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**ORAL SUBMISSIONS TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON WEDNESDAY 15TH JUNE,
2011 AT THE NHIF AUDITORIUM, NAIROBI**

PRESENT

Getrude Chawatama	-	The Presiding Chair, Zambia
Ahmed Farah	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Margaret Shava	-	Commissioner, Kenya
Patricia Nyaundi	-	Commission Secretary

COUNSEL

Mr. Mutua Mulu	-	Counsel
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(Opening Prayers)

(The Commission commenced at 10.20 a.m.)

*(The Presiding Chair (Commissioner Chawatama) introduced herself
and other TJRC Commissioners)*

The Presiding Chair (Commissioner Chawatama): On behalf of the Commission, I welcome you all to today's hearing. I will start by introducing the panel.

We have had two interesting hearings in Nairobi for two weeks. We have been hearing witnesses summoned by ourselves who by virtue of the positions that they held in government, came to testify on the issue of Wagalla Massacre. We will continue hearing from the remaining witnesses. I believe that we have two or three witnesses and we hope to conclude tomorrow.

Those who have cell phones should switch them off. Members of the public should respectively listen to the evidence of witnesses. We may not agree with everything that is being said but please, continue being patient and respectful. The witnesses before us will take oath then the Leader of Evidence will ask them to read their statements which they gave to us. After that, questions will be posed to them. Commissioners also will have an opportunity to ask questions. I would like to ask the Counsel present today to tell us their names and who they represent.

*(Mr. Mutua introduced himself and
listed who he is representing)*

The Presiding Chair (Commissioner Chawatama): We welcome you counsel to our second day of our sittings. I am sure this is very different from your usual experience of

the courtroom but it is also our hope that you have seen the value of having a process such as this and that you have picked up a few things.

The Commission Secretary (Ms. Nyaundi): Madam Presiding Chair, it has just been mentioned to me by Mr. Ismail that they were concerned about media reports and that apparently, some words were quoted verbatim but their clients never stated them. I mentioned to Mr. Ismail that we are availing to them copies of audio recording where they can confirm whether it is so. The Commission is serious that the proceedings be recorded accurately.

The Presiding Chair (Commissioner Chawatama): I do not know whether the counsel would want to put that on record.

Mr. Mutua: Madam Presiding Chair, let me begin by saying that we do appreciate the role of the press in this process because we think the integral part of public participation is really important. There has been a feeling by some witnesses that certain sections of the media have given an impression that is not correct. That aspect is disturbing to them, particularly where verbatim remarks attributed to them were printed in the newspapers but to their knowledge, that is not what they said. In particular, Mr. Joseph Kaguthi feels that certain remarks attributed to him in the *Daily Nation* of Friday and the *Sunday Nation* were unfair to him and they did not correctly capture what he said to the Commission. Therefore, we seek your indulgence to direct the press to be a little bit fair and reasonable in their reports, particularly if the official Hansard reports have not come out yet. For the time being, we are satisfied with that particular action.

The Presiding Chair (Commissioner Chawatama): We have heard your concerns and as a Commission, we are also very concerned when the reporting of what is said in these proceedings is distorted. We want the people of Kenya to get the accurate picture of what transpired in Wagalla or anywhere else. Since you are going to be given the recordings, please, point those issues to us and compare what is in the papers and what was said by your clients. After that, we will know what to do. I also wish to warn the media that it is very important that you report correctly. When we set out for these hearings, we knew that many people will benefit from the hearings more than the report because not every Kenyan will get the report. Many people are following these hearings through the media. Therefore, it is very important that what is reported is accurate; otherwise, you will be doing the Commission dis-favour. When you will have an opportunity to hear the proceedings and be able to point out the exact things that were said, then bring it to the attention of the CEO who will then bring it to our attention before we discuss how to handle the issue and avoid situations like this in future.

Mr. Mutua: Madam Presiding Chair, we will do that.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence, may we proceed?

(Mr. James Stanley Mathenge took the oath)

The Commission Secretary (Ms. Nyaundi): Madam Presiding Chair, I wish to bring to your attention that Mr. Mathenge volunteered to come before this Commission. We did not invite him either by letter or by summonses. Mr. Kaguthi mentioned that when he talked to me, he very graciously offered to come before the Commission.

The Presiding Chair (Commissioner Chawatama): We thank you very much for volunteering to come before this Commission. For us, that is a plus because we are now seeing that Kenyans are now taking ownership of this Commission.

The Commission Secretary (Ms. Nyaundi): Please, state your name and where you are staying and your current occupation.

Mr. James Stanley Mathenge: My name is James Stanley Mathenge, P.O. Box 56737 Nairobi. I retired in 1990 as the Chairman of the Public Service Commission (PSC). When this matter happened, I was the Permanent Secretary, Office of the President in charge of Internal Security and Provincial Administration.

The Commission Secretary (Ms. Nyaundi): Mr. Mathenge, I have a copy of your statement but unfortunately, it is not signed or dated. But still, I invite you to read it to the Commission.

Mr. James Stanley Mathenge: Madam Presiding Chair, I am very aware this morning that I am going to give a statement about an issue where lives were lost. It was a tragic and regrettable event which could have been avoided. That is what I would like to say before I start. That was a grave matter in the history of our country. As it has been said, I was not summoned to give evidence to this Commission. I was part of the civil service from 8th to 10th January, 1984. During my service of 27 years in Kenya and regarding the subject matter you have been discussing, I feel I can contribute something towards it. I am available to discuss the matter in any forum, of how we can run our country in future.

A visit to North Eastern Province was my brain child. It is me who thought that members of the Kenya Intelligence Committee (KIC) should be exposed to some of the areas where there were challenges. I strongly believe that what you have seen is different from hearing. I am told that scientifically, what you see can be retained by 80 per cent and you only retain 20 per cent of what you hear. I have been thinking about that region for many years because of my involvement in the provincial administration. When I handed over the Ministry of Agriculture in 1975, I told the Permanent Secretary who I was handing over to that I will be taking him to North Eastern Province to see the challenges of Agriculture there and that is where he was to begin from.

I took Mr. Muliro to Mandera, Wajir and Garissa using a plane which almost crashed. That was in 1979. The issue of security was to be addressed, so that there is development. I took those people there so that when we come to the boardroom, they are able to discuss what they know. That is why the delegation included people who could be useful in that vast high potential area for development. Although we were security based, we got

officers from other areas. After that, we wrote a report on what we had come to do and circulated it to Ministries which needed to do certain things. We were able to come up with issues which were useful to that situation. Other than security issues, we were also looking at development matters. We were concerned about the drought situation in that area and the people starving. We had to improve agriculture through improvement of slaughterhouses in Garissa. We wanted a closer administration. More Government officers were needed in that vast area. We wanted the area to be developed so that there were settlement schemes. We wanted people to be settled instead of being nomadic. We wanted to introduce farming to the people. We also wanted to make water available. Education was also being put into consideration.

The delegation was of mixed membership from the army to the police because they were there dealing with security matters. Some members just came to the meeting and could only ask questions regarding their ministries. I singled out the Ministry of Information and the Ministry of Foreign Affairs which were not involved but others were involved. There were five members from the security section. It was me and Mr. Mwiraria who were directly involved. Mr. Mwiraria was in charge of prisons which are part of the security set up. The others did not have any direct link to security. They came because of their input. The familiarization tour was not like a workshop or seminar where you go and interact but someone would come and brief us. It is the people on the ground who knew what to show us. We received briefings from Garissa, Wajir, Mandera, Takaba and Hulugho where we covered security and development matters. The chairman of the development committee is the person who can tell you what happens in that field.

We started in Wajir on 8th and in the afternoon, we flew to Mandera then to Garissa via Takaba, Liboi and Hulugho. We inspected projects around Garissa and then came back to the city. When we left the province, there was nothing to indicate that the situation would require the intervention of the KIC. I want to confirm here that at Wajir when we were told that everything was okay, we took it like that because these were the people on the ground. When we came back to Nairobi on the evening of 10th there was nothing. When we were sitting in Harambee House, the first indication came from Parliament. The Minister was confronted with questions in Parliament and he was at a loss. The Minister was Mr. ole Tipis. He rushed to us to find out what was happening. That was the time we started seeking for answers. We had an officer dealing with parliamentary matters. What was surprising was that even the case of Garissa was known because the police station was near there. It is the police who are concerned with internal security. The army only assists. The Administration Police is an organization which was set up to assist the civil authority like the sub-chiefs, chiefs, DCs and PCs but if something happens, they also go to assist the police. So, when you see them act together, it means that there is something extra-ordinary. The army deals with external aggression, the AP assists in the civil authority and the police are for internal security. With that lack of information from the province, we had to get an independent body to go immediately and see what was happening. That was when the Chief Secretary appointed a provincial commission from outside the province, which could understand what was happening. There were two people from the army and another one from the police who went on the ground. They brought a report which should be made available to this Commission. That is the report

that will tell the whole story. The report showed that 57 people died. There are two parts of my submission. The first one is related to North Eastern Province. The second one is about an operation that was well-intended but badly executed.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Mathenge. I will ask you a few questions, then the Commissioners will also ask you a few questions. I just want to know when you joined the public service.

Mr. James Stanley Mathenge: I joined the Public Service in 1962 in the Office of the President as a District Officer and I was posted to Kwale, Kinango. Then I went to the Kenya Institute of Administration (KIA) for training in administrative studies where we were trained in finance and administration. We also studied law in provincial administration. From KIA, I was posted to Murang'a in 1963, then to Kirinyaga in 1964 which is also my home district. The PC discovered that I came from that district and so, I was posted back to Murang'a as DO I. I was then posted to Nyeri as the Clerk to the Regional Assembly and Personal Assistant to the PC. I was then promoted to a DC and posted to Kilifi in 1965. In 1966, I was promoted to a senior secretary and posted to the Department of Defence in Nairobi. I told the PC that I wanted to work in the provincial administration because where I was, there was no work. Then I went back to the provincial administration where I was posted to Nakuru as a senior DC, then to Deputy PC.

In 1968, I was posted as PC in Kakamega, then to Kisumu in 1969. In 1970, I was brought back to Nairobi as the Deputy Permanent Secretary, Office of the President up to 1973. I then applied for a job at Commonwealth Secretariat and I got it. Therefore, I went there for four years and came back to Treasury as the Director of External Resources. I went around the world begging on behalf of the Government of Kenya. I was then made the Deputy Permanent Secretary, Treasury. I was then promoted to PS, Ministry of Water in 1978. I moved to the Ministry of Agriculture as the PS. In 1982, I was posted to the Office of the President as the Permanent Secretary.

On other issues, they could fly any direction; in particular, because they had to complete the contract with the President---

(Technical Hitch)

The Commission Secretary (Ms. Nyaundi): Were these all the PCs?

Mr. James Stanley Mathenge: All of them. You know, as in the American system, they were governors in their respective provinces. They were appointed by the President. So, they were representatives of the President.

The Commission Secretary (Ms. Nyaundi): So, who would sign the letters of appointment to that position? Would it be the Head of the Public Service and Secretary to the Cabinet or would it be the President?

Mr. James Stanley Mathenge: They would be signed by the Head of the Civil Service and Secretary to the Cabinet.

The Commission Secretary (Ms. Nyaundi): Were those individuals subjected to interviews, in terms of their recruitment?

Mr. James Stanley Mathenge: Not really. Most of them would be appointed by the President directly, just in the way the Ministers are appointed.

The Commission Secretary (Ms. Nyaundi): When it comes to issues like reporting on work progress, would those reports be submitted to you or would they be submitted to the Head of Civil Service and Secretary to the Cabinet?

Mr. James Stanley Mathenge: Those reports dealing with important things like staff appraisal, disciplinary cases and all that, would be brought to me. They would be processed. If they required to be taken to the Public Service Commission (PSC), they would be taken from there.

The Commission Secretary (Ms. Nyaundi): I am just wondering, in terms of your actual work, apart from staff appraisal and other staff issues, what did you understand was the work of the PC?

