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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON FRIDAY, 24TH JUNE, 2011,
AT THE NHIF AUDITORIUM, NAIROBI**

PRESENT

Tom Ojienda	-	The Presiding Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Margaret Shava	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia

(The Commission commenced at 11.10 a.m.)

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

(Opening Prayers)

The Presiding Chair (Commissioner Ojienda): Thank you. May we take our seats? I want to thank everyone for bearing with us. We are starting a bit late because we had to do a few things at the Commission before starting. So, we apologize for any inconvenience that may have been caused to those who were here since 8.00 O'clock.

I just want to simply set out the rules of this Commission for those who are coming here for the first time. One, every testimony that we receive here pursuant to our mandate ought to be respected. So, let us listen in silence to the witness and let us respect what they say. Let us not interrupt their testimony under any circumstance. Those who have their phones, please, switch them off. We do not want to have phones ringing in the course of the hearing or to have our proceedings interrupted. If you have anything to communicate, please, communicate it through the Leader of Evidence, who is in charge of leading evidence before the Commission.

Leader of Evidence, the witnesses are already seated and I can see counsel, Mr. Ndubi, in the room. Are there any primary issues that you may want to raise before we start?

Mr. Harun Ndubi: Mr. Presiding Chair, Sir, and Commissioners, I do not have any preliminary matter to raise but I just want to introduce myself as Harun Ndubi, representing the Wagalla Massacre survivors and victims as well as Truth Be Told Network, Abdirashid Salat and the networkers generally.

Thank you.

The Presiding Chair (Commissioner Ojienda): Thank you very much. Is there any other counsel present?

There being no other counsel, I would ask the Leader of Evidence to take over the proceedings.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Presiding Chair, Sir. The witness will be sworn in.

(Col. (Rtd) Frank Kariuki Muhindi took the oath)

The Commission Secretary (Ms. Nyaundi): Good morning and welcome to the Commission. For purposes of record, I would ask you to state your names, where you are staying and your current occupation.

Col. (Rtd) Frank Kariuki Muhindi: Once again, my names are Rtd. Col. Hastings Frank Kariuki Muhindi. I am a retired military officer. I am living in my home at Lanet, Nakuru. I am 70 years old.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Would you prefer that we refer to you as Col. Muhindi or as Mr. Muhindi?

Col. (Rtd) Frank Kariuki Muhindi: I guess this is common knowledge. I am a retired Colonel and I am known as Colonel.

The Commission Secretary (Ms. Nyaundi): Thank you. Colonel, I have with me a statement that you have recorded with the Commission and I now invite you to present that statement.

Thank you.

You can proceed to read your statement.

Col. (Rtd) Frank Kariuki Muhindi: I am a male. My identification number is 5073426 and my telephone number is 0722650690. My residential or physical postal address I have given is Nakuru District, Lanet Location, and Railway Estate. My occupation currently is a farmer.

I, Hastings Frank Kariuki Muhindi declare---

The Commission Secretary (Ms. Nyaundi): Col. Muhindi, I will request that you just read beginning from page two. That is the statement that you recorded in relation to the incidents that occurred.

Thank you very much.

Col. (Rtd) Frank Kariuki Muhindi: I am the named person and currently, a farmer in Nakuru's Railway Estate where I settled after retirement from the military in 1993. I served in the Military for 30 years where I started as a cadet and then went to UK in

1965. I was commissioned in 1965 as a second lieutenant and posted to 1st Battalion in Nanyuki, which later moved to their present location in Langata, where the current 7th Battalion or 7th Kenya Rifles is. I was there up to 1968 when I was posted to Military Training School before it changed its name to Armed Forces Training College as an instructor. In 1971, I was posted to the 3rd Battalion or 3rd Kenya Rifles in Nanyuki. The beginning of the following year, we relocated or the Battalion relocated to Lanet in Nakuru, where it remains to date. I later went to the United States of America (USA) in 1978 for further training and came back the same year. On return, I was posted to the 2nd Brigade Headquarters at Gilgil as a staff officer. Later, I went to India at the end of 1979 for a one year course. When I returned, I was posted to the 9th Kenya Rifles Battalion in Eldoret as the 2nd in Command. The same year, I was posted to 5th Battalion in Gilgil as 2nd in Command but acting as Commanding Officer as the Commander had gone to school. In November or December 1981, I was promoted to the rank of Lieutenant Colonel and posted to Langata Barracks; that is the 7th Kenya Rifles. I remained there from the beginning of 1982 up to 1986. We used to post units to take charge in North Eastern Province (NEP), whose headquarters is in Garissa, for a period of six months. My first tour of duty to the NEP was in 1979 when I was 2nd in Command, 9th Kenya Rifles and my 2nd as Command Officer of 7th KR in 1984. I was back there again in 1986 when I was promoted to the rank of full Colonel and appointed as the Defence Advisor in Kampala, Uganda.

As the Battalion Commander in NEP, what I can say is that we have general operations and we had a unit in Moyale in northern Kenya. We carried a large operation in Moyale where there was a cross border conflict and internal ethnic clashes. We used to believe that the local community was getting support from their kinsmen in Ethiopia. I remember I went to a place known as Malkamari, where there was an attack on a Kenya Army unit, but I cannot recollect the details. I want to mention that Kenya Army lost soldiers in the course of duty, although I cannot remember the number. They were killed by *Shiftas* and it was sometimes difficult to distinguish whether the attackers were Kenyan *Shiftas* or Ethiopian militia.

