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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON THURSDAY, 9TH JUNE,
2011 AT THE NHIF AUDITORIUM, NAIROBI**

PRESENT

Ahmed Farah	-	The Presiding Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Ronald Slye	-	Commissioner, USA
Gertrude Chawatana	-	Commissioner, Zambia
Margaret Wambui Shava	-	Commissioner, Kenya
Tom Ojienda	-	Commissioner, Kenya
Patricia Nyaundi	-	Commission Secretary, Kenya
Simon Njenga	-	Hearing Clerk
Elijah Mwangi	-	Counsel

(The Commission commenced at 9.50 a.m.)

(Opening Prayers)

The Presiding Chair (Commissioner Farah): Good morning. I welcome you all to our fourth day of Nairobi hearings this week. They are a follow up to the northern region hearings. I am the Presiding Chair today.

Our process is well known to you all. The witnesses will give testimony after taking oath. The Leader of Evidence will lead the questions to the testimony. On completion, the panel of Commissioners will pose further questions to clarify matters to the witness.

If there are any counsel present, as our normal routine requires, they can identify themselves and say whom they represent.

Mr. Elijah Mwangi: Mr. Presiding Chair and fellow Commissioners, Mr. Kioko Kilukumi and I, Elijah Mwangi, continue to appear for the various witnesses who have been appearing before this Commission. Some have actually appeared and testified before this Commission. They are Messrs. Njue, Mutemi, Kaguthi, Mativo, Mwangovya, Mwiraria, Kaaria, Kiplagat, Gituma, ole Serian, Kibwana, Chebet, Muringi, Mathenge, Matui, Ndirangu and King'ori.

The Presiding Chair (Commissioner Farah): Are there any preliminaries before we proceed?

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, I have one issue and I have discussed it briefly with the counsel appearing for the witnesses. This morning, Citizen TV aired an interview of Amb. Kiplagat. During that interview, Amb. Kiplagat discussed matters that are before this Commission. My hearing of that interview appeared

to suggest that what he was doing was explaining his testimony. He proceeded to provide further information that I do not recollect him presenting to the Commission.

The concern I had is that yesterday, we spent time discussing how to preserve the integrity of these proceedings. My appreciation of that discussion is that the integrity of the Commission shall be protected by the Commission, Commissioners and its staff in the manner that we conduct ourselves not only in this hall, but wherever we are handling the work of the Commission. I think we concurred with the counsel who appears for Amb. Kiplagat.

My concern is that when Amb. Kiplagat testified before us, he said that he had given us all the information within his knowledge and within days, he appeared before the media giving further information and naming persons who may not have the opportunity to respond to some of the issues that have been raised.

My second concern is that Amb. Kiplagat, in that interview, made reference to his position within this Commission. I am of the view that probably, his counsel would help him understand how that is really not in the interest of protecting the integrity of this process. My hearing of that interview appears to suggest that Amb. Kiplagat assumes the position of Chair of the Commission. My understanding of the law is that Section 19 of the Act has been operationalised with his stepping aside and that is why Commissioner Tecla Namachanja, formerly the Vice-Chairperson, is now the Acting Chair of this Commission. I feel that matter ought to be clarified to Amb. Kiplagat. I am aware that given that he is earning his salary and enjoys the full benefits of the position, that may confuse issues. However, the fact is that Section 19 of the Act has been operationalized.

In addition, and I think his lawyers would give him this counsel, the matter of his position in the Commission is really before a properly constituted tribunal. The law is clear on what he can and cannot say. It is in his interest really, to allow that tribunal to do its work. As far as the Commission is concerned, it is crucial that there is no communication that suggests that the Commission has made a determination on any of the issues that have come before it and, therefore, a witness who has had this platform cannot then go out there and mention people for whatever reason.

In addition to talking about the incidents at Wajir, Amb. Kiplagat also talked about issues to do with the death of Ouko and issues to do with land. It is my understanding of the mandate of the Commission that these are issues that will also come before it. If we are to go by the tone of the discussions that we had today, I believe that even witnesses who believe that they will appear before the Commission, the proper process is to indicate to the Commission that they have evidence or they would like to be heard on those issues and then the Commission will guarantee them the platform.

That is the issue that I had and I am praying that it be reflected so in the records of the Commission.

Thank you.

The Presiding Chair (Commissioner Farah): Thank you.

Commissioner Chawatama: Mr. Presiding Chair, before the counsel responds, as Commissioners, we ought to say something so that the counsel may respond.

The Presiding Chair (Commissioner Farah): Counsel, you better hold for a while.

Commissioner Chawatama: The integrity of this process is very important not only to us as Commissioners, but also to the counsel and his clients.

Leader of Evidence, one of the concerns I have is: When Amb. Kiplagat spoke, did you get the impression that he was speaking on behalf of this Commission? We ought to address the issue of once a witness leaves the hearings and then they feel that they have new evidence, should they present that evidence first to the Commission or should they present it on television, radio, or other means of communication?

Commissioner Slye: Counsel yesterday raised the issue of whether the Commission is prejudging issues. The Commission is tasked with discovering the truth about historical injustices in Kenya, including what happened in Wagalla in 1984. Eventually, we will make findings with respect to what happened in those days and who we think is responsible for what happened.

Amb. Kiplagat, in speaking in his own words and apparently appearing to be speaking on behalf of the Commission, gives the impression that the Commission has already decided some of these issues in determining who was responsible for what happened in Wagalla. He has every right to speak wherever he would like to speak. That is up to him. He has that constitutional right, but when he does that, he is not doing so on behalf of the Commission. This Commission has not yet made any findings, either preliminary or final. We have hearings today and next week with respect to witnesses who have information about what happened. As a Commission, we continue to keep an open mind in terms of this issue. We will do that until we make our preliminary findings as we discussed yesterday.

Commissioner Ojienda: I want to join my colleagues in restating the fact that in the conduct of the business of this Commission, we are guided by the TJRC Act and by the rules that are enacted to guide this process. Yesterday, you cited rules 9 and 20 which are key in ensuring that we maintain the integrity of this process.

Mr. Elijah Mwangi, have you guided your witnesses and informed them about the process? Do they understand that as a Commission, we proceed from a fairly inquisitorial basis and that is to say that we do research to find out a number of things? When we ask questions to your witnesses, it is because we have done research and have read. We do not intimidate those witnesses. We want to find the truth and we want justice to prevail. The end process of what we are doing is to hopefully find the root cause of the issues that we are investigating.

It behooves the assisting counsel and yourselves to be forthright when your witnesses testify and when you speak before this Commission. We expect to submit sound findings based on concrete testimony and materials that will have come out of the research. We want to assure you that we have no preliminary findings. We will be as fair and we will always be beyond reproach as Caesar's wife.

Commissioner Shava: I think I am feeling a bit of sympathy for counsel. A lot of issues have been raised with regard to the conduct of one of your clients. Perhaps, in your response, you could also clarify whether you had any pre-knowledge that this was going to happen. Did you have an opportunity to guide your client?

Mr. Elijah Mwangi: I have to say that I was caught by surprise by the Leader of Evidence about five minutes before the session began. She informed me that Amb. Kiplagat had been on air and so forth. I was already here myself. On Monday or so, I mentioned to the Leader of Evidence that I had not had occasion to meet or talk to Amb. Kiplagat either on phone or on a one-to-one meeting.

I want to send my apologies not only to the Commissioners, but also the Leader of Evidence and everybody who is here because this is not a game, any kind of forum or a political contest. It is extremely unfortunate that, that kind of thing is coming out. I want to disassociate myself with that kind of conduct. The witnesses whom I represent, unfortunately---With respect to my relationship with Amb. Kiplagat, it has only been limited to the summons before this Commission. I know the Leader of Evidence can confirm that I am not acting for him either. I understand that there is a tribunal and court process. I am not acting for him. I actually do not even know the proceedings that are taking place there. With that kind of feedback coming, I will not want to associate myself with that process. I respect the process. It is not a game that anybody is going to win. The victims ultimately should be the winners in this process in terms of reconciliation and healing. I certainly would not want to associate myself with that kind of process. If and when I meet him, I will express my displeasure and that of the Commissioners. I know, he probably has his own personal interest in that kind of process because he was sitting with you at some point in time. I personally do not want to advise him on that process. I will confirm that the witnesses that I represent have not under any circumstances been advised to undermine the proceedings of this Commission because if you respect a legal process and you appear before a legal tribunal, you have to respect the tribunal no matter how disagreeable you are with that tribunal. Even if you disagree on very good grounds, you have to respect the tribunal. That has always been my practice of about a decade and slightly more than that and I really do not need to change from that path.

I want to apologise to the Leader of Evidence because this is somebody she has worked with and summoned as a witness. Without condemning him, I think the Commission must be having reserved powers to deal with that process. I believe that the Commission, being a party to the other proceedings, has a right to take action on that kind of process. I think that is what should also be considered. It is very unfair to the Commission because you cannot also call a television session and answer him back. If he says he is representing the Commission and he has been a witness, you cannot also do that.

I would guarantee that as far as I continue to represent my clients together with Mr. Kilukumi, we will not allow any witness to comment outside this forum and unofficially about the process.

The Presiding Chair (Commissioner Farah): Thank you counsel. Leader of Evidence, you may bring in the next witness.

(Mr. David Kiilu Mativo took the oath)

The Commission Secretary (Ms. Nyaundi): Commissioners, this witness had earlier testified on 2nd June. We have recalled him. Please, state your name for the record.

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

The Commission Secretary (Ms. Nyaundi): Thank you for accepting to come back, Mr. Mativo. After you left, the Commission received the annual report for Wajir District for the year 1984 and a copy had been furnished to your lawyers. If you look at the second page, you will find that the letter of transmission dated 1st June, 1985 is signed by you. Can you confirm that the letter addressed to the PC, North Eastern Province bears your signature?

Mr. David Kiilu Mativo: Yes, Presiding Chair.

The Commission Secretary (Ms. Nyaundi): And you confirm that the attached report is the one that you forwarded to the PC?

Mr. David Kiilu Mativo: Yes.

The Commission Secretary (Ms. Nyaundi): Commissioners, I am praying that we admit this report onto the record of the Commission.

The Presiding Chair (Commissioner Farah): Report so admitted.

The Commission Secretary (Ms. Nyaundi): Mr. Mativo, this Report for the year 1984, is it accurate to say that the intention was that it would cover events that had occurred in the district from January to December, 1984?

Mr. David Kiilu Mativo: Yes.

The Commission Secretary (Ms. Nyaundi): Thank you. And so, when you transmitted it, were you satisfied that this was an accurate presentation of what had occurred and was of significance in 1984 within Wajir District?

Mr. David Kiilu Mativo: Yes.

The Commission Secretary (Ms. Nyaundi): Mr. Mativo, can we confirm that there is an incident that occurred at the Wagalla Airstrip in February, 1984? You have that recollection?

Mr. David Kiilu Mativo: Yes.

The Commission Secretary (Ms. Nyaundi): I have looked at this Report and I see no mention of the fact that individuals were rounded up, detained at the airstrip for close to four days and that deaths occurred as a result of that operation.

Mr. David Kiilu Mativo: The annual district report gives the overview of development activities that have taken place in the district, but not of security nature. It may touch on the district being quiet, but not in detail as far as security matters are concerned.

The Commission Secretary (Ms. Nyaundi): My understanding of the evidence that has so far been given was that this was an operation. Are you then saying that an operation like this whose intention was to acquire illegally acquired firearms was a purely security matter and would, therefore, not have found its way to the report?

Mr. David Kiilu Mativo: Correct.

The Commission Secretary (Ms. Nyaundi): In the report, there is a section that goes in detail with the report on incidences of crime. I ask this because you were also a District Magistrate at this time. Would the issue of illegally acquired firearms constitute a crime as far as you are concerned?

Mr. David Kiilu Mativo: Yes.

