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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY 17TH MAY,
2011 AT LENANA HALL, KENYATTA INTERNATIONAL
CONFERENCE CENTRE, NAIROBI**

PRESENT

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

(The Committee commenced at 10.00 a.m.)

*(The Presiding Chair (Commissioner Slye) introduced himself
and the other TJRC Commissioners)*

(Opening Prayers)

The Presiding Chair (Commissioner Slye): On behalf of the Truth, Justice and Reconciliation Commission (TJRC) I want to welcome all of you to our second day of hearings in Nairobi. Today's hearing is a continuation of a series of hearings that we conducted in the northern region of Kenya during the last month. We are here to listen to individuals whom we hope will shed light on and help us to better understand some of the historical injustices that we have heard in our testimony during our visit to the northern region. Some of the individuals we have invited here today have been invited because of the positions they held. Some have been invited because we have been told that they have made efforts to further truth, justice and reconciliation.

We are a truth commission; we are not a court of law. We do not prosecute and we do not determine innocence or guilt. We have not accused any individual. We are here to provide a platform for truth telling. That platform is to contribute to a national conversation that one hopes will further national healing and reconciliation, which is the ultimate purpose of this commission. So we are here to provide a safe space for individuals to share their perspectives, to share with this Commission and the people of Kenya what they know of the historical injustices in this country from independence in 1963 until the end of February 2008.

To provide that safe space and provide the dignity of our witnesses, we allow individuals who have been invited to come to be represented, including by legal counsel. We do not allow anyone, except for Commission staff and Commissioners to cross examine or otherwise examine witnesses. We remind witnesses that they cannot be held liable for

their testimony or for any evidence that they present before this Commission before any civil or criminal proceeding, or for any penalty in the future. So again, we have provided space for individuals to come forward and share with us everything now in a way that protects them and protects their rights.

We will combine what we hear in the hearings with the work of our research and investigations. We will then make findings and recommendations. Those findings and recommendations will be included in our final report. The findings will be based upon all the testimony that we have heard in addition to the evidence that we will be able to gather from our own investigations, and our own research. Once we make a preliminary finding that identifies an individual as connected to an event that we are examining, we will present that preliminary finding to that individual with all the evidence that supports that finding, and allow that individual to comment on the evidence that we have. It is only after we receive the information from that individual that we will come to final conclusion and a final finding on that individual.

In furtherance of creating a safe space, I would like to set out a couple of very simple ground rules. First, I would like to ask all of you with cell phones to, please, turn them off. Even when they are on a silent mode they interfere with our recording equipment.

If you need to take or make a phone call, we ask that you leave the hall to do that so that you do not disturb your neighbours. We ask that you please listen quietly and respectfully to the witnesses. Some of what you may hear today may be familiar. Some of what you hear may be unfamiliar. Some of you may agree with it while some of you may not. The purpose here is for us to listen to a fellow Kenyan, even if their perspectives and their experiences are different from our own. I ask that you listen attentively to their testimony.

We welcome the media and appreciate their presence. We ask the media and anyone else with still cameras not to take photographs of witnesses during their testimony. You may take photographs before or after the testimony but not during the testimony. Anyone who is found in violation of these simple rules will be politely asked to leave the hall.

The process here is a simple one; the witness will be sworn. The evidence leader will lead the witness in his or her testimony, and then the Commissioners may ask additional questions.

If there are any counsel, they can introduce themselves.

Mr. Kioko Kilukumi: My name is Kioko Kilukumi. I am together with Mr. Elijah Mwangi for the following individuals, A.J. Njue, David Mutemi---

The Presiding Chair (Commissioner Slye): Can I ask that when you mention the names that those individuals should, please, stand up so that we know whether they are present,

Mr. Kioki Kilukumi: They are as follows:- A. J. Njue, David Mutemi, J. K. Kaguthi, D.K. Mativo, J.P. Mwangovya, David Mwiraria, Benson Kaharia, B. A. Kiplagat, John Gitumu, James ole Serian, Gen. (Rtd) J. R. Kibwana, Maj. Philip Chebet and Lt. Muriungi.

Those are the 13 individuals whose names appeared in *The Standard* and the *Daily Nation* of Thursday May 5th 2011. Upon reading the notification appearing there, or being informed by their relatives that their names had appeared in the Press, they made efforts to get summons. Some of the individuals were personally served and agreed to appear before this Commission.

I may mention to the Commission that Mr. Mwiraria had to go and seek medical attention, and he is at present not in the Hall. The others had promised to be available today.

The Presiding Chair (Commissioner Slye): Who is not here because they are at a hospital?

Mr. Kioko Kilukumi: Mr. David Mwiraria.

The Presiding Chair (Commissioner Slye): I am sorry I was not able to keep track of everyone who has stood up, but it seemed to me there are a couple of others who are also not here. I do not know if that is, in fact, the case.

Mr. Kioko Kilukumi: We had agreed that the named persons would be present here except for Mr. David Mwiraria, who mentioned that he had to go and see a doctor. He mentioned that to me yesterday.

The Presiding Chair (Commissioner Slye): Okay. Please, proceed.

Mr. Harun Ndubi: My name is Harun Ndubi. I represent the Wagalla Massacre victims and survivors as well as the Truth Be Told Network. Abdirashid Salat and Sal Asheik represent the victims.

The Presiding Chair (Commissioner Slye): Are there any other counsel present? So my understanding is that there are two counsel present. I believe we have an appearance for one and not the other. Is that correct, evidence leaders?

We have Mr. Kioko who did register with the Commission; did Mr. Harun Ndubi file a formal appearance with the Commission?

Mr. Harun Ndubi: I am sorry I have not filed the formal document. I think it was an oversight. I will do so if it is necessary by tomorrow.

The Presiding Chair (Commissioner Slye): Would you like to now orally request leave to appear, we will enter it at the moment.

Mr. Harun Ndubi: Sorry, I made the application yesterday. I thought that permission was granted.

The Presiding Chair (Commissioner Slye): I apologize. So, you have, in fact, filed an appearance. You are rightly here.

I would like to ask the Evidence Leader if we could verify those individuals who are in the room, and were asked to be here today by reading out their names; those are the individuals we have invited for today's hearing.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Presiding Chair, Sir. Except for the clients of Counsel Mr. Kioko, whose names he has read out, the following individuals had been invited to be present today. They are:- Abdikadir Hussein, The hon. G. G. Kariuki, Mr. Fred Machokaa, Mr. J. K. Kinyanjui and Mr. Njeru Mugo.

The Presiding Chair (Commissioner Slye): I see that none of those individuals are here; is that correct?

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, Sir, I did not see them rise. I suppose that means that they are not here.

The Presiding Chair (Commissioner Slye): So I would just like the record to show that no one rose when those names were read out.

I would like to ask now if there are any preliminary issues the counsel would like to raise before this panel.

Mr. Kioko Kilukumi: On behalf of the 13 persons that we represent we need clarification from the Commission whether their appearance before you is as sources of information, or they are being considered as suspects. This arose from the kind of documents that have been available. Firstly, what appeared both in *The Standard* and the *Daily Nation* carried the words that they have to appear before you to defend themselves. In our preliminary consultation with them, this raised a lot of concern for them and they were wondering what the accusation against them that they ought to defend themselves against is. If they are being regarded as suspects, they obviously have constitutional rights, which they may wish to protect at the earliest possible opportunity. If they are invited before your Commission as sources of information, they are exceedingly happy to give each and every detail that they may know of the episodes in question.

All my clients worked in various positions in 1984 or thereabout, and that is 27 years ago. For them to be of value to this Commission, it is important to note that they are retired and they need access to Government documents. When they retired and handed over their offices, they handed over all the minutes and documentation with regard to the episode in question.

Commissioners, if these persons are going to assist this Commission we are seeking from you clarifications, are they suspects or sources of information? If they are sources of information, we are begging that you give us at least 21 days, so that we are able to liaise with the Government offices both in the North Eastern Province as well as the headquarters in Nairobi for supply of the documents that documented what happened in Wajir in 1984. The time we think will be sufficient is about 21 days, in our own estimation. From experience, the Commission will decide the time they will take with these witnesses once they are able to get their documents together and get time to reflect on these events which occurred 27 years ago.

Those are the clarifications we are seeking at this stage. We are also seeking clarification whether the Commission will be minded in accordance with the TJRC Act to make provision for expenses of these retired men. Most of them are retired and therefore have no source of income. For them to come to Nairobi and give evidence they will need their expenses to be catered for as provided for in the law. Those are the clarifications we are seeking at this stage.

The Presiding Chair (Commissioner Slye): Thank you Counsel. First of all, I want to thank you also for being here and representing your clients, and participating in this process. I think on the first issue I want to assure you and state quite clearly that none of the individuals we have invited here today are accused. None of them are individuals that we have formally suspected or made any conclusions with respect to. They are, as you have suggested--- We believe that they have information, some specific and some general, that will help us to understand some of the historical injustices that we are examining. I hope your clients can hear that and I hope that you clearly hear that these individuals are invited here to give information. They are not here as accused persons.

As explained to you in my opening remarks, the process by which this Commission approaches these issues will later provide an opportunity for individuals who may be suspected of being involved in some of these injustices to respond as the rule of natural justice and the constitutional rights require.

You have asked about a postponement for 21 days so that your clients may collect documents from the Government to assist them in their testimony. You have also asked that we provide travel expenses or other expenses related to those individuals whom we have invited to testify here. At this point, I would like to ask if any other counsel would like to comment on that request.

Mr. Harun Ndubi: Mr. Presiding Chair, Sir, may I say that I have had a quick glance at the advertisement, and I agree with you that from the notification and information provided to the persons invited, it is clearly stated that they will be coming to provide information relating to the two things that are stated there, the security operation that took place in Wajir at Wagalla Airstrip in February 1984 and the District Security Committee meeting on 8th February at the DC's office in Wajir. Those two events point out clearly the specific incident and even place and position of information that is expected. Therefore, notwithstanding that it has been 27 years since the specific incidents occurred,

I do not think it is utterly reasonable to require 21 days to get minutes regarding an event and a meeting of a particular date or information or minutes regarding two or three days when these things happened. I think the time sought is excessively long.

I also need to point out that this advert was placed on the newspapers on May 5th. If it is true that, indeed the submission, by my learned friend and personal friend is true, they have, therefore, been aware since that date. Having been willing to participate before the Commission I would expect that they would have made arrangements to obtain those minutes, notwithstanding the clarifications they have now sought, and learned that they are not accused before this Commission. Therefore, one would expect that they did-- Indeed, I saw yesterday that the acting DC at the time did come before you with documents and minutes of the time when the subject of this inquiry took place. I, therefore, submit that with due diligence the persons named ought to have come before you with adequate information.

Regarding the expenses, my learned friend quotes the law and if that is the law, yes they would be entitled to expenses. I would have hoped that the Commissioners set a certain standard level of compensation to be given to all witnesses who would come from long distances notwithstanding their status or situation in life. Of course, they are entitled to be treated like everyone else. However, I do recognise the names of the persons called before you. They are not impecunious men so to speak; this will be part of their contribution to the society. Even if the Commission did not have the money to pay them today they would still be willing to co-operate and help the Commission to get to the truth in time, so that non-payment does not hold back the proceedings of this Commission upfront.

That is what I would humbly like to say.

The Presiding Chair (Commissioner Slye): Thank you counsel. I would like to ask the Evidence Leader if she has any comments on this.

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, Sir, on the issue of notification to the persons, I wish to point out that even prior to the notification of summons, we had by advertisement again in the newspapers notified all the individuals on the 5th of April. This was in *The Standard*, *Daily Nation* and *The Star*. We invited all 27 individuals to make arrangements to record statements with the Commission on any information that they might have had.

