling for it, and when I read the appreciation, this evidence shows that one man and five women were butchered. According to them, this was a very serious matter. So, they decided to sit down and do what was right; they took a decision. That decision of the District Security Committee (DSC)--- Although you are saying that he was very junior, he was recognized by the Kenya Government. It was a decision of the right authority and not of an individual. That is why I said it was a team. So, going to the District Commissioner (DC) and hammering him alone, I have a bit of a problem with that. We normally would recognize that it was the DSC of the district, and he sent it to the PSC when they were acting. Let us not over-hammer an officer who chaired a meeting.

The Commission Secretary (Ms. Nyaundi): Okay. My understanding of what I have heard thus far is that from the level of the PSC upwards, there has been a very clear statement that they would disassociate themselves from the decision that was made on the 9th of February. It was made without proper consultation. What the DSC did did not have the approval of the PSC. That is the message that the Commission has gotten. In fact, members of the KIC who have testified thus far have clarified to the Commission that they were not informed either of the intention to institute that operation or its actual execution. The one member of the PSC who has come thus far has stated to the Commission that there was a radio transformation of information to the Provincial Police Officer (PPO); he was called Mr. Ndirangu. He informed the Commission that while at a dinner at the Provincial Commissioner’s (PC) place, there was information that the DSC had met and were requesting reinforcements, but he was quick to say that no approval of the PSC had been sought. So, as a man who understands administration, and this is what the Commission has heard, my question to you is: When we are faced with a situation where a DSC, through its chair, has taken action that is not sanctioned by his or her superiors, ought that officer to have been disciplined?

Mr. Joseph Kaguthi: I repeat that the DSC is an authority in itself, and if you read about its meeting they say, “We have appreciated this is the problem and we have therefore

decided to do the following...”. How then do you isolate one person and start disciplining them? You discipline the whole lot. The DSC is an authority and I would blame them if they delayed taking a decision which they felt was right to deal with a certain security issue. So, the meeting of 9th was perfect. Whether the content is right or wrong, then that is a different matter. Whether the execution was wrong, that is a different matter. The meeting of the DSC and the taking of a decision were recognized, since it was a Government decision.

The Commission Secretary (Ms. Nyaundi): Thank you. We want to go to the execution. We have heard that the execution was wrong. We have been told by witnesses who testified before you that the execution was wrong. Commissioners, I want to request your permission for a short health break.

The Presiding Chair (Commissioner Dinka): Okay. Let us break for 15 minutes.

[The Commission adjourned temporarily at 12.00 p.m.]

[The Commission resumed at 12.15 p.m.]

The Presiding Chair (Commissioner Dinka): We can continue now.

The Commission Secretary (Ms. Nyaundi): Thank you. Mr. Kaguthi, my last question to you was that we have been told that the very execution of this operation was wrong and the response I need from you as a person who has worked his way up in provincial administration is that a number of the members of the DSC were disciplined. In your own view, should the members of the DSC have been disciplined for this wrongful execution of the operation?

Mr. Joseph Kaguthi: The information I had when I was trying to get to what took place was that the officers in the province as well as of in the district were disciplined.

The Commission Secretary (Ms. Nyaundi): Again, just based on what I have seen happen in this country where DCs have been found to have misappropriated funds, they have been dismissed. Is that so?

Mr. Joseph Kaguthi: Yes, and some even taken to court. Is it not so?

The Commission Secretary (Ms. Nyaundi): Yes. Interdicted, charged in court and eventually dismissed. In the recent past where they have fiddled with relief food, they have been interdicted, taken to court and if found guilty dismissed. Is that not so?

Mr. Joseph Kaguthi: Yes, as per the Code of Regulations for the entire service.

The Commission Secretary (Ms. Nyaundi): Now, in our case, if it was found that the DSC, without authority and getting the approval or proper direction of the PSC, carried out an operation, mismanaged it resulting, according to the Government, in the loss of

lives of 59 Kenyans--- Members of that community tell us that the numbers were higher. In addition, women were raped and property destroyed. If we put these issues on a weighing scale and we had misappropriation of funds on one side of the weighing scale and mismanagement of an operation on the other side, then on which side would the scales tilt in terms of gravity?

Mr. Joseph Kaguthi: Mr. Presiding Chair and Commissioners, let us first of all clear one issue because it is clogging my mind. The DSC had the authority to organize that operation. In fact, they were entitled to discipline if they appreciated something had not happened. So, to start with, they were not disciplined--- They sat down, took a decision and wrote minutes. Two, on the decision they took, it is very difficult to discipline them for it, because that was the way they appreciated the approval and the solutions that they had proposed. That is a different thing. Where there appears to be a problem is that at the time they visited to see what the men on the ground were doing on the people they had rounded up, there lay the problem that we are dealing with. You have been asking whether we could discipline the DC for calling the meeting. You cannot discipline the DC for calling the meeting and taking a decision. You could only blame them if they did not brief their seniors, who were the departmental heads correctly; they had the authority to meet and decide and then brief them on what they had decided, so that in the event of a problem, it was corrected at the right time. The information that I am gathering, partly from the PPO, who had to be changed - leave the livestock alone and deal with the men--

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The mistake occurred when the DSC went to do an evaluation of the progress made and people became angry when they saw the DC. I have a problem with the DC as a person when he said that he did not confront the people and calm them down, because there were police officers, APs and army men and citizens. A DC is a civilian, but he is trained to appreciate this other force, and that is why he is in uniform of a different nature. When he wears that helmet and holds his stick, then he should not run away from citizens when they have a complaint; he should calm them down, listen to them and take action. They should have negotiated because they had been going through a process. Why did he run away? That is embarrassing to me. I cannot run away from a problem; as a result of what the DC did, there was damage to the country.

The Commission Secretary (Ms. Nyaundi): Precisely. I really appreciate because you have clarified that it was not calling the meeting that was wrong; it was not taking the decision that was wrong; it was not rounding up the people indiscriminately that was wrong. In your view, we have heard of DCs who have misappropriated public funds, and we have here a DC who mismanaged an operation resulting in loss of lives; some people have called it a massacre. I have asked you to put it on a weighting scale and say on which side the scale will tilt.

Mr. Joseph Kaguthi: Functionally, you cannot mix life and money. Where we have lost lives, we cannot equate them to loss of money or something like that. We have lost lives and it is a grave thing.

The Commission Secretary (Ms. Nyaundi): Even graver than where we have lost money. So, the scale would tilt towards where we have lost lives?

Mr. Joseph Kaguthi: Yes.

The Commission Secretary (Ms. Nyaundi): Now, in this instant case, Mr. Tiema told us that what happened to him was that he was instructed to proceed on leave. He was paid for a year while on leave and then he was redeployed still as a DC to Nyamira. In terms of service with the Government of Kenya, he worked his way up and retired as an Under Secretary. Mr. Kaguthi, I am saying this: The DC who misappropriates money and the one who mismanages an operation and people are killed; do you think, as far as his superiors were concerned, he had acted wrongly?

Mr. Joseph Kaguthi: Off-the-cuff, I think the officer was named. Two, he did not tell the truth. There is no way you can claim that you were at home and you were earning because of having allowed that incident to take place. There is more that he did not disclose. In my view, what possibly happened in his case was that he was possibly suspended from duty. He went through the due process of the PSC or the courts. Evidently, he had a problem. If he was discharged, the Government was forced to pay and reinstate him. That is what I think happened, but to say casually that he just went home and took that long is wrong.

I had a problem when I was in the Directorate of Personnel Management (DPM) on that issue, as a result of which I issued a circular saying that if an officer stole money--- I had a case where somebody stole Kshs7 million, and then he was interdicted. He used the Kshs7 million to hire advocates, who looked for the loopholes. They delayed the case until the people who had the evidence were frustrated and they ran away. Thereafter, he was discharged. I said we had to do the right thing and I am defending them for taking a decision like the sitting they had. This is because if you have a problem, you have to make a decision. We said we had to sack him first and let him defend himself when he is at home, so that the issue of the officer using loopholes and technicalities does not arise. Although he mishandled that situation, he retired as an Under Secretary. You know it is painful. Is it not?

The Commission Secretary (Ms. Nyaundi): I think the Commission will be in a position to confirm whether there were any disciplinary proceedings taken against Mr. Tiema. However, just as we leave this point, I would appreciate your view on this. If it had been found that, indeed, he had acted wrongly at any stage of this process like calling a meeting or whatever, what would have been spoken of most clearly about the Government's disapproval of Mr. Tiema's conduct, which was his immediate summary dismissal?

Mr. Joseph Kaguthi: Affirmative. That is what I would have done. Running away from people when he was an elder and they had a problem--- I would not have had any qualms in dismissing him.

The Commission Secretary (Ms. Nyaundi): In fact, we can say this is something that was so obvious. It was a situation where there was no need to waste Government resources in taking him through a disciplinary process and what not.

Mr. Joseph Kaguthi: That is a different matter, again, because of the nature of what I saw. I saw a statement in Parliament by the late *ole* Tipis, saying that was politics. I have told you I have agonized, so that I am not blank. So, you cannot say that it would have just passed like that when you had tears everywhere.

The Commission Secretary (Ms. Nyaundi): Thank you. You have taken me to the next point; the statement by the late Minister, *ole* Tipis, in Parliament. I think your lawyers have it. For purposes of confirming, in your position as the Personal Assistant (PA) to the Permanent Secretary (PS), were you in any way involved in preparing that statement for the Minister?

Mr. Joseph Kaguthi: No, that would have come from the appreciation within the DSC.

The Commission Secretary (Ms. Nyaundi): So, in terms of how that statement was finalized, that information would have come from the Deputy Secretary, Security?

Mr. Joseph Kaguthi: Even the matter was very weighty.

The Commission Secretary (Ms. Nyaundi): So, you remember it. At least, even as SAS, within the Ministry, it was a very weighty matter at that time?

Mr. Joseph Kaguthi: Each of the departments had a Deputy Secretary and then the PS. So, you are an SAS on another schedule. Possibly, you bump into it during the discussions or if it was raised in the senior staff meeting, but it was not raised.

The Commission Secretary (Ms. Nyaundi): The question is: As SAS in 1984, the Minister was preparing a statement. So, were you involved in its preparation?

Mr. Joseph Kaguthi: No.

The Commission Secretary (Ms. Nyaundi): And you only dealt with discipline of Assistant Chiefs and not DCs?

Mr. Joseph Kaguthi: When I was a SAS, I was dealing with that schedule of Chiefs and Assistant Chiefs but much later, I changed to that other schedule of DOs and DCs.

The Commission Secretary (Ms. Nyaundi): Not in 1984?

Mr. Joseph Kaguthi: No, I do not think it was in 1984.

The Commission Secretary (Ms. Nyaundi): Thank you. The Commissioners will ask you questions.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Kaguthi. I will ask my colleagues to ask you some questions. Let us start with the judge.

Commissioner Chawatama: I do not have very many questions because I am trying to understand the discretion and the powers of the DC. Maybe, I want to thank you for appearing before this Commission and for assisting us, especially me as a non-Kenyan, in understanding Civil Services rankings. I also pray that your appearance before this Commission has served one of the purposes that you wanted, and that is for the public to know that you were not PC for NEP. So, for that alone, your presence has been worth it and I am happy for you. It seems the DSC had very wide discretion in the exercise of their duties. Would you agree with that?

Mr. Joseph Kaguthi: Affirmative.

Commissioner Chawatama: I think although you had a worry in the execution, you seemed not to think that it was wrong for them to have rounded up the men, taken them to the airstrip, which was not a place for detention, and to have kept them in the hot sun for so many days? Did I misunderstand you on that?

Mr. Joseph Kaguthi: The argument which, were they justified in having them sit down? Was it legal? That is correct. They were justified. As to whether I would have given them high marks on highhandedness, I have a problem there because the weakness was that they did not communicate adequately with their bosses for moderation. There was a bit of a problem there.

Commissioner Chawatama: Thank you for your response; I am also a believer in accountability. I have no more questions.

Commissioner Farah: Mr. Kaguthi, thank you very much for your evidence. I just wanted to confirm that you were in the Office of the President (OP), working in the office of the Minister for Internal Security from 1980 until when?

Mr. Joseph Kaguthi: I was in OP as an officer from 1973, but deployment was a different matter.

Commissioner Farah: I am talking about the headquarters; that is the OP. That is the tall building near the Attorney-General's office. You worked in the tall building from 1980 until when?

Mr. Joseph Kaguthi: The first tenure was from June 1980 to November 1991. I then moved out and came back in 1999 as PS in the same building.

Commissioner Farah: I did not even know that you became a PS.

Mr. Joseph Kaguthi: I confirm to you that I was a PS, Directorate of Personnel Management.

Commissioner Farah: So, you went out in 1991?

Mr. Joseph Kaguthi: Yes.

Commissioner Farah: Between 1991 and 1998 was when you were a DC and PC? What were you?

Mr. Joseph Kaguthi: In that November, I was posted out of the OP to the Ministry of Arid Lands and Reclamation. I was there for four days and then took leave to the end of 1992. In 1992, after the general election, I was posted to the Ministry of Water, Regional Development and Land Reclamation where I was for about a month. I did an assignment to combine the three ministries so that functionality and accountability were seen. Before then, I was a PC in Nyanza. I stayed in Nyanza until I came to the OP in Nairobi.

Commissioner Farah: Thank you. Let us concentrate on between 1980 and 1991. You were in OP for eleven years. In those eleven years, you were not only Senior Assistant Secretary (SAS) but worked in different grades within the OP, Internal Security?

Mr. Joseph Kaguthi: Look at page one of my statement, the last sentences show that I was SAS in 1980, and I was promoted to Under Secretary and then Senior Under Secretary. Then Deputy Secretary and then Senior Deputy Secretary. As the Senior DS, I was posted to Arid and Semi-Arid Lands Ministry, where I just performed the same functions - it was a redeployment; otherwise the title was still the same, but we never wrote "SDS". We just confined ourselves to "DS".

Commissioner Farah: I am very much used to Lieutenant, Captain, Major. So, a DC would be what in a Senior Secretary position?

Mr. Joseph Kaguthi: There was no Senior DC in field operations. You could not get a senior DC who was in job group "Q". This grade was only a preserve of very few in the headquarters. So, a Senior DC was equated to a Deputy Secretary.

Commissioner Farah: So, you rose from Under Secretary to Deputy Secretary?

Mr. Joseph Kaguthi: Senior Assistant Secretary to Senior Deputy Secretary.

Commissioner Farah: That is good. And you were all under Internal Security docket? Tell me the sections that were under administration; there was security, finance and so on?

Mr. Joseph Kaguthi: I will take you from where you have reached and then I will proceed. There is the Government Chemist, Government Printer, and the Commissioner of Police, who was in charge of the security of the President.

Commissioner Farah: Was the police in 1984 under OP?

Mr. Joseph Kaguthi: Yes.

Commissioner Farah: This is because yesterday, we were told they were under the Ministry of Home Affairs.

Mr. Joseph Kaguthi: Even the Directorate of Aerodromes was under the OP and not under the Ministry of Transport.

Commissioner Farah: How about the Administration Police?

Mr. Joseph Kaguthi: Then the AP; what is the other one now?

Mr. Joseph Kaguthi: Lands at one time was under the Office of the President.

Commissioner Farah: Thank you very much, Mr. Kaguthi. So far, you are very co-operative. How many Permanent Secretaries did you work for in those eleven years, starting with J.S. Mathenge?

Mr. Joseph Kaguthi: I did not start with J.S. Mathenge. I started with Francis Njuguna when I arrived in 1980. In 1982, J.S. Mathenge joined us. I went with him up to 1984 or 1985, then Hezekiah Oyugi came in and I worked with him until he moved to do something else and then we had Kimalat. Therefore, I worked with four.

Commissioner Farah: Can you tell me, therefore, that Francis Njuguna, J.S. Mathenge, Hezekiah Oyugi and Kimalat were all Permanent Secretaries in the Office of the President in charge of internal security and at the same time, looking after the docket of the chief secretary?

Mr. Joseph Kaguthi: You are wrong here, Commissioner. The PS, Provincial Administration and Internal Security has never been the Chief Secretary. The Chief Secretary was a different office because that was the overall supervisor. Just like the PS, Defence, Kiereini left as a PS, Defence and came to be Chief Secretary in Cabinet Office but we were in Provincial Administration.