The Commission Secretary (Ms. Nyaundi): I refer you to page 43 of the report. According to the police department report on page 43, those were the crimes that had been identified?

Mr. David Kiilu Mativo: Yes.

The Commission Secretary (Ms. Nyaundi): Would you be able to confirm, at least, based on page 43 that you did not have any incidences of charging people with illegally acquired firearms?

Mr. David Kiilu Mativo: It is not there.

The Commission Secretary (Ms. Nyaundi): It is not there? There is an analysis of cases both in 1983 and 1984?

Mr. David Kiilu Mativo: Yes.

The Commission Secretary (Ms. Nyaundi): A number of witnesses who have appeared before the Commission have stated that from 1984, there was a deliberate attempt by Government to erase from its records, the fact that there had been an incident at the Wagalla airstrip that occasioned the death of Kenyans. Given the fact that your report makes no mention of this incident, would you be in a position to rebut or deny that statement?

Mr. David Kiilu Mativo: I still deny it. As you can see, my takeover of the district in 1985 is quite a long period. If there was such suppression, it would have died within the 12 months before I took over. It could not have been something for discussion at that time. If I might have heard, according to the police department statistics, this is the normal police statistics which they give in every district. They are not a secret matter. They are printed all over for everybody to see.

The Commission Secretary (Ms. Nyaundi): Did you prepare another report for the year 1984 that would have been preserved as a record that, indeed, in 1984 either as a security operation or as an intelligence report there was an operation at Wagalla airstrip conducted by the DSC Wajir?

Mr. David Kiilu Mativo: No, there was no such a report. Anything of security nature goes in form of minutes, either from the District Intelligence Committee or the District Security Committee.

The Commission Secretary (Ms. Nyaundi): And those are the things that are not available now. But you as a person who assumed office and took over the responsibility of preparing annual reports, do you have any recollection of recording anywhere that in 1984, there was an incident at Wagalla airstrip and the operation was conducted by the DSC Wajir?

Mr. David Kiilu Mativo: Commissioners, this document is a preparation or an annual report of each Government Ministry in the district. After writing, they bring to the DC as the Chairman of the Development Committee to compile a whole annual report for the year. Different chapters mention each Ministry of Government that was represented in the district.

The District Commissioner's role as the Chairman of the District Development Committee (DDC) is to compile the list or the whole report from different Ministries or departments, then forward them to the Provincial Commissioner (PC), who does the same to the national office. So, in such case, there could not be any mention of security measures.

Commissioner Shava: Mr. Mativo, the Commissioners will now ask you questions.

Thank you, very much.

The Presiding Chair (Commissioner Farah): Very well. We will start with Commissioner Ronald Slye.

Commissioner Slye: Thank you, Mr. Mativo. Again, I want to echo our Leader of Evidence by thanking you for agreeing to come back before us to discuss this document. You became the District Commissioner (DC) in Wajir in November, 1984. Is that correct?

Mr. David Kiilu Mativo: Substantively. I was promoted to the post of a DC sometime in October, but I was transferred to Wajir towards the end of December, 1984.

Commissioner Slye: So, can you just briefly explain your direct role, if any, with respect to this report, when you came in as late as December, 1984, as I understand it?

Mr. David Kiilu Mativo: This is an annual event, and having worked up to that level, I knew it happens and I had prepared it elsewhere, so it was not something new. Since I succeeded Mr. Matui in January, there was no way he could have had time to prepare this. So, everything was left to me to compile the annual report.

Commissioner Slye: So, when you came in, the departments within Wajir, for example, Agriculture, Livestock, and Police, *etcetera*, those reports would have been left with you, and you were to compile them into this complete report. Is that right?

Mr. David Kiilu Mativo: Correct.

Commissioner Slye: Then in compiling it, I assume you read through when you were reviewing what was there?

Mr. David Kiilu Mativo: Yes.

Commissioner Slye: Then in the process, did you have access to additional information? Did you take that in account when you were reviewing so that we can see that when you are talking about water, maybe, they have left out something in terms of a new source of water? Is it a process through which the information being brought to you is tested or reviewed or you make sure that it is as accurate as it can be given after all these constraints?

Mr. David Kiilu Mativo: In fact, I could not even add a word to this document because it is something which had taken place in 1984 and I was not there. Therefore, I could not make any alterations at all. I could just have it the way it was presented to me by the Ministry departments.

Commissioner Slye: So, examine that and if, for example, the police department issued a report and said that there was no crime whatsoever in Wajir in 1984, you would not have the ability to say: "Wait a minute, that seems odd, there must have been some kind of

issue that happened.” Are you sure that this was correct? You would not be engaged in that sort of process. Would you?

Mr. David Kiilu Mativo: Not really.

Commissioner Slye: So, you would take exactly what was poured to you?

Mr. David Kiilu Mativo: I would take it the way it was because that was a responsible Government Ministry and I would take it the way it was. If there is anything, they could answer on their behalf.

Commissioner Slye: The problem with that is that there is your signature at the time of this report. So, unfortunately, what that means, since there is no other signature on the report - if I remember correctly--- Ultimately, you are responsible for the content or the information on the report. Is that not right?

Mr. David Kiilu Mativo: Not really. If you can see chapter one, I am just forwarding. “I have the pleasure and the honour to present with compliments, the Wajir District Annual Report for the year 1984.” There were no personal comments.

Commissioner Slye: Right. But I gathered that by doing that and being the DC, it is only if I was the PC receiving that, it would be my assumption, and correct me, if this would be incorrect--- You as the DC who would stand behind with this report, that in your view, having affixed your signature to that, it reflects an accurate picture of what happened in Wajir the previous year; is that correct?

Mr. David Kiilu Mativo: It is correct.

Commissioner Slye: Okay. So, then given the understanding that you did come that year to the district; I find the police with a trend of crime reports, some of them personally and let me just give two examples related to murder and manslaughter - this is on page 43.

For the year 1984, it says that there were seven murder cases and there was no manslaughter. A number of reports including the report--- In a nutshell, I hope you have had access to these and I apologise. But there is a report of February, 27th - this is before you came to Wajir - concerning the Wagalla Massacre that lays out a number of incidences that justified the security operation with respect to the Degodia. Let me just read out two of them to you and I do not know whether you have it, but let me just read it out to you. And for the record, this is on page three of that report, paragraph numbers four and six.

The first was on the third of February 1984, the *Manyatta* attack near Griftu; one Ajuran, fifty-year-old Yusuf Ali Omar, was shot dead, while four others were injured and six camels stolen. So, we have one person killed, perhaps, murder or manslaughter.

Then, the sixth; was on the 9th February, 1984, Yako *Manyatta* Massacre. And it says: “If the above five incidents by the Degodia bandits who had refused to surrender the firearms will kind of explain the Wagalla Massacre.” A gang of ten armed bandits attacked the above *Manyatta* and killed six people, one male and five female and injured two people and shot dead three camels and put down all the... in that *Manyatta*. So, there were six people killed and those were people that were civilians and they were members of the Ajuran community and they were killed within Wajir District on the 9th of February, 1984. Those were the people who were allegedly killed by the Degodia so, they were Ajurans. You would not be surprised if there were other killings in January and February and then obviously, there were other killings to the end of the year. So, even if one were to say that those who were killed on the Wagalla Airstrip were killed as part of a security operation, I do not understand why these other killings would not be reflected.

Then lastly, in his Parliamentary comments, the way they were read out to us yesterday, the Hansard Reports of April, 1984, the then Minister for Internal Security, *Ole Tipis*, referred to 88 civilians being killed and I assume that was from January to April, 1984, the time he made that statement.

So, I do not know whether you can help me, but it seems a bit hard. For the whole of the year, there were seven murder incidents and seven manslaughter cases, when really there were more than those numbers of people killed in the district. As someone swore evidence before me, up to 9th February, seven people had been killed and then the assumption would be, nobody had been killed from 9th February, 1984 to the end of the year; which seems impossible to me. So, can you help us understand why there was hoarding of information by the police department in Wajir, and they would be so reluctant to voice some of the things which were the reality in terms of murder and manslaughter in that area?

Mr. David Kiilu Mativo: In fact, I am not competent to speak on behalf of the police but the figures shown here, to my understanding, are murder reports that have been made to the police station to be investigated by the police. These are the ones which are mentioned here. Operational killings or murders or whatever you can call it, without any complaint, they cannot feature in this report.

Commissioner Slye: So, does that mean that when the Government learnt of the killings of those Ajuran individuals; the seven that I have just mentioned, that the Government - I do not know who brought those killings to the attention of the authorities - that whosoever attention this was brought to did not in turn inform the police department and say that: “We have just heard that a fifty-year-old man had been killed in Tula *Manyatta* and six more people have been killed in the Yako *Manyatta*.” That the Government in its effort of protecting its people did not say: “Hey! These people have been murdered and there is obviously a security issue that we need to deal with, but these people had been murdered and the police must be involved in investigations to see what had happened.”

Mr. David Kiilu Mativo: The department of Kenya police, whom I think would be appearing before you, would be in a position to explain it better than me.

Commissioner Slye: Lastly, looking on that same list, for 1983, it mentions one and for 1984, it mentions two. I assume you will agree with me that probably, that does not accurately reflect the actual rapes that occurred in the region during those two years. I assume you will agree with me and if you do not, obviously, please say so. If you agree with me, can you speculate or have any ideas why those numbers would be so low?

Mr. David Kiilu Mativo: Yes, in North Eastern Province, rapes were very rare and if they so happened, due to their culture, it was very difficult for somebody or for a victim to go to a police station to report.

Commissioner Slye: So, in your view, do you think that these numbers might be correct or they are under-reported because the individuals or victims did not report the rapes?

Mr. David Kiilu Mativo: Those were the cases reported, but there may have been many unreported ones. I think there were rape cases but due to the culture of the people, it was difficult for such cases to be reported.

Commissioner Slye: I partially agree with you. All of us have been educated over the years about how hidden rape cases are, in different societies and, part of the reason for that is the shame associated with it, which has cultural, religious and other social explanations. It was also our experience when we travelled to the northern region. As a number of us have said earlier in these hearings, a number of women reported to us of rapes by Government officials and in some cases, the police and other individuals in uniform, which I think can also explain, perhaps, the hesitation on the part of those who were not comfortable in reporting because the problem would be known a year or two later--- If not the direct individual to report the matter, at least, a member of a similar organization who may or may not be objective or sympathetic, who may or may not be a friend of the alleged perpetrators and that, in itself also would be narrow in terms of reporting rape. I do not really have a question, but obviously, if you have a comment to make---

Mr. David Kiilu Mativo: To my understanding, it depends on the circumstances under which the rape incidents took place, especially when there are raids or some kind of operation, some unorthodox things may occur which may not be reported at all.

Commissioner Slye: Okay. Thank you, very much. I do not have further questions.

Commissioner Chawatama: I take notice of the fact that you have admitted to having signed the report. I also take notice that having signed the report and the fact that you are a magistrate, you would have had an opportunity to peruse through this report before it was sent to the Provincial Commissioner. When you look at page three of the report, under the heading “political”, which is part “C”, there is a part in the last line, the sentence starting with:

“For the major part ever, things were not as pleasant during the year as the major things at every *baraza* hinged on banditry which was being perpetuated by some disgruntled elements among them the Degodia and the Ajuran clans. The Provincial Administration, however, left no stone unturned in the quest for peace and redirection of efforts and resources to more useful purposes, such as implementation of development projects.”

This makes me think that this report was not just about development alone, the mere fact that the Degodia and the Ajuran clans were mentioned, we should have seen a list of those who died from this particular clan because what has been mentioned here is the result. There were clashes which resulted into deaths, so going by the question Commissioner Slye asked you, why were these deaths not recorded?

Mr. David Kiilu Mativo: As I said, security operations cannot be discussed in the general Annual Development Report. But here, security as an input in development has to be mentioned in a way as it is mentioned here because the clans involved had to be discouraged or advised through *barazas* not to bring more trouble to pave way for development.