Later we did place again in the newspapers of the 5th of May notifications of summons to attend. In addition, each of the individuals had letters addressed to them. Some have collected them from the office with regard to the invitation to attend that was made in April. As has been collectively stated by Senior Counsel, Mr. Kioko Kilukumi, some of them were individually served with summons to attend. Therefore, Chair we would be submitting that adequate notice was given to the individuals to enable them prepare for today's hearing.

In the event that the Commissioners do grant them time I will be asking that you have regard to the tight schedule that we have as a Commission. We are required to wind up our work and hand in our report in November. We have only held hearings in the northern region; therefore, we have not held hearings in the rest of the country. Therefore, I will be asking the Commission to have regard to the time that is available to the Commission in determining how much time these individuals will be given to prepare to appear before the Commission.

I will agree with my senior, Mr. Kioko Kilukumi, that they are here as witnesses and not as accused persons. Mr. Kioko Kilukumi has also sought clarifications on summons and I would wish to go on record that not all these individuals have been summoned to give information with regard to incidents that occurred in Wagalla in 1984. I will, therefore, be asking the Commission also to advise those who are present to ensure that they have their own copies of the summons, so that they are well advised on the information that the Commission seeks from them.

On the issue of transport, those individuals who have communicated to the Commission have been advised that the Commission will reimburse transport costs incurred by public road transport. That is what the Commission will offer. The Commission can only act within its means and so will offer them full board accommodation of Kshs3,000 per day spent. We are guided by means.

I also sought clarification from counsel; I note that Mr. Kaguthi, who had been invited to attend today by summons is not present in Hall, and my senior, Mr. Kioko Kilukumi, indicated that he appears for him. Since the summons attract penal sanctions in the event of non-attendance, I would wish that Mr. Kioko Kilukumi advises us whether it is Mr. Kaguthi's intention to attend either today or tomorrow when the Commission will be having hearings, so that appropriate action can be taken. I also would like to get clarification on when Mr. Mwiraria is likely to make his appearance before the Commission.

Commissioners, Section 28 of our Act is very clear and requires personal attendance of individuals who are summoned. I will be, therefore, seeking those clarifications from Mr. Kioko Kilukumi.

In conclusion, I am informed that the counsel for Hon. G. G. Kariuki is now present. After he introduces himself, you will probably engage with him.

The Presiding Chair (Commissioner Slye): Thank you Leader of Evidence. I would like to ask counsel to identify himself and tell us who he is representing. If the people, or person, you are representing are present, I would like to ask them to stand, so that we can acknowledge their presence.

Mr. Emmanuel Wetangula: My name is Mr. Emmanuel Wetangula. I appear for hon. G. G. Kariuki. The summons which was issued to our client actually requires him to appear at 11.00 a.m. I came in a little bit early only to be surprised that the proceedings

had commenced. I confirm that he is on the way and he is going to be present here very shortly, just before the required time.

The Presiding Chair (Commissioner Slye): I would now ask if any members of the panel have any comments or questions for the senior counsel on his request that he has made to the Commission.

Mr. Wetangula, do you have any preliminary issues you want to raise before the Commission? Mr. Kioko Kilukumi, on behalf of a number of individuals, has raised some issues before the Commission. I just want to ask you if you have any preliminary issues that we need to deal with before your client agrees to testify.

Mr. Emmanuel Wetangula: The preliminary issues that we may have had were clarified by the TJRC, because initially the summons that had been issued to hon. G.G. Kariuki indicated that he was to give responses to issues regarding the Wagalla Massacre. However, subsequent clarification confirmed that he was not in Government at the time this incident is alleged to have taken place. Then subsequently, a correction was issued where he is supposed to respond to some security operation that took place in Garissa. In addition to that, only four issues were identified on which he is to give a response, which actually will not take more than five minutes. It is to the effect of enquiring where he was at the time of the operation and if there were any committee meeting reports, and what he has that may have been developed. Based on the information that he is supposed to respond to, we will not be having any preliminary issues, and I would like to get this thing out of the way as soon as possible.

The Presiding Chair (Commissioner Slye): Thank you counsel. Mr. Wetangula, I want to summarize for you the issues that have been presented to us by senior counsel Mr. Kioko. They were three issues; first, he wanted clarification on the summons with respect to the individuals being asked to appear here today. The clarification is whether the individuals are here as accused individuals, whether they are suspected of any sort of wrong doing. Our response to that was to very clearly state that individuals asked to appear here are not asked to appear here as suspects or as accused. They are asked to appear here to give information, in some specific cases, and also some general information with respect to Government operations and other related operations to help us better understand the historical injustices this Commission is examining.

The second issue he has raised is a request that we postpone the appearance of his clients for 21 days to give them an opportunity to secure documentation, as they were in Government service that is in the hands of the Government; these minutes and other related documents which would then assist them in their testimony before the Commission.

The third issue was that he asked whether the Commission will be providing expenses related to those individuals appearing before this Commission. Mr. Wetangula, I think when you walked in the Leader of Evidence was, perhaps, addressing the position with respect to the expenses. So, given those three issues I think it is right to say that the first

issue we have dealt with is that we will put this formally in writing. I would like to ask whether you have any comments on the other two issues. That is the request for postponement for those individuals and the request for expenses.

Mr. Emmanuel Wetangula: With regard to the request for postponement of hearing for a period of 21 days, I do also note that in the summons issued to hon. G.G. Kariuki it was intimated that if he was in possession of any document related to this security operation he should have them before the Commission. However, this having been a Government security operation it is inconceivable that an individual serving in the Government at the particular time could actually be in possession of any documentation related to the issue in question. In this regard, our simple response was that we were not in possession of any document or report and subsequent action had never been taken by the Government.

However, in view of the fact that the response that the Commission seeks to hear from my client is related to this security operation, I think it may be imperative that these documents are availed to him, taking into account the fact that in various publications that have been in the Press, my client has been mentioned in negative light in relation to this security operation. If he is to clarify what he is to respond to, and if at all any level of his involvement in the matter arises, it may be prudent that the documents that the Commission may have, or that are in possession of the Government, are availed so that they can be scrutinized and then the Commission can assess against them the responses that we give. My apprehension is that if we are to make enquiries from an individual who does not know exactly what he is to respond to and in what capacity, then we may end up wasting the Commission's time; actually nothing much will be achieved. It is imperative that these documents be availed.

Secondly, with regard to the question of the expenses incurred by the witnesses who have been summoned, the Commission is sitting to inquire about some incidents that have scarred the fabric of our nation. Most of these people served in their individual capacities at the time that these incidents happened. Since they are not appearing before the Commission as suspects but simply to aid it in preparing its report, to be able to get to the root cause of what may have transpired, then reasonable expenses that have been incurred by the witnesses ought to be paid.

Since the summons bear a penal sanction against a person who does not appear, we should not lose sight of the fact that even if a witness appears, and can be compelled to candidly disclose what transpired, the penal sanction would be of no consequence at all. Most of these people will voluntarily appear and explain what role, if any, they played. Therefore, the reasonable expenses they have incurred with regard to transport, accommodation and food ought to be catered for. In that respect, I would concede to the application that if the documents are available we would like to have a perusal of them.

That is all.

The Presiding Chair (Commissioner Slye): Thank you, counsel, for your appearance and your openness. I also want to thank your client for his openness that has assisted the Commission in this process. I understand that your client, Mr. Kariuki is present.

Mr. Harun Ndubi: Mr. Presiding Chair, Sir, there is one more point I omitted. I say this without knowledge or information whether the persons present making this application have recorded statements with the Commission. My own view is that if they have or have not, in the course of working with the Commission, the specific documents, the locations to get them and the persons to assist may come out so that under the Act, the Commission may either issue summonses to the locations where those documents are to be availed on an early date. It would also be clearer for the Commission to summon or subpoena those documents to come rather than giving plenty of time that is wide without specific direction.

Commissioner Chawatama: Thank you, counsel, for your presence in this hearing. Do you know whether any efforts were made by your client from the time they received information that they would be appearing before this Commission? Were efforts made to get the documents that would be needed today?

Mr. Kioko Kilukumi: My clients received these summons at various stages. They did not receive them at the same time. Some of them got these documents yesterday and instructed me yesterday. If you look at the notices we have filed, they will confirm so. They got the summonses yesterday and as such they did not have time to seek these documents. Those who received the documents earlier have written to the Office of the President seeking these minutes to be availed to them. They have given me that information and asked me to follow up this issue with further correspondence to those offices.

I have an issue that is not directly related to your question and I do not know if this is the appropriate time to deal with it. Actually, it is what was raised by the CEO of the Commission. Maybe I will respond to that later.

Commissioner Chawatama: Did I hear you correctly say that for some of your clients you only obtained instructions yesterday?

Mr. Kioko Kilukumi: That is correct. Voluntarily, they just went and picked the summonses.

Commissioner Chawatama: It will be very interesting to hear which one of your clients. This is because I think the majority received their notifications. Some of them actually called our offices to confirm and we engaged them in a conversation. So, I am actually shocked to hear that some of them received notification only yesterday. Clarifications, I can understand, but not notification.

Mr. Kioko Kilukumi: Madam Commissioner, for the record, Major Philip Chebet got his summons yesterday. General J.R. Kibwana was served much earlier in Mombasa. I

am sorry about that. Lt. Muriuki received summons yesterday. Those are the ones I can confirm straightaway.

Commissioner Chawatama: I am sure counsel also appreciates some of the difficulties because most of your clients are retired. This is why we found it easier to do substitution service and placed the names in the newspaper. That in itself was adequate notification. Now you are talking about the physical summonses. What about the notifications in the newspapers?

Mr. Kioko Kilukumi: Madam Commissioner, you will appreciate that an advert appearing in the newspaper would be a presumption that these people read that newspaper for that particular day. These people are scattered all over the Republic and this Commission cannot make a presumption that once something appears in the newspaper all these people read it on that particular day. Some of them were called a week later by relatives to be told that they have been mentioned in an adverse way and that they are to appear before the Commission to defend themselves. That is how they got this information.

Commissioner Chawatama: I think the issue is: when they received the information what did they do? It seems that the majority of your clients did nothing once that information was received, that is, whether somebody told them that their names are in the newspapers or receiving the actual summons. That is my concern.

Mr. Kioko Kilukumi: Madam Commissioner, the persons I appear for did not ignore when this information was passed to them. Firstly, they sought legal representation which is important when you are asked to appear and defend yourself.

Secondly, they were also concerned to find out where the documents they were working with were. They did not go home with them upon retirement. So, they contacted the Office of the President. So, hon. Commissioners, when you are assessing our request, please, bear in mind that you are dealing with people who would want to provide all the information they have because we have now got clarification that they are not suspects before you. They want to be of extreme assistance to this Commission.

Commissioner Chawatama: Maybe you also appreciate that our lifespan is very short. We needed your clarification on this matter. It will be of great benefit to this Commission to know of the efforts that your clients have undertaken to write to the Office of the President. What sort of response did they get? As a Commission, we can step in and assist.

Mr. Kioko Kilukumi: So far we have not received a response from the Office of the President. Obviously, if we do not get a response to our requests, we will be forced to come before you possibly to seek issuance of summons because my clients would want these documents placed before the Commission. That is the only way you are going to establish the truth. We hope we will get a favorable response from the Office of the President and table the documents before this Commission.

Commissioner Chawatama: What, in your opinion, is reasonable time within which you would want to hear from the Office of the President?

Mr. Kioko Kilukumi: Madam Commissioner, this depends on efficiencies of different offices. I would imagine that the Office of the President should be the most efficient in the country. So, in a span of seven to 14 days, we should be able to get responses from these offices.