During those years, there were no developments to be undertaken by the army in the area because the area was actually hostile. The Government could not undertake any development and many local people were living in *manyattas* which were scattered in the bush. If we found people in the areas where they were not expected to be, we would handle them with suspicion unless they voluntarily told us the purpose of their presence.

What I can remember about Wagalla is that, we had visitors from Nairobi and Amb. Bethwel Kiplagat was one of them when Mr. Benson Kaaria was the Provincial Commissioner (PC), NEP. We, that is the Provincial Security Committee (PSC) accompanied them to the District Commissioners (DCs) Office in Wajir from Garissa in one Buffalo aeroplane which they used from Nairobi. It was on 8th February, 1984, and I was a member of the PSC together with the PC, Mr. Benson Kaaria, Provincial Police Officer (PPO), Provincial Special Branch Officer (PSBO) and the Provincial Criminal Investigations Officer (PCIO). I cannot remember their names. The situation in Wajir at that time was actually volatile because of feuds between the Ajuuran and Degodia clans. I

am aware that the District Security Committee (DSC) was getting concerned and they informed us, as the PSC. There must have been a series of killings between the two Somali sub-tribes and it was common knowledge. That was contained by the DSC which had the manpower because they had the Army, the Police and the Administration Police. It was rare for the General Service Officers Units to be included. These units had all the required arms. As a battalion, we only got involved if they felt the situation was beyond them and they would inform the PSC to make a decision. But where the DSC was able, they would plan on their own and mount the operation. However, if they were getting adversaries from outside their areas, then the PSC would get involved and even supply air support such as for transportation of soldiers and supplies. We made a courtesy call to the DC in Wajir; that is with this visiting team. He was in charge of the district and would, therefore, welcome the delegation and brief us on the situation touching on security, development and any other matter of concern to the people, who are policy makers. That visit informed us of the situation on the ground. I do not remember whether or not the DSC told us of the intended operation. But one could tell that they were planning to contain the situation, going by the prevailing reports we were receiving as PSC in Garissa. The operation they mounted was a decision of their own. You cannot deny them their own initiative. We went with the visitors to Mandera after visiting Wajir and after touring the area, we spent the night there; that is on the same day, the 8th, when they arrived. We went to Wajir and then we proceeded to Mandera after the brief at Wajir. We spent the night at Mandera and the following morning, we took them to River Daawa at the border point between Ethiopia, Kenya and Somalia. We call it border point one. After that, we returned to Mandera Camp and boarded the plane again and proceeded to Takaba which is under the jurisdiction of Mandera.

After Takaba, we proceeded to Liboi. We did not hear what the DSC was planning to do in terms of operation. If the team, that is the DSC, felt they had adequately planned an operation, they would go on to execute the operation without any further reference to us. We felt they were capable of doing that and only informing us, and I do not think the PSC would tell them not to. They informed us through their communication channels. The Commander in Wajir, the late Maj. Mudogo, informed me through the army channel that the police were getting through the OCPD and, likewise, for the PSBO and PCIO. The delegation left Garissa on 10th February, 1984. During the Wagalla operation, they did not inform us; that is the DSC did not inform us that they had rounded up the Degodia Community at Wagalla Airstrip and were screening them. At that time, we knew nothing whatsoever that was happening in Wajir with regard to the operation until 12th February, 1984, at about 8.00 O'clock in the evening when someone came from my camp and told me: "I think something amiss is happening in Wajir and everything is not okay. I think something has happened in Wajir." If I may divert a bit, I still think, because it is very many years ago, it was the duty officer or one of the operators who may have monitored what was happening in Wajir. He knew we were at Jamhuri Club with the PSC for the evening because we used to go there for games. He came and called me outside and informed me that something was amiss at Wajir.

I think I called Maj. Mudogo when I went to the camp. I went back to the club and called the PC aside, Mr. Kaaria, and informed him that I have got information that something

was not okay in Wajir. I told him I needed to get to Wajir first thing in the morning because I was trying to get Maj. Mudogo on radio and he was not coming over. I took a plane the following morning and when I got there, I found that Maj. Mudogo, the Company Commander was not there. A Land Rover came for me at the airstrip because Maj. Mudogo was out in the field. The district team was not there and I do not remember whether the DC or the OCPD were there. I proceeded to Wagalla Airstrip and found policemen guarding people who were at the airstrip. The civilians were lying down. I asked what had happened when I was taken round. The police told me that the DC had visited the previous day and when these people saw him, they stood up – I do not know – maybe thinking that he was the one to rescue them. However, the police who were guarding the DC fired at the crowd, killing and injuring many. It happened simultaneously as another crowd started running away from the airstrip. That is the information I got from the ground. I tried calling Maj. Mudogo again, but he did not respond to my call over the radio. I did not find bodies at the airstrip but I could see that the people were weak and burned by the sun. They had injuries and they were alive. I did not expect the injured ones to be there; there was blood. I do not know what caused the bloodshed because Maj. Mudogo did not respond to my calls all day long. I felt sad and went to the Acting DC. I do not recall whether he was there or not. So, I went back to Garissa the same day without a brief from any member of the DSC.