Mr. James Stanley Mathenge: The work of the PC in the province was representing the President. Secondly, as the most senior person in that area, he would be in charge of co-ordination of development activities. He would chair most of the major development committees. He performs a co-ordination role. He would also be the one supervising, generally, all the other officers, even in other Ministries.

The Commission Secretary (Ms. Nyaundi): You, as the PS, in terms of functions, did you, for instance, deal with issues of development?

Mr. James Stanley Mathenge: Yes, because of the Provincial Administration being charged with the responsibility of development, I dealt with issues of development.

The Commission Secretary (Ms. Nyaundi): I note that your title was, "PS, Provincial Administration". So, would you be co-ordinating the efficiency of the various PCs?

Mr. James Stanley Mathenge: Yes, I would.

The Commission Secretary (Ms. Nyaundi): I am assuming that decisions would be made at the Cabinet level. They would then be transmitted to you and you would be the one transmitting them to the PCs for implementation?

Mr. James Stanley Mathenge: On matters of development, the Cabinet Papers have to come from the line Ministries. When decisions relating to their Ministries were made, they would go directly to them. They would then find their way to a province or district,

and I would deal with them. So, the DC would make sure that such decisions were implemented at the district-level and the PC would make sure that they were implemented in the province.

The Commission Secretary (Ms. Nyaundi): Just to pick up from what you had raised in effect, that although you had a broad docket, when it came to your PCs, they were not, in terms of their work load, answerable to you. Did this present challenges to you in terms of how you were able to deliver?

Mr. James Stanley Mathenge: Yes, it sometimes gave me a lot of trouble. I remember trying to discipline somebody for misuse of Government money and he tried to rush to the President. I, however, stood my ground because I knew that I was dealing with a money issue. The issue had to be approached in that manner and I had my way. Of course, political matters had their own way.

The Commission Secretary (Ms. Nyaundi): Apart from the administrative work of the Provincial Administration and issues of internal security, did you find, as PS, that the docket required you to interact with your PCs?

Mr. James Stanley Mathenge: Yes, I did interact with PCs, but at the national level, the major source of good security was the Department of Intelligence, which was at that time called “Special Branch”. They were the ones who were, in fact, co-ordinating all the information, receiving it from all the districts and provinces at once.

The Commission Secretary (Ms. Nyaundi): Was the Department of Intelligence housed in your Ministry?

Mr. James Stanley Mathenge: No, it was housed in a different building.

The Commission Secretary (Ms. Nyaundi): But was it in your Ministry?

Mr. James Stanley Mathenge: Yes, it was in my Ministry. We had very many Departments, including the Departments of Immigration, Registration of Persons, the Government Printer, the Government Chemist, the Police, Provincial Administration, National Youth Service, *et cetera*. There were very many Departments.

The Commission Secretary (Ms. Nyaundi): Were those Departments headed by a Director?

Mr. James Stanley Mathenge: They were headed by a Director, at least.

The Commission Secretary (Ms. Nyaundi): In terms of the structure, you would then have the PS?

Mr. James Stanley Mathenge: Yes.

The Commission Secretary (Ms. Nyaundi): So, we could say that if we had a chart, all these people fell below you?

Mr. James Stanley Mathenge: Yes.

The Commission Secretary (Ms. Nyaundi): We had the PS, above whom we had the Minister?

Mr. James Stanley Mathenge: Mind you, the PS was the Accounting Officer. As the Accounting Officer, he would be the one looking for resources for each of these groups. However, in terms of operations, these people would operate on their own on a day-to-day basis.

The Commission Secretary (Ms. Nyaundi): So, your function was, maybe, supportive as opposed to managerial?

Mr. James Stanley Mathenge: That is correct; it was supportive. When it came to operations, each Department had its own operational orders.

The Commission Secretary (Ms. Nyaundi): I am just thinking that the Director of Intelligence, for instance, received information and thought that it was an issue which needed to be brought to the attention of higher authorities. In such a case, would you be within reach or would the Director of Intelligence have other channels?

Mr. James Stanley Mathenge: He had very many channels. If the information affected a certain Ministry, he would go to them directly. There was some information which would go straight to the Head of State. There was some information which would come to us.

The Commission Secretary (Ms. Nyaundi): For instance, if he had developed a brief, the nature of relationship would not be consultative with you, he would not come to you and say, "I am in receipt of this information" and then seek a decision from you?

Mr. James Stanley Mathenge: If he gathered information, he would just give you the information on what was going on because his work was to gather intelligence information for you to use. He may not even have assisted you to synthesize it. He would mostly just give you information for you to use.

The Commission Secretary (Ms. Nyaundi): In the course of these hearings, we have heard that there were the DSC, the PSC and, at your level, there were the KIC and the KSC. Is that correct?

Mr. James Stanley Mathenge: That is correct.

The Commission Secretary (Ms. Nyaundi): In fact, Gen. Kibwana informed us that you sat on both the KIC and the KSC. Is that correct?

Mr. James Stanley Mathenge: That is true.

The Commission Secretary (Ms. Nyaundi): The other witnesses who have appeared before the Commission appeared not to be very clear on the functions of the KIC and the KSC and their memberships. So, I would now request you to, please, tell the Commission, the membership of the KIC and the KSC and their respective functions.

Mr. James Stanley Mathenge: The KIC comprised of the PSs in the Ministries of Information, Foreign Affairs, Home Affairs, Defence, the PS, Office of the President, in charge of Provincial Administration, the Director of Intelligence, the Commissioner of Police and the officer in charge of intelligence from the Army.

The membership of the KSC was by all those persons, but it was chaired by the Vice-President and Minister for Home Affairs. The Ministers who would be dealing with security, namely the Minister for Defence and the Minister for Provincial Administration, were also members of the KSC. There were times when we did not have a Minister for Defence – when the whole security docket was under the President.

I should say that this structure, at the top, has since been changed. Instead of the KSC, we now have the National Security Advisory Committee (NSAC), which now works through the Cabinet Committee on Defence and Foreign Affairs. That is also true in terms of reporting. They have since changed the set up.

The Commission Secretary (Ms. Nyaundi): So, in terms of the new set up, we no longer have the Vice-President chairing the National Security Advisory Committee?

Mr. James Stanley Mathenge: No, we do not have that. It is now chaired by the Cabinet Secretary.

The Commission Secretary (Ms. Nyaundi): Its membership still remains the PSs and the Ministers that you have identified?

Mr. James Stanley Mathenge: Yes, they still remain but the composition and the chair have been changed.

The Commission Secretary (Ms. Nyaundi): What about the respective functions?

Mr. James Stanley Mathenge: The functions of this committee are still the same – restoring law and order in the country right to the district level. The core function is really restoration of law and order. If you go down, it is really about protection of lives and property of Kenyans.

The Commission Secretary (Ms. Nyaundi): Were you the Secretary of the KIC?

Mr. James Stanley Mathenge: I was the Chairman of the KIC at that time.

The Commission Secretary (Ms. Nyaundi): So, Mr. Mwangovya was the Secretary?

Mr. James Stanley Mathenge: Yes.

The Commission Secretary (Ms. Nyaundi): He was in your Ministry?

Mr. James Stanley Mathenge: Yes, he was in the Office of the President.

The Commission Secretary (Ms. Nyaundi): Who acted as Secretary of the KSC?

Mr. James Stanley Mathenge: The Director of Intelligence acted as the Secretary of the KIC.

The Commission Secretary (Ms. Nyaundi): Did you also sit in the KSC?

Mr. James Stanley Mathenge: Yes, I did.

The Commission Secretary (Ms. Nyaundi): You sat as the PS?

Mr. James Stanley Mathenge: Yes, I sat as the PS. The difference between the KIC and the KSC was that one would just gather information whereas the other one would act on that information as was necessary.

The Commission Secretary (Ms. Nyaundi): What was the relationship between the KIC and the KSC?

Mr. James Stanley Mathenge: Both the KIC and the KSC were created by the Security Charter. One was just an image of the other at a lower level. The district is an image of the province. The outfits at the district and provincial levels were doing almost identical jobs but at different levels. Each outfit was able to act on its own fairly independently on a day-to-day basis. That was because there were meetings all the time. They would meet at least once every month but they would meet more often, if need be. As we sit here, there are some which are meeting. They do that and transact business all the time.

It is only when an extra-ordinary issue occurs that they turn to the other committees for help. In the case of Wajir, they would do that but if they wanted to look into matters relating to Ethiopia or Somalia, since those are territories outside their jurisdiction, they would communicate with the other committee to organise a meeting. From there, the Foreign Affairs PS would be asked to ask the other people whether we could meet. The Ministry of Foreign Affairs could then say, “Yes, Foreign Affairs has got hold of their Somalia counterparts, and we can have a meeting at Liboi” or in whatever place. So, they will only come in if they want to do something which they cannot do on their own, because it is neither within their budget nor within our territory.

The Commission Secretary (Ms. Nyaundi): Was it the practice that at least the PSC would forward, as routine, their minutes?

Mr. James Stanley Mathenge: Obviously, they would always do so. It was a must. It was a standing instruction. They always passed their minutes up. We would not pass our minutes down, but if there was an issue on which they had to act, we would write to them.

The Commission Secretary (Ms. Nyaundi): So, instructions would be relayed downwards in the form of a letter?

Mr. James Stanley Mathenge: Yes.

The Commission Secretary (Ms. Nyaundi): That is why in the minutes of the PSC, I have seen them say that they wanted to have good neighbourliness meetings with Ethiopia, and that they were waiting for confirmation from you?

Mr. James Stanley Mathenge: That is correct.

The Commission Secretary (Ms. Nyaundi): There is something which recurs. I hope you have had time to look at the PSC minutes. In the minutes that we have, there is an item which kept recurring, beginning November, 1983, where they made reference to a long-term solution in the recommendations they made to the KIC, and they were waiting for your feedback. Do you recollect the dialogue you had with the PSC and KIC?

Mr. James Stanley Mathenge: By the way, we had asked for those minutes. You know, the worst thing is to, after 27 years, look at those minutes to start imagining what you were thinking at that time, because our thinking does change over time. I can tell you something I am thinking of now but, at that time, I was a different person.

These are some of the issues on which we have asked your counsel to get minutes, because we want the truth to be on the table because those things were interesting. I would like to know what we were thinking then because my long-term solution now is different. If you ask, my long-term solution now is not buying more guns and recruiting more policemen. It is getting more development. However, 27 years ago, I might have been thinking about something very differently.

That is why I would like to get the minutes since they are there. We have asked the counsel to get them. If I get them, I promise you, I will give them to you. The reference to “long-term solution” in those minutes was really the long-term development of that area. At least they were saying that the best security is development, and the best development is security. The two were tied together. Commissioners, do not be surprised when you find a committee went there, and mixed them; you cannot separate security from development.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Mathenge. The challenge we have had with witnesses is when they have tried to separate development from

security when it is obvious that, based on what we are reading, security and development were in a siamese kind of relationship at that time.

Mr. James Stanley Mathenge: That is correct.

The Commission Secretary (Ms. Nyaundi): Maybe, looking at the minutes of 23rd February, 1984, will help you. As I have said, this is an item which kept coming up. Let us look at Minute 26/84.

Mr. James Stanley Mathenge: I am there.

The Commission Secretary (Ms. Nyaundi): It is on “Recommendations on long-term policy as a solution to the armed banditry activities”?

Mr. James Stanley Mathenge: Yes.

The Commission Secretary (Ms. Nyaundi): Depending on your memory, given that this is a matter which kept coming up in the PSC, would you today be in a position to remember some of the solutions that were recommended to you by the PSC?

