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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY, 14TH JUNE, 2011
AT THE NHIF AUDITORIUM, NAIROBI**

PRESENT

Tecla Namachanja Wanjala	-	The Acting Chair, Kenya
Gertrude Chawatama	-	Commissioner, Zambia
Berhanu Dinka	-	Commissioner, Ethiopia
Ahmed Sheikh Farah	-	Commissioner, Kenya
Tom Ojienda	-	Commissioner, Kenya
Margret Wambui Shava	-	Commissioner, Kenya
Ronald Slye	-	Commissioner, USA

(The Commission commenced at 10.00 a.m.)

*(The Acting Chair (Ms. Namachanja) introduced herself
and the other TJRC Commissioners)*

(Opening Prayers)

The Acting Chair (Ms. Namachanja): Hearing Clerk, could we have the witness in? Welcome to today's hearing of the Truth, Justice and Reconciliation Commission, today being the 14th day of June, 2011. Before we start the hearings, I would like to welcome you to today's hearing of the TJRC. This is the third week that the Commission is conducting hearings in Nairobi here for violations that took place in North Eastern and Upper Eastern. The focus of the hearings for the last week and for this week is on massacres that took place, especially in North Eastern, to be specific, in Garissa and Wajir. This took place during the security operations. The witnesses have been mainly former Kenya Government officers from the local administration. We also heard some from the armed forces, Permanent Secretaries and Under-Secretaries from the Ministries that formed the Kenya Intelligence Committee (KIC) and former members of the Provincial and District Security Committees.

Members of the public that have been attending include residents from North Eastern and Upper Eastern Provinces who are mainly the survivors and victims of the violations under investigation.

Our main witness today is Mr. Benson Naaman Kaaria. Mr. Kaaria was the Provincial Commissioner of North Eastern Province during the period of the violations under investigations. This is between the period of April, 1980 and April 1984. His testimony today is, therefore, very important for this Commission which is a truth-seeking Commission because Mr. Kaaria was the chairman of the Provincial Security Committee

(PSC). To facilitate the dialogue that we shall be having with Mr. Kaaria is our Leader of Evidence, Ms. Patricia Nyaundi. Before we start the process, I would like to find out if we have any counsel present. Please, identify yourselves and the people you are representing.

Mr. Kioko Kilukumi: My name is Mr. Kioko Kilukumi. I appear together with Mr. Elijah Mwangi for 17 individuals who I will name. Today, we are also joined by my colleague, Mr. Mutua Mulu, because, in a short while, I will be seeking your permission to attend a criminal trial.

The people we are representing are: Mr. A.J. Njue, Mr. David Mutemi, Mr. J.K. Kaguthi, Mr. D.K. Mativo, Mr. J.P. Mwangovya, Mr. David Mwiraria, Mr. Benson Kaaria, Mr. B.A. Kiplagat, Mr. John Kituma whose presence was excused by this Commission; Mr. James ole Sirian, Gen. (Rtd.) Kibwana, Maj. Philip Chebet, Lt. Murungi Kaaria, Messrs. James Stanley Mathenge, Joshua Matui, J.M. Ndirangu and P.N. King'ori.

I also want to update the Commission on the documentation that has been supplied by the Office of the President. I do not know whether this is the appropriate time or I wait until the other counsel introduce themselves.

The Acting Chair (Ms. Namachanja): I think we can finish with you.

Mr. Kioko Kilukumi: As you may recall, on 18th May, 2011, we wrote to the Office of the President seeking to be supplied with minutes as well as any records relating to the Wagalla operation which took place in 1984. Yesterday, we received a letter from the Permanent Secretary in the Office of the President forwarding the following documents: -

1. District Security Committee meeting of 18th November, 1983.
2. District Security Committee minutes for 14th February, 1984.
3. The Provincial Security Committee minutes for 17th November, 1983.
4. Provincial Security Committee minutes for 28th January, 1984.
5. Provincial Security Committee minutes for 17th February, 1984.
6. Provincial Security Committee minutes for 24th February, 1984.
7. Provincial Security Committee minutes for 2nd January, 1984.
8. KIC minutes for 9th February, 1984.
9. District Security Committee minutes for 9th February, 1984.
10. Provincial Security Committee minutes for 29th March, 1984.
11. Minutes for KIC tour of North Eastern Province and;
12. A report of a committee appointed to investigate circumstances leading to the recent unrest in Wajir District and this is what is popularly known as the Etemesi Report.

The Commission will notice from that report, the annexures to the report were not supplied to us. We immediately took up that issue with the Permanent Secretary. His immediate reaction was these annexures could not be traced, but every effort would be made to trace them. If available, we will table them before this Commission.

Thank you very much.

The Acting Chair (Ms. Namachanja): Thank you, counsel. On behalf of the Commission, I would like to confirm that, yes, indeed, we are in possession of the documents that you have listed. Any other counsel?

Mr. Harun Ndubi: Good morning. My name is Harun Ndubi. I am appearing for the Wagalla Massacre Victims and Survivors alongside the Truth Be Told Network, Ahmed Salah and Abdishad Salat.

The Acting Chair (Ms. Namachanja): Thank you, counsel. I would like now to check if there are any preliminaries before we proceed with the hearings.

Mr. Harun Ndubi: Yes, Madam Acting Chair. On behalf of the Wagalla massacre victims and survivors, we have a couple of preliminary points to make. One, which is more procedural, is that we would like to be formally assured by the Commission and provided with copies of witness statements and exhibits or minutest that may be provided by the various witnesses in the earliest possible opportunity, so that we can continue to meaningfully participate in these proceedings.

On the occasion we have had to receive any, it has been on a very *ad hoc* basis so we are not very well-prepared.

The second point that my clients have advised that I make a request is that the Commission be pleased to consider specifically seeking and taking or obtaining evidence regarding the role played by the District Security Committees of Garissa and Mandera Districts alongside Wajir because you will recall that the so-called operation around Wagalla Massacre, Wagalla was the epicenter, but the catchment area for the Degodia men was across those districts including Habaswein which is outside Wajir.

We, therefore, realized that it is essential for the Commission to be informed of what specific security operational or political role that may have been played by the District Commissioners in Mandera and Garissa districts as well as the Special Branch officers, the District Commissioner, the police as well as the military personnel in those regions.

More specifically, we would like to be assured that Col. Muhindi, Capt. Njeru and Mr. Okello who was the substantive Provincial Special Branch officer for North Eastern Province at that time, would be called to testify. We would be happy if we were advised when they will be attending.

The Acting Chair (Ms. Namachanja): On this side, do we have any preliminary issues?

Mr. Kioko Kilukumi: I do not have a preliminary issue relating to today's hearing. But I would want to seek your permission that I be excused and Mr. Mutua Mulu will be holding my fort, so that I can attend to a murder trial which is ongoing. Thank you.

The Acting Chair (Ms. Namachanja): Permission granted. I would like now to ask the Leader of Evidence to respond to the preliminaries raised and also, I will check with the Commissioners if they have any response.

The Commission Secretary (Ms. Nyaundi): I just wish to confirm that we have, where possible, been sharing documents that we receive with the counsel both for the witnesses and counsel appearing for the victims. The only issue is that some of these documents have been brought to us on the morning of the hearing. However, I take his point and henceforth, I can give the undertaking that the documents that are within our possession, including exhibits will be made available.

With regard to the witnesses that he has mentioned, the original summons that we issued included summons to Lt. Muhindi and Capt. Njeru Mugo. They have not responded to those summonses. I believe the Commission directed that we could not act on the newspaper summons in terms of penal action and that, therefore, attempts are being made to locate these two officers. We are also attempting to locate Mr. Okello. I have indicated to counsel, Mr. Ndubi, that the Commission shall also be holding thematic hearing around massacres later in the year. At that time, we anticipate that we shall call additional witnesses who will be able to speak more on Government policy and other issues at that level.

The Acting Chair (Ms. Namachanja): He also asked for statements. Are there any statements from us that we could share with him?

The Commission Secretary (Ms. Nyaundi): The statements that we have of the witnesses, we will share those statements with him.

The Acting Chair (Ms. Namachanja): We shall now commence our hearings today. My name is Tecla Namachanja Wanjala. I am the Acting Chair of the TJRC and the presiding chair for today. I will now ask our hearing clerk to swear in our witness.

(Mr. Benson Kaaria took the oath)

The Acting Chair (Ms. Namachanja): Leader of Evidence, before you start, I want to ask that we continue listening patiently and with respect; I appreciate that we have the victims and the survivors in the public. I know that the issues that we have been discussing are very emotional. Thank you for being silent and listening with respect to the testimonies that we have been hearing and that we shall continue to hear. Thank you. Please, continue.

The Commission Secretary (Ms. Nyaundi): Thank you. Please, state your name and where you are staying for the record.

Mr. Benson Kaaria: My names are Benson Naaman Kaaria. I stay in Meru and also in Nairobi.

The Commission Secretary (Ms. Nyaundi): What is your current occupation?

Mr. Benson Kaaria: I am a small-scale farmer.

The Commission Secretary (Ms. Nyaundi): Thank you. I have a copy of the statement that you recorded on 23rd May, 2011. I invite you to present that statement to the Commission.

Mr. Benson Kaaria: Thank you. I am a male adult aged 77 years and a retired civil servant. I reside both in Nairobi and Meru District. I am currently a farmer. I was appointed to the post of Provincial Commissioner in April, 1980 and posted to North Eastern Province (NEP), where I worked until April 1984. Formerly, I was the District Commissioner for Machakos District. The previous PCs were Messrs. Joseph Musembi, J.G. Mburu, W.K. Mate, Barrack E. Osare and Nahashon Musa Ngugi, from whom I took over. I recall that sometime in 1980, there was an incident in Garissa Town, where some unknown bandits attacked a bar in town where some civil servants were having a drink. The bandits shot at them, killing four on the spot and wounding several others. I believe it was between 8.00 p.m. and 9.00 p.m. On receiving this information, both the District Security Committee (DSC) and the Provincial Security Committee (PSC) held an emergency security meeting to assess the situation. It was then decided that the bandits must be pursued. An operation order was to be drawn in order to flush out the culprits. The PSC was of the view that maybe that was one of the attacks aimed at the Kenya Government by the Somali militia from across the border. If so, the incident could have occurred simultaneously in both Wajir and Mandera districts. In order to contain the situation, the movement of civilians had to be curtailed somehow in the whole province. The PSC felt the need to invoke the Preservation of Public Security Act, Cap.57, which provides for an imposition of a curfew order. I was then mandated by the PSC to seek the approval of the Head of State to declare a curfew in the whole province, which I did and the Head of State gave a nod. I made the order that limited movement from 7.00 p.m. to 6.00a.m. until further notice. The DSC then took over the responsibility of implementing the curfew order.

We prepared an operational order, rounded up all adults and took them to the open primary schools grounds for interrogation and screening in order to know who the perpetrators were. In the course of that operation by the security forces, several houses in Bula Karatasi went up in flames. It is believed that either the fleeing bandits or security forces torched the houses as they were pursuing the bandits. In an operation area such as NEP, the security committees are mandated, or empowered, by the Kenya Security Charter to carry out operations without any reference to any other authority. The composition, or membership, of these committees are: In case of Garissa DSC, the members are the District Commissioner (DC) who is the chairman, Officer Commanding Police Division (OCPD), District Special Branch Officer, Officer Commanding a Kenya Army Company. In case of PSC, the committee members are the Provincial Commissioner, who is the chairman, the Provincial Police Officer (PPO) who is a member, the Provincial Special Branch Officer and Commanding Officer, Kenya Army Battalion.

I can also recall two days later, Hon. G.G. Kariuki, MP, and Minister of State in the Office of the President, who was in charge of internal security, flew to Garissa to assess the situation and after addressing a *baraza* or a public meeting, he directed that the curfew order be relaxed immediately and I complied. The curfew order in Wajir and Mandera was revoked but that of Garissa was relaxed, but continued to exist for some time before it was revoked.

As regards the Wagalla Massacre incident in Wajir District, this followed another security forces operation in Wajir, which was carried out by the DSC under the chairmanship of the Acting DC, Mr. M.M. Tiema. The operation was necessary in order to recover illegally acquired firearms owned by the Degodia clan, or tribesmen, following a Government order to have all illegal firearms surrendered. The Ajuran clansmen surrendered all their firearms but the Degodias were adamant and they continued to attack and kill the defenseless Ajurans. From the literary report that I received from the Acting DC, Wajir, four days later, all the arrested persons were transported by Kenya Army vehicles to Wagalla Airstrip for questioning and interrogation. That was where the shooting took place and this ended in a number of the arrested persons being killed. What transpired here and led to the shooting--- All the DSC members who were on the ground can explain the circumstances under which the shooting was done. I would like to add that before any operation is carried out, a meeting with the security committee must be held, minutes taken and an operation order drawn by the Commanding Officer Police Division or by the DC. This gives the date of the proposed operation, time and personnel to be used. An operation order should indicate the purpose of the operation and what is to be done with prisoners, if any.

I have just a few things to mention here before I conclude my statement. I have worked as a District Officer (DO) for eight years, as a DC for nine years and as a PC for four years. As a DC, I must have chaired more than 100 DSC meetings. The DSC derive their authority to operate from the Kenya Security Charter or Manual. They operate independently from either PSC and the Kenya Intelligence Committee (KIC). The operation at Wagalla was to disarm the Degodia clan. The attack on Ajuran *manyattas* on 9th February, 1984 by the Degodia was a culmination of many incidents during which five women were murdered, one man killed and three camels shot. By tradition, it is inhuman to kill a woman. Even in the wars of long time ago, women and children were taken prisoners and were not killed. This also angered both the Ajuran and the DSC. The Wajir incident that followed was some kind of a last straw which broke the camel's back, and was followed by the operation. Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you. Mr. Kaaria. You have mentioned that you worked as a DO for eight years. So, when were you employed in Government service?

Mr. Benson Kaaria: I joined the service as a DO in May 1963, before Independence.

The Commission Secretary (Ms. Nyaundi): Where did you work?

Mr. Benson Kaaria: I worked in several districts like Meru, Machakos, Marsabit, Moyale Sub-District, Isiolo, Embu, as the Personal Assistant to the PC, Mandera as DO1 in 1967, Garissa in 1965 as the Personal Assistant to the PC up to 1971, when I was promoted to the post of a DC and posted to Lamu District.

The Commission Secretary (Ms. Nyaundi): You say that in 1980, you were appointed a PC, Garissa. So from 1971, were you in Lamu or did you also serve in various stations?

Mr. Benson Kaaria: Madam Acting Chair and Commissioners, in 1972, I was posted to Lamu as a DC where I stayed for three years. In December 1974, I was posted to Machakos District where I worked until 1980, when I was promoted to a PC in April.

The Commission Secretary (Ms. Nyaundi): In terms of your training so that you assumed the office of a DO, were you a trained administrator and what qualifications do you hold?

Mr. Benson Kaaria: I was trained at the Kenya Institute of Administration (KIA) which was training DOs of all cadres and DCs.

The Commission Secretary (Ms. Nyaundi): So, you were trained prior to your appointment in 1963?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Subsequent to that training, did you undergo further training for your elevation to a DC and then a PC?

Mr. Benson Kaaria: Madam Acting Chair, I attended several seminars and courses at KIA which were being offered to DCs, so that they could become senior DCs or be posted to other ministerial stations. It was the KIA which trained me.

The Commission Secretary (Ms. Nyaundi): You have said that you were appointed in 1963 and up till 1971, you worked as a DO within the northern region. I assume, therefore, that you have an understanding of what we in Kenya refer to as the "secession war. Is that so?"

Mr. Benson Kaaria: Yes, Madam Acting Chair. I can mention the little that I know. In 1963 when Kenya attained Independence, the residents of NEP did not want to stay in Kenya. They wanted to secede and join their relatives in Somalia. The then President Kenyatta said they could go less the land, and that brought the problem because the people still felt they were part and parcel of NEP land and not Somalia land.

The Commission Secretary (Ms. Nyaundi): So, was this something that you were trained at KIA or knowledge that you acquired by virtue of serving as a DO between 1963 and 1971?

Mr. Benson Kaaria: That was the knowledge I acquired in the field because I was a DO in Moyale which borders the NEP and we knew what was happening.

The Commission Secretary (Ms. Nyaundi): Did you, as the DO, provide reports to this effect?

Mr. Benson Kaaria: Reports to whom, if I may ask?

The Commission Secretary (Ms. Nyaundi): Either to your immediate superior like your DC?

Mr. Benson Kaaria: When I was the DO, Moyale, I was answerable to the DC Marsabit.

The Commission Secretary (Ms. Nyaundi): So, in the course of your duties as a DO, are you saying that you came across Kenyans in that region who made it clear to you that they would rather go to Somalia? Did you make reports on this to your DC?

Mr. Benson Kaaria: No; that was common knowledge. It was known in Kenya that they did not want to be in Kenya. So, the Government said that it would not part with any part of Kenya.

The Commission Secretary (Ms. Nyaundi): Mr. Kaaria, I just want our record to be accurate. You did not, as an administrator, formally state that you have come across these Kenyan Somalis and they had expressed to you that they wanted to be part of Somalia?

Mr. Benson Kaaria: I did not. Where I was working, the tribesmen were Boranas, Gabra, Rendille and, maybe, a few Somalis. The people did not tell me they wanted to go. I did not have the authority to be told.

The Commission Secretary (Ms. Nyaundi): You say it was common knowledge. Did we assume that these were things that were read in newspapers or mentioned in conversations that you had with your fellow DOs, or what was the basis of your conclusion that this was common knowledge?

Mr. Benson Kaaria: There were written reports from the Office of the President to tell the administrators about the politics of the day.

The Commission Secretary (Ms. Nyaundi): Now, between 1963 and 1971 when you served in the region, what was the security situation?

Mr. Benson Kaaria: Madam Acting Chair, it was volatile because that was the time when the banditry in NEP, which was called *Shifita* war started. These were militia from Somalia who came to Kenya to fight the Kenya Government. It was so unsafe that the President posted a whole battalion of the Kenya Army to the region with companies in Wajir, Mandera and Garissa.

The Commission Secretary (Ms. Nyaundi): And you refer to that period as the *Shifta* War time. For purposes of confirming the record, are you saying that at the time, the Somalis who were engaging the Kenyan forces were people whom you referred to as the *Shifta*?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Could you give the English equivalent of *Shifta*? Is it a corruption of language?

Mr. Benson Kaaria: I should think so. What I assumed was that *Shifta* meant bandits who robbed, stole and caused havoc.

The Commission Secretary (Ms. Nyaundi): At that time, the term was used in reference to non-Kenyan Somalis?

Mr. Benson Kaaria: Yes, it was.

The Commission Secretary (Ms. Nyaundi): Now, was it during the time when you served 1963 to 1971, that an agreement was signed between the Kenya Government and the Somalia Government that was intended to end hostilities?

Mr. Benson Kaaria: Yes, Madam Chair, it was and this was done because the bandits introduced mines which were blowing up Government vehicles and other civilian vehicles in the whole of the region, including Isiolo and Marsabit. In order to stop that, our President and the President of Somalia, with the help of President Kaunda, struck a deal and the enmity ended. Also, the issue of land mines stopped almost immediately.

The Commission Secretary (Ms. Nyaundi): I am saying this because I have also had an opportunity to read some of the regional reports. What year was this agreement signed?

Mr. Benson Kaaria: In 1967.

The Commission Secretary (Ms. Nyaundi): Was there then a period of relative peace?

Mr. Benson Kaaria: Yes, there was peace for a long time because planting of the landmines and the banditry stopped.

The Commission Secretary (Ms. Nyaundi): Until when?

Mr. Benson Kaaria: I would say after the Ogaden War. That was when there was some infiltration by remnants of the war between Somalia and Ethiopia in 1978.

The Commission Secretary (Ms. Nyaundi): Was there Government communication that there were some remnants who had infiltrated Kenya?

Mr. Benson Kaaria: I was not in Garissa then. I was in Machakos.

The Commission Secretary (Ms. Nyaundi): Okay, but you are aware of this and the source of your information is Government documentation?

Mr. Benson Kaaria: It is from the records that I read.

The Commission Secretary (Ms. Nyaundi): Now, these persons who infiltrated Kenya, were they Kenyan nationals or non-Kenyans?

Mr. Benson Kaaria: I think they were not Kenyan nationals, but I think they had influence and support of the local people because they came and lived with Kenyans in Kenya.

The Commission Secretary (Ms. Nyaundi): Again, this was information that you heard?

Mr. Benson Kaaria: This was information I got from the Press and records.

The Commission Secretary (Ms. Nyaundi): What term was used to refer to these remnants?

Mr. Benson Kaaria: *Shifta*.

The Commission Secretary (Ms. Nyaundi): For how long did this situation continue?

Mr. Benson Kaaria: I should say for some time our people started supporting the Government and the security forces kept on driving them away. They went away and peace was restored.

The Commission Secretary (Ms. Nyaundi): What year would this be?

Mr. Benson Kaaria: I should think by 1980. When I went there, things were not as bad.

The Commission Secretary (Ms. Nyaundi): You were appointed PC in April 1980 and you proceeded to Garissa. Would it be correct to assume that you were inducted into the position of PC?

Mr. Benson Kaaria: No, I was not inducted. I was knowledgeable in what I was supposed to do as a PC, having worked with two PCs as a Personal Assistant for three years.

The Commission Secretary (Ms. Nyaundi): So, you assumed this office with the benefit that you had gained from 1963?

Mr. Benson Kaaria: From 1968 when I went to Garissa as a Personal Assistant.

The Commission Secretary (Ms. Nyaundi): Now, I have a document here and I believe your counsel has a copy. It is referred to as “NEP Internal Security Scheme”, and it states that it was compiled by you as the PC, NEP, and through---

Commissioner Chawatama: I think you need to give us a little bit of time and maybe a little bit of information where the document is. Is it in the file you gave to us?

The Commission Secretary (Ms. Nyaundi): It is the separate one. Thank you. You have found the document?

Mr. Benson Kaaria: I have.

The Commission Secretary (Ms. Nyaundi): On page 10, there is a signature there. Can you confirm whether it is yours?

Mr. Benson Kaaria: Madam Acting Chair, this is my signature.

The Commission Secretary (Ms. Nyaundi): And so you were the author of this document?

Mr. Benson Kaaria: I was.

The Commission Secretary (Ms. Nyaundi): So, is this a document that you prepared by virtue of your office or when you assumed the office in April 1980?

Mr. Benson Kaaria: I am not sure when I prepared it, but it is a manual that is applicable to all provinces as a security manual.

The Commission Secretary (Ms. Nyaundi): So, are the contents your original thoughts, or it is a standard Government document, and all you did, as PC, was to append your signature on the copy for your province?

Mr. Benson Kaaria: It is a standard document.

The Commission Secretary (Ms. Nyaundi): So, all PCs would have prepared and signed a similar document for their provinces?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): That is dependent on their own peculiar circumstances in their respective provinces?

Mr. Benson Kaaria: That is true.

The Commission Secretary (Ms. Nyaundi): Now, what was the purpose of this document?

Mr. Benson Kaaria: The document gives guidelines on what the DSC or PSC can do in case of an emergency like civil disobedience, and particularly if there were large scale rapes by Somali nationals, or an organized large scale banditry promoted by grievances, criminal activities or any other disturbance. That is on page 2.

The Commission Secretary (Ms. Nyaundi): So, in terms of any operations, if that would have been conducted in the NEP, this is the document that would guide those operations?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): You, as the PC, would you furnish your DCs with a copy of this document?