When I arrived in Garissa, I informed the PSC and the Department of Defence (DoD) Headquarters. Gen. Mulinge came over the following day and we met in Wajir. We were given a brief by the Acting DC but Maj. Mudogo was not there because he was said to be in Giriftu. This was reported to us by his men at Wajir. The army team in Wajir could not have had assistance from the DoD or other units without my knowledge, but I cannot remember the number of choppers on the ground. I had choppers in Garissa and one aircraft. The operation had been mounted while we were still moving around with the team from Nairobi. The then Chief of General Staff (CGS), Gen. Mulinge, could not make a decision when he had not been briefed by the person who executed and planned the operation, in this case Maj. Mudogo. The CGS only had the information which I gave him. I am not sure, however, that the CGS visited the scene at Wagalla. The Government later commissioned the Etemesi Inquiry to look into the occurrence at Wagalla Airstrip, which took place on the 12th and not 10th February, 1984 – if I may make that correction. After all this, a platoon was sent to Wajir from Garissa with two lorries of supplies and in case of any reinforcement required, but there was no operation going on at that time because those who were at Wagalla had been released; that is those who could be released. I think they said that some of those who had died had been buried while those who were wounded were taken back to Wajir for treatment.

That is what I have on this.

The Presiding Chair (Commissioner Ojienda): Thank you very much. Leader of Evidence?

The Commission Secretary (Ms. Nyaundi): Thank you, Col. Muhindi. I will ask you a few questions and then the Commissioners will also ask you additional questions for clarification.

You have indicated in your statement that your first tour of duty to the NEP was in 1979. At that, time, were you also stationed in Garissa?

Col. (Rtd) Frank Kariuki Muhindi: In 1979, I was in the 9th Battalion and I was the acting Commanding Officer because the Commander was not around. So, I went with the people and at that time, we were at Moyale.

The Commission Secretary (Ms. Nyaundi): Okay. So, you were based in Moyale?

Col. (Rtd) Frank Kariuki Muhindi: For a while.

The Commission Secretary (Ms. Nyaundi): That was from 1979 to which year?

Col. (Rtd) Frank Kariuki Muhindi: It was a very short time. I was not there for more than four months.

The Commission Secretary (Ms. Nyaundi): Okay.

Mr. Harun Ndubi: Mr. Presiding Chair, for the sake of the HANSARD staff, he needs to keep adequate distance from the microphone.

The Commission Secretary (Ms. Nyaundi): You have mentioned on page 3 of your statement in the final paragraph that you were a Battalion Commander in North Eastern Region and that you had a unit in Moyale. So, I am assuming that this was during 1979?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): That was the same duty tour?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): And you have said that there was an incident at a place called “Malkamari” that resulted in loss of lives?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): While we were in the northern region, we did receive evidence from a number of witnesses who also spoke of this incident and their recollection is that the army again moved in and confined people in their *manyattas* and interrogated? them. Do you have a recollection of engaging in that operation?

Col. (Rtd) Frank Kariuki Muhindi: Not at all.

The Commission Secretary (Ms. Nyaundi): Okay. You have said that the army unit was attacked and you are not clear whether it was by the Kenyan *Shifta* or Ethiopian militia?

Col. (Rtd) Frank Kariuki Muhindi: That is correct.

The Commission Secretary (Ms. Nyaundi): So, as the Battalion Commander, when you lost officers, in terms of determining who was responsible, what actions did you take?

Col. (Rtd) Frank Kariuki Muhindi: Normally, we would try to engage our people across the border; that is in Ethiopia, because we were still friends. We regarded them as a friendly country and sometimes we would even liaise with their commanders across the border. However, when we do not get them or when we get them and they do not give you the information, then you remain wondering who you are dealing with, because they were also experiencing the same skirmishes that we were experiencing across our border. Our people would cross into Ethiopia and make attacks while their people would cross over to Kenya and make attacks. So, it was difficult to determine who exactly did what.

The Commission Secretary (Ms. Nyaundi): Thank you. You have mentioned on page 4 of your statement in the first paragraph, and other witnesses have also spoken and said that these, indeed, were very difficult days in the northern region. I am referring to the third-last sentence of the first paragraph on page 4 where you say: “When we found people in areas where they were not expected to be, we would handle them with suspicion unless they voluntarily told us the purpose of their presence.” Could you expound further? What do you mean when you say: “When we found people in places where they were not expected to be?”

Col. (Rtd) Frank Kariuki Muhindi: Thank you. These areas were generally closed areas by the Government because of the skirmishes. Once there was an incident where our people were attacked and killed or injured, obviously sometimes we could not know who the attackers were. We could not know whether they were from across the border in Ethiopia, they were from Somalia or they were local people. This is because they all spoke in the same language and they had similar features. So, unless you got them or probably if you were lucky to apprehend one and interrogate him, it became very difficult to establish the attacker. However, we should remember that since Independence, that area had remained kind of closed district and that is why the military has been deployed there ever since because of those skirmishes. I also did mention that they were concentrated in the *manyattas*. If you found people further away from these *Manyattas*, then you became suspicious and you had to interrogate them to know where they were going. Normally, as military, we were accompanied by the police and the police did the duty of interrogating them. However, it was not always easy to get the true picture and reason for some people to be in areas where you would not expect or according to our operation codes to be in closed areas.