Commissioner Farah: So, you worked for four Permanent Secretaries in charge of Internal Security from 1980 to 1985 and at the time of Wagalla, you were actually working for J.S. Mathenge? Did you at any one time receive minutes of PSC and DSC from the fields on behalf of the PS?

Mr. Joseph Kaguthi: No, because I was not on the schedule of security.

Commissioner Farah: You never worked on security schedule even under Oyugi?

Mr. Joseph Kaguthi: He had his own DS, security and I think he also worked with Mwangovya on that particular schedule.

Commissioner Farah: Can you confirm that you were in the delegation that went to Wajir with the KIC?

Mr. Joseph Kaguthi: I confirm.

Commissioner Farah: I do not know if the Leader of Evidence asked you this question but what was your specific role at that particular trip?

Mr. Joseph Kaguthi: She did ask.

Commissioner Farah: When you arrived from Liboi in an aircraft to Garissa and the PC held a dinner for the delegation in his house, were you there?

Mr. Joseph Kaguthi: Yes I was.

Commissioner Farah: Then you must have heard Wagalla being discussed?

Mr. Joseph Kaguthi: No, I would have been purged if I told that kind of lie in the statement.

Commissioner Farah: Have you ever heard of the Etemesi Report?

Mr. Joseph Kaguthi: Yes.

Commissioner Farah: Did you take part in the formulation of the team of Etemesi?

Mr. Joseph Kaguthi: No.

Commissioner Farah: So, when the Etemesi team was being formed, you were not involved but did you take part in the implementation of his report? Have you seen his report?

Mr. Joseph Kaguthi: Until recently, nothing came privy to me on that particular team, especially Wagalla. The four things that I remembered all along and which stuck with me are; the irrigation and the drought situation at Border Point One and the wastage in Liboi where the police station where Government officers built the houses on a river bed where sand was deposited. The fourth one was the very heavy security presence whenever we went as if we were a threatened kind of species. Those four remained strongly with me but not Wagalla.

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

Commissioner Shava: Thank you, Mr. Kaguthi, for your testimony. I just have two questions for you. There is something you said in response to a question by the Leader of Evidence. You said that in efforts to refresh your memory, you have gone over Ambassador Kiplagat file. Which file is that you are referring to?

Mr. Joseph Kaguthi: I was very keen to see the bundles that you were given through Kilukumi. He has also been asking me and would tell me what I can remember and what I could not remember. So, I went through his folder because I was very keen to see what his findings were. I was very concerned that when it comes to the Truth, Justice and Reconciliation Commission, we should do a lot of homework to help.

Commissioner Shava: My second question is related to the meeting in Wajir on the 8th of February when the DSC chaired by Mr. Tiema presented a brief. At the end of that brief were certain recommendations and some proposed actions. I think I understood you clearly when you were talking in a very analytical manner about decision-making and the importance of making timely decisions, whereas the contents of those decisions and the execution is a different thing. We are just talking about this proposal that was put to the KIC delegation. My question is: what did the KIC do with those recommendations? What was the reaction to the meeting?

Mr. Joseph Kaguthi: What proposal are you talking about?

Commissioner Shava: When the DC, Mr. Tiema and the District Security met with the KIC delegation and a brief was presented and we are not sure whether the brief was presented ahead of time or not but the brief was presented to the delegation. Do you remember that?

Mr. Joseph Kaguthi: My recollection was that, that board-room did not have the lot that we are talking about, concerning the 28th. I could be wrong but I visited those areas again with the Chief Secretary and many Permanent Secretaries under the District Focus for Rural Development. We toured all the provinces. Simeon Nyachae came with a drive of a decentralized development kind of coordination and we went to the field, briefing the leaders of various places. I am not so sure if my mind was confusing that picture of the meeting headed by Nyachae from the meeting headed by my PS, Mr. J.S. Mathenge. Yesterday, I was trying to see how I can have a look at the visitor's book so that I can clarify that kind of confusion in my mind because in my mind, it seems as if that meeting was far bigger than what is coming here. Commissioners, I suggest that you look a little bit on that because you are likely to get even more. When a briefing of that nature takes place, they take notes depending on the time they have. I know of one meeting where it was quite an engagement in 1976 in Kakamega and the PS that time, Mr. Kibe. He engaged my PC on what is the problem on that. I have a bit of confusion as to how the communication was, from the DC to briefing the meeting. We have gone to places where a whole province hosts the Minister of State the way we hosted the Minister for State in Kakamega in 1974, the late Mbiyu Koinange, and he was checking on the welfare of the civil service and the way the people were responding directly.

Commissioner Shava: So, what you are saying is that you do not remember very clearly, whether the entire delegation was in the room or whether part of the delegation was in the room for that briefing? That, you also do not remember clearly? Is that what you are saying?

Mr. Joseph Kaguthi: No, what I am saying is that the delegation, the DSC and the PSC, included local people in that hall. That is something I would suggest you check a little deeper because it will also help you on how to go on the content because it has bothered the Commission in the four days I have been listening to it. What was the content of this briefing because we do not seem to have the minutes of that meeting? What we have is the Mwangovya summary of the tour. So, it might be helpful to go a little deeper and interrogate. The only record that appears to be there and is authoritative is who signed and sometimes, we stop locals from signing the visitor's book because you cannot sign a whole *baraza*.

Commissioner Shava: The other thing that you have said is that depending on the time available and the nature of the discussion, interaction after presentation of such a brief may be longer or shorter. Do you recall the content of the interaction at this time?

Mr. Joseph Kaguthi: I cannot recollect but when I saw the Nairobi team come and have a brief, have lunch and had to travel to Mandera to get there before six, then I can see there was quite a bit of a rush.

Commissioner Shava: Perhaps, you can help me to understand this. The reason why the briefing paper would be prepared for this important high powered delegation as well as the PSC and at the end of that briefing would be proposed actions. When you prepare such a paper and you propose something, you are inviting feedback. Whether you remember or not what the actual feedback was, can you give the Commission some guidance on what sort of feedback would have been expected from the KIC delegation?

Mr. Joseph Kaguthi: I have been to many districts where I toured as a Provincial Commissioner. The delegation that was with me was with the PCs tour. I have also seen Presidents visit and have meetings with the leaders and then there would be somebody who talks. In certain cases, there would be a response and in other cases, you just listen and you go. I have seen all those. I have a problem in appreciating what took place. I cannot remember taking notes on that particular meeting. I only remembered the four things that I pursued to see changes later when I got to a position of decision-making. We introduced some things in order not to have the kind of things that I saw in that particular tour.

Commissioner Shava: Thank you very much, Mr. Kaguthi. You have been very helpful to the Commission.

Commissioner Slye: Thank you, Mr. Kaguthi. I just had a couple of things I wanted to get clarity on. One was that you were very helpful in going through the structures of Government and I followed most of it but the one area that I am still a little confused is

the secretariat of the KIC. If you imagined that I came to you in 1984 and said I would like to meet with all members of the secretariat of KIC, who would I be meeting with?

Mr. Joseph Kaguthi: The DSS.

Commissioner Slye: So, it would be one person; and what is the DSS?

Mr. Joseph Kaguthi: The Deputy Secretary, Security.

Commissioner Slye: Did the secretary just consist of one individual? I thought you also referred to the secretariat of the KIC in your administration and you also referred to somebody in finance. I am just trying to get a sense of all the people that would have been called or considered part of the secretariat.

Mr. Joseph Kaguthi: Allow me to go a little wider again. The security schedule has a DS, the Under Secretary and the Senior Assistant Secretary and they have their own staff.

Can I describe how the offices were, so that I can be of some help and so that you can move the concept of a secretariat? We have the PS and in the next office we have the secretary's office; then we have DS, administration and then DS security. Then you get the other officers of administration and finance scattered in other offices but the schedule and the files flow. The concept of secretariat is the one that is confusing but it is a schedule. Look at it from the point of view of the Commission. There are departments for all functions and you cannot say that it is a schedule.

Commissioner Slye: Correct me if this is a misimpression. If I wanted to talk to somebody about a policy issue with respect to the Kenya Intelligence Committee, I would go to the DSS. If I had some questions about the financing of KIC, then there would be somebody in finance whose docket would include the KIC. Is that the sort of structure that was there?

Mr. Joseph Kaguthi: If you come from the US and you want to talk about security, you go to the Permanent Secretary in charge of security.

Commissioner Slye: Let's say I am a Kenyan Government official and I have a question about a policy issue related to Kenyans or a decision that the Kenya Intelligent Committee has made and I wanted to talk to somebody in the secretariat about that--- If I came and said that I understand that the Kenya Intelligence Committee has approved the purchase of radios for Garissa and I want to understand why they need radios and I want to talk to somebody in the Committee, I would talk to the DSS. Is that right?

Mr. Joseph Kaguthi: There is no way KIC would be involved in taking a decision on equipment?

Commissioner Slye: Forget the hypothetical example but if there was a policy issue related to the core function of the KIC and I wanted to talk to somebody about that, who would I talk to?

Mr. Joseph Kaguthi: In the context of this country, something called Kenya Intelligence Committee had never been an issue within the public domain. We are here as Kenyans and you are also there as Kenyans and you can even ask the General. Maybe, he could only get to that when he was a General. Civilians did not get it because it was intelligence and the word intelligence has a lot of problems with citizens. It is only used by functional officers.

Commissioner Slye: If I am a President of Kenya and I want to talk to the person within the secretariat who can inform me about the core functions of the Kenya Intelligence Committee and the decisions they have made and those they have not made, areas they should look into and areas they should not look into, who would I speak to? Would that be you, the DSS or who within the secretariat function would I speak to get that information?

Mr. Joseph Kaguthi: You would speak to the Director of Special Branch, that time who later became the Director of Security Intelligence.

Commissioner Slye: So, the Director of Special Branch will be directly linked to the Kenya Intelligence Committee who would be able to inform me about this operation?

Mr. Joseph Kaguthi: If it is at the operational level, you have your Chief of General Staff for military and you have the Commissioner of Police for penal code and other things.

Commissioner Slye: So, all those individuals would be able to help me to understand the Kenya Intelligence Committee because they work directly with it. Is that what you are saying?

Mr. Joseph Kaguthi: For now, I think it is right to say that those officers who were named yesterday could be able to answer those kinds of questions because I am closer to civilians when it comes to intelligence.

Commissioner Slye: The person further away from civilian, if I understand correctly, is the DSS. Is that right?

Mr. Joseph Kaguthi: Yes. That is the schedule officer, the one who goes for the details.

Commissioner Slye: If I am interested in the core functions of the KIC in terms of intelligence, forget finance, administration and logistics--- That would be the person I would want talk to? I assume that the Director of Special Branch would have a lot of things on his plate and he might know something about Kenya Intelligence Committee. If I am elected as a President today and the only thing I want to know is about the Kenya

Intelligence Committee and I want to know who I can go to and give me a thorough briefing in an hour about the purposes and functions of the Kenya Intelligence Committee, would I go to the DSS or the Director of Special Branch?

Mr. Joseph Kaguthi: If you are a President and you want to know the structures of the country and how the country is secured and the flow of intelligence, then you simply get your Director of Security Intelligence and your Minister for Provincial Administration and Internal Security who is in charge of political and policy direction of his ministry.

Commissioner Slye: I appreciate that. If I am not interested in the broader picture but I am just interested in this narrow thing--- What if somebody has come to me and said he wants to get rid of the Kenya Intelligence Committee and I want to know whether that is a good decision and I want to know what it is that this organization does for me as President. I want to understand what its functions are, how much it costs and whether it is an efficient use of Government resources to have this body, who do I go to, to tell me what this thing does?

Mr. Joseph Kaguthi: I would still go to the Permanent Secretary who is in charge of that docket and the Director of Intelligence. You know why you are confusing your evidence giver is because you are a civilian and you are also the President as Chief Executive. So, you dialled my mind badly when you mixed the two. As a President, there is no way you can go to talk to those people but if you are a citizen who has heard about the Kenya Intelligence Committee, the receptionist will not even know who to refer you to. If it is security, you will be referred to the DS Security, the Under Secretary of that schedule or an Assistant Secretary in that schedule.

Commissioner Slye: I think I have some better understanding of that. When I had asked you hypothetically if the KIC had decided to purchase radios, you were clear that, that is not something the KIC would do. Could you give us a better sense of what they would do and what sort of decisions they would make if not purchasing radios?

Mr. Joseph Kaguthi: Let me answer you from the ground in which I am familiar so that I see whether I can be of some help. The ground I am familiar with is the Provincial Security setup because that is something I have operated. The Provincial Intelligence Committee feeds information to the security committee which digests the information for operations. If there is anything to do with purchases, it is not the business of the people who provide information to talk about equipment and plants. After the department reformed itself from the old Special Branch, they provide information and hand it over to the people who use it. They provide that information on the need to know basis and even if something was happening in my province in Nyanza, they could decide to go to the PS because it is at their discretion. In PSC, there were no minutes and I doubt whether KIC had minutes as well. The decisions taken are like a cabinet decision. It comes as an extract and to you as TJRC, we think this would be helpful. They do not talk about things like purchasing; those are left to the accounting officers and other authorized officers in their respective places. They are authorized by the Public Service Commission because of the human resource under their docket and the accounting in terms of plant, machinery

and money. That is why they are called the Accounting and Authorized officers. That is where the decisions about the purchase would go and not this other one.

Commissioner Slye: There is something called a PSC at the provincial level which you are analogizing with KIC. Would the PSC advise the KIC or how does the PSC work? I do not think I have come across PSC.

Mr. Joseph Kaguthi: The PSC is where the information is shared.

Commissioner Slye: So, at the provincial level, there would be a Provincial Intelligence Committee that would collect raw information and then some of that raw information, depending on their decision, would then go to the Provincial Security Committee where it would be operationalized. Is that correct?

Mr. Joseph Kaguthi: You have now got it.

Commissioner Slye: Does that mean that the KIC, if the analogy works, would be collecting raw intelligence information and sifting through it and then give some of that information depending on the credibility to the Kenya Security Committee where it would then be operationalized? Is that your understanding?

Mr. Joseph Kaguthi: I guess so because this is what was happening on lower ground. So, I tend to think that it would be replicated up there.

Commissioner Slye: Just to be clear, you know at the provincial level that, that relationship is correct but then you are assuming but you do not directly know whether it is the same relationship at the national level?

You also said that the Provincial Intelligence Committee never kept minutes. Do you know whether the Kenya Intelligence Committee kept minutes or you are just speculating?

Mr. Joseph Kaguthi: I have no idea.

Commissioner Slye: Did you ever see minutes in your capacity when you were there?

Mr. Joseph Kaguthi: No.

Commissioner Slye: You were on the trip that started on the 8th of February in Wajir. You landed in the morning, went to the DC's office, there was a briefing and then you went back to the airport. Do you remember whether you or the whole delegation or part of the delegation visited other places during that visit in Wajir itself? Were there other visits to other places besides the DC's office?

Mr. Joseph Kaguthi: Yesterday when Commissioner General Farah was asking whether we visited some water place, I had problems. Apart from what is in the program, for now

I wouldn't know but I think we stuck to the program. You remember I mentioned the fourth item that I observed which was the issue where we had to go to specific areas where there were protective systems that had been put in place wherever we went? I also mentioned to you that I was not feeling free but we went to where the program indicated.

Commissioner Slye: We have some documents about the program but just in terms of your own memory, you just said before that you have a problem with the testimony that there was a visit to a water place or a borehole. Do you mean that you just do not remember or that you remember clearly that you did not go anywhere else? If anything, does your memory add to this as opposed to the documents?

Mr. Joseph Kaguthi: I would not expect that we went anywhere else apart from where it had been organized we would go to because that was a PS's familiarization tour and they go by the programme and the PC is the one with the flag leading. That is the way I see it.

Commissioner Slye: Based on your memory, is it possible they went somewhere else or are you saying that you think it is not very possible?

Mr. Joseph Kaguthi: I do not think it would have been possible to go outside the area that had been programmed.