Mr. Benson Kaaria: They had copies.

The Commission Secretary (Ms. Nyaundi): Of the same document or did they create their own documents?

Mr. Benson Kaaria: I prepare it and give them a copy.

The Commission Secretary (Ms. Nyaundi): Then it was your responsibility to ensure that this document was adhered to?

Mr. Benson Kaaria: That is true.

The Commission Secretary (Ms. Nyaundi): In the event that your DC did not adhere to the instructions in this document, were you, as the PC, empowered to take any form of disciplinary action?

Mr. Benson Kaaria: I do not think that would have happened because the DC would not act alone. As per the security manual, he was supposed to have a meeting with the other officers.

The Commission Secretary (Ms. Nyaundi): We are going to the details but my understanding of the structure is that the DC was answerable to you as the PC. The OCPD was answerable to the PPO and the DCIO would be answerable to the PCIO. Is that correct?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): So, in terms of the people who were answerable to you and in this case is the DC--- If the DC did not adhere to this scheme, would you, as the PC, be empowered to either take disciplinary action or recommend disciplinary action?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): So, it was not a binding document on the DC?

Mr. Benson Kaaria: Not on the PC but on the DC.

The Commission Secretary (Ms. Nyaundi): The DC was not bound and he could act outside of this scheme?

Mr. Benson Kaaria: My understanding is that he could not. It has never happened.

The Commission Secretary (Ms. Nyaundi): So, my question is: Supposing because there are always elements who do not pay attention to instructions--- This is not an actual case but I just want to say the force of this document--- Suppose you had a DC who ignored any of the instructions in this scheme, would you, as the PC, under those circumstances be required to take or recommend any form of disciplinary action?

Mr. Benson Kaaria: In that circumstance, I would report him to the PS, Office of the President for disciplinary action.

The Commission Secretary (Ms. Nyaundi): And what would be the kind of disciplinary action? Would this be a minor offence?

Mr. Benson Kaaria: I think this would be grave because it concerned security. So, it would be a serious offence.

The Commission Secretary (Ms. Nyaundi): And we would be talking of dismissal?

Mr. Benson Kaaria: Interdiction, suspension, and maybe dismissal by the Public Service Commission.

The Commission Secretary (Ms. Nyaundi): Thank you very much. We now want to go to the period after you reported as PC. I have furnished your counsel with a bundle of newspaper cuttings and, we want to look at the first one of *The Standard* on November 4th 1980. The headline is “DO Shot Dead by Shifta”.

Mr. Benson Kaaria: Yes, Madam. I have it.

The Commission Secretary (Ms. Nyaundi): And we can confirm that this is a front page story?

Mr. Benson Kaaria: Yes of November, 4th.

The Commission Secretary (Ms. Nyaundi): Are you able to confirm that it was, in fact, true that a DO by the name of Johnson Welimo had died in an ambush near Liboi?

Mr. Benson Kaaria: I would like to confirm it. He was my DO attached to Dadaab Division, and he was killed on his way to Garissa.

The Commission Secretary (Ms. Nyaundi): The headline indicates that he was killed by *Shiftas*. Would you be able to confirm that these were non-Kenyan Somalis?

Mr. Benson Kaaria: No; I do not know who the killers were.

The Commission Secretary (Ms. Nyaundi): At that time, you did not know who the killers were?

Mr. Benson Kaaria: Up to now.

The Commission Secretary (Ms. Nyaundi): So, you can confirm that as far as investigations were concerned, the killers were never identified and no one was charged with the offence of the death of Mr. Welimo?

Mr. Benson Kaaria: As far as I can remember, nobody was charged with the killing of the DO but investigations were started.

The Commission Secretary (Ms. Nyaundi): Investigations were started by whom?

Mr. Benson Kaaria: By the police in the NEP.

The Commission Secretary (Ms. Nyaundi): This would be the DCIO Garissa?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Was the killing of the DO an isolated incident?

Mr. Benson Kaaria: Madam Acting Chair, it was not an isolated one, because we had a similar incident in Wajir where another DO was killed.

The Commission Secretary (Ms. Nyaundi): When was this?

Mr. Benson Kaaria: I cannot remember the year, but I know the name of the DO.

The Commission Secretary (Ms. Nyaundi): What was the name of the DO?

Mr. Benson Kaaria: Somebody Matoke. He was a Kisii.

The Commission Secretary (Ms. Nyaundi): Were you able to identify the persons who had killed Matoke?

Mr. Benson Kaaria: We were not able to identify them.

The Commission Secretary (Ms. Nyaundi): Now, let us go to the *Sunday Standard* of November 9th. Do you have it? Again, it is a front page story entitled “*State Acts on Shiftas.*”

Mr. Benson Kaaria: I have it, Madam Acting Chair.

The Commission Secretary (Ms. Nyaundi): By this time, would you be able to confirm whether the police were still conducting investigations to determine the killers of the DO, Mr. Welimo?

Mr. Benson Kaaria: I believe they were still investigating, but by the time I left there, they had not come to a conclusion of the investigation.

The Commission Secretary (Ms. Nyaundi): So, what we see in the newspaper of November 9th, in the second paragraph are remarks attributed to you? It states there that: “There is a demand that the people of Garissa produce the *Shifita* gangsters and an ultimatum that unless the *Shifita* is produced, the Government will have no alternative but to round up all Somalis and put them in restricted villages.” Have you seen those remarks attributed to you?

Mr. Benson Kaaria: I have.

The Commission Secretary (Ms. Nyaundi): And you recollect making them?

Mr. Benson Kaaria: Yes, I did because I had to give a terse statement and warning to the people, and it worked. It works.

The Commission Secretary (Ms. Nyaundi): Where were you when you made this statement?

Mr. Benson Kaaria: I was in a public meeting in town which I addressed.

The Commission Secretary (Ms. Nyaundi): Were you alone in this meeting?

Mr. Benson Kaaria: I was with the PSC and even heads of departments.

The Commission Secretary (Ms. Nyaundi): Now, when you said that you had the power to put them into restricted villages, were you referring to the power that you had under the Internal Security Scheme?

Mr. Benson Kaaria: Yes, and in relation to the Preservation of Public Security Act. It had provisions---

The Commission Secretary (Ms. Nyaundi): For rounding up people and putting them into villages?

Mr. Benson Kaaria: Yes, it had happened before.

The Commission Secretary (Ms. Nyaundi): Were you relying on the benefit of the experience that you had from 1963 and 1971? We have heard from the people of Marsabit and Moyale that at that time, it was common practice to put people in villages. Were you relying on the experiences you had at that time?

Mr. Benson Kaaria: I was relying on the experiences of former PC, John Mburu. I was his personal assistant in Garissa. That was in 1967 when I was in Mandera and Garissa.

The Commission Secretary (Ms. Nyaundi): While there, you had operationalized the putting of people in villages?

Mr. Benson Kaaria: I think this was copied from the colonial Government because that is what they used to do to the Mau Mau. When you put people in a village, you protect them and their animals against anybody else. There were villages all over. I found them.

The Commission Secretary (Ms. Nyaundi): Between 1971 to 1980, was it a common practice to put people in villages?

Mr. Benson Kaaria: When peace returned, everything went back to normal. We forgot about it.

The Commission Secretary (Ms. Nyaundi): In 1980, as the PC of the North Eastern Province, you assessed that you were in a situation where you needed to put people in villages?

Mr. Benson Kaaria: We were heading there.

The Commission Secretary (Ms. Nyaundi): In the sixth paragraph of November 9th Edition of the *Standard*, you said that you have the experience. Of course, you are referring to the time that you served as the PA to Mr. Mburu. You are referring to the Preservation of Public Security Act and the Internal Security Scheme to "...put each one of you in villages". Do you remember making that remark?

Mr. Benson Kaaria: I made that remark. You have to do that as an administrator.

The Commission Secretary (Ms. Nyaundi): Let us move to the bottom of that page. There are other remarks that are attributed to you again at that *baraza*. You said in the end, "Since you are 678,000 people in the province, all of you would be eliminated and Kenyans would be left living in peace"? Do you recollect making those remarks?

Mr. Benson Kaaria: That was taken out of context. If you finish people, whom do you rule? You would remain with empty land.

The Commission Secretary (Ms. Nyaundi): So, what exactly did you say?

Mr. Benson Kaaria: I said that action would be taken by the Government.

The Commission Secretary (Ms. Nyaundi): Did you state exactly how many people the action would be taken against?

Mr. Benson Kaaria: I did not. I do not even know whether they were exactly that number.

The Commission Secretary (Ms. Nyaundi): Did you, during that *baraza*, indicate that action taken would resort into loss of life?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): After that paragraph, there is a statement that says that Mr. Kaaria said that those residents whose loyalty was in Somalia should pack and go. Do you recollect saying that?

Mr. Benson Kaaria: That is true. If you did not want to be under the Kenyan Government, you could pack and go elsewhere. This was a warning to people who would understand. Before, there was a directive.

The Commission Secretary (Ms. Nyaundi): When you communicated, it was very clear that you were not joking with them. Did you indicate to them that this to you was just a figure of speech or were you saying that the Government---

Mr. Benson Kaaria: You cannot say that. They would laugh at you.

The Commission Secretary (Ms. Nyaundi): Your intention on that day was to communicate firmly to the people at the *baraza* that the Government would not hesitate to take action, including action that would resort to loss of life?

Mr. Benson Kaaria: And even putting them into villages.

The Commission Secretary (Ms. Nyaundi): My question to you was: On that day, did you communicate to the people at the *baraza* that the Government was prepared to take stern action including action that may resort to loss of life? The next newspaper cutting is of the *Sunday Nation*, 9th November, 1980. Do you have that? It is a front page story that says: *We will Shoot to Kill, PC Warns*. Do you remember issuing that threat at the *baraza*?

Mr. Benson Kaaria: I do not remember having said that. Shooting to kill?

The Commission Secretary (Ms. Nyaundi): You do not recall that?

Mr. Benson Kaaria: I do not recall.

The Commission Secretary (Ms. Nyaundi): We want to move to the second paragraph which begins with “*Step*”. Can you see “*Step*” in bold? Can you see that?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Mr. Kaaria told the well attended *baraza* that he would withdraw some services to the people of that region. Did you say that?

Mr. Benson Kaaria: I did not say that. If I withdrew animals, people would die and I would be left with an empty province.

The Commission Secretary (Ms. Nyaundi): The newspaper also states that you also threatened that the Government would withdraw the famine relief supplies. Do you recall that?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): That same paragraph says that leaders and *wananchi* of the province must be told frankly and openly that they had gone too far and were playing with fire. Do you recollect saying that?

Mr. Benson Kaaria: I do not recollect saying that.

The Commission Secretary (Ms. Nyaundi): We have agreed that this was on the front page of the *Nation* of 9th November, 1980. Assuming that these remarks were made to you and you did not make them, did you at any time contact the *Nation* and tell them that they had carried you on their front page of their paper and quoted you to have made statements that were false?

Mr. Benson Kaaria: I could not do that because in the North Eastern Province at that time, you could not get newspapers.

The Commission Secretary (Ms. Nyaundi): Mr. Kaaria, do you agree that the statements that have been attributed to you are very serious? They are very grave, in fact.

Mr. Benson Kaaria: Yes, they are very serious. They are very grave, in fact.

The Commission Secretary (Ms. Nyaundi): Are they the kind of statements that if your PS saw, he would call you and ask about what he was reading in the newspaper? Did the PS ever ring you and ask you about what he had read in the newspaper?

Mr. Benson Kaaria: I cannot recall.

The Commission Secretary (Ms. Nyaundi): So, he never called you? What had happened earlier was that Welimo had been killed. Subsequently to that, there was an

incident that you have alluded to in your statement that says that bandits attacked people in a bar in Garissa Town. That is in the third paragraph of your statement. The incident happened at night and in the process, four civil servants were killed.

Mr. Benson Kaaria: Correct.

The Commission Secretary (Ms. Nyaundi): Considering the issues we heard in North Eastern Province during the hearings, the Provincial Administration suspected that that had been engineered by Ali Madobe?

Mr. Benson Kaaria: Yes, that is what we later learnt after interrogating people.

The Commission Secretary (Ms. Nyaundi): In the wake of these attacks, are you aware that people were rounded up at the Garrisa Primary School?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Could we confirm again that this was done under the guidance of the internal security scheme?

Mr. Benson Kaaria: During the Garissa operation, both the DSC and the PSC were involved in terms of analyzing the situation and making the decision to put people at the Garissa Primary School.

Mr. Benson Kaaria: That is true, Madam.

The Commission Secretary (Ms. Nyaundi): Again, looking at the newspapers of November 10th and November 11th which is again a front page story says that people were rounded up for the purpose of screening at the Garissa Primary School. Is that correct?

Mr. Benson Kaaria: Yes, that is correct.

The Commission Secretary (Ms. Nyaundi): If you recall, the intention you had as the PSC, was your intention to screen?

Mr. Benson Kaaria: The intention was to screen and find out who the killers of the officers were.

The Commission Secretary (Ms. Nyaundi): Is it within your knowledge the number of officers who were rounded up at the Garissa Primary School?

Mr. Benson Kaaria: I would not know the number.

The Commission Secretary (Ms. Nyaundi): Did you ever go to Garissa Primary School?

Mr. Benson Kaaria: I did the following day and ordered that all the women be released.

The Commission Secretary (Ms. Nyaundi): Thank you. When you went to Garissa Primary School, did you get a brief on when the rounding up had commenced?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): Would you then be in a position to confirm that people had been brought to the primary school from the previous night into the early hours of the morning?

Mr. Benson Kaaria: I believe that they were brought to the field in the early morning hours.

The Commission Secretary (Ms. Nyaundi): Did you find out who was responsible in terms of the security forces? Was it the police, the APs or the Army that brought people to the primary school grounds?

Mr. Benson Kaaria: It was the police and the APs.

The Commission Secretary (Ms. Nyaundi): Was the Army involved in any way in this operation?

Mr. Benson Kaaria: I did not see the Army when I went to the field.

The Commission Secretary (Ms. Nyaundi): So, they were not involved in any way?

Mr. Benson Kaaria: They were not.

The Commission Secretary (Ms. Nyaundi): So, when you went to the ground the next morning, is that the day you were in the company of your Minister, G G. Kariuki?

Mr. Benson Kaaria: No. That was before. It was immediately after the round up.

The Commission Secretary (Ms. Nyaundi): So, G. G. Kariuki came later?

Mr. Benson Kaaria: Yes, he came later.

The Commission Secretary (Ms. Nyaundi): When you went there, how many people did you see at the grounds?

Mr. Benson Kaaria: Madam Acting Chair, I cannot tell.

The Commission Secretary (Ms. Nyaundi): Were the grounds full or was it half full or were people just in a corner?

Mr. Benson Kaaria: It was half filled.

The Commission Secretary (Ms. Nyaundi): Were people standing or they were seated?

Mr. Benson Kaaria: They were seated.

The Commission Secretary (Ms. Nyaundi): You confirmed that when you went on 10th, there were women there?

Mr. Benson Kaaria: There were women and civil servants and I ordered them to be released.

The Commission Secretary (Ms. Nyaundi): All civil servants or non-Somalis?

Mr. Benson Kaaria: I did not go to check who was who but I said that civil servants should be set free.

The Commission Secretary (Ms. Nyaundi): So, you are not in a position to contradict the statement that Somali civil servants continued to stay on?

Mr. Benson Kaaria: I did not check.

The Commission Secretary (Ms. Nyaundi): When your Minister, Hon. GG Kariuki, came the next day, who else was with him?

Mr. Benson Kaaria: I am not quite sure who else was with him. I suspect there was an MP who had accompanied him.

The Commission Secretary (Ms. Nyaundi): I am required to help you remember. We are told that Mr. Biwott came on that day. Do you recollect that?

Mr. Benson Kaaria: I do not recall that.

The Commission Secretary (Ms. Nyaundi): Do you recollect Major Sawe coming there on that day and at that time, he was the Chief of the Army?

Mr. Benson Kaaria: Mr. Sawe was there and I believe he was the Army Commander.

The Commission Secretary (Ms. Nyaundi): So, by the time Major Sawe came in, were you in a position to know whether the Army was involved in this operation?

Mr. Benson Kaaria: The Army was not involved in this operation.

The Commission Secretary (Ms. Nyaundi): So, I assume that you also addressed a *baraza* when you had this high powered delegation from Nairobi?

Mr. Benson Kaaria: I only introduced the Minister.

The Commission Secretary (Ms. Nyaundi): So, let us go to the newspaper of 11th November, 1980. The front page indicates that thousands of people had been rounded up for the purpose of screening and the remarks there are attributed to the Minister. Let us go to the next page which is a continuation; page 3. If you look at the last column, the second paragraph, you will see that later in the night, the PC, Benson Kaaria, chaired an emergency security meeting after which he declared a state of emergency in the entire province and placed the area under a 12 hour curfew.

Mr. Benson Kaaria: That is true and it is also in my statement.

The Commission Secretary (Ms. Nyaundi): It states that you released a statement and it says that the PC stated that the Government would no longer tolerate any form of terrorism and banditry. The statement read:

“In retaliation, all development committees have been disbanded forthwith. I have disbanded the provincial, district and location committees and there shall be no meeting of any nature whatsoever.”

Do you remember issuing a statement?

Mr. Benson Kaaria: I cannot remember saying that.

The Commission Secretary (Ms. Nyaundi): This says that this was an actual statement.

Mr. Benson Kaaria: Disband?

The Commission Secretary (Ms. Nyaundi): Yes, disband the development committees. This was a front page story. Page one says, *Thousands Rounded Up* There are statements attributed to the Minister, Mr. G G. Kariuki.

On page 3, we have statements attributed to you. So, this is actually a front page story. You can confirm that what we are looking at is a continuation of what you are seeing on the front page. So, again, I would like to ask you: Is this the kind of story that if your PS saw it while in Nairobi, he would have rang you and told you that we are seeing on page 3 of the *Standard* that you have disbanded the provincial district and location committees. Is that true?

Mr. Benson Kaaria: If they saw it, they would call me.

The Commission Secretary (Ms. Nyaundi): Do you remember them calling you?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): And have you ever contacted the *Standard* to tell them that they misquoted you?

Mr. Benson Kaaria: I could not contact them because they had no office in Garissa and we did not receive newspapers.

The Commission Secretary (Ms. Nyaundi): At that time, newspapers would not come? I know, although mine is in more recent years, that it is the practice of the Government to issue officers with complimentary copies of newspapers. Are you saying that in 1980s, the Government did not furnish its officers with complimentary newspapers?

Mr. Benson Kaaria: That service was not there.

The Commission Secretary (Ms. Nyaundi): Later on, we can say that the newspaper is accurate in its last paragraph where it says:

“By mid afternoon yesterday, most women, children, civil servants and non-Somali citizens who had been rounded up for screening were released.”

Mr. Benson Kaaria: That could be correct.

The Commission Secretary (Ms. Nyaundi): This was your directive as you had stated earlier?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Could you shed some light with the people on the ground what screening entailed?

Mr. Benson Kaaria: It means getting people, one by one and asking them what they know with regard to the information required by security officers. It is a kind of an interview.

The Commission Secretary (Ms. Nyaundi): Which officers conduct it?

Mr. Benson Kaaria: It is conducted by the Special Branch and the police.

The Commission Secretary (Ms. Nyaundi): How long was screening going on at Garissa Primary School?

Mr. Benson Kaaria: I believe it was only for a day.

The Commission Secretary (Ms. Nyaundi): It was for a day and then people were released.

Did you receive a letter as the Chair of the PSC of the results of that screening exercise or its findings?

Mr. Benson Kaaria: The Committee must have written and given a report but I cannot remember what it said.

The Commission Secretary (Ms. Nyaundi): But you received a report?

Mr. Benson Kaaria: Yes, my committee should have given a report.

The Commission Secretary (Ms. Nyaundi): Did the report disclose that houses had been burnt in the villages?

Mr. Benson Kaaria: Yes, it did.

The Commission Secretary (Ms. Nyaundi): Did that report disclose who had burnt those houses?

Mr. Benson Kaaria: It did not, Madam Acting Chair.

The Commission Secretary (Ms. Nyaundi): Did your officers who were conducting the report inform you that while looking for the criminals in the villages, they burnt houses?

Mr. Benson Kaaria: The burning of the houses was done by fleeing bandits.

The Commission Secretary (Ms. Nyaundi): So, you received a report about burning of houses and the persons responsible?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Did you receive a report that during that operation, women had been raped?

Mr. Benson Kaaria: Madam Acting Chair, I did not get that report.

The Commission Secretary (Ms. Nyaundi): Did you inquire or investigate in any way the effect of the operation on the civilian population?

Mr. Benson Kaaria: I did not.

The Commission Secretary (Ms. Nyaundi): And so did information reach you either as the Chair of the PSC or as the Provincial Commissioner that persons had been killed and their bodies were disposed off in the river?

Mr. Benson Kaaria: I did not get that report at all.

The Commission Secretary (Ms. Nyaundi): Did you inquire as to how bodies were disposed off? Those are bodies of people who died during the operation.

Mr. Benson Kaaria: I did not get a report of people dying or having been shot during the operation.

The Commission Secretary (Ms. Nyaundi): For how long was the curfew on?

Mr. Benson Kaaria: I believe it was for three months or so. I do not have the records and so I cannot remember.

The Commission Secretary (Ms. Nyaundi): It continued for about three months?

Mr. Benson Kaaria: I believe it was for three months, if not one month.

The Commission Secretary (Ms. Nyaundi): When the Minister, Mr. G.G. Kariuki, came, he said - and I can see that you have put it in your statement - that you relax the order in Mandera and Wajir but it continued for sometime in Garissa. Is that accurate?

Mr. Benson Kaaria: That is true.

The Commission Secretary (Ms. Nyaundi): So, what was removed immediately was the operation in Wajir and Mandera?

Mr. Benson Kaaria: And the relaxation of timed hours in Garissa.

The Commission Secretary (Ms. Nyaundi): What was the reason for extending curfews to Wajir and Mandera?

Mr. Benson Kaaria: The PSC was of the view that the two areas had been attacked by militia from neighbouring countries.

The Commission Secretary (Ms. Nyaundi): My understanding is that what provoked the operation was that you believed that the attack at the bar was by Abdi Madobe and that it had occurred in Garissa. Is that so?

Mr. Benson Kaaria: No, we did not know that at that time.

The Commission Secretary (Ms. Nyaundi): So, when did you get information about the activities of Abdi Madobe?

Mr. Benson Kaaria: It was after the rounding up. Through screening, we got information that it was his group that attacked the Maa.

The Commission Secretary (Ms. Nyaundi): We have received reports that Abdi Madobe had sent circulars round stating that he wanted to attack civil servants. Do you have such information?

Mr. Benson Kaaria: I cannot recall.

The Commission Secretary (Ms. Nyaundi): I will look for it but there is a newspaper report stating that your response to that was that if that attack was conducted, then the Government would respond harshly. We will look at it and I will draw your attention to it. In any event, can we confirm whether or not there was an investigation carried at Garissa Primary in November, 1980?

Mr. Benson Kaaria: Madam Acting Chair, I cannot recall because that was a long time ago. I do not remember having seen that report but possibly, there was a report. There was no way that the DSC could do something like that and not send a report to the office.