The Commission Secretary (Ms. Nyaundi): At that time people were expected to confine themselves within their *manyattas* and if they moved beyond their *manyattas*, you were entitled to an explanation. Is that what you are saying?

Col. (Rtd) Frank Kariuki Muhindi: Sometimes, depending on whom you find grazing animals or just loitering in the bush or along the roads, you became suspicious and you had to interrogate them. If it was a military unit, it used to be accompanied by the police who did the interrogation. Sometimes when they did not have policemen around, they would do the interrogation. But it was very difficult to know because people were in the bush and most of the people that we encountered who were harmful to our security would generally be in the bush hiding. This is why when you found people even on the roads, we tended to want to interrogate them to know where they were coming from, where they were going and where their *manyattas* were. Sometimes, we would even take them to show us where their *manyattas* were. Sometimes as we were trying to persuade them to show us where their *manyatta* was, they just disappeared and run away and we just called it a day. We were operating under very difficult circumstances. The reason why we would interrogate them was because, first, anybody who was in an area that is suspicious would hear your vehicle coming or they would see your troops when you were patrolling in the bush and they would walk to the road so as to appear to be innocent. But you could not know where he had hidden his gun, because that is what they used to do. Maybe he has a gun somewhere and this was why we would interrogate them. If we were not satisfied, obviously, we would take them to those who were qualified to interrogate them further.

The Commission Secretary (Ms. Nyaundi): Because you have said that your first tour of duty was from 1979 up to 1986, did you leave the region?

Col. (Rtd) Frank Kariuki Muhindi: Not at all. We used to go on a tour of six months duration and then after six months, another unit would relieve us.

The Commission Secretary (Ms. Nyaundi): Okay.

Col. (Rtd) Frank Kariuki Muhindi: So, it was rotational after every six months.

The Commission Secretary (Ms. Nyaundi): Okay. The situation where people had to explain when they were found away from their *manyattas*; was this the situation obtaining until 1986 when you left the northern region? In 1986, did you find that this was still happening?

Col. (Rtd) Frank Kariuki Muhindi: Generally, people were a bit freer because they could graze and have *manyattas* in larger parts. But we have these two sub-tribes namely the Ajuran and the Degodia who were kind of--- I would not call it co-located, but at least, they lived almost side by side. But they had distinct different sub-tribes or clans. You would find the Degodia in one place and the same applied to the Ajuran. At that time we had a problem with the two tribes, because they were not friendly.

They are distinct. Where you find Degodias you will only find Degodias. It was the same for the Ajurans. The problem we had was about those two tribes because they were not friendly. They were attacking each other, but the aggressor was always the Degodia against the Ajuran.

The Commission Secretary (Ms. Nyaundi): For clarity of our records are you saying that at least when you were there on tour of duty until 1986 if a person of Somali origin was found in certain areas and you thought his presence there was suspicious you would interrogate them?

Col. (Rtd) Frank Kariuki Muhindi: It was common.

The Commission Secretary (Ms. Nyaundi): When we were in that part of the country we were told that women were sexually assaulted by security officers. Did you receive such reports?

Col. (Rtd) Frank Kariuki Muhindi: No, I did not. All military persons or policemen knew that the repercussions would be drastic if they were confirmed to have done that. The punishment would be very severe.

The Commission Secretary (Ms. Nyaundi): The witnesses said that their relationship with the military was a very difficult one and they used terms like “Hyena” to describe the military. They viewed the military more of an enemy rather than a protector. Recalling the time you spent in the northern region, what could have contributed to the people speaking so painfully about the army?

Col. (Rtd) Frank Kariuki Muhindi: I think the problem in North Eastern Province is common knowledge. It started immediately after we got Independence. A certain community decided to rebel against the nation. Obviously, there would be difficulties. So, we started on a sour note at Independence. You have been granted Independence, but there were people who did not want to be in Kenya. They wanted to secede to Somalia. Apart from the Borana, the other sub-tribes of the Somali origin wanted to pledge allegiance to Somalia and there is no doubt about it. That is why the army and the police had to be deployed there to contain the situation and to ensure that, that part of Kenya remained the territory of Kenya. So, there was animosity.

My first posting after training as a cadet was to Garbatulla in Eastern Province. That area was volatile because we still had the *Shifita* there. We do not know how they teamed up to decide that they wanted to secede to Somalia. We had to operate in order to contain the situation and at the same time try to pacify these people to make them understand that they are part and parcel of Kenya.

The Commission Secretary (Ms. Nyaundi): When were you a cadet in Garbatulla?

Col. (Rtd) Frank Kariuki Muhindi: Not as a cadet, but as an officer. After commissioning from Britain, my first posting was at Garbatulla in January, 1965.

The Commission Secretary (Ms. Nyaundi): When we were in that part of the country residents said that they were being confined in villages.