Commissioner Slye: I am not asking whether they went outside the program or not. The program as we have it says go to Wajir, go to the DC's office and then fly to Mandera and we have a couple of different versions of that. A number of people have talked about visiting a prison or a police office, some have talked about going to visit police homes or police camp and some have talked about going to a water project. The impression is that, at least, for some, they have a memory of not just going to the DC's office but also visiting other places in Wajir during the visit. None of those things are reflected, at least, as I recall in the documents. But that does not mean that the visit did not occur. So, all I am asking you is whether you remember whether people went to other places besides the DC's office. If you cannot remember, that is fine because I know that it was 27 years ago and I know a lot of things have happened since. But do you have any recollection of that at all?

Mr. Joseph Kaguthi: I need to understand you. Are you referring to us going to Border Point One?

Commissioner Slye: I am talking about Wajir. You arrived on the morning of 8th and in the afternoon, you flew to Mandera. During the 6-8 hours you were in Wajir, do you remember anyone visiting, including yourself, any other place in Wajir other than the DC's office and the airport?

Mr. Joseph Kaguthi: No, I cannot.

Commissioner Slye: Is it possible or you clearly remembered that you did not?

Mr. Joseph Kaguthi: We are lucky because there are manifests of the arrival of that place and the departure and you are likely to get more, but I cannot remember diverting from that program.

Commissioner Slye: That is all from me and again I want to thank you for coming and testifying before the Commission and for patiently waiting for the number of days you have waited here.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Kaguthi for your testimony. You have been a very patient person and you have waited four days in the queue as it was mentioned earlier. I do not want to detain you for much longer because you must be tired as we are. I just wanted to clarify one or two points. We have heard from you that there exists a Provincial Intelligence Committee (PIC) which collects information and then feeds it to the Provincial Security Committee. Who constitutes the membership of the PIC? We know the membership of the PSC; which officers are members of the PIC?

Mr. Joseph Kaguthi: Before I went to the field as a PC, it used to comprise of the PC, Provincial Special Branch Officer and the Provincial Police Officer as its Secretary and the PC as its Chairman. When we were in the field, we would sit as PIC and then allow our colleagues to join us on the actual PSC because of the introduction of the Provincial Criminal Investigation Officer being included in the PSC. Later, we found that it was cumbersome and it did not auger well and we became four members. The PC is the Chairman, the PPO is the Secretary, the Provincial Security Intelligence Officer and the Provincial Criminal Investigation Officer. We did not take minutes, but when the Military reorganized their command under General Tonje, the officer in charge of the Military command in the region became an additional member of the Provincial Security Committee and the Provincial Intelligence Committee.

The Presiding Chair (Commissioner Dinka): So, this will be the regional Military Commander and not the local Military Commander?

Mr. Joseph Kaguthi: They divided the regions into two. So, there was Western Command and the Eastern Command. When we had the disaster and we closed everything, that was the time the General in charge of the Eastern Command came out clearly as a member of the Provincial Security Committee.

The Presiding Chair (Commissioner Dinka): Is the PIC the same as the PSC in membership?

Mr. Joseph Kaguthi: Yes.

The Presiding Chair (Commissioner Dinka): So, why do you need two? Can one not do the same thing without giving it different names?

Mr. Joseph Kaguthi: You have gone too much into the operations.

The Presiding Chair (Commissioner Dinka): But the Chair is always the PC for both of them?

Mr. Joseph Kaguthi: Yes.

The Presiding Chair (Commissioner Dinka): Do we have the same structure at the district level when you were a District Commissioner?

Mr. Joseph Kaguthi: I guess so, but I did not work as a District Commissioner. I did not have that privilege; after being a DO, I went to the headquarters instead of going for a promotion as a DC and then I became a PC.

The Presiding Chair (Commissioner Dinka): My colleagues have asked all kinds of questions which you have answered very well and this is my last question. Wagalla happened only a few days after you came back from your visit to Wajir and I am sure you must have read about it in the papers. In the Ministry for Internal Security and the Provincial Administration, civil servants talked to each other in the coffee shops or water fountains about this thing. What was the atmosphere? Was it depressed, euphoric or what were people saying? It was a very tragic event as you said and cables were flying back and forth; was it some point of conversation in the President's office?

Mr. Joseph Kaguthi: I cannot recollect us handling it. It would have come at the senior staff meeting where we used to discuss many issues as they were brought from the departments and sections. We had incidents, some of which took a lot of time talking about it, like losing such a high number and we lost 92 at one time. I guess it is coming to me because when reports first came of another incident, it landed on my ear and I was the one who was going to brief the PS that this is reported to have happened. On this other one, it would depend on who first got that information and how the PS received it when it came to his office. I believe that he is coming and he will be able to possibly tell you how it came and how the reaction was, but it did not spread to my ear. Wagalla started coming in much later where I gathered that the UN special rapporteur made a report and I hope you will get that report and that is when I started seeing that this was something that was being hyped. It came out up to where it is now and we have taken a bit of time and resources applied because of it and a lot of details are coming out.

The Presiding Chair (Commissioner Dinka): So it was really compartmentalized that civil servants in the President's Office were not talking to each other even over coffee or quietly?

Mr. Joseph Kaguthi: We did not have a cafeteria where we would meet. I get what you are saying; that one would have expected to get the exchange of information in an informal manner, but this chance was not created.

The Presiding Chair (Commissioner Dinka): I want to join my colleagues to thank you for your patience and for your good humour and frankness. In consultation with my colleagues, I think we will now break for lunch and reconvene at 3 o'clock.

[The Commission adjourned temporarily for a lunch break]

[The Commission resumed at 3.00 p.m.]

The Presiding Chair (Commissioner Dinka): We shall now resume the session. Leader of Evidence, you may now call in the next witness.

(Mr. Alexander Njue took the oath)

The Commission Secretary (Ms. Nyaundi): Please state your name, where you stay and what you are currently doing, for the record.

Mr. Alexander Nyaga Njue: My name is Alexander Jeremiah Nyaga Njue. I stay in Embu and I am a small scale businessman and farmer.

The Commission Secretary (Ms. Nyaundi): I have with me a statement that you recorded on 24th of May, 2011, in response to summons by the Commission and I now invite you to present that statement to the Commission.

Mr. Alexander Nyaga Njue: Thank you. I state that I am a male adult aged 75 years. In 1984, I was working in Garissa as a Deputy Provincial Commissioner for North Eastern Province. My duties at the time included deputizing the Provincial Commissioner in carrying out general administrative duties. I was also a co-opted member of the Provincial Security Committee (PSC) and also its secretary. I note that I am summoned by the Truth, Justice and Reconciliation Commission (TJRC) to provide information about an operation that took place in Wajir District at Wagalla Airstrip in February 1984 during which period, I was Deputy Provincial Commissioner. Regarding the above mentioned operation, I wish to state as follows:-

(a) That I was not on the ground at Wajir which is over 200 miles away from Garissa where the operation took place.

(b) That to the best of my recollection, the Provincial Security Committee (PSC), of which I was secretary, did not have the information about the operation prior to its being carried out but came to know about it after it took place.

(c) That the Provincial Commissioner, who is the Chairman of the Provincial Security Committee, immediately called for an explanation regarding what prompted the said operation and the District Commissioner promptly provided a detailed report on what transpired including any casualties inflicted and including who was commanding the operation.

(d) That the Provincial Security Committee held an emergency meeting to review what had taken place in Wajir after learning about the operation

Further, I am asked to give any information regarding a series of extraordinary provincial and district security meetings prior and after the security operation.

Regarding the question about the PSC and DSC meetings prior and after the security operations, I have the following to say:-

(a) That the North Eastern Province was an operation area during my tenure of service there and whenever the PSC or the DSC had information that something untoward was likely to happen or had happened, it would hold a meeting to plan how to ensure law and order was maintained. In this regard, therefore, I may not be able to give an account of particular meetings of the PSC since whatever records are available were left in the office. It should be noted that the matter in question occurred 27 years ago and one may not quite honestly be able to remember the details of meetings that were held prior to and after the security operations.

(b) That as a member of the PSC, I may not be able to account for any DSC meetings as the DSC operates on its own as per the security charter and only informs the PSC about the contemplated actions. Records of any such meeting may be obtained from the relevant offices. I wish also to tell the Commission that I retired from the public service many years ago and left all records of whatever I was doing in office.

(c) The third piece of information I am required to provide regards a security operation that took place in November 1980 in Bulla Karatasi village in Garissa. Regarding the above operation, I wish to state that in 1980, I was District Commissioner, Murang'a, in Central Province and may not be of use regarding the matter.

This is what I have to say and I have signed my statement.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Njue. I will just ask a few questions for clarification. When did you take up the position of Deputy Provincial Commissioner, North Eastern Province?

Mr. Alexander Nyaga Njue: I took the position of Deputy Provincial Commissioner in North Eastern Province in June 1981.

The Commission Secretary (Ms. Nyaundi): You said that your specific duties were to deputize the Provincial Commissioner in carrying out general administrative duties?

Mr. Alexander Nyaga Njue: That is right.

The Commission Secretary (Ms. Nyaundi): About your role as Secretary to the PSC, can you confirm that part of your responsibilities as Secretary to the PSC would be to receive communication that was intended for the PSC?

Mr. Alexander Nyaga Njue: That is right.

The Commission Secretary (Ms. Nyaundi): Did you, for instance, as part of your role as Secretary to the PSC, receive minutes from the DSC?

Mr. Alexander Nyaga Njue: I used to receive minutes from the DSC.

The Commission Secretary (Ms. Nyaundi): This morning, we were informed that there is a PIC, to which you were not a member; did you receive what are referred to as extracts from the PIC?

Mr. Alexander Nyaga Njue: Allow me to say that the PSC and the PIC, used to take place simultaneously. We would start with the PIC, have a brief prepared by the Provincial Security Officer then after we have gone through the brief, we returned the brief to the Provincial Special Branch Officer. We would then extract whatever we thought was of security nature out of that brief and then we would continue with the PSC meetings of which I would take the minutes.

The Commission Secretary (Ms. Nyaundi): So, you would sit on the PIC meetings?

Mr. Alexander Nyaga Njue: Yes, I did.

The Commission Secretary (Ms. Nyaundi): Was there a Secretary to those meetings and if there was, who was it?

Mr. Alexander Nyaga Njue: The Secretary was the Provincial Special Branch Officer.

The Commission Secretary (Ms. Nyaundi): Would it be correct to state that the PIC meetings were structured around the PSC meetings? For instance, when you scheduled your meetings for the year in the minutes of 23rd February 1984, looking at page 3 Minute of 27/84 and in page 4, there is scheduling of minutes. There is a calendar of minutes there so that the first meeting would be on 23rd suggesting that the meetings of the PSC would be held on a regular monthly basis. Is that accurate?

Mr. Alexander Nyaga Njue: Yes, it is accurate.

The Commission Secretary (Ms. Nyaundi): Can we state that under this arrangement, the PIC would also hold its meetings on those same dates?

Mr. Alexander Nyaga Njue: Yes, that is correct.

The Commission Secretary (Ms. Nyaundi): After the meeting of the PIC, you would extract what you considered as security minutes. As the secretary, were you the one who was charged with the responsibility of extracting what was considered as security issues for onward transmission to the KIC?

Mr. Alexander Nyaga Njue: We would go over the brief by the Provincial Special Branch Officer together as members of the PSC and then we would together agree on matters that are of security nature and, therefore, would come up in the Provincial Security Committee meetings.

The Commission Secretary (Ms. Nyaundi): When you discussed it in the Provincial Security Committee meetings and you determined that this was a matter that you needed to push forward to the KIC, because we have already been informed that information would be transmitted to the KIC because the PSC is the operational one, would you be the one who would formulate those issues for transmission to the KIC after you have agreed on them as a PSC?

Mr. Alexander Nyaga Njue: What would be agreed upon at the PSC meetings would be transmitted to the Office of the President as minutes. These same minutes that I have in front of me here are the ones that would go to the KIC.

The Commission Secretary (Ms. Nyaundi): The reason I am asking that is because when I look at all the minutes that you recorded yourself, the meeting for 15th February dated 17th February, at the signature page, after your signature as the secretary with the date, then confirmation by the Chair, date and then distribution, “normal”, what has come out from the statements by various witnesses is that not every piece of information followed a single channel. For instance, in the PSC minutes as recorded, I believe what you are saying is that this would follow the normal channel. Does a normal channel mean direct to the Permanent Secretary with a forwarding letter and that was your responsibility?

Mr. Alexander Nyaga Njue: Yes, and that was my responsibility.

The Commission Secretary (Ms. Nyaundi): My assumption is that the meaning of the word “normal” is in the normal course of business and there is nothing of concern. So, my assumption is that there is communication other than the normal. Is that correct?

Mr. Alexander Nyaga Njue: “Normal” here also may mean with sufficient copies for those who are recipients of the said minutes.

The Commission Secretary (Ms. Nyaundi): Does “distribution, “normal” mean that sufficient copies for those who are entitled to copies?

Mr. Alexander Nyaga Njue: Yes.

The Commission Secretary (Ms. Nyaundi): In your experience as Secretary and as a member of the PSC and as someone who was serving in the provincial level, were there communications other than these minutes that would then be communicated to bodies such as the KIC?

Mr. Alexander Nyaga Njue: I cannot quite say whether there were or not but, should the PS, Internal Security, query any clarification on a particular minute, then there would be some communication.

The Commission Secretary (Ms. Nyaundi): As far as you are concerned, with regard to the meetings of the Commission, when you forwarded the minutes, you always forwarded to the PS Internal Security?

Mr. Alexander Nyaga Njue: Yes.

The Commission Secretary (Ms. Nyaundi): You have stated in your statement in Paragraph B, regarding operation, were you privy to the information that a high powered delegation from Nairobi would be in Wajir on 8th of February?

Mr. Alexander Nyaga Njue: Yes, I knew that a delegation from Nairobi would be in Wajir.

The Commission Secretary (Ms. Nyaundi): How did you come across such information?

Mr. Alexander Nyaga Njue: I was Deputy to the PC and, therefore, he would brief me about any contemplated trips outside so that in his absence, I was in charge.

Well, I may not quite say there may have been or there may not have been, but perhaps should the PS, Internal Security query any clarification on a particular minute, then there would be some communication, yes.

The Commission Secretary (Ms. Nyaundi): But as far as you are concerned, with regard to the minutes of the Commission, when you forwarded them you always forwarded to the PS Internal Security?

Mr. Alexander Nyaga Njue: Yes!

The Commission Secretary (Ms. Nyaundi): Now, you have stated in your statement in Paragraph B regarding the operation; were you privy to the information that a high powered delegation from Nairobi would be in Wajir on 8th of February?

Mr. Alexander Nyaga Njue: Yes, I knew a delegation from Nairobi would be in Wajir.

The Commission Secretary (Ms. Patricia Nyaundi): How did you come across such information?

Mr. Alexander Nyaga Njue: When we communicated to the DCs, I was in the PC's Office. I was deputy to the PC and therefore, he would also brief me about any contemplated briefs outside so that in his absence, then I was in charge of the province on all other matters.

The Commission Secretary (Ms. Nyaundi): So I believe that information about that meeting is in the minutes of 26th January, 1984. Our records indicate that this meeting

had been planned earlier and had not materialized and, therefore, was rescheduled to February, 1984.

Mr. Alexander Nyaga Njue: Correct!

The Commission Secretary (Ms. Patricia Nyaundi): Would you remember or recollect the reasons for the postponement of the trip?

Mr. Alexander Nyaga Njue: I may not remember that. I may not even remember the reason for the postponement but I think it was normal if the contemplated visit is not feasible, then it can be postponed.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Njue. Can you confirm that sometime prior to February 1984, the then President of the country undertook a trip into Somalia?

Mr. Alexander Nyaga Njue: Yes, I think, vaguely, I can remember His Excellency the President undertook a visit to Somalia.

The Commission Secretary (Ms. Nyaundi): And this was before February 1984?

Mr. Alexander Nyaga Njue: Yes!

The Commission Secretary (Ms. Nyaundi): Would you recollect now again probably that this was the reason that the initial trip of the KIC was, in fact, delayed?

Mr. Alexander Nyaga Njue: I may not say that precisely. I cannot quite remember the reason for the postponement.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Njue. Did you, yourself, accompany the then President to Somalia when he went for the trip?

Mr. Alexander Nyaga Njue: Madam, no, I did not.

The Commission Secretary (Ms. Nyaundi): Mr. Njue, is it within your knowledge as to the persons who accompanied the then President on this visit to Somalia?

Mr. Alexander Nyaga Njue: No, I cannot remember.