Mr. James Stanley Mathenge: This is an area where I would not like to guess, because I have seen some writing where they said that because of the long porous border between Kenya, Ethiopia, Sudan, Uganda and Somalia, guns kept on coming into our country. So, one of the long-term goals would be improving our relations with all these neighbours. That is captivating and working for that relationship. The other one, to me, is a marshal plan to invest in this area in development in terms of building schools and providing water. If you provide more water, people will move less. They should be in one area. So, anything taking place outside those areas is very---

So, talking of long-term solution, you will never get me out of the development area. What are we talking about? Is poverty not one of the causes of clans keeping on clashing with each other? It is really poverty and competition for land and water resources. That was why, on what they were saying at that time, I promised to get the minutes and give them to you. However, right now, I am seeing completely different images. I may have advocated for something at that time, which in the course of time has changed. To me, the long-term policies for that area--- I am sure that you are going to be interested in this because you will realise that in formulating strategies for peace and reconciliation, you cannot have peace until development is achieved, and nobody sleeps hungry, is going naked or is molested. So, let me give you our thinking at that time correctly, and not what I am thinking today.

The Commission Secretary (Ms. Nyaundi): Thank you very much. On the trip to the North Eastern Province, you did not specify the dates but I assume that it was the trip we are talking about – of 9th and 10th of February. Is that correct?

Mr. James Stanley Mathenge: That is correct.

The Commission Secretary (Ms. Nyaundi): That trip was your brain child?

Mr. James Stanley Mathenge: Yes, it was.

The Commission Secretary (Ms. Nyaundi): According to the minutes that we have seen from the PSC, apparently, it was to be held in November, 1983. It did not materialise and then it happened the next year. We have received information that there was a meeting in Nairobi, and that a decision was made to deal with the rising insecurity in that region. We have been informed that the Degodia having been found responsible, a meeting was held in Nairobi, where the late Minister, Mr. ole Tippiis, was present, and a decision was made to disarm the Degodia. Were you present or did you know of such a meeting involving high level Government officials, where a decision was taken to disarm the Degodia?

Mr. James Stanley Mathenge: If a decision was taken to disarm the Degodia, the records would be there. That is why I am crying for the minutes. You remember that in December, when the Minister of State in the Office of the President, Mohammed Maalim, went to Wajir, he advocated for disarmament. When a Minister advocates disarmament, it is taken as Government policy. So, on that basis, I would not deny the existence of such a policy. What I would like to say is that it was Government policy to disarm not only members of the Degodia clan but people holding onto illegal firearms in the whole country.

Remember that there were exercises to disarm the Pokot, the Turkana and the Samburu people. This exercise was all over the country, including in Isiolo, Marsabit and Tana River. It was a general policy. You will remember that the Army moved to West Pokot in a big way on disarmament. You can remember the Uganda Army being involved, so that we disarmed both sides of the border. So, disarmament of people holding onto illegal guns is not a strange subject in this country. It was Government policy. In any case, in Kenya, it is illegal for an individual to own a gun without a firearms licence. So, every minute you keep a gun without a firearms licence, you break the law. So, disarmament is a continuous exercise.

The Commission Secretary (Ms. Nyaundi): The specific question I had put to you is that the information is that there was a meeting, and the discussion was about disarming Degodia tribesmen in Wajir. So, apart from the national policy on disarmament, there was a specific meeting where people said they would forcefully disarm Degodia tribesmen in Wajir. Do you recollect sitting in such a meeting or hearing of such a meeting?

Mr. James Stanley Mathenge: I do not recollect sitting in that meeting at all. If I recollect it, I will tell you about it very clearly. I really do not recollect. I would not be surprised because I had a very busy schedule within and outside the country. In fact, some of the meetings were chaired by other PSs in my absence. So, in between, a lot of things could have happened. That is why I would like to get the record; it could be a meeting I did not attend, but which took place. The best thing is the record in this case.

We must get the minutes because they are there; but it is Government policy to disarm people holding onto firearms illegally, and that policy covers the Degodia.

The Commission Secretary (Ms. Nyaundi): Thank you very much. You have informed the Commission that, as a practice, in fact, under this law, organs were under instructions to always forward their minutes. So, in the minutes of 26th January, 1984 which were forwarded, it would appear that these issues had been on the agenda of the PSC. I was taught that if you see “X-minutes”, it means a minute from another meeting. So, I would like to refer you to Page 7 of those minutes. The minutes are dated 28th January but the meeting was held on 26th January.

Mr. James Stanley Mathenge: I am there.

The Commission Secretary (Ms. Nyaundi): On Page 7, there is “X-Minute 14/84”, titled “Influx of Degodia Tribesmen from Wajir into Garissa”, which reads as follows:

“In view of the widespread reports of influx of Degodia from Wajir to various places, the PSC advises that when Degodia tribesmen infiltrate other people’s areas, they should be driven out. The Degodia tribesmen appear to be the aggressors virtually against all the tribes, and nobody appears to like them.”

Do you have any recollection of KIC having received these minutes from the PSC and deliberating on this kind of issue?

Mr. James Stanley Mathenge: I do not remember deliberating on this issue. What would happen is that once the KIC received the minutes, the officer who was dealing with the minutes would come and give summary of the things which required to be taken into account. On a minute like this one, there is nothing to do. It may be something which the DSC was dealing with. So, I do not remember personally seeing something like this.

The Commission Secretary (Ms. Nyaundi): In the period prior to February, 1984, when you made this trip, had you, as PS or as member of the KIC, thought of the situation, maybe, with a sense of what the levels of insecurity within the region were, and particularly in Wajir,?

Mr. James Stanley Mathenge: Yes, we were well briefed, as the KSC, on what was happening in the whole of the North Eastern Province and, in fact, in the whole country. We knew the issues which concerned the people on a day-to-day basis. We knew that immediately after the Ogaden War, there was a lot of influx of people from Ogaden to this area. That influx created pressure, particularly in Wajir. From that time, there had been quite a bit of instability which, later on, turned into political rivalry. Political rivalry sometimes arises from competition for resources. That aspect came out very well.

The Commission Secretary (Ms. Nyaundi): So, when you heard these issues being raised, did you, either at individual level or as KIC, form the impression that security in that province, and particularly in Wajir District, was a matter of very great concern or

small concern? In your mind, how did you assess the situation? Was it a matter of great concern?

Mr. James Stanley Mathenge: You can say “great” or “greater” but comparing it with other parts of Kenya, definitely, it was the most unstable, in terms of security, considering even the neighbouring Tana River District, Isiolo and all those other places. That used to be the most volatile area. When there were disturbances in Isiolo, we were told that it had spilled into Wajir District. Information was coming all the time that Wajir was becoming a very unstable region. We knew that its people had come from a state of war and had a lot of poverty and instability thus causing disturbance to families. We knew all those things. That was why we were thinking of how to arrest the situation. That was in our mind all the time.

The Commission Secretary (Ms. Nyaundi): There is something you mentioned. I just want to be sure that I heard you correctly. Did you say that the reports you were getting were that even when there were security issues in Isiolo, they would have originated from Wajir?

Mr. James Stanley Mathenge: Yes. There were some reports which said that there had been clashes on the border between who and who. When incident reports come, they were on everything on the ground.

The Commission Secretary (Ms. Nyaundi): So, are you saying that the reports you were getting were that the whole of the North Eastern Province had a general security problem?

Mr. James Stanley Mathenge: Yes, and it was spilling over to other areas.

The Commission Secretary (Ms. Nyaundi): According to those reports, the insecurity situation in the North Eastern Province was graver than in the rest of the country?

Mr. James Stanley Mathenge: Yes; it spilled over to Kitui, Isiolo and Meru districts as well as other parts of the country.

The Commission Secretary (Ms. Nyaundi): Even within the North Eastern Province, it was possible to single out Wajir District as a particular challenge. Is that what you are saying?

Mr. James Stanley Mathenge: No! No! I am not saying that it necessarily came from Wajir. You know, a bandit has no clan, tribe or nationality. Some bandits were even coming to the national parks to kill wildlife. You would not know whether they had come from Wajir or Garissa or other places. They could even come from Somalia. At one time, bandits were coming from as far as Somalia to kill our game.

The Commission Secretary (Ms. Nyaundi): It is good to be very clear on this one. When you looked at the whole of the North Eastern Province, were you, as KIC or as the

PS, Internal Security, able to zero in on it and say, “The province has a challenge. These are the issues”? In this particular region, there was no gravity, as opposed to the whole of the North Eastern Province?

Mr. James Stanley Mathenge: Definitely! Towards the end of, particularly, 1984, Wajir District had a lot of incidences. There were serious incidences of communities attacking each other. Mandera and Garissa districts also had such incidences all the time. There was no area which had no such incident. Really, banditry, which involved stealing of cattle and other property, was an ongoing situation. The idea of revenge becomes a see-saw phenomenon. That is what we are seeing. There was a see-saw phenomenon in terms of revenge attacks. How do you stop that see-saw phenomenon?

That is another area which this Commission must address by talking to more parties. That is the more difficult part in terms of addressing insecurity in this country. You can look at individual incidences, but you must really go to the root cause of the insecurity incidences. There is instability of clans and it surprises us, because these are people who share the same language and everything else, but they cannot sit together and say, “Let us share what we have and live in peace”. I would like to see them come together and say, “Let us go to the Government together and get resources to get ourselves a lot of water”. I would like to see them united, Hon. Commissioners.

The Commission Secretary (Ms. Nyaundi): That is the issue. At this time, had you formed the impression that even with these grand ideas that we were coming up with for development, unless the issue of security was addressed, then there was little chance of achieving developmental goals?

Mr. James Stanley Mathenge: Chair, my problem here was like chicken and egg; which comes first, security or development? I wanted to solve a security problem and my solution was to put development. The more development you put, the less insecurity you get. If I give people in North Eastern a lot of water, there will be less movement of cattle. If I improve the grazing and roads, so that they can sell their *ng’ombe* quickly when drought appears, I have solved it. So, to me, it is not either or but really both fronts at the same time. Security must protect life and property, but, please, the permanent issue is to provide more schools and infrastructure (roads and water) in North Eastern. These are the permanent issues. These behooves on the combatant clans to get to the Government and say, “We hear there was a marshal plan. We want to know whether deliberate action was taken to give people a future which was destroyed by the Germans.” They came back and now I think they have been industrialized. We want a similar treatment because we are coming from a worse situation. This is why I will look for justice today.

The Commission Secretary (Ms. Nyaundi): So, you then communicated to the PC, in the minutes of 26th January, that you were coming. That is Minute 684 and the itinerary was drawn. Is that correct?

Mr. James Stanley Mathenge: That is correct.

The Commission Secretary (Ms. Nyaundi): Now, according to that itinerary and your programme, you were slated to meet the DSCs of the respective districts, that is, Wajir, Mandera and Garissa. Just picking up from my previous question, was there a reason that Wajir was placed first on the itinerary of the KIC?

Mr. James Stanley Mathenge: As far as I am concerned, no. It was just a convenient way of making circle. You could have started with Garissa and then come round or Wajir and then come round; either clockwise or anticlockwise. It was just that.

The Commission Secretary (Ms. Nyaundi): So, you had the meeting in Wajir on 8th February. Now the current Permanent Secretary of Provincial Administration and Internal Security has furnished us and also your lawyer, Mr. Kioko, with two records of proceedings of the meeting. One is a brief by Mr. Murimi, dated 16th February, 1984, to the Director of Intelligence. Do you have that brief?

Mr. James Stanley Mathenge: I have got it.

The Commission Secretary (Ms. Nyaundi): You also have the report prepared by Mr. Mwangovya, dated 24th May, 1984. You are able to confirm that Mr. Murimi was with you in Wajir?

Mr. James Stanley Mathenge: Confirmed.

The Commission Secretary (Ms. Nyaundi): He accompanied you as the representative from the Director of Intelligence. He has recorded here what he says was a summary of observations by members of the KIC. Have you had opportunity to go through this document?

Mr. James Stanley Mathenge: Yes. I received it yesterday and have gone through it.

The Commission Secretary (Ms. Nyaundi): Are you able to confirm that this would be an accurate record of some of the issues that were discussed between 8th and 10th February, 1984?

Mr. James Stanley Mathenge: Not all of it. We never discussed about Islam fanaticism.

The Commission Secretary (Ms. Nyaundi): That is on page 2.