Commissioner Chawatama: I am now concerned because 14 days is too long. You are already asking us for 21 days and we do not know the mountains of documents that you are going to get and then how long it will take you and your clients to peruse these documents. I think 14 days is a bit too long, but I will leave that to the Presiding Chair to give direction on that.

The Presiding Chair (Commissioner Slye): Mr. Kioko, you had said that you had some comments you wanted to make. You could make them now for the record and then we recess into the break.

Mr. Kioko Kilukumi: Madam Patricia Nyaundi, the CEO of this Commission raised the issue of Mr. Kaguthi. For the record, Mr. Kaguthi has not been served with any summons at all. Indeed, he only instructed me on the basis that his name appeared in the newspaper. He was extremely shocked. He says that at the time he was a small man, that is, a Personal Assistant to the Permanent Secretary. Nonetheless he instructed me to put in an appearance for him and he will appear before this Commission. I have also received information that he had also gone for a medical appointment. That information was passed to me as I was seated here.

Regarding David Mwiraria whom I said earlier on that he had said that he will be seeing a doctor today, he will be immediately available as soon as he is through with his doctor to give any testimony that is required of him now that it has been clarified that he is not a suspect.

The issue of penalties for the summonses, hon. Commissioners, I know that this is not an adversarial session. This is a non-judicial body just interested in establishing the truth. The summonses that have been served to all my clients, none of them specify that they must appear in person. If one looks at Section 28 of the Truth, Justice, and Reconciliation Commission Act, unless you have specified that that person must appear in person, no penalty can ensue. That is as a matter of law, but I want to emphasize that all the clients I represent will appear as and when required by this Commission once they have got the documents and they are ready to testify.

The Presiding Chair (Commissioner Slye): Thank you counsel. The panel will retire to consider your request and then return with a ruling.

The Commission Secretary (Ms. Nyaundi): Mr. Kioko Kilukumi also appears for Mr. Kiplagat and Mr. Ole Serian who were scheduled to appear before the Commission tomorrow. I believe that they are in the same situation as his other clients. The clarification, therefore, we shall be seeking from the Commissioners, will you require Mr. Kiplagat and Mr. Ole Serian to appear tomorrow? These are witnesses No.17 and No.20 respectively on the list. Could we get that clarification so that Mr. Kioko is clear on this?

The Presiding Chair (Commissioner Slye): Mr. Kioko, I assume, and I stand to be corrected, that your request for the 21 days also applies to those two witnesses who were scheduled to appear tomorrow. Is that correct?

Mr. Kioko Kilukumi: It is the correct position. It applies to both of them.

The Presiding Chair (Commissioner Slye): Thank you very much. We will now retire.

[The Commission adjourned temporarily at 10.55 a.m.]

[The Commission resumed at 11.25 a.m.]

The Presiding Chair (Commissioner Slye): Thank you counsel for the issues that you have raised before the Commission. We have deliberated and we have come to a decision on all the issues that senior counsel has raised. I would like to summarize the ruling, but we will be putting the ruling in writing and we will make it available to the counsel and clients and, generally, to the public.

The first issue is one on whether individuals who have been invited here by summonses are here as accused persons or suspects or whether they are here as invited persons to give information. The Commission takes a very clear stand that no one here is a suspect. We have not accused any individual. Individuals are here because we believe that they have information that could be specific and general. When I talk of general information I mean information about how the Government operates. That sort of information is useful to the Commission as we work to put together an accurate and complete historical record of our mandate period.

I want to note that in our summonses we used the words, “come to defend yourself”. By using that word, we did not either explicitly or implicitly mean to imply that an individual is being suspected of anything. We regret any misunderstanding that word might have caused.

The second issue is with respect to expenses of witnesses. The Commission has set forth a schedule of reimbursement for our witnesses who appear before the Commission. That schedule was actually described by the Leader of Evidence, our CEO, before we took the recess. We will reimburse public road transportation to the hearing venue and up to Kshs3, 000 per day for room, boarding and incidental expenses.

Third, an issue has been raised with respect to personal appearance before the Commission. The Commission wants to be clear that when we ask an individual to appear, whether it is by summons or otherwise, the invitation is to that individual himself or herself and we expect that individual will appear unless we receive a good reason why they cannot appear on that day.

The summonses that were sent to every individual begin: “You are hereby summoned to attend a hearing” That is directed to the individual and not the counsel or anyone else. At the end we quote the language from the Act concerning the possible penalties for failure to appear. We note that there are some individuals that have not appeared today and there are others that apparently are seeking medical attention. We ask the counsel representing those individuals to file with the Commission within seven days’ documentation confirming that those individuals were, in fact, otherwise occupied during today’s hearing.

On the request for an extension, the Commission took into account a number of things. First we took into account our own schedule. As you know, we have a very limited time frame within which to complete our mandate. At the moment, we are required to submit our final Report on 3rd November, 2011 unless we get an extension from Parliament. We also took into account the arrangements we have already made with respect to other hearings in other parts of the country. We have also taken into account our interest and the interest of the people of Kenya in unearthing the truth of the historical injustices during our mandate period.

Finally, we have taken into account what we would consider a reasonable time frame for the individuals that have been invited to attend, to secure the necessary documents so that their testimony before this Commission would be the most enlightening.

Taking into account all those factors, we are granting a 14-day period up until 2nd June which is when we will resume these hearings for those individuals to secure those documents and prepare for testifying before this Commission.

We also note, Mr. Kioko that, a number of your clients still do serve in Government. We hope those individuals will be of great assistance to you and your other clients in securing the documents that you are requesting.

We also would like to indicate that some of the documents that I suspect that you will be requesting, including the minutes of some of the PSC meetings, some of those documents we currently do have. Please ask for minutes of meetings of the PAC and KIC of the following dates: 2nd January, 1984; 17th November, 1983; 28th January, 1984; 15th February, 1984; 16th February, 1984; 17th February, 1984; 12th February, 1984; 24th February, 1984; 29th February, 1984; 29th March, 1984.

We also know that there are other minutes and we would like to see any minutes related to the incidents before this Commission, including the Wagalla Massacre and other incidents that are within the mandate of our Commission.

Lastly, I would like to remind individual witnesses as well as counsels of two things: One, as I stated earlier on, under our Act, any testimony and any evidence presented before this Commission cannot be used against the individual who gives that testimony or presents that evidence in a civil proceeding or a criminal proceeding or for any other penalty or forfeiture.

The individuals who have been asked to appear here as well as any other any other individual here who has information that they think will be useful for this Commission are free to submit a statement to this Commission with respect to everything that they know about historical injustices within the period of our mandate, that is, from the time of Independence until 28th February, 2008.

We will postpone hearing the witnesses the senior counsel has mentioned until 2nd June, 2011. We want to remind you that under our rules we have asked that the documents that are presented to us for those hearings should be given to us seven days in advance. We understand that you could get the documents in less than seven days before the hearing. If that is the case, we would ask that you present them to us immediately upon your receipt of them.

Mr. Harun Ndubi: Commissioner Slye, before the Leader of Evidence says anything, I am advised by my client that there were meetings for which there will be minutes that you may have omitted that happened in Wajir on 8th February, 1984.

The Presiding Chair (Commissioner Slye): Thank you for that correction. That is the one, of course, that we are most interested in. It is the joint meeting of the PSC, KIC and DSC. I want to make it clear that the dates I have mentioned, we are not indicating that those are the only dates that we are interested in. We are indicating that those are minutes that we have knowledge of existing and that we would specifically like to see. Of course, there may be many other minutes that would be useful to this Commission.

The Commission Secretary (Ms. Nyaundi): Commissioner Slye, we had also sought clarification whether Amb. Kiplagat and the current PC of North Eastern who are scheduled to appear tomorrow, but are represented by Mr. Kioko will be required.

The Presiding Chair (Commissioner Slye): I am sorry. Given that we have ruled that the hearings involving those individuals will take place on 2nd June, 2011 they are no longer required to appear tomorrow.

Mr. Kioko Kilukumi: Madam Chair and Commissioners, we are most grateful for extending that time and we intend to use it very well. Thank you, very much.

The Presiding Chair (Commissioner Slye): Leader of Evidence, we are now in your hands for the next witness.

The Commission Secretary (Ms. Nyaundi): Thank you, Commissioner Slye. I wish to invite Hon. G.G. Kariuki if he and his counsel are ready

(Mr. G.G. Kariuki took the oath)

The Commission Secretary (Ms. Nyaundi): Please, tell the Commission your names and current occupation for the record.

Mr. G.G. Kariuki: My names are Godfrey Gitahi Kariuki. I stay in Nairobi. I am a farmer. I am a businessman and I am a politician.

The Commission Secretary (Ms. Nyaundi): I trust that you are in receipt of summons that were issued on 3rd May, 2011 inviting you for the hearings today.

Mr. G.G. Kariuki: Yes, I do.

The Commission Secretary (Ms. Nyaundi): In that summons the Commission requires you to give us information on security operations that took place in Bula-Karatasi Village in Garissa in November, 1980 when you were Minister of State, Office of the President and in charge of internal security. I invite you to make your statement.

Mr. G.G. Kariuki: I would like to start with item one. You want to know the role played by the Ministry of Internal Security in the Garissa operation. It was a Government security operation with a view to apprehend the criminals who were suspected to have killed four civil servants and two civilians.

The Commission Secretary (Ms. Nyaundi): I see you have a prepared statement. I will invite you to read it out to the end.

Mr. G.G. Kariuki: Thank you. With regard to item two, you wanted to know where I was during that period. I was in Nairobi and the only thing I did after the incident was to fly to Garissa for a public baraza which was held at Baraza Park. Before the baraza, I attended the provincial security meeting to understand what had actually happened during the attack.

I cautioned the officers against using excessive force and to be mindful of innocent civilians. A curfew had been imposed from 5.00 p.m. to 6.00 a.m. The curfew was relaxed after my visit and hours were adjusted from 7.00 p.m. to 7.00 a.m. The curfew was then lifted few weeks later.

Question three asks me about the incident report as well as the report of subsequent inquiring committees. My recollection is that there were no public inquiries in the matter in reference. If there was, that would have only been among law enforcing officers.

Question No. 4 is an insight on command and control of security forces involved in the operation. The command in control of security forces in any operation is the

responsibility of the senior officers. They are expected to understand their roles and execute their mandate efficiently and with due regard to innocent lives.

That is the end of my small statement with an intention of giving you guidance on what the Government does.

The Commission Secretary (Ms. Nyaundi): The statement that you have, can you avail it to the Commission so that it is part of the record of the Commission?

Mr. G.G. Kariuki: It will be my pleasure.

The Commission Secretary (Ms. Nyaundi): You have mentioned that this operation was a Government security operation. I need you to confirm that you were then the Minister in charge of internal security.

Mr. G.G. Kariuki: Yes, I was.

The Commission Secretary (Ms. Nyaundi): Could you, please, give us a brief on what you understood your responsibilities were as the Minister in charge of internal security?

Mr. G.G. Kariuki: That is an interesting question: How I understood. I was the Minister in charge of internal security. The Minister is appointed by the President to discharge responsibilities concerning security in the entire country. I think that is what I was expected to do.

The Commission Secretary (Ms. Nyaundi): Just because I need to be clear, when you say that this was a Government security operation, would it be correct to state that it fell under your Ministry?

Mr. G.G. Kariuki: Yes. You cannot separate the Ministry and the Minister.

The Commission Secretary (Ms. Nyaundi): Therefore, in terms of defining whether there was insecurity or whether there was need for an operation, those were decisions that would be made by your Ministry.