The Commission Secretary (Ms. Nyaundi): You do not remember, for instance, your PC accompanied the President on this trip?

Mr. Alexander Nyaga Njue: No, I may not remember that.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Now, in paragraph b, you state that you came to know about the operation after it took place?

Mr. Alexander Nyaga Njue: Correct!

The Commission Secretary (Ms. Nyaundi): When you say after it took place, because we are told on 9th is when there was a meeting in Wajir and a decision was made to round up people beginning the night of 9th, do you then mean when the operation commenced or do you mean you learnt about it after people had left the airstrip?

Mr. Alexander Nyaga Njue: Personally, I came to learn about the operation long after it had taken place.

The Commission Secretary (Ms. Nyaundi): What do you mean by long after?

Mr. Alexander Nyaga Njue: Not the following day but---

The Commission Secretary (Ms. Nyaundi): Not on 10th?

Mr. Alexander Nyaga Njue: Not on 10th!

The Commission Secretary (Ms. Nyaundi): So, well there are minutes and we will refer to them. There are minutes here that indicate that on 14th, you had a special PSC meeting and this is after Mr. Ndirangu had come from Wajir. Are you stating that this is the first time you were hearing about the operation?

Mr. Alexander Nyaga Njue: I think that was about the first time I was hearing about the operation when Mr. Ndirangu came back and we sat as members of the PSC.

The Commission Secretary (Ms. Nyaundi): So are you saying that as a Deputy PC when the delegation that had come from Nairobi was hosted at the office of the DC as part of its tour on 10th you were not present?

Mr. Alexander Nyaga Njue: At the---

The Commission Secretary (Ms. Nyaundi): You see these people who had come from Nairobi had been in Wajir on 8th, had travelled to Takaba on 9th and came back and had a meeting with the DSC and the PSC on the 10th. Are you saying you were not present?

Mr. Alexander Nyaga Njue: I was present.

The Commission Secretary (Ms. Nyaundi): We have information that on the night of the 9th a message came through to the PPO informing him that an operation had commenced because they were seeking reinforcements and informing him that reinforcements were being sought and the Acting PSBO was informed by the PPO. So, by 10th in Garissa, are you saying that as the Deputy PC you had not heard that an operation had commenced?

Mr. Alexander Nyaga Njue: I had not known that an operation had commenced.

The Commission Secretary (Ms. Nyaundi): Okay! Are you also saying that when the decision was made to send Mr. Ndirangu to Wajir, you were not aware of the purpose for which he was going?

Mr. Alexander Nyaga Njue: I think by the time Mr. Ndirangu was going to Wajir to fact-find, I had overheard that there had been an operation in Wajir and that Mr. Ndirangu, the Acting PSBO, was going there to find out what had happened and what had prompted the operation and how it was carried out. So when he came back, I got the full information now about the operation.

The Commission Secretary (Ms. Nyaundi): This is just for my own understanding. Mr. Njue, what was the situation like in North Eastern at that time? I am imagining if something like this was happening in Wajir and you were the Deputy PC, and it is not brought to your attention, it must be that probably you were either very busy and with very grave issues. Could you now just shed some light, what was the situation in North Eastern Province at this time so that an issue such as this that one would think is very serious is not brought to your attention as the Deputy PC?

Mr. Alexander Nyaga Njue: What I may have to say about an incident such as the one that happened in Wajir, and particularly the Wagalla issue, the DSC in Wajir has the prerogative. If they have information that something untoward is likely to happen, and much so, me having been a DC for many years, they are free to hold a DSC meeting, take a decision as to how to go about it.

The Commission Secretary (Ms. Nyaundi): Using my own experiences, when I am cooking in the kitchen, some things will burn sometimes. If I find my attention is on one plate, so I will find it as I am trying to fry meat, vegetables or cook *ugali*. If I am not very well prepared, the onion for the vegetables sometimes burns. So I was just wondering whether that was your situation as the Deputy PC and that you had many things that demanded your attention, and so when this very serious thing is happening, you are engrossed in something else?

Mr. Alexander Njue: It is true I had many other things to do in the office besides attending to matters pertaining to the Provincial Security Committee.

The Commission Secretary (Ms. Patricia Nyaundi): That is why I was asking you whether you can, please, give us a sense of what demands on your time at that time were.

Mr. Alexander Nyaga Njue: Various administrative duties, welfare of staff in the office, correspondence with the various Government departments, co-ordination of Government activities in the province and so on and so forth. Those were part of my responsibilities.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Now in paragraphc, you state that the Provincial Commissioner, who is the Chairman of the PSC, immediately called for an explanation.

Mr. Alexander Nyaga Njue: Yes!

The Commission Secretary (Ms. Nyaundi): In terms of understanding immediately, when you use that word “immediately”, when was it that the PC called for an explanation as to what prompted the operation?

Mr. Alexander Nyaga Njue: I may not be able to say the specific dates but immediately after we learnt of the operation and how it went, then the PC wrote and asked the DC, who was the Chairman of the DSC, to give an explanation as to what happened, what prompted the operation and why they had kept us in the dark, not informing us that we are contemplating to do A, B, C, D because of this and the other, and so on and so forth. That is what I mean by immediately.

The Commission Secretary (Ms. Nyaundi): Mr. Njue, I will refer you to the minutes of 14th February, 1984. You can confirm that at this meeting, at least, as the records state, you were the Secretary---

Mr. Alexander Nyaga Njue: The minutes of 15th February, 1984---

The Commission Secretary (Ms. Nyaundi): They are dated 15th but the meeting was held on 14th February at 8.45 a.m.

Mr. Alexander Nyaga Njue: Yes, I was the Secretary.

The Commission Secretary (Ms. Nyaundi): And you can confirm that on page 4, that is your signature on those minutes?

Mr. Alexander Nyaga Njue: I cannot get it!

The Commission Secretary (Ms. Nyaundi): Let me help you. I think it is the order in which they were stapled.

Mr. Alexander Nyaga Njue: Yes, it is my signature.

The Commission Secretary (Ms. Nyaundi): Thank you. Now we look at Minute 1284. That will be the first page, I think they were stapled wrongly.

Communication from the Chairman - Just in terms of understanding the structure of your meetings, I have noticed that the first item at each meeting was communication from the Chairman. Is that accurate?

Mr. Alexander Nyaga Njue: Yes, it is correct.

The Commission Secretary (Ms. Nyaundi): Based on your recollection, was this just on his own motion or were these communications from the Chair based maybe on a brief that you had furnished him or on the basis of the minutes he had received from the DSC, based on your recollection?

Mr. Alexander Nyaga Njue: Presiding Chair and Commissioners, I recall that always and all the time, we met in the PC's Office, and not in the boardroom. So as a matter of courtesy and the rest of it, we would always welcome the members and tell them why they had been invited to the meeting. He would always make some opening remarks.

The Commission Secretary (Ms. Nyaundi): I have also had the benefit of sitting in meetings and occasionally chairing some and sometimes when I am talking as a chair, I would have consulted with the colleagues and then make a general address to the people who are attending the meeting. So my shot here: was it the practice that before you had meetings, you and the PC, you as the deputy PC would sit with your PC, and you would agree even as we meet with the PPO, the PSBO, this is our position as the Provincial Administration?

Mr. Alexander Nyaga Njue: For this one, I would say not all the time but at times, we would sit and do some consultations and then agree on the way forward.

The Commission Secretary (Ms. Nyaundi): And then he would come and present it as communication from the Chairman?

Mr. Alexander Nyaga Njue: Yes!

The Commission Secretary (Ms. Nyaundi): Now, there are a number of issues that I have noticed in these meetings where you were the secretary. For instance, page 2, the second paragraph, and this is because you were the secretary, did you, as a practice, record verbatim the words that were used by the participants at the meeting or did you rephrase and say, this is how I saw it and this is what I am recording?

Mr. Alexander Nyaga Njue: Commissioners, obviously I cannot record minutes verbatim as they came from the members. It is as a result of the deliberations; a deliberation ensues, a discussion ensues and at the end of it, they reach a common understanding. This is what would be recorded as a minute.

The Commission Secretary (Ms. Nyaundi): Would you record there and then or would you retreat and then write what you will say were the minutes?

Mr. Alexander Nyaga Njue: Obviously I would retreat and record the minutes out of the notes I would have been taking during the proceedings.

The Commission Secretary (Ms. Nyaundi): For instance, Page 2, the second paragraph, when you say that the PSC further noted with disgust that on the 3rd---, would you say

that, that was based on the discussions there? Your observation was that the PSC was disgusted or would you say that, that word was used at the meeting?

Mr. Alexander Nyaga Njue: I would say that the PSC was disgusted, not just the question of a word having been used in the meeting.

The Commission Secretary (Ms. Nyaundi): And so, as far as you are concerned, you maintained an accurate record of the proceedings of the meetings of the PSC, including any emotions that PSC members had?

Mr. Alexander Nyaga Njue: Presiding Chair and Commissioners, I would imagine so. If there was, for instance, any objection to any particular minute or word, then during the subsequent meeting, it would be raised under matters arising, and the same would be rectified as appropriate.

The Commission Secretary (Ms. Patricia Nyaundi): Thank you. When I look at the record of your minutes, and I am referring to the minutes of the meeting of 23rd February, that is the first time--- 23rd February Ex minute 2/84. I do not know what it means. Does it mean executive?

Mr. Alexander Nyaga Njue: No. Ex Minutes refers to a previous minute, a matter arising out of a previous meeting. That is what Ex Minute means.

The Commission Secretary (Ms. Nyaundi): Thank you very much. So, I am looking at Ex Minutes 2/84 on page 3 and the last paragraph of those minutes - Ex Minute 2/84, Wajir Deaths incident, towards the bottom of that page, the 3rd paragraph.

It says:-

“The PSC could not comprehend why the DSC decided to keep the authorities uninformed of the incident until when the PSC visited Wajir on 13th February, 1984. The PSC demands a detailed written incident report on what went wrong and why the report was kept secret to the DSC committee alone.” That is accurate?

Mr. Alexander Nyaga Njue: Yes, it is accurate.

The Commission Secretary (Ms. Nyaundi): When I look at your minutes, this is the first time that I see the PSC calling for a written report. I did not see it in the minutes of 14th between 14th and 23rd, but yet you say in paragraph c that the Chairman immediately called for an explanation. So, unless you are of the view that 23rd February is immediately?

Mr. Alexander Nyaga Njue: I have not followed that one.

The Commission Secretary (Ms. Nyaundi): In paragraph c of your statement, the one that you have read this afternoon, the one that is folded, you say that the Chair

immediately called for an explanation regarding what had prompted the said operation. But when I look at the minutes, and I have gone through the minutes from 14th February and I am assuming that after 26th January, the next meeting you had after the operation is 14th February, so when I look at the minutes for 14th February onwards, the first time I see the PSC demanding an explanation is on 23rd February. Would that be accurate?

Mr. Alexander Nyaga Njue: I should imagine it is.

The Commission Secretary (Ms. Nyaundi): And so just going back to paragraph c, would you then say that calling for the written report on 23rd February, as you have said in paragraph c, would be immediately, or on reflection, do you think that the PC must have called for the report earlier?

Mr. Alexander Nyaga Njue: I think the PC must have called for the report earlier.

The Commission Secretary (Ms. Nyaundi): As the Chair of the PSC?

Mr. Alexander Nyaga Njue: As the Chair of the PSC.

The Commission Secretary (Ms. Nyaundi): And for that reason, you, as the Secretary of the PSC, would have been aware?

Mr. Alexander Nyaga Njue: When he called---

The Commission Secretary (Ms. Nyaundi): Yes, because he is doing it as the Chair of the PSC and not as PC.

Mr. Alexander Nyaga Njue: It is difficult to actually separate the two, the question of being the PC and being the Chairman of the PSC. The same PC who is the Chairman of the PSC is the same PC who is the Provincial Commissioner for the entire province. Equally, the DC who is the Chairman of the DSC is also the same person who is the District Commissioner for the area. So it is difficult to separate the two.

The Commission Secretary (Ms. Nyaundi): My assumption is that every time he acts as the PSC Chairman, then the secretary and the other members participate in that because as PC, he can act as an individual, but when he wears the hat of the PSC chair, then the committee has got to be with him. Is my thinking correct?

Mr. Alexander Nyaga Njue: I would imagine that if anything happens in a district, and that is normal practice as at that time. If anything happens in the district, the DC will call for an explanation whether as Chairman of the DSC or District Commissioner. The PC is the Chairman and is also the co-ordinator of all Government activities in a given province. So there is no time, he will say that this time I will not call for an explanation because there is no PSC meeting. Anything happening, he will call for an explanation.

The Commission Secretary (Ms. Nyaundi): I just wanted to understand; so when you recorded your statement in paragraph c, were you referring to 23rd February or you were referring to knowledge that you had that the PC must have sought for an immediate explanation?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, allow me to say this: I am the author of these minutes. I am also the author of my statement but I was writing this statement 27 years after it happened. So even if there may appear to be a discrepancy, what I meant is exactly what is contained in these minutes because I did not have the advantage or the benefit of having the minutes as I was recording. I am seeing these minutes today for the first time. If you asked me whether I recorded minutes on 23rd January, I would not have known. If I said I do not know or I cannot remember, it should not be taken that I have any information that I am not giving to the Commission. It is because it is many years since, and I could not remember.

The Commission Secretary (Ms. Nyaundi): I appreciate. Actually, what I had sought to confirm is that there has been the suggestion that information was not forthcoming, so it would be extremely useful to understand that the first time a written explanation was being sought was, in fact, on 23rd of February, 1984?

Mr. Alexander Nyaga Njue: That is correct!

The Commission Secretary (Ms. Nyaundi): Thank you. Now as the Secretary to the PSC, at least we have here that the PSC immediately convened on 14th February where there were two meetings, one of the PSC and one a joint PSC and the DSC on the same day. So the PSC met at 8.45 a.m. and on the same day, the PSC and the DSC met at 11.50 a.m. and then on the next day, PSC met. You have seen those minutes?

Mr. Alexander Nyaga Njue: I have seen the minutes of 14th February.

The Commission Secretary (Ms. Nyaundi): There were two meetings on 14th and one meeting on 15th at 9.30 p.m. That is accurate. The report of the minutes of the meeting of 15th is dated 17th February, 1984. You have seen that?

Mr. Alexander Nyaga Njue: Yes, I have! I have seen the minutes of 17th February, 1984.

The Commission Secretary (Ms. Nyaundi): Now, it says that the Chairman, having just arrived from Wajir with the rest of the PSC members, that is on 15th February, and that would include you?

Mr. Alexander Nyaga Njue: No, I did not go to Wajir.

The Commission Secretary (Ms. Nyaundi): But on 15th February, do you have a recollection when the minutes record, that it is with the rest of the PSC members, that

would include Mr. Kaaria, Lieutenant Col. Muhindi, Mr. Gaturuku and Mr. Ndirangu. That is correct?

Mr. Alexander Nyaga Njue: Correct!

The Commission Secretary (Ms. Nyaundi): So they are the ones who went to Wajir on 15th?

Mr. Alexander Nyaga Njue: I would imagine so, yes!

The Commission Secretary (Ms. Nyaundi): Together with what is in the minutes, it says General Mulinge and other people who are mentioned there. That is correct?

Mr. Alexander Nyaga Njue: Yes!

The Commission Secretary (Ms. Nyaundi): So at least on 15th, you got a more complete picture of what was going on in Wajir?

Mr. Alexander Nyaga Njue: Correct!

The Commission Secretary (Ms. Nyaundi): Now, you were the Deputy PC. At that time in 1984, were you able to form an impression on the properness or the improperness of the operation that had occurred in Wajir?

Mr. Alexander Nyaga Njue: Yes, Presiding Chair and Commissioners, we had further discussion of the PSC on what had transpired after they had visited Wajir. I certainly formed an impression because there was a discussion over it. I formed an impression that something went wrong somewhere.

The Commission Secretary (Ms. Nyaundi): Were you able to determine what it is that had gone wrong and whether people should be held responsible?