Mr. James Stanley Mathenge: We did not discuss that. We were being briefed. I was not surprised to see this, anyway, because the Special Branch going there listens with different ears. They can pick things which other people will not pick, because they are trained.

The Commission Secretary (Ms. Nyaundi): But it is not in their nature to record things that were not said? So, it may be something that you did not pay attention to, but with his security mind, he is quick to note it.

Mr. James Stanley Mathenge: Even when you are seeing projects, he can see or hear something. It is a note to his boss and I have no quarrel with it, but he heard more than we heard.

The Commission Secretary (Ms. Nyaundi): Okay. But I think just for the record it would be important to record that even as far as you are concerned, as a security man, he would be picking out the security issues.

Mr. James Stanley Mathenge: Of course, but he also picked development issues.

The Commission Secretary (Ms. Nyaundi): That is why I thought that this was an accurate record. On pages 3 and 4, he goes into great detail on the development issues and we had said earlier that the two are linked. It is a chicken and egg.

Mr. James Stanley Mathenge: Comment at the end is that he picked something which Mwangovya did not pick.

“KIC members were impressed by the visit as it enabled them to understand the issues affecting them in the province. It was suggested that such visits be made to elsewhere in the Republic by the members.”

He picked that and Mwangovya had not picked it.

The Commission Secretary (Ms. Nyaundi): Thank you very much. You have said that the Director of Intelligence was a member of KIC. Now, I am assuming that even after this trip, you must have met as KIC. We have got Mr. Mwangovya’s Report but it is dated 24th May. So, I am assuming that his would have been useful to you after and not before 24th May. It would not have been before the KIC. Did you, as the KIC, meet between March and April?

Mr. James Stanley Mathenge: I have no recollection, but we must have met. This is because the absence of one member did not stop the meeting from going on. I was scheduled to take leave. I was absent for sometime but I am very sure that there were meetings. That is why I want the minutes. If it met, the records will be there. I took 30 days leave.

The Commission Secretary (Ms. Nyaundi): What was the name of the Director of Intelligence then?

Mr. James Stanley Mathenge: At that time, I think it was James Kanyotu.

The Commission Secretary (Ms. Nyaundi): I am sure you met as members of the KIC and you were reflecting. Do you remember sitting in a meeting with Mr. Kanyotu and probably, him sharing a brief from the Intelligence on that meeting that you had in Wajir or the northern region?

Mr. James Stanley Mathenge: No! Could be one or two follow up meetings, but I am sure it will not be omitted.

The Commission Secretary (Ms. Nyaundi): Okay! Now, we have been told that the DIC and PIC did not keep minutes. Was this the same with the KIC?

Mr. James Stanley Mathenge: There was an intelligence brief which was always destroyed after use, but whatever was practicable was now written in the development committees. Whatever was implementable was reflected in security committee, but the briefs were not kept.

The Commission Secretary (Ms. Nyaundi): Now, for this trip when you were in northern region – and again just looking at the itinerary and the other witnesses who have testified before you – the briefs that you were given were by the chairs of the respective district security committees. Is that correct?

Mr. James Stanley Mathenge: The chairs of the security committees are the ones who gave us the briefs. There were also chairs of development committees.

The Commission Secretary (Ms. Nyaundi): I am assuming that like the other witnesses who have appeared before you, you also remained as part of the delegation and returned to Nairobi at the same time with everyone else. What we have been told is that on the night of 9th, the delegation went together for supper at the house of the PC. Do you remember going for that supper?

Mr. James Stanley Mathenge: Yes, I remember.

The Commission Secretary (Ms. Nyaundi): Some of the members of the delegation said that they heard in the conversation that an operation had commenced in Wajir that involved rounding up men and placing them at the airstrip. On 9th February, did you hear mention of an ongoing operation in Wajir?

Mr. James Stanley Mathenge: Not at all.

The Commission Secretary (Ms. Nyaundi): The PC did not mention to you?

Mr. James Stanley Mathenge: Nobody mentioned to us even casually. I would not have forgotten that.

The Commission Secretary (Ms. Nyaundi): Some have told us that when they got at the airstrip, for instance, Gen. Kibwana, he heard that there had been an operation in Wajir. So, when you got back to Nairobi, did you get any information that there was an ongoing operation?

Mr. James Stanley Mathenge: Not at all.

The Commission Secretary (Ms. Nyaundi): Did you get information that Gen. Mulinge, who was the Chief of General Staff then, travelled to Wajir on 15th February?

Mr. James Stanley Mathenge: I think it was normal for him to do so, indeed.

The Commission Secretary (Ms. Nyaundi): Did you get that information?

Mr. James Stanley Mathenge: That he travelled to North Eastern Province?

The Commission Secretary (Ms. Nyaundi): You did not get information as to what he was going to do?

Mr. James Stanley Mathenge: No! At that time, we were already getting information.

The Commission Secretary (Ms. Nyaundi): Around 15th February?

Mr. James Stanley Mathenge: That is correct.

The Commission Secretary (Ms. Nyaundi): The issue was that you had said earlier that the first time you got information was when---

Mr. James Stanley Mathenge: It was on 13th or 14th because the thing came from Parliament. Parliament meets on Tuesdays and so, if I am to guess then it is about 14th. It is the Minister who came asking about what he had been asked in Parliament. On 15th, General Mulinge was there because the issue had been raised in Parliament.

The Commission Secretary (Ms. Nyaundi): After you heard about it, that is when you engaged the PC, Etemesi?

Mr. James Stanley Mathenge: Yes, to go and find out exactly what was happening.

The Commission Secretary (Ms. Nyaundi): Before we go to Etemesi and his report, yesterday, we shared a document with Mr. Kaaria, who was then the PC, known as the Internal Security Scheme. He said that he was the author of this particular one for North Eastern Province, but he appeared to suggest that the practice was that this was a kind of scheme generally for the country and all he did was customize it for North Eastern Province. Are you familiar with this internal security scheme?

Mr. James Stanley Mathenge: Yes, I am familiar with that because every district is supposed to make one. In case something happens, they have got to have a document – security scheme – which can guide them. So, they get general guidelines. From there, they do it according to their area. When they go to specifics, say, guarding installation, they will be talking about different installations, for example. They will be talking about different priorities but each must fit the protection of life and property in their area. They customize according to their area.

The Commission Secretary (Ms. Nyaundi): This is a document which would be part of the job requirement for the person who is holding the office of a PC. This is upon appointment.

Mr. James Stanley Mathenge: That is the first thing he should look at. I am sure the outgoing may give him one, but he is at liberty to look at it.

The Commission Secretary (Ms. Nyaundi): And make one that he thinks would serve best. Is this something that you, as the PS, would then look at and say you either approve of or you need to improve on that, or is it something that he has the final word on?

Mr. James Stanley Mathenge: I think they have the final word because they make them. They have got a committee which goes through the process and determines how to fulfill their mandate.

The Commission Secretary (Ms. Nyaundi): So, it was not something either you, as PS or a member of the KIC, would receive from Provincial Commissioners and say, "Yes, we have received a scheme from North Eastern Province which we think is adequate and we approve of it."?

Mr. James Stanley Mathenge: I do not remember approving anything.

The Commission Secretary (Ms. Nyaundi): But would he forward it to you?

Mr. James Stanley Mathenge: Yes, a copy of it.

The Commission Secretary (Ms. Nyaundi): Under what law was this document being prepared?

Mr. James Stanley Mathenge: We had what we call a Charter. We had what you call a Charter which is spelt out.

The Commission Secretary (Ms. Nyaundi): Under what law was the Charter prepared?

Mr. James Stanley Mathenge: I cannot tell right now under what law--- I will have to check. There was a Charter setting up that.

The Commission Secretary (Ms. Nyaundi): Do you now have a copy of the Etemesi Report?

Mr. James Stanley Mathenge: Yes, I have.

The Commission Secretary (Ms. Nyaundi): We can confirm there that in the introduction, paragraph 1A, the last line--- He says that he was instructed via a letter dated 23rd February, 1984 by the Chief Secretary. But you are saying that this was a decision of the KIC.

Mr. James Stanley Mathenge: Executed by the Chief Secretary.

The Commission Secretary (Ms. Nyaundi): But the KIC had met and the decision there was that the Chief Secretary to appoint a team?

Mr. James Stanley Mathenge: This came mainly from Parliament. I think it was a general agreement to do the investigations. Since it involved several Ministries, she was the best person to write a letter because several Ministries were involved.

The Commission Secretary (Ms. Nyaundi): Now that you have said “she”, this is one Sally Kosgei?

Mr. James Stanley Mathenge: No! No! I think it was Kiereini.

The Commission Secretary (Ms. Nyaundi): Okay! You said “she”. In the statement that I have, you stated – although I think you read from a different statement – that the KIC, on learning of the deaths, immediately dispatched a three-member committee under Mr. John Etemesi, to investigate the incident. Is that the correct position?

Mr. James Stanley Mathenge: The Chief Secretary is the one who sent the letter.

The Commission Secretary (Ms. Nyaundi): But the KIC had occasion to meet and decide?

Mr. James Stanley Mathenge: Yes.

The Commission Secretary (Ms. Nyaundi): Okay! You also defined the terms of reference?

Mr. James Stanley Mathenge: Yes.

The Commission Secretary (Ms. Nyaundi): When you look at this report of Etemesi would it be a correct conclusion to make that this was a Government sanctioned operation that went wrong?

Mr. James Stanley Mathenge: This group makes that conclusion. It was an operation which was well justified, but it went wrong.

The Commission Secretary (Ms. Nyaundi): My question is: Would it be correct to say that this was a Government sanctioned operation but it went wrong?

Mr. James Stanley Mathenge: Of course, it is very clear that it was sanctioned by the DSC. If you describe the DSC as the Government--- You know this one has got a lot of meaning to many people. It was done by the DSC, an authoritative body which was also right to do so, but it went wrong. But then sometimes you wonder what “Government” is. The Government at that time is not the Minister or Ministries; it is the whole

organization. It was done by an authorized person but it went wrong and the facts are very ready.

The Commission Secretary (Ms. Nyaundi): Actually, this report is very clear on exactly what happened. When Mr. Kaaria was here yesterday, what he informed us was that at that time, it was accepted that the DSC, in carrying out operations, had full authority. In fact, no one could stop them in their tracks. He said likewise that the PSC was an authority unto itself and no one could stop them in their tracks. Can you confirm that, that is how we were operating then as a country?

Mr. James Stanley Mathenge: I would put it very differently, that anybody who is on a hierarchy does control the next layer. That is why they are there. So, the DSC, although was not subjected to tell the next layer, it is good management to do so. In security you very much emphasize on the need to know. If you do that and something happens, they will know how to help you. But if you have not made it known to them, they will disown you. Like in this case, if the DSC did not say that we were doing that, then it would not help itself. He said that you cannot completely interfere with a body which is under you.

The Commission Secretary (Ms. Nyaundi): I think as you have said, in good management that is the practice. But I was just asking: In terms of that time – 1984 - would you say that, that is how things were running when you reflect now? You have already said that as the PS you had a number of challenges, because these were Provincial Commissioners, for example, and they were not answerable to you on certain issues. Now, because the issue was raised by a PC and he says that his position was that once a DSC was in conduct of an operation, he did not think that he could stop them. Actually, his statement was that even as the PSC, they were running an operation and no higher authority other than maybe the President could have stopped them. My question was about your understanding then and not good management or anything. In 1984 was that the situation obtaining?

Mr. James Stanley Mathenge: I think I have very clearly said that, that was not the situation at that time. The higher body could have an input. The way things would go is that you would raise a question: Why have an operation now? They will tell you the reason and you can go ahead. You could also say that, “It is not timely because of this and that.” As a higher authority I have no means of swaying something with my junior. Even if the law is supporting him to do it, it is good to be realistic. But in these times we are very flexible and pragmatic. You take issues on the spot. Even with that authority as a senior I can improve the approach and do it differently.