Mr. G.G. Kariuki: It does not work that way. When a situation has happened like it happened in Garissa that time, it is the local security committee and the officers in charge of maintaining law and order to immediately decide which direction they want to take to stop whatever incident which was against the law and also an incident which was against public security.

The Commission Secretary (Ms. Nyaundi): When you talk about the local security body, in this instance you would we be talking about the District Security Committee (DSC)?

Mr. G.G. Kariuki: That one evaluates day to day business of security nature. You must appreciate that the Government only anticipates that something may happen and sometimes it does not happen. The criminals do not report that they are going to attack at a certain time. You should appreciate that all actions are taken immediately after an incident has occurred.

The Commission Secretary (Ms. Nyaundi): After the local DSC analyses a situation, do they respond to the situation or are they required to consult a higher office?

Mr. G.G. Kariuki: No; more security action is taken immediately if something has happened. If there is need for further---

And, there is need for additional strength to communicate to the provincial headquarters and advise them that the situation in our hands is beyond our control and that you should assist us in providing more personnel to deal with the matter.

The Commission Secretary (Ms. Nyaundi): Thank you once again. With regard to the District Security Committee at the time that you were a Minister, what was the composition of that committee? Who were the members?

Mr. G.G. Kariuki: The members of the security Committee which is chaired by the District Commissioner are the officers in charge of the district and also the Special Branch who are also in charge of security matters in the district. They are supposed to be three members.

The Commission Secretary (Ms. Nyaundi): And then Sir, what is the membership of the provincial security or what was it when you were a minister?

Mr. G.G. Kariuki: It is all the same. It used to be the same. The man or the woman in charge of the province and the in charge of police is a member of the committee and if it is the Provincial Commissioner (PC), he is the chairman and the person who is in charge of intelligence is also a member.

The Commission Secretary (Ms. Nyaundi): Thank you, Sir. Because we have said that when it is normal the District Security Committee can make a decision and respond to the situation, that appears to suggest that there are situations that are not normal?

Mr. G.G. Kariuki: Which ones are not normal? I did not get you!

The Commission Secretary (Ms. Nyaundi): You said that when there is a normal situation, and there is a normal security issue, then the District Security Committee will be able to respond to the issue. So, in my thinking, then there are issues that you would define as not normal security issues.

Mr. G.G. Kariuki: The District Security Committee is in charge of the entire maintenance of law and order in that district. That is the job of the security committee. I

am using the word abnormal to mean, if it is a bigger crime that they are unable to control, they ask for assistance from their seniors outside the district.

The Commission Secretary (Ms. Nyaundi): Thank you, Sir. Then I assume that beyond the Provincial Security Committee, there may be another body that the Provincial Security Committee will also consult, should the need arise?

Mr. G.G. Kariuki: Yes. Should the need arise, the PC is under the Permanent Secretary, in the Ministry of Internal Security. But the PC used to have a lot of other responsibilities because he would directly speak to the President over any matter regarding his province. That is the position. And, if the Minister is required for any reason or political reason, then it is when the Minister will present himself.

The Commission Secretary (Ms. Nyaundi): Okay. So that I am clear on the hierarchy, we have the District Security Committee at the lowest level; then, the Provincial Security Committee, the PS internal security and as you have said, the Minister for political issues. Because I need to understand what, for example, would constitute a political issue for the Minister in charge of internal security to be needed---

Mr. G.G. Kariuki: The Minister for Internal Security works under the direct control of the President. You will appreciate the President will not have come to Parliament to answer questions regarding the security problems in some areas. The main job of the Minister is to make sure that he satisfies Members of Parliament and the country at large that what happened, the Government has taken action in the manner that he would have explained to Parliament or to any other invitation which he may have required to be given the same answer. This is because it is not within the docket of the Permanent Secretary or the Commissioner of Police to go to public meetings to explain what happened. It is the Minister who appears to carry the responsibility of talking to the masses or the public.

The Commission Secretary (Ms. Nyaundi): So, you were the visible face of the Government?

Mr. G.G. Kariuki: Yes.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Kariuki. As indicated in our summons, we have invited you to give us information on what happened in Garissa in 1980. So, with this understanding that you have given me on the workings of the security up to the district level, and also making reference with regard to your statement as I have already stated today, when did you receive a report, or would you remember when you received the report that four civil servants and two civilians had been killed by criminals?

Mr. G.G. Kariuki: I received the information on the same night.

The Commission Secretary (Ms. Nyaundi): Do you have the date?

Mr. G.G. Kariuki: I think there were two incidences. One involved the district officer who was killed a week before the four civil servants were killed, in the name that I cannot remember. But it first of all started with the DO who was killed on Sunday, I believe it was on the 2nd November, 1980 and the four civil servants were killed on the 9th November, 1980. These two incidences happened on Sunday. So, I think if you have got a calendar maybe, you will be able to correct what I am saying. But that is the situation. I got the message about the DO and I also got the message about the four civil servants who had been killed and two civilians who were also killed.

The Commission Secretary (Ms. Nyaundi): Mr. Kariuki, who informed you?

Mr. G.G. Kariuki: I was informed by the Commissioner of Police.

The Commission Secretary (Ms. Nyaundi): So, that was not a member of the PSC or the DSC?

Mr. G.G. Kariuki: He was not a member of that Provincial Security Committee, but he is in charge of all the police activities in the country.

The Commission Secretary (Ms. Nyaundi): So, when you received the report from the Commissioner of Police, as the Minister, what action did you take?

Mr. G.G. Kariuki: They had already taken action. The Provincial Security Committee had already taken action; they had imposed a curfew which would run from 5.00 p.m. to 6.00 a.m. in the morning. All I was to do was to go to Garissa and for a fact finding mission to understand what had happened and what action had been taken. That is what I did and I went there the following day.

The Commission Secretary (Ms. Nyaundi): So, this should be on the 10th of November, 1980?

Mr. G.G. Kariuki: It could be on the 10th or 11th November, 1980 or somewhere there.

The Commission Secretary (Ms. Nyaundi): And, that was at the Baraza Park?

Mr. G.G. Kariuki: Yes.

The Commission Secretary (Ms. Nyaundi): You said that you went on a “fact finding” visit?

Mr. G.G. Kariuki: Yes.

The Commission Secretary (Ms. Nyaundi): So, how did you seek your facts?

Mr. G.G. Kariuki: When I got there, as stated in my statement, the first thing I did was to go to the Provincial Security Committee meeting so that I could be briefed on what had

happened and to know how many people had been killed in order to understand what had happened, so that I could be able to answer any question from the public.

The Commission Secretary (Ms. Nyaundi): Just to be clear; was that the District Security Committee meeting you attended or the Provincial Security Committee meeting?

Mr. G.G. Kariuki: The Provincial Security Committee meeting.

The Commission Secretary (Ms. Nyaundi): It was the Provincial Security Committee meeting?

Mr. G.G. Kariuki: Yes.

The Commission Secretary (Ms. Nyaundi): So, when you asked that specific question: “What has happened?” What response did you get?

Mr. G.G. Kariuki: The response was that four people had been killed and two died on their way to hospital and the action had already been taken to stop the spread of violence and the curfew had been imposed. That is the information I got.

The Commission Secretary (Ms. Nyaundi): Okay. Apart from the curfew, did you inquire further as to what particular action had been taken to deal with the situation?

Mr. G.G. Kariuki: I think the action that you need to know is what had happened - that is point number one; number two, what have you done, number three, is what you have done effective or are you sure you are going to control the situation bearing in mind the lives of innocent people. These are the questions that I asked the civil servants who worked in that particular department and then they gave the answers. And, you must appreciate you do not have any other way of getting correct or incorrect information. You just get them from the officers in the field.

The Commission Secretary (Ms. Nyaundi): Thank you Sir. I agree with you. So, when you asked and sought that specific information, what were the answers? Did they tell you, for instance, exactly what had happened; who had done it and where?

Mr. G.G. Kariuki: Of course, they explained as I have already explained. This has happened and they suspect a character in the name of Madobe or such name might have attacked the civil servants and also the District Officer and, that kind of information that you get. You just ask to know what had happened, then you are told what had happened; then from there, you ask what they have done and if they think that in their own judgment they are going to control and contain the situation. They answer you yes or no. They were quite clear in their minds that they were going to contain the situation.

The Commission Secretary (Ms. Nyaundi): I can imagine it was a very tense situation and you as a Minister must have been concerned that they would be able to contain it.

Did you inquire from them what specific measures they were taking to ensure that the situation would be contained?

Mr. G.G. Kariuki: When we were dealing with an operation area, the officers had started a kind of security operation. You do not expect details because you are dealing with criminals who are also armed. So, it is very difficult to tell you: In the morning we have to do this, in the afternoon we are required to do abcd; it is their responsibility to deal with the situation according to the law.

The Commission Secretary (Ms. Nyaundi): Did you, for instance, seek to find out who was in charge of the operation, how many officers had been assigned to do that operation and what their instructions were?

Mr. G.G. Kariuki: I cannot remember who was in charge of that particular operation, but the person who was in charge of the district or the Provincial Police Officer (PPO), were supposed to be on charge; it was their responsibility.

The Commission Secretary (Ms. Nyaundi): Yes, Sir. I am just trying to imagine, on your flight back to Nairobi, you would want to be settled in your mind that the people you had left in Garissa would handle the situation well. That is the reason I am asking you whether you sought to satisfy yourself that based on the situation on the ground, adequate arrangements had been made to deal with the situation.

Mr. G.G. Kariuki: Yes. As far as they were concerned, the arrangements which had been made to deal with that matter were sufficient. I was given to understand that it was effective. Mark you, these are the people trained to do this kind of job and the Minister is not trained to deal with situations like the security ones.

The Commission Secretary (Ms. Nyaundi): Okay. What did they share with you that assured you that the measures taken would be effective?

Mr. G.G. Kariuki: I am not sure whether you are asking relevant questions because I have already said that I was satisfied and I was given to understand that whatever measures which had been put in place were capable of dealing with that situation.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Mr. Kariuki, when we were in Garissa, the witnesses who came before us mentioned that the military and the police were involved in this operation. I just wish to seek to confirm from you that when you got the briefing, you advised that the military was participating in the operation and the police were also to participate in the operation.

Mr. G.G. Kariuki: That issue should not come up because before 1963, the military and the police used to do joint operations in the area. So, I assumed they were doing the same. So, I did not get confirmation whether the army or the police did this work together, but it was in my mind that even before Independence, the military and the police used to do operations together.

The Commission Secretary (Ms. Nyaundi): So, in fact, we can conclude that when you were in Garissa on the 9th, November, 1980, there was nothing suggested to you that either the military or the police were not involved in the operation? There was no contradiction and, therefore, you understood that as had been the position from 1963, this operation was conducted in the same manner and with the same people?

Mr. G.G. Kariuki: That would depend on whether the police are not able to control the situation. Maybe, they could get support from the army in those areas; not in the other areas, but the whole of northern frontier districts, and that was before Independence. There were a lot of threats from our neighbours and the job of the military is to maintain international boundaries and make sure that our boundaries are secure and the police deal with internal law and order. In an area like that one, the operations sometimes could be held jointly. I cannot just remember when and what kind of operations took place during a certain period where the army was invited.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Kariuki. You had said that one of the other questions that you put to the PSC was: How many people were killed? Did they give you an answer to that question?

Mr. G.G. Kariuki: Of course. They said the figure was as I have just said it; four civil servants and, two civilians who died on their way to hospital.

The Commission Secretary (Ms. Nyaundi): Those were the people who were killed by the bandits?

Mr. G.G. Kariuki: Yes, by the bandits.

The Commission Secretary (Ms. Nyaundi): As a result of the operation, did you get a report how many people were killed?