Commissioner Chawatama: I am looking at the report and it is called the “Annual Report 1984”; so where does the “Annual Development Report” come from? Is there another report that is the “Annual Development Report?”

Mr. David Kiilu Mativo: This is the “Annual Development Report”. It is a combination of---

Commissioner Chawatama: Sir, just point to me where it says that this is the “Annual Development Report”. That is all.

Mr. David Kiilu Mativo: No, it is not there, but the activities that took place in the district---

Commissioner Chawatama: Those activities include the Wagalla Massacre, Sir!

Mr. David Kiilu Mativo: That is if the nature of security was addressed in a different forum.

Commissioner Chawatama: Okay. Again going into the questions that Commissioner Slye asked you, if you turn to page four, it says that the efforts of the police bore fruits as a large number of illegally acquired firearms and ammunition were surrendered.

Again, in the list, there is nothing to show that firearms were recovered, how many and from who. This is something that you would include in an annual report!

Mr. David Kiilu Mativo: No, those are the figures of surrendered firearms which were included in the normal security report.

Commissioner Chawatama: Do you have that security report for us to look at?

Mr. David Kiilu Mativo: That can only be obtained from the District Security Committee Minutes.

Commissioner Chawatama: Going further down, as a magistrate, when you reported, you had no opportunity to try anybody for illegal possession of a firearm?

Mr. David Kiilu Mativo: I had my own limitation as a magistrate. I was a visiting magistrate from Nairobi who used to hear cases which did not fall under my purview.

Commissioner Chawatama: So, these were cases that were beyond your jurisdiction which you put aside for that magistrate. Did you come across any that had to do with the possession of illegally handled firearms?

Mr. David Kiilu Mativo: Not at that time. No!

Commissioner Chawatama: Page four, under “Administration Police”, the first paragraph; “The Administration Police force continued to play a crucial role of maintaining security in the district.” Help me understand, can you ever mention the work of the police without referring to security?

Mr. David Kiilu Mativo: Protection of life and property.

Commissioner Chawatama: That is security?

Mr. David Kiilu Mativo: Yes, that is security!

Commissioner Chawatama: So, to some extent, this report has issues bearing on security?

Mr. David Kiilu Mativo: Yes.

Commissioner Chawatama: Thank you, very much.

The Presiding Chair (Commissioner Farah): Any other Commissioner with a question or so to the witness?

Commissioner Shava: Mr. Mativo, you have repeatedly referred to the report which you forwarded as a development report.

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: When you testified earlier before this Commission you said that your understanding of “development” is economic improvement.

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: And you have now said that your understanding of “security” is the protection of life and property?

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: So, by life I presume you mean human life?

Mr. David Kiilu Mativo: Yes. And anything else!

Commissioner Shava: And anything else. And development is geared towards economic improvement for human beings?

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: So, you would agree that the link between security and development is human life?

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: Therefore, the birth or death of a human being would be something that would naturally feature in a development report?

Mr. David Kiilu Mativo: Yes. But, it would depend on the need to know principle; whom are you giving that report? That is why I am saying that such report would be addressed in a different report, not in this one. But it can be mentioned in passing, but not in detail. It cannot appear here.

Commissioner Shava: Which forums are those that you are referring to?

Mr. David Kiilu Mativo: Intelligence and security committees.

Commissioner Shava: And at the district level both of those committees existed?

Mr. David Kiilu Mativo: Yes, they existed.

Commissioner Shava: So, which report is it that you would make with regard to, as you called it, “the details” with regard to births and deaths?

Mr. David Kiilu Mativo: It can be found in the Minutes of district security committees or intelligence committees. For your information, intelligence lapses; you can be seriously talking about something today and next week it will not feature anywhere!

Commissioner Shava: I am just curious about the nature of the deaths reported. This report you presented has various sections; it has the section on the police department where some deaths are noted as a result of crime. There is a report by the game department which reports deaths as a result of attacks and compensation *etcetera*. So, it is recognizing death. Some of those Minutes to which you have referred also refer to a high number of deaths, resulting from the operation of Wagalla Airstrip. I would just like to know from you if 17 deaths can be reported in this report or one death can be reported why would more than 300 deaths not be reported in this report signed by you?

Mr. David Kiilu Mativo: That is why I said the deaths reported here are the ones reported to the police station, either they are in court or pending investigation.

Commissioner Shava: I am not sure if you got what I mean.

Mr. David Kiilu Mativo: I can see. But for somebody shot dead by a bandit, you will find that it would not feature here because it has not gone through the system of investigation. It has to feature in the DSC.

Commissioner Shava: Let me ask my question in a different way. If the loss of 17 human lives has such an impact on development that it is important for it to feature in this report, surely, the loss of 61 lives would have an enormous impact on development and should properly feature in this report. These human beings are no longer there to participate in development activities to be targeted by the Government in terms of provision of water and other services. Surely, that loss of life should properly be reflected in a report which you term "A Development Report".

Mr. David Kiilu Mativo: In this case, such cases are not included here, but they would appear in the DSC.

Commissioner Shava: You have a development report which in a way is incomplete and misleading because the Government then does not know for whom it is planning because the absence of these citizens is not recorded.

Mr. David Kiilu Mativo: Not really because it does not happen all the time that we have deaths resulting from situations like that of the Wagalla Massacre. It is not normal!

Commissioner Shava: We were listening yesterday to a testimony which was suggesting, and which I want to know from you whether it is the case, that when one is the DC or the PC, one wears many hats. Would you agree with that?

Mr. David Kiilu Mativo: It is true.

Commissioner Shava: In this case, one of the hats that the DC in Wajir was wearing was that of the Chair of the DSC?

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: Magistrate!

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: And heading the Department of Registration of Births and Deaths in the district?

Mr. David Kiilu Mativo: Co-ordinating!

Commissioner Shava: Co-ordinating. Your report states that no officers were posted, although the DC was charged with this function, so the officers doing it would be the officers under the DC?

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: With all these hats; registration of births and deaths, including late registration of deaths, as you put it and the chairing of DSC, would you say that the DC would be in a good position to have a good overall knowledge of what was the situation with regard to births and deaths in the district?

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: Would you agree that a significant number of people from Wajir District died at that airstrip?

Mr. David Kiilu Mativo: Not really! Births and deaths can only be registered when either somebody pursues a birth or death certificate. If he does not, there is no way a DC would know; as the one in charge of registration.

Commissioner Shava: The District Commissioner was the head of the District Security Committee, so it would not need the deaths to be registered for the DC, as the Chair of that Committee, to be aware of those deaths. Am I right?

Mr. David Kiilu Mativo: No! Everybody needs to ask for a birth or death certificate.

Commissioner Shava: That is not my question. Being aware death has occurred and the registrations of that death are two separate things. I am saying that the DC would be in a good position to be aware of deaths that had occurred.

Mr. David Kiilu Mativo: Yes.

Commissioner Shava: So, I come back to this question which has been asked by my colleagues, but I really feel I must ask it again. It really does appear as if there is a deliberate attempt to suppress the information on these deaths. This is because if you look at who is addressed in this report - this report has gone out to the Kenya National

Archives and I think to the Kenya Institute of Administration. These are Government bodies that record information that train Government officials based on that information. You have said that death resulting from a security operation, the information of those deaths would be restricted to minutes, which themselves have restricted circulation. So, what I understand from that is that, what this report is supposed to be putting out can be more within the public domain and that is why you did not reflect the significant number of deaths. That is only reflected, as you put it, “on the need to know basis” of restricted minutes to which even we have had difficulties gaining access. So, that information is thereby suppressed. Would you agree with me?

Mr. David Kiilu Mativo: Not really. This is because----

Commissioner Shava: How would the general public gain access to those minutes where the information is made available?

Mr. David Kiilu Mativo: Sometimes these figures, nationally, are released by the Commissioner of Police. It is not something to hide because it is a crime trend of each district.

Commissioner Shava: Are you saying that the Commissioner of Police would be the one to release information on the deaths that occurred in Wagalla as a result of crime?

Mr. David Kiilu Mativo: Not really. It has to emanate from the DSC.

Commissioner Shava: What method does the DSC use to communicate such information to the general public?

Mr. David Kiilu Mativo: To the general public, no!

Commissioner Shava: Therefore, the general public would not be in a position to know?

Mr. David Kiilu Mativo: I do not think so.

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

Commissioner Dinka: Thank you, Mr. Mativo for coming back again to enlighten us a bit. Do you remember when you first came to testify here, you told us that when you got your promotion and you were being deployed to Wajir you passed through Garissa and had a conversation with the PC?

Mr. David Kiilu Mativo: Yes.

Commissioner Dinka: And the PC gave you very simple instructions in one or two sentences saying: “Look, go straight, forget about whatever had happened before you came and start with development issues.”

Mr. David Kiilu Mativo: Correct.

Commissioner Dinka: Do you think when you were writing this report you were actually keeping that in mind and carrying out your instructions to the letter?

Mr. David Kiilu Mativo: Not really. I said this report is a combination of different Ministries' departments.

Commissioner Dinka: That one I know.

Mr. David Kiilu Mativo: Of which they had to write what they have done for the year---

Commissioner Dinka: Mr. Mativo, if you are the head of that administration in the district, you represent the President of the Republic in the district of Wajir.

Mr. David Kiilu Mativo: Correct.

Commissioner Dinka: You are first among equals, whether you have Ministries represented there or not. You are the final and ultimate decision-maker there. We have all worked in the legal administration like this. You have people that you call and they bring that bit to you and you compile it and then, in your own assessment it bears your signature. It is not compilation like the secretaries do, but what a leader does. You compile, asses, analyze, recommend and put your own views in it.

Now, is this the kind of report that you would recommend, in your assessment?

Mr. David Kiilu Mativo: You would agree with me that I was forwarding activities that took place in 1984 when I was not there.

Commissioner Dinka: Yes.

Mr. David Kiilu Mativo: And even if I was there, there was very little I could do---

Commissioner Dinka: Let me ask you the questions so that we can get out of this quickly. My colleagues have been saying there is nowhere in the report that it says that this is a development report. It is an annual report of Wajir. The happenings within Wajir District; whatever happened in Wajir during 1984 because your predecessor had left in November, and you took over. But you took over the administration, it is not that the whole place was vacant! So, you had records, you had people and you were also the Chairman of the District Security Committee, not only the development committee.

As the Chairman of the District Security Committee and the Development Committee, I find this report to be incomplete. Would you agree? This is because it does not have the security aspect of what had happened from the security point of view in 1984.

Mr. David Kiilu Mativo: You are correct. But, ---

Commissioner Dinka: Okay. Just stop there. Please, stop there. We have listened to a number of witnesses here, including you at the beginning, the first time. Everyone says that security and development are very much linked, and therefore we have been doing this and we have been going around talking about development and security because without security there can be no development and without development there is no security. That kind of interlink between the two.

So, one writes about development of Wajir, which is huge district, the second or the third largest in the country, and also it being part of the North Eastern Province and particularly insecure and turbulent area, you could not have forgotten about the security issue because if Wajir was a peaceful area, as Mr. Njue or somebody else said yesterday, more development could have taken place. Even from that point of view, the security aspect or the security element in the report is critical for the people who are going to read the report. It is important for the President, the Prime Minister, the Cabinet or all those who are going to have access to this report and make the final policy decisions about the area. It is important that they know what had happened. Is that not right?

Mr. David Kiilu Mativo: Okay.

Commissioner Dinka: So, you were wearing several hats, but you kind of forgot to wear your security hat. From what I heard, maybe you can explain to me, you seem to be saying that when somebody or another citizen reports to the police it goes to the statistics of death. But when the Police or the Army or the Administration Police or the combination of them goes on rampage and kill people, then who reports to who? It just disappears and goes into black wall. That is why we have people who are superior to all those groups in districts or provinces, like yourself, who should take the high ground and look from the top on what is happening and see whether everybody else is doing what he is supposed to do. This has to go into the report. Is that not supposed to be done by the leader of the team because you were the leader of the team from the Government side?