The Commission Secretary (Ms. Nyaundi): Did you receive this report from Mr. Etemesi either as the PS, Internal Security or as a Member of the KIC?

Mr. James Stanley Mathenge: I received it.

The Commission Secretary (Ms. Nyaundi): Now, there are a number of conclusions that he made. I want us to refer particularly to paragraph C. It reads:

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

Yesterday when we heard Mr. Tiema who was the Acting DC then, he informed the Commission that sometime in May he received a signal from the Office of the President advising him to proceed on leave immediately. Were you the originator of that signal?

Mr. James Stanley Mathenge: I do not recall because it would originate from my office and there was somebody dealing with staff. Sometimes I could give him orders and he would do that. But it would come from my office.

The Commission Secretary (Ms. Nyaundi): Do you remember a decision?

Mr. James Stanley Mathenge: I remember a decision. With investigations, those involved must go on leave. That was done. Therefore, a mechanism of sending the signals follows immediately, including the PC. It was followed and he told what happened. Later on, he lost his job.

The Commission Secretary (Ms. Nyaundi): The PC?

Mr. James Stanley Mathenge: Yes. Tiema was suspended and later on his case was reviewed. This was a person who was put in a job and was very new. He was not an operation officer and we chose the position of getting him out of the area and later posted him to Nyanza. He ended up in Kisii.

The Commission Secretary (Ms. Nyaundi): Would you be able to confirm that Mr. Tiema was on full salary for the one year?

Mr. James Stanley Mathenge: I do not know how long he stayed because of my absence from the office. But if he was sent on leave, he would be on salary.

The Commission Secretary (Ms. Nyaundi): Yes, that is what he told the Commission; that he was on full salary for a year and then his next posting was in Nyanza. Given what is stated in this Report, that particular recommendation by Mr. Etemesi's committee – and now maybe with the benefit of hindsight - would you say that in terms of response to this operation and the people who were involved, it was adequate?

Mr. James Stanley Mathenge: I would say that although he had recommended transfer, Mr. Kaaria got more than that. It was not a transfer but really a demotion. The PPO was also demoted and the person from the Army was retired. So, I thought we went even beyond what the report was recommending.

The Commission Secretary (Ms. Nyaundi): I will just ask you directly. In your own assessment you do not think this action warranted a dismissal and maybe criminal prosecution?

Mr. James Stanley Mathenge: That is another grade. This is a lower reaction by the Ministry, but it does not stop the higher organs of the Government, including the Attorney-General, investigating and taking him to court.

The Commission Secretary (Ms. Nyaundi): Let us say, within the Ministry – and this is just with the benefit of hindsight – do you think regarding these actions, if a decision was to be made now at least within the Ministry, some people ought to have been dismissed?

Mr. James Stanley Mathenge: Let us be very fair. I think you have to look at how the whole issue happened. Here, the people who go to do a job, and from the facts it is justified because of what is happening--- In the course of it they did not plan to go and kill, and then they commit this. That is exactly what happened; they wanted to do a good job, but it misfired. The best mode of travelling today is by aircraft. Occasionally an aircraft would crash and it is said that it is a pilot error, but traveling by air is still the best mode of transportation. These people have done a lot in protecting life and property. They do that all the time and so, one incident is a very serious one, but we should also look at it, that they were not planning to do that. This does not remove the fact that the person with a gun is always alone. He is taught how, where, and when to use a gun. If he kills somebody, the responsibility is his. Did he use the gun the way it should be used or not? Somebody would say, “I met a thief who wanted to do that and I shot him.” Nobody can support you because sometime nobody saw when you pulled the trigger.

So, I want you to look at the evidence which is available very truthfully. This Commission gives this country a lot of hope for any excesses not to be repeated in future. I went to Rwanda the other day and seeing the skulls of people in the museum, you cannot know who is Tutsi and who is Hutu. It is very sickening. I went to Bangkok the other day on scouting business and visited the museum of war. When I was leaving, if I had a bomb I would kill all the Japanese, but at the end of the building I was told, “We have not shown you this museum so that you can hate the Japanese. We have shown you this so that you can hate war.” Immediately, I was a different person. What I am saying is: The person with a gun always judges situations on the spot and nobody can come there and talk on his behalf. This is where you require a lot of forensic investigations to establish the truth. The people said, “We had people here and they tried to run away. What does a person with a gun do?” When you run away from a gun, how is that person trained? These are issues which are tertiary and can only be done beyond our level.

The Commission Secretary (Ms. Nyaundi): In fact, what I saw in this report - and some witnesses have spoken about it and it is confirmed – is what they referred to as communal punishment apart from the guns that you are talking about. Another concern there was that they actually stripped people naked and had them lie down. According to Etemesi’s findings, people were denied food and water.

As I said, now with the benefit of hindsight and after reading this report, would we still say that the disciplinary action that was taken under those circumstances, holding people there, applying something that you are calling communal punishment that involved

people lying there naked, being denied food, do you think adequate disciplinary action was taken?

Mr. James Stanley Mathenge: I would not personally support excesses of this nature because I know denying somebody water is a very serious thing. It is more serious than denying someone food. If I go by what this report is saying, this is not something---

The Commission Secretary (Ms. Nyaundi): On page 19 of the report, the committee gave some recommendations. The first one says, "The Government's immediate task should be to try and restore the confidence of the Degodias." It then proceeds to say, "This is how you engage the elders."

As the PS then, did you initiate the implementation of any of these recommendations?

Mr. James Stanley Mathenge: Apart from the PC whom I briefed about what had happened in that area, I think what was important was not a question of implementing the recommendations, but the question of bringing confidence to the Degodias. When you go there as a new person, the first thing to do was to bring confidence. It was important with the change of a PC to start building this confidence. That was initiated.

The Commission Secretary (Ms. Nyaundi): I will just ask the last question. We were told that in 1989 at Galgamalla Primary School people were rounded up. What had arisen then was that four policemen were escorting money. They were attacked - Galgamalla is in Garissa. A crowd of people was brought to a primary school ground for interrogation. Did you hear about the Galgamalla incident?

Mr. James Stanley Mathenge: I read about it, but at that time, I was serving in the Ministry of Agriculture.

The Commission Secretary (Ms. Nyaundi): So, when you read about it, what was your reaction? Mr. Etemesi had raised certain issues.

Mr. James Stanley Mathenge: He had raised the question of rounding people. He believed that unless there was an emergency, rounding up of people should be avoided at all costs. Unless there is an emergency, rounding up of people is not the first option. That was very clearly brought up.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Mathenge. The Commissioners will now ask you some questions. I am done with the witness.

The Presiding Chair (Commissioner Chawatama): Thank you, Leader of Evidence. I would like to find out from Mr. Mathenge whether or not we can proceed with our questioning or whether you would like a break.

Mr. James Stanley Mathenge: I think we can have a short break.

The Presiding Chair (Commissioner Chawatama): Let us have a five minutes health break.

[The Commission adjourned briefly at 12.25 p.m.]

[The Commission resumed at 12.40 p.m.]

The Presiding Chair (Commissioner Chawatama): Welcome back from that very short health break. I will ask the Commissioners if they have some questions for you. We will start with Commissioner Farah.

Commissioner Farah: Mr. Mathenge, I thank you for being very forthcoming and for sharing with us a lot of information. As the Permanent Secretary in charge of Provincial Administration and Internal Security in 1983 and 1984, how would you assess the relationship between Kenya, Somalia and Ethiopia? What was the prevailing geo-politics situation at that time and how were they impacting on our internal security then?

Mr. James Stanley Mathenge: In 1984 we had the Ogaden war in Ethiopia which involved Somalia and Ethiopia. As a result of that we got a lot of refugees coming to Kenya from Ethiopia. Some of the *askaris* were moving through our territory from Somalia crossing to Ethiopia, through Mandera. A few shells also fell in our territory in that area. So, they were fighting, but we were also affected adversely.

Commissioner Farah: We have had a special relationship with Ethiopia from Independence in 1963. We even had a defence pact with them. The Ethiopians defeated the Somali army during that war and the Somali army was split; some of them did not want to go back to Siad Bare for fear that they might be court martialed or killed. Would you agree with me that most of the bandits, therefore, who were operating in North Eastern Province at that particular time, were foreigners as far as we, the Kenyan Somalis, were concerned? Actual Kenyan Somalis were experiencing drought and poverty. They had no guns. Were you aware of that? Was there a failure in intelligence?

Mr. James Stanley Mathenge: I think we got intelligence that some of them were able to get Kenyan ID cards. They got Kenyan Identity cards and became Kenyans. Therefore, it was very difficult to establish due citizenship. We are all aware that they were operating in that area. We are also aware that different clans would enlist their support if they were pushed. They were also being used by some of the clans who were fighting against each other. Those are the ones who were sometimes able to penetrate to even our national parks.

Commissioner Farah: Where they were killing animals?

Mr. James Stanley Mathenge: That is correct.

Commissioner Farah: You agree with me that at that time poaching was the trade of the day?

Mr. James Stanley Mathenge: The Tsavo was very easy to target.

Commissioner Farah: I will come to that one later. First of all, did you go with the delegation that visited Somalia when our Head of State was going to Somalia?

Mr. James Stanley Mathenge: When was that?

Commissioner Farah: It was in October or November, 1983.

Mr. James Stanley Mathenge: I was in that delegation. The President visited Ethiopia mainly to negotiate for the Arusha deal. They agreed. I was there with the President, but it was a State visit.

Commissioner Farah: You went to Somalia?

Mr. James Stanley Mathenge: I went there.

Commissioner Farah: Kiplagat was Foreign Affairs Secretary and you were internal?

Mr. James Stanley Mathenge: Yes.

Commissioner Farah: What was discussed there?

Mr. James Stanley Mathenge: We just agreed on co-operation between the two countries, recognizing the boundaries as they were at Independence.

Commissioner Farah: Did you tell them that we were having problems with remnants of their army who had infiltrated our country; that they were poaching our animals and killing our citizens?

Mr. James Stanley Mathenge: Yes. We agreed to co-operate on border meetings.

Commissioner Farah: Why did you not carry out joint operations with them, so that you could get rid of these people whether they were poachers or not?

Mr. James Stanley Mathenge: We never went to that. We went to the issue of governance of countries bordering each other to have good relations. We agreed that if bandits crossed to their side, they would tell us.

Commissioner Farah: So, you do agree then that most of the bandits at that time were killing our civil servants? Were these bandits from the other side who according to you acquired our ID cards? If they did, of course, that was our failure.

Mr. James Stanley Mathenge: Some of those people were not arrested. They were not caught. So, I cannot really say that they belonged to this side or that side. Anything was possible at that time.

Commissioner Farah: Would you agree with me that when these bandits came in the towns or even in the reserves, no army or police was there? First of all, I am told that the GSU never used to operate in North Eastern Province; that President Kenyatta barred them from operating in North Eastern Province in 1964. Is that true? When they killed 11 people in a Wajir mosque, President Kenyatta gave a decree in 1965. From that time, the GSU was never deployed in North Eastern Province. It is only the ordinary police, the Military and the Administration Police who were deployed there?

Mr. James Stanley Mathenge: That is correct.

Commissioner Farah: Do you not think it was the wrong policy for people to be collected and brought into an open ground from the urban setting and told, “Tell us where your brothers are. Where are they? Why did they kill our civil servants”? and that kind of thing because an urban man is going to the market, he is selling his camels and goats? He is even thinking of his daily life as opposed to good intelligence and pursuing the tracks of those bandits who were attacking people. Would you agree with me that it was actually wrong?

Mr. James Stanley Mathenge: General, you know very well having been in the army that the people undertaking an operation use the best methods possible at that time; the way they see it. The person thinks that this will bring the best results at that time when they are operating. But when we look at it later on, we say no, use a different method. But the person using that method at that time thinks that this will get me the quickest results. The policy is now that, do not round up people in that way. Go and look for criminals. Unless it was an emergency do not do so. We do that because of the two experiences of Garissa and Wajir. That is what brought us to that position. Do not round up people any more. We are changing.