Mr. G.G. Kariuki: By the armed forces?

The Commission Secretary (Ms. Nyaundi): As a result of the operation?

Mr. G.G. Kariuki: They were killed by whom?

The Commission Secretary (Ms. Nyaundi): Okay. Let me ask you this way: Did you receive any report as to the people who died as a result of that operation that was carried out by the military giving support to the police?

Mr. G.G. Kariuki: Not to my recollection because there was no report given to me that a certain number of people had been killed. What I was told was that, they were still looking for the person they suspected had been in charge.

The Commission Secretary (Ms. Nyaundi): Did they mention to you where they suspected that person to be? Did you have that kind of discussion?

Mr. G.G. Kariuki: Yes, because they said that person is known to be in the province and it was confirmed by the police when he killed the DO. He committed that kind of atrocity against the DO. But the police or the provincial administration did not tell me whether there was any other death other than the four civil servants and the two civilians.

The Commission Secretary (Ms. Nyaundi): Okay. So, you then had that meeting and then you proceeded to the public baraza, I believe?

Mr. G.G. Kariuki: Yes, I did.

The Commission Secretary (Ms. Nyaundi): When you went to the public baraza, about how many people did you find at the Park; the wananchi?

Mr. G.G. Kariuki: They were many. As far as I am concerned, I cannot remember how many they were. In fact, even if it is today, I cannot tell you how many. But you can give a rough estimate to say the number of people you saw. It is not a week ago; we are talking about 26 to 27 years ago.

The Commission Secretary (Ms. Nyaundi): But you confirm that it was a large crowd?

Mr. G.G. Kariuki: It was.

The Commission Secretary (Ms. Nyaundi): It had filled the park?

Mr. G.G. Kariuki: It had filled the park.

The Commission Secretary (Ms. Nyaundi): Did you address the public baraza?

Mr. G.G. Kariuki: Yes, I did. That was my purpose of visiting the place.

The Commission Secretary (Ms. Nyaundi): Thank you. Before I ask you about what you said at the baraza, who accompanied you to the baraza?

Mr. G.G. Kariuki: I was accompanied by the former commander of the army, General Sawe and also hon. Biwott. They accompanied me to Garissa.

The Commission Secretary (Ms. Nyaundi): Were you only three?

Mr. G.G. Kariuki: Yes. We were the three top officers there. There were two Ministers of State, the General who was the Commander of the army and I think we had other officers like the Provincial Commissioner and Commissioner of Police.

The Commission Secretary (Ms. Nyaundi): Would you remember who the Provincial Commissioner was, the one that accompanied you?

Mr. G.G. Kariuki: Yes. He was Mr. Kaaria.

The Commission Secretary (Ms. Nyaundi): And the Commissioner of police?

Mr. G.G. Kariuki: That time, he was Ben Githi.

The Commission Secretary (Ms. Nyaundi): So, then you began to address the baraza?

Mr. G.G. Kariuki: Yes, I did.

The Commission Secretary (Ms. Nyaundi): Apart from you, did anyone else address the baraza?

Mr. G.G. Kariuki: Yes. We were to be introduced by the PC and then the local politicians were there. Before the Minister who was in charge of the whole programme stood to speak, others had already spoken, right from the local people to the administration and the politicians who might have been there. And then finally, I took over the platform.

The Commission Secretary (Ms. Nyaundi): Thank you Mr. Kariuki. Would you remember the address or the statement made by any of the other persons you were with and really, what it was that you were communicating to the people at the baraza?

Mr. G.G. Kariuki: I think there were two issues here: The local people were very concerned of their security and what they said was happening from the armed forces. They said that the armed forces were harassing people who had not committed any crime. That was the local people's stand and then the provincial commissioner and others would say what they were doing and what had brought that kind of menace. Then the Minister would come and give a Government statement after having listened to all the issues given by everybody; he just stands and speaks what he thinks would be the Government policy.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Kariuki. You said, that on that day, the local leaders stated that their people were being harassed by the armed forces and the PC responded; do you remember what the PC said?

Mr. G.G. Kariuki: No, I cannot remember what he said. But when the PC talked, he sort of explained the general security situation in the area. He did not talk about the actual operation. But he talked about what he thought people would want to hear and what they did not want to hear because he is supposed to be very independent because he is not a politician. He is there to represent the President to maintain law and order.

The Commission Secretary (Ms. Nyaundi): Thank you so much. Then you have said that after that, you gave the Government position on the matter?

Mr. G.G. Kariuki: The Government position is from the Minister himself, having listened to all the sides. So, you just explain to the people what you have heard and from the Government side you have to give confidence to the people and give them hope; that if the Government finds anybody harassing them for no reason, the Government would take action. It was up to the Government to maintain peace and make sure that criminals do not hide in their midst. So, such kinds of statements are what the Minister normally gives to the people.

The Commission Secretary (Ms. Nyaundi): So, we are now looking at your speech on that day at the Baraza Park. What exactly did you say?

Mr. G.G. Kariuki: But, if you have the speech, you tell me what I had said!

The Commission Secretary (Ms. Nyaundi): No, I do not have the speech and I was hoping---

Mr. G.G. Kariuki: You have just said you are looking at it! It is not easy to remember all the words I used, but it is my thinking that the Commission should have tried to investigate and know what I said, so that they can ask me why I said so. But I cannot remember what I said just now.

The Commission Secretary (Ms. Nyaundi): Thank you Mr. Kariuki. We had actually assumed that you will be the best source of what you had said.

Mr. G.G. Kariuki: No! Do you think I can remember what I said unless I am reminded by the Commission or someone else? Then do not forget what I said was reported by the Press. We have no control over what they report. But the police had equipment to maintain and to record what I said. That is normal and it used to happen. This is because when a Minister is talking or any other politician, it has to be listened to very carefully; whether he is instigating people to war or whether he is preaching peace, so that the Government knows whether we are on the right direction. So, it is very difficult to remember what I said in that baraza and what actually was reported. But, what I have just said is what I said. I have already answered that question but what was reported, I really do not know.

The Commission Secretary (Ms. Nyaundi): Okay.

Mr. G.G. Kariuki: Although you can get it from the archive. You can get that information from the archive.

The Commission Secretary (Ms. Nyaundi): Thank you for that direction. Because you have told us that your visit there was sparked by bandits attack upon civil servants and one of the people who had been identified was Ali Madobe.

Mr. G.G. Kariuki: Abdi Adolf Madobe!

The Commission Secretary (Ms. Nyaundi): Is this one of the things that you spoke about at the baraza?

Mr. G.G. Kariuki: No! One thing is that the Minister is not so sure who is Ali Madobe. But the Government officers have information and they can describe the person to you, because we have the Special Branch officers who do this kind of work to exactly understand what is happening on the political side. Also, sometimes anticipate that criminal activities may take place in due course. But I cannot really tell you what happened.

The Commission Secretary (Ms. Nyaundi): You have mentioned earlier in the PSC meeting, his name had arisen and the PSC informed you that they thought he was in the region.

Mr. G.G. Kariuki: Yes, they thought he was still in the region.

The Commission Secretary (Ms. Nyaundi): So, in the baraza, the people who were present; were they invited to give information as to the whereabouts of Ali Madobe?

Mr. G.G. Kariuki: The local people were very much concerned with what action the Government was to take and also who was the killer of the four civil servants. The local people supported the Government fully. But supporting the Government does not stop the criminals to get into their midst. It is not the local people's responsibility to apprehend a criminal, unless they are so sure that if they do that, it is going to help them maintain peace. So, we always find a contradiction. The police think that the local people are hiding the person. Those are the kind of accusations which normally come from the police. The local people would state their case and most of the stories and information that you get from the local people is based, many times on truth. This is because they are the people who are affected. They will tell you what is happening. A local person without exaggeration or without politicizing issues will tell you the truth more than the Government officer or the Minister, because he is the one who is affected.

The Commission Secretary (Ms. Nyaundi): Mr. Kariuki, was it the understanding of the Provincial Security Committee and, is that the advice they gave you that the local people were likely to know the whereabouts of Madobe?

Mr. G.G. Kariuki: That is an accusation; that the local people knew where he was. The local people were accused of having that knowledge. But that was just an accusation because the local people also accused the police of saying untruths about them.

The Commission Secretary (Ms. Nyaundi): I just want it to be clear. So, you are saying the accusation was made by the Provincial Security Committee; that the local people would know where Madobe was?

Mr. G.G. Kariuki: Yes. That is what was said in the baraza by the provincial administration. They were cautioning the local people to make sure that they do not hide that guy because if they knew where he was, they needed to assist the police. If they did not know, they should make sure that he should not in any way hide within them because he is going to cause a lot of suffering for the innocent men and women.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Kariuki. So, going back to the guidance you had given us earlier on how security situations are assessed--- When you had a meeting with the Provincial Security Committee before you went to the baraza, was that something that the District Security Committee could handle on its own?

Mr. G.G. Kariuki: Yes, it could. In an area where it is not an operational area, sometimes where the police have come from other areas to join a certain group in a given district, it becomes more or less a provincial matter. But when it is just a district problem, it is sorted out by the district security officers who include the District Security Committee.

The Commission Secretary (Ms. Nyaundi): We were told in the statements that we heard earlier that that operation was conducted by combined efforts of the army, police and the provincial administration. Again, based on your knowledge on how you make assessment of security situations, what then was the situation in Garissa?

Mr. G.G. Kariuki: Frankly, I do not understand what you are asking because I have already answered those questions. There is no any other way I can get additional information, because I do not have it.

The Commission Secretary (Ms. Nyaundi): Thank you for that guidance. I will make it clear to you. Mr. Kariuki, after the baraza, how long did you stay in Garissa?

Mr. G.G. Kariuki: After the baraza, I came back home. I do not remember having stayed in Garissa because I went back home. I came back the same day.

The Commission Secretary (Ms. Nyaundi): So, you did not have another briefing with the PSC after the baraza?

Mr. G.G. Kariuki: No! Not after. I think everybody was represented. They heard what I said, what the police said and the administration. Therefore, there was no need for us meeting again. They took what we said as the Government position. But our main concern is when the public accuse the police for harassing them. That was our main concern because police are trained to act according to the law and to make sure that they do not harass innocent people, whether there is a curfew or not. But the curfew needs to be observed by everybody, not just by the ordinary persons only.

The Commission Secretary (Ms. Nyaundi): So, did you inquire and find out prior to your arrival in Garissa, how long the curfew had been in force?

Mr. G.G. Kariuki: As I said, I attended the PSC where all this information was given.

The Commission Secretary (Ms. Nyaundi): So, would you remember for how long that curfew had been in force?

Mr. G.G. Kariuki: Yes. I remember I was told that particular day, the curfew was imposed between 7.00 p.m. to 6.00 a.m. After addressing the meeting, I instructed that, that curfew be adjusted downwards to start at 7.00 a.m. to 6.00 a.m. in the morning.

The Commission Secretary (Ms. Nyaundi): Did you get information as to who had directed that there be a curfew?

Mr. G.G. Kariuki: As I said, I do not know why you want to repeat what I have just said. If I have exhausted the questions, I think you better let me free.

The Commission Secretary (Ms. Nyaundi): Thank you very much Mr. Kariuki. I think I will have a limitation with the questions.

Mr. G.G. Kariuki: I think you need to do that. I also have the limitation; English is not our language, you know that.

The Commission Secretary (Ms. Nyaundi): Thank you. Then you will accommodate me. What I had understood you to say was that there was a curfew, but you had not told us who ordered that there be a curfew. So, that is the information that I am looking for.