The Commission Secretary (Ms. Nyaundi): I have looked at the scheme and the internal security scheme. Was there a requirement that at the end of the operation, if it was the DSC or the PSC that was carrying out the operation, they would prepare a report and transmit it to the higher authority? Was there such a requirement?

Mr. Benson Kaaria: There was no requirement but it is common sense.

The Commission Secretary (Ms. Nyaundi): There was no provision of preparation of reports?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): While we were in Garissa, we received testimonies of yet another operation that occurred in 1989 at Galgamalla. What had happened is that security officers were transporting money and were attacked and killed. An operation was conducted. I am just recollecting that you left in 1984. That is okay. Between 1980 and 1984, in your recollection, were there other situations within the province that would have required the conducting of an operation?

Mr. Benson Kaaria: I do not remember but as I can recollect, there was none.

The Commission Secretary (Ms. Nyaundi): So, are you saying, as the PC, between 1980 and 1984, your region was peaceful and there was no need for an operation?

Mr. Benson Kaaria: If it were not for these killing of the DO and the other officers, the province was peaceful.

The Commission Secretary (Ms. Nyaundi): We will now refer to minutes. You have been here during the three weeks that the Commission has been holding its hearings. Let us look at the minutes of 14th November, 1983. That is the bundle that we received from the PS, Internal Security. Minutes of 14th November, 1983. They are dated 17th but they are for a meeting that was held on 14th November. Have you found them?

The Commission Secretary (Ms. Nyaundi): If we look at the minutes of 14th November on page two, at the bottom, Minute 185 of 83, it is headed “KIC Visit”. According to your understanding, what was the KIC connection to the PSC and the DSC?

Mr. Benson Kaaria: The PSC did not have any connection. The visit was intended to see the development programmes in the province and areas where they could recommend funds to be made available to implement the projects. It was a development visit.

The Commission Secretary (Ms. Nyaundi): Just to assist us further on the connection, look at the Minutes of the meeting of 23rd February, 1984. Do you have the minutes of 23rd February?

Mr. Benson Kaaria: No, I do not have.

The Commission Secretary (Ms. Nyaundi): They are not in the bundle we have received today, but you will have a copy. I will give you my copy and you will refer to page three, Minute 27/84, the Schedule for KIC Meeting for 1984. Look at page three and four. If you look at the front page of those minutes, you were chairing that meeting. Is that correct?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And there were other members of the PSC. Let us go to Minute 27/84, which is at the bottom of page three. It continues to page four and if you look at Minute 27/84, it talks about schedule of the KIC meetings. Is that so?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Then on top of page four is the meetings for the KIC and you are saying there that you received communication from the KIC that this is when they would be holding their meetings. The second paragraph, you are scheduling their meetings so that they are held a week before the KIC and in the final paragraph, you are giving instructions to the DSC to hold its meetings before your meetings and presumably two weeks before those of the KIC. Is that correct?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): So, on the basis of Minute 27/84, what was the connection between the PSC and the KIC?

Mr. Benson Kaaria: The connection is that we, as the PSC, would like the DSC to have its meetings earlier than the PSC, so that we can use their minutes in our meeting. Similarly, the KIC would like us, as the PSC, to have a meeting before so that the minutes can be for security of the KIC.

The Commission Secretary (Ms. Nyaundi): What was the core function of the PSC on which you served in the ordinary conduct?

Mr. Benson Kaaria: The PSC meets monthly to assess the security situation in the province.

The Commission Secretary (Ms. Nyaundi): So, on the basis of that, what would be the nature of your communication to the KIC?

Mr. Benson Kaaria: If we find that there is an area which requires the KIC action, we minute to that effect, namely, action by the PS, Office of the President.

The Commission Secretary (Ms. Nyaundi): This would be on security related issues?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): You will allow me to refer you to the internal security scheme on page 7. At the top of page 7, we have Command and Control. Is that true?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And it defines the membership of the PSC and also the DSC and where necessary, you state that there can be a representative of the Armed Forces?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Paragraph “b” states, “Tasks - to keep under regular review measures for the maintenance of law and order in the provinces and districts, to meet normally once a month for this purpose and to refer either to the PSC concerned or the KSC Committee as appropriate any problems in the internal security field which in their view require attention and cannot be solved locally. Subject to the overall control to the President advised by the National Security Council, the direction of an emergency in a province or district lies with the Provincial or District Security Committee”. That is true?

Mr. Benson Kaaria: True.

The Commission Secretary (Ms. Nyaundi): So, would it be possible under any circumstances for the DSC to refer a matter directly to the Kenya Security Committee (KSC)?

Mr. Benson Kaaria: They will not refer directly to the KSC. There is no connection.

The Commission Secretary (Ms. Nyaundi): There is no way they would by-step the PSC and go directly to the KSC?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): The second clarification I would require is whether the KSC that you are referring to in the internal security scheme is different from the KIC that we are talking about in the minutes of 14th November, 1983 and 26th January, 1984?

Mr. Benson Kaaria: The KIC advises the KSC. It is an advisory body.

The Commission Secretary (Ms. Nyaundi): In the same way that the DIC advises the DSC, the PIC advises the PSC?

Mr. Benson Kaaria: That is true.

The Commission Secretary (Ms. Nyaundi): Just for clarity, you as the PC, would sit as both Chair of the PIC and the PSC?

Mr. Benson Kaaria: I would sit as Chair. Normally, the PIC does not record minutes. You receive an intelligence summary from the Provincial Special Branch Officer and when you go through it, you find areas which require action. The PSC then meets immediately after the PIC.

The Commission Secretary (Ms. Nyaundi): In the minutes of 14th November, 1983, it is reported there that you notified members about the KIC's visit to the Province beginning from 28th November, 1983 and it was to hold meetings with the DSCs in all districts and then end up with the PSC in the North Eastern Province and that you would communicate details to the DSC. That is accurate?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): So, did the intended KIC visit of 28th November, 1983 materialize?

Mr. Benson Kaaria: No, I think it was put off.

The Commission Secretary (Ms. Nyaundi): Do you remember the reason that it was put off?

Mr. Benson Kaaria: They would not give us the reason but maybe for other commitments, they would just say that it has been put off and they would be coming later. They would not tell us the reason.

The Commission Secretary (Ms. Nyaundi): I do not know whether you are in a position to confirm that some persons have suggested that the reason that the KIC meeting was put off was that the Head of State, the then President Daniel arap Moi, visited Somalia and for that reason, the visit of the KIC was postponed.

Mr. Benson Kaaria: They would not give us reasons or communication to that effect.

The Commission Secretary (Ms. Nyaundi): As the PS, North Eastern Province, did you have occasion to either be part of a delegation or accompany a delegation lead by His Excellency the President, when he met the Head of State of Somalia?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): Never while you were the PS, North Eastern?

Mr. Benson Kaaria: Never.

The Commission Secretary (Ms. Nyaundi): As the PC, North Eastern, were you aware of the visit by the Head of State to Somalia even if you did not accompany the mission?

Mr. Benson Kaaria: I was not aware.

The Commission Secretary (Ms. Nyaundi): Did you travel a lot outside the Province while you were PS?

Mr. Benson Kaaria: I travelled a lot inside the province.

The Commission Secretary (Ms. Nyaundi): So, if the Head of State had gone to Somalia, you would have been aware?

Mr. Benson Kaaria: Yes, through the news.

The Commission Secretary (Ms. Nyaundi): But your position did not entitle you to accompany that trip?

Mr. Benson Kaaria: It did not.

The Commission Secretary (Ms. Nyaundi): So, did you, maybe on news, hear that the President had gone to Somalia?

Mr. Benson Kaaria: There was something like that.

The Commission Secretary (Ms. Nyaundi): It was on television or radio?

Mr. Benson Kaaria: Radio, there was no television then.

The Commission Secretary (Ms. Nyaundi): So, when did you hear this visit on the radio?

Mr. Benson Kaaria: I cannot tell but there was information that he had gone to Somalia.

The Commission Secretary (Ms. Nyaundi): Maybe just to try and help us, was it before or after the Christmas break of 1983?

Mr. Benson Kaaria: I would not know.

The Commission Secretary (Ms. Nyaundi): You would not remember. Let us now make reference to the minutes of the meeting on 26th January, 1984. They should be in the holder that you are holding and are dated 28th January, 1984, immediately after the minutes we have just been looking at. They are dated 28th but the meeting was held on 26th January. Let us go to page four, Minute 684. Do you have that? Again, it talks of the KIC tour of North Eastern Province. Is this the same meeting that you were referring to in the earlier meeting? Is this the same tour?

Mr. Benson Kaaria: It is the same tour which was rescheduled.

The Commissioner Secretary (Ms. Nyaundi): Between the date of the last meeting and 26th January, the KIC had not come?

Mr. Benson Kaaria: Yes.

The Commissioner Secretary (Ms. Nyaundi): So, this would be the same tour. Looking at this minute, it also includes the programme of the KIC tour. Did this programme originate from the PSC or did the KIC advise you from Nairobi that they were coming to the northern region and they wanted to meet with the PSC and the respective DSCs?

Mr. Benson Kaaria: We were advised by the KIC, Nairobi, and they said they wanted to be in the province. Then we prepared the programme for approval.

The Commissioner Secretary (Ms. Nyaundi): Are you the ones who proposed to them that when they come, they should meet the DSC and the PSC or are they the ones who communicated to you from Nairobi that they were coming and they would like to meet the PSC and the DSCs?

Mr. Benson Kaaria: I think it is the PSC which prepared the programme if I can remember well and we suggested where they should visit and who to see.

The Commission Secretary (Ms. Nyaundi): So, the proposal that you sent to them was that they would arrive and they would be met by the PSC and the DSC?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): When they communicated to you, did they tell you what the purpose of the tour had been and so you then proceeded to define whom they should meet?

Mr. Benson Kaaria: Because it was the KIC, definitely we knew they would like to have a briefing of the security position in all the districts and the province.

The Commission Secretary (Ms. Nyaundi): So, you proceeded to prepare and going by the documents in the possession of the Commission, we can assume that the KIC approved the programme that was drawn?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Mr. Kaaria, do you have a document separate from the report that sets out the programme for the tour?

Mr. Benson Kaaria: Yes, I have, which is headed: “Kenya Intelligence Committee Tour of North Eastern Province”.

The Commission Secretary (Ms. Nyaundi): Ambassador Kiplagat informed us that they were given this prior to their departure from Nairobi and attached to it was a list of people who would participate in the meeting. The clarification he gave us was that whereas these were people who had been slated to travel, the list that is attached to the report is the list of the people who were in the North Eastern Province between 8th and 10th February. We will now go back to the report by Mr. Mwangovya. I assume that even as you prepared for the meeting, you must have got that original report. Do you remember receiving a list from Nairobi informing you of the likely delegation that would arrive?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And likely, it would be that document?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): If you look in the folder that you have, there is a document just before the report by Mr. Mwangovya and there is this file that had a list of documents that were forwarded yesterday by the PS, Internal Security. If you look in that folder, the document we have been looking at is the one dated 24th May, 1984 and just before it is a document addressed to the Director of Intelligence, KIC tour of North Eastern Province. Have you seen that document?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Please go to page five of that document. It is signed by P.M. Murimi, the same P.M. Murimi who is number five on the report of Mr. Mwangovya. Is that correct?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): This document is addressed to the Director of Intelligence. It states there: “Members of the Kenya Intelligence Committee visited Wajir, Mandera and Garissa between 8th to 10th February, 1984. They conferred with the respective DSC members on matters concerning security, personnel and administrative problems. Enumerated below is a summary of their observations”. That is the correct reading?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): This is the same tour we are talking about in the minutes of 26th January, 1984?

Mr. Benson Kaaria: It is the same tour.

The Commission Secretary (Ms. Nyaundi): On page one there is a summary on the discussions relating to security. Is that correct? This is on the KIC tour; the document signed by Mr. Murimi. Commissioners, I will request for a ten minutes break then I can go through the document with Mr. Kaaria, so that we are sure we are referring to the same document.

The Acting Chair (Ms. Namachanja): That is fine with us. So, we adjourn for ten minutes and we shall come back and continue.

The Commission Secretary (Ms. Nyaundi): I am told it is 12.15 p.m.

The Acting Chair (Ms. Namachanja): It is fine. We shall come back and continue. We break until 1.00 p.m. We have consulted and decided that the best way we can make use of this time is maybe we go for an early lunch and come back at 2.00 p.m. and continue. The hearings are adjourned until 2.00 p.m.

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

[The Commission resumed at 2.20 p.m.]

(Mr. Benson Kaaria continued with his evidence)

[The Acting Chair (Ms. Namachanja) in the Chair]

The Acting Chair (Ms. Namachanja): Welcome back to the afternoon hearings of today, 14th June, 2011, and we shall continue with the testimony of Mr. Benson Kaaria. Yes, Leader of Evidence!

The Commission Secretary (Ms. Nyaundi): Thank you, Madam Acting Chair.

So Mr. Kaaria, we were on that document that has been signed by P.M. Murimi. I had referred you to Paragraph 1 of that document on the first page. We can confirm that this is a report by Mr. Murimi of the meeting that the Kenya Intelligence Committee had had with the respective DSC members.

Mr. Benson Kaaria: Yes, it is!

The Commission Secretary (Ms. Nyaundi): And earlier, in fact, we had confirmed that in its itinerary, the KIC was meeting members of the DSC in the respective districts. That is correct?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): Now when we look at page 1 under the subtitle, "Security", Paragraph A is talking about tribal animosity. That is correct?

Mr. Benson Kaaria: According to this, yes.

The Commission Secretary (Ms. Nyaundi): And identifies a number of issues and proposes solutions? Is that correct?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): Then when we look at page 2, banditry is identified as an issue and solutions are proposed. That is correct?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): The third item is the divided loyalty and solutions are proposed. The fourth item is Islamic fanaticism. Then there we have development as an issue that was discussed, that is on page 3 and the various setbacks. Then on page 4, loyalty and morale, recommendations and the final thing there is a comment. That is correct?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Let us just talk about the meetings with the DSCs. When you were going round with the DSCs, you were addressed by the Chair of each respective DSC?

Mr. Benson Kaaria: Yes, the DCs who were the chairmen.

The Commission Secretary (Ms. Nyaundi): And so this is what happened in Mandera, Garissa and also Wajir?

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): When Mr. Tiema was here, he showed the Commission the brief that he presented---

(Loud consultations from the public)

The Acting Chair (Ms. Namachanja): Please, let us maintain silence!

The Commission Secretary (Ms. Nyaundi): He showed the Commission the brief that he presented to the members of the KIC. Do you remember that?

Mr. Benson Kaaria: I cannot remember because I did not get a copy.

The Commission Secretary (Ms. Nyaundi): But you remember that when you communicated to the respective DSCs, you instructed them to prepare a brief for the KIC that they would present?

Mr. Benson Kaaria: They prepared a brief which was passed over to the team leader.

The Commission Secretary (Ms. Nyaundi): Yes, who was the Permanent Secretary?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): But you can confirm that your instructions to the DSCs, including the Wajir DSC, was to prepare a brief to the KIC?

Mr. Benson Kaaria: Sure!

The Commission Secretary (Ms. Nyaundi): There is a document that I trust your lawyers have, it is dated 1st February, 1984, Wajir DSC brief to KIC during its visit.

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): Did you confirm that on that day, Mr. Tiema presented as the other chairs of the DSCs to the KIC?

Mr. Benson Kaaria: Yes, he did.

The Commission Secretary (Ms. Nyaundi): And you can see that the last page of that document bears Mr. Tiema's signature?

Mr. Benson Kaaria: Yes, Madam Acting Chair, it does.

The Commission Secretary (Ms. Nyaundi): Have you had occasion to look at this document before? Mr. Kaaria, I am wondering whether you have had the benefit of looking at this document.

Mr. Benson Kaaria: I looked at it.

The Commission Secretary (Ms. Nyaundi): Today or previously?

Mr. Benson Kaaria: I was given here.

The Commission Secretary (Ms. Nyaundi): Okay! Do you confirm that at least on pages 1 and 2 of this document, some background is given to the tribal animosity in Wajir District?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And that is what we are seeing on page 1 of Mr. Murimi's brief?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Go to pages 1, 2, 3 and 4, substantial part of it. Beginning on pages 4 and 5 of Mr. Tiema's brief, there is a bit of discussion on banditry and subsequent surrender of firearms. Is that correct?

Mr. Benson Kaaria: On the report?

The Commission Secretary (Ms. Nyaundi): Yes! Mr. Tiema's report. Just look at page 5 of that report at the top, on 16th December, 1983, the Minister of State in the Office of the President---

Mr. Benson Kaaria: Yes, I can see it.

The Commission Secretary (Ms. Nyaundi): It is concerned about the security situation in Wajir West. Is it not?

Mr. Benson Kaaria: Yes, Madam Acting Chair!

The Commission Secretary (Ms. Nyaundi): As a result of his directive, Ajuran surrendered 11 firearms. Is it not?

Mr. Benson Kaaria: Correct!

The Commission Secretary (Ms. Nyaundi): And, in fact, he says there, subsequently you toured the district and on 10th January, he called for surrender of firearms and the Ajurans continued to surrender. Is it not?

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): So that is also captured in Mr. Kirimi's report. Now let us look at divided loyalty---

Mr. Benson Kaaria: Mr. Kirimi or Murimi?

The Commission Secretary (Ms. Nyaundi): I am sorry, it is Mr. Murimi. Let us look at divided loyalties. So what Mr. Tiema presented to the KIC was, on page 5, what we have as influence. You can see that? And he is talking about what is happening in Somalia. "They are using some of our tribes as soldiers of fortune, like the Irelia Somali movement". Later on in the report, in fact, he says some of the Kenyans had taken to listening---

Let us look at page 9. He says the use of Somali currency in Kenya, there is an indication there that we are using Somali currency. Is that correct?

Mr. Benson Kaaria: I can see it from the report.

The Commission Secretary (Ms. Nyaundi): You can see it from the report?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Look at page 8, the bottom paragraph No.3; "a concerted and ruthless effort should be embarked on by the Kenyan Government to instill patriotism to Kenyan Somalis living in this province. They should be made to understand that Kenya is the best of the three countries. They should be discouraged from having any dealings with Somalis unless it is on legal and official terms. We know our locals have a tendency of listening to Radio Mogadishu rather than VoK. Even if VoK plays patriotic songs, the locals do not listen to such songs". Is that correct?

Mr. Benson Kaaria: That is the report he wrote.

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

Mr. Benson Kaaria: That is what he has written.

The Commission Secretary (Ms. Nyaundi): And what Mr. Murimi has written is what the KIC received that some Kenyan Somalis still lack sense of belonging and place their allegiance to either Ethiopia or Somalia for ethnic reasons. Is that true?

Mr. Benson Kaaria: That is what Murimi says.

The Commission Secretary (Ms. Nyaundi): And there are many other issues we could go through to show that Mr. Murimi's report must have been said on the briefs that he received here in Wajir and the other visits. That would be accurate to state, would it not?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Now, as we have agreed, Mr. Murimi identifies the issue that was raised to the KIC and the solutions that were offered. Is that correct?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): So when we look at tribal animosity, the solutions that were offered on page 1 of that document are continued security patrols and operations to defuse tribal tensions, is it not?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And they have four other solutions, making them five. I want us to look at the issue of banditry. So when we look at the issue of banditry, the solutions that were offered at the meeting were:-

- (1) Usual security patrols/operations;
- (2) Communal punishment where tribal element is established;
- (3) Detention of known criminal collaborators;
- (4) Disarming the locals; and,
- (5) Rehabilitation of defectors and those who had surrendered. Is that correct?

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): When you look at the report by Mr. Mwangovya, that document dated 24th May, 1984, the numbering is in hand, you could look at page 36 on the top left corner - The report of Mr. Mwangovya.

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): So what Mr. Mwangovya has done is that he has picked up each district. Can you see that?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And for Wajir District, he has picked two issues. Is that correct?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): And he talks about their meeting with the DSCs and the issue is tribal clashes between the Degodia and the Ajuran. Is that correct?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And there is fencing of police divisional headquarters?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And you can confirm that was actioned to the PPO North Eastern Province; the fencing of police divisional headquarters?

Mr. Benson Kaaria: Action by PPO, yes!

The Commission Secretary (Ms. Nyaundi): I am sure you have been here during the hearings when we have had other witnesses and we have gone through these minutes and shown that everything that was pending was actioned.

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Now, Mr. Kaaria, if we look at that item; meeting with the DSC, the Acting DC briefed the Committee on the security situation in the district. You can see that item?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): You can confirm that it was not actioned?

Mr. Benson Kaaria: It says the tribal clashes between Degodia and Ajuran had slightly improved because the situation had improved.

The Commission Secretary (Ms. Nyaundi): Precisely! There is a column here for actioning, is it not?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): What I want you to confirm is that on the side of this particular item, there was no action taken. There was nothing that was actioned either to the KIC or to the PPO or to the PC or the PS. Is that accurate?

Mr. Benson Kaaria: There is no comment on that action column.

The Commission Secretary (Ms. Nyaundi): Mr. Kaaria, the suggestion I want to make to you is that it was not actioned because according to Mr. Murimi, on page 2 of his report, a solution had been offered during the meeting with the KIC.

Mr. Benson Kaaria: And which resolution is that?

The Commission Secretary (Ms. Nyaundi): If we go back to Mr. Murimi's document, this other document we have been looking at - It is not Mr. Mwangovya's document.

Mr. Benson Kaaria: Yes, I have it.

The Commission Secretary (Ms. Nyaundi): So Mr. Murimi's document on page 2 - I think you are looking at Mr. Mwangovya's document.

Mr. Benson Kaaria: I am looking at Murimi's page 2. If you repeat the question, I think I will follow.

The Commission Secretary (Ms. Nyaundi): Yes, Sir. I was saying on page 36, there is no action on this issue of the conflict between the Degodia and the Ajuran because a solution had been offered.

Mr. Benson Kaaria: Which is the solution offered? I do not see it.

The Commission Secretary (Ms. Nyaundi): Okay! If we look at page 2, then there is banditry. You can see banditry, page 2 of Murimi's document?

Mr. Benson Kaaria: Yes, banditry!

The Commission Secretary (Ms. Nyaundi): So that is the issue that was raised, that there were armed gangsters operating in the entire North Eastern Province. These are usually ex *Shiftas* who have turned to crime as a way of life, runaway insurgents, tribesmen armed by neighbouring countries for self-defense or those who have purchased arms for the same purpose, poachers and animal rustlers. Some of the acts of banditry are committed by infiltrators while passing through our territory on missions to neighbouring countries. That was the issue that was raised.

Mr. Benson Kaaria: I think there was no need for action.

The Commission Secretary (Ms. Nyaundi): Because the solutions are there, is it not?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): So the solutions, and according to Mr. Murimi, if we look at his page 1 he says he has enumerated--- Do you see that last sentence of paragraph 1?

Mr. Benson Kaaria: Solutions?

The Commission Secretary (Ms. Nyaundi): Last sentence of Paragraph 1. You can see paragraph 1?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): So what Murimi is saying is that he is enumerating a summary of the observations of the KIC, is it not?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): So when the KIC was told about banditry, these were their observations and solutions. Is that correct?

Mr. Benson Kaaria: It is correct.

The Commission Secretary (Ms. Nyaundi): And they are talking about usual security patrol and operations, communal punishment, detention of known criminal collaborators, disarming the locals and rehabilitation of defectors, at least going by Murimi's document. Is that correct?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Now we want to go back to the programme. What we have been told is that after your meeting in Wajir, the team proceeded to Mandera. Is that correct?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): And then in the evening, you went back to Garissa. That is correct?