Mr. David Kiilu Mativo: Mr. Presiding Chair, Sir, as I mentioned earlier, this report portrays the general activities that have taken place in a year from various government departments in the district. Anything of a security nature can be mentioned by passing although it is known. It is communicated to other concerned offices through District Security Committees and District Intelligence Committees. In that case, they would go under classification which is different from “restricted”.

Commissioner Dinka: Mr. Mativo, that is correct. It has been reported and we have seen some of those reports. What I am saying is that these are the annual reports where you should report what had happened during that year in all aspects including development or drought. In this report there is a big gap considering what we heard throughout the week. There is nothing about Wagalla in this report. This reminds me of an old saying which says, “who guards the guardians”? These are people who are supposed to guard citizens. The District Commissioner (DC) is the guardian but in this one the report is not reflective. Since you knew they might have a reason to hide what happened in Wajir,

which was tragic, do you not think that you could have had a little bit better and much more complete report than this? This report seems like an annual report although it is restricted. Why was it restricted if it was only about development?

Mr. David Kiilu Mativo: Mr. Presiding Chair, Sir, this is the pattern that was being used then, but I am not aware if it has changed to include matter of security.

Commissioner Dinka: Just one last question Mr. Mativo: This is a forum where we invited you to help the Commission. For some of us who come from other counties, maybe we do not understand what happens here. In your own view, do you think this is an acceptable report about what happened in Wajir in 1984?

Mr. David Kiilu Mativo: It is very much acceptable. Anything touching on security is sensitive. That is State security. State security is restricted. For example, the police would be in a better position to explain about security matters.

Commissioner Dinka: The Commission may have access to those files. My question was why are they missing from here?

Commissioner Ojienda: Thank you, Mr. Mativo for the clarifications on the annual report that is described as restricted. Look at page 48 of the report, Chapter 19 of the report. You can just read it out.

Mr. David Kiilu Mativo: It says:

“Although it started on a sour note, the ending was quiet with a number of notable achievements, noteworthy among them the dawning of peace among the warring clans of the district and the successful completion of the Standard Eight classrooms.”

Commissioner Ojienda: Could you just demystify that to us? What was the sour note in 1984?

Mr. David Kiilu Mativo: The Wagalla Massacre.

Commissioner Ojienda: After all, you reflected in your conclusion that something unusual had occurred.

Mr. David Kiilu Mativo: Yes, it happened in that year but the details can be found elsewhere.

Commissioner Ojienda: I am glad that you reflected that. I just want to find out something because you touched on security. Was this your first report as the District Commissioner (DC)?

Mr. David Kiilu Mativo: In fact, I wrote on behalf of my colleague who had been transferred.

Commissioner Ojienda: So, had you known that there were gaps you would have asked the specific departments to add anything that was missing or that you felt was left out?

Mr. David Kiilu Mativo: Not really because this report is what the departments wrote to their seniors elsewhere. It is a copy of what they wrote to their seniors and they brought it to me for compilation then I forwarded it to the Provincial Commissioner (PC) as the Chairman of the Provincial Development Committee.

Commissioner Ojienda: Is there anything that you think should have been done better in Wajir at the time the event of 1984 happened?

Mr. David Kiilu Mativo: I could not have done better because these issues were to be addressed in a different line and for the rest, the way they have been addressed here, it is correct. That is according to my understanding at that time because policies keep on changing.

The Presiding Chair (Commissioner Farah): Mr. Mativo, I know you have been here before and you gave us evidence but at that time we did not get the opportunity to ask you a few questions. Could you tell the Commission when you joined the service and your career progression until you became the DC in Wajir?

Mr. David Kiilu Mativo: Mr. Presiding Chair, Sir, I joined the service in 1967. In 1972, I was promoted to District Assistant. Between 1967 and 1972 I was a Senior Clerk, Senior Sergeant Administration Police. In fact, I started in Administration Police College in Embakasi. Then I rose to Senior Sergeant level.

The Presiding Chair (Commissioner Farah): When did you become a District Officer?

Mr. David Kiilu Mativo: I think it was in less than a year. That is in 1973.

The Presiding Chair (Commissioner Farah): So, between 1973 and 1984 you were DO III, DO II, DO I, Acting DC in various districts?

Mr. David Kiilu Mativo: That is true and in 1984 I was promoted to be a DC.

The Presiding Chair (Commissioner Farah): Then you were a unique DC because not all DCs had the AP training on security matters. The others were being recruited from the university to be DOs.

Mr. David Kiilu Mativo: I am also a trainee of Kenya Police College, Kiganjo.

The Presiding Chair (Commissioner Farah): Then how did you become a magistrate? What training did you undergo to become a magistrate?

Mr. David Kiilu Mativo: There was no training at all. I was just gazetted.

The Presiding Chair (Commissioner Farah): Are you telling me that you were a DC and even a magistrate without any training in law at all?

Mr. David Kiilu Mativo: Yes, Sir.

The Presiding Chair (Commissioner Farah): And you would imprison people? This is a serious matter. Without the knowledge of the laws of Kenya---

I rose in career from a Cadet to a General but later on I did a bit of training in law so that I could discipline soldiers and sailors but with you, where did you undergo the training in order to discipline civilians and imprison them?

Mr. David Kiilu Mativo: That was the trend that time. Through my training up to the rank of a DC I had gone through many courses where some bits of law were included. We went through the Kenya Institute of Administration (KIA) where penal code lessons were held.

The Presiding Chair (Commissioner Farah): With all that training, you went to Wajir and a massacre took place executed by the Administration Police and the Military. Why did you not visit Wagalla Airstrip to see where the position of soldiers was and where the citizens were?

Mr. David Kiilu Mativo: I agree with you but during that time, Wajir Airstrip was almost deserted. When you pass there you could see only goats and no aircraft was landing there. It was an empty shell.

The Presiding Chair (Commissioner Farah): But there were people living nearby?

Mr. David Kiilu Mativo: Not at that time.

The Presiding Chair (Commissioner Farah): I am just curious why you did not bother going there just to appreciate? Was it part of the reason why the DC told you to forget about it and concentrate on development?

Mr. David Kiilu Mativo: No.

The Presiding Chair (Commissioner Farah): Could it have been that you authored this report and omitted all the security issues including the Wagalla issue because of the PC's order to forget about security and concentrate on development?

Mr. David Kiilu Mativo: The chapter on security is from Police Department.

The Presiding Chair (Commissioner Farah): If we go to the national archive we will find that the distribution is between the Provincial Administration, Permanent Secretaries

and Office of the President. You did not copy the letter to the PC, North Eastern Province but to the Director, National Archives.

Mr. David Kiilu Mativo: It is addressed to the PC.

The Presiding Chair (Commissioner Farah): Then you copied it to the DC Mandera and not DC Garissa. Why?

Mr. David Kiilu Mativo: Garissa is involved. I also copied to all heads of departments who had given me their report.

The Presiding Chair (Commissioner Farah): Why did you have to copy to the Principal, KIA?

Mr. David Kiilu Mativo: It is very important because that is the institute which trains administrators.

The Presiding Chair (Commissioner Farah): Suppose we now go to the National Archives; at that time there were 48 districts which are now currently counties, would their annual reports conform or shall we find some security matters mentioned? I am asking about the bureaucratic format. You told us that no security issue should have been covered but only developmental issues. Even the Wagalla Massacre was just mentioned in passing. In case our research goes to the national archives and goes through the 48 Annual District Reports, would they be the same?

Mr. David Kiilu Mativo: They would all be the same as far as page 43 is concerned. The pattern would be the same.

The Presiding Chair (Commissioner Farah): I am talking of development issues. For example, all the deaths that were being reported to the police were not mentioned anywhere.

Mr. David Kiilu Mativo: It will all be the same as far as page 43 – trend of crime from police department.

The Presiding Chair (Commissioner Farah): I am not concentrating on that page alone. I am talking of developmental issues sieved away from security issues. For example, in those reports all the Degodia and Ajuran deaths that had been reported to the police from the field were not mentioned in the report. The seven deaths reported to the police, investigation was going on and the cases were pending. There are other matters pertaining to security that happened in the district but they are not mentioned here. So, what I am asking is: would it be the same?

Mr. David Kiilu Mativo: It would be the same, Mr. Presiding Chair, Sir.

The Presiding Chair (Commissioner Farah): I do not have any more questions. I Thank you, very much, for being co-operative and willing to support the Commission and answering all the questions very candidly. As you know, we are a Commission in search of the truth, so should there be any other matter that requires us to recall you again, we shall do so.

Mr. David Kiilu Mativo: You are free to do so as many times as you wish.

The Presiding Chair (Commissioner Farah): Leader of Evidence, could you please stand down the witness and bring in the next one?

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, Sir, I would like the record to reflect that Mr. Ndubi is present and can introduce himself.

Mr. Harun Ndubi: Thank you, very much, Mr. Presiding Chair, Sir. My name is Mr. Harun Ndubi.

The Presiding Chair (Commissioner Farah): Let us go to the next witness.

(Mr. Paul Ng'anga King'ori took the oath)

The Commission Secretary (Ms. Nyaundi): For the record, please, state your name, where you stay and what you are currently engaged in.

Mr. Paul Ng'anga King'ori: My name is Mr. Paul Ng'anga King'ori. I am a male adult Kenyan from Gatundu District, Kiganjo Division, Mutati Location, Mutati Sub-location, Kinoo Village, P.O. Box 38 Ruiru, Tel. No. 0722718768.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. King'ori.

The Presiding Chair (Commissioner Farah): May I interrupt for a moment? Please, members of the public, there are some people whose cellphones are on and they are interfering with our public address system. Could I now remind you once again to switch off the phones? When they are close to the microphones, they interrupt the recordings.

The Commission Secretary (Ms. Nyaundi): Apologies, Mr. King'ori. I have a statement that you recorded on 22nd May, 2011 in response to summonses by the Commission. I invite you to present that statement.

Mr. Paul Ng'anga King'ori: Mr. Presiding Chair, Sir, I joined the police in 1961 and rose to the rank of SSP. Later I was posted from CID headquarters in Nairobi to North Eastern as the Provincial Criminal Investigation Officer (PCIO) North Eastern where I took over the CID duties from Mr. M.M. Waseka SSP, who was by that time in Wajir District. I continued working there until 24th October, 1983 when I was given 29 days leave for the previous year. I resumed duties at Garissa on 2nd December, 1983. I continued working there as PCIO until 15th November, 1985 when I was transferred to

the CID headquarters where I continued working until I retired from the Kenya Police force on 1st September, 1992. Currently, I am at home as a farmer and small business trader.

I received information that my name had appeared in the Daily Nation that I am required by this Commission to come and testify here. So, I have come here and I was told that my summonses were at the police headquarters.

My response to what the Commission wanted to know from me on the findings of the operation that took place in Wajir, I have explained there. I was not a member of the Provincial Security Committee (PSC) neither was I a member of a District Security Committee (DSC) but I was a PCIO in terms of security and crimes. In the district, I had my DCIO who were supplementing the police crime investigations within the three districts in North Eastern Province.

The Commission Secretary (Ms. Nyaundi): Mr. King'ori, you have said that you served as PCIO. Could you confirm that it was from 9th May, 1983 and not 2003 as you have stated?

Mr. Paul Ng'anga King'ori: It was 9th May, 1983.

The Commission Secretary (Ms. Nyaundi): Could you shed some light as to what your responsibilities entailed as the PCIO?

Mr. Paul Ng'anga King'ori: My duties were to advise my DCIOs on how to assist the Officer in Charge Police Station crime personnel to investigate incidents of security which are reported in the police station. When they have done so, they give me information on the progress of whatever they are doing. Crimes are reported at police stations.