Mr. Alexander Nyaga Njue: What I thought, what I still think, is that the cause of the incident that is said to have happened in Wajir, the holding of DSC meetings was justified. The other opinion is that the decision to carry out an operation because of the incidents that had happened was also justified. But in my view, if, for instance, I was the DC Wajir, and we decided to mount an operation of that magnitude and then gather people at Wagalla as it happened, and then leave my officers doing investigations and so forth and then later, I come back to review what was going on and people stand up and I was the DC, the father of everybody in that group, I would not have run away. I would have addressed the security officers and even the members of the public because I would be in charge of the district. That is what I would have done myself. So, therefore, in my view, that is probably where things went grossly wrong because the shootout that is mentioned here occurred because people started running away because their DC had also ran away. That was my impression, it is still my impression and I have not changed from thinking what I thought at that time.

The Commission Secretary (Ms. Nyaundi): Did you, as the Deputy PC then, make a decision with regard to how that officer would be dealt with; the Acting DC?

Mr. Alexander Nyaga Njue: The matter was actually reported as appearing in these minutes and in my view, I guess, this is why the then Acting DC was suspended from duty. And this is what prompted the PC to call the substantive DC to come and take charge of the district.

The Commission Secretary (Ms. Nyaundi): On reflection and looking at the consequences of that mismanaged operation, would you take the view that – I assume that you were his senior and he was answerable to you – that sufficient disciplinary action was taken against this officer?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, Sir, allow me to say this; we are in front of you, we are giving evidence, we are saying what we thought should have happened. In my view I think at the end of it all, having heard from us and whoever else has given evidence before you, you will make your findings as a result of evidence in front of you and make your recommendations based on the evidence and your findings. This is the way I would look at it. I do not want to influence you to say I would recommend that so and so be hanged or this happens. I have told you my part of thinking and the impression I formed at that time and the impression I have up to today. I think up to there, I have said what I ought to say to you.

The Commission Secretary (Ms. Nyaundi): That is fine but can you confirm that you as the Deputy PC then, you did not recommend disciplinary action with regard to the Acting DC, Mr. Tiema?

Mr. Alexander Nyaga Njue: We sat in the PSC together with my PC. There is no way I would go out of the way and make my own recommendations when my boss was sitting there.

The Commission Secretary (Ms. Nyaundi): But when you were discussing it, because when I look at the minutes for instance, the meeting of 14th February, Mr. Ndirangu told us he had just come back from Wajir. He only went as far as the airport. Mr. Tiema and the other junior officers, members of the DSC did not allow Mr. Ndirangu to go outside of the airport. When he comes back on the 14th of February, he is briefing you. What you have minuted here on page three; the meeting that started at 8.45 a.m. In the course of the interrogations, as far as you were concerned, on 14th February, when you were meeting as the PSC these were interrogations that are ongoing. Four firearms were surrendered by some of those who were being interrogated. I find that this was indeed commendable.

So at this stage, my assumption is that you have had discussion and taken notes. When you are writing the minutes, you are saying this was indeed commendable since the interrogations were yielding desired regards as far as the PSC is concerned. Again, you

have discussed regarding the deaths. You are saying, “The unfortunate incident regarding those who died in the entire process is regrettable”.

This is my impression that I am forming. As far as the PSC is concerned, regarding the ongoing operation, you have confirmed that people are being held at the airstrip. You have confirmed that the DC stood up when he should have addressed people. You have confirmed that people died and what you are finding, as the PSC, is that it is commendable, the deaths are unfortunate but otherwise you appreciate that four firearms have been discovered. That is why it is a thought I am having and I want you to clarify. Is it correct to state that at this time you were not contemplating any disciplinary action against Mr. Tiema?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, Sir, with your permission allow me to say this: there is a saying that meanings are with people not in words. I have said what I have said. I have said if I were the DC, for instance, I would not have acted the way he acted. However, I have also said the operation and the DSC meeting were justified because there was an incident. The operation was justified because of what happened. However, the professionalism of carrying out that operation, the interrogation they had is what brought the problem. Therefore, in my view and in the view of the PSC at the time, it is justifiable to say it was okay to carry out an operation but they did not carry it out the way it should have been carried out.

The Commission Secretary (Ms. Nyaundi): The question I had asked you: looking at those minutes, can we assume that at least by the 14th of February, 1984, am I reading the minutes correctly, that at least during that meeting you were not considering disciplinary action against Mr. Tiema?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, Sir, I think disciplinary action was contemplated immediately after the revelation of what went wrong. That is why Tiema was quickly sent away and the substantive DC brought back.

The Commission Secretary (Ms. Nyaundi): So, I am assuming that as the Deputy PC, everyone else can speculate but this was clearly within your docket. Now, if there were going to be disciplinary proceedings against Mr. Tiema, would you have participated in them?

Mr. Alexander Nyaga Njue: I guess the question is: disciplinary action against Mr. Tiema was to inform the headquarters, which is the Office of the President, what had happened and what our view was. I think that was done.

The Commission Secretary (Ms. Nyaundi): And you remember writing such a letter?

Mr. Alexander Nyaga Njue: I may not remember who wrote the letter.

The Commission Secretary (Ms. Nyaundi): But you remember there must have been a communication?

Mr. Alexander Nyaga Njue: I remember there must have been a communication.

The Commission Secretary (Ms. Nyaundi): Do you remember what the recommendation was in that communication?

Mr. Alexander Nyaga Njue: I may not quite remember.

The Commission Secretary (Ms. Nyaundi): I do not think the options are many. It would either been a promotion or--- Did the North Eastern Province recommend his promotion?

Mr. Alexander Nyaga Njue: No.

The Commission Secretary (Ms. Nyaundi): Did you recommend his dismissal?

Mr. Alexander Nyaga Njue: As I said, like now these minutes are refreshing my mind when I read them. If that letter was available, I would read it and see this is what was recommended. I may not---

The Commission Secretary (Ms. Nyaundi): Again, you make me imagine that there must have been so much going on in Wajir that for you as a Deputy PC, the Government records states 59 people have died and there were many other things happening such that you would not follow up this case. It did not impress you.

Mr. Alexander Nyaga Njue: First of all, I was not aware of that 59 or whatever number. I was aware of 29.

Secondly, during the subsequent month of March, I was scheduled for a course in Britain. So I was at the same time busy preparing myself to leave the country for the course. So, I did not seriously follow up what happened later after I had left.

The Commission Secretary (Ms. Nyaundi): The only reason, Mr. Njue, I am bothering you with this issue is that it has been my experience that, and I think two or three months ago when some young men were shot, it was big news. They were three people, it was big news and the country's attention was drawn to it. There was an explosion this week somewhere here in Nairobi, some people died, others were gravely injured and it was big news in the country. We have followed it with interest. I am just trying to comprehend how busy North Eastern Province must be for the Deputy PC? The PSC was having this meeting after discovering there is an operation going on; 29 people have died, the Deputy PC from what you are suggesting leaves that meeting and begins preparing for an overseas trip. That is my dilemma. When I am prolonging this discussion with you it is only because I am not yet fully persuaded that you would have too much on your plate that you would not prioritize and give attention to an issue of a DC within your jurisdiction who, owing to mismanagement of an operation, we have lost as far as you came to know 29 lives. That is my dilemma. I am just seeking to understand from you; do

you want the Commission to record that you did not concern yourself with the disciplinary action that was to be taken against Mr. Tiema and other members of the DSC?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, Sir, let me put some records straight. Nowhere, before this Commission have I said I left a meeting of the PSC to go and prepare myself for a journey to the UK. There was no journey to the UK that day or even the following for that matter. What I said is that I would not know what transpired later because during the month of March I was not in Garissa. What I know is that disciplinary action was taken against Mr. Tiema and his colleagues. This is why the substantive DC was recalled. When the matter went to Nairobi, it was up to Nairobi now to know the best line of action to take.

The Commission Secretary (Ms. Nyaundi): So, what you are telling us is that action was taken after March when you had left?

Mr. Alexander Nyaga Njue: I am not saying that. I am saying action against Tiema was taken immediately it was revealed that it was some kind of negligence that prompted the killing of the people who died at Wagalla.

The Commission Secretary (Ms. Nyaundi): Mr. Njue, Mr. Tiema, when he was here, informed us that what happened is that he proceeded on leave for a year, did not receive communication from anyone and was later reinstated to serve as a DC in the Nyanza Province. Do you have information different from what Mr. Tiema told us?

Mr. Alexander Nyaga Njue: I am not aware about that.

The Commission Secretary (Ms. Nyaundi): At least, if Mr. Tiema would have been dismissed, you would have been aware?

Mr. Alexander Nyaga Njue: I would have known. But let me also add that I do not see Mr. Tiema proceeding on one year leave which he had not earned. Allow me also to say this; if a man says a lie once, anything else he says later should be taken with a lot of caution.

The Commission Secretary (Ms. Nyaundi): I assume that is a general rule. So, the direct question I was asking you is that you cannot at this moment, at least, contradict or you do not have information that would say that Mr. Tiema did not proceed on leave? He actually said he proceeded to his home village and he stayed there for a year. You did not hear anything?

Mr. Alexander Nyaga Njue: I did not hear anything.

The Commission Secretary (Ms. Nyaundi): So, when did you leave Garissa?

Mr. Alexander Nyaga Njue: I left Garissa in 1986.

The Commission Secretary (Ms. Nyaundi): Did you leave before or after Mr. Kaaria, the PC?

Mr. Alexander Nyaga Njue: I left after Mr. Kaaria.

The Commission Secretary (Ms. Nyaundi): When did Mr. Karia leave the PC position?

Mr. Alexander Nyaga Njue: When I went for a course I left him there. When I came back he was not there.

The Commission Secretary (Ms. Nyaundi): So, are you saying you do not know the date that he left?

Mr. Alexander Nyaga Njue: Yes, I would not know the date he left.

The Commission Secretary (Ms. Nyaundi): Would you know whether his removal from that position was related to this incident that had occurred at Wagalla?

Mr. Alexander Nyaga Njue: I would not precisely know that but I guess probably it might have been related to that incident of Wagalla.

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

The Presiding Chair (Commissioner Dinka): Thank you very much, Leader of Evidence. Thank you very much, Mr. Njue.

Colleague Commissioners, you can ask questions.

Commissioner Slye: Thank you, Mr. Njue for coming here and sharing with us your knowledge and your testimony.

I think I wanted to start by assisting you a little bit in what was the subject of some of the previous questions. I would just like to be clear in mind what these minutes may present. I guess the first, which is a simple one, is that the PSC meeting on the 23rd February, you are not listed as being present and you are not taking minutes. There is a man named Mr. Kamau who is there. Do you recall if by that time you had gone off to the UK to do whatever the study was that you were doing? Do you recall why you were not present at that meeting?

Mr. Alexander Nyaga Njue: The meeting of which date?

Commissioner Slye: Its minutes are dated 24th February but they are minutes of a meeting on the 23rd of February, of the North Eastern Provincial Security Committee. There is a reference P.6/Vol.VI/25 and it has as present:-

1. Mr. Karia.
2. Mr. Lieutenant-Col. Muhindi.
3. Mr. Ndirangu.
4. Mr. Kariuki.
5. Mr. Kamau.

So, according to this, you were not there and you were not taking minutes. I was just wondering if at that point you had left to go to the UK or not? Is there some other reason you can remember why you might not have been at that meeting?

Mr. Alexander Nyaga Njue: I may not remember why I may not have been at that meeting. However, I had not left for the UK.

Commissioner Slye: Thank you.

When the Leader of Evidence was asking you about your paragraph c in your statement about the PC as the Chairman of the PSC, immediately calling for explanation for what happened in Wagalla. I think if you look at the minutes of the meeting on the 14th of February, 1984, which was dated the 15th of February, and if you go to page three the third paragraph right above Minute 1484, the only line there is:-

“Exhaustive investigations into what actually went wrong are going to be carried out by the PSC.”

Maybe I am putting words into your mouth but I understand that you did not have the benefit of looking at these minutes before you put together your statement. It seems to be suggestions that there would be exhaustive investigations; might be what you were referring to when you were calling for an explanation. However, it is not clear whether it is calling for a detailed written report, which is also what you said. At least, there is some indication of some sort of investigation there. Does that jog your memory a bit about what you might have been referring to?

Mr. Alexander Nyaga Njue: Yes, most probably that might be what I was referring to.

Commissioner Slye: I think here we need a little assistance. Maybe this is the way these things are talked about in formal minutes but the paragraph that the Leader of Evidence did read talked about how commendable it was that a number of weapons had been acquired and so that paragraph reads as though this is a very positive operation; it was commendable, there were good results although it does say that there is the unfortunate incident regarding those who died. Then the next sentence which was read to you talks about exhaustive investigations into what went wrong. So, I wonder if you could help us in reconciling on the one hand what appears to be a statement of approval with what appears to be a statement saying that something went wrong. How do we reconcile those two?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, Sir, my guess here is that if for instance, the shootout never occurred--- I can go further and say that if for instance, even anybody is a prisoner, he or she should be given food and water. If these people had been treated the way they should have been treated, and the shootout did not occur, as a result of the operation and interrogations there was the recovery of firearms, the whole operation in total would have been a success.

However, the reason we are saying perhaps it is commendable is in the sense that the DSC had some information. That information, as a result of what they did, yielded the desired results. Up to there, things would have gone well. However, because of not carrying out that interrogation, part of it, and keeping people in the hot sun so that some them died because of sun stoke, thirst, hunger, shooting, this is where as a person, I feel that things went wrong. I hope I have expressed it enough.

Commissioner Slye: I think let us restate it a bit and see if you agree with us that the idea would be that it was commendable that weapons were recovered. If we look at the means that were undertaken to achieve that result; rounding up everyone, putting them up in the hot sun, not giving them food and water and then eventually as a result, opening fire on them and anywhere from 57 to maybe hundreds of people dying. That is what went wrong. That assessment is sort of separating now, what obviously is very much learnt in terms of the reality of the people there, but separating out the acquisition of the illegal weapons which in isolation is sort of a good thing. However, all of the things that were done to get there is what went wrong. Is that correct? Is that your understanding as well?

Mr. Alexander Nyaga Njue: That is my understanding. That is what I mean.

Commissioner Slye: Thank you. That is helpful.

You had testified that the PIC which you are also a member and sat in meetings, PIC would meet immediately before the PSC, did I understand that correctly?

Mr. Alexander Nyaga Njue: Yes.

Commissioner Slye: Can you assist us in understanding what sort of decision would be made by the PIC?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, Sir, the PIC is a body headed by the Special Branch. It is advisory to the PSC. Before the PSC starts meeting, we would discuss an elaborate report by the PIC. Out of this we would extract what we would feel is of security nature. That would then be discussed at the PSC meeting. All the papers and briefs which everybody else would be having from the Special Branch, that is the collection of intelligence, would be withdrawn. That would be the end of the PIC meeting. We would then continue with the PSC meeting. That kind of format would apply also to the DSC.

Commissioner Slye: To the DSC in relation to the DIC?

Mr. Alexander Nyaga Njue: Yes.

Commissioner Slye: I have two follow up questions on that. I believe we were told that the Chair of the PIC was the Provincial Commissioner although I just heard you say that it was the Special Branch officer who chaired that meeting. Who is the Chair of the PIC meeting?

Mr. Alexander Nyaga Njue: The Provincial Commissioner.

Commissioner Slye: So when you said that the Special Branch ran that meeting, was that just because the focus was on Special Branch related activities or what did you mean by that?

Mr. Alexander Nyaga Njue: Yes. The focus would be on the Special Branch related activities. After we had extracted what was agreed to be of a security nature, then the PSC meeting would start.

Commissioner Slye: When you were sitting as the PIC, you sort of agreed amongst yourselves about what can be taken to the PSC. I assume that as part of that discussion you would also have discussion about what action, if any, should be taken based upon that information. Is that correct?

Mr. Alexander Nyaga Njue: Not really. Not to the best of my recollection. No.

Commissioner Slye: I do not want you in answering this to reveal anything that is not meant to be public or that might be secret as a matter of national security or something like but if there was a highly sensitive issue would it be, may be in rare circumstances when a decision with respect to action might have been taken by the PIC but not by the PSC?

Mr. Alexander Nyaga Njue: That is correct. From experience, I imagine that even when that brief is being given the Director of Intelligence may probably already be having a copy of that brief. He might even have briefed the relevant people as per the need to know, who should know what, and so on and so forth.

Commissioner Slye: So, if I understand correctly, intelligence information would come to the PIC and there are three different avenues by which there might be an action arising out of that intelligence. One is that the same information may have already gone up to the Director of Intelligence and he, maybe with consultation with others, initiate some action.