Mr. Benson Kaaria: We stayed overnight in Mandera.

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

Mr. Benson Kaaria: The team stayed overnight in Mandera.

The Commission Secretary (Ms. Nyaundi): That was on 8th?

Mr. Benson Kaaria: The day they got a brief from Wajir DSC they proceeded to Mandera. They had a night stop in Mandera, and then the following day they left for Garissa.

The Commission Secretary (Ms. Nyaundi): So the evening of 9th found you in Garissa? In fact, we have been told you hosted a dinner for the team.

Mr. Benson Kaaria: I did, Madam Acting Chair.

The Commission Secretary (Ms. Nyaundi): I just want us to go through the security scheme.

Mr. Benson Kaaria: Sorry.

The Commission Secretary (Ms. Nyaundi): Thank you. As we had agreed earlier, this security scheme is what acts as a guide when operations are conducted.

Mr. Benson Kaaria: True.

The Commission Secretary (Ms. Nyaundi): Just going by this scheme and looking at Page 1 of the scheme, given your understanding of what happened at Wagalla, and if we look at that execution, assessment of types and severity of the emergency likely to be encountered, the operation as conducted in Wagalla, would we say it was “a” unrest and lawlessness stemming from intertribal or sectional disputes between the Somalis themselves or inter-racial trade union or was it “b”; lawlessness and civil disobedience among the Somalis who still pursue secession?

Mr. Benson Kaaria: To me, it looks like “c”.

The Commission Secretary (Ms. Nyaundi): It looks like “c”?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): So this operation would fall under the internal security scheme?

Mr. Benson Kaaria: Yes, precisely!

The Commission Secretary (Ms. Nyaundi): Okay. Now, what we have been told is that the DSC met on 9th of February at 3.00 p.m., and then they made the decision to have this operation.

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): What I have seen about this scheme, we have been told here that one of the things that the DSC did was to call for reinforcement. I just wish you to confirm whether page 2 paragraph “D” is what would apply, so request for police reinforcements would be made by the PSC through police channels to force headquarters?

Mr. Benson Kaaria: “D” on the execution?

The Commission Secretary (Ms. Nyaundi): No, Page 2 “D”, it calls for reinforcement.

Mr. Benson Kaaria: Yes, the DSC requested for reinforcement.

The Commission Secretary (Ms. Nyaundi): And that would have been under Paragraph “D”?

Mr. Benson Kaaria: That is under Paragraph “D”.

The Commission Secretary (Ms. Nyaundi): The question I had for you is where it is that the DSC is asking for reinforcement because here it provides for the PSC asking for reinforcement. Would we then say that the DSC would make that request to the Provincial Police Officer (PPO) who would place it before the PSC and then they would transmit it to the force headquarters?

Mr. Benson Kaaria: The reinforcement required here was within the province.

The Commission Secretary (Ms. Nyaundi): So within the Province---

Mr. Benson Kaaria: The request was made to the PSC within the province and the PPO was directed to make the arrangements.

The Commission Secretary (Ms. Nyaundi): Ok! So what happened in this situation is that the DSC got in touch with the PPO?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): But that is in accordance with Paragraph D (1). That is just what we have read. Now we have also been told that the military were involved in this operation. That is true?

Mr. Benson Kaaria: They were.

The Commission Secretary (Ms. Nyaundi): So what I have seen here is that pages 3 and 4 provide for normal procedure and immediate procedure. That is true?

Mr. Benson Kaaria: Where are you, Madam?

The Commission Secretary (Ms. Nyaundi): Sorry, when I refer to the pages, I am referring to the numbering at the top of the page.

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): So I am referring to page 2, the bottom of page 2 which talks about request for military assistance in aid of the civil power. That is correct?

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): So it provides both for the normal procedure and then on the next page, it provides for immediate procedures. That is correct?

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): So based on your understanding on what happened in Wagalla in February, what procedure was adopted by the DSC, was it the normal or the immediate procedure?

Mr. Benson Kaaria: I should say it should be normal.

The Commission Secretary (Ms. Nyaundi): So let us look at the normal. So in this case, a request by the Provincial Commissioner, because I have gone through it, maybe I can just assist you so that we move faster---

Mr. Benson Kaaria: Let me read again---

The Commission Secretary (Ms. Nyaundi): It looks like what happened was an immediate procedure---

Mr. Benson Kaaria: Let me read again.

The Commission Secretary (Ms. Nyaundi): You want to read it a bit.

Mr. Benson Kaaria: To me it looks like “A” because we did not involve the National Security Council (NSC). It was not a war between Kenya and any other country, it was internal.

The Commission Secretary (Ms. Nyaundi): The reason I was asking you to confirm whether it was normal or immediate is because what we have heard was that the decision was made rather hurriedly on 9th of February. There was a meeting at 3.00 p.m., and when I read the procedure under immediate procedure paragraph “A”, it says, “In a sudden and urgent emergency, when life and property would be endangered by delay involved in following the normal procedure, a Provincial or District Commissioner may, after consultation with the local police commander, unless otherwise impossible, ask for assistance from the commander of any force which happens to be in the area at the time. Such a request would be reported to the Ministers for Defence and for Home Affairs at the earliest opportunity and by the quickest means.” Because what “normal” suggests is that the DSC would have had time to communicate the request to you and then you would

have made a request to the President through the operations rules, but this is not what happened.

Mr. Benson Kaaria: There was no need of involving the President here. We had the machinery at hand and could take a decision on the spot.

The Commission Secretary (Ms. Nyaundi): Okay! So what happened in this particular instance you are saying is that the DSC after their meeting got in touch with the PSC through the PPO and a decision was made?

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): Thank you. And so this operation was carried out under the normal procedure?

Mr. Benson Kaaria: It was carried under the normal procedure.

The Commission Secretary (Ms. Nyaundi): You can confirm that under this document, the scheme, there was a requirement that there is maintained a line of communication between the PSC and the force headquarters. That is what the scheme provides for.

Mr. Benson Kaaria: If there was a necessity to involve them.

The Commission Secretary (Ms. Nyaundi): So you would then make the decision on the spot?

Mr. Benson Kaaria: And finish with it.

The Commission Secretary (Ms. Nyaundi): Okay! So on that day, you made the decision that there would be no need to go further than you?

Mr. Benson Kaaria: There was no need.

The Commission Secretary (Ms. Nyaundi): Thank you very much. One other thing that I want us to look at here is Appendix No.13--- It is in small print. Unfortunately the page is not numbered but right after the 8th memo, Stages of Action is the next document.

Mr. Benson Kaaria: I have Appendix Nos.14, 15---

The Commission Secretary (Ms. Nyaundi): We can exchange because I have found it on this one and then I can refer to yours. So we are there, Appendix No.13. This looks to be the operational guide for the police. Now there is a paragraph there that talks about command. Have you seen it?

Mr. Benson Kaaria: Number 2?

The Commission Secretary (Ms. Nyaundi): Yes! Based on your knowledge and your understanding, what it says here is that the PSC would supervise the overall deployment of security forces and such information if available and based on decisions arising there it would direct the implementation of the action towards the successful control and elimination of the cause of the state of emergency. The clarification I sought is whether in the case of Wagalla it is the DSC who were in active command of the operation.

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): Would the same apply only that instead of Provincial Commissioner, we would be talking of District Commissioner?

Mr. Benson Kaaria: I do not understand because when it says “direct implementation of action towards successful control and elimination of the cause of the state of emergency”, we did not have emergency in Wagalla.

The Commission Secretary (Ms. Nyaundi): Okay! My understanding is that this paragraph seeks to state who will be in command of an operation, when an operation is occurring. What we had seen on page 1 of the document when we were talking about assessment of the types and severity of emergency, we had agreed that this one was “c”. So, it amounts to an emergency because it is unrest, lawlessness and that is why we were operating under this scheme.

Mr. Benson Kaaria: No. Let us read carefully from top.

The Commission Secretary (Ms. Nyaundi): Yes!

Mr. Benson Kaaria: “The type of emergency envisaged and the circumstances of the unrest leading to the state of emergency throughout the Republic or in any particular locality and may manifest itself in any or in combination of the following forms; general uprising, unlawful assembly or killings, that is out...”

The Commission Secretary (Ms. Nyaundi): Inter-tribal?

Mr. Benson Kaaria: On “A”, “B”, “C”, “D” that is when the command follows what is written here. I will go on a little bit. It says: “The Committee will meet at the Provincial Police Officer’s room immediately”. This is in case of emergency.

The Commission Secretary (Ms. Nyaundi): So now we are looking at “E” – Intertribal disturbances. Well, maybe to assist you, let us look at the DSC’s minutes of the meeting that was held on 14th February, 1984. It is in the bundle of documents we received this morning.

Mr. Benson Kaaria: That is right!

The Commission Secretary (Ms. Nyaundi): So minutes of the Special DSC Wajir Meeting held on 14th February in the OCPD's office starting at 10.30 a.m.

Mr. Benson Kaaria: Yes, minute number?

The Commission Secretary (Ms. Nyaundi): I will request you to just hold both documents. When I look at Appendix 13, there is the requirement that when there is an operation ongoing, the Committee will meet at the Provincial Police Operations Room, if it is at the provincial level.

Mr. Benson Kaaria: Yes!

The Commission Secretary (Ms. Nyaundi): When I saw these minutes, I was wondering because what I have seen about minutes is that traditionally, meetings are held either in the DC's office for the DSC or the Provincial Commissioner's office for the PSC. This meeting is being held at the OCPD's office during the operation. Was this pursuant to the command under Appendix 13?

Mr. Benson Kaaria: Inter-tribal disturbances, this is where the two tribes fight, the fight between the two, a real fight. This is one sided and it does not come into the category of inter-tribal disturbances.

The Commission Secretary (Ms. Nyaundi): What you are saying is that in as far as you are concerned, when the DSC met on 9th February, 1984, and expressed alarm at what was going on in Wajir, and decided to have an operation, they did not conduct that operation under the Security Scheme or are you saying that meetings were being held in Garissa and instructions were being transmitted to Wajir?

Mr. Benson Kaaria: The problem was not a tribal clash as such. It was just magnified. The DSC decided to handle it locally but with assistance of personnel to provide transport and other logistics.

The Commission Secretary (Ms. Nyaundi): We will not refer to the Internal Security Scheme for this operation?

Mr. Benson Kaaria: It was not of that magnitude, to me.

The Commission Secretary (Ms. Nyaundi): Under what authority were they conducting the operation? What document gave them authority to conduct the operation?

Mr. Benson Kaaria: They have the power as the DSC to take a decision on matters pertaining to any insecurity within their district.

The Commission Secretary (Ms. Nyaundi): Is it just a power that is not spelt out anywhere? Is this something they just wake up and say these people have killed so many people, let us round them up and put them at the airstrip?

Mr. Benson Kaaria: It could come under what we call command but not the magnitude of going to the operation room in the PPOs office. I have never seen it myself. It has been handled the way it was handled.

The Commission Secretary (Ms. Nyaundi): How was it handled?

Mr. Benson Kaaria: By making the operation order.

The Commission Secretary (Ms. Nyaundi): Operation order originated from where?

Mr. Benson Kaaria: From themselves. They have authority to mount an operation order. To me, they have.

The Commission Secretary (Ms. Nyaundi): To your knowledge, did this operation have a code?

Mr. Benson Kaaria: I do not know but it is supposed to have a code so that the officers can communicate. I do not know whether they had a secret code.

The Commission Secretary (Ms. Nyaundi): Now, we have agreed that they communicated to the PPO on the 9th February. That is what we have been told. Orders were given and the operation proceeded. You as the chair of the PSC when was the first time you were made aware that there was an ongoing operation at Wagalla?

Mr. Benson Kaaria: On the evening of the 9th the PPO told me that he had sent a signal to Wajir who had told him that they were going to have an operation. When he showed me the signal, I thought it was very strongly worded. It said they were going to mount an operation covering all men, women and animals. We met as the PSC and revised the signal. We said the operation should not include wives, children and animals.

The Commission Secretary (Ms. Nyaundi): When did you hold the meeting?

Mr. Benson Kaaria: We did not meet as such. We agreed because we were together. We said we must revise---

The Commission Secretary (Ms. Nyaundi): All the members of the PSC were there? This was the night when there was the dinner at your house?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): You had a discussion by all the members of the PSC and agreed to tone down the language.

Mr. Benson Kaaria: Yes. We thought it was too strong and did not convey the decision of the PSC. It was an individual's view.

The Commission Secretary (Ms. Nyaundi): So, after that 9th February 1984, did you as the chair of the PSC or the PC North Eastern Province remain updated on what was going on in Wagalla?

Mr. Benson Kaaria: We did not remain updated because the DSC Wajir decided to put us off. We do not know for what reason but we did not know what had transpired, how they arrested people, where they had taken them and the action they were taking until after two days.

The Commission Secretary (Ms. Nyaundi): So you did not hear from them on the 10th and 11th?

Mr. Benson Kaaria: No communication.

The Commission Secretary (Ms. Nyaundi): Did you yourself maybe try and contact them?

Mr. Benson Kaaria: There was no communication. After the second day, I sent the Army Commander and the PCIO to Wajir to find out what was happening.

The Commission Secretary (Ms. Nyaundi): That would be on the 13th?

Mr. Benson Kaaria: I should think so.

The Commission Secretary (Ms. Nyaundi): That was Mr. Ndirangu, I think he testified.

Mr. Benson Kaaria: Mr. Ndirangu and Col. Muhindi.

The Commission Secretary (Ms. Nyaundi): When was the first time you heard that Gen. Mulinge would be coming to your region?

Mr. Benson Kaaria: After they had come back and briefed the PSC what had happened, we thought the matter was very serious. We informed the PS Office of the President. I think he might have informed the Chief of General Staff. This is because he came the following day and we met in Wajir.

The Commission Secretary (Ms. Nyaundi): So you communicated on the 14th?

Mr. Benson Kaaria: Yes. When we got the information from Wajir we translated it to the PS, Office of the President.

The Commission Secretary (Ms. Nyaundi): Looking at the minutes, I see that on the 14th of February you chaired three meetings, is that correct?

Mr. Benson Kaaria: Let me check the minutes. They were at different times. Was it on the 14th or 15th?

The Commission Secretary (Ms. Nyaundi): They are dated 15th but the meeting was on 14th.

Mr. Benson Kaaria: On 15th February there was a meeting?

The Commission Secretary (Ms. Nyaundi): Yes. So there was a meeting at 8.45 a.m. Is that correct? The date is 15th but the meeting was on 14th. You had a meeting at 8.45 a.m.?

Mr. Benson Kaaria: This was at 11.50 a.m.

The Commission Secretary (Ms. Nyaundi): At 8.45 a.m.

Mr. Benson Kaaria: This is a special joint meeting.

The Commission Secretary (Ms. Nyaundi): I think you first had the special PSC meeting and then the joint meeting.

Mr. Benson Kaaria: I have.

The Commission Secretary (Ms. Nyaundi): This is after Mr. Ndirangu and Col. Muhindi have come back.

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): Now you were getting a briefing from them?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): I have looked at these minutes. Based on page three of the minutes, there is that paragraph that begins, "In the course of the interrogations..." On the third line of that paragraph where you say:-

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

Would it be correct to state that as at this time you were satisfied with that operation?

Mr. Benson Kaaria: We were satisfied with the operation.

The Commission Secretary (Ms. Nyaundi): At that time?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): And that following from Minute 15/84 you sensed that more ought to be done? There you were saying there was a possibility of more danger and therefore you were calling for additional measures to be taken.

One of the things that you decided to do was to increase the number of security men who were deployed for this operation.

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): What we have been told is that on the 13th of February a decision had been made to release people from airstrip. What is it these extra troops were coming to do?

Mr. Benson Kaaria: To assist the DSC Wajir with manpower.

The Commission Secretary (Ms. Nyaundi): So there was still need for extra security in the region even after the people had been released from the airstrip?

Mr. Benson Kaaria: We did not want to take chances. Wajir District did not want to take any risks.

The Commission Secretary (Ms. Nyaundi): Now, you then had another meeting at 11.50 a.m. that is contained in the immediate minutes after those ones. They are dated 16th.

Mr. Benson Kaaria: We had a special joint meeting.

The Commission Secretary (Ms. Nyaundi): There was a special joint meeting between the PSC and DSC. This time looking at it, you were giving counsel to the DSC. Is that correct?

Mr. Benson Kaaria: That is correct.

The Commission Secretary (Ms. Nyaundi): There is a statement there that I would like you to explain. You say in the first paragraph that:-

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

What is it that you sought to avoid? What was your concern?

Mr. Benson Kaaria: We wanted the DSC Garissa to be more vigilant in getting more information about security in their districts so that they could be aware in case of any tribal conflict to avoid a case where we would have to round up people again.

The Commission Secretary (Ms. Nyaundi): So we can state that even by the time you were having this meeting, as the PSC you really had no issues with the manner in which the operation had been conducted at Wajir?

Mr. Benson Kaaria: We already had the report from those who went to Wajir but we thought as a security measure, the DSC should be more vigilant so that they are not caught by any incident where conflict occurs without their knowledge.

The Commission Secretary (Ms. Nyaundi): Now, there is the meeting that you had on the 15th February at 9.30 p.m. This as indicated by the minutes, you had just come back from Wajir where you had been with Gen. Mulinge. Would it be correct to state that when you came back, at least in Wajir, you had got a more detailed briefing of exactly what happened during the operation?

Mr. Benson Kaaria: We had not yet got the full details because the number of people we learnt had died was 29.

The Commission Secretary (Ms. Nyaundi): You learnt that when you went on the 15th?

Mr. Benson Kaaria: On the 15th.

The Commission Secretary (Ms. Nyaundi): Was that the first time you were learning that people had died?

Mr. Benson Kaaria: We had learnt when the Commanding Officer and the PAPSBO came from Wajir. That is the first information we got.

The Commission Secretary (Ms. Nyaundi): But this is the first time you were hearing that 29 people had died?

Mr. Benson Kaaria: This is when we went to Wajir now with the General. That is when we got the information about the 29 people.

The Commission Secretary (Ms. Nyaundi): So when you went with the General, now that people had been told to leave the airstrip, where did you go?

Mr. Benson Kaaria: After talking to the DSC---

The Commission Secretary (Ms. Nyaundi): You met them at the office?

Mr. Benson Kaaria: We met at the Army Camp. After that discussion we decided to go to Wajir Airstrip to see for ourselves where the people had been kept.

The Commission Secretary (Ms. Nyaundi): What did you find at the airstrip?

Mr. Benson Kaaria: We found the airstrip. We found the side of the fence which was broken and we could see traces of footprints in the runway.

The Commission Secretary (Ms. Nyaundi): Inside or outside the enclosure?

Mr. Benson Kaaria: Inside the airstrip there were traces of maize and beans scattered.

The Commission Secretary (Ms. Nyaundi): On plates or on the ground?

Mr. Benson Kaaria: On the ground.

The Commission Secretary (Ms. Nyaundi): Did you see any people still at the airstrip?

Mr. Benson Kaaria: There were no people there. Nobody was there when we went there.

The Commission Secretary (Ms. Nyaundi): Including the military?

Mr. Benson Kaaria: There was nothing at the airstrip.

The Commission Secretary (Ms. Nyaundi): Did you maybe go to hospital to confirm whether there were some people in hospital?

Mr. Benson Kaaria: We did not go to the hospital because the DSC had told us that they had dumped the bodies.

The Commission Secretary (Ms. Nyaundi): Did you go to the sites where the bodies had been taken?

Mr. Benson Kaaria: We were not taken there because we were not shown.

The Commission Secretary (Ms. Nyaundi): Did you ask to go to see where the bodies had been taken?

Mr. Benson Kaaria: I do not think we asked. The whole thing was horrible and it was very bad. We do not want to remember it. When you hear people have died, you do not feel comfortable. It was very bad.

The Commission Secretary (Ms. Nyaundi): Up to that, Minute 22/84 the meeting of 15th February, you made the decision to disarm the Degodias and Somali APs.

Mr. Benson Kaaria: This was a recommendation of the DSC because they feared that anything was likely to flare up as things were mounting high and the DSC felt that anything could happen between Degodia and Ajuran or even Degodia and civil servants. This was just a feeling.

The Commission Secretary (Ms. Nyaundi): But in Minute 23 you actually directed that those transfers were to take effect immediately and in any case not later than 20th February 1984. That is on page four.

Mr. Benson Kaaria: That is true.

The Commission Secretary (Ms. Nyaundi): The other decision that you made was with regard to the Kenya Policemen and their transfers from Wajir?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Minute 24/84 you say:-

“PSC was of the unanimous view that the events in Wajir have been so disturbing and noting that the Degodia tribesmen had become aggressively hostile, it was absolutely necessary for the DSC to take stern action in order to bring the wanton killings of innocent people to an end. It was particularly serious when the Degodia tribesmen were known to be skimming a plan of extinguishing some prominent leaders and senior civil servants by assassinating them.”

The action that the DSC had taken was to round up people, put them on an airstrip. Now, when you say you wanted stern action taken, what was the PSC contemplating at that stage?

Mr. Benson Kaaria: It was to ensure that the DSC makes small patrols in the affected areas because the presence of the soldiers would scare the would-be attackers. The presence of the DSC must be felt within their area through patrols.

The Commission Secretary (Ms. Nyaundi): So, you can confirm that at least by 15th February, and this is a meeting that started at 9.30 p.m., even by the end of that day you were not contemplating any disciplinary action against the DSC?

Mr. Benson Kaaria: We were not contemplating that because they had done a good job. The operation was successful because they were able to get the guns. That was the aim.

The Commission Secretary (Ms. Nyaundi): Did you have then, or do you have now, an opinion on the lives that were lost in the process?

Mr. Benson Kaaria: Yes it was very bad. It is very sad and regrettable. This is because when an operation was mounted, it was not meant to kill anybody. I do not know whether we should call that a calamity. It was not planned to kill people.

The Commission Secretary (Ms. Nyaundi): During the meeting of 23rd February, the minutes are dated 24th---

Mr. Benson Kaaria: I have the minutes.

The Commission Secretary (Ms. Nyaundi): Let us look at page two. In terms of the success of that operation and thinking of the PSC, you state there that you noted with appreciation that the Ajuran have surrendered 31 firearms. Contrary to that paragraph two, the Degodia were still not surrendering firearms and that they were concealing and harbouring destructive elements.

In paragraph three of page two you say:-

“Consequently, the PSC recommended that to realize effectiveness stiffer measures should be deployed against the Degodia.”

The clarification I sought was, were you contemplating something more serious than rounding up people at an airstrip?

Mr. Benson Kaaria: No, similar but then get the ringleaders maybe detained for a few days or weeks. It proved effective to do that. That can send a signal to the clan concerned.

The Commission Secretary (Ms. Nyaundi): Now, at the meeting of the 23rd we are looking at Minute 284 – *Wajir Deaths Incident*. You state there in the last paragraph that, “The PSC demands a detailed written incident report on what went wrong and why the report was kept secret to the DSC alone.”

Can you elaborate on that statement?

Mr. Benson Kaaria: Yes, we wanted a written detailed report from the DSC of what went on from the time of arresting these people, taking them to the airstrip and up to the time they released them. We wanted to have a full report of what happened at the airstrip.

The Commission Secretary (Ms. Nyaundi): Subsequent to that meeting you instructed the DSC to furnish you with a report which I believe is a letter dated 27th February and prepared by Mr. Matui. Do you have it with you?