The Commission Secretary (Ms. Nyaundi): Therefore, your role was supervisory?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): We heard a testimony yesterday from Mr. Kaguthi and he mentioned to us that in terms of structure, apart from the PSC and the DSC there was also a PCIO and DCIO. Are you familiar with that?

Mr. Paul Ng'anga King'ori: I am not familiar with that because I am not involved with either PSC or DSC.

The Commission Secretary (Ms. Nyaundi): He informed us that as PCIO you would sit in the PSC and the person at the district would sit at the DSC.

Mr. Paul Ng'anga King'ori: Unless they changed after I had been transferred from that province, I am not aware.

The Commission Secretary (Ms. Nyaundi): There are minutes of a meeting that was held on 15th February and they are dated 17th February.

Can I assist you with my copy?

Mr. King'ori, please refer to Minute 2084 titled "Communication from the Chair". If you look at that first paragraph, the Chair is informing the meeting that they have just come back from Wajir as members of the PSC. He is saying that apart from the PSC, the other members present were Gen. Mulinge, Mr. Gatui and Mr. P. N. King'ori. Are you seeing that?

Mr. Paul Ng'anga King'ori: I can see my name is appearing there.

The Commission Secretary (Ms. Nyaundi): Mr. King'ori, the minutes say that this was on the spot fact-finding mission that I believe was on 15th February, 1984; do you have any recollection of participating in that fact-finding mission?

Mr. Paul Ng'anga King'ori: I cannot recollect, apart from that fact. If the Provincial Commission (PC) was to go there on other matters, sometimes I could accompany him. He could request me but I was not a member of the PSC.

The Commission Secretary (Ms. Nyaundi): What may be useful to you is that the minutes indicate that the Chief of General Staff, Gen. Mulinge was accompanied by some people. Do you remember going to Wajir with him?

Mr. Paul Ng'anga King'ori: I do not recollect. What I can remember is that when the PSC came, they requested if I could go to Wajir. I was told that someone who was more senior than me was to come. So, Mr. Ombati came and accompanied the PSC. They went to the airstrip at Garissa and boarded the aircraft but I was left behind.

The Commission Secretary (Ms. Nyaundi): Do you remember whether it was on 15th February, 1984?

Mr. Paul Ng'anga King'ori: I cannot remember.

The Commission Secretary (Ms. Nyaundi): Regarding the incident at the airstrip, do you remember seeing Gen. Mulinge there?

Mr. Paul Ng'anga King'ori: There were several senior officers.

The Commission Secretary (Ms. Nyaundi): Did you see Gen. Mulinge?

Mr. Paul Ng'anga King'ori: I cannot recall except for Mr. Ombati who came to replace me. There were several other senior officers from---

The Commission Secretary (Ms. Nyaundi): No, we just want to be specific. Did you see Gen. Mulinge? He was rather senior.

Mr. Paul Ng'anga King'ori: He was senior but I cannot recall. Apart from Ombati, who came to replace me, amongst the rest of the officers, I could not tell who was what.

The Commission Secretary (Ms. Nyaundi): You have said that there were members of the Kenya Intelligence Committee? Did you see them or were you told about them?

Mr. Paul Ng'anga King'ori: I was at the airstrip. So, I asked, "Who are the officers who have come?" I was told that they were members of the KIC.

The Commission Secretary (Ms. Nyaundi): Who told you that?

Mr. Paul Ng'anga King'ori: The then PPO, Mr. Gatui.

The Commission Secretary (Ms. Nyaundi): What does "DSM" stand for? According to the minutes, Mr. Gatui was the DSM. In the minutes, under "Representatives of the Commissioner of Police", we have Mr. J.P. Gatui, who is described DSM".

Mr. Paul Ng'anga King'ori: I think he was Deputy Commissioner of Police.

The Commission Secretary (Ms. Nyaundi): Was Mr. Gatui based in Garissa or did he come from Nairobi?

Mr. Paul Ng'anga King'ori: He was from Nairobi but---

The Commission Secretary (Ms. Nyaundi): He came on this trip?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): But he was an officer from Nairobi?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): Were you able to identify any of the KIC members at the airstrip on that 15th day of February?

Mr. Paul Ng'anga King'ori: Apart from Mr. Gatui, the PC and the Deputy PC, I could not identify the others.

The Commission Secretary (Ms. Nyaundi): My final question is that there is the report dated 27th February, 1984, addressed to the Provincial Commissioner. It was prepared by Mr. Mati. I just want to ask you a question on that report. Let us look at page two. First of all, would possession of illegal firearms be a matter that would be handled by the CID?

Was that an issue you would have handled, in terms of investigations, if it were reported to you?

Mr. Paul Ng'anga King'ori: It would be investigated at the police station in the Police Division. It would be investigated by the DCIO.

The Commission Secretary (Ms. Nyaundi): So, the DCIO would be involved in investigating reports of people alleged to be in possession of illegal firearms?

Mr. Paul Ng'anga King'ori: Precisely.

The Commission Secretary (Ms. Nyaundi): The evidence that we have had so far is that during this period generally – we now want to focus on 1983 and 1984 – within Wajir, there was a serious problem of illegal firearms being in possession of individuals, both known and unknown. Is that your recollection?

Mr. Paul Ng'anga King'ori: Yes. Reports were reaching me. I then informed the Director of CID. By then all this was being done by the OCPD, Garissa, and the DSC.

The Commission Secretary (Ms. Nyaundi): I am not talking about the operations and whatever else happened. I believe that possession of illegal firearms would be an offence.

Mr. Paul Ng'anga King'ori: Yes, it is an offence. If somebody is arrested, he is handled at the police station level.

The Commission Secretary (Ms. Nyaundi): So, if, for instance, a report came that we suspect there are people in that part of Wajir with illegal firearms, the DCIO would be interested in that matter. Is that so?

Mr. Paul Ng'anga King'ori: Yes, if it is reported and depending on the circumstances in which that firearm was found.

The Commission Secretary (Ms. Nyaundi): If it was reported that somebody in possession of firearms used them to kill people, again, that was a matter which the DCIO would act on, in terms of investigating?

Mr. Paul Ng'anga King'ori: That is what I must have done; when I reported to my Director, after he got the information that there were some people who were carrying out an operation, and that some people had been shot, when I asked him, he said: "Wait." After that, I saw the KIC people come from the CID Headquarters.

The Commission Secretary (Ms. Nyaundi): I think we are talking but we are not communicating. I will come back to the question I wanted to ask you. I believe what you are referring to is what happened at Wagalla Airstrip?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): You said you heard that people had been shot and killed. As the PCIO, you wanted to go to Wajir and find out exactly what had happened?

Mr. Paul Ng'anga King'ori: That is true, but I could not have gone there without informing my Director.

The Commission Secretary (Ms. Nyaundi): When were you informing the Director? Was it the day before you went to the airport or the very morning when you were going to the airport?

Mr. Paul Ng'anga King'ori: I remember that it was immediately I received that report from my DCIO, through the PPO. I reported to him: "I have received a report from Wajir that there was a joint operation, and some people have been shot dead. Would you advise me to go there?" He said: "No, you wait there. I am also going to come." That was how I handled that issue.

The Commission Secretary (Ms. Nyaundi): Mr. Kingori, in terms of us having some of this information, you will allow me to ask you additional questions with the aim of just trying to confirm when it was that your DCIO spoke to you, or when it was that Mr. Aswani spoke to you. We have been told that the KIC members came to Wajir on 8th February. I think you have sat here, and have heard that the KIC members came to Wajir on 8th; on the night of the 9th, they were in Garissa, and they had dinner at the House of the PC. At least Mr. Kingori told us that while there, the PPO told him that there was an ongoing operation in Wajir. Do you remember, while you were here in Nairobi, hearing witnesses say that there was dinner hosted by the PC? No one has said whether the dinner was hosted in the PC's house, but were you present in the evening of the 9th?

Mr. Paul Ng'anga King'ori: I cannot recollect.

The Commission Secretary (Ms. Nyaundi): So, you cannot recollect whether that was when Mr. Aswani mentioned something to you?

Mr. Paul Ng'anga King'ori: No, I cannot.

The Commission Secretary (Ms. Nyaundi): It was not at that dinner, was it?

Mr. Paul Ng'anga King'ori: I recall that the aircraft came in the morning, at around 9.00 a.m., with those officers. So, about the dinner, I cannot recall.

The Commission Secretary (Ms. Nyaundi): What we are trying to find out is when Mr. Aswani told you that people had died.

Mr. Paul Ng'anga King'ori: It was immediately, and through the VHF call from there.

The Commission Secretary (Ms. Nyaundi): You received a VHF call from Wajir?

Mr. Paul Ng'anga King'ori: Yes, and he was the one who told me. Thereafter, my DCIO rang me to confirm that report.

The Commission Secretary (Ms. Nyaundi): Did you know whether Mr. Aswani was talking to your DCIO or to Mr. Tiema?

Mr. Paul Ng'anga King'ori: At that time, I could not tell.

The Commission Secretary (Ms. Nyaundi): But you were in the vicinity when he received the report?

Mr. Paul Ng'anga King'ori: This was at the Provincial Police Headquarters.

The Commission Secretary (Ms. Nyaundi): So, you heard him?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): When you were standing with him, did you get the impression that this was the first report he was getting?

Mr. Paul Ng'anga King'ori: Precisely, yes.

The Commission Secretary (Ms. Nyaundi): So, this was the first report that Mr. Aswani was getting. You are saying that as you were standing there---

Mr. Paul Ng'anga King'ori: After some time---

The Commission Secretary (Ms. Nyaundi): Some time after Mr. Aswani received that report, you communicated to your Director?

Mr. Paul Ng'anga King'ori: Yes, then after about one hour, the officers came from Nairobi.

The Commission Secretary (Ms. Nyaundi): Were they the KIC officers or other officers?

Mr. Paul Ng'anga King'ori: It was a group of officers.

The Commission Secretary (Ms. Nyaundi): A group of many people came from Nairobi?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): Did you know whether they originated from Nairobi or this was the group that was in the province but was now arriving in Garissa?

Mr. Paul Ng'anga King'ori: I assumed that they had come from Nairobi.

The Commission Secretary (Ms. Nyaundi): You assumed so because you could see that they were people from Nairobi?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): You said that you spoke to your Director. Can you remember the Director's name?

Mr. Paul Ng'anga King'ori: It was Mr. Noah *arap* Too.

The Commission Secretary (Ms. Nyaundi): Was it during that conversation that he told you: "No, do not go there now?"

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): He asked you to hold on?

Mr. Paul Ng'anga King'ori: Yes, he told me to wait at Garissa because there were more senior officers coming.

The Commission Secretary (Ms. Nyaundi): We are assuming that before the day you went to the airport and you were turned away, are you aware of whether senior officers arrived from Nairobi?

Mr. Paul Ng'anga King'ori: I did not have information about other people coming from Nairobi.

The Commission Secretary (Ms. Nyaundi): So, the first delegation that came in connection with this matter arrived on 15th February, 1984, as reported in the minutes?

Mr. Paul Ng'anga King'ori: Maybe---

The Commission Secretary (Ms. Nyaundi): To your knowledge, that was when a more senior officer from the Directorate of Investigations came from Nairobi?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): When they went to Wajir and came back, did your senior give you a briefing?

Mr. Paul Ng'anga King'ori: No, he did not. He just went back because they were not answerable to me. They had gone to tell the Director what they had found.

The Commission Secretary (Ms. Nyaundi): Sometimes they might have been leaving you with instructions.

Mr. Paul Ng'anga King'ori: No, they did not give me any instructions.

The Commission Secretary (Ms. Nyaundi): After they went back to Nairobi, did your Director communicate with you as to any action that you should take? Did you receive instructions from your Director?