Mr. G.G. Kariuki: When the District Security Committee advises the Provincial Security Committee that the situation warrants a curfew so that they can deal with the situation effectively than normal--- The PC has two persons to inform or seek authority or concurrence; that is the President and, sometimes they can ask the Minister what they think. They have the authority to do all these things in terms of maintaining law and order. But in this case, the Provincial Commissioner did not seek permission from me but he got it directly from the President. In fact, even with the President, it is kind of consultation. Before the Provincial Commissioner and others impose a curfew, they have to seek concurrence from the President.

The Commission Secretary (Ms. Nyaundi): So, after you held the *baraza*, you came back to Nairobi?

Mr. G.G. Kariuki: Yes, I came back to Nairobi.

The Commission Secretary (Ms. Nyaundi): Did you then receive information from the Provincial Security Committee (PSC) in Garissa as to action that had been taken thereafter?

Mr. G.G. Kariuki: No, I did not receive information I can say was tangible, but we communicated to find out what was happening. We did this by telephone: “We are just calling you to say that we have done A, B, C and D” but we also continued cautioning them: “It must be done the way you are doing it, in terms of making sure that people are not harassed. Look for the criminals and do not harass ordinary persons”. We continued talking like that, and even the President would ask any question he would want to ask the Provincial Commissioner. He would also ask whether I got in touch with the PC in order to understand what was happening. That is something normal that happens when people are working together.

The Acting Chair (Ms. Namachanja): You have called the conversations that you had “A, B, C and D”. I am just wondering what the details of the conversations that you were having with the PC are when he told you that there was a certain action they were taking.

Mr. G.G. Kariuki: I do not know whether you will actually get anything from me to that effect, because at the time I started talking here, I said that the PC would sit down with you, together with his committee, and explain to you what had happened. I have said what I told them. So, any other conversation may not be---

The Commission Secretary (Ms. Nyaundi): Did he, for instance, tell you that they had gone into Bula Kartasi Village to look for Abdi Ali Madhowe?

Mr. G.G. Kariuki: No, they did not tell me about Bula Kartasi because, I even came to know the words “Bula Kartasi” from your first summonses, in which you said that I was the DC, Isiolo to which, through my lawyer, I objected because I have never been a DC. I cannot remember what happened in Bula Kartasi because I did not go there. So, I do not know what happened there.

The Commission Secretary (Ms. Nyaundi): Apart from the information you got from the PC, did you, while you were Minister, read in the newspapers that something had happened at Bula Kartasi?

Mr. G.G. Kariuki: Maybe, I read it but I cannot remember since we are talking of something that happened 27 years ago. That is why if there is something which happened at Bula Kartasi, I ought to have been told, first, by you – what happened and whether I had any knowledge about it – but I do not know what you want to know from me. I do not even know about Bula Kartasi.

The Commission Secretary (Ms. Nyaundi): So, when you said that you saw those stories in the newspaper, about their having been a raid on Bula Kartasi Village, in Garissa, to look for Ali Abdi Madhoe, and that, according to the media report, a number of people had died and a number of women raped, did you, as the Minister in charge of internal security, seek to find out exactly what it was that you were reading in the media?

Mr. G.G. Kariuki: The Minister and the Government are represented by the Provincial Commissioner (PC), the Provincial Police Officer (PPO) and of course, other civil

servants. So, whatever information you want to know, you could just ask the PC and the others who were involved. They can tell you what actually happened. In administration, we do not go by newspaper reports. In politics, you can go by newspaper reports. In security maintenance, you do not go by newspaper reports. You go by the facts. I am sure that whatever we were told was based on facts. It may not sound good to you because what you want said is not being said, but in security maintenance, you do not bother whether people believe what you are saying or not.

You are also always mindful of other consequences, if you do not tell the truth because the truth will eventually come out. If a certain inquiry is established, it will find you having told a lot of lies and then you will suffer the consequences. So, the civil servants, as much as possible, try to say what actually happens. Even the PPO instructs other people to do whatever he reports to higher authorities. So, if anything contrary happens, they will have to explain what they were told to do. So, there was no instruction to harass the public or kill innocent people. In every area, you find people who do not do the job in the way they are supposed to do it. That could happen, but it is not in my knowledge. I am not so sure about what happened in Bula Kartasi.

The Commission Secretary (Ms. Nyaundi): I am sure that, as a Minister then, you had time to reflect. You have even written an autobiography called *The Illusions of Power*. In that book, while speaking about Garissa and Wagalla, you have said: “Why does the Government refuse the occasional demands by the people of North Eastern Province for an independent investigation regarding the Wagalla Massacre of February, 1984 or a similar incident in Garissa in 1981 as well as others committed in the name of the shifita wars?” Do you confirm that, that statement is in your book – *The Illusions of Power*?

Mr. G.G. Kariuki: Yes.

The Commission Secretary (Ms. Nyaundi): Mr. G.G. Kariuki, do you recognise that the TJRC is probably a tool of independent investigations such as the one you have written about in *The Illusions of Power*?

Mr. G.G. Kariuki: No, I do not, because the kind of investigation I was advocating for in my book is a kind of a judicial commission, so that people could come and say what they saw and what they did not see. I envisage some kind of commission which would investigate a certain matter for the purpose of coming up with the truth, where political bickering would be eliminated, and where civil servants would be questioned as they hide facts. That is the kind of investigation I was talking about. I do not know whether your Commission will be able to do that, but it could if it decides to do so. However, during the time I was writing this book, there was nothing like the TJRC. As published in the media, as a politician, I did not support the formation of the TJRC. It is good to speak the truth. I did not see how the TJRC was going to solve any problem, if there were problems to be solved. It is based on the South African kind of reconciliation. So, I thought we needed to go straight to the point and establish who did what and why they did it; and if they committed crimes, they should be dealt with in accordance with the law. That was my intention.

The Commission Secretary (Ms. Nyaundi): What we have been trying to do is to answer the question: “Who did what in November, 1980?” You appear to suggest, in your book, that those are questions which the Government can answer. You were the Minister in charge of internal security then. So, who did what?

Mr. G.G. Kariuki: Yes, that is what you are saying but I am very clear in my mind. Maybe, I have not been able to pass to you whatever is clear in my mind – that my understanding of the kind of commission I was advocating in my book was a kind of a judicial commission. The TJRC could do the same thing, but I am not so sure. I am not very familiar with the TJRC Act.

The Commission Secretary (Ms. Nyaundi): Mr. G.G. Kariuki, this will be my final question. Did you, as the Minister for Finance, at any time---

Mr. G.G. Kariuki: I was the Minister for Internal Security, and not the Minister for Finance. Do not make the same mistake as in the case where you suggested that I was a DC in Isiolo.

The Commission Secretary (Ms. Nyaundi): My apologies!

Mr. G.G. Kariuki: Please!

The Commission Secretary (Ms. Nyaundi): I think I had my mind on money. I am very sorry.

(Laughter)

As the Minister for Internal Security, did you, at any time, have occasion to look at a report on what had happened in November, 1980, in Bula Kartasi?

Mr. G.G. Kariuki: No, I did not. If I did, I would have told you.

The Commission Secretary (Ms. Nyaundi): So, to your knowledge, there was no report that got to you as the Minister for Internal Security?

Mr. G.G. Kariuki: To my knowledge, I did not get such a report.

The Commission Secretary (Ms. Nyaundi): Mr. G.G. Kariuki, I want to thank you very much---

Mr. G.G. Kariuki: Before you thank me, it is good to put the record straight that I was not a Minister during the Wagalla massacre.

The Commission Secretary (Ms. Nyaundi): I have not asked you anything about the Wagalla massacre.

Mr. G.G. Kariuki: That is misinformation which has been circulating everywhere all the time. There are some people who want my name to be associated with the Wagalla massacre business. I want to make it clear today that I left the Government in 1983, and the Wagalla massacre happened in 1984.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Kariuki. That is the reason as to why we only summoned you in connection with what had happened in Garissa when you were the Minister for Internal Security.

I am done with my questions, but I will ask you to, please, be patient for a little while more. My fellow commissioners will also be asking you some questions.

The Presiding Chair (Commissioner Slye): Mr. G.G. Kariuki, I thank you for being willing to come here and testify before this Commission with respect to events that occurred during your time as Minister for Internal Security. I hope, with the assistance of individuals like you, this Commission will be able to discover who did what. We appreciate your assistance to us in trying to determine the truth of those matters. As you know, this Commission will make recommendations. Those recommendations, depending upon what we will find, depending upon how thorough our own investigations are, and depending upon how much information we are able to get from individuals like you, we may, in fact, find ourselves in a position where we will be making the same recommendations you have made in your book. At the moment, I want to thank you for co-operating with this Commission in its our investigations to make headway on that issue.

I would like to ask whether my fellow commissioners have additional questions for you.

Commissioner Shava: Mr. G.G. Kariuki, I thank you very much for coming and testifying today, and telling us what you know about this incident. Before I ask you any question, I would like to clarify that this Commission is, indeed, empowered to do the things you have spoken about. There have been very many truth commissions in the world – over 30 – which have taken several different models. Ours is unique in that it has a justice component. So, we can, indeed, make recommendations like the ones you have spoken about to deal directly with the issue of justice. We are empowered to find out who did what and make recommendations about what should happen to them.

Having said that, I have listened to you say that, as the Minister in charge of internal security then, you were in charge of security in the whole country. I have also listened to you say that you did not hear about Bula Kartasi or Garissa Kubaya, as it is sometimes called. I just invite you to reflect and, maybe, let us know. If you heard about that incident from a different individual who was charged with internal security responsibility then – that he did not know that so many people had been killed, raped and injured and so much property destroyed, so that the threshold was been reached for the incident to be called a massacre – would you classify it as personal failure or institutional failure?

Mr. G.G. Kariuki: As I said earlier, I was not given any information regarding Bula Kartasi. If something of the nature you have described happened, it would be a very serious matter if the Minister was not informed. I want to be very clear here that when we were dealing with Garissa Town, where the crime was said to have happened, I took it that we were talking about Garissa Town, and not another specific place in Garissa. So, if there were crimes which were committed by Government officers in Bula Kartasi, the officers who were in charge of that operation need to explain fully what happened.

Commissioner Shava: Thank you very much.

Commissioner Ojienda: Mr. G.G. Kariuki, I want to join my fellow commissioners in thanking you for your testimony. I also want to emphasise that when you have occasion to read the TJRC Act, you will find that some of the questions you have asked are addressed by that Act. Particularly, I want to point out to you that, as a Commission, after hearing witnesses like you, we will write a report, in which there will be recommendations. Some of those recommendations may actually include recommendations on prosecution. So, what you are telling us is very important.

We may also recommend further investigations into specific issues. We may recommend amnesty. When we have our amnesty hearings, people will appear before us and apply for amnesty. We will also recommend specific reparations after we do hearings in respect of reparations. Therefore, I want to assure you that the powers you yearn for in your book are powers which are available to you today. Therefore, let me reassure you that what you say is not in vain. This is a very serious Commission. We are taking our work very seriously because we know that its outcome may have permanent impact on the lives of certain people in this country.

I want to just ask you a few questions. I want you to honestly clarify whether you were unaware of any massacre that occurred during your reign as Minister for Internal Security. I am talking about the period before 1983.

Mr. G.G. Kariuki: Well, it depends on the description of “massacre”. If I may go by my understanding of “massacre”, during my time as the Minister for Internal Security, nothing of the sort happened – that was between 1980 and May, 1982, when I left the Office of the President.

Commissioner Ojienda: You have alluded to occurrences in North Eastern Province in 1981. Just tell this Commission what the state of security in the North Eastern Province was in 1981.