Mr. Benson Kaaria: I have seen it.

The Commission Secretary (Ms. Nyaundi): Could you refer to it?

Mr. Benson Kaaria: I have the report from Wajir dated 27th February.

The Commission Secretary (Ms. Nyaundi): When you received this report you were satisfied on the information contained in that report?

Mr. Benson Kaaria: I was satisfied on the report of what transpired.

The Commission Secretary (Ms. Nyaundi): The reason I am asking is when I look at your deliberations on the 15th February and look at this report, the information is basically the same. Therefore, I am wondering what new thing you were asking for.

Mr. Benson Kaaria: It might look the same but when you want something in writing it is not what you heard from the people. We wanted something written to confirm what took place in writing.

The Commission Secretary (Ms. Nyaundi): So the issue of 23rd February was that you did not have it in writing, not that you were not updated on what was going on in Wajir?

Mr. Benson Kaaria: It was not a full report because it was scanty.

The Commission Secretary (Ms. Nyaundi): But again we can confirm that what is reported in your minutes of 15th February is basically what is in the report for 27th February 1984.

Mr. Benson Kaaria: I do not think it is the same word for word.

The Commission Secretary (Ms. Nyaundi): Soon after this, the Government appointed a committee which was headed by Mr. Etemesi. You have a copy of that report?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): Your advocate must be having it. We got it from them in the morning.

Mr. Benson Kaaria: I have it now and I am seeing it for the first time.

The Commission Secretary (Ms. Nyaundi): I will take you through it. If you look at the last page you confirm that it is signed by four individuals; Mr. Etemesi, Col. Thirimu---

Mr. Benson Kaaria: F. Serem and Maj. J. Githiri.

The Commission Secretary (Ms. Nyaundi): On the 15th day of March 1984.

Mr. Benson Kaaria: Yes, that is correct.

The Commission Secretary (Ms. Nyaundi): When I look at the first paragraph it appears to me that this Committee was instructed on the 23rd February 1984.

Mr. Benson Kaaria: I do not know.

The Commission Secretary (Ms. Nyaundi): If you look at that paragraph---

Mr. Benson Kaaria: That is what they are saying.

The Commission Secretary (Ms. Nyaundi): We will just go through the document. That document states that they were instructed on 23rd February 1984. My question to you therefore is, given that the information you had by 15th February does not define any significant detail from the report that was given to you by Mr. Matui, when you learnt that the Government would be investigating this matter did you feel the pressure then to call upon the DSC Wajir to furnish you with a written report?

Mr. Benson Kaaria: No. That was the initiative of the PSC.

The Commission Secretary (Ms. Nyaundi): It had nothing to do with the fact that the matter was now being investigated by other authorities?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): Looking at page one, this committee was to look at the background of the incidents which caused the restlessness, to scrutinize the instructions given to Wajir DSC by the PSC and to scrutinize all the details of the operational orders. It actually had seven terms of references. You can confirm that. Did Mr. Etemesi or any member of his team interview you at any time?

Mr. Benson Kaaria: Yes, they came and interviewed the PSC members.

The Commission Secretary (Ms. Nyaundi): On what?

Mr. Benson Kaaria: I do not remember the date but they came to Garissa and interviewed us; the four of us.

The Commission Secretary (Ms. Nyaundi): And you volunteered?

Mr. Benson Kaaria: We gave them all the information that was at our hands at the time.

The Commission Secretary (Ms. Nyaundi): Okay. We will just go straight to page seven that talks about the operation itself. Paragraph (d) says:-

“The DSC, after taking the decision to mount the operation as a normal procedure, recorded their meetings proceedings in their minutes.”

These are the meetings we have here.

“The OCPD, after the meeting also released a signal message to the PPO--- I think that is the one Mr. Ndirangu confirmed receiving and the one you said you then held a meeting on.

“(e) The PPO on receiving the information and while action on the PSC decision.... released another message on the 9th at 8.20 p.m.”

Is that correct?

Mr. Benson Kaaria: It could be.

The Commission Secretary (Ms. Nyaundi): That is 092020C.

Mr. Benson Kaaria: “C” meaning?

The Commission Secretary (Ms. Nyaundi): I am told it means the time zone in which we are.

Mr. Benson Kaaria: It could be.

The Commission Secretary (Ms. Nyaundi): Okay. I wish I could reintroduce some people to the witness seat then they will clarify. However, I am told that the first digit stands for the date (9th) then 20 would be the time. Therefore, 2020 is 2020 hours which is 8.20 p.m. This would be round about the time you had dinner. The signal that went out said:-

“All Degodia plus stock in Griftu Divisions plus adjacent divisions will be rounded up and will be treated mercilessly. Everybody plus stock will be confined in the area. No mercy will be exercised. You will get more instructions from this headquarters in another two days’ time. No nonsense will be accepted. Further instruction will follow on the relief of stock. Report progress daily.”

Is this the signal that you saw and thought was too harsh?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): So in (f) the signal was revised and sent out on the 10th at 0840 hours from Garissa. It states:-

“All Degodias in Griftu Division and surrounding areas will be rounded up. Women, children and animals not affected. Deputy PPO is visiting with further instructions.”

Is that accurate?

Mr. Benson Kaaria: Yes. We corrected that signal. It had a bad taste.

The Commission Secretary (Ms. Nyaundi): So, all you had wanted was the Degodia men to be rounded up?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Now, is it accurate that you then sent the PPO to Wajir on the 10th of February 1984 as indicated in this signal?

Mr. Benson Kaaria: If I can remember well, I think I sent the PCIO and Col. Muhindi. I cannot remember the PPO. Might be he was---

The Commission Secretary (Ms. Nyaundi): This is on the 10th not on the 13th. We are aware that on the 13th Mr. Ndirangu and Col. Muhindi went there. However, on the 10th according to this signal the Deputy PPO was visiting with further instructions.

Mr. Benson Kaaria: I am not aware of that.

The Commission Secretary (Ms. Nyaundi): But when you saw this signal you did not correct it as you had the earlier one?

Mr. Benson Kaaria: The part the Deputy PPO is waiting for further instruction, we could not correct as he wanted his man to come with information.

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

Mr. Benson Kaaria: The PPO perhaps sent his deputy personally with further instructions. The PSC was not party to that.

The Commission Secretary (Ms. Nyaundi): So, you are saying you did not get any feedback from the PPO either on the 10th, 11th or 12th?

Mr. Benson Kaaria: I do not think so. I cannot remember. Any information that came to us was reported at the PSC meeting.

The Commission Secretary (Ms. Nyaundi): So, are you saying that between the 9th and the 13th you held a PSC meeting to discuss the situation in Wagalla?

Mr. Benson Kaaria: No, the first meeting was I think on the 14th. In between we had a blackout.

The Commission Secretary (Ms. Nyaundi): But were you talking as members of the PSC?

Mr. Benson Kaaria: I cannot remember whether we were talking because everybody was waiting communication from his department in Wajir. The Army were expecting information or signal, the PPO and even me from the DC through the police but nothing came.

The Commission Secretary (Ms. Nyaundi): Okay then let us look at paragraph h:-

“As a follow up to all these Acting DC, Mr. Tiema, on the 10th February, released another signal message to Garissa also narrating the drifty incident, the progress of the operation and the DSC’s intention to push the Degodias back to their traditional grazing ground.”

Mr. Benson Kaaria: I cannot remember seeing that signal.

The Commission Secretary (Ms. Nyaundi): Even if you did not see it, it came to Garissa.

Mr. Benson Kaaria: Presumably it came to the PPO.

The Commission Secretary (Ms. Nyaundi): Actually, Mr. Ndirangu told us that he was receiving updates from his man in the district.

Paragraph (i) indicates that the Army man also kept Garissa informed, can you see that?

Mr. Benson Kaaria: I can see it.

The Commission Secretary (Ms. Nyaundi): Although they are not attached, there are three signals.

In terms of the details of the operation, are you saying that after Mr. Etemesi prepared this report you have never seen the final report?

Mr. Benson Kaaria: No this is my first time to see this.

The Commission Secretary (Ms. Nyaundi): This is the first time you are seeing it?

Mr. Benson Kaaria: Maybe he had to handover to the Office of the President which had appointed him before circulating it to us.

The Commission Secretary (Ms. Nyaundi): Did you, as PC or Chair of the PSC receive communication from Nairobi stating what the Government felt about the manner in which this operation had been conducted?

Mr. Benson Kaaria: No. There was no communication.

The Commission Secretary (Ms. Nyaundi): You have said that you left the position of PC in April, was this before or after the Ministerial Statement was given in Parliament?

Mr. Benson Kaaria: When was the Ministerial Statement given in Parliament?

The Commission Secretary (Ms. Nyaundi): On 12th April.

Mr. Benson Kaaria: Madam Acting Chair, I am not sure when I left, but it was in the month of April. I cannot recollect.

The Commission Secretary (Ms. Nyaundi): Were you dismissed from service?

Mr. Benson Kaaria: I went on leave together with the other PSC members.

The Commission Secretary (Ms. Nyaundi): For how long were you on leave?

Mr. Benson Kaaria: Four months.

The Commission Secretary (Ms. Nyaundi): When did you resume?

Mr. Benson Kaaria: I did not resume. I was deployed as the Chairman of the Post Office and Savings Bank.

The Commission Secretary (Ms. Nyaundi): For how long did you serve there?

Mr. Benson Kaaria: Madam Acting Chair, I served for three years until 1987 and then I was deployed to the Tea Research Foundation for another three years.

The Commission Secretary (Ms. Nyaundi): Let us look at page 24 of Mr. Etemesi's report, paragraph "c". He says:-

"In view of the above the Government officers involved in the operation, Galant should be transferred to other areas and dealt with departmentally."

So, would you say that your subsequent transfer was in accordance with the recommendation that had been made by Mr. Etemesi?

Mr. Benson Kaaria: I do not think so, because I am not the officers in the operation Galant.

The Commission Secretary (Ms. Nyaundi): But you will agree that as we have seen earlier, if I can refer you back to pages 7 and 8, you were involved in the operation. Is that so?

Mr. Benson Kaaria: Yes, somehow.

The Commission Secretary (Ms. Nyaundi): Quite specifically, Mr. Etemesi, in looking at the signal and the manner in which the PSC had conducted itself, we found that instructions to the DSC were not clear at all.

Mr. Benson Kaaria: Instructions came from an individual member of the PSC, the PPO.

The Commission Secretary (Ms. Nyaundi): But you have said that you met on 9th February during the dinner and you agreed as members of the PSC and you even corrected the signal. So, the signal that went out and what the DSC did was to round up Degodia men.

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): It is on that basis that you were involved in the operation?

Mr. Benson Kaaria: Whatever it means we left the station.

The Commission Secretary (Ms. Nyaundi): When you say “we,” what do you mean? You and who?

Mr. Benson Kaaria: PSBO and PPO, but I do not know about the colonel. We were replaced.

The Commission Secretary (Ms. Nyaundi): In fact, as Mr. Etemesi stated in paragraph C, “you should be slowly transferred to other areas”. That is what happened. You left without drama. Are you aware also of the circumstances under which, Mr. Tiema left Wajir?

Mr. Benson Kaaria: I may not know because there was no communication between us and the Office of the President. However, I presume he was similarly sent on leave.

The Commission Secretary (Ms. Nyaundi): Actually, he did show us a signal that originated from the Office of the President instructing him to proceed on leave. However, you can confirm that by the time you left as PC of North Eastern Province no disciplinary action had been taken against Mr. Tiema?

Mr. Benson Kaaria: I have not heard of any disciplinary action.

The Commission Secretary (Ms. Nyaundi): Then, the final document I will be referring you to is the Ministerial Statement that was read in Parliament by the then Minister for Internal Security. Could you, please, show it up? It seems I cannot find my copy. Have you seen the Ministerial Statement?

Mr. Benson Kaaria: I have seen it, Madam Chair.

The Commission Secretary (Ms. Nyaundi): In that Ministerial Statement have you had occasion to look at it before today?

Mr. Benson Kaaria: Yes, I had.

The Commission Secretary (Ms. Nyaundi): Would you agree that in terms of content the statement borrows a lot from the report that was prepared by Mr. Matui?

Mr. Benson Kaaria: It does.

The Commission Secretary (Ms. Nyaundi): I want us to look at the screen. The Minister was giving the background information of what happened. He says, “on 27th February and on the morning of 9th February, some individuals had been killed.” Then, in that paragraph he says, “after the incident of 9th February, 1984, the Wajir District Security Committee with the concurrence of the Provincial Security Committee decided to mount an operation with the aim of disarming and getting the names of the bandits responsible for the killings of 9th February.”

Is that reading correct?

Mr. Benson Kaaria: Yes.

The Commission Secretary (Ms. Nyaundi): Now, based on the signals that we have seen, those originating from Wajir and those coming from the PPO, it would be right to say that the operation was carried out with the Provincial Security Committee?

Mr. Benson Kaaria: Yes, because we did not tell them not to. When I look at the annual report of the DSC, I do not know whether you have access to the DSC annual report of 1984---

The Commission Secretary (Ms. Nyaundi): Your lawyers had a copy, but we can furnish you with one for your quick reference. If you look on page 55 of that report, what we have there is an appendix; it shows an extract from the visitor’s book. You can see it says there “Name of Visitors”. So, this is an extract from the visitors’ book. So, if we look on page 56, we see that on 26th February, Mr. Etemesi, Sirimu, Mr. Serem and Mr. Githiri - this was the Committee that was investigating - came to Wajir. Is that correct?

Mr. Benson Kaaria: That was on 26th February. That is correct.

The Commission Secretary (Ms. Nyaundi): Then after some time on 6th March, 1984, PSC, Garissa, that is you, lieutenant Muhindi, Mr. Karuku, Mr. Ndirangu and Mr. Langat who was the DC Garissa came to Wajir. On the next day, part of the team, Mr. Etemesi’s team, also signed the visitors’ book.

My question, therefore, was your visit to Wajir on 6th March, 1984 connected to the work that Mr. Etemesi was doing?

Mr. Benson Kaaria: No.

The Commission Secretary (Ms. Nyaundi): Would you remember what the purpose of your visit was as the PSC?

Mr. Benson Kaaria: Well, the PC accompanied by the PSC.

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

Mr. Benson Kaaria: Maybe, the PSC-- I can see we were all there.

The Commission Secretary (Ms. Nyaundi): Yes, you were all there and I was just curious to know whether it was connected to the visit by Mr. Etemesi's team.

Mr. Benson Kaaria: It was not.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Kaaria. That is all from me and Commissioners will ask you questions.

The Acting Chair (Ms. Namachanja): Thank you very much, Leader of Evidence and Mr. Kaaria for answering the questions from the Leader of Evidence. I will now check if Commissioners have questions for you for further clarifications on your testimony. I will start from my far right.

Commissioner Ojienda: Thank you very much, Mr. Kaaria for the evidence that you offered to the Commission. I just want to ask a few questions so that you can just clarify to us everything you have said.

Let me commend you for being co-operative in terms of answering the questions. You have been very straight in terms of answering questions. That has helped us, as Commission, in getting to the root of this issue.

I want to just ask you very general questions which will make us understand better. You have been shown the Etemesi report?

Mr. Benson Kaaria: Yes.

Commissioner Ojienda: You have also been shown some of the recommendations that were made including transfers of officers who had been involved in operation which is described as *Operation Gallant*. Now, on your part, you were transferred and made the Chair of Kenya Post Office Savings Bank after this incident. I just want you to confirm to us, does that position compare to that of a PC?

Mr. Benson Kaaria: It does not compare because the other one has more dignity. So, the other one is on a lower side.

Commissioner Ojienda: So, you were transferred to undignified position after the Wagalla Operation. What did this say to you? What was the Government telling you?

Mr. Benson Kaaria: To me, it meant that something went wrong in a district which was under me.

Commissioner Ojienda: You as the PC, the boss of North Eastern Province in terms of administration, is that right?

Mr. Benson Kaaria: I was.

Commissioner Ojienda: Would you take full responsibility for the wrong things that occurred during operation?

Mr. Benson Kaaria: I cannot. Everybody has to carry his own cross.

Commissioner Ojienda: In this case, who should carry the cross, Mr. Kaaria?

Mr. Benson Kaaria: The DSC Wajir.

Commissioner Ojienda: But it is true that you sanctioned the operation?

Mr. Benson Kaaria: The person on the ground was my DC with his team. They went wrong in the final analysis of the operation they carried out.

Commissioner Ojienda: Is it true that the PSC sanctioned or sent a signal confirming that Degodia male tribes be arrested? You were correcting a previous signal which you thought was very---

Mr. Benson Kaaria: The first signal was wrong because it was not authorised by us, the PSC. The second signal was to correct the other one.

Commissioner Ojienda: Is it as a result of that signal that the operation occurred?

Mr. Benson Kaaria: The operation was on. It was the DSC that had mention what they would do.

Commissioner Ojienda: So, it is you, Mr. Kaaria and your team in the PSC that gave the final word to the operation?

Mr. Benson Kaaria: Yes, to say it should go on.

Commissioner Ojienda: Yes.

Mr. Benson Kaaria: They had already met and said it should go on.

Commissioner Ojienda: But you corrected the signal.

Mr. Benson Kaaria: Initially, it was not us who authorised the DSC to carry out the operation.

Commissioner Ojienda: Let us engage a reverse gear; suppose, Mr. Kaaria you had sent a signal and said the operation should not go on, would the DSC have carried out the operation?

Mr. Benson Kaaria: They would not have obeyed because we cannot stop them from what they had planned.

Commissioner Ojienda: In the pecking order of the DSC and PSC, who takes decision from who?

Mr. Benson Kaaria: On the matter of operations, every security Committee is an entity by itself.

Commissioner Ojienda: But in the end you have agreed or admitted that the PC was, therefore, in charge of North Eastern Province at the time. Is that right?

Mr. Benson Kaaria: Yes.

Commissioner Ojienda: You have said that besides yourself, the PPO was also transferred.

Mr. Benson Kaaria: According to what I heard the PPO was demoted.

Commissioner Ojienda: You were also demoted.

Mr. Benson Kaaria: You can call it demotion

Commissioner Ojienda: It is not a matter of calling it, you were also demoted, Mr. Kaaria.

Mr. Benson Kaaria: You can call it so.

Commissioner Ojienda: In fact, Mr. Kaaria, it is little surprise that you faded away from public service. Did you serve in any other senior capacity later?

Mr. Benson Kaaria: I did not fade because I did not die. I am still living. When you fade you disappear.

Commissioner Ojienda: Did you serve in a position as senior as that of a PC?

Mr. Benson Kaaria: As the Chairman of a bank you are also very responsible.

Commissioner Ojienda: I want to get back to a few comments that you made in the cause of your examination, relevant to the minutes that are with the Commission. You said that you kept silent. The minutes that are with us bear this out. You kept quiet for two days. On 15th, you went to Wagalla Airstrip and found remnant maize and beans. Is that right?

Mr. Benson Kaaria: That is right.

Commissioner Ojienda: But you did not at that point bother to find out the detail of what had gone on.

Mr. Benson Kaaria: We had asked the DSC and they said it was the food they were giving the prisoners. Maybe, it was left over or something, but it was part of the food given to the prisoners.

Commissioner Ojienda: Did you bother to know how people had been surrounded or had died as at that date.

Mr. Benson Kaaria: Check the number of men who had been rounded up.

Commissioner Ojienda: How many were they?

Mr. Benson Kaaria: They were 381 men.

Commissioner Ojienda: Did you confirm how many men were alive?

Mr. Benson Kaaria: There was no way of knowing because they had been released.

Commissioner Ojienda: So, there is every possibility that 381 men perished in the operation.

Mr. Benson Kaaria: I do not think so. Unless if it is assumed because they were released and went home.

Commissioner Ojienda: Did you confirm how many men actually died yourself?

Mr. Benson Kaaria: From what I was told by the DC, they were 16 men at that time.

Commissioner Ojienda: Did you confirm how many men had died?

Mr. Benson Kaaria: I could not confirm because there was no way of confirming.

Commissioner Ojienda: Did you go to hospital?

Mr. Benson Kaaria: I did not go to hospital.

Commissioner Ojienda: But Mr. Kaaria, as a responsible PC, you are telling this Commission that you did not bother to find out what had happened to people who had been surrounded?

Mr. Benson Kaaria: I did not go to the hospital. The DC told us that they had dumped the bodies.

Commissioner Ojienda: Where had the bodies being dumped, Mr. Kaaria?

Mr. Benson Kaaria: The DC did not show us where.

Commissioner Ojienda: Did you care to ask?

Mr. Benson Kaaria: We asked, but they did not show us.

Commissioner Ojienda: Mr. Kaaria, you were the PC then?

Mr. Benson Kaaria: Yes, but I could not have beaten them to show me where they had dumped those bodies. I just thought that this man was grown up and he could tell us the truth. I was with the Army General when I asked him where they had dumped those bodies.

Commissioner Ojienda: So, I think there was no sense of authority. You as the PC and as the chair of the PSC, knowing---

Mr. Benson Kaaria: I could not go beyond asking that question because this person was giving us that information. So, according to the information we were given with the Army General, there were 27 people.

Commissioner Ojienda: In the meeting that you held on 9th February, 1984, when you hosted a dinner for the KIC members, you were aware that an operation was going to occur and you had actually toned down the minutes which you considered harsh. Is that right?

Mr. Benson Kaaria: We were aware the operation was on.

Commissioner Ojienda: Of course, you had informed the intelligence about the fact you had actually toned down the language of the signal---

Mr. Benson Kaaria: We were three of us when we toned. I did not need to tell any other person. We were all of us there.

Commissioner Ojienda: As Members of the KIC, you inform them for courtesy so that they know what is happening.

Mr. Benson Kaaria: No! No! It is just a concern.

Commissioner Ojienda: Who knew that you had toned down the language?

Mr. Benson Kaaria: We were three members; the two other members who were not part of the writing.

Commissioner Ojienda: The PCIO, PPO and yourself?

Mr. Benson Kaaria: Yes.

Commissioner Ojienda: You were the mastermind of ensuring that the operation went in line with the signal as you transmitted it.

Mr. Benson Kaaria: We knew they would carry it out the way they wanted to carry it out. We were satisfied they would do it well.

Commissioner Ojienda: Do you think they did well?

Mr. Benson Kaaria: We assumed that they would carry it well.

Commissioner Ojienda: Sitting there now, Mr. Kaaria, did I hear you say that the operation was a success?

Mr. Benson Kaaria: After what they did it was a success. Other than the incident of people dying it was as success.

Commissioner Ojienda: So, the operation was a success and death of the people was an incident?

Mr. Benson Kaaria: It was a success, according to us. They had achieved what they wanted. The other one was unfortunate.

Commissioner Ojienda: How many guns did they recover in the cause of the operation?

Mr. Benson Kaaria: I think three or four, I am not quite sure.

Commissioner Ojienda: Against the death of how many people, Mr. Kaaria?

Mr. Benson Kaaria: According to the report 27.

Commissioner Ojienda: And you term that as a success?

Mr. Benson Kaaria: To me, it was a success.

Commissioner Ojienda: You have no apologies about the death; do you have any, Mr. Kaaria?

Mr. Benson Kaaria: Even if I do, I cannot revive---

Commissioner Ojienda: No! Do you have any?

Mr. Benson Kaaria: I sympathise, it was very sad.

Commissioner Ojienda: You have no apologies as a member of the PSC for having authorised an operation in which people died?