Mr. Paul Ng'anga King'ori: From that time, no further instructions came from Nairobi. What I can recall is that the matter was being handled by the team that had come from Nairobi.

The Commission Secretary (Ms. Nyaundi): Did you get instructions from the PSC or your Provincial Commissioner on any action you should take as the PCIO?

Mr. Paul Ng'anga King'ori: I remember that after that group went back, when people were going there, I went with him.

The Commission Secretary (Ms. Nyaundi): Some time later, you accompanied Mr. Kaaria?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): When you accompanied him, was it with regard to what had happened at Wagalla Airstrip?

Mr. Paul Ng'anga King'ori: I am sorry, I cannot recall. Many years have passed since then. My seniors from Nairobi did not tell me what I should have done, or what they were going to do about that incident. So, my senior officers did not give me any further information.

The Commission Secretary (Ms. Nyaundi): So, you are saying you can remember that you went to Wajir with Mr. Kaaria, but you cannot remember what it was that you went and did in Wajir?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): Do you remember the name of the DCIO, Wajir?

Mr. Paul Ng'anga King'ori: No, unless we go back to the police records.

The Commission Secretary (Ms. Nyaundi): Would you remember giving him any specific instructions with regard to that incident at Wajir?

Mr. Paul Ng'anga King'ori: I did not give him any instructions because he was to be advised by the officer from the CID Headquarters. Otherwise, he would have interfered with whatever the officer from Nairobi was going to do.

The Commission Secretary (Ms. Nyaundi): Do you remember, for instance, the DCIO establishing the number of people who had died? Was that ever done by your department?

Mr. Paul Ng'anga King'ori: No, that was to be handled by the OCS.

The Commission Secretary (Ms. Nyaundi): This is just to confirm. At the beginning, you said that your instinct was to travel to Wajir but you were stopped?

Mr. Paul Ng'anga King'ori: Yes.

The Commission Secretary (Ms. Nyaundi): So, I assume that at that time, you were concerned to know who had died and under what circumstances. Is it so?

Mr. Paul Ng'anga King'ori: No.

Ms. Nancy: Before you were stopped, when you called your Director, my assumption is that, as the PCIO, you were very concerned, and you wanted to proceed to Wajir and find out how many people had died, and under what circumstances. Is it so?

Mr. Paul Ng'anga King'ori: Not really; after I was told that some people had died, I decided to immediately make a report to the Director to advise us on how to handle that situation, because I was told that, that had been an operation. If it was an incident where somebody had been shot by somebody else, that would have been a different case.

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

Commissioner Chawatama: Thank you, very much, for your testimony, Mr. Kingori. I think you will have to bear with me a little bit. I am not a Kenyan. I may not be familiar with a number of things. So, most of the questions I will ask you will be based on my experience in working with the police as an adjudicator.

You said that you were involved in investigations. You were the most senior person in investigations in the province. Is that correct?

Mr. Paul Ng'anga King'ori: Correct.

Commissioner Chawatama: So, somebody like the DCIO would have been under you?

Mr. Paul Ng'anga King'ori: Yes.

Commissioner Chawatama: I am puzzled as to why somebody senior from Nairobi would speak to your junior, and not communicate instructions that he had left to you. Why was that the case?

Mr. Paul Ng'anga King'ori: It is because the senior officer from Nairobi had been sent by the Director himself to come and investigate the incident.

Commissioner Chawatama: Yes, but were you not the most senior person on the ground?

Mr. Paul Ng'anga King'ori: I was but from what I came to learn later, they wanted that matter to be treated separately, because it was a matter which was under a security operation. So, an independent body or officers should investigate it. I then heard that Mr. Etemesi had come to take over the investigation.

Commissioner Chawatama: If part of your work was to carry out investigations, were you not puzzled as to why you were stopped from carrying out investigations, especially since the police were involved in the operation?

Mr. Paul Ng'anga King'ori: I could not stop my Director from advising me as to who was supposed to come and investigate, although it was my work.

Commissioner Chawatama: So, you did not conduct any preliminary inquiries?

Mr. Paul Ng'anga King'ori: Not me. Not even my DCIO.

Commissioner Chawatama: Who would contribute to an annual report on the activities related to investigations?

Mr. Paul Ng'anga King'ori: That was supposed to be done by the OCS, assisted by my DCIO. The OCPD then was to report to the DC, so that he could report to the PPO.

Commissioner Chawatama: Did you later come to learn that the OCPD was the person who was said to have given orders to fire on fleeing men at Wagalla Airstrip?

Mr. Paul Ng'anga King'ori: I came to learn of that one much later.

Commissioner Chawatama: If you were to investigate this incident of the order to open fire, was it something that you would have done?

Mr. Paul Ng'anga King'ori: No, that was a decision made by the people on the ground. I was at Garissa. Wajir is over 200 kilometres from Garissa.

Commissioner Chawatama: But somebody would have reported to you and, maybe, sought your counsel or advice? If somebody had said that the report they had received was that the OCPD had given an order to fire and this had resulted in 13 deaths, what would you have advised such a person, who had sought your counsel?

Mr. Paul Ng'anga King'ori: I could have advised the PPO first that the OCPD had taken an unusual action, but I did not do so because this was a matter handled by the DSC.

Commissioner Chawatama: Were you aware that the police were behind the detention of people at Wagalla Airstrip?

Mr. Paul Ng'anga King'ori: I came to learn of that when I was told that people had been shot. I was not even aware of the operation that was going on.

Commissioner Chawatama: I am looking at you as the person who was in charge of investigations, and you were based at the province. You had a finger in every district and a way of knowing what was happening. Am I wrong to think so?

Mr. Paul Ng'anga King'ori: You are not wrong but if they did not report to me, I would not know. They were supposed to report to the PPO, who would then have reported to me.

Commissioner Chawatama: Do you remember the day on which the incident that took place at Wagalla was reported to you?

Mr. Paul Ng'anga King'ori: No, I cannot recall the date.

Commissioner Chawatama: Would you know whether Wagalla Airstrip was a gazetted place for detaining people?

Mr. Paul Ng'anga King'ori: I was not aware about that. I knew that it was an airfield.

Commissioner Chawatama: So, I would be right to say that there would be no facilities available for basic human needs?

Mr. Paul Ng'anga King'ori: It is a large compound. Apart from the runway, the other area is empty.

Commissioner Chawatama: You have been there?

Mr. Paul Ng'anga King'ori: Yes.

Commissioner Chawatama: So, from what you are saying, you did not have an opportunity to gather information for you to pass on to your Director? You did not play that role at all?

Mr. Paul Ng'anga King'ori: No, I did not.

Commissioner Chawatama: Did you hear of any disciplinary action that may have been taken against people like the police or the OCPD?

Mr. Paul Ng'anga King'ori: I came to learn of it very much later; in the year 2005. I was told so-and-so went on leave. So-and-so went there. So, I was asking whether they had resumed duties. That was when I came to learn of it.

Commissioner Chawatama: You are telling us that what you learnt was that people had gone on leave, and not that they were disciplined as a result of what had taken place at Wagalla Airstrip?

Mr. Paul Ng'anga King'ori: That is correct.

Commissioner Chawatama: The issue of firearms is something that the Leader of Evidence has alluded to. From the evidence we have heard, this was really a burning issue – that firearms be recovered. As part of your investigations, did you know the number of firearms that may have been recovered in the province you were operating in?

Mr. Paul Ng'anga King'ori: No, I did not know how many firearms were recovered. The information I received from my DCIO was that some firearms had been recovered, and that the suspects had been detained for interrogation.

Commissioner Chawatama: I am not talking about those ones that were recovered. I will come to those later. I meant generally. For example, if one thought that in the province there were about 13, 000 firearms and 12, 000 were recovered, you would know that one had done a good job. Did you have an idea of the number of firearms that the police may have wanted to recover?

Mr. Paul Ng'anga King'ori: I did not know the number, but I knew that there had been several incidents where some illegal firearms had been recovered. Some were surrendered and some were arrested with some people or recovered from suspected bandits. The records pertaining to those recoveries are with the police in Wajir.

Commissioner Chawatama: Do you know whether the records would contain the names of the persons from whom the firearms were recovered?

Mr. Paul Ng'anga King'ori: I would not say “yes” or “no”, but I know that some firearms were recovered.

Commissioner Chawatama: Would you know the type of firearms that were recovered?

Mr. Paul Ng'anga King'ori: There were different types of firearms.

Commissioner Chawatama: So, you know the different types of firearms that were recovered?

Mr. Paul Ng'anga King'ori: I was told that different types of firearms were recovered and their numbers were recorded. Firearms were not recovered only once. There were several incidents.

Commissioner Chawatama: The police normally keep a good record of recoveries?

Mr. Paul Ng'anga King'ori: They are supposed to keep a good record, because firearms are dangerous weapons. They are supposed to be kept safely somewhere.

Commissioner Chawatama: As head of investigations, did you know that such a record existed?

Mr. Paul Ng'anga King'ori: They are supposed to keep records. What I know is that we have got civilian files. We have other police records indicating how many firearms have been recovered.

Commissioner Chawatama: I am asking about your personal knowledge. Do you know of a list or lists of the firearms that exist?

Mr. Paul Ng'anga King'ori: Yes, they are supposed to show that.

Commissioner Chawatama: I want to take you back to the question that I asked about facilities at Wagalla Airstrip. Were there any toilets there?

Mr. Paul Ng'anga King'ori: I recall that there were some toilets. When people visit a place, there should be a place where one can go and help oneself.

Commissioner Chawatama: We visited that place. I do not recall seeing any buildings.

Mr. Paul Ng'anga King'ori: I recall that there were some toilets.

Commissioner Chawatama: Were there any taps of water?

Mr. Paul Ng'anga King'ori: No, there are no water taps. People in that area use wells.

Commissioner Chawatama: Thank you, very much.

Commissioner Shava: Mr. King'ori, I have no more questions for you. I would just like to thank you and commend you for all the trouble you have taken to respond to our summons. Thank you for your testimony.

Commissioner Ojienda: Thank you, Mr. King'ori, for your testimony. Do you agree with me that as the PCIO, North Eastern, between 1983 and 1985, you were the principal person in matters of investigations?

Mr. Paul Ng'anga King'ori: Yes, before I was posted elsewhere.

Commissioner Ojienda: I am sure, therefore, that the events before and after the Wagalla incident must have been investigated by your DCIO?

Mr. Paul Ng'anga King'ori: Yes.

Commissioner Ojienda: Was the DCIO within the structure of the PCIO in matters of investigations in the province?

Mr. Paul Ng'anga King'ori: No, he was at the district level.

Commissioner Ojienda: As the PCIO, Mr. King'ori, did you cover investigations in the districts?

Mr. Paul Ng'anga King'ori: Yes, through them.

Commissioner Ojienda: Which districts?

Mr. Paul Ng'anga King'ori: Garissa, Wajir and Mandera districts. There were three districts in the North Eastern Province.

Commissioner Ojienda: So, the DCIO, Wajir, was under you?

Mr. Paul Ng'anga King'ori: Yes.

Commissioner Ojienda: So, it was within your powers to investigate, or direct any investigations and to know of any investigations that were undertaken by the DCIO, Wajir, because you were the PCIO?

Mr. Paul Ng'anga King'ori: Yes.

Commissioner Ojienda: So, what stopped you from finding details of this incident?

Mr. Paul Ng'anga King'ori: It was the Director of CID then.

Commissioner Ojienda: Your testimony, Mr. King'ori, is that you were stopped from investigating the Wagalla incident by the Director of CID?

Mr. Paul Ng'anga King'ori: No, it was because he told me to wait for more senior officers to come and investigate. That was why I did not go to Wajir. Otherwise, I was to

report to him, so that he could report to the PPO and the PC for them to give us people to go there and do the investigations.

Commissioner Ojienda: From your experience, was it a normal occurrence that the Director of CID would stop you from investigating any incident that had occurred within your jurisdiction?