Col. (Rtd) Frank Kariuki Muhindi: That is correct.

The Commission Secretary (Ms. Nyaundi): Would you then confirm that part of your brief when you went there was to make sure that they confined themselves to those villages?

Col. (Rtd) Frank Kariuki Muhindi: Yes, but they had the right to go grazing in the fields. They had to be in areas where they could be protected from attacks by other sub-tribes and ensure that they did not have many people roaming all over. At that time, you could not distinguish a Kenyan Somali from Somalia Somali. We believed they were getting a lot of support from Somalia.

The Commission Secretary (Ms. Nyaundi): Were you involved in escorting people to the designated camps in Garbatulla?

Col. (Rtd) Frank Kariuki Muhindi: By the time I went there the camps had already been established because the skirmishes had started much earlier before I joined. However, there were people still in the bushes and not necessarily in the *manyatta*. We were not calling them camps but *manyatta*.

The Commission Secretary (Ms. Nyaundi): Will it surprise you that we had reports from women that there were many incidents of brutal rapes against women who would be on their way to attend some basic needs?

Col. (Rtd) Frank Kariuki Muhindi: I would not deny that there would be such incidents. This is because some of the incidents were even inflicted upon them by their people. However, I can assure you that if a military person or a policeman was discovered to have been involved in that kind of activity, they were severely punished because that would be outside our code of conduct. There were specific instructions that that should not happen. We are human beings and it may have happened.

The Commission Secretary (Ms. Nyaundi): Is it within your knowledge of a particular incident where a security person was found to have done this and then disciplinary action taken against him? Are you aware?

Col. (Rtd) Frank Kariuki Muhindi: No.

The Commission Secretary (Ms. Nyaundi): The witnesses from that region felt that some of the things that happened to them at that time were discriminatory. For instance, the practice then that if you were found away from your *manyatta* you were to explain to security officers and you would be escorted by the security officers to your *manyatta*. In

your view, would you agree that this amounts to discrimination of the people of Somali origin?

Col. (Rtd) Frank Kariuki Muhindi: I do not know where we would draw the line between providing security for a community and at the same time engaging in following up such incidents wherever they occurred. You have *Shifita* men and they have hunger for women. You also have our people maybe one or two lunatics who would meet women and do such things. However, I can assure you that if a soldier was caught or accused of having sexual intercourse with the local women, the punishment was very severe. Those that came to light, I am sure were dealt with severely. I cannot, however, deny that there were such occurrences.

The Commission Secretary (Ms. Nyaundi): If, for instance, I am found along Moi Avenue and it is obvious that I am not working, it is not common behaviour for a policeman or an army man to stop me and ask me what I am doing there. Would you agree with those who say that it was discriminatory on the part of the security personnel to stop people in the northern region who are by nature pastoralists and ask them what they were doing with their animals away from their *manyatta*?

Col. (Rtd) Frank Kariuki Muhindi: I would not go by the parlance you have put. You cannot compare Nairobi which is a free city with a situation in the bushes. It would be improper. I do not know if you were old enough to have been around during the Mau Mau. I do not think so. People were confined in the villages and if they were found outside those villages other than the designated areas--- The situation in these areas was not as volatile as in North Eastern Province all the way from Garbatulla. You would be lucky to see me 100 metres away because the area was bushy. For one to be in such areas, he would be considered a danger to the community.

Remember I said that the intention since 1963 was to bring these people to understand that they were part of Kenya. The Government had to deploy troops there to ensure that Kenya remains one country. There were people whose mindset was that they did not belong to Kenya.

If somebody was wayward and information did not reach the commanders, it would remain hidden there. It may never get to the person in charge of that area because they did it in the bush. You are a commander at the base and you do not know what is happening in the bush. You rely on the information you get from your people on the ground.

The Commission Secretary (Ms. Nyaundi): This brief that people must understand that they are part of Kenya and containing those situations, in terms of explaining this to the people, this was not just limited to men, but also included women. Based on what we heard, even girls of age 14 years would be stopped by the army to explain why they were away from their *manyatta*. There was no restriction?

Col. (Rtd) Frank Kariuki Muhindi: There was no discrimination. First of all, anybody found in areas designated as no-go-zones would be suspected. I was a big boy during the Mau Mau and I know how we served them against the colonial Government. As boys we were used to maintain surveillance on the Johnnies and the *askaris* they had then. We had girls also who were being used like boys to do surveillance and keep kind of sentry. So, with that kind of knowledge I knew that a similar situation could obtain in that area.

The Commission Secretary (Ms. Nyaundi): You, therefore, instructed your juniors accordingly?

Col. (Rtd) Frank Kariuki Muhindi: This was normal briefing. You do not just expect to find only grown up people doing surveillance against you. In fact, you should be wary of such children. Normally, it is the children in a scouting mission who would take back information to those who had placed them there so that they know where we were. When we set up a base, we were attacked at night and yet you would not have seen a grown up person anywhere. How did they know that you were around and you were putting up a base somewhere? So, you would be suspicious that the children are being used for surveillance.