Mr. G.G. Kariuki: In the North Eastern Province, there had been security issues now and then. There was no time when there were no incidents in certain areas, but it is very difficult for me to remember exactly where the incidents happened during that time, unless you seek some reports from the Ministry of Internal Security, which will seek information from the police, because anything that happened was recorded, except that minutes pertaining to top security matters are sometimes destroyed--- That is a fact.

You have said that I tell you “quite honestly”, I believe that I have been very honest in my life. Any statement I am making here is according to what I know and what I can explain, if I am so asked.

Commissioner Ojienda: So, you say that in the Government, minutes of top security operations are destroyed. So, were the minutes of the meeting you attended on 3rd November, 1980, destroyed or are they available?

Mr. G.G. Kariuki: I am not very sure whether they are available or not but I said “some minutes”, and not all of them. It is especially very hard to get access to minutes of meetings on top secret matters involving security issues.

Commissioner Ojienda: Do you remember how many minutes you destroyed yourself during your reign?

Mr. G.G. Kariuki: It is not the Minister’s job to destroy minutes, or to be near where minutes would be destroyed because that is not the Minister’s work.

Commissioner Ojienda: Lastly, if I may ask you to just help us, you said that it was not possible to order the imposition of a curfew unless the President gave the final authority stamp under the Preservation of Public Security Act. So, before you went to Garissa on 3rd November, 1981, were you aware if the President had given such authority?

Mr. G.G. Kariuki: Yes, I was very much aware. I had all the authority from the President to go there. I got all the information about the curfew that had been imposed. So, I went there with full knowledge that the curfew had been imposed.

Commissioner Ojienda: Lastly, how would you describe your reign as Minister for Internal Security? How do you think you handled the North Eastern Province as the Minister?

Mr. G.G. Kariuki: That is why I said, right from the start, in *The Illusion of Power*; that one would think he is so powerful when he is actually not. The Minister for Internal Security did not have the presidential kind of power, so that one would say “so-and-so is in charge of a certain thing”. You always seek permission and authority from the person who appointed you. A Minister of State does not do his work without consulting the President. That is what it is. Even if I were to impose a curfew, I would not have done it unless I got a nod from the President.

Commissioner Ojienda: So, you are saying that the President was essentially in charge of all security matters in this country?

Mr. G.G. Kariuki: National security is under the President’s Office. So, the security of the entire country is the responsibility of the President. He appoints the Ministers to assist him discharge those responsibilities.

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

Commissioner Chawatama: Mr. G.G. Kariuki, I join the other commissioners in thanking you for making yourself available to take part in today's hearings. Maybe, from my accent, you may judge that I am foreigner. So, you have to indulge me a little bit in the questions that I ask. I would also like to inform you that I am a Judge of the High Court, and that when I was appointed to this position, I asked myself the same questions that you did – why not just go to court? But as I got to know the process a lot better, I found that this was a necessary process for this country and at this time. After visiting the northern Kenya region, I was fully persuaded that this nation needed a Truth, Justice and Reconciliation Commission. So, I do not know if that makes you feel a little bit better – that even a Judge of the High Court has found that this process is necessary.

As Commission Ojienda asked questions, you talked about the President. Who was the President at that time?

Mr. G.G. Kariuki: It was former President Moi.

Commissioner Chawatama: For how long did you serve in your position as the Minister for Internal Security?

Mr. G.G. Kariuki: I served for about two years.

Commissioner Chawatama: What was your position before then?

Mr. G.G. Kariuki: I was an Assistant Minister for Lands and Settlement.

Commissioner Chawatama: I just want to ask you three brief questions. When you talked about strength that was needed, you only talked about it when a situation and incident occurred, and there was need for help. You said that the District Security Committee, or the Provincial Security Committee, would ask for immediate strength. They would ask for help, in other words, and you mentioned personnel. So, the help would only be in terms of personnel?

Mr. G.G. Kariuki: Yes.

Commissioner Chawatama: All the time?

Mr. G.G. Kariuki: Yes, in terms of security.

Commissioner Chawatama: Okay. Having gone to Garissa, the curfew was imposed. In your view, do you think that was the only way of containing the situation? If you had been given a choice, was there something else you would have recommended?

Mr. G.G. Kariuki: That is a very interesting question. I wish I had any other way of dealing with the situation, but when you have the officers in charge of that particular docket – who are supposed to be your officers – give you the reason as to why they imposed the curfew, you tend to agree with them. That is why I keep on saying that you agree with them, but you caution them all the time, that a curfew should not be an open cheque to mishandle the public. They should have the curfew in place to enable them apprehend any criminals who may be within the township. Without a curfew, people would be as free as is normal. For instance, we had the particular person who went to Garissa Town to commit the crime he committed. Once a curfew is imposed, it becomes very difficult for a criminal. You would not know whether he was still there or he had left the town. So, it is very difficult when dealing with security matters. Security measures are never popular anywhere in the world. Security measures can never be popular. Security matters only become popular when people say “Oh, yes, so-and-so has been arrested. He has been doing A, B, C and D”, but when you deal with a security situation, something which I do not like getting involved in, it is a very difficult job for the officers in the field. You will appreciate that there are very many people who talked of their colleagues who had been killed, but very few who talked of the policeman who was killed.

Commissioner Chawatama: The reason why I asked that question was because you said that you would be the one to defend the security personnel before Parliament. So, I thought that you would exercise some discretion.

Your response leads me to the next question. The so-called “criminal” in Garissa was a known person. I am asking you this question because of our findings on the ground. When we went throughout the region, we found out that there was collective punishment at all times. Even where it was one lone person who had done something, a lot of villagers were punished. So, was it the policy of the Government to collectively punish the people in the northern Kenya region, even when the person who committed certain acts was known to the security agencies?

Mr. G.G. Kariuki: It has never been a policy of the Government to punish innocent people, and it can never be; but in the process, amongst the people carrying out this kind of an operation, there could be some who may not be responsible. Such individuals are noted by their seniors for some disciplinary action to be taken against them. So, I want to say that, at no time, during my time as the Minister for Internal Security, did the Government ever think of punishing an entire population. Development in all sectors was taking place in that particular area, and there was no way the Government could have any intention of leaving that area behind. The only setback was that there had been the problem of insecurity for so many years in that area. This was a matter which had not been politically resolved by the time Kenya became Independent. The issue had started many years back. There were those people who wanted the northern Kenya region to be part of our neighbouring country, and there were those people, in the same province, who wanted to remain in Kenya. The final statement that came out of the Lancaster House constitutional talks was that the issue had not been fully resolved. So, you can understand that the confusion that was there was not because of a certain person. You may also

understand that somebody who may be terrorising you is actually a freedom fighter for somebody else.

Commissioner Chawatama: Thank you very much, Sir.

Commissioner Farah: Mr. G.G. Kariuki, I join the other commissioners in congratulating you for having come before this honourable Commission and for having been very candid in your testimony. I am the last commissioner to ask you questions before the presiding commissioner takes over and, therefore, I am disadvantaged in that I may ask you a question which may already have been asked. I would like you to bear with me for the sake of clarity.

My first question is on the killer or killers of the DO on 7th November, 1981 and the four other civil servants later on the 9th. Were the killers shifta bandits or was it an individual?

Mr. G.G. Kariuki: When the problem of the NFD started, the word “shifta” came up. I am a writer but, to date, I do not know what the word “shifta” means. But it is said that it was terrorist gang. Nobody can explain what they were fighting for. So, one would describe the guy who is said to have been called “Abdi Madhoe” as a criminal or a shifta. He was entitled to those descriptions because he was in the area where these things were happening.

Commissioner Farah: My second question is that the people of Garissa, especially those in Bula Kartasi, were removed from their houses and assembled at a primary school ground, and the houses in Bula Kartasi burnt down; people were killed and women raped; people were held on that play ground without being given water or food for some days. Were you aware of these facts when you arrived in Garissa and joined the DSC and the PSC meetings?

Mr. G.G. Kariuki: Please, appreciate that I went there after the event had taken place. When I went there, I was briefed on what was happening. The curfew had already been imposed.

The Commission Secretary (Ms. Nyaundi): Commissioners, I just wish to bring to your attention the fact that someone is taking photographs. So, you may wish to address that issue.

The Presiding Chair (Commissioner Slye): I do not see any person doing so, but I want to remind you that we have directed that photographs are not to be taken during the testimony of a witness. You may take photographs before and after, but not during the testimony.

Please, proceed, Mr. G.G. Kariuki.

Mr. G.G. Kariuki: So, the issue of the atrocities said to have been committed in Bula Kartasi, as I said before, did not come to me. You must appreciate that if the security

agencies in Garissa then wanted to hide anything from me, it was possible for them to do so since they were human beings. So, they could have behaved in the manner they did, but I know nothing about the incident. It is a matter which needs to be followed up with the police, and the people who were in charge of the operation to explain clearly what happened, because it is not Government policy to herd people into one place, molest women and do all the things that have been said. It is not Government policy. So, it could have been an individual's policy, and that individual did not want us to know what was happening.

Commissioner Farah: If you did not know about it at the time you arrived and addressed the public baraza and then flew back, were you informed on the same later in the form of situation reports (SitReps) and what might have transpired?

Mr. G.G. Kariuki: I was informed that some houses had been burnt down but it was not clear whether the houses were burnt by the criminals or by the police. So, I was not quite sure about who did what in terms of houses. For that one, I asked the question because, as I was coming down from the aeroplane that took us to Garissa, I could see some houses which had been burnt. When I asked what was happening, I was told that they were not quite sure but there were some houses which may have been burnt by the criminals, and some which may have been burnt by the police. At that particular time, they confessed that if there was any house that was burnt by the Government forces, the Government was in a position to pay. That was the message I got thereafter, but whether that actually happened in Bula Kartasi or somewhere else, I would not know. What I know is that it happened in Garissa Town.

Commissioner Farah: My last question is on collective punishment, which you were earlier asked about by a fellow commissioner. Even though one bandit by the name "Abdi Madhowe" could have killed four civil servants and one DO in Garissa, a curfew was imposed not only in Garissa Town but also in Wajir and Mandera towns, which was essentially the entire North Eastern Province. You are aware of the long distances between Wajir, Garissa and Mandera. Was this not collective punishment since Abdi Madhowe could not have been in all those places at the same time?

Mr. G.G. Kariuki: I agree with you that he could not be in one particular place at the same time, but nobody knew which area he could have been. There was no way you could also detect or visualize that the person might be in a certain place. But collective punishment was not intended. The whole idea was to make sure that that criminal was apprehended, because he caused a lot of problems in the area. The Government action may have been excessive, but also the public needed to have understood that their responsibility was to make sure that a criminal of that nature was not allowed in their area. But this man would just come and kill innocent people in Garissa and Wajir, because he was mobile. He may have just been operating by the name of Matope, which we knew, but I do not think that he was acting alone. There could have been other criminals who were acting. So, while he was doing something in Garissa, somebody else was doing something in Wajir. That is possible, but I really sympathize with the people

who live in Mandera, Garissa and Wajir because they live under very difficult conditions. I am aware of that.

Commissioner Farah: Thank you very much, Mr. G.G. Kariuki, for your very candid answer and honesty. I have no further questions.

Commissioner Dinka: Thank you very much, Mr. G.G. Kariuki, for your testimony. I have only one-and-a-half question. It is true that to run after the shifta or gorillas is very difficult. But I have been in the northern region of Kenya for the last five weeks with my colleagues and three weeks alone. Everywhere I went, people were talking about collective punishment and rounding up of people and keeping them in that heat for days without water and food. I am sure that during your tenure as Minister for Internal Security, you must have received reports or read in the newspapers or even in foreign newspapers about these things. Have you ever heard during your time that anyone from the security forces has been punished for this kind of excessive behaviour against the people?