Mr. Paul Ng'anga King'ori: I think it is because this was an operation area, and the incident happened during an operation.

Commissioner Ojienda: So, did you find this unusual in your ordinary course of duty? In your operation as the PCIO, did you not find it unusual that, for the first time, you were being stopped from investigating an incident?

Mr. Paul Ng'anga King'ori: No, because it was at the discretion of the Director to decide who was to investigate what incident. There were times when incidents occurred and I was sent elsewhere, or I exchanged with somebody else, and investigated incidents, if the incidents were related to our duties.

Commissioner Ojienda: I believe you have written communication to this effect. Is there a signal?

Mr. Paul Ng'anga King'ori: No, we communicated through the Operation Room.

Commissioner Ojienda: So, do you have that signal here?

Mr. Paul Ng'anga King'ori: No, we communicated directly. There are two modes of communication. One is through a written signal and the other one is verbal communication via radio.

Commissioner Ojienda: In this case, was the communication verbal or was it written?

Mr. Paul Ng'anga King'ori: It was verbal.

Commissioner Ojienda: So, you have no written evidence absolutely?

Mr. Paul Ng'anga King'ori: No.

Commissioner Ojienda: Do you recall the investigations that were undertaken by Etemesi subsequent to the incident at Wagalla Airstrip? Do you recall?

Mr. Paul Ng'anga King'ori: No, I do not. Etemesi came and went round with other officers. They then went back and wrote a report.

Commissioner Ojienda: Another thing, Mr. King'ori, is that you were not present when Etemesi came to the province. Is that what you are saying?

Mr. Paul Ng'anga King'ori: I do not recall when he came, because I did not accompany them.

Commissioner Ojienda: Just tell me what you know.

Mr. Paul Ng'anga King'ori: I did not accompany them.

Commissioner Ojienda: Tell me what you know now, and not what you recall. Did you look at the Etemesi report, because it was prepared when you were still the PCIO, NEP?

Mr. Paul Ng'anga King'ori: I have never even seen that report.

Commissioner Ojienda: So, you took no interest? You were the PCIO!

Mr. Paul Ng'anga King'ori: Mr. Etemesi was a very senior officer, and I could not accompany him. The only person who could have resolved that issue was the PPO. That matter was above me.

Commissioner Ojienda: Mr. King'ori, you have confirmed that you visited Wagalla Airstrip. When did you do this? Was it before or after the incident?

Mr. Paul Ng'anga King'ori: It was much later after the incident.

Commissioner Ojienda: Do you recall the date?

Mr. Paul Ng'anga King'ori: I cannot recall it.

Commissioner Ojienda: What were you doing there?

Mr. Paul Ng'anga King'ori: I was on a normal visit to the district.

Commissioner Ojienda: And you chose the airstrip? You were just walking there? Were you investigating anything?

Mr. Paul Ng'anga King'ori: I went to visit the district. I cannot recall now what it was about, because there were so many incidents. There was an incident which had already occurred.

Commissioner Ojienda: When you retired, before you left office as PCIO, I am sure that you were in charge of supplying information to the Provincial Intelligence Committee (PIC). Did you give information to the PIC?

Mr. Paul Ng'anga King'ori: No.

Commissioner Ojienda: What about the Provincial Security Committee (PSC)?

Mr. Paul Ng'anga King'ori: No, the PPO was there.

Commissioner Ojienda: Did you read the report of the DSC?

Mr. Paul Ng'anga King'ori: No.

Commissioner Ojienda: Mr. Kingori, you were the PCIO!

Mr. Paul Ng'anga King'ori: Since I was not a member of the PSC, I could not have been given the minutes of the meetings of the PSC to read. Minutes of PSC meetings would only be given to members.

Commissioner Ojienda: Did you file any report with your Director about the province and the occurrences of 1984?

Mr. Paul Ng'anga King'ori: No, those ones were sent to Nairobi by the PPO. I did not send such reports.

Commissioner Ojienda: So, what was your role as the PCIO? What did you do?

Mr. Paul Ng'anga King'ori: My role was to report all the things that were happening there, indicating what action CID officers were taking and whether investigations were properly conducted where there were incidents of crime. Those were my duties.

Commissioner Ojienda: Did you properly execute those duties?

Mr. Paul Ng'anga King'ori: Those reports were not for use. We only sent verbal reports. The reports went through the PPO.

If I may elaborate, what happens in the districts and the provinces is that officers out there carry out investigations relating to crime. People on the ground report incidents at police stations or to Administration Police officers.

After that, the officer in charge of the police station will now call the DCIO with his section of investigators to deal with that report. If that report is serious like breakings or incidents of bandits, they organize themselves. Through the DSC, they know how they are going to operate. This is because an operation area is not for two or three people to go to by themselves. It has to be composed of a good number of personnel, and then they send a report to us.

The Presiding Chair (Commissioner Farah): Thank you, Mr. King'ori. You were the Provincial Criminal Investigation Officer (PCIO). That included, as you have alluded to from the answers to the questions posed by my fellow Commissioners, Mandera, Wajir and Garissa. Let us forget about Mandera and Wajir and concentrate on Garissa alone.

Would your investigation of crime be limited only to Garissa Town itself or would it include the outlying stations?

Mr. Paul Ng'anga King'ori: It includes all the places. Each district has got a DCIO. So, if there is any incident the DCIO will take action immediately it is reported by the OCS or a police station. Without them reporting---

The Presiding Chair (Commissioner Farah): The OCS will only receive the report, but investigation will be conducted by you and your people?

Mr. Paul Ng'anga King'ori: Correct! You are right.

The Presiding Chair (Commissioner Farah): Let us talk about the Wagalla incident. Prior to the collection of many people at the airstrip or operation--- In your statement, you seem to call it operation. That kind of operation was not of concern to you or under your docket. Is that what you are saying?

Mr. Paul Ng'anga King'ori: It was a joint operation.

The Presiding Chair (Commissioner Farah): You are saying: "I was not involved in these operations, since my duties were limited to security and crime investigation." The operation is security and it is still in your docket. Is that correct?

Mr. Paul Ng'anga King'ori: Yes.

The Presiding Chair (Commissioner Farah): But you were not interested in that particular operation?

Mr. Paul Ng'anga King'ori: It is not that I was not interested. I was not involved. I was not informed that there was such an operation going on. If I was informed, my DCIO should have been there. In this particular case and even up to date, I do not know whether he was in the group or whether he was among those who went to pick those people. This is because the only information I got was that there was a joint operation within here and some people had been shot.

The Presiding Chair (Commissioner Farah): Forget about that and let us come to what led to this operation. It was about collection of illegally held arms. Is that correct?

Mr. Paul Ng'anga King'ori: I learnt later.

The Presiding Chair (Commissioner Farah): That is what that operation was all about, but before the operation, were you in any way, as a Criminal Investigation Officer, involved in the search for illegally held arms?

Mr. Paul Ng'anga King'ori: It was done at the district level at Wajir.

The Presiding Chair (Commissioner Farah): Your DCIO in Wajir was involved?

Mr. Paul Ng'anga King'ori: I will not say “yes” or “no”, because this was now coming from the OCPD. My DCIO was working under the OCPD.

The Presiding Chair (Commissioner Farah): Does that work similarly in other provinces?

Mr. Paul Ng'anga King'ori: Yes.

The Presiding Chair (Commissioner Farah): So, the CID role is subservient to the OCPDs and OCSs? Here in Nairobi, the CID does crime prevention, investigation and all that. Do they work under OCPDs and OCSs?

Mr. Paul Ng'anga King'ori: It depends on what type of information they are dealing with. There is the CID Headquarters here in Nairobi and even some divisions and areas. They have got even the Crime Branch.

The Presiding Chair (Commissioner Farah): At that time, in 1984, did the Criminal Intelligence Unit exist?

Mr. Paul Ng'anga King'ori: Yes. That is why Ndirangu was there.

The Presiding Chair (Commissioner Farah): No! No!

Mr. Paul Ng'anga King'ori: Criminal investigation or intelligence?

The Presiding Chair (Commissioner Farah): The Criminal Intelligence Unit.

Mr. Paul Ng'anga King'ori: It was there. Ndirangu was there with me.

The Presiding Chair (Commissioner Farah): Ndirangu was in the Special Branch and not the CID. It is now the equivalent of the NSIS, but in the police, still you have an intelligence unit on crime. Was it there?

Mr. Paul Ng'anga King'ori: It was there.

The Presiding Chair (Commissioner Farah): Good! So, where was your intelligence then? Why were they not reporting to you about illegally held arms?

Mr. Paul Ng'anga King'ori: Intelligence is not within the CID. The CID has informers. Unless informers give you information, then you may not know what is happening. That is to say that we do not have prior knowledge of what is pending but the information that there were illegal firearms within Wajir or Mandera was there.

The Presiding Chair (Commissioner Farah): Did you in 1984 surrender your responsibilities to Mr. Ndirangu or you were actually pursuing your duties?

Mr. Paul Ng'anga King'ori: In my line, I was pursuing my duties through the DCIO. The DCIO also had a DISO. Ndirangu had his own people and I had my people. The information could be different.

The Presiding Chair (Commissioner Farah): When you were there for intelligence, the people you were using to acquire information, were you not investigating illegally acquired arms and pursuing them with a view to retrieving them?

Mr. Paul Ng'anga King'ori: They were doing that, but it would depend--- That is why information was coming that there were some people or bandits who had illegal firearms. Then, we would submit that information. That is why they did not---

The Presiding Chair (Commissioner Farah): I am talking about this business of submission of information to Nairobi. I am talking about action being taken.

Mr. Paul Ng'anga King'ori: There was action which they could take by themselves, because of the security situation in the province.

The Presiding Chair (Commissioner Farah): Were you aware that there were some four people who were detained in Wajir slightly before the Wagalla operation?

Mr. Paul Ng'anga King'ori: I am not aware of that.

The Presiding Chair (Commissioner Farah): You are not aware at all?

Mr. Paul Ng'anga King'ori: No.

The Presiding Chair (Commissioner Farah): You never even came to know about it later?

Mr. Paul Ng'anga King'ori: Later, I learnt.

The Presiding Chair (Commissioner Farah): How did you come to learn later?

Mr. Paul Ng'anga King'ori: They were said to be inciting some people and so on, and that was now under the intelligence reports which were coming.

The Presiding Chair (Commissioner Farah): I would have thought that if this Etemesi team was coming to investigate a crime, you would be the first person to contact and lead them. Why is it that you were not involved at all?

Mr. Paul Ng'anga King'ori: Commissioners, if at all I was not stopped, the PPO could have told me to take this and that action. If I would need more support or senior people to

go and investigate, then I would tell my Director to tell them to come and do this investigation.

The Presiding Chair (Commissioner Farah): Within Garissa Town, Wajir Town and Mandera Town you used to investigate crimes?

Mr. Paul Ng'anga King'ori: Yes.

The Presiding Chair (Commissioner Farah): But not in the outlying stations?

Mr. Paul Ng'anga King'ori: Every police station or division has got its own sector of CID people.

The Presiding Chair (Commissioner Farah): Even in the outlying stations?

Mr. Paul Ng'anga King'ori: Even outlying stations and other districts. Each district has got its own OCPD and OCS.

The Presiding Chair (Commissioner Farah): Thank you, very much. I have got no further questions for you. There is a Commissioner who wants to ask you the last question.

Commissioner Dinka: Mr. King'ori, I am sorry earlier, I did not want to ask questions because I did not think that there was much to ask about. But right now, after exchanges with my colleagues, I am kind of confused. I am asking this question just to clear my own mind.

First, I think we are confusing the Criminal Investigation Department (CID) with the intelligence gathering organization, which is the other office. Can you tell me how you initiate an action where a crime is being committed? Is it the police that invite you to give them expertise or can you actually initiate a process of investigation on your own?