The second is that the information would be brought to the PIC and the PSC would then decide what, if anything, to do.

The third, which was maybe rare, is that the PIC itself, based upon information before it, would decide that some particular action would be undertaken. Do I understand that correctly?

Mr. Alexander Nyaga Njue: I may also need to add that we never took minutes of PIC meetings. It was only the brief. The PSC would extract what would be of security nature in as far as that brief is concerned. At the end of it all, we would end up with what you are having as minutes of the PSC, not necessarily based on that information, but from information from other sources.

Commissioner Slye: So, in the brief it was something that was prepared for the PIC meeting or it is something that came out of the PIC meeting? It is a document that came to you as a member of the PIC or was it a document you produced based upon information that you collected?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, Sir, the brief was normally prepared for the PIC.

Commissioner Slye: Okay. So, the brief will come to the PSC and go to the Director of Intelligence; so, there are two different path ways in which this information would flow. Thank you. That is much clear in my mind now.

There are number of places where those sort of actions designates the body for action; PSC, DSC and so on. There are a number of times when the KIC is mentioned with equipment related activity, clearance for certain meetings and a few other things like that. Can you help us to understand from the point of view of the PSC what was the role of the KIC? Those parts of the minutes suggest that the KIC was a body to which the PIC would go to get approval for certain things, to look for Government direction and such things. Is that the correct interpretation based upon these documents?

Mr. Alexander Nyaga Njue: Yes, but it is not in every case where the PSC would wait for direction from the KIC.

Commissioner Slye: Do you have a sense of which cases you would be waiting for and which you would not? What would be the appropriate thing to wait for guidance from KIC on?

Mr. Alexander Nyaga Njue: Let me probably try to remember a case where some militia from across the border crossed over our border and we prepare a security operation scheme, we would say, for instance, this is what is happening. We think the strength of the enemy is this, we would require reinforcement. Sometimes we require a chopper. We would need to wait before we go to action in cases of that nature. There were a few cases of that kind. However, we would require the intervention of the KIC.

Commissioner Slye: So, then was your understanding that the KIC, at least in those areas you have described, would have authority to give you (PSC) authority to act in

those areas? You would go to the KIC and they would either approve or disapprove and that would determine whether you would get the helicopters or you could engage in a particular action or not?

Mr. Alexander Nyaga Njue: Yes.

Commissioner Slye: This is maybe getting beyond your personal knowledge; do you know or understand what the relationship was between the KIC and the Kenya Security Committee (KSC)?

Mr. Alexander Nyaga Njue: As far as the PSC is concerned, in the provincial administration where the PC was the Chairman of the PSC, we were liaising with our headquarters. We were always liaising with our PS in charge of internal security virtually in all cases.

Commissioner Slye: I do not want to put words into your mouth so correct me if I am misstating this; from the point of view of the PSC, your main contact with the rest of the national Government would have been both with the PS, Internal Security and the KIC. Is that a correct statement?

Mr. Alexander Nyaga Njue: You are correct.

Commissioner Slye: Would you have any direct contact with the KSC or other intelligence bodies?

Mr. Alexander Nyaga Njue: Not as such.

Commissioner Slye: I understand that this is 27 years later and that it is difficult to have personal memory of this, just relying upon the documents, on the meeting of the 26th January, 1984 dated 28th January, 1984 and the Leader of Evidence may have raised this a little bit with you. Minute No.384 which in turn has under it X.min.No.19983, so we are referring to something back in the year previously. There is a sentence that says:-
“The Chairman informed the meeting that the PSC proposals had now been circulated to the recipients of the PSC minutes.”

I may not be able to find what I am looking for right away but at some point, there is reference again to these PSC proposals. I should say the heading under which this comes is, “Recommendations on Long-term Policy as a Solution to the Armed Banditry Activities.” Later, there is a reference then to waiting for the KIC with respect of those proposals. Do you have any memory about what those proposals may have been? What I am referring to is on Min.26/84(a). Again, the heading is, “Recommendation on Long-term Policy as a Solution to the Armed Banditry Activities.” It states that:-

“The Chairman informed the members that the PIC proposals have already been to the KIC for the Government’s consideration and implementation.”

Do you have any memory about what those proposals may have been or what the nature of them might have been?

Mr. Alexander Nyaga Njue: I may not remember. I do not think I can remember but if I saw the paper that had the proposals, I definitely would be able to remember what the proposals were.

Commissioner Slye: What seems to be indicating is a set of proposals concerning banditry in the North Eastern Province. Would it be correct to assume that in terms of operations concerning like that, at least in some circumstance, the PSC would look to the KIC for direction or for approval?

Mr. Alexander Nyaga Njue: I may not quite remember what those proposals were but I can remember also that at one time, it was recommended to the Government, for instance, that if a person or one of the bandits surrendered a firearm, they should be given inducement.

I may not remember them. However, if I saw the paper which contained those proposals, I will definitely be able to remember them.

Commissioner Slye: Were those proposals concerned with the banditry in the North Eastern Province? In some circumstances, will it be correct to assume that in terms of operations concerning the banditry in the North Eastern Province, the PSC would look up to the KIC for direction or approval?

Mr. Alexander Nyaga Njue: I may not quite remember all those proposals. However, I can remember it was recommended to the Government that if one of the bandits surrendered a firearm, he be given an inducement or compensation. It was also recommended that if they surrendered a landmine, they be highly compensated, so that they encourage others to surrender what they had.

Commissioner Slye: So, that might be one of the contents of those proposals. So, you sought the approval of KIC before you did anything?

Mr. Alexander Nyaga Njue: I am just trying to remember some of the proposals that were made.

Commissioner Slye: In terms of a large scale operation like the one which took place in Wagalla, a lot of the documentation suggests that the final authority came from the DSC. If at the PSC there was a decision to do a large scale operation to deal with banditry in the area, would the PSC have asked for approval from the KIC?

Mr. Alexander Nyaga Njue: Well, Commissioners, let me, perhaps, say this off the cuff without reference to any documentation. You have advantage yourselves because you are referring to some documents. Suppose the DSC, Wajir, decided to mount an operation and in the course of it, he tells the PSC that they intended not to give them food and water. Certainly, even if the PC would be away, I would have said, "no" to that operation

because we could not have denied people food or water. The provision of food and water would not have required approval from the headquarters.

Commissioner Slye: Using that hypothetically, would the PSC have the authority to direct the DSC to go ahead with the operation and make sure that he provides food and water to those people? Did the PSC have such an authority?

Mr. Alexander Nyaga Njue: The PSC are established authorities under a charter which stipulates “a”, “b”, “c” or “d” must be done before the operation is undertaken. So, the DSC is an authority by itself and they can decide on an operation without reference to anybody. The PSC and the DSC are composed of experienced officers. Therefore, they should inform them of any contemplated action in a given district, so that they are not caught unaware. Nairobi does not have to hear about an operation, for example, then they call the Deputy PC, Garissa, and he says he does not know about it. I think that is where they went wrong.

Commissioner Slye: That is very helpful to me. Let me see if I understand that correctly: The DSC and the PSC had the authority in terms of mounting operation. However, as a matter of practice and courtesy, there would have been communication between them. In other words, the DSC would be communicating with the PSC, and the PSC would be communicating with the KIC not necessarily because the PSC or KIC approval was required, but because you wanted to share that information. As you said, you did not want people to be caught unawares, that they hear indirectly about a major operation that somebody else has mounted without knowing anything about it. This was a general matter. Is this correct?

Mr. Alexander Nyaga Njue: That is correct.

Commissioner Slye: One of the things that went wrong in terms of Wagalla and actually minutes suggested that, and I think the Leader of Evidence suggested so when she referred to February 23rd, was that the PC was expressing frustration to the lack of consultation by the DSC in Wajir with respect to the operation in Wagalla. One of the things that were not done well was that sort of communication and consultation. Is that your view?

Mr. Alexander Nyaga Njue: That is correct.

Commissioner Slye: The Leader of Evidence was stressing with you on disciplinary issue. I apologize for repeating that. I understand that it is your understanding that a letter was written from the PSC level to the Office of the President on a request for a disciplinary action to be taken against Mr. Tiema. Would there be a hearing? Would Mr. Tiema have an opportunity to respond to that letter which stated that he be disciplined?

Mr. Alexander Nyaga Njue: I do not know the answer to that question. However, I remember an incident when I was a DC, Kajiado, way back in 1996. I recommended the sacking of a chief because of gross misconduct, and my recommendation went through

my PC in Nakuru at the time. We laid off the chief. Later on, I got another letter reinstating the same chief. There is nothing I could have done more than what I did. If I was wrong, I was not told by anybody that I was wrong. However, the chief was reinstated. That was the end of the matter.

So, we recommended action to be taken against Wajir DSC. However, I do not know. So, I cannot speculate.

Commissioner Slye: Going by the example you have just given, it seems that it happened in 1976 and a similar situation existed in 1984. However, there was no process by which either you as the person making the recommendation or Mr. Tiema in this case, he would be the object of such a disciplinary action. Could you really elaborate to us the hearing process or something of that nature which could be followed in disciplining Mr. Tiema given that your knowledge and experience in other parts of the country never existed?

Mr. Alexander Nyaga Njue: At that time, something went wrong with Wagalla operation. After I retired from the Government for many years, I still believe something went wrong.

Commissioner Slye: Some of the witnesses who appeared before us said what happened in Wagalla was wrong. I was not asking about that. My question was about the procedures followed in disciplining Government officials. I understand from the experience you had in Kajiado and the little that you had understood about what happened in the case of the Wagalla Massacre, there was no formal process by which such discipline could have been meted out. Assume today, if a Government official was recommended for disciplinary action, although, I do not know this for fact, that there might be a hearing. The person who is accused of wrongdoing would have an opportunity to state his side of the story, and somebody like you, as the person who recommended he be disciplined, get set of full evidence and arguments that you have for disciplining them. In other words, there will be a process. But back then, at least, as far as you are aware, there was no such process. You made a recommendation. Something did not happen or something happened and your recommendation as happened in 1976 was revoked and the chief was reinstated. You are aware of a process by which such allegation would be tested or dealt with?

Mr. Alexander Nyaga Njue: Yes.

Commissioner Slye: Thank you very much for the answers.

Commissioner Shava: Thank you very much for your testimony, Mr. Njue. However, I have a few questions for you.

Firstly, could you tell us in what capacity you served in North Eastern Province and how long you were there?

Mr. Alexander Nyaga Njue: I was a DO in Wajir in the 1960s. I established Griftu Division. I was the first DO to serve there. I also served in Habaswein. I was DO in Habaswein. I knew the General even then although he did not know me. I also served at the District headquarters as Acting DO I. That was the first tour. Then I went back in 1981. I served there for five years. So, North Eastern Province was actually my home. I know North Eastern Province well. I experienced a lot of things there.

Commissioner Shava: Thank you. Indeed, that is a lot of experience in that area. You spoke about serving in Murang'a. So, you also served in others parts of Kenya?

Mr. Alexander Nyaga Njue: Yes.

Commissioner Shava: Just for my own understanding, did you ever experience, what we have heard of being called operational areas anywhere else in Kenya?

Mr. Alexander Nyaga Njue: Yes, indeed. I served in Eastern Province. As I said, I was a District Commissioner in Isiolo which was an operation area. Similar things which happened in North Eastern Province were also happening in Isiolo.

Commissioner Shava: What do you think then, and what do you think now, about the treatment by the Government of citizens in those areas, as opposed in other areas of Kenya? There were clearly objectives to be met because of the historical political situation? What did you think then, and what do you think now, about whether they would have been another way for the Government to achieve its objectives?

Mr. Alexander Nyaga Njue: I am going to be very brief because, if I talk about what I thought and I what I saw, maybe, it will take a long time.

In the 1960s, when I was serving in North Eastern Province as a DO, it was really hectic. It is really a situation of war. Perhaps, a question was raised here that how on earth could Government not have tarmacked a road from point "a" to "b"? It should be realized that most of the roads in North Eastern Province had been landmined. We lost many vehicles and officers as a result of those landmines. Therefore, there was no tangible development that could have been done at the time because it was more or less, total war. Things improved to the extent that the *shifita* high command even in Mogadishu was eventually abolished. I received members of the *shifita* high commands, 17 of them, when they surrendered in Garissa. They were headed by the Vice-president of the *shifita* high command, one Wako Wario from Isiolo in Garissa. Even His Excellency the President had visited Garissa during that time. So, we worked under very difficult circumstances.

I remember one time when my DC, Wajir, Mr. Mohamed Maalim Masoud Warsame, called me and said, "Mr. Njue, there are two gentlemen here who have surrendered, and they request for a Government to escort them to where the other people were, so that they could also surrender." They feared that if they met the security forces along the way, they could attack them. It was a very scaring thing. I was made to go with these fellows who had surrendered to receive the others. I was imagining that when I give evidence before

this Commission and, perhaps, they see the kind of injustices, circumstances in which we worked, they would ask me whether I received any medal. In fact, I did not receive any. At the end of this hearing, you may recommend me for a medal because it was a brave act.

However, that aside, my feeling is that a lot has been done. There is a lot of improvement. The security situation has improved despite the fact that there are pockets of banditry activities here and there. There is a hell of difference between what it was those years and what it is now. I think there is a tremendous improvement.

I also remember, perhaps, for your information, my PC mounting a series of *barazas* in North Eastern Province. Then, after one week, he comes back to Garissa, having lost his voice, "...and then there are three *barazas*, Mr. Njue, I have not held, but I would like them finished. So, take an aircraft, go and hold those *barazas* in point "a", "b" and "c". We did a lot in North Eastern Province.

I also recall that at one time, the PC commissioned me to write to all the DCs directing them to start a *Harambee* secondary school in their districts. I asked them to be filing periodical reports about the progress they were making towards establishing those schools in their districts. We believed that education would spearhead of any social reforms and development in those districts. If these people did not get education in North Eastern Province, perhaps, what we are seeing now, would not have been realized. So, I think there is a tremendous difference between what it was those years and what it is today. I stand to be corrected, but I believe a lot was achieved and a lot was done. I also believe that a lot of human mistakes were committed.

Commissioner Shava: Thank you very much, Mr. Njue, for that valuable perspective. With the experience that you have in the province, you have given us a good idea of the difficulty that the Government was facing. I appreciate the fact that you have said mistakes were made but this was background in which we are working.

I will have a few more quick questions: As Deputy PC, you said to us that administration and welfare were in your docket. I am thinking of the trip of the KIC where they went from Wajir to Garissa to have dinner on 9th at the home of the PC. What arrangements did you make for that dinner? Did you attend it?

Mr. Alexander Nyaga Njue: When the delegation was seeing whatever they were seeing in the rest of the province, the PC would, from time to time, get in touch with me and tell me that they would end up in Garissa in the evening. He asked me to organize their stay and dinner and so forth. So, I was deeply involved.

Commissioner Shava: You were the person on the ground. Did you attend that dinner then on 9th? Did you receive them?

Mr. Alexander Nyaga Njue: Yes, I did.

Commissioner Shava: Was there an overlap in your duties in anyway and those of the PPO?

Mr. Alexander Nyaga Njue: What do you mean by overlap? Would it mean I was doing something and then the PPO would chip in and assist?

Commissioner Shava: In any of the committee on which you served, for example, were there parallel committees that did similar duties in terms of co-ordination? You said part of your duties involved co-ordination. Was there any place where there was a key person with whom you would interact?

Mr. Alexander Nyaga Njue: The PC's office co-ordinates all Government activities in the province. Nobody else did the co-ordination. He would direct me to do "a", "b" and "c". Of course, we had a lot of staff. Under my supervision, they would do the rest of the work.

Commissioner Shava: So, when the PPO then, at the dinner, would have come to tell people as you have also reiterated here to know what the DSC had decided to do. This was just for your information so that, as you have said, you do not get a phone call from Nairobi telling you what was happening on the ground and yet you people at the provincial level did not have knowledge of it. So, I presume you would have been the first person to know about this information.

Mr. Alexander Nyaga Njue: Unfortunately, I do not remember the PPO, Mr. Aswan, on that particular night talking to me. I was busy making sure that they were properly taken care of. Maybe, he did not find it appropriate to talk to me about it. So, I did not know it on that evening.

Commissioner Shava: What about the next day when there was a through briefing of this delegation? Were you present at that briefing?