The Commission Secretary (Ms. Nyaundi): Once again, Colonel Muhindi, I must appreciate the information you have shared with us. It confirms some of the stories that the witnesses had told us and we were unable to understand. That is extremely useful. Would it then be correct to conclude that probably what we saw happen in the northern region was borrowed from the experience of the Mau Mau? In your own assessment would you say that the way the colonial masters dealt with the Mau Mau was a positive lesson from which our Government could draw how to contain difficult citizens?

Col. (Rtd) Frank Kariuki Muhindi: Having experienced the Mau Mau situation, I would not say it was good. The military are given a job to do by the taxpayers. It is not an easy thing to be able to balance these situations. We regarded the British as oppressive and anti-independence. They did not like us because they wanted Kenya to remain their colony. Here we are in an independent country and yet a section of the people wants to secede and join another country. So, the scenarios are different. The Mau Mau was against the *mzungu* who was trying to suppress a rebellion so that they could continue ruling peacefully.

The Commission Secretary (Ms. Nyaundi): I was asking that because you witnessed the two scenarios. During the Mau Mau period people were confined in villages. In the northern region we, again, see people being confined in *manyattas*. During the Mau Mau young people were used almost as sentries. The brief you gave your juniors is that even young people may be used as sentries. Would it be right then to draw a conclusion that in the northern Kenya there were people who had experienced this and were now applying it in that part of the country?

Col. (Rtd) Frank Kariuki Muhindi: It would depend at what level the people we have in mind were in the hierarchy of leadership. Definitely, we had people who had similar

experiences as I was a young boy during that time; 1952. So, if the Mau Mau were able to use us to carry out their errands, be their sentries and even to lead them to areas they want to attack--- When the Mau Mau came I think I was 11 years old, but they relied on me. They knew the young boys had grazed animals in almost all the areas and so they knew every nook and crook of the area. The same thing would be in North Eastern Province.

The Commission Secretary (Ms. Nyaundi): We will move to the incident that happened in Wagalla. You have confirmed that you were a member of the Provincial Security Committee (PSC). We have heard from the then PC, Mr. Benson Kaaria; the Acting Provincial Special Branch Officer, Mr. Ndirangu and the Secretary, Mr. Njue and they have confirmed that they sat with you. They have confirmed that sometime in November, 1983 you held a meeting where the Chairman, Mr. Kaaria, was informed that there would be a delegation of the KIC conducting a tour of the region. Do you have recollections of that meeting?

Col. (Rtd) Frank Kariuki Muhindi: In 1983 I was not in North Eastern Province.

The Commission Secretary (Ms. Nyaundi): So, you would not have been at that meeting. One of the witnesses, Amb. Kiplagat availed to the Commission a programme of the KIC tour. It had a schedule and a list of the people accompanying. He shared with us the itinerary that showed the visitors from Nairobi and the PSC and the DSC in the region who would be their host. Please look at this document that I have and confirm that the Lt. Muhindi listed as No.21 would be you.

Col. (Rtd) Frank Kariuki Muhindi: Last time you mentioned 1993.

The Commission Secretary (Ms. Nyaundi): I meant 1983.

Col. (Rtd) Frank Kariuki Muhindi: Your statement talks of 1984.

The Commission Secretary (Ms. Nyaundi): The tour was in 1984, but there was a PSC meeting in November, 1983. You said that you were not in Garissa in 1983. The KIC tour was in February, 1984 and there is a name on that list under No.21. Is that your name?

Col. (Rtd) Frank Kariuki Muhindi: I think you are confusing me with 1983 and 1984.

The Commission Secretary (Ms. Nyaundi): My apologies. So, with regard to the KIC tour of February, 1984 the No.21 on the list is you?

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, the minutes of 17th November, 1983 are with us and he is listed again. Maybe you want to lead him on that.

The Commission Secretary (Ms. Nyaundi): I will share documents with you that will help you refresh your memory. There are minutes for the meeting of 17th November, 1983. That is the document you are being shown. It is a PSC meeting and you are shown as being present. In those minutes, the Chairman of the PSC is informing the members

that the KIC will be touring beginning 8th February until 10th February. So you were in that meeting?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): You were, therefore, aware that the KIC would be coming?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): That is what we are referring to on page 4 of your statement. On that page, what information did you have on the situation on the ground and the information you received when you went to Wajir?

In the second paragraph, the ninth line of page 4 of your statement you stated: “The situation in Wajir at the time was actually volatile because of feuds between the Arjuran and the Degodia.”

Did you have this information before the KIC tour or it is information you were being told on 8th February?

Col. (Rtd) Frank Kariuki Muhindi: This information was with us. It was not a one-off thing. Those skirmishes and the animosity between the two tribes was common knowledge for some time.

The Commission Secretary (Ms. Nyaundi): Speaking for yourself, by the time you travelled to Wajir, this is something that you knew?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): According to the PSC minutes, it is a matter that was constantly on the agenda of the PSC.

Col. (Rtd) Frank Kariuki Muhindi: That is true.

The Commission Secretary (Ms. Nyaundi): Therefore, speaking for yourself, at least, by the time you were travelling to Wajir; you knew that the feuds between the Arjuran and the Degodia were volatile?

Col. (Rtd) Frank Kariuki Muhindi: The Degodia, I knew about it.