Commissioner Farah: After the Wagalla Massacre, do you remember a letter from the KIC, actually from your own office which directed the PC North Eastern Province not to conduct any more operations without the Minister’s approval. Do you remember that letter?

Mr. James Stanley Mathenge: I remember that letter.

Commissioner Farah: I am coming to that now. This is 1984. Soon the Government now realized that conducting an operation and gathering the public in the open ground was backfiring; it was not good. Therefore, the directive was different. But in 1989 as the Leader of Evidence alluded to a while ago, when bandits killed the occupants of a Land Rover which was carrying the payroll, Galmagalla people were collected and assembled in the open ground for three or four days. Therefore, it means this was a habit which even directives from Nairobi could not stop it. It was a procedure that became habitual. The

Galmagalla case was wrong because they did not get instructions to do so. So, you agree with me on that. What we are trying to do is that we are looking back.

Mr. James Stanley Mathenge: But let us accept to be very pragmatic about all these things. What worked yesterday will not necessarily work today. We must keep everything under constant review to ensure that people change the methods that were used the other day. It is not right.

Commissioner Farah: This one I can already anticipate that you might say no, but I just want to clear it off my chest. Do you remember Wagalla operation planning? Was it mentioned at the KIC and the DSC meeting in Wajir?

Mr. James Stanley Mathenge: I think I would like to say very clearly that at the meeting at Wajir the PC was briefing the delegation about the district. He mentioned everything including security, but the Wagalla incident was never mentioned. His concluding remarks which I remember very well were that security has improved. It was a bit better. It was quiet now. That is what transpired at Wajir.

Commissioner Farah: Do you remember the Wagalla operation being discussed during the dinner gathering at the Provincial Commissioner's residence?

Mr. James Stanley Mathenge: Not at all. It was not discussed.

Commissioner Farah: When did you hear about the Wagalla Massacre?

Mr. James Stanley Mathenge: I heard it from Parliament. An MP had already flown all the way to Nairobi; that is the first time I heard about it. That is a few days after it occurred. It was either Monday or Tuesday. This is because Parliament was meeting that day. It does not sit on Mondays. The first sitting is on Tuesday that is why if I was told to guess I would say that I heard about it on Tuesday.

Commissioner Farah: What action did you take? Did you draft the Minister's---

Mr. James Stanley Mathenge: I had to find out what was happening by contacting the police, the PC and everybody for information. After that a team was sent to the area to investigate.

Commissioner Farah: I may be wrong here, but the Director of CID and the Director of NSIS were under you. Did you ask them to investigate quickly or would they be reporting to the President?

Mr. James Stanley Mathenge: Of course, they would report to the President and also the police. You see this was a police operation.

Commissioner Farah: While you were Permanent Secretary did you hear of any foreign embassies' protest against the massacre to the Kenya Government? I know you were not

the PS in the Ministry of Foreign Affairs, but the PS for Internal Security would obviously know if a group of foreign ambassadors protest about the issue.

Mr. James Stanley Mathenge: I remember there were quite a lot of Press reports about it. But I cannot recall if there was a formal protest.

Commissioner Farah: Thank you for your co-operation. I have no further questions.

Commissioner Dinka: Thank you very much, Mr. Mathenge, for your testimony and also for volunteering to come and help the Commission understand these problems better. For some of us who are not from Kenya, this has been a very clear and clarifying moment. Just before I ask my two questions, I want you to clarify one thing. You said that the KIC was chaired by yourself and the Director of Intelligence was the secretary?

Mr. James Stanley Mathenge: The secretary was Mr. Mwangovya.

Commissioner Dinka: He was not the Director of Intelligence?

Mr. James Stanley Mathenge: No.

Commissioner Dinka: He was what?

Mr. James Stanley Mathenge: The secretary.

Commissioner Dinka: All the KIC are members of that and it is chaired by the Vice-President. Who is the secretary to that?

Mr. James Stanley Mathenge: He was the Director of Intelligence. But they have now changed the name.

Commissioner Dinka: It has been changed to what?

Mr. James Stanley Mathenge: National Security Advisory Committee.

Commissioner Dinka: Chaired by who?

Mr. James Stanley Mathenge: Chaired by the Cabinet Secretary and reporting to Cabinet Committee on Defence and Foreign Affairs.

Commissioner Dinka: They brought that in?

Mr. James Stanley Mathenge: Yes, they brought that in.

Commissioner Dinka: Otherwise, the membership remains the same. Let me go to my two questions now. The whole of 1983 there were serious problems between the Arjuran and the Garre. This was being reported by the DC, the DSC, the PSC and as you said it

was mandatory that the minutes come to the KIC or to your office. So, it was not really a sudden happening. It was building up to some climax and there were serious indicators beginning 1983 almost for about 10 months between the Arjuran and the Garre and then the Degodia and the Arjuran picking up from the last two or three months of 1983 and coming up to February. Practically every single day there was something going on. You said you initiated the visit of this KIC group. But why did it not happen earlier or why was something even more vigorous not done earlier to stop it?

Mr. James Stanley Mathenge: I looked at those incidents. They were intensifying particularly in February. They were three or four in one month. They were intensifying. From 1983, they started building up. If you recall on 16th December, the Minister in the Office of the President in charge of Provincial Administration, Mr. Mohammed from Garissa had a meeting in Wajir. It was recorded as the largest meeting ever held in Wajir. He pleaded with clans to stop fighting. He really pleaded with them and told them to surrender their guns so as not to fight. He gave them 10 days notice. The days ended and the PC went back. He told them, "You were given 10 days, but I am giving you 10 more to return your guns." It is not as though action was not being taken. The report we are getting from the PC was that an incident had occurred there and that investigations were continuing or that an incident has occurred there, they are being pursued. There was no action on our side. They were still contained. They had enough people to do the work. It was vigorously being followed.

Commissioner Dinka: My second and last question is: You mentioned that after you received Mr. Etemesi's report, you acted on the recommendations and that could be measured by the facts that you had taken steps to suspend some people, dismiss others and so on. One important sector has been forgotten and that is: what was done for the victims? Apparently nothing has been done for the victims. Why do you think that happened?

Mr. James Stanley Mathenge: The question of doing anything to the positive or looking at who was wrong to take him to court, that was about---

Commissioner Dinka: I am not talking about charging people in court, but was some kind of memorandum done to the Head of State in terms of regaining the confidence of the people of Wajir and that area; people who had suffered and the victims' families in terms of helping them and making them feel more as Kenyan citizens. When we went to the Northern region, people were still telling us, "We do not feel like Kenyans. We are not being treated as Kenyans". I think that kind of assistance to them at that time when things were already hot, could have gone a long way to regain their confidence as citizens.

Mr. James Stanley Mathenge: I get your sentiments very well. The change of staff at that level, we thought that was the first element to bring new faces because the older faces who had been involved in this would not be listened to by anybody. This is what we did by getting new people on all fronts, in the police, the army, particularly the Provincial Commissioner.

Commissioner Shava: Mr. Mathenge, I join my fellow Commissioners in thanking you for that spirit of volunteerism, for coming to help this Commission draw a clearer picture for Kenyans as to what happened. I have basically two set of questions which might be a bit drawn out, but I will try and be brief. The first set of questions is quite basic. We have references to the National Security Council (NSC) and to the KSC. Are those two things the same? Are they the same entity?

Mr. James Stanley Mathenge: They are not. They are two different entities. The KSC was at the Ministerial level, but the NSC today would be the top council under the President, the one which could declare war. That one would comprise of the President, his Ministers, both the heads of the army and forces. That would be the composition. It would not be a committee any more. It becomes a council; National Security Council.

Commissioner Shava: Where are the minutes of that organ deposited? Where would I find the minutes of the deliberations of the NSC?

Mr. James Stanley Mathenge: That one I can say it is so high that I do not even know when it meets or when it does not meet. If there is no need of meeting, it does not meet. That one would meet only when it was necessary to do so. It was not subject to our monthly meetings. It would only do it when there was need. We have not declared war on anybody in Kenya since Independence; I doubt whether it has met.

Commissioner Shava: That is very clear. That is really where the power lies. In the testimonies that we have heard, in particular your testimony, we have seen that the security situation in the north was very complex and this includes Wajir. There was the issue of disarmament, inter-clan conflicts, relations with neighbours and those relations with neighbours were also affecting the relationship between the Kenya Government and its people in the north of Kenya. So, this is the background against which you are operating. Just thinking about Wagalla and the nature and scale of that operation, if we look at the Etemesi report on page 9, we see the Seventh Battalion Kenya Rifles was present, plus a platoon from Moyale and a platoon from Garissa. There were 92 police officers classified as anti-shifta squad, including the anti-shifta squad from Mandera. There were also 45 VPs and policemen who had been brought in from Garissa. So, I think you would agree that this was a substantive operation. We also read elsewhere that soldiers were also brought in from Langata barracks to Wajir as reinforcement. So, that is quite substantive. You have said that the NSC did not necessarily meet because there was no declaration of war, but we also read that the National Security Council held a meeting in Nairobi in January, 1984 where it was decided that all male Degodia be disarmed by force.

The NSC further resolved that the North Eastern Province security committee study and forward recommendations as to how this is to be achieved. So, with that background and framework, I just want to suggest to you a scenario and then ask you to react it. It is a suggestion coming from all the evidence that we have heard and the documentation in our possession. If, for example, the KIC with feedback from the minutes of the DSC and the

PSC as you have told us happens, if they realized the nature and the magnitude of the security threat to development that was obtaining in Wajir, and the KIC gave this information to the KSC or the NSC which decides that the Degodia now should be disarmed by force and instructs PSC to develop a strategy. This was done in January of 1984 when the KIC visit had been scheduled originally to happen; because of the nature of the hierarchical relationship, the PSC instructs the people on the ground who would be the DSC to develop a strategy. The DSC develops this brief and the strategy which the PSC then passes on to the KIC before the tour.

This proposal is then approved and then you have a DSC which was headed, as other people have said and as you also alluded to, by a relatively inexperienced acting DC in terms of operational matters. They launch the operation which as we read even in the Etemesi Report is headed by the army. So, the Officer Commanding the A company would then be the one actually in charge although we have heard a lot about military aid to civil authority.

We also read from a Government officer that the army was actually in charge of that operation. We have also learned and gathered that the people who were held captive at the airfield were not particularly forthcoming with information on bandits or firearms which was part of the purpose of this operation.

We have also learnt that the PSC under the Provincial Commissioner was chastised for not giving clear operational guidelines to this DSC, so that there was very wide leeway for the army to do what it wanted to do and for the DSC basically to do what it wanted. We have seen the application of illegal measures, that is Etemesi's language, in form of deprivation of food and water to the people who were held captive there, beatings and torture. This led to some deaths. At which point the acting DC seems to be trying to break this deadlock and bring the situation to an end by appealing to the people who are held captive there to be more forthcoming, otherwise the treatment would become worse. There is a spontaneous response from the people held captive there. This response gives rise to shooting of people which in turn leads to deaths. We have also heard that some people had already died on the first day due to the kind of treatment they were receiving which is lack of food and water. So these deaths by shooting, in the scenario that I am presenting to you would then have led to the calling off of the operation by the DSC in consultation with the PSC. Then we see what looks like a cover-up whereby bodies are transported for up to 200 miles away. The operation was huge. We see even in Etemesi's Report people were brought to the airfield from very far away. Page 7 of the report says that the operation was designed to cover the following areas: Bula Jogoo in Wajir Township, Griftu, Eldas, Butu Helu, Dambas and Elben. Those places are quite far away. So, willingly, the army now begins to transport people who are dead and nearly dead away from these places so that by the time, as the PC told us yesterday, he arrived there, there were no people at the airfield. The people had been taken somewhere and they were dead or nearly dead. Does that sound like a likely scenario to you? What is your reaction to this scenario that I have just drawn?