Mr. G.G. Kariuki: To be frank, not to my knowledge. I have never heard of anyone being punished over what he has done in the Northern Frontier District.

Commissioner Dinka: My half question which follows from that is: Some of its citizens may even be collaborators with foreign forces or whatever, but in the final analysis, the Government is also responsible for the security, order, peace and even prosperity of its own citizens. What has the Government done, for example, long after the situation in Bula Karatasi or Garissa when the houses were burnt? You have said that you heard that some houses were burnt, people killed and property destroyed. What has the Government or your office, as Minister for Internal Security, propose to do at that time or later to rehabilitate the population that has been affected and help them to regain their lives again?

Mr. G.G. Kariuki: That is a good question. First of all, the security activities in Northern Frontier District are not like any other activities that you see in other areas of the country. This is because that area had its own history before Independence. When a district is classified as a security area, there is a lot of misfortune which happens to the public. This is because the Government is after a certain clique of people or group who are terrorizing the public, and they can only operate within the public. So, we find a lot of problems to be able to do things that you might think, humanly ought to be done. Sometimes it is very difficult.

Regarding your question whether the Government has ever thought of helping the families of the people who lost their lives and property, I left that issue open because it is a security area. For an area like that where the Press is the only way to inform the public, they inform the public in their own way on how they look at things. But my concern here was that a lot of misinformation which comes from that area is because the Government has never, within its capability, thought about giving all the information regarding what has actually happened. The operation can be done but, eventually, you do not get the

report. What you get is what the people of the area talk about. So, I blame the Government, including myself that they ought to bring these people into the open. Whatever incident that needs to be known to the people, it has to happen, but if you leave it to disgruntled politicians to talk the way they want, they will say anything which could not even have happened. So, our biggest problem is that we have lived in a country where the truth was becoming a problem. The people who wanted to speak the truth went through big problems, because we have developed a culture where the Government needs not be said or disclosed. Some of the information was really nothing, but it was kept secret, and they created a lot of political bickering for nothing. If in the Northern Frontier District the truth was brought out, we would not have been in the situation that we are in today. For example, in Wagalla, they ought to have said that it happened and a number of people had died. Now, they left it for people to do guesswork through the Press. The Government is not managed by angels. It is by us and we make mistakes. I have been in this country long enough. Also, I was given that opportunity to be in the security docket. There are things which, maybe, the new Constitution which has created this TJRC, might give us some lead towards the real stability.

Commissioner Dinka: Thank you very much, Mr. G.G. Kariuki, for your openness and frankness.

The Acting Chair (Ms. Namachanja): Hon. G.G. Kariuki, let me also join others to thank you for coming to shed light on what happened in northern Kenya. I am sure the participants from northern Kenya will really appreciate this process.

Hon. G.G. Kariuki, from the research and testimonies we have heard from people from the former Northern Frontier District, they are wounded. When this Commission was set up, some were asking: Why are you going to open the wounds? What I want to tell you now is that those wounds never healed. In fact, they were gaping. If you had a chance to view the documentary that *Citizen Television* has been airing every Saturday and Sunday after lunchtime news, you will realize that almost everybody who appeared before the Commission to give testimonies, including young people, women and old people broke down. In fact, the trauma is very much. What is coming out is that some of the atrocities committed at the local level, top level people like you never learnt about them. For example, you do not know that after the chief's *baraza* in Garissa, the community members were rounded up in the field with temperatures over 50 degrees centigrade; houses were burnt and women raped. We saw the scars. The operation did not even spare the students. Up to 2003, I had a student colleague from Garissa who could not bear the sight of me taking Sprite. I asked her: "Deka what is wrong with the Sprite?" She told me that it smells blood, because during the operation, they were forced to take Sprite. Up to 2000 when we were students – and she was counseled – she could not bear the sight of Sprite. These are some of the wounds there. For example, you do not know that even Matope was the creation of our own security forces. The man could kill without caring because he was castrated. I wonder if you had any file on this man to understand what made him to be known as a notorious bandit. He could kill without caring because he had nothing in life. We asked them: "When you think about our security forces, what images come in your mind?" They answered: "They are crocodiles that eat everything in the

river.” This image was given to us by an over 80-year old woman who was raped. For the first time, she was talking before the Commission. She told us that she had never revealed this. So, they think of the security forces being crocodiles, hyenas and lions.

I am wondering, as a way of moving forward, what recommendation would you give us to change this image of the security forces among the people of Northern Frontier District?

Mr. G.G. Kariuki: Madam, I do not see the way you can change the image of the Armed Forces in the Northern Frontier District, because it is a historical problem. Some children were born and found themselves into this unfortunate situation. They have grown up and seen nothing except war. Now, the only way we can sort out that problem is, first of all, for the Government to be open, clear and explain to the people the role of the Armed Forces without hiding. It should tell the truth. If you get the truth from the Government, you will get the answer, because I think the biggest problem here is when you leave the situation to a politician and people who would want to exaggerate for their own interest, because that has been happening. Someone would come and explain that the crime was committed against her and you have no way of telling whether or not she is telling the truth. That is the situation we are in. Anybody can come forward and say many things, because they know that the Government will not explain better. The Government has kept its mouth shut about these situations and, therefore, that is why the public has all space to say what they want to say. There is no counter information. The role of the administration under the new Constitution should be to inform and tell the people exactly what happened. We have to start afresh, but if there is anything that the Government committed and is clearly known, I think there is no reason why the Government should not compensate the known cases where property was destroyed and where a woman was raped and it can be exhibited. I do not see why the Government should not be compelled to pay these people just as a token. This is because you know that even if you pay a woman who was raped – even Kshs10 million – you have not removed the ordeal or that problem in her mind. She will die with it. So, that is not the answer. The answer is to make sure that this kind of thing is dealt with permanently. But we have a problem when a neighbour does not co-operate with us and let their criminals loose. We will continue to have this problem. So, the people of Northern Frontier District should also start a new life; that they would want to see peace and nothing else. That is why I say that this can only happen if the Government and people of Northern Frontier District agree that we now move forward and forget the past. But compensation for known cases is absolutely necessary.

The Acting Chair (Ms. Namachanja): I am not asking you this because you were a Minister for Internal Security but as one of the top Government officials. How come we do not have any tarmac road from Garissa to Mandera to Wajir to Moyale to Marsabit? Was that a Government policy? How do people travel there? No wonder they do not see themselves as being part of Kenya. One young lady who is well educated was sharing about an incident and said that when she was at the border--- The “border” means the river as you enter Garissa. I remember Shava asking: “You mean the border from which country to which country?” It took us 17 hours to move from Mandera to Moyale. It

almost took my life, the bodyguard and driver because we rolled. It is God's mercy for wanting this Commission that we are even having these hearings. Why was this allowed to happen?

Mr. G.G. Kariuki: I think you have the answer, when you agree that there is a problem in the Northern Frontier District. Security is the key to all development. There is no way you will find a place with a security problem developing. This is because the first issue is to sort out the security problem. The second one is now to prepare for development. There are some areas which are very advanced. Some are politically motivated to be as advanced as they are while some are the security area. What I can advise the Chair is not to be very emotional about what has happened, because it has happened. Let us deal with tomorrow. How can we change the situation from the past to current? For sure, if you look at the statistics, you will see that the people from North Eastern Province are now in the Government in a big way, unlike the way it used to be. So, they are represented. That is why I am suggesting that we should not be very emotional as a result of what we have been told by individual persons. We should move to find the truth of what may have happened.

The Acting Chair (Ms. Namachanja): Hon. G.G. Kariuki, we were told but were also there and saw. So, it is not about hearsay. It is seeing and experiencing. Thank you. I have no further questions.

The Presiding Chair (Commissioner Slye): Thank you, Mr. G.G. Kariuki. I just had one issue that I wanted some clarification on. Earlier in your testimony, you mentioned the membership of the Provincial Security Committee. I heard you correctly say that there were three individuals. There was the police officer in charge of the area, security branch officer in charge of the area and the Provincial Commissioner. Were there no military personnel who were members of that Committee?

Mr. G.G. Kariuki: There could have been by invitation. But, generally, they are not supposed to be in the security committees. Maybe in an operation area like that one, they must have been invited often. This is because they were more or less dealing with the same issues. They are on the border and the police and others are in Tana. So, that communication among the officers is allowed.

The Presiding Chair (Commissioner Slye): Thank you. That is very helpful because we have seen some minutes from Garissa of the PSC meetings. In some of them, there had been military personnel. I do not recall if it was during the time you were Minister, but it was a little unclear to me why they were there if the Committee had only three people, but you have clarified that.

Again, I want to thank you on behalf of the Commission for coming forward and testifying. I want to clarify one thing that one of my fellow commissioners said with respect to our powers. While we do have the power to recommend amnesty, we cannot recommend amnesty for anything that qualifies as gross violation of human rights. So, many of the issues that we are looking into in the northern region of Kenya would not

qualify for amnesty. But as I also have said a couple of times earlier this morning, the testimony that you have given before this Commission; documents and other evidence, cannot under our legislation be used against you or the individual that gave them to us, in either civil or criminal proceedings or any proceedings involving a penalty or forfeiture. So, while we cannot and will not recommend amnesty, our legislation does provide certain provisions that we hope will encourage individuals to come forward and share information with this Commission. As you had said earlier, what the Government really needs is to be truthful and transparent. I am very happy to hear you say that. That is really what this whole process is about. This process is about understanding the truth of the past. It is through understanding the truth of the past that we can better construct a future that does not include the sort of injustices that we saw and heard about first hand in the northern region of Kenya. I know we will hear that in other parts of the country as we embark on hearings in other parts of the country.

With that truth, we will through our recommendations, push for justice. It is after one starts to push and achieve justice that one can really talk about national healing and reconciliation. Ultimately, that is what this process is about. So, I want to thank you, again, for being a part of this process and coming forward to testify before us. We did summon you and so, you did not have a choice with respect to appearing here, but you did have a choice with respect to your testimony and how much you were willing to share with us. I just want to express, on behalf of the Commission, my gratitude for the level of co-operation that you have shown.

Thank you very much.

Hearing Clerk, you may escort the witness back to his seat. Do we have additional witnesses?

The Commission Secretary (Ms. Nyaundi): Chair, these are the people we had called out in the morning and were not here. I was, therefore, going to propose that maybe we can call their names again. If they are not here, then you may adjourn until tomorrow.

The Presiding Chair (Commissioner Slye): While you do that, regardless of whether or not, they are here we will take a break for lunch. The question is whether we will come back this afternoon or tomorrow. So, you could read out those names.

The Commission Secretary (Ms. Nyaundi): Abdikadir Hussein, J.K Kinyanjui and Njeru Mugo.

The Presiding Chair (Commissioner Slye): Since none of those individuals are here at the moment, we will adjourn these proceedings for the day. We will resume tomorrow morning at 9.00 a.m., to hear additional witnesses.

I want to thank everyone for your co-operation in our proceedings. I want to thank the individuals we had invited to come here. Many of you showed up and we very much appreciate your presence and willingness to sit here and listen to the testimony of your fellow Kenyans. We want to appreciate the counsels who are here representing some of

the individuals and their co-operation with this process. It is something that we greatly appreciate.

Most importantly, we want to acknowledge and thank the members of the public, particularly those individuals who travelled here from the northern region to come and hear our testimonies. I want to thank, particularly the Kenya National Commission for Human Rights for helping to facilitate their presence here today.

With that, the proceedings of the Commission stand adjourned and ask the master of ceremonies to arrange for someone to lead us in closing prayer.
Thank you.

(Closing Prayers)

(The Commission adjourned at 1.40 p.m.)