Mr. Alexander Nyaga Njue: When the delegation was being briefed?

Commissioner Shava: Yes, we were given to understand that they had a thorough briefing on all issues; issues to do with security and development. All these things were discussed with the team because it had gone there to address itself to security situation and development in that province.

Mr. Alexander Nyaga Njue: There are two aspects; one, the KIC touring the district. When they came to Garissa, they went to the DC's office. That is where they were briefed. I did not have to attend. In any case, I did not have to attend the briefing about North Eastern Province because the PC accompanied them. So, I was not there. I did not have to accompany them.

Commissioner Shava: Then by the 13th, we see that the concern had risen to such a level with regard to the operation in which that a delegation of the PC found it necessary to go

to Wajir. So, between the time of the briefing when it seemed that there was not any level of unnatural alarm, between the 10th and 13th, the situation had escalated to that level. What was happening in between? What actions did you take? What information were you receiving?

Mr. Alexander Nyaga Njue: If there was elaborate information about what was happening in Wajir, surely, there would have been no need for the delegation to be sent from Garissa to Wajir for fact finding.

Commissioner Shava: Because of this death of information, no information was forthcoming or the information was not quality that was required. I presume that people did not just sit there until 13th and then decide to jump into aircraft. I presume that efforts were being made or phone calls were being made, or information was being exchanged, meetings were being held and so forth. What was happening in that interim period?

Mr. Alexander Nyaga Njue: As you put it, I think there were people meeting and trying to get concrete information. Finally, it was decided to send a team on the ground for fact finding and then brief the rest of the team. That prompted the meeting the following day.

Commissioner Shava: Did you have a sense in that interim that things were not as they should be?

Mr. Alexander Nyaga Njue: Yes, indeed.

Commissioner Shava: My final question is on the interaction between PSC and DSC anywhere in the country. I believe the structures are set out by the Government. You said earlier that the PC, whether he is sitting in the PSC or DSC, remains the PC, which I agree with you.

So, in terms of the way the set up is, it is quite hierarchical. The PC remains the PC and the DC remains the DC. The PC is senior to the DC. You have told us that the PSC is an advisory. How would you classify the relationship between the PSC and the DSC?

Mr. Alexander Nyaga Njue: The DSC would gather information simultaneously with the special branch at the provincial headquarters. They would sit as DSC and record whatever information regarding what they have, and then send their minutes to us. If we have more information than them, it would be included in our minutes or decision. If there is anything that they may have omitted, they may not have foreseen and we knew, then we would alert them. We would tell them that besides what they have told us, we have information “a”, “b”, “c” and “d”. We could ask them to check and confirm. That was the link between the PSC and the DSC.

Commissioner Shava: So in a way, you would supplement some of their efforts. As you said, there was a direct link between you and with the national headquarters in the Ministry of State for Provincial Administration and Internal Security. Your link was with the PC and you said you were constantly in touch. The information would also flow the

other way in terms of policy decisions that have been made from Nairobi. This information was channelled through the DSCs?

Mr. Alexander Nyaga Njue: Correct.

Commissioner Shava: The hypothetical example you were giving us earlier showed that you went not aware that there was an intention to deprive these persons of food and water. You said that could not have happened.

Mr. Alexander Nyaga Njue: Correct.

Commissioner Shava: So, the relationship between the PSC and the DSC then we can say was one where the PSC has some sort of advisory function in terms of what the policies were supposed to be. They knew what was happening in the entire province and that they could give guidance despite the fact that the DSC was autonomous according to its charter. In other words, the PSC could still, therefore, influence the DSC.

Mr. Alexander Nyaga Njue: Yes, the DSC could tell the PSC that they decided to mount an operation and that they dumped people at Wagalla for interrogation purposes and that they decided not to give them food and water. At the PSC level, we would say no to that operation because it was not right to deprive those people their rights. In fact, you may not achieve much if you did exactly that.

Commissioner Shava: So, that implies also that the DSC, in a way, would consult the PSC. They would let the PSC know what their intentions were at the DSC level.

Mr. Alexander Nyaga Njue: Correct.

Commissioner Shava: Okay, thank you very much, Mr. Njue, you have been very helpful.

Commissioner Chawatama: I would like to thank you, Sir, for the clarity in your testimony. I am a judge and one of the things I enjoy most is listening to a witness who gives evidence with a lot of clarity. In such situation, I am not left with a lot of questions. Your testimony has cleared a lot of issues and questions which I had. However, I have one or two questions to ask. My first question is: What are some of the things that you did to ensure that law and order was maintained in the province, whether by yourselves as PSC or whether by advising the DSCs? Could you remember what you did in that direction?

Mr. Alexander Nyaga Njue: Commissioner, most of the time, we held *barazas* to educate members of the public on issues pertaining to security. We educated them on the importance of security. We told them security is the key in their lives and that nothing could be achieved without it. We could not achieve viable development without security. We encouraged them to abandon banditry as a way of life so that we could achieve viable development in the province.

Commissioner Chawatama: Did you find that the holding of *barazas* was very successful?

Mr. Alexander Nyaga Njue: It was very successful because we recovered thousands of firearms from the locals. I have just given an example where I collected a lot of firearms in the 1960s. I can also remember a special branch officer who persuaded two brothers who were in the bush to surrender. Although his seniors could not allow him to go to the bush and talk with those two brothers, I facilitated him to go. I got convinced that if he went, he might be able to yield some good results. So, I called the members of the PSC and said: "This gentleman has a point; I think, why do we not risk and allow him to go?" We allowed him to take a Land Rover. He stayed away for four or five days, and then he came back with five armed men. So, we achieved something. I asked him how he was able to convince them to surrender. He told me that he talked with them for several hours because they were very adamant to surrender. I cried a lot because my two brothers were among those people who surrendered. So, we used all sort of efforts to achieve peace.

Commissioner Chawatama: I am glad to hear of peaceful means of achieving something as great as that. From the documents that we have before us and even from the witnesses, there were several incidences that occurred, clashes, from November 1983 up to 6th February, before this Wagalla incident happened. I am glad that you have mentioned that there was a PSC and that you had the benefit of gathering intelligence from somebody from special branch. Were these incidences that happened discussed in your meetings?

Mr. Alexander Nyaga Njue: Commissioners, this is not a digression, if I appear to be digressing from what you are asking, note that I am not hearing what you are asking me. Let me say this, from my experience, the problems in Wajir in particular, and particularly between the Ajuran and the Degodia, was partly political. It was political in the sense that during the years, I was a DO in Griftu, that is, the western part of Wajir, it was predominantly inhabited by the Ajuran. I am sure Commissioner can bear me out, when I say this. In cause of time before the 1969 General Election in this country, Western Wajir was inhabited by Degodia tribesmen. So, politically, they wanted to sponsor a candidate in Wajir East. As I said, Wajir West was inhabited by the Ajuran, and Wajir South was inhabited by the Ogaden. There was some conflict between the Ogaden clansmen and others because they were able to hold their area of habitation. They had the grip of their area they habited. Consequently, the Member for Parliament at that time was an Ajuran, but he held a seat which belonged to Degodia. Degodia wanted to have two seats; that was Wajir East and Wajir West. The Ogaden area was not problematic. So, constant attacks or conflicts were between the two clans. It was very active. If the Commission would want to countercheck, you can check with the tribesmen of both tribes. I am sure I am not wrong on this.

Commissioner Chawatama: Yes, that information is before us. However, I may not have a lot of knowledge on how intelligence operates, but I would have thought that these events if they were brought to the attention of the PSC by the DSC, that you would have

been high alert, and maybe, correct me if I am wrong, you would have been able to intervene before the DSC took the decision that it took.

Mr. Alexander Nyaga Njue: You are partly right, but the way I look at it is this: I have made that recollection here, but I knew it when I was in Garissa. I would not have remembered. The KIC tours Wajir on the 8th; the DC briefs them and says that the security situation in this district is now calm. That notwithstanding, on the following day, there is an attack which was not of his own making. There is an attack and then they meet and decide on an operation, which was also perfectly right in as far as I am concerned. The operation went well. Had it not had those discrepancies which I have already described, I think things would have gone on all right. So, this was an incident and it was as a result of that incident that the DSC, in my view, decided to have that meeting of 9th.

Commissioner Chawatama: I need to beg your forgiveness; I think it is the fatigue. I am referring to the PSC as the PSU and the DSC as the DSU. I ask for your forgiveness.

Who do you think should bear the greatest responsibility or at least the share of responsibility of what happened in Wagalla?

Mr. Alexander Nyaga Njue: Mr. Presiding Chair, Sir, we have put the card in your table. Based on whatever evidence you now have, you have heard other people elsewhere and those who have testified before you, I think you will be in a better position when you analyze the evidence before you to see, for example, if Njue bears the greatest responsibility.

Commissioner Chawatama: Once again, Sir, I thank you very much for your testimony. That is all I have for you.

Commissioner Farah: Thank you very much, Mr. Njue, for your candid way in which you have testified. I join my fellow Commissioners in thanking you also, knowing that I come from Habaswein, which is my home. But you will agree with me that the *shifita* menace began in 1963/1964 and ended in 1967 when the Prime Minister for Somalia and our beloved President, *Mzee* Jomo Kenyatta, went to Arusha under the chairmanship of His Excellency, Kenneth Kaunda, the former President of my learned friend here, Judge Chawatama, in which all the *shiftas* started surrendering. I am glad you mentioned in your testimony that you actually went to collect some of them. So, you agree with me on that?

Mr. Alexander Nyaga Njue: Yes, it is true.

Commissioner Farah: So, you will also agree with me that from 1966 to 1976/1977 when the Ethiopian/Somali governments fought over the Ogaden Province, North Eastern Province (NEP) was a relatively peaceful province. Is that correct?

Mr. Alexander Nyaga Njue: I agree with you.

Commissioner Farah: Thank you very much for that. Therefore, the remnants or the fallout of the Ogaden war were the people who infiltrated NEP but it was not really north easterners who went up in arms against the Kenyan Government as *shiftas* between 1978/1979 and 1990 when the Siad Barre Regime started falling apart. Would you agree with me on that also?

Mr. Alexander Nyaga Njue: I would partly agree with you that it was only the *shifita* high command that had not been abolished. It was abolished when they came back and I said I received them and His Excellency the President came all the way. It is like when we talk about the complete abolition of slave trade.

Commissioner Farah: I think there was no high command that remained there because you have just told us that the Vice-President, whom we had the chance as a Commission to pass in Garbatulla and met him in person and we shook hands with him, told us how he surrendered and how--- So, actually, if the President alone was left there, he had a family but he had no charter, support, funds and people. So, the *shifita* thing was as dead as a dodo?

Mr. Alexander Nyaga Njue: Yes.

Commissioner Farah: Good. Thank you very much. So, he himself could not have done anything. So, the people who were in the province loitering were really bandits who were fallouts from the Ethiopian/Somali war, mainly looking after elephant tusks, rhinoceros horns, cheetah and leopard skins and things like that, which the games department was pursuing?

Mr. Alexander Nyaga Njue: As you will realise and as I have repeatedly said, I have not called them *shiftas* at any single moment. I have said “bandits” and “banditry activities.”

Commissioner Farah: Yeah. But in the minutes which we later on referred to, they are referred to as “*shiftas*” all the time. Perhaps bandits and *shiftas* were synonymous?

Mr. Alexander Nyaga Njue: Yeah.

Commissioner Farah: Thank you very much for agreeing with me on that.

Let me come to the crux of the matter now. I think your lawyers have got copies and I am referring to the minutes. Can we, please, go to the minutes of the PSC on 16th February? You remember very well, of course, as testified before by a number of other people, that the actual holding of men at the Wagalla Airstrip was called off on 13th February. Twelfth February was the day when the DC went there and people rioted. Before that, of course, a number of people died of thirst, heat and lying on the ground without food. Although a number of people died, the official figure was 16 or something like that. But on 12th February, when Mr. Tiema went there and they were happy to see their DC, some of them started coming forward and others, as it was alleged, started running away towards the fence and as they left, the OCPD or rather, the security men opened fire and

as a result, another 29--- All together 29 people died; 16 people died plus 13 people. Is that correct?

Mr. Alexander Nyaga Njue: That is correct.

Commissioner Farah: So, up to 12th, the men were being held and bodies were being disposed of in the bush. However, on 13th was the day when the PC – as Mr. Ndirangu, of course, testified – flew to Wajir. Somebody flew to Wajir on 13th.

Mr. Alexander Nyaga Njue: That is correct.

Commissioner Farah: And when they arrived at the airstrip, they were briefed by the DSC there and we learnt, of course, later on that they did not visit the Wagalla Airstrip. I think, may be, they did not want to see the horror or I am just speculating. Or, may be, they were afraid, security wise to go there but for whatever reasons, they did not go to the airstrip and they returned from there. Is that correct?

Mr. Alexander Nyaga Njue: That is correct.

Commissioner Farah: Thank you very much. So, on 13th February, they came back and then on 14th February, two meetings were held. I do not know which meeting was held first. The first meeting was held on 14th February, at 8.45 a.m. Please, refer to that.

Mr. Alexander Nyaga Njue: Yes.

Commissioner Farah: And you are the signatory, as my learned friend has said?

Mr. Alexander Nyaga Njue: I was.

Commissioner Farah: Having visited Wajir and having not visited the site and having been briefed by the DC, of course, the PSC would hold the view that he withheld information and mishandled the operation. Why did you write the following minutes and what was the interest? Presumably because you people, first of all, have a PIC meeting – Provincial Intelligence Committee – of which you said there are no minutes. There is anintelligence brief. Is that correct?

Mr. Alexander Nyaga Njue: That is correct.

Commissioner Farah: So, I am of the view that you have some intelligence information in order to arrive at the following minutes, which is starting from the Chairman's address. I do not have to read it to you, but it was to welcome the members and he said the purpose of the urgent meeting was to discuss the worsening security situation in Wajir District, where the Degodia tribesmen have become more or less hostile to the authority. Is that correct?

Mr. Alexander Njue: That is correct.

Commissioner Farah: That was on 14th February, because on 8th February, the situation was calm. That is on page 3.

On immediate remedial actions, the PIC can foresee the danger of a major conflict between the Degodia and the Ajuran tribesmen on one hand and bitter feelings against the civil servants on the other. The first one says: “Address civil servants and warn them against escorts, safaris by armed personnel and unnecessary movement for fear of attack by the Degodia bandits in retaliation.” Forget about that, but what is this: “Consider transferring all the Degodia and the Ajuran Kenyan policemen and Administration Policemen should the situation---” Why would you do that? I mean, here are loyal people like me; I am serving my country and I have worked in the Armed Forces for 35 years and I have never been disloyal even in the face of my people being killed. By the way, just to let you know, I used to school in Shimo la Tewa High School throughout the *shifita* time and I never used to go home. So, presumably, you had intelligence information but I see a meeting which has got no minutes. You have been candid and honest to us throughout with an exception to this time. Be forthcoming and tell me why was it necessary to transfer both the Degodian and the Ajuran policemen and yet they were loyal to the Republic?

Mr. Alexander Nyaga Njue: The situation is that people have been rounded up at the Wagalla Airstrip and some have died in the hands of the authorities. It is just human to feel, having seen a mistake was made. There was a likelihood of bad blood between those who lost their lives and the ones in whose hands they died and, therefore, they were likely to sympathize with their kinsmen. This is what the PIC was looking at in the meeting at that time.

Commissioner Farah: So, that was the minutes of the PIC alone? On the same day at 11.45 O’clock, you met with the DSC?

Mr. Alexander Nyaga Njue: Yes.

Commissioner Farah: By the way, your minutes of the PIC came to the PS, Internal Security here in Nairobi?

Mr. Alexander Nyaga Njue: Yes, they did.

Commissioner Farah: Presumably, that clause was meant for the higher authority. But, now that you were having a meeting with the DSC, it was more elaborate---

Mr. Alexander Nyaga Njue: Of Garissa.

Commissioner Farah: Not Garissa. It says:-

“The Chairman pointed out to the DSC that we must ensure that all vital places are guarded at all times; vital installations. As directed earlier, all security personnel,

namely the Kenya Police and the Kenya Administration Police must be put in a pool for deployment for guard duties. The Chairman emphasized that in deploying the security personnel, care must be taken to ensure that the local policemen – with local I mean Somalis – and Administration Policemen are to be mixed up with upcountry policemen. However, they should not be left alone; they must be under the watch of upcountry policemen and, more importantly, ensure that the upcountry security men are not outnumbered by the local security personnel.”