Mr. James Stanley Mathenge: Yes, through the report you can see some measures which I have already said I never applied. I can see unprofessionalism in that operation,

the way you describe it. This is being disclosed by a commission which we did. The size of the army, I think we know that that area is quite vast. It is quite a large area. They had their own reasons for putting it and we almost got information that they were going beyond the border of Wajir. So, I have no quarrel with the conclusions of Mr. Etemesi.

Commissioner Shava: Thank you, Mr. Mathenge. I have no further questions.

The Presiding Chair (Commissioner Chawatama): Thank you, Mr. Mathenge for availing yourself to this Commission. I just have two very brief questions. One is a follow-up to Commissioner Dinka's question. The Government took action. In taking action against the officers who they think erred in this operation, some were dismissed, some were demoted, some were transferred and some were suspended. That action in itself was an admission that something wrong had taken place. Why were the victims forgotten when there was a clear admission by the Government that this operation had gone totally wrong? Why did you make that sort of recommendation?

Mr. James Stanley Mathenge: I said that I am not the best judge. The Etemesi Report does say this operation was justified. The incidents that were quoted before, justified that. Who was responsible for that? Because it was justified, they came and did an operation. My job is to protect lives and property; not to kill people. So, if I go for an operation and somebody dies, it is not something to celebrate about because my job is to protect lives and property, as I said from the beginning. I was putting this to you when you were weighing the evidence that when you are under arrest for example, when you try to run away from an armed person what is happening exactly? I said at the end of the day it is the armed person who decides what to do. At that time the fellow is thinking, "protect yourself first so that you can protect the other person because the person with the gun has got the final say". A policeman chasing a thief on Kirinyaga Road in Nairobi does not ask the Police Commissioner, "can I do this?" This is because he has been trained on what to do. If he does it wrongly, we follow him and take him to court and many have been taken to court because of using the gun wrongly.

This is not for me to judge, but for somebody else to do so. Did they use the weapon correctly?

The Presiding Chair (Commissioner Chawatama): We have evidence before us that President Moi announced that a fund be established for the Wagalla victims. This is why this question was important to us. This has come to nothing. Again, this announcement is an admission on the part of the Head of State that something had gone wrong. Did you ever come across information that suggested that a fund had been established for the victims?

Mr. James Stanley Mathenge: Not really.

The Presiding Chair (Commissioner Chawatama): Thank you for your testimony. Leader of Evidence, we were of the view that we could carry on for about 30 minutes so that we can attend to the next witness.

Thank you, Mr. Mathenge. You may go back to your seat. Thank you for making time to appear before us and being very frank. There were certain questions concerning the offices of the DC and the PC that had really been bothering me and you have managed to address some of them. For other things that I do not understand, I will seek you out.

Thank you.

Mr. James Stanley Mathenge: Thank you, Commissioners.

(Amb. David Mutemi took the oath)

The Commission Secretary (Ms. Nyaundi): Please state your name, where you reside and your current occupation.

Amb. David Mutemi: My name is Amb. David Mutemi. I am currently working in the Ministry of Justice, National Cohesion and Constitutional Affairs. I reside in Nairobi.

The Commission Secretary (Ms. Nyaundi): What is your position in the Ministry of Justice?

Amb. David Mutemi: Currently, I am the Director of Administration in the Ministry of Justice. In that case, I am actually the Deputy to the Permanent Secretary.

The Commission Secretary (Ms. Nyaundi): The Commission issued you with summons on the basis that you had served as a District Commissioner in Wajir and the Commission wanted to get a statement from you as one of the Commissioners that had served after the incident in Wajir. What steps did you take as District Commissioner to foster peace within that region? You have recorded a statement with us. I now invite you to present that statement to the Commission.

Amb. David Mutemi: Thank you. If the Commission allows me, I would like to read the statement. It is a very short one. I want to read it as follows:

“I recall I sat as District Commissioner, Wajir, from August, 1997 to August, 1998 when I was transferred to the central Government. During my call of duty in the district the major activity that occupied my work as District Commissioner was promotion of peace through public meetings, popularly known as *baraza* meetings. Because of the proliferation of illegally-held firearms in the district, the main aim of the public meetings was to appeal to the local people in the district to surrender illegal firearms. Besides the public meetings I also undertook specific peace initiatives with the help of the local elders to reconcile the three main clans that occupied Wajir district; namely, the Ajurans, Degodia and Ogadens. I undertook these peace initiatives in conjunction with the other members of the district security committee which I chaired. The other members of the DSC included the Officer Commanding the Police Division, the District Security Intelligence Officer and the District Communal Investigations

Officer. In carrying out these peace initiatives, the DSC under my chairmanship avoided the use of any coercive methods and instead made use of public meetings and the elders to appeal to the local people with illegal firearms from the three clans to surrender them on their own.

Although there were deadlines for such surrenders, at no time did the DSC carry out any punitive operations to punish the local people for not surrendering the firearms. In my own assessment, this approach was successful since quite a number of guns were surrendered from time to time. However, I cannot remember how many guns were surrendered during my tenure of office as DC. The Commission will realize it is a long time from that time to today. I also recall it was during my tour of duty in the district that the Wagalla Airstrip was renovated for use by the commercial aircraft ferrying *miraa* from Nairobi to the district. However, I do recall the elders from the Degodia clan being opposed to the renovation of the airstrip because in their view, it reminded them of the Wagalla operation. Despite this resistance, the DSC was able to convince the elders of the importance of renovating the airstrip since there was a ban for use of the military airstrip by the *miraa* planes and this was affecting *miraa* business which was actually a major activity in the district.”

That is all I can recall.

The Commission Secretary (Ms. Nyaundi): I will just ask you a few questions and then the Commissioners will also seek further clarification from you. In your own assessment, at the time that you were there as DC the magnitude of illegal firearms, how far was this contributory to insecurity within the region?

Amb. David Mutemi: It was a major problem. This Commission will recall that even from the previous witnesses, there had been an inflow of firearms from Somalia because at that time Somalia did not have a stable Government. There was an inflow of illegally held firearms from Somalia into our area. People were buying these guns. I would want to state that one of the things that made people to buy these firearms is that there was insecurity generally in the whole area. Therefore, this, together with the issue of cattle rustling, people wanted to have firearms to protect their animals and themselves. I would like to state that the illegally held firearms were a major contributing factor to the insecurity, particularly in Wajir District where I was working. I can state that even in the neighbouring district of Mandera and Garissa, it was the same.

The Commission Secretary (Ms. Nyaundi): Previous witnesses have said that the conflict, especially within Wajir took the form of inter-clan rivalry. Did you find evidence of this while you were DC in Wajir?

Amb. David Mutemi: This was true. When I was in Wajir I had not realized that the three major clans, that is the Degodia, Ajurans and Ogadens had problems among themselves over water points. That is a dry area. What happens is that when there is no rain there is competition for grazing areas and watering points. Each clan wanted to protect its area. There is a general movement of the pastoralists. Whenever there is

drought people will move anywhere where there is water and grass. This necessitated confrontations time and again. I would say that there were antagonistic relationships between the three clans.

You will realize that the three clans occupied different areas. Mostly the Ogadens are found in the south. The Ajurans and the Degodia have mixed for quite some time. Although the Ajurans were supposed to be in the north I think up to before 1984, there was intensified movement of Ajurans into Degodia areas, particularly in both Wajir East and Wajir West. This was a major cause of conflict every other time. I would say that in 1997 during the elections this conflict came openly because the Degodia were claiming that the parliamentary seat in Wajir West belonged to them. But because of the Ajurans' movement into Wajir West, the MP who was elected in 1997 was an Ajuran. This antagonistic sort of relationship was there, first because of the competition of resources, the issue of the guns and the political interest because every other clan wanted to have its own MP.

The Commission Secretary (Ms. Nyaundi): We have also been told that in the 1980s this conflict resulted in loss of life of citizens. Was this your experience during your tenure? Were lives lost as a result of the conflicts?

Amb. David Mutemi: If there were any losses of lives they must have been isolated cases. At no time when I was there for the one year I served in Wajir did we have a large number of people being killed. But I do recall once in a while there would be instances of people being killed, particularly on the major roads. You would, perhaps, find that somebody had been killed when they were coming from Garissa to Wajir or from other areas. But those were isolated cases. They were not widespread.

The Commission Secretary (Ms. Nyaundi): You have said that you worked with the elders towards promoting some peace initiatives. Were women participants in these peace initiatives?

Amb. David Mutemi: When I went to Wajir remember the District Commissioners at that time were also the chairmen of the District Development Committees (DDC). One of the issues that we enforced was to ensure that particularly women participated in the development and peace committees. Since we had formed committees in almost all the locations, women participated. But you must also realize that, that is a Muslim area. I am not a Muslim; I am a Christian. According to Muslim faith, women do not venture out so much. So, although we had a number of women who participated, the level of participation was not very high. But I do recall that in Wajir Town we had a lady councillor. I cannot remember her name; we used to call her *Mama councillor*. I remember she was an active member of the District Committee where we used to meet with the elders. She was very active. I also do recall that there was another lady in a place called Habaswein, that is in the south, who was also very active. However, because of the Muslim faith in some areas and although ladies were nominated, they declined to take up the positions.

The Commission Secretary (Ms. Nyaundi): We have been told that at least in the 1980s there was this very firm link between security and development. During your tenure, did you find that this was so?

Amb. David Mutemi: Indeed, yes. You will not realize how much you need peace until you lose it. I was privileged to work in some countries. I worked in Pakistan. I realized that when you lack peace that is when you realize how important that peace is. Development and security are connected because if you do not have a secure environment it is not easy to undertake development projects. So, the two are linked and even now I believe they are.

The Commission Secretary (Ms. Nyaundi): I do not know whether you have heard of the Etemesi Report. This was a committee set up to inquire into what had transpired in Wagalla. One of the recommendations that committee made was that measures be taken to try and restore the confidence of the Degodias towards the Government and also a number of issues around prioritizing development. As District Commissioner then, were you given any counsel as to how you ought to relate to the people of that region?

Amb. David Mutemi: Yes. I want to say that I went to Wajir when this country was in the multi-party dispensation. What had happened is that the way things were conducted had totally changed. So by the time I went to Wajir, use of force was automatically not allowed. You could not round up people and ask them to surrender guns. You were supposed to use peaceful means. That is why we resorted to using elders. So, we used the elders to actually talk to their people, so that if they know of anyone who has guns, they tell them to surrender them. But we were not supposed to use any force. I can state here that things had changed by the time I went to Wajir. We were in the second elections in the multi-party dispensation and the issue of human rights was a very pronounced subject. Therefore, you could not do some of the things which were done those many years.

The Commission Secretary (Ms. Nyaundi): When we were there a number of people felt that they did not enjoy the privileges or rights of citizenship as much as the other Kenyans appear to enjoy. As a DC, did you sense within Wajir that there was a general feeling that they did not have the confidence in the Government and that they felt as though the Kenyan Government did not pay attention to them as citizens of this country?

Amb. David Mutemi: Yes, there was that feeling. But my thinking was that Wajir, Mandera and Garissa were border districts. Because of what I said that there was no stable government in Somalia, what was happening is that there was a lot of inflow of refugees into Kenya. There was actually a very intensified intent by the people from Somalia to acquire identity cards and become citizens of Kenya.

It was for issuance of identity cards and other national documents like passports and whatever. Therefore, this did not go down well with the people of Garissa, Wajir and Mandera. It was not easy to differentiate between a Kenyan Somali and a Somalia

Somali, if I can use that word. So, because of that, there was a deliberate attempt by the Government to ensure that there was serious vetting of the Somalis before they could be given identity cards, or those other documents. However, I would also like to add that generally North Eastern Province (NEP) has lagged behind in terms of development. During that time, if you left Wajir for Garissa, you could not go without security and the road was very bad; I believe even up to today, it is so. Therefore, there was that tendency, and I think they were right to think that the Government had neglected the people of NEP. They did not have good schools. When I was in Wajir there was only one major secondary school. There was only Wajir District Hospital. The only other hospital was the one in Buna, which had very few facilities. So, really, I think the people of NEP were justified in thinking that somehow something somewhere had gone wrong, but I think the same cannot be said now. I think things are changing tremendously.