The Commission Secretary (Ms. Nyaundi): Okay. Actually we have heard opportunity to look at the PSC minutes---

The Presiding Chair (Commissioner Ojienda): Those at the back, ensure that your microphones are properly placed. Thank you.

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, maybe they should be asked not to switch the microphone on and off; that is also happening.

The Presiding Chair (Commissioner Ojienda): Please reduce the volume so that it does not interfere with the proceedings.

The Commission Secretary (Ms. Nyaundi): Thank you. I was saying that we have had the benefit of looking at the minutes of the PSC and it was a matter that was constantly on the PSC agenda.

Col. (Rtd) Frank Kariuki Muhindi: That is true.

The Commission Secretary (Ms. Nyaundi): Yes. So, as a member of the PSC, do you recollect, around the time that the KIC was going to have this tour, in February 1984--- Did you, as the PSC, hold a separate meeting with the DSC; that did not include the delegation from Nairobi?

Col. (Rtd) Frank Kariuki Muhindi: Not at all.

The Commission Secretary (Ms. Nyaundi): So, the only meeting that you had in Wajir-- - May be a better way of putting it, in all the meetings that you would have had in Wajir, a delegation from Nairobi was present in the DSC and PSC.

Col. (Rtd) Frank Kariuki Muhindi: My recollection is that, we travelled together from Garissa and we went to the DC's office; that is the whole team. Normally, the DCs would get a brief generally on what could be happening in their area of Jurisdiction. I remember after that, we did visit a few projects; I remember we went to see a borehole and a pump station. And, at least, we went around Wajir town. After that, we came back to the DC's Office and they had prepared some snacks for us. We were very many people; some of them were not involved in security issues. So, apart from what the DSC would have told us in the DC's office, these other forums we would be having so many people, nothing about security would be discussed.

The Commission Secretary (Ms. Nyaundi): Okay. Thank you, colonel. That was my question and even the witnesses who have come before you have emphasized that security issues would be discussed at the general meeting.

Col. (Rtd) Frank Kariuki Muhindi: Exactly!

The Commission Secretary (Ms. Nyaundi): So, when you were briefing the team from Nairobi about the volatile situation in Wajir, as the PSC and the DSC, on account of the Arjuran and the Degodia, would you remember whether it was then that the acting DC briefed the delegation or may be when you were at the well?

Col. (Rtd) Frank Kariuki Muhindi: That kind of brief would not be given out there. It would be given in the office.

The Commission Secretary (Ms. Nyaundi): It would be given in the office. Okay. So, you remember that, at least, the PSC and the DSC briefed the KIC on the volatile situation between the Arjuran and the Degodia?

Col. (Rtd) Frank Kariuki Muhindi: It would not be the PSC briefing the KIC at that meeting, it would be the DSC because that is their area of jurisdiction and they know what they are going through. So, the brief would come from them.

The Commission Secretary (Ms. Nyaundi): Okay. So, you do have a recollection of the chair of the DSC, Mr. Tiema, who had appeared before the Commission and had informed us that he did share a brief on the security situation obtaining in Wajir at the time?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): You have a recollection of that?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): In your own words, do you remember what he said?

Col. (Rtd) Frank Kariuki Muhindi: The emphasis here was the same problem of Degodia versus the Arjuran; which was quite worrisome. This is because if you have a section that is being oppressed by another section and they belong to one and the same country, and the forces there are supposed to be looking after their security, obviously it was the concern of each one of us. It was the concern of the DSC and the PSC. But the only thing that would have happened was that, when the DSC said that: “We are containing the situation.” It was their baby or, the ball was in their court. So, the DSC as an autonomous body in the security system; they have their own area of jurisdiction and in this regard, their area was Wajir District. So, whatever happened, or did not happen in Wajir District, the security committee there would have to say what happened.

The Commission Secretary (Ms. Nyaundi): Right. So, again, just relying on your memory, do you remember, on the 8th February, 1984 - The acting DSC had told you that the situation was worrisome and that they were containing it - Do you remember him or anyone asking him to explain what measures the DSC was taking to contain the situation?

Col. (Rtd) Frank Kariuki Muhindi: At that meeting?

The Commission Secretary (Ms. Nyaundi): Yes, at that meeting.

Col. (Rtd) Frank Kariuki Muhindi: No!

The Commission Secretary (Ms. Nyaundi): You do not remember if---

Col. (Rtd) Frank Kariuki Muhindi: I do not remember if anybody asked him what measures they were taking because they said that they were able to contain the situation.

The Commission Secretary (Ms. Nyaundi): What the acting DC, the Chair of DSC then, told us when he came before us was that, in the build up to this situation, as reflected in the minutes, at least, a number of elders had been detained under the preservation of Public Security Act. Do you have a recollection of that?

Col. (Rtd) Frank Kariuki Muhindi: No.

The Commission Secretary (Ms. Nyaundi): You do not have a recollection of that?

Col. (Rtd) Frank Kariuki Muhindi: No, I do not.

The Commission Secretary (Ms. Nyaundi): You do not have. Then he told us that, in addition to that, Mr. Tiema was previously in Garissa and then in January he had come to Wajir. He said, prior to his coming, he found that another measure that had been taken was to deny the residents of Wajir access to water points, both for animals and for domestic use. Do you have a recollection of Mr. Tiema? Maybe sharing that with him, or you having heard about him as a member of the PSC?