That would mean that the minutes of DSC/PIC joint meeting are meant for the DSC for action. So, this was actually for Garissa DSC and not for Wajir?

Mr. Alexander Nyaga Njue: No, it was not.

Commissioner Farah: This is where the problem was.

Mr. Alexander Nyaga Njue: This is a joint meeting of Garissa DSC and PSC---

Commissioner Farah: Not Wajir DSC?

Mr. Alexander Nyaga Njue: Not Wajir.

Commissioner Farah: So it was meant for?

Mr. Alexander Nyaga Njue: That is not for Wajir.

Commissioner Farah: It goes on to say:-

“PSC cautioned the DSC further that they must be on the alert regarding anybody suspected to be disloyal in any instigation of tribal conflict and stressed that such elements must be dealt with immediately and firmly.”

So, you are right. You said that this is in the context that you fear the repercussions of the Somali policemen and Administration Policemen.

Now, let me go to the second line. It reads:-

“The CO, 7th KA briefed the joint PIC/DSC about his meeting with all security personnel---

“Security personnel” to us mean Police and Administration Police. Did he mean the Armed Forces or the Army to be included, where he addressed them and told them the necessity for 100 per cent loyalty? Was it only for the Administration Police and the Regular Police or was it for even the Army?

Mr. Alexander Nyaga Njue: I am assuming. It is just an assumption---

Commissioner Farah: Like you did just now?

Mr. Alexander Nyaga Njue: Yeah. When he says, “I have briefed all the security men”, the assumption is that it is including the Armed Forces or the Army, to be precise.

Commissioner Farah: Okay. Thank you very much, Sir. The two meetings which were held on 14th were immediately after the Wagalla Massacre. Let me take you to the last question or rather high up in the hierarchy, which is the minutes of 24th February, but of the meeting which was held on 23rd February, 1984. Did you get it?

Mr. Alexander Nyaga Njue: The minutes of 24th?

Commissioner Farah: Yeah, they are dated 24th February, but they were held on 23rd February, 1984?

Mr. Alexander Nyaga Njue: That is correct.

Commissioner Farah: If you go to Minute No.23/84---

Mr. Alexander Nyaga Njue: The minutes start with Minute No.25/84.

Commissioner Farah: Minute No.25/84?

Mr. Alexander Nyaga Njue: Yeah.

Commissioner Farah: Let us go to Minute No.26/84, which is matters arising from previous minutes.

Mr. Alexander Nyaga Njue: That is correct.

Commissioner Farah: And we come to Murule/Garre Tribal Feud, which is in paragraph one and two. When you turn to the other side---

Mr. Alexander Nyaga Njue: B1.

Commissioner Farah: It has got to be B2. That is on page 2.

Mr. Alexander Nyaga Njue: Yeah.

Commissioner Farah: “Tribal tension between the Degodia and the Ajuran in Wajir.”

The PSC noted with appreciation that the Ajuran group had co-operated with the security forces and this has made it possible for the recovery of 31 firearms and a number of assorted ammunition. It is very encouraging. On the contrary, the Degodian had proved very adamant in surrendering firearms. The PSC pointed out that, “apart from refusing to surrender the firearms, they are concealing and harboring destructive elements that are

constantly harassing the Ajuran. They have not shown willingness to co-operate with the security personnel. Consequently, the PSC recommended that to realize effectiveness, stiffer measures should be deployed against the Degodia.”

I am just wondering. That was on 23rd of February and it is almost ten days after the Wagalla Massacre and after the operation was halted. Why was that feeling there yet hundreds of people had died? Was there no sympathy? Was it right for the PSC in continuing with an operation that had backfired and had ended up in hundreds of people dead? One would have wondered whether they had no slight sympathy and let matters cool down first and then, later on, continue with other methods of trying to recover the guns. I am talking of the high handedness by the PSC just ten days after the operation. You were there and you took the minutes.

Mr. Alexander Nyaga Njue: Yeah, I was. I took the minutes. My information is this. Based on---

Commissioner Farah: 23rd?

Mr. Alexander Nyaga Njue: Yeah. It is now that I am making the recollections after reading. That is based on the report that was written by the DC. My assumption is coming from there.

Commissioner Farah: Yes.

Mr. Alexander Nyaga Njue: Immediately even after the Wagalla incident, other incidents occurred almost immediately after that act.

Commissioner Farah: Yeah, but just to refresh your memory, the report of the DC was dated 27th February, and I am talking about 23rd February.

Mr. Alexander Nyaga Njue: What I am saying is that, based on that report, although I am not having it here---

Commissioner Farah: I have the report here.

Mr. Alexander Nyaga Njue: I think the report says---

Commissioner Farah: Your counsel was having it.

Mr. Alexander Nyaga Njue: The report says, although I do not know on what page and I have skipped through it while here and I must have read it even before, that other incidents followed even after the Wagalla incident. Those were attacks on the Ajuran. I assume---

Commissioner Farah: There were some other attacks?

Mr. Alexander Nyaga Njue: Yeah. It is because of those attacks that the PSC sat and said that we cannot just fold our hands. We should maintain surveillance. I stand to be corrected.

Commissioner Farah: Posting surveillance and high handedness of stiffer measures are two different things. On the same page, which is page 2 in the last paragraph, there were the contents of a letter---

Mr. Alexander Nyaga Njue: In these minutes?

Commissioner Farah: In the same minutes of 24th February or dated 24th February?

Mr. Alexander Nyaga Njue: Yes, on the same page.

Commissioner Farah: On the same page where there was this stiffer measure towards the end and just above the word “secret”. The contents of a letter reference OP334A/111/113 of 14th February, 1984--- So, we are referring to a letter coming from the Office of the President to the PC dated 14th February and the Permanent Secretary, Administration. Please, we do not have the contents of that. Could you just remember what that letter was about? I mean, you are the one who took the minutes and you also had a PIC meeting prior to the PSC one.

Mr. Alexander Nyaga Njue: Yeah, that is true. I am not lying, but I am the one who---

Commissioner Slye: Commissioner, excuse the interruption but I just want a clarification. On the meeting of 23rd February, he was not present or taking minutes. He might still have independent knowledge of that, but I just wanted to be---

Commissioner Farah: Yeah, we are aware that he was not taking the minutes, but he also had not left the province. He was present in Garissa and, earlier on in his answer to a question by a Commissioner, he said that he had not left for UK. He said that he was still in Garissa but he just could not remember why Kamau, who was an assistant to somebody, took the minutes. I was just trying to understand that.

Finally, the same minutes again on page 3 reads:

“The Provincial Security Committee (PSC) on 23rd could not comprehend why the District Security Committee (DSC) decided to keep the authority uninformed.”

Even though the DSC kept you uninformed at that time of the ongoing operations, later on the PSC, even though it demanded a detailed incident report, later on authorized additional forces to go and support the ongoing operations. Why was there an ongoing operation after the Wagalla Massacre? Was there no stop to all operations immediately this big mishap happened so that investigations could be instituted?

Mr. Alexander Nyaga Njue: First of all, are these the minutes of 23rd February but dated 24th February?

Commissioner Farah: Yes, we will disregard that because I have just been told by my fellow Commissioner that you were not the one who took the minutes. So, we will just forget about that.

Mr. Alexander Nyaga Njue: Neither was I present in the meeting.

Commissioner Farah: Yes, but in your opinion, why would an operation continue and reinforcements of so many platoons of 100 men and what have you, be sent after the Wagalla Massacre? In your opinion, should there not have been a pause to try and investigate the deaths of these civilians and, may be, start operations later on?

Mr. Alexander Nyaga Njue: You know, the minutes of any given meeting, in particular the PSC, the decision would be arrived at after discussion and it was a collective decision.

Commissioner Farah: After an action has been taken?

Mr. Alexander Nyaga Njue: Yes.

Commissioner Farah: After an action has been taken, it would be put in the minutes just for formalization?

Mr. Alexander Nyaga Njue: No, I am saying that these are minutes of a meeting and a decision has already been taken. The decision is taken after a discussion, after an issue is explained and the PSC would arrive at a decision to do “a, b, c or d.”

Commissioner Farah: Thank you very much. I would like to conclude my questioning by saying that there was nothing wrong with the Degodia herdsmen going to the Ajuran area in times of drought to look for greener pastures. As a matter of fact, as we are talking right now, there is drought in North Eastern Province (NEP) and my constituency, Wajir South, has experienced a bit of rain. However, Wajir West and Wajir North have not experienced rain at all and I have many Degodian and Ajuran who are grazing in Wajir South and there is no conflict.

Thank you very much.

Mr. Alexander Nyaga Njue: Thank you.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Njue. We have very few minutes left before they kick us out of this hall. So, I am going to ask you very few questions in a few minutes. I hope you will answer me in a few minutes before the time is over. Mr. Tiema was working in Garissa before he went to Wajir. So, he was known to everyone in Garissa, the PC and yourself?

Mr. Alexander Nyaga Njue: Yes.

The Presiding Chair (Commissioner Dinka): What was the selection criteria? How was he selected to go and replace, temporarily, the substantive DC?

Mr. Alexander Nyaga Njue: The substantive DC was away on leave and the person who was acting in his place, the senior most DO was his DO1. He is the one who was left acting when the substantive DC went on leave. The substantive DO1 who was then 2i/c to the DC was transferred out of Wajir and out of the province. We were left now to look for the next senior most person, because the DC was not transferred but was on leave. So, the next senior most person we could lay hands on was Mr. Tiema, who was in our office. In fact, he worked immediately under my supervision; he was a DO1. So, this is the criteria used to select him to go and stand in when the substantive DC was away on leave. He was senior to all the other DOs who were in Wajir.

The Presiding Chair (Commissioner Dinka): So, he was selected by the PC?

Mr. Alexander Nyaga Njue: Of course.

The Presiding Chair (Commissioner Dinka): Did you need to seek approval from Nairobi on his appointment?

Mr. Alexander Nyaga Njue: No, because he was not substantively---

The Presiding Chair (Commissioner Dinka): Okay. So, it was done at the PC's level?

Mr. Alexander Nyaga Njue: Yes.

The Presiding Chair (Commissioner Dinka): Okay.

Mr. Alexander Nyaga Njue: But I would urge that when somebody is acting, we would inform Nairobi that so-and-so is now acting in place of the substantive DC.

The Presiding Chair (Commissioner Dinka): But the appointment is done prior to that information?

Mr. Alexander Nyaga Njue: Yes.

The Presiding Chair (Commissioner Dinka): Okay. The second question is about presentation. We were told by Mr. Ndirangu the other day that the Provincial Police Officer (PPO) told him when he came back with the KIC team that Mr. Tiema had called him and because he could not find the PSC, who were travelling with the KIC people, he could not--- So, he talked to him and informed him that he was going to mount this operation on 9th February. So, Mr. Tiema had actually informed the PPO, who was the

only senior person left in Garissa at that time. Did he report this back, let us say, on 11th, the next morning to the PSC?

Mr. Alexander Nyaga Njue: Allow me to make this observation on that one. I cannot understand. It is inconceivable that Mr. Tiema informed the PPO that we were going to mount an operation purportedly because he was the senior most officer left in Garissa when he actually directly worked under me in the absence of the PC and I was in Garissa myself. I cannot understand!

The Presiding Chair (Commissioner Dinka): But did the police chief brief the PSC the next day after the return of the PSC?

Mr. Alexander Nyaga Njue: Not in my presence.

The Presiding Chair (Commissioner Dinka): Because you should have been in the meeting, but he did not brief them?

Mr. Alexander Nyaga Njue: Not that I remember of.

The Presiding Chair (Commissioner Dinka): Okay. In the HANSARD of the National Assembly, there was a Statement by the then Minister of State for Provincial Administration and Internal Security, Hon. *ole* Tipis, in which he says:

“After the incident of 9th February, 1984 – that is the killing of the Ajuran – the Wajir DSC with concurrence of the PSC decided to mount an operation with the aim of:-

- (a) Disarming the Degodia; and,
- (b) Giving the names of the bandits responsible for killing of 9th February, 1984.”

How do you assess that Statement from your own background knowledge?

Mr. Alexander Njue: First of all, that is a newspaper report.

The Presiding Chair (Commissioner Dinka): It is the HANSARD of Parliament.

Mr. Alexander Nyaga Njue: That is the HANSARD of Parliament?

The Presiding Chair (Commissioner Dinka): Yes.

Mr. Alexander Nyaga Njue: I am not aware of it. Secondly, I was not in Garisaa when the Minister of State came to give a Statement, which is now subject of reference in the HANSARD. So, I may have no comment about it.

The Presiding Chair (Commissioner Dinka): But given your own knowledge of the situation on the ground, how do you assess the validity of the Statement by the Minister?

Mr. Alexander Nyaga Njue: From actual knowledge of what happened and the reports available to me, the Wagalla operation was not carried out in concurrence with the PSC because what would be the reason for the PSC asking: “Why did you not inform us about this operation?” At every stage, my trainer at the Kenya Institute of Administration (KIA) used to tell us: “Gentlemen, always remember Constant Consultation which will Consolidate (CCC).” If we had constantly consulted, I am sure things would not have gone haywire.

The Presiding Chair (Commissioner Dinka): Well, that is the end of my questions. I thank you very much, Mr. Njue, for your testimony and for your patience. You have been with us for the last few days. You have also tried to be as clear as you can today in as far as you could recollect and we thank you very much for this.

Leader of Evidence, you may lead the witness to his seat.

First of all, I would like to thank the audience for the patience and the perseverance they have shown by sitting through all this and listening the whole day. I have seen some of them sitting in the same place from morning until now and we thank you very much for that.

We also thank the media for your co-operation with us and for complying with the instructions that the Chair had announced in the morning.

Finally, I think the Leader of Evidence has some announcement to make. You have the Floor.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Presiding Chair, Sir. We had hoped to hear two witnesses this afternoon because we have only heard one. So, we have not heard Mr. King’ori. We are also scheduled to hear four additional witnesses; that is, Mr. Benson Kaaria, Mr. Mathenge, Mr. Mativo, PC *ole* Serian and Amb. Mutemi. I am also aware that the Commission had prior engagements for Friday. We did not know that these hearings would go on until today. Based on our progress, I would be making a proposal that the most we can do henceforth is give the order in which we will hear the witnesses. It looks like it is an exercise in futility to attempt to give definite times. I was, therefore, humbly requesting that the order which we would hear the remaining witness be Mr. Mativo tomorrow at 9.00 a.m., followed by Mr. King’ori and then Mr. Benson Kaaria followed by Mr. Mathenge and then Amb. Mutemi, and finally, PC *ole* Serian. Then there are the prior commitments that the Commissioners had for Friday. So, I am, therefore, seeking for directions and confirmation from counsel for the witnesses we are listening to on whether we can have hearings beginning on Monday next week. We will have some tomorrow and then proceed to have hearings on Monday next week. It is clear to me that we cannot possibly finalize tomorrow and, therefore, confirm from them whether their witnesses will be available and, specifically, Mr. Kaaria, Mr. Mathenge, Amb. Mutemi and PC *ole* Serian beginning Monday.

The Presiding Chair (Commissioner Dinka): Okay. Counsel, you have the floor on the issue.

Mr. Elijah Mwangi: I have not had any time to consult PC *ole* Serian, but I believe that because he is in service, he is more easily available than the others. However, the others are available.

The Presiding Chair (Commissioner Dinka): Thank you very much, Leader of Evidence and counsel. Then tomorrow we will begin at 9.00 O'clock with Mr. Mativo, Mr. King'ori, Mr. Benson Kaaria, Mr. Mathenge, Amb. Mutemi and PC *ole* Serian. From our experience, we may not do much. So, we will hear the remaining ones on Monday.

I apologise. In my thanking of the witnesses I forgot to mention Mr. Joseph Kaguthi, who was also here with us. He had the patience for four days without a hitch. He came and gave us a very good testimony today and we also thank him.

Thank you very much, ladies and gentlemen. We will meet at 9.00 O'clock tomorrow. Now I ask the Master of Ceremony to close this meeting with the Commission prayer.

(Closing Prayer)

(The Commission adjourned at 6.30 p.m.)