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

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony Amb. David Mutemi. Over the weeks that we have been conducting hearings, we have had cause to celebrate certain lives and I think it is in order for us to celebrate the work that you did. I do not recall personally that your name ever came up in our hearings with bitterness and pain. So, it is also encouraging for us, as Commissioners and also for the people of Kenya, to know that there are lives that should be celebrated and works that were done that should be recognized. On behalf of the Commission, I would like to thank you and ask Commissioner Farah if he has any questions for you.

Commissioner Farah: Amb. Mutemi, from 1977/1978 when you were posted there, had you ever at any time been involved in any duty, or anything to do with NEP?

Amb. David Mutemi: Not all that but I would say that before I went to Wajir, I served briefly as a Deputy Provincial Commissioner (PC) in Garissa for about three months.

Commissioner Farah: Which year was that?

Amb. David Mutemi: That was actually the same year of 1977 because I actually was transferred from Bomet District where I was a District Commissioner (DC) to Garissa as the Personal Assistant (PA) to the PC. The PC then was Mr. Maurice Makhanu and I was there for around three months from around June to August.

Commissioner Farah: Okay. You said it was difficult to identify who was a Somalia Somali and a Kenyan Somali. Would you agree with me that, that problem was not the making of the people of NEP, but was through corruption by the officials who were giving identity cards and passports; therefore, it was a vicious circle by a mafia that gave out the documents? This is because if you remember in 1989 there was screening, which was an illegal exercise as far as our Constitution then was concerned; it was not based on any law? Screening was conducted and people were given yellow cards. I was not there

because I was in the military at that time and the military was exempted. However, did you analyse that exercise and see it as futile?

Amb. David Mutemi: I think I indicated when I started giving my evidence that I did not approve of some of the things that were being done. I would want to say that the Government might have had its own reasons. The reasons that I tried to explain are that it was actually not easy to issue identity cards because of the inflow from the neighbouring countries. Because of that, it became very difficult to distinguish between a Kenya citizen and a Somali citizen; but I do not think that would have been the right thing. I mean it justified the Government to really deny the Somalis who were Kenyans their right to get the identity cards or the passports. I believe the Government should have been able to put into practice some sort of method that would actually have been able to weed out those who wanted to illegally acquire the identity cards; I think one of them was, as you have said, screening. I do not think it was the right thing anyway, but they might have had their own reasons.

Commissioner Farah: Do you also support me when I say that--- One of the witnesses yesterday said that the best way to bring peace to that province is to post there indigenous officers as DCs and PCs. Do you agree with me that when the first Somali PC was posted to NEP, peace was achieved and now that he has been removed from there, again we are back to the old situation?

Amb. David Mutemi: I think I want to decline to answer that question.

Commissioner Farah: You are right to decline to answer any question. I was asking for your opinion. This being a truth seeking Commission, it would have helped but I cannot proceed to ask that question again. Thank you very much. I have no further questions for you.

Commissioner Dinka: Thank you very much. I just want to join the Chair in thanking you. I was with the Commission throughout the journey to the NEP, and we did not hear any bitterness being expressed about you by the people, which is very unusual. It is a big compliment to you and to the Government for posting you there; we thank you for coming and assisting us. We hope that the time will come when there will be more educated people in the NEP who may be used, as Gen. Farah has just mentioned. However, at least until that time, we hope that the Government will look for people of your ability and character.

Commissioner Shava: Amb. Mutemi, I join my fellow Commissioners in thanking you for volunteering to come and help us carry out our task. I have two brief questions for you; one was asked by Commissioner Farah. I believe that it is the responsibility of the Government to plan for its citizens as and when it is necessary. You have talked about the screening process which you have told us you did not agree with. In our travels in the north we visited the Bureau of Registration of Persons and found frustrated Kenyans. I spoke to one woman who said that she had a Kenyan passport but could not get registration for one of her children because she could not produce the father of the

children. To me this is separate issue. If she is genuine Kenyan citizen, I think it would follow that she should be issued with documents for her children. I know this does not fall directly within your docket, but I am just seeking your opinion. If the situation that led to the screening was obtaining at a time when we had a huge influx of refugees, has it changed now? Why would it be difficult to know who is a Kenyan and who is not a Kenyan; should the Government itself not know this? What would be your suggestion on how that situation can be improved?

Amb. David Mutemi: I think it is not difficult actually for a Government to be able to know who is a Kenyan Somali and who is a Somalia Somali. It is not difficult particularly at this age when we have children being born in hospitals. Most of them have hospital cards and they will indicate the father's and mother's name. Secondly, one of the advantages the Somalis have as a people is that they are widely travelled; most of them have passports. If one got a passport, I cannot understand why then his children should be denied a passport! He can give the necessary documentation.

So, I want to agree that actually the Government can find a way of ensuring that they do not apply some of the anti-people processes we have applied to deal with this issue of registration of Somalis, for identity cards or passports. We can use other better methods of trying to identify the people; the problem of inflow of the Somalis from Somalia into Kenya is there even today. This is because even though there is a transitional Government in Somalia, that Government still does not control most of the areas in Somalia. I had the opportunity, when I came back from my diplomatic service, to serve in the Ministry of Foreign Affairs as the head of the Horn of Africa Desk. I travelled to Somalia extensively and I can assure you that that inflow is still there, and the Government must be able to find a way of dealing with it. Why would we allow people from Somalia to move into Kenya and mingle with our own people? If there are refugee camps, they should remain there.

The other thing is we should better man our border with Somalia, so that we are able to screen anybody who comes in. I must say that one reason for our failure is because our border has remained very porous for a very long time. You saw the other day what happened with our neighbour from Ethiopia when the Merille moved in. They settled in our country and chaos erupted. What I am saying is that the Government must find a way of securing our borders, so that we can deal with this frequent movement of people from Somalia. You must remember that United Nations (UN) conventions say that you cannot prevent people who are running away from a situation that is warlike from coming in. We cannot. As signatories to the UN Charter, we must accept them, but we must find a way of dealing with that issue so that it does not affect our security.

I think the people in the Government must find a way of dealing with the matter without appearing to take punitive measures against innocent people; the people who have been molested are innocent. They have only mixed with people on the basis that these people have the right to move in. We must also remember that there is a large Somali community. Those of us who are historians know that when there was partitioning of Africa, the Somalis were divided into four main countries – Kenya, Somalia, Ethiopia

and Djibouti. You will find them there and they are related. So, we cannot curtail this movement. They will continue to visit each other now and in future. We must find a way of dealing with this, and apply better methods than the ones we have applied before.

Thank you.

Commissioner Shava: Yes, you have referred to conventions and I think in the way the world moves these days, it is not desirable to restrict movement of people. I think what you are trying to say is that we just need to know who the people are. In Kenya we do not have only the Kenyan Somalis; we also have the Teso in Mount Elgon and they have their own organization. There are also the Teso in Uganda and their king is in a different country. People meet and move for cultural reasons and that should be facilitated. So, we just need to know who they are.

My last question is on the issue of your discussions with Degodia elders when you were trying to renovate the airstrip. Would you elaborate on that and what was the resistance towards rehabilitating the airstrip? Did they want it to be used for something else?

Amb. David Mutemi: Their reservations were because of the Wagalla operation. The first time we were asked to renovate that airstrip was early in 1998. It was because the military did not want the *miraa* carrying airplanes to use the airstrip. We were given money to very urgently renovate the airstrip because it was not serviceable. Now, when we went and surveyed the area because it was bushy, I remember there was one Degodia councillor whom I think belonged to Wajir County Council who came and told me that the Degodia elders wanted to meet the District Development Committee (DDC) and I the next morning. They strongly opposed the renovation of that airstrip; they would only accept it if the renovators were not going to dig deep. They said that there were people buried there. So, what we agreed on was that we were not going to dig deep; we were to employ young people to clear the bush, do shallow grading, apply murrum and then put the concrete. Eventually we did not put the concrete but just poured some murrum and airplanes started using the airstrip. So, their resistance was on the basis that there were people buried there; even on the official opening of that airstrip, very few people attended the function from the Degodia community. They were actually opposed to it. Even after opening that airstrip, it was not used for a long time. By the time I left Wajir in August that year, we had resumed the use of the military airstrip. I believe that even today Wagalla Airstrip is not used.

Commissioner Shava: Do you know why it is not being used? Do you know why that happened?

Amb. David Mutemi: I really do not know. When I left the reason that time was that pilots were complaining that it was bumpy. It was not easy to land on that airstrip because it did not have a bitumen sort of base. It was rough; they said that if an aircraft was loaded, it could not land there safely. So, after some time, we negotiated with the military and they accepted the *miraa* planes to use the airstrip. So, we stopped using it. I

do not think there was any other reason why we stopped using it; the military airstrip was available again.

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

The Presiding Chair (Commissioner Chawatama): Maybe to assist you, I spoke to a lady who said that they were very unhappy with the airstrip, because when it was being put up their hope was that it would help them economically; they did not know that it would be the place where they would lose their husbands and sons. So, I think it was the pain that was connected with the event that occurred there. Also, as a by the way, talking about the vetting, I met a woman in Dadaab who had two children who were four years apart. One child had a birth certificate but the other one was denied. So, those were some of the things that the women were grappling with. As Gen. said, because of issues of corruption there were cases where in a family one member would get an identity card and another would not. There were other complaints that having a birth certificate did not really mean that one was a Kenyan. Since you are in service, I thought I should let you know that those are some of our findings on the ground. Did you have any opportunity to meet with other DCs in your meetings and discuss issues that were taking place in the districts of Garissa and Mandera? Did they also experience what you went through in terms of restoration of peace and co-operation from the people they were leading in freely surrendering some of their firearms? Were they also engaging with elders or Wajir was an isolated district in this?

Amb. David Mutemi: Thank you Chair for that question. Wajir was not an isolated case in dealing with these issues. We, indeed, had frequent meetings with the PC in Garissa. We used to go there quite often and I would meet with my colleagues, the other DCs and we would share a lot of experiences. One of the common issues that came up during our discussions was the method that we were using to bring peace in the entire NEP. I think all of us were appreciative of the fact that people were appreciating the efforts that we were making. Personally, when I meet many people from Wajir they tell me that I did a good job. I did not know I was actually doing a good job, because it was a large area to operate in; having served in Central Province, I was not happy to go to NEP. It is a hardship area, but I must say that looking back, it was an eye opener for me. I gained a lot of experience in peace building. One of the cardinal issues that I would apply today - I still continue to apply it--- That is why I decided to become a student in public management. You cannot deal with peace issues without involving the people themselves. They must be able to contribute and say what their problems are. They may state it in a different way, but you must accept the way they put it, because that way you walk the road with them.

The Presiding Chair (Ms. Chawatama): Thank you very much Ambassador and we are not surprised that you were successful when you were in Wajir as a DC. I would like to thank you for making yourself available and this goes for other witnesses whom I still see here. You came on different days and sometimes we sent you back, because we sat for long hours; you left and came back. I do not think you complained. I believe that is all for today.

The Commission Secretary (Ms. Nyaundi): Thank you, Chair. That is our last witness for today. With regard to the remaining witness, I have spoken with Mr. Murimi, the author of the document that we received yesterday, and he has confirmed that he will be available tomorrow. We also have the PC for NEP, Mr. ole Serian, who ought to appear tomorrow. There is a resident of Wajir who had indicated a wish to testify; it is a Mr. Bishar, who will furnish me with his statement. It is likely we will hear him tomorrow.

The Presiding Chair (Commissioner Chawatama): Thank you very much. I would like to thank the public, especially witnesses who appeared before us and gave their testimonies. I thank the Leader of Evidence. Thank you, mum, for a job well done. I would like to hand over to the Master of Ceremony at this time; we will meet tomorrow at 9 o'clock for the conclusion of our hearing here in Nairobi. Thank you.

(The Commission adjourned at 2.00 p.m.)