Mr. Benson Kaaria: I cannot apologise.

Commissioner Ojienda: You cannot!

Mr. Benson Kaaria: On behalf of the DC, I cannot.

Commissioner Ojienda: Let me get back to the Garissa, Guba incident, where every person was surrounded and you later released civil servants and women---

Mr. Benson Kaaria: That is correct.

Commissioner Ojienda: On this occasion, you were looking for Ali MathobeMadobe, a bandit. Is that right?

Mr. Benson Kaaria: We were not looking for MathobeMadobe. We learnt that evening that he was the person who conducted the attack. We had not known that. They were just unknown bandits. It was the following day after interrogation when we learnt it was Mathobe and his team who caused that.

Commissioner Ojienda: At the time, it was part of the security scheme to surround entire communities where there was suspicion, where an offence or criminal act had been committed?

Mr. Benson Kaaria: The truth will be found out after the operation and interrogation.

Commissioner Ojienda: You were asked how many people died during the Garissa Guba operation, but you did not answer that question. How many people died?

Mr. Benson Kaaria: According to me, nobody died.

Commissioner Ojienda: According to you---

Mr. Benson Kaaria: According to the PSC we did not get a report of deaths.

Commissioner Ojienda: How many houses were burnt, according to the record of the PSC?

Mr. Benson Kaaria: I do not know because the houses were made of paper and they were not countable. It was a village of houses roofed with paper. This is why it was called *karatasi*.

Commissioner Ojienda: You are not aware what amount of property, if any, was lost?

Mr. Benson Kaaria: No, I do not know.

Commissioner Ojienda: No animals were killed?

Mr. Benson Kaaria: No animals were killed.

Commissioner Ojienda: And of course, no deaths as you have said.

You have denied, but also admitted certain contents of the report in the newspapers. When you were initially asked about the statement that you would deal with Somalis living in North Eastern, you said that there was some mood at that time of the people in North Eastern wanting to be part of Somalia and Ethiopia. Is that right?

Mr. Benson Kaaria: Not now, long before. That was before 1963.

Commissioner Ojienda: Was there a legal process that was undertaken during that time that made you issue that statement?

Mr. Benson Kaaria: I did not get that question.

Commissioner Ojienda: In what form did the Somali of North Eastern express their intention to join the bigger Somalia?

Mr. Benson Kaaria: In 1963?

Commissioner Ojienda: Yes.

Mr. Benson Kaaria: That was a common knowledge by the Kenyan Government. They declared they wanted to go.

Commissioner Ojienda: If I make it simpler for you, was there a referendum that was held before independence that required them to make a choice?

Mr. Benson Kaaria: As far as I know, there was no referendum.

Commissioner Ojienda: So, what informed your statement, a threat that you issued in 1980? What informed your statement about telling them that Kenya is a better place to be in and that you would deal ruthlessly with those who wanted to join Somalia?

Mr. Benson Kaaria: They have changed from that mentality of going away. I was warning them that being loyal to Kenya Government was important.

Commissioner Ojienda: Those who did not want should pack and go?

Mr. Benson Kaaria: Yes. You cannot remain where you do not want to stay.

Commissioner Ojienda: At least, you confirm now that you are not misquoted on that one. On the shoot to kill, do you still maintain that you were not properly quoted?

Mr. Benson Kaaria: I was not properly quoted. Where I have said that I would kill everybody---

Commissioner Ojienda: That people should be shot and killed.

Mr. Benson Kaaria: No.

Commissioner Ojienda: As I end my questions, I want to ask you why it was a form of security tactic, or probably an approach that you and your team took to always involve the wider members of the public in your fight against the *Shiftas*? Why was there tactic to take away resources such as watering holes and animals?

Mr. Benson Kaaria: I deny that because if we did that we could have killed everybody. It was not possible for me to kill people I was looking after. They could not have survived without water. I deny that something like that would have happened.

Commissioner Ojienda: So, you do not agree with the evidence that we received from many persons who testified before us in North Eastern that, that was the trend that Government was using?

Mr. Benson Kaaria: No.

Commissioner Ojienda: How do you describe your tenure as PC, North Eastern Province, between 1980 and 1984?

Mr. Benson Kaaria: Very good.

Commissioner Ojienda: If you had an opportunity to be PC again, are there things that you think you would do differently?

Mr. Benson Kaaria: Sorry. I did not get the last question.

Commissioner Ojienda: If you are PC, North Eastern Province now, or if you had the opportunity to rewind clock, are there things that you think you would do differently? Are there things that you had not done well that, probably, would have been done better to improve the lives of the people in North Eastern Province?

Mr. Benson Kaaria: I would not think that. I do not want to rewind the clock and go back. However, despite all these odds, I can count my achievements for four years as a PC. One, I recommended that the province should have a technical training college. This college was started. In the province, I discovered civil servants were employing their kins from upcountry and transferring them there. I banned that kind of recruitment. I issued a circular saying any employment of these cadres other than those of the Public Service Commission would be filled locally. That did not go well with other civil servants. That kind of thing denied the local people a chance to earn a living. I also recommended to the Office of the President that we should have more DOs from the local area. When I was there in 1970/1971, I would have expected a few DOs. I wrote a letter recommending 13 people to the Office of the President, 12 men and one lady. They were employed as DOs.

On agriculture, I thought people should be educated on agricultural activities. I started the Garissa Agricultural Show which was taken over by the ASK. Those are my achievements.

The technical training school was my initiative with the former PEO, brother of the General. I got Kshs1 million from the European Union to start a technical high school. We built four classrooms and a dormitory. However, I left before it was opened. I am now told it is secretarial college. So, I can at least mention my achievements despite everything else that happened in this province.

Commissioner Ojienda: Those are good things that you remember. There were several occasions when we had curfews in North Eastern Province. I just want to take you back because a former Minister, G.G. Kariuki said there were curfews imposed in that region. I want to find out from you whether you, as the PC, had power to impose curfews?

Mr. Benson Kaaria: There were a lot of powers under the Preservation of Public Security Act. The Provincial Commissioner had power to impose a curfew order.

Commissioner Ojienda: Was it with the authority of the President?

Mr. Benson Kaaria: You impose with the authority of the President.

Commissioner Ojienda: So, when you imposed a curfew in 1980, was it with the authority of the President?

Commissioner Ojienda: That is okay. Of course, you could not declare a state of emergency---

Mr. Benson Kaaria: That you cannot. Only the President can.

Commissioner Ojienda: But did you declare any state of emergency? Was there a state of emergency declared during this time by yourself?

Mr. Benson Kaaria: I did not declare any of this kind.

Commissioner Ojienda: Okay, Mr. Kaaria. Thank you very much for your statement. I am sure my colleagues will ask you more questions.

Commissioner Shava: Thank you, Mr. Kaaria. Just pulling from what my colleague had asked you, you have stated here today that you could not have intended to expel the people of Wajir to Somalia because to you this would make no sense because there would be empty land and no people to rule? Did I hear you correct?

Mr. Benson Kaaria: True.

Commissioner Shava: You have told us about all the training you have undergone even from the colonial time when you were administrator until 1984 when you ended with that kind of job. In your view, is it the role, or has it ever been the role of the Provincial Administration to rule Kenya?

Mr. Benson Kaaria: I did not get you well.

Commissioner Shava: You stated that if people were killed or expelled to neighbouring countries then there would be no people left to rule, there would just be empty land. So, my question is, is it the role or has it even been the role of the Provincial Administration to rule Kenyans?

Mr. Benson Kaaria: The best words are “to look after”.

Commissioner Shava: Thank you for that clarification. I just want to go back again to the colonial period. You have said that you were dividing your time between Meru and Nairobi. I presume that you originally came from Meru and it is believed that colonial Government was harsh on Meru people. I wonder whether you experienced the emergency laws in the colonial period? Did you experience such things such as victimization?

Mr. Benson Kaaria: Very much so.

Commissioner Shava: Have you ever thought of that as an effective way of addressing problems?

Mr. Benson Kaaria: I think it was effective because if the colonialists did not remove all the Kikuyu and take them to detention camps, we would still be there. It was a machinery that touched on the people and it worked.

Commissioner Shava: So, it was a weapon that worked very well. I wonder if you think that colonial rule and the way in which it did things helped people. Do you think that, that was justified? The colonial Government was the Government in power in Kenya, so we can say that they were justifiably ruling Kenya.

So, was it correct for people to protest those kind of measures that were put in place or should people just have accepted that kind of---

Mr. Benson Kaaria: They were not accepting because it was imposed on them.

Commissioner Shava: So, Mr. Kaaria, having had firsthand experience of that kind of action from Government against its citizens, I ask myself how you could have been doing the same thing to your fellow citizens. Was there not another way in which you could have recommended that the Government addresses whatever problems they perceived were in that region?

Mr. Benson Kaaria: I do not think there was any other way and if there was, I would not know. But from experience, it happened in Isiolo, where I was DO1 in 1967 and it was even worse. People lost livestock and kin and they were similarly rounded up because the *Shifita* had attacked Isiolo Town. That is from town to civil servants to the army camp. So, the Government said the following day that they would mount the operation. It was very bad because some were shot in the mosque.

Commissioner Shava: And that was before you came to Garissa?

Mr. Benson Kaaria: That was before.

Commissioner Shava: So, while you were in Garissa as the head of the entire province, did you recommend a different way of operating and doing things?

Mr. Benson Kaaria: I recommended they interview people and not kill! You interrogate them and get the answers from them.

Commissioner Shava: My final question is to do with your visit to the Wagalla Airstrip. We have seen a report and it has been discussed in these hearings that the Acting DC was receiving a lot of criticism with people calling his conduct cowardly. One witness said that he ran away from his people, which is something that was seen as quite unforgivable. You have said today that you thought that the death of those people on the airstrip was bad. So, you as a PC – who is even higher in position than a DC – when you found that, basically, your people had been killed this way and their bodies had been dumped, and by all traditions, we have respect for the dead--- But the word used is “dumped”; their bodies were dumped. Did you do anything, even at the human level, to try and comfort your people or show them that you were on the case; that you were going to do something; that you were going to try and help them? Did you do anything?

Mr. Benson Kaaria: I did not do anything because, one, the people were very bitter and very hostile. You cannot talk to somebody who is bitter and hostile. But it was a very bad experience.

Commissioner Shava: And when you left there, what did you do about the situation because we see that the PSC recommended even sterner action against the Degodia? So, I am a bit confused.

Mr. Benson Kaaria: Nothing happened. That was just a stern warning against them; that they should not repeat killing the Ajuran. Nothing happened.

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

Commissioner Slye: Thank you, Mr. Kaaria. You have been here for over two hours now and I do not know whether you want a brief break to stretch your legs or whether you want to continue?

Mr. Benson Kaaria: Thank you very much because at this age, even the breaks are not operating you know.

(Laughter)

Commissioner Slye: Which breaks?

Mr. Benson Kaaria: A health break will help, Sir.

Commissioner Slye: Okay.

The Acting Chair (Ms. Namachanja): Thank you Prof. Slye. I think we shall now take a health break for five to ten minutes.

[The Commission adjourned temporarily at 4.35 p.m.]

[The Commission resumed at 4.40 p.m.]

Please, sit down.

Prof. Slye, you can continue with your questioning.

Commissioner Slye: Thank you, Madam Chair. I want to echo what my fellow Commissioners have said in thanking you for being here, Mr. Kaaria. I also thank you for being candid and open with this Commission. As somebody who is relatively new in this country, I have learned a lot from your testimony; probably more than most of the individuals that have testified before us. I want to thank you for that.

I am still trying to understand the Government structures at the time of the 1980s when you were in Garissa. Given your experience as a PC and the Chair of the PSC, I am interested at the moment with communications going up the chain of command up to the national level in Nairobi. We have made reference to and we have heard about the Kenya Intelligence Committee (KIC), the Kenya Security Committee (KSC) and the National

Security Council (NSC). Are there situations or would there be situations when the PSC or you, as the PC, would communicate directly with the KSC?

Mr. Benson Kaaria: No, Sir. We have no such communication between the PC or the PSC to the KSC. But when we met, we sent them minutes.

Commissioner Slye: And you mentioned the PIC. Does that also include the PSC?

Mr. Benson Kaaria: If there is anything they want the PSC to do, it would come in a letter.

Commissioner Slye: It would come?

Mr. Benson Kaaria: To the PC in a letter---

Commissioner Slye: From the KIC?

Mr. Benson Kaaria: From the KIC if there was anything.

Commissioner Slye: So, the KIC might communicate directly with the PSC?

Mr. Benson Kaaria: If they want, but it has never happened.

Commissioner Slye: It never happened. Okay. You as the PSC or the PC would never directly communicate with the KIC, is that correct?

Mr. Benson Kaaria: Never.

Commissioner Slye: Okay. The NSC, which I understand is a Cabinet level Ministerial body, you would not communicate with them?

Mr. Benson Kaaria: Never.

Commissioner Slye: So, if you were going to communicate with the headquarters or the national Government or they were going to communicate with you, how would that communication come?

Mr. Benson Kaaria: He will write a letter to the Permanent Secretary (PS), Office of the President (OP).

Commissioner Slye: So, all of that communication would go through the PS in the OP?

Mr. Benson Kaaria: Once it reaches him, he would know what to do.

Commissioner Slye: Okay.

Mr. Benson Kaaria: He is in charge of all the Provincial Commissioners and he can communicate to the President, although the President can communicate directly with the PC.

Commissioner Slye: Then the KIC would communicate directly with them or would they communicate directly with you?

Mr. Benson Kaaria: There was no communication.

Commissioner Slye: So, in the PSC minutes, there were some action items where it says KIC. There are a number of areas, if I remember correctly, concerning approval for meetings *et cetera*. That looks to me like there is a direct communication between the PSC and the KIC.

Mr. Benson Kaaria: The only way that can be done, if it is for action by the KIC, the Secretary of the PSC would write to the PS, OP, drawing his attention to that minute, asking to take action. He would do so with the relevant authority.

Commissioner Slye: I see. The PS then in the OP would take that part of the minutes and go to the KIC for the KIC to take whatever action that was being requested for. Is that correct?

Mr. Benson Kaaria: Exactly.

Commissioner Slye: And then if the KIC, let us say, had a response, they would give the response to the PS in the OP who would then communicate it to you?

Mr. Benson Kaaria: That is correct.

Commissioner Slye: So, the communication would happen, but there would be this middle person that would mediate on that?

Mr. Benson Kaaria: Yes.

Commissioner Slye: Okay. This is relying upon your memory. If you have before you the minutes of the PSC meeting of 28th January, 1984---

Mr. Benson Kaaria: Which date?

Commissioner Slye: I am sorry. It is the minutes of 26th January, 1984, but it is dated 28th January. If you look just at the bottom of that first page, Minute 3/84(1), which is referring to Minute 199 of 83, it recommends long-term policy as a solution to the armed banditry activities. And the only thing that it says there is that the Chairman, who would be you, informed the meeting that the PSC proposals had now been circulated to the recipients of the PSC minutes, and this is prior to the Wagalla operation. Can you remember what those recommendations or proposals were?

Mr. Benson Kaaria: I cannot recall what they were, but maybe if you take Minute No.199 of 83, we can trace it backwards.

Commissioner Slye: Unfortunately, we do not seem to have received those minutes; so we are still waiting for that from the Government. But I was wondering just whether – and I know it has been a long time ago – you had any memory of what those proposals might be? There is a later reference on 23rd February, if this helps, which would have been after the Wagalla incident. If any one of you has a lawyer, I can give you those minutes as well. On 23rd February, 1984, the PSC Minutes---

Mr. Benson Kaaria: 23rd February.

Commissioner Slye: It is actually dated 24th February, 1984, but it is a meeting of 23rd February.

So, on that one, just again on the first page, Minute 2684, sub-section “A” refers to Minute 384, which is the one which you and I were just looking at, which in turn, refers to 1983. It says that the Chairman –again you – informed the members that the PSC proposals had already been presented to the KIC for the Government’s consideration and implementation. So, the impression that we get from this is that these are maybe broader, extensive proposals – I am not sure – given that they originated in 1983, were discussed in January, 1984 and at the end of February, they are still waiting for approval. Does that help jog your memory about what those proposals might have been?

Mr. Benson Kaaria: I am not quite sure what they are, but if I read--- Because it came from Minute 384, if we trace it back, we can know.

Commissioner Slye: Minute 384 is the one you and I were just looking at which in turn refers back to 1983, which is the minute that we are yet to get a copy of.

Mr. Benson Kaaria: I am not quite sure, Sir, what the recommendations were which were forwarded to the KIC. But they can be traced.

Commissioner Slye: Okay. Do you have a general idea of what sort of proposal might have been submitted to the KIC and circulated among your PSC members?

Mr. Benson Kaaria: I cannot recollect.

Commissioner Slye: We have seen some reference to some meeting of the National Security Council in January, 1984, and the reference suggests that it was at that meeting that a decision was made to disarm by force all the Degodia. Do you have any knowledge or recollection of such a decision being made at that level in terms of what was happening in Wajir at the time?

Mr. Benson Kaaria: What I can remember was that there was a general disarmament order by the Kenyan Government to recover firearms from all the tribes bordering Ethiopia, Somalia and that side because of the firearms seeping through. There was general disarmament of the firearms and it is still in force.

Commissioner Slye: Is it your recollection that, that is something that would have come into effect in January, 1984, or was it something that was in effect longer than that?

Mr. Benson Kaaria: It is continuous.

Commissioner Slye: So, it would have been before January, 1984?

Mr. Benson Kaaria: Yes.

Commissioner Slye: Could you think of anything that might have happened in January, 1984, with respect to arms or disarming, or the Ajuran/Degodia conflict, coming from the national level?

Mr. Benson Kaaria: No.

Commissioner Slye: Okay. In a document that the leader of evidence referred to, which was the document that Mr. Murimi had written about the visit of the KIC summarizing the KIC's observations arising out of their visit--- Under the *Banditry Section*, there was reference to *Communal punishment* and I just wanted to ask you if you could elaborate a bit upon what constituted communal punishment and what guidance either you were given or you gave the district level in terms of what sort of communal punishment would be allowed or what would not be allowed.

Mr. Benson Kaaria: What I can recollect is that there was an Act of Parliament – it is not operational now – in the 1970s called *Special District Administration Act*, which provided the attachment of animals belonging to a clan. If this clan attacks another one and steals cattle or livestock, you can collect the same from that tribe, sell them and put money in the Kenya Government to be used for education or other services for that tribe. But it is no longer applicable. I do not know what happened, but it was there.

Commissioner Slye: So, when you read a document like this that refers to communal punishment, is that what you think of or there are other things?

Mr. Benson Kaaria: That is the one I would think of.

Commissioner Slye: So, the rounding up of members of a community; would that constitute communal punishment?

Mr. Benson Kaaria: That is part of communal punishment.

Commissioner Slye: Okay. So, in your view, what appears to have been a policy of allowing communal punishment would not have authorized the Wagalla operation? Is that correct?

Mr. Benson Kaaria: I beg your pardon?

Commissioner Slye: My understanding was that given what is in that document and given what is in other documents, there was a general acceptance or a general policy on the part of the Government to use communal punishment in certain situations. I would have thought that, that would have given some authority to undertake an operation like Wagalla; that is the Degodia have not been co-operating with respect to the surrender of illegal firearms; there have been a number of attacks and there is some evidence that they were done by members of the Degodia Clan and that the justification for the Wagalla operation was to take all the Degodia men, detain them at the airstrip and interrogate them in order to find out whether they had firearms and whether they knew where the individuals were who had engaged in those sort of atrocities *et cetera*. I would have thought that, that would constitute communal punishment but, maybe, I am misunderstanding the term.

Mr. Benson Kaaria: Communal punishment would have been confiscation of livestock. That is how you touch the person most, but we did not have that because where do you take the animals? It was a kind of control of stock theft by the tribes.

Commissioner Slye: Would denial of access to boreholes be communal punishment?

Mr. Benson Kaaria: If it was, that was harsh.

Commissioner Slye: The reason I mention it is that, I think, as a colleague said, we have received some testimony saying that, that had happened to some people. And if you look at the Etemesi Report on Page 15 Paragraph 23, you will find that there is reference to the Degodia Clan being denied use of water holes by the security forces since 5th February, 1984. This was confirmed by Etemesi and his team to be true; the District Security Committee (DSC). So, at least, according to this, the DSC from 5th February, 1984 denied members of the Degodia Clan access to boreholes. Is that something that would be allowed or authorized under communal punishment?

Mr. Benson Kaaria: It would not be allowed because even if it had happened, there would have been reports to the Minister of State when we went round campaigning for surrender of firearms. It should have been raised with him.

Commissioner Slye: So, if the report is accurate, what the DSC did here would not have been authorized. It would be illegal. Is that right?

Mr. Benson Kaaria: If they did, it was illegal.

Commissioner Slye: If this had come to your attention - they say that it started on the 5th of February; let us say on the 6th of February, 1984--- If you were informed that the DSC had embarked on this, what would your reaction be to that?

Mr. Benson Kaaria: I would have gone there and changed the order.

Commissioner Slye: So, you would have reversed that order and said “stop this”?

Mr. Benson Kaaria: Immediately.

Commissioner Slye: Because that would have been illegal in terms of--- So, is that you as the PC or is that the PSC?

Mr. Benson Kaaria: As the PSC.

Commissioner Slye: So, the PC had the power---

Mr. Benson Kaaria: That is coming to heart---

Commissioner Slye: So, you could reverse the---

Mr. Benson Kaaria: There is a softer one and a harsh one.

Commissioner Slye: And the PC is the softer one?

Mr. Benson Kaaria: Softer one.

Commissioner Slye: That is the soft one. So, using your softer heart, you had the powers to reverse a decision of the DSC?

Mr. Benson Kaaria: Exactly.

Commissioner Slye: That means that a decision of the DSC on 9th February, 1984, to round up all the Degodian and taking them to the airstrip, you had the power to reverse that decision. Is that correct?

Mr. Benson Kaaria: If I knew, I would have reversed it on the spot.

Commissioner Slye: You knew something on the night of 9th February, 1984, when the PPO's signal came in and then the PPO sent out the bad signal which you then amended in the morning of the 10th? So, at that point, our understanding, in fact, from testimony you have given, you knew something; you were given information about the operation. So, if at that moment, you thought that it was an improper operation or needed to be improved upon, you, as I understand you, could have changed the order and, therefore, changed that operation. Is that right?

Mr. Benson Kaaria: I thought you were referring to boreholes and water?

Commissioner Slye: I was referring to boreholes.

Mr. Benson Kaaria: Are you changing?

Commissioner Slye: Well, with the boreholes, if I understood you---

Mr. Benson Kaaria: Let us finish about the boreholes first because you cannot combine the two. With the boreholes, I think you cannot deny people water and as a PC, I would go straight and open the boreholes and make them operational so that they get water.

Commissioner Slye: Okay. I am satisfied now with our discussion of boreholes. Is there anything else that you would like to say with respect to the issue of boreholes? Okay, we move on to the 9th of February, 1984.

Mr. Benson Kaaria: What is the question about that date?

Commissioner Slye: So, I understand what you said to me was that as the PC, if the DSC ordered something that was unauthorized or illegal, and the example we were using was what seemed to be the real example of the DSC ordering the closing of boreholes, at least, to the Degodia Clan; that you, as the PC had the power to reverse that decision. Now, I am asking you or I am assuming – correct me if my understanding is not correct – that if or when you learnt about the operation that was undertaken on the night of the 9th and the morning of 10th February - the rounding up of the Degodia at the airstrip - you had the power to change that operation and even stop that operation, is that correct?