Mr. Paul Ng'anga King'ori: We cannot initiate. We look for information. Every CID officer should have an informer who will give him some information. You cannot do proper investigation without having an intelligent person who will give you information secretly without people knowing. Those are what we call informers and we are not supposed to reveal them. They are undercover informers. They are the people who report that so-and-so is a criminal. The intelligence officers do the same thing, but we deal with the line of crime.

Commissioner Dinka: For instance, if somebody kills another person in Garissa and your informer comes and tells one of your officers that he knows the person who killed him, what do you do with that information? Do you start the process of investigation or you give it to the police who might do the investigation?

Mr. Paul Ng'ang'a King'ori: We do the investigation. We congratulate that informer and he gives us all the details. We keep him under cover and he directs us to get underneath the evidence. We visit the scene of crime with intelligence without spoiling the evidence. We go there and interview those people.

Commissioner Dinka: I understand that. You said that you can initiate investigation on your own without reference to the police?

Mr. Paul Ng'ang'a King'ori: Yes, because we are also police officers. It is only that the department is different.

Commissioner Dinka: When the Wagalla situation happened, you called your Director and said: "Such and such a thing has happened and I want to go and investigate." He said: "No! No! No! You stay; I am sending somebody more senior." Did he send that somebody?

Mr. Paul Ng'ang'a King'ori: Yes, that is what I said in my statement. Later on about one hour or so---

Commissioner Dinka: Just say "yes" or "no".

Mr. Paul Ng'ang'a King'ori: He sent somebody.

Commissioner Dinka: Had that somebody done the required investigation or not?

Mr. Paul Ng'ang'a King'ori: Whoever came – and I saw him – went to the scene without even talking to us. He went to Wajir and I do not know what he did. This is because after finishing, he did not come to report to us. He went back to Nairobi.

Commissioner Dinka: Do you remember his name?

Mr. Paul Ng'ang'a King'ori: No, I cannot remember. I could recall. It was Mr. Ombati or somebody. He was a more senior officer than me. We used to work with him---

Commissioner Dinka: You do not remember his name?

Mr. Paul Ng'ang'a King'ori: No.

Commissioner Dinka: When he went back, do you have any idea whether or not he had made a report to the Director?

Mr. Paul Ng'ang'a King'ori: After someone is sent to go and attend a scene like that one, he is supposed to have given him a report.

Commissioner Dinka: Very good! You were the head of the Provincial Criminal Investigation. Was it not a matter of sharing information, at least, if not of courtesy for

your Director or his deputy to give you a copy of that report for your own consumption, so that you would know what is going on?

Mr. Paul Ng'ang'a King'ori: As my senior, he has no obligation to tell me. When he said that a more senior officer was coming, he knew why he was doing so.

Commissioner Dinka: Do you know what he has done with the report?

Mr. Paul Ng'ang'a King'ori: I do not know.

Commissioner Dinka: You said that you send your reports through the PPO.

Mr. Paul Ng'ang'a King'ori: After we receive the reports, I report to the Director. The PPO reports to the Commissioner of Police.

Commissioner Dinka: Do you share information with the PPO?

Mr. Paul Ng'ang'a King'ori: Yes.

Commissioner Dinka: Has he mentioned anything about that report which is done by the person who sent it to the Director?

Mr. Paul Ng'ang'a King'ori: No.

Commissioner Dinka: He has not shared any information with you on Wagalla?

Mr. Paul Ng'ang'a King'ori: No. When the senior officers came to investigate, I was not informed of whatever happened.

Commissioner Dinka: Then I honestly fail to see what the Provincial Criminal Investigation officers' duties are. The police do not share information with you and you have been refused, even within your docket, to check what is happening in Wajir. Is it a normal way of working for the Director to say to you, for example: "No! No! You are not going." Even if he sent somebody senior as part of that delegation, why could he not send you?

Mr. Paul Ng'ang'a King'ori: I would not say that because, maybe, he had his own reservations. As the Director he can decide---

Commissioner Dinka: Do you not think that they were trying to exclude you from getting to know what was happening?

Mr. Paul Ng'ang'a King'ori: Not really.

Commissioner Dinka: You never felt that at that time?

Mr. Paul Ng'ang'a King'ori: No, because I assumed that it could have been because it was a joint operation. When an incident like that happens, it is supposed to be investigated to know what happened. According to the Criminal Procedure Code if somebody dies under police action, then there is a procedure that ought to be followed.

Commissioner Dinka: Now, you have really touched the core of the issue. Why would somebody not be charged if he had committed a crime?

Mr. Paul Ng'ang'a King'ori: It will depend with how the incident happened.

Commissioner Dinka: In other words, in an operational area, whatever the operators do is not liable to criminal liability?

Mr. Paul Ng'ang'a King'ori: From my understanding and what I was taught and according to the law, if an incident happened during this operation, if there is any death or anything, the Government takes action as they did in this case. In this case, I understand the OCPD and DC have already testified here. So, it is now for the Commission to decide who is to blame for what, based on the evidence from what happened in the province.

Commissioner Dinka: Okay! Actually, I do not know whether you agree with me, but I just want to throw an idea to you. It would appear that during the Wagalla operation, certain things had gone wrong. But when the investigation began, the man who actually was in place and knew the area and actors - you- has been prevented. From what you have just said, if there is something which has gone wrong, then people will be talked to. But a decision has already been made somewhere that there will be no criminal liability process. So, that is the way it looks to me, especially keeping you out and sending someone and they do not even furnish you with the summary of the report that came out, it creates some kind of a pattern. Do you not think there is something behind it?

Mr. Paul Ng'ang'a King'ori: I would not say so. For example, if my own staff do anything wrong, I will call another department or officers and not them to come and take their selection. Otherwise, they will not be fair. This is because they will be one-sided and would want to assist their people. Those were my officers who were on the ground. The police officers are within the province and so, why do they not recall? That is what we have been doing even when I was working at the CID Headquarters for all those years. If a district or province has got some problems, we send other officers from other provinces to go and investigate them.

Commissioner Dinka: Thank you, very much, Mr. King'ori, for your testimony and frank discussion with us.

The Presiding Chair (Commissioner Farah): Thank you, Mr. King'ori. I just want, with your lawyer being next to you, that do not feel at all having stayed there for no reason. This Commission was established to investigate all gross human rights violations, establish an accurate and complete historical record of violations and abuses of human

rights and economic rights inflicted upon persons by the State, institutions and holders of public offices from 1963 to 2008, record circumstances and all that, give motives and perspectives of the persons responsible for the commissions of violations and by conducting investigations and holding hearings. Where we are right now, we are holding hearings and our objectives is to find--- Now, with our recommendations, apart from finding out who were responsible and recommending prosecutions, perhaps, reparations for victims and so on, we are supposed to recommend policy changes by establishing what went wrong in those days and ensuring that if there were any changes to be made--- That is why we are trying to find out really what was going on at that time; what the policy was and what the procedures were. So, by sitting there today, do not feel intimidated or that your time was wasted. We also thank you for having been very co-operative. Please, go and tell all the other people who will be coming here, if you are close to them, that this Commission is here to establish the truth.

Leader of Evidence, stand down the witness.

(Mr. King'ori was stood down)

Leader of Evidence, do you have something to say?

The Commission Secretary (Mrs. Nyaundi): Chair, those are the two witnesses we had for today. I would be requesting that when we adjourn, we do so until next week. Neither this venue nor KICC, which are our preferred venues, are available for Monday. I had not had an opportunity to consult with Mr. Elijah Mwangi, but I would just be asking whether he would have any challenges if instead of Monday, we commence on Tuesday, owing to the non-availability of our preferred venues.

Mr. Elijah Mwangi: There is no problem at all because it was always obvious that the proceedings would not end today or even tomorrow.

The Presiding Chair (Commissioner Farah): Thank you, very much. Today, we heard the evidence of Mr. Mativo and we thank you for your patience. We also heard evidence from Mr. King'ori, who was also very good. I think we will adjourn until Tuesday, at 9.00 a.m., in this place where we are now sitting. We shall proceed with the other witness. Do you have a list of those witnesses who will come on Tuesday?

Mr. Harun Ndubi: Mr. Chairman, perhaps before we adjourn, I would like to bring it to the attention of the Commission – not in the nature of a complaint, but to note – that this morning about 8.00 a.m. or thereabouts, one of the Commission witnesses, Amb. Bethwel Kiplagat, was on national television, *Citizen Television* – on a programme called *One on One*, and he seemed to take a large part of that process to explain himself in the context of his submission or evidence he tendered before this Commission and possibly, seek to explain some difficulties or issues that were being posed. Some matters might be subject of this inquiry which have not yet arisen. I remember he was discussing matters related to the death of the former Minister, Dr. Robert Ouko. I know that this is not a court of law, which you could say that matters would be *sub judice*, but, considering the reluctance of

the Ambassador to testify – I am saying this on the account that he has subjected the Tribunal investigating him to a judicial process that has already been scheduled for hearing on 29th September – I do think that some of his remarks or the way he carried himself out on television may appear to embarrass the process of this Commission. I am saying that knowing very well that he has his freedoms of expression and the rights to do so, but there needs to be a balance between a fair comment and engaging in a conversation outside of this Commission where nobody can ask him questions in a manner that is likely to create an impression in the public eye, that will finally have a huge impact in the public as to whether it is this Commission and the process that will have the veracity of truth or what is stated in other fora such as the forum that he chose. I thought that was important to bring that to your attention. I apologize that I was in court earlier and so, I do not know whether that matter was raised earlier and dealt with. If it was, that would be fine, but I would like to note that my clients did take notice of it and were not particularly happy.

Commissioner Slye: Thank you, Mr. Ndubi, for bringing that to our attention. We did discuss the issue this morning. I would not want to repeat what we said this morning, but as you rightly pointed out, this is not a court of law. In fact, the purpose of this Commission, in part, is to spur a national conversation about historical injustices in Kenya during our mandate period. Having said that, we did express concern this morning on two fronts; first, it is our understanding that Amb. Kiplagat mentioned or maybe even gave false information concerning the issue currently before the Commission and other issues that may come before the Commission. To the extent that, that is true, I think we are going to discuss whether it will be worth recalling him as a witness, so that, that information can be properly put before this Commission. Secondly, we had expressed the concern that he expressed himself as being a member of this Commission and appeared to be speaking – at least a reasonable viewer might view him as speaking – on behalf of the Commission. The worry that we had there is related to the worry that actually the other counsel had raised yesterday, which is the concern about the appearance or reality of this Commission not being open minded, having prejudged the issue and come to conclusions in advance. Amb. Kiplagat did make some statements in terms of who he thought was or was not responsible for what happened in Wagalla. Of course, he has every right to do that, but we wanted to make it clear that when he makes statements like those ones, that those are not statements that reflect the views of this Commission. We have not made any preliminary or other findings at the moment with respect to what happened at Wagalla and who may or may not be responsible. We will eventually make those determinations and let those individuals that we think are responsible respond to our findings and then they will make their way into our final report.

Mr. Harun Ndubi: Thank you, very much.

The Presiding Chair (Commissioner Farah): Thank you, very much, Counsel Ndubi. We have settled that matter. As I said earlier on, we will meet here on Tuesday, at 9.00 a.m. For the benefit of the Counsel, we have the list of his clients who will come.

The Commission Secretary (Mrs. Nyaundi): Chair, we propose to hear them in this order: -

1. Mr. Benson Kaaria
2. Mr. J.S. Mathenge
3. Amb. Mutemi
4. P.C, James ole Serian.

The Presiding Chair (Commissioner Farah): At least, the Counsel is now well briefed and he will brief his clients. Your clients have co-operated very much with us all along and I am 100 per cent sure that next week, they will co-operate even more. We appreciate your taking part in our proceedings and your contributions. We really appreciate it.

We will adjourn and assemble here on Tuesday at 9.00 a.m.

(The Commission adjourned at 1.05 p.m.)