Col. (Rtd) Frank Kariuki Muhindi: I do not know if I heard that because I do not understand which wells these were. Were they the wells in the bush or the wells in Wajir Town, or which wells were these?

The Commission Secretary (Ms. Nyaundi): What he said is that they were denied access to the watering points as a measure--- His own words were that this would have compelled them to either surrender firearms or disclose those who had firearms. Were you at anytime aware that this was going on in Wajir?

Col. (Rtd) Frank Kariuki Muhindi: No.

The Commission Secretary (Ms. Nyaundi): You were not aware?

Col. (Rtd) Frank Kariuki Muhindi: No, I was not.

The Commission Secretary (Ms. Nyaundi): Okay. Now, during your time in the Northern Region, beginning from when you served at Garbatulla; did you get an appreciation of the fact that the policy then was to apply communal punishment?

Col. (Rtd) Frank Kariuki Muhindi: With regard to communal punishment, again, I would say that was not a policy because, one, these were our own people and we would have wished them to be truthfully members of the Kenyan community. To impose

punitive measures without giving alternatives would actually have not been right because if you have a community in a certain area, they need access to watering points. Maybe they would also have needed access to wherever they could get other provisions maybe in the small centres. If you restricted them into the bush, it would mean you want them to live on cows and milk alone. But they have those other human necessities that they would need. So, really, I do not think it would have been proper to deny them access to those facilities.

As I said at the beginning, there was suspicion that any time you found somebody in an area that is designated as “a no-go zone” for the reasons that I gave - I do not know whether that answers your question because that is the truth of the matter in any situation that obtained like that. If people moved freely, they are likely to get other people who would be interested in molesting them. And, if they are molested out there, they would also blame it on the security forces. So, really, we have to be very cautious; even on the information that we get. Sometimes they would be molested by their own people, but they could not say that it is their people who molested them.

The Commission Secretary (Ms. Nyaundi): The reason I was asking about communal punishment is because some people have described what happened at Wagalla Airstrip as a form of communal punishment. Given your own understanding of what communal punishment is, do you think what happened at Wagalla Airstrip would amount to a form of communal punishment?

Col. (Rtd) Frank Kariuki Muhindi: I would say that this was an operation planned to gather people to a common place where they could be interrogated easily. This is because any operation like that would most likely mean that these people were not able to get assistance in the bush and unless they were brought together so that they could be interrogated to be able to discern who are--- We are talking about two communities who were at each other’s throat. When you have an autonomous body like the DSC, and they have the wherewithal to determine what they want to do and they know the problem facing them. And, they are the people who are entrusted with the responsibility of seeing that there is peace in that area. They would normally sit down together as a security committee, find out if they have enough information on what they want or what they determine to do, and whether really it is the right thing to do.

So, there was consultation between them because they had the responsibility or the mandate to save life and property in their area of jurisdiction. So, with that mandate, they would determine what kind of operation they were going to undertake. Whatever they came out with, in their own assessment, they determined that they would require reinforcement from outside and with the resources they had they would have come to the PSC. But if they determined that they had the wherewithal to carry out an operation that they were planning to do, then it was a question of them planning and executing the plans. That is how it went on.

The Commission Secretary (Ms. Nyaundi): Thank you. Now, on page five of your statement, beginning with the fifth line up to the seventh line. You said, “I do not

remember whether or not the DSC told us of the intended operation. But one could tell that they were planning to contain the situation, going by the prevailing reports we were receiving as the PSC in Garissa.” I want to ask you just to expound on that, when you say that you would tell that they were planning and these are reports that you had received in Garissa.

Col. (Rtd) Frank Kariuki Muhindi: Madam Secretary, you did read out that there was a briefing at the DC’s office. Now, whatever brief that we got from the DC’s committee, it indicated that there was a problem which needed to be resolved or be tackled. As far as I am concerned, they knew that they were the people to think of what they wanted to do. As I had said earlier, if they planned on something that would require assistance from the PSC, then they could have told us. But if they realized that they had the wherewithal to undertake whatever they had planned to do, then it was a question of carrying out their mandate.

The Commission Secretary (Ms. Nyaundi): Thank you very much. The other witnesses who have come here before you confirmed that you held the meeting and no one mentioned that people were going to be rounded up at the Wagalla Airstrip.

Col. (Rtd) Frank Kariuki Muhindi: That is correct.

The Commission Secretary (Ms. Nyaundi): Everyone who has been here has said that. What they have all told us is that, on the evening of the 9th February, 1984, you were all being hosted by the Provincial Commissioner for a dinner. Is that correct?

Col. (Rtd) Frank Kariuki Muhindi: Yes, that is correct.

The Commission Secretary (Ms. Nyaundi): Okay. And, what Mr. Ndirangu told us is that, on the night of that dinner, there was a radio call that came from Wajir and he was then informed by the Provincial Police Officer (PPO) that the operation had commenced and there was need for reinforcement. Mr. Ndirangu stated that the PC could vaguely recollect the conversation of the 9th event. I am wondering whether you did have any communication on the 9th that the operation had commenced.