Mr. Benson Kaaria: No. I cannot.

Commissioner Slye: So, why that difference?

Mr. Benson Kaaria: On the question of water, I assumed you meant that the DC went and closed the borehole for people not to drink water. That is where I now come in; there is no way the DSC can close a water borehole. It is the DC who could do that.

Commissioner Slye: But the example that I gave you and actually if you look at the Etemesi Report on Page 15 Paragraph 23, it is that the DSC ordered the denial of use of borehole from 5th February, 1984. It does not indicate when this ended. It actually goes on to say that this was a purely punitive measure to force the Degodia to surrender arms. If you have the Etemesi Report, it is on page 15 at the top, paragraph 23.

Mr. Benson Kaaria: This is an allegation. I do not think it ever happened. Etemesi did not get the report correctly.

Commissioner Slye: Okay. But my question to you was that, if it happened, you said that you had the power to stop it. Is that right?

Mr. Benson Kaaria: If it was ordered by the DC.

Commissioner Slye: Okay.

Mr. Benson Kaaria: If it was ordered by the DSC, I could not because they had their own authority under the Charter and I would be diluting their authority.

Commissioner Slye: So, you could not; if the DSC--- If Etemesi's information was correct and he suggests that, actually, the DSC told him this; if the DSC told him that they denied the use of waterholes by the Degodia, you would not have the power to reverse that? Is that correct?

Mr. Benson Kaaria: I could not, because you can even read here; it was just an allegation!

Commissioner Slye: Yeah. I do not want to focus on whether this is true – what is in paragraph 23 – what I am trying to understand is, if the DSC engaged in an illegal act, then if I understood you correctly before, you as the PC had power to stop that act?

Mr. Benson Kaaria: No.

Commissioner Slye: You did not? You had no power over the DSC?

Mr. Benson Kaaria: No. If I did that, I would dilute the authority of the DSC.

Commissioner Slye: Okay!

Mr. Benson Kaaria: They would not be there.

Commissioner Slye: Does that also mean that you, as the PC, and you as the member of the PSC had power to do anything and that could not be stopped by the Kenya Security Committee (KSC)? Or could the KSC come in and say to you, "Do not do that" or they would order you to stop that or "we think you should do this, but in a different way?"

Mr. Benson Kaaria: The KSC would not do that.

Commissioner Slye: What about the PS in the OP?

Mr. Benson Kaaria: For your information---

Commissioner Slye: Would the PS in the OP do that?

Mr. Benson Kaaria: He could plead with us to see whether he could assist; otherwise, we would tell him, "Come and do it yourself." Things do not work like that! The KIC or the KSC cannot order the PSC to do something.

Commissioner Slye: Could anybody order the PSC to either do something or not do something?

Mr. Benson Kaaria: Maybe, the President through the PS.

Commissioner Slye: Through the PS in the OP?

Mr. Benson Kaaria: Or if he talked directly to the PC.

Commissioner Slye: Okay.

Mr. Benson Kaaria: He would tell me, “Why are you doing this? Do a, b, c or d” directly.

Commissioner Slye: Let us not talk about you or Garissa. Let us say a PC in another province has ordered, let us say, that all individuals be rounded up and be executed for no reason, just because this person has a whim--- Who, then, could stop that from happening?

Mr. Benson Kaaria: The President.

Commissioner Slye: So, the President could stop it. He was the only person that could stop that?

Mr. Benson Kaaria: He can intervene on a serious matter as the Head of State.

Commissioner Slye: But nobody else could intervene and they would have to go to the President?

Mr. Benson Kaaria: Right.

Commissioner Slye: So, in terms of the Wagalla operation and in terms of the rounding up of the Degodia at the Wagalla Airstrip, the only person who could have stopped that was the President; is that what you are saying?

Mr. Benson Kaaria: He could if he wanted.

Commissioner Slye: But nobody else could stop that?

Mr. Benson Kaaria: Nobody else!

Commissioner Slye: Okay.

Lastly, one of my colleagues had asked you about whether the operation was a success or not and you said that it was. But you also expressed some regret at the number of people

that died. What I want to ask you is, in the United States, my country, for example, my Government has done a number of bad things both to its own people and to other people. The one example that comes to mind is; we rounded up all individuals of Japanese ancestry during World War II with no basis in terms of considering whether they were a threat or not. It led to a number of law suits that eventually made the Government back in the 1980s – 40 years afterwards – apologize to members of that community, even though the people in that Government and the Government that apologized were not the same people back in 1943 when the operation occurred.

So, my question to you is; we as a Commission, have the power to make recommendations and some have suggested to us that we should recommend that the current Government apologizes to the people of Wajir and Wagalla and those who suffered during that operation and more broadly, to the people of North Eastern Province (NEP) in terms of other acts of violence, economic deprivation and all of these things. But just focusing at the Wagalla operation at the moment, would you recommend that we recommend that the Government apologizes?

Mr. Benson Kaaria: Whether I say you can or you cannot, I think it is meaningless because the Commission has got authority. That is why you were appointed to take evidence from us; you chew it and give the result of your investigation. Because even if I say that the Government cannot apologize, it will not change a single cent. But one way is clear: I am not the Government. These officers are not the Government; you know who the Government is. You recommend to the Head of State, “We feel that you should apologize as the Head of State on behalf of your people” or send the Government Spokesman to convey the message through him and nobody else! Even the PS cannot, in my view. And I think it will be wrong for me to tell you to tell the Head of State that. I am not mandated to do that; you have the leeway and you have a very strong Commission – from judges to professors, to the General – you do not require any outside input to make a decision on this. I am sorry to say that that is my view. Because if I was in your shoes, I would just do that; take evidence and where I feel it should be done without any favor or anything, you pass it on to whoever appointed you. You have a duty, Sir.

Commissioner Slye: I appreciate that. You said that in order to determine whether we should recommend an apology, we need to look at the evidence. Can you help us or help me to understand what evidence would be useful for me to look at to come to a decision about whether I should suggest that we make such a recommendation? What sort of factors should I take into consideration?

Mr. Benson Kaaria: I think the evidence is there and you have enough evidence from day one up to now, not only on Wagalla but also on others. You have everything at your fingertips, unless you fear to deliver that decision.

Commissioner Slye: So, do I understand that you are sort of suggesting that we should, as long as we do not fear the consequences? The reason I am asking you in part, I think both the Commission as a whole welcomes advice in terms of what sort of recommendations we should make. Everywhere we have gone, we have asked people

about what recommendations they think we should make and we have come across some very interesting and useful ideas; things that I am not sure we would have thought of on our own.

But, secondly, I and two of my colleagues here are not from this country. While I have been here for almost two years and I have gained some knowledge on how things work here, I am by no means an expert on what would be considered appropriate, effective or helpful. So, I am asking you as a Kenyan with a lot of experience both in the country and in government, about whether you think it would be useful or appropriate for us to make such a recommendation.

Mr. Benson Kaaria: In America, you said you rounded up Japanese. Did your President apologize?

Commissioner Slye: Yes, he did.

Mr. Benson Kaaria: There is no President number one and President Number two; both are presidents. Talk to the President, pass information to him, “This is what we feel and damage has been done. Clean your Government.” It is simple!

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

Commissioner Farah: Thank you very much, Madam Acting Chair. Mr. Kaaria, I want to base my first question on this internal security scheme which is sometimes called the charter. Possibly, you have it with you. First of all, this document was produced by you out of which authority, if you may refer to Statute or a Government law that was in force in 1984? This is because it does not quote any such law or authority.

Commissioner Farah: You produced this out of which law of Kenya? You are aware that it has to be produced with reference to a certain supreme law from which you derive its effectiveness.

Mr. Benson Kaaria: This document is extracted from a Kenya security manual. The wording is like when you go to register a company. There is a document where you just change. It is a manual---

Commissioner Farah: Agreed. Manuals can be produced by anybody. What I am asking is under what law?

Mr. Benson Kaaria: Under what law that security manual was drawn, I do not have. We can ask the Director of Intelligence.

Commissioner Farah: The Director of Intelligence cannot produce any document without the express permission of a law of Kenya. Could it have been produced out of Chapter 57 of the Laws of Kenya which deals with the preservation of public security?

Mr. Benson Kaaria: I do not know, but there it is.

Commissioner Farah: So, you just copied it from a manual?

Mr. Benson Kaaria: Given in a manual as it is and we were told what to do. It becomes a paper to use.

Commissioner Farah: Let us assume that it was based on a certain law somewhere – a research could be done by the lawyers--- Do you agree that it was drawn from a manual that was dealing with the whole of Kenya and, therefore, it was a kind of guideline on how to deal with emergencies?

Mr. Benson Kaaria: Agreed. It was for the whole of Kenya.

Commissioner Farah: Talking of emergencies, if I go to Coast Province, the PC there would produce a scheme like this one to deal with disaster control. Should a ship sink at the entrance of Kilindini Harbour or should the oil refinery catch fire, this manual would be applied. Therefore, it was an emergency control situation, whereby what is paramount is the safety of the citizen?

Mr. Benson Kaaria: I do not know that, but the PC, Coast Province has something like this. In case of a ship sinking, the navy is next door.

Commissioner Farah: That is why I am saying it deals with emergencies.

Mr. Benson Kaaria: I think it touches on things enumerated here on page 2.

Commissioner Farah: You are aware the *Shifita* War ended in 1967. At the time you were PC in 1984, there was no requirement for producing a document like this. This is because in your own words, if there were *Shiftas* or bandits coming from Somalia into our country, that would be the responsibility of the Department of Defence and not the PCs.

Mr. Benson Kaaria: The manual can be there because anything can recur. It can be somewhere for use. External aggression is a different matter. It is a matter for national security and not even the PSC. By the time we know that, the aircraft have already clashed in the air and bombs have been thrown. We do not have bombs in Garissa. What you are referring is an act of war where the national security is involved. It is where the President declares an emergency.

Commissioner Farah: In your statement, you said that when deaths occurred in the evening of 4th November, 1984 between 8.00 p.m. and 9.00 p.m. in a bar in Garissa where a bandit went and killed four people, you immediately called the DSC and the PSC and you straightaway, without any intelligence information, concluded that the attacks were aimed at the Kenya Government by Somalia militia from across the border. Is that correct or not?

Mr. Benson Kaaria: That was an impromptu decision. You have no time to think when something like that has happened.

Commissioner Farah: This man came and killed only four people in a bar and run away. It would have been normal if the following morning, an assessment by the intelligence officers was done. I do believe that was not the first day that the fellow or the group of people attacked people in Garissa.

Mr. Benson Kaaria: How many people would you have liked to be killed, so that it can create an impact if it were yourself?

Commissioner Farah: But it is better than collecting all the Garissa people into an open ground where people die, rather than gather intelligence to look for the lone bandit.

Mr. Benson Kaaria: That was a measure and it was necessary that it took place.

Commissioner Farah: If you may refer to page 6 of the manual, it talks about protection of life. From my reading of it, my assumption is that an emergency has occurred, people are killed and you started collecting the people at dawn from their homes and gathered them in primary schools for their protection against the bandits. You are a servant of the citizenry of Kenya and not a king who was commanding or ruling them. I assume that you were protecting them. Were you assembling the people in the primary school to protect them?

Mr. Benson Kaaria: We were protecting any more killing of civil servants. They were very vulnerable but the population was not.

Commissioner Farah: A civil servant was killed the previous night. I do not know what the population of Garissa was then, but thousands of citizens' lives were in the line of danger of the bandits.

Mr. Benson Kaaria: How many died?

Commissioner Farah: In Bula Karatasi, Garissa, a lot of houses were burnt. Presumably, there were disabled people in those houses who were burnt to death. In fact, you should be telling me how many people died.

Mr. Benson Kaaria: These people know one another. They are the same people. What we learnt after the operation was that the marauding group stayed two nights in town being fed and being given food.

Commissioner Farah: Did it occur to you that most bandits were having weapons and they got the poor citizens to feed them under threat?

Mr. Benson Kaaria: They were not.

Commissioner Farah: Any way, that is your assumption and you are entitled to it. So, you have confirmed that the concentration of those people was for their safety?

Mr. Benson Kaaria: It was for their safety.

Commissioner Farah: Do you believe or agree that the Bula Karatasi burning, the rounding of the Degodia men from as far afield as Modogashe, Griftu, Bunna and bringing them to Wagalla airstrip--- The two operations had similarities and there was a kind of collective punishment. Do you agree with me?

Mr. Benson Kaaria: No.

Commissioner Farah: Why was Mr. Tiema posted to Wajir on 24th January and the substantive DC was given leave at a time when the security situation was not calm in the district?

Mr. Benson Kaaria: Mr. Matui was due for leave. He had not taken his leave for about three years. By the time he left, the position in Wajir had cooled down.

Commissioner Farah: Presumably, you are the one who chose Mr. Tiema and posted him to Wajir?

Mr. Benson Kaaria: Yes.

Commissioner Farah: Why did you do that? Why did you not choose another officer?

Mr. Benson Kaaria: There was no other one. Did you have one? That was the best officer I had at that time. He was in the PC's office.

The Acting Chair (Ms. Namachanja): Mr. Kaaria, I would appreciate that you just answer the questions and do not respond with questions. We are seeking clarification from you.

Mr. Benson Kaaria: I am sorry for that. He was the best officer because he was working in my office.

Commissioner Farah: Why was his substantive deputy, Mr. W.P. Godo transferred on the eve of the operation?

Mr. Benson Kaaria: Godo was a sick person. He was suffering from Malaria.

Commissioner Farah: So, you removed him because of his sickness. Now, that is a satisfactory answer.

Thank you, very much.

Can you explain the absence of the substantive Provincial Special Branch Officer, Mr. Okello, throughout the operation and during the visit of the KIC in the province?

Mr. Benson Kaaria: Okello had taken his long leave and went to Kisumu.

Commissioner Farah: Prior to the Wagalla operation, you held a baraza at Bunna Trading Centre to discuss the pending Wagalla operation?

Mr. Benson Kaaria: I do not think I did.

Commissioner Farah: But you held a *baraza* there?

Mr. Benson Kaaria: I have gone to Bunna many times.

Commissioner Farah: Could you, please, explain to the Commission what happened and what you did?

Mr. Benson Kaaria: I had a *baraza* in Bunna to appeal for surrender of firearms. I never mentioned about an operation because I do not know.

Commissioner Farah: And some oaths were taken and what have you?

Mr. Benson Kaaria: The cleansing? That was in a different area between Garre, Ajuran, and the Degodia, where they killed some rams.

Commissioner Farah: So, the Garre were also attacking the Ajuran?

Mr. Benson Kaaria: There was a lot of involvement according to Mr. Matui.

Commissioner Farah: Why did you authorize the detention of Degodia leaders before the operation?

Mr. Benson Kaaria: That is within the mandate of the DSC, according to the Preservation of Public Security Act. They were suspects.

Commissioner Farah: Can you confirm Mr. Mwiraria's testimony before this Commission that you told him that the Wagalla operation was a military one?

Mr. Benson Kaaria: I even never talked to him. You can tell the way he answered questions here. He was not even himself!

Commissioner Farah: But you were present when he said that. Why do you say he was not himself?

Mr. Benson Kaaria: *Amezeeka*. He is old!

Commissioner Farah: We did not realize that. We thought he was a good officer who was giving us good information.

The Commission Secretary (Ms. Nyaundi): Madam Chair, with your kind permission, I do not know whether that is a fair statement to be said about Mr. Mwiraria and whether, indeed, that kind of statement should remain on the record of the Commission.

The Acting Chair (Ms. Namachanja): It is not fair. It is an abuse and I will request that Mr. Kaaria takes it back. It is not part of the record.

Mr. Benson Kaaria: I did not discuss anything with him.

The Acting Chair (Ms. Namachanja): But we want you to take back the statement that Mr. Mwiraria was not himself and that *amezeeka*.

Mr. Benson Kaaria: I withdraw that.

Commissioner Farah: Did you authorize the trip of the members of the PSC to Wajir and why did you not accompany them?

Mr. Benson Kaaria: Because I was busy in the office and they were going on a fact finding mission and then come and report to us.

Commissioner Farah: The death of hundreds of people and the official count being 57 men; did you not think it was incumbent upon you to go---

Mr. Benson Kaaria: I agree, but there were equally responsible people whom I thought could go and bring me a report.

Commissioner Farah: As PC, North Eastern Province, why did you not involve the local leadership of the province, particularly the Somali civil servant officers in the visit of the KIC? Why was it kept a secret?

Mr. Benson Kaaria: I do not know and there was no reason as such. We went by that letter from the President's Office that the KIC would tour the area and would be interested to discuss with the District Security Chairmen.

Commissioner Farah: What was the role of the Chief Engineer, Aerodromes and the Director of Land Adjudication? What did they have to do with KIC?

Mr. Benson Kaaria: The team came also to inspect part of the development in the area. The aerodrome man came to see Mandera Airstrip which was peeling off and the military airstrip needed some repair.

As for the Land Adjudication Officer, it was recommendation before. When I went to Mandera and found people doing good farming, I thought they could be given title deeds along the river and the department appropriate was the Director of Land Adjudication; that was, Mr. Kinyanjui.

Commissioner Farah: You accompanied Gen. Mulinge to Wajir Airport on 15th February, 1984 long before the PSC minutes of 24th February, 1984 in which you complained of lack of information. Having accompanied him, you got all the information. So, why did you later on right in the minutes, say that you did not have information?

Mr. Benson Kaaria: By the time we left Garissa, the information had not come. When we went to Wajir, that was when we got more information.

Commissioner Farah: Is it true that Gen. Mulinge was “furiously” angry with you for having used his troops in the operation?

Mr. Benson Kaaria: No, he was not.

Commissioner Farah: Did you give any input in the drafting of Hon. Tipis’ statement to Parliament on 12th April, 1984?

Mr. Benson Kaaria: I did not give any input. What we do was that, we write a letter to the Office of the President detailing the history. The Permanent Secretary would then pick what he would use.

Commissioner Farah: In your last PSC meeting that you attended sometime in March, it is said that a letter came from KIC giving directives that from now onwards, any operation that would be done in North Eastern Province must get the permission of the Minister. Even the letter from the Office of the President was quoted.

Mr. Benson Kaaria: I have not seen that.

Commissioner Farah: You profusely objected to that. I think that is the minutes of 29th March, 1984. Benson Kaaria is quoted saying, “No, this directive of the Minister is not tenable.”

Mr. Benson Kaaria: My own minutes?

Commissioner Farah: Yes. Leader of Evidence, can you help us?

The Commission Secretary (Ms. Nyaundi): Commissioner Ahmed, it was a meeting held on 25th April, 1984. Those are among the minutes that we have asked for and have not received from Mr. Kimemia.

Commissioner Farah: I remember reading that. Directions were being given to the PSC that no operations should be done in North Eastern Province without the express permission of the Minister.

Mr. Kaaria, it is said that you objected to that by saying that it was not a good idea and that it was not tenable.

Mr. Benson Kaaria: I cannot comment on something that I have not seen.

Commissioner Farah: Okay. We will leave it there. You are off the hook.

Mr. Benson Kaaria: In any case, the PS, Office of the President is here and I am sure he will give evidence, maybe, tomorrow.

Commissioner Dinka: Mr. Kaaria, thank you very much for your testimony and spending the whole day with you has given us a lot of insight into what took place during those difficult days in North Eastern Province.

During the time you were PC in North Eastern Province, a number of things happened, including the Bula Karatasi situation. During that incident, many people were rounded up and taken to the primary school and kept there for two or three days. Some kind of communal investigation went on and there was burning of houses. The same happened in Wajir. Do you think those procedures conform to the security scheme you had compiled yourself?

Mr. Benson Kaaria: Rounding people is compatible. That is the measure the Government uses to control or make sure that you get information from people. It is done because the perpetrators are among those people.

Commissioner Dinka: How about the burning of houses?

Mr. Benson Kaaria: We are not allowed to burn houses.

Commissioner Dinka: In Bula Jogoo, you could see the light at night and the ashes in the next morning. What did you do once you knew about that?

Mr. Benson Kaaria: Upon investigation, the report from the security said that the houses were burnt by the bandits while fleeing. That was the information that we had.

Commissioner Dinka: One person who was challenged in his movement was burnt inside one of the huts. Was something done to his family?

Mr. Benson Kaaria: Madam Acting Chair, we did not get that information. I do not know up to now.

Commissioner Dinka: It is even in the report by some of the witnesses.

Mr. Benson Kaaria: I am not aware.

Commissioner Dinka: Let me take you back to Wagalla. You said that you did not know because there was breakdown in communication. You were told what had been happening and before that, the PPO had briefed you at your home about what had been happening and that was why you went out to re-write the telegram to tone it down. Why did you not stop that as PC by giving direct instructions to the DC and not the security committee?

Mr. Benson Kaaria: I think your questions are too many together. Can you separate them? If you separate them, I will be able to follow.

Commissioner Dinka: On the 9th, you heard from the PPO that operations had started. He told you that he would “deal with them without mercy” and you tried to correct that, although the telegram had already gone. In fact, you only managed to correct half of the message that women, children, and cattle should not be involved. How they should be treated, the PPO’s merciless treatment still remained. Why did you not do something to nip in the bud, this emerging disaster by using your PC’s hat and instructing your DC to stop it? He represents the President also.

Mr. Benson Kaaria: As a PC, I could not stop the DSC from operating because they had taken action. They wanted to do an operation and the PPO did not tell me that the operation had started. He mentioned that the operation would start the following day; that is, 10th at night. He showed the signal which he had sent which said that they should be merciless and whatever, and that they should round up even the livestock and the women. That was when I said that we corrected that. The language was not very good. I said, “Do not include women and livestock.”

Commissioner Dinka: What tragedy had taken place when you came to learn about it? When you went to Wajir, there was some kind of normalcy, but you already knew that 57 people had been killed, at least according to the Government count. Have you asked people above you, say call the President on phone and ask him to do something in a post event manner?

Mr. Benson Kaaria: We could not involve the President in matters that he knew were in the hands of a DSC. However, the right channel was to inform the PS, Office of the President of what had happened, which he regretted and that was why he took disciplinary action. You cannot talk to the President to tell him that people have died. So, what will he come to do?

Commissioner Dinka: For your information, about the disabled person who died in a burning hut, it is in the Etemesi Report on page 11. It happened in Wajir.

My assumption is that when things of this magnitude take place, the first duty of a PC would normally be to put things back to normalcy – console people and encourage them

to be live in harmony and get the local leaders to do something at their level and also advise those above him, including the President of the Republic to take some kind of gesture to bring things back to normal. In this regard, is there anything that you did that you can tell us?

Mr. Benson Kaaria: I think it was very difficult. It was a very sad situation because you were dealing with people who were bereaved and they were beyond repair. We tried to go there, but they were very hostile. I tried to send them famine relief, but they refused because they were very bitter. We only had to give it time to cool by itself.

Commissioner Dinka: After your visit to Wajir and after the Wagalla massacre happened, in one of the minutes, the PSC talked about stiffer action in Wajir. What stiffer action could there be, more than what had happened in Wagalla? What did you understand by that?

Mr. Benson Kaaria: I think they meant talking tougher. This is because people will not learn if you were soft on them. If you have an operation and you talk tougher in a public meeting, things will settle down. It is not about taking tough measures to kill more people. It was not in that sense.

Commissioner Dinka: As PC, you have the powers to reprimand the DC?

Mr. Benson Kaaria: No. That is the work of the PS, Office of the President or the Public Service Commission. You can reprimand other junior officers.

Commissioner Dinka: My last question now is about the relationship between the KIC and the PSC. We have been talking about this thing but it is still nebulous. It is not very clear to me.

When you say that the Chairman informed the members that the PSC proposals on long-term policies have a solution to banditry activities, what does that mean?

Mr. Benson Kaaria: It means that whatever recommendations that were made, maybe, they touch on areas that require funding. If it was a question of improving a road, that was a matter that required funding. That is what I think.

Commissioner Dinka: I thought you said that you do not report to them or you do not ask them anything. You said that you go through the PS.

Mr. Benson Kaaria: That is what I am even saying. The area we wanted covered, probably, required money and that was why we sent a letter to the PS, Office of the President to forward those requests.

Commissioner Dinka: Why did you say KIC?

Mr. Benson Kaaria: Because the action would come from there. We forward a copy of the minute to the PS, Office of the President to ask whether they can take action. Once he gets that minute, it goes to the KIC.

Commissioner Dinka: It is an intermediary, a kind of conveyor belt between the two of you, that is, PSC and KIC. However, you have a kind of reciprocal relationship. We heard that on 25th April, there were directives that no future activities like this one would take place without clearance from the Minister. This means that they go through the President's Office.

When you were asked whether on 9th February, 1984 you briefed the KIC what the PPO briefed you, you said it was not their business. Why did you not brief them and yet they were with you at your home?

Mr. Benson Kaaria: The signal said that the operation would be done tomorrow. There was no need for me to tell all the members of the KIC when they were eating that the operation was to be done the following day. We did not require anything from them. The operation was in Wajir.

Commissioner Dinka: You have sent already the recommendations on how to solve this problem on a long-term basis. You could have exchanged ideas. But you have this kind of relationship where they visit you at your home. Why did you not brief them?

Mr. Benson Kaaria: That was only a signal we received which said, "Operation will be done tomorrow." There was no way I could tell the Kenya Intelligence Committee (KIC) during eating time that the operation was to be done the following day. We did not require anything from them because the operation was to be done in Wajir, and those in Wajir had set it up, so they were to operate!

Commissioner Dinka: But you had already sent recommendations or a series of proposals to them on how to solve these problems on long term basis. So, this would have been just an element of that and you could have exchanged information or ideas to help them in approving that proposal.

Mr. Benson Kaaria: We did not brief them!

Commissioner Dinka: You did not brief them? Thank you very much. I have no further questions. Again, I thank you for coming to talk to us.

Commissioner Chawatama: Sir, I would like to join the other Commissioners in thanking you for giving us your testimony.

Four civil servants were killed in Garissa and when you were asked a question about that, you said the District Security Committee (DSC) and Provincial Security Committee (PSC) were involved in analyzing the situation and deciding to put people at the primary school. Is that correct?

Mr. Benson Kaaria: Yes, that is correct.

Commissioner Chawatama: So, when you say people, you mean men, women and children?

Mr. Benson Kaaria: I mean men and women.

Commissioner Chawatama: And children as well?

Mr. Benson Kaaria: I think children were not there.

Commissioner Chawatama: You later said that you went to a primary school and then you asked that the women and children be released?

Mr. Benson Kaaria: There were no children!

Commissioner Chawatama: So, men and women were collected and the children were left alone at home to look after their homes and livestock?

Mr. Benson Kaaria: Madam Commissioner, it was the men who included civil servants; the children were not there.

Commissioner Chawatama: Okay. So, on one hand in Garissa, you were on the ground and you were in charge and you asked people to be rounded up, which included women? Then on the other hand, in Wajir, when you got the operation order, you then toned it down and said: "Round up the men, but not the women." Is that correct?

Mr. Benson Kaaria: Yes, it is.

Commissioner Chawatama: Why did you choose the primary school ground?

Mr. Benson Kaaria: Madam Commissioner, it was the only open ground nearby town which could have accommodated people.

Commissioner Chawatama: What did you call this collection of people? Were they detained persons or prisoners? What did you call them?

Mr. Benson Kaaria: They were not prisoners as such, but there were suspects among them.

Commissioner Chawatama: Did you find the suspects among them?

Mr. Benson Kaaria: The security committee interviewed them and they got the information they wanted and then they released---

Commissioner Chawatama: So, the suspects were not among them?

Mr. Benson Kaaria: I do not think the police arrested any suspects. I cannot remember what happened.

Commissioner Chawatama: Would I be right then in assuming that those people were rounded up to help the PSC with investigations?

Mr. Benson Kaaria: Yes.

Commissioner Chawatama: Okay. I think it is my legal brain - I am trying to understand what happened. In the evening, four people were killed; early in the morning, people are round up. So, when did you have time to carry out proper investigations?

Mr. Benson Kaaria: When they were rounded up---

Commissioner Chawatama: No! Between the time of the killing of the four civil servants and the morning, were there any investigations carried out by the police?

Mr. Benson Kaaria: There were no investigations carried out. It was kind of rounding up of the people because the curfew had already been declared. That was to enable the security men to look for the perpetrators of the killings.

Commissioner Chawatama: I am concerned because all we have heard is that in North Eastern or the Northern Region, there is lack of investigation, even when one is sure who the culprits are. So, why did you not order an investigation at that time before the rounding up of the people?

Mr. Benson Kaaria: We did not order for any investigation.

Commissioner Chawatama: Yes. My question is: why did you not?

Mr. Benson Kaaria: The PSC was of the view that with the curfew, because action had already been taken, there was no time for investigations. It was a question of taking action by implementing the curfew order.

Commissioner Chawatama: Besides, being the District Commissioner (?), were you also a magistrate?

Mr. Benson Kaaria: I was.

Commissioner Chawatama: What class?

Mr. Benson Kaaria: First Class.

Commissioner Chawatama: Yes. So, on one hand, you were the Provincial Commissioner and on the other hand, a magistrate. So, the issues of justice were also things that you would have taken into consideration? And, investigation is one of the things that you would have done because when a matter comes before you, one of the things you would want to find out is how that matter was investigated. So, my question still remains: why was there not even some semblance of investigation?

Mr. Benson Kaaria: The District Security Committee was instructed to investigate the matter, but I do not know what happened.

Commissioner Chawatama: Were the people at the primary school guarded?

Mr. Benson Kaaria: Yes. There were soldiers surrounding them.

Commissioner Chawatama: And the soldiers had guns?

Mr. Benson Kaaria: Yes, they had.

Commissioner Chawatama: Were they free to get up, go home and come back?

Mr. Benson Kaaria: I presume they were.

Commissioner Chawatama: You cannot presume! You were in charge of the province.

Mr. Benson Kaaria: I did not go there to see.

Commissioner Chawatama: But you went there on the second day?

Mr. Benson Kaaria: Then I gave orders that they should go home.

Commissioner Chawatama: You went there on the second day?

Mr. Benson Kaaria: Yes, I did.

Commissioner Chawatama: Just help me understand what happened. What scene met your eyes when you went there on the second day? What did you see?

Mr. Benson Kaaria: People looked miserable and terrified because there were men with guns who scared them.

Commissioner Chawatama: Were any of the people armed? Did you find any arms on the people who were being guarded?

Mr. Benson Kaaria: No! No Madam Commissioner.

Commissioner Chawatama: Coming to Wajir, you were informed that some firearms were recovered?

Mr. Benson Kaaria: Yes.

Commissioner Chawatama: Did you get a report stating how many firearms were recovered, the types of firearms and from whom?

Mr. Benson Kaaria: I did not get the details of the firearms and the culprits.

Commissioner Chawatama: Did you receive a report of any investigations that might have taken place?

Mr. Benson Kaaria: No.

Commissioner Chawatama: When you received the operation order, did it state where the people would be held; the Degodia men who were rounded up?

Mr. Benson Kaaria: The operation order specified that they were to go to Wajir Airstrip.

Commissioner Chawatama: And, was this okay with you?

Mr. Benson Kaaria: According to them, because it was the only open ground. It would have been enough to contain the number of people rounded up.

Commissioner Chawatama: Was the Airstrip gazetted as a place of detention for people?

Mr. Benson Kaaria: It was not!

Commissioner Chawatama: Were you concerned about the welfare of the people who were gathered there, in terms of whether they would be all right or not, and whether or not their basic needs would be met?

Mr. Benson Kaaria: We did not know whether people had been rounded up until very late.

Commissioner Chawatama: Earlier on when you were asked the question, you said that you sent out warnings. It was good to send out warnings and warning shots do not harm people. In the report that you received from the DSC, was there anything to indicate that before shooting at the crowd, there were warning shots that had been fired?

Mr. Benson Kaaria: There were no warning shots, but there was only an order for them to stop from running away. There was no information that warning shots were fired.

Commissioner Chawatama: Maybe, you should try and stretch your imagination. Can you imagine somebody saying, “Stop running away!”, and there are a lot of people running in all directions; do you think that is something that they may have heard?

Mr. Benson Kaaria: I do not know. I assume they heard because they were nearby.

Commissioner Chawatama: So, the men who were shot at were fleeing, according to the evidence that we have heard and the reports that we have, meaning that they were shot in the back?

Mr. Benson Kaaria: Most likely because they were running away.

Commissioner Chawatama: These men had been described as prisoners and people were held in a lawful custody and that they were escaping from a lawful custody. So, Wagalla Airstrip was a lawful custody?

Mr. Benson Kaaria: In law in this country, once a police man has arrested you, whether you are walking with him or not, you are under the custody of that police officer, even if it is in an open area.

Commissioner Chawatama: Excellent! So, those people were arrested?

Mr. Benson Kaaria: They were arrested.

Commissioner Chawatama: And they were told that they were arrested?

Mr. Benson Kaaria: I do not know that.

Commissioner Chawatama: Do you know whether or not they were surcharged or charges were preferred against them?

Mr. Benson Kaaria: I do not think whether there were any charges preferred against them.

Commissioner Chawatama: Okay. So, they were arrested?

Mr. Benson Kaaria: Yes.

Commissioner Chawatama: Thank you. One of my colleagues asked you a question. I think it was Prof. Ronald Slye; whether or not, the President knew about the Wagalla Operation to which you said---

Mr. Benson Kaaria: I do not think whether he knew about the operation until it took place.

Commissioner Chawatama: Okay. Who was the president at that time?

Mr. Benson Kaaria: He was President Moi.

Commissioner Chawatama: You also said that the president was the only person who could have ordered that the same be stopped. Is that correct?

Mr. Benson Kaaria: Yes, he could intervene in any situation.

Commissioner Chawatama: He could intervene in any situation; but as far as you know, he did not intervene in this situation?

Mr. Benson Kaaria: Because he did not know; therefore, he could not have intervened.

Commissioner Chawatama: You were 100 per cent sure that he did not know or you are assuming that he did not know?

Mr. Benson Kaaria: I am assuming that he did not know.

Commissioner Chawatama: You are assuming that he did not know?

Thank you.

I am sorry, I have one last question. The person who ordered the firing or the shooting onto the crowd that was fleeing; should he be held responsible for the deaths that occurred?

Mr. Benson Kaaria: He should.

Commissioner Chawatama: Thank you.

The Acting Chair (Ms. Namachanja): Mr. Benson Kaaria, let me also thank you for your testimony and your helping us understand the truth about the atrocities that took place in north and upper eastern Kenya. In your testimony, you compared the detention of individuals in villages similar to what happened during the Mau Mau era?

Mr. Benson Kaaria: Yes, Madam Chair.

The Acting Chair (Ms. Namachanja): Are you aware that some of the Mau Mau victims took the British Government to court over the humiliation?

Mr. Benson Kaaria: Yes, I am.

The Acting Chair (Ms. Namachanja): Do you think that Kenyans who suffered in similar ways should take the Kenya Government to court?

Mr. Benson Kaaria: I did not say they should; they should take in discretion, what they want to do. They have the freedom to do what they want.

The Acting Chair (Ms. Namachanja): Okay. Would this be in order?

Mr. Benson Kaaria: Madam Chair, you cannot stop somebody from claiming his right.

The Acting Chair (Ms. Namachanja): Okay. So, this is their right?

Mr. Benson Kaaria: It is their right.

The Acting Chair (Ms. Namachanja): Thank you. I also just want to check when you went to Wajir on 15th February, 1984; did you see any signs of houses that had been burnt?

Mr. Benson Kaaria: No! No, Madam Chair, we did not visit that area.

The Acting Chair (Ms. Namachanja): Sorry!

Mr. Benson Kaaria: We did not visit that area.

The Acting Chair (Ms. Namachanja): Okay. But did you hear reports of houses having been burnt?

Mr. Benson Kaaria: We did not hear because the DC did not tell us.

The Acting Chair (Ms. Namachanja): Okay. Did you receive any reports of women having been raped?

Mr. Benson Kaaria: No, Madam Chair. I did not hear that report.

The Acting Chair (Ms. Namachanja): Okay. Going back to the Garissa situation--- How many armed forces did you have in Garissa? When I talk about armed forces, in my laywoman's language, I mean the Military, the Administration Police and the General Service Unit. Approximately, how many armed men did you have in Garissa?

Mr. Benson Kaaria: I cannot tell by now. There were quite a good number.

The Acting Chair (Ms. Namachanja): Were they 100, 200 or 300 armed forces men.

Mr. Benson Kaaria: I think the Administration Police had more than 200 men.

The Acting Chair (Ms. Namachanja): Okay. How about the Military Forces?

Mr. Benson Kaaria: I will not know. It was a company!

The Acting Chair (Ms. Namachanja): Okay!

Mr. Benson Kaaria: Yes, Madam Chair.

The Acting Chair (Ms. Namachanja): You received reports that the people who burned houses in Bura Karatasi were the fleeing bandits, with so many forces; two hundred police force. Even if they were one hundred, is it possible that people could burn houses and run away and the armed force men did not apprehend even one of them?

Mr. Benson Kaaria: Since it was at night, anything was possible.

The Acting Chair (Ms. Namachanja): Was it at night?

Mr. Benson Kaaria: It was at night and to operate at night was also very difficult.

The Acting Chair (Ms. Namachanja): But the operation was on sir, and the people had just been killed.

Mr. Benson Kaaria: The operation came after.

The Acting Chair (Ms. Namachanja): Okay. Back to the dumping of bodies; was that the usual way of disposing of dead bodies in the region?

Mr. Benson Kaaria: I do not think so! According to what I know, they should have been taken to hospital, so that the postmortem could be done and then the bodies released to the relatives for burial. But according to the evidence which was given here, the DSC decided to bury or dump them because under the custom of those people, they were to be buried within hours thereafter. But to me, I should have expected the bodies to be taken to hospital.

The Acting Chair (Ms. Namachanja): And being Africans, I know that we really value our people, even those who have died and the only way that families can do when mourning is when they accord their bodies a decent burial. How do you feel about this act by your fellow Government officials?

Mr. Benson Kaaria: That was wrong and inhuman; it should not have happened.

The Acting Chair (Ms. Namachanja): Okay. There have been proposals that maybe, to help the victims put a closure to the mourning and, that is for us to organize a memorial ceremony where the people whose bodies were dumped in a very dehumanizing way could be accorded a decent burial. Would you support us in this?

Mr. Benson Kaaria: That is a very good idea, Madam Chair.

The Acting Chair (Ms. Namachanja): Thank you. When we toured the region, right from Garissa, Wajir and Mandera, and from the testimonies that we heard, the people from that

region remember your name with a lot of pain because of what they experienced during your period as the PC. We were wondering why. Would you help us to understand why? Is it because of the challenges, nature of your work right from the elderly to the children? I think it is the narratives they have heard about your name; they remember it with a lot of bitterness.

Mr. Benson Kaaria: Therefore?

(Laughter)

Why I am asking this is because you have made statement.

The Acting Chair (Ms. Namachanja): Yes.

Mr. Benson Kaaria: You did not expect an answer from me. So, I was listening and waiting for you to finish.

The Acting Chair (Ms. Namachanja): No! A reaction at least, from you; do you have any reaction? How do you feel about this?

Mr. Benson Kaaria: I need their sympathy. I worked for them and if they are not grateful, there is nothing I can do to make them happy!

The Acting Chair (Ms. Namachanja): Okay.

Mr. Benson Kaaria: Yes.

The Acting Chair (Ms. Namachanja): But you have also said that you worked in other places! Is it because of the nature of the region or---? What challenges did you face as a PC in this region? Just to help us understand.

Mr. Benson Kaaria: Other areas do not have the same feeling. It is only here, if there is a reason--- If you went there and imposed a curfew on people - I do not think there is anybody there aged 60 years.

The Acting Chair (Ms. Namachanja): Okay!

Mr. Benson Kaaria: It would remind you of *Shifita* War! The man was brutal and militant! This happened in Wajir; out of that context, you can guess why. I am not trying to be happy or famous; I did my work, I have retired and I am enjoying my pension. I do not want any more hustle.

The Acting Chair (Ms. Namachanja): Okay. But when---

Mr. Benson Kaaria: I did not want to make them like me. There was nothing I could do. If somebody does not want you, you cannot make him love you!

The Acting Chair (Ms. Namachanja): But when you were working there, what was the relationship between you as the PC and the people?

Mr. Benson Kaaria: I could not know because sometimes, they could not talk.

The Acting Chair (Ms. Namachanja): Okay. Right!

Mr. Benson Kaaria: Somebody may think that everything is okay. But somebody may choose to keep quiet; you cannot know. Somebody can be bitter inside and you may not know.

The Acting Chair (Ms. Namachanja): And you were not concerned that you were leading people who may be bitter and you do not know? You did not have any other mechanisms to improve on the relationship?

Mr. Benson Kaaria: Madam Chair, there is none. People choose to say that they do not want you because you are bad. Even if you go to church, they would still think that you are bad. That is a decision that somebody takes and it does not bother me because I was sent there to do a job; I did it and I retired. Maybe, somebody else would do it better than myself.

The Acting Chair (Ms. Namachanja): Okay. Let us turn back to the Wagalla Massacre. In your testimony, I remember you said it was something close to a calamity. It was unfortunate and very bad. Those are the words you used. What do you think went wrong because actually, that was an operation which went wrong?

Mr. Benson Kaaria: I think it was a management issue. The three people did not agree on what they were supposed to do. If they would have shared information on what they were supposed to do, then they would have gotten an answer. What I believe is that, maybe, they were bulldozed by the army man, who was senior to them. There was an army major there - Major Mdogo---

The Acting Chair (Ms. Namachanja): So, for this operation, do you think the people of Wajir should be bitter about what happened to them?

Mr. Benson Kaaria: Of course, they should be bitter. Those were not palatable things; they were very serious!

The Acting Chair (Ms. Namachanja): Okay. If you were in charge, what would you have done differently to stop such calamity from happening the way it happened?

Mr. Benson Kaaria: Personally, if it were me in Wajir after that operation, I would have put the people into Wajir Prison as it had space and could have accommodated over 200 people. If there was an overflow of people, they could have been taken to Wajir Social Hall.

The Acting Chair (Ms. Namachanja): Okay.

Mr. Benson Kaaria: I would have had that thinking because I know Wajir and the Prison as well as the county council hall.

The Acting Chair (Ms. Namachanja): Okay.

Mr. Benson Kaaria: Yes. In fact, if the DSC had told us and asked us to suggest what they wanted to do, I would have told them to take the men into Wajir Prison and interview them from there because in the prison, they could have been given water and food.

The Acting Chair (Ms. Namachanja): Okay. It seems that you also did not know or you did not receive the report that during the massacre in Garissa, quite a number of people who testified before us said that they lost their loved ones. But again, like the bodies that were dumped in the river, they did not get a chance to bury them.

Mr. Benson Kaaria: I would not know that. I did not have any report about that.

The Acting Chair (Ms. Namachanja): Okay. In our investigation to find out this, you will agree with us that in a similar way, we should come up with a ceremony for a closure?

Mr. Benson Kaaria: I will support that because it will be in memory to the people to remind us what went wrong. Like in America, they put one where the twins' tower was. A memorial function like that is good.

The Acting Chair (Ms. Namachanja): Okay.

Mr. Benson Kaaria: I think even the Government can support it.

The Acting Chair (Ms. Namachanja): Okay. The people are very bitter with their Government because of what they experienced through the local administration and the military. Apart from seeking for the truth and justice, the main objective of this Commission is to promote healing and a reconciliation. In your view, what should we recommend to promote healing and reconciliation, especially to the people of the Northern Region?

Mr. Benson Kaaria: I would recommend that civil servants should be the local people to work there. Let them see the service of their own men because all these are foreigners. But when you have indigenous people there, it makes a difference; there are more educated people like graduates. I do not see why they cannot be posted there instead of posting personnel from other regions to North Eastern. That feeling that these people have come to rule or to take their jobs should be removed. That should be the first healing; localize the people.

The Acting Chair (Ms. Namachanja): Okay.

Mr. Benson Kaaria: They will respect each other and work will move smoothly. The Government should continue to support them and let them see more from their own people.

The Acting Chair (Ms. Namachanja): Thank you, Mr. Kaaria. I do not have any further questions for you.

With this, we have come to the end of our hearing. But before we officially close, I would like to check with our Leader of Evidence if there were any documents that were presented today for admission. She should also help us to know who the witnesses for tomorrow will be.

The Commission Secretary (Ms. Nyaundi): Madam Presiding Chair, as had been indicated by the Legal Counsel, Mr. Kilukumi, certain documents came to us through the Permanent Secretary, Office of the President, Provincial Administration and Internal Security, by his letter dated 20th June, 2011. I am requesting, therefore, that we admit into the records of the Commission, the minutes of the DSC Wajir for 18th November 1983 and 14th February, 1984. There are also minutes of the PSC for 17th November, 1983; 28th January, 1984, 17th February, 1984 and 2nd January, 1984.

We had already admitted the PSC minutes of 24th February, 1984 and DSC minutes of 9th February, 1984. I am also requesting that we admit into the records of the Commission, the KIC documents prepared by Mr. Mutemi and also the DSC minutes 29th March, 1984 and the PSC minutes of 29th March, 1984. I also pray that we admit to the record, the Etemesi Report.

There is also the internal security scheme for the North Eastern Province. I am also praying that, that document be admitted into the records of the Commission.

The Acting Chair (Ms. Namachanja): They are so admitted.

The Commission Secretary (Ms. Nyaundi): Thank you Madam Chair. For tomorrow, we will have Mr. Charles Mathenge, followed by Ambassador Mutemi and finally, Provincial Commissioner, Mr. ole Selian.

The Acting Chair (Ms. Namachanja): On behalf of the Panel today, I would like again, to thank Mr. Benson Kaaria for his testimony and the Leader of Evidence for the good work well done. I would also like to thank our Hearing Clerk for the support you have given us and our Master of Ceremony. But more importantly, I would like to thank the public for participating in our hearings. That is what makes the hearings of the truth commissions.

I would also like to thank the Kenya National Commission on Human Rights (KNCHR) for facilitating the victims and survivors all the way starting from Northern Region and upper Eastern Province to be part of this process so that, at least, they get to understand, maybe, some of the questions that have been nagging them for years. In a way, they may get some answers.

Thanks also go to the media that have continued to journey with us to carry our painful stories, our version of the truth, not only to the Kenyan public but also to the international community.

Thank you and have a good evening.

Master of Ceremony, tomorrow we will start at 9.00 O'clock.

(Closing Prayer)

(The Commission adjourned at 6.25 p.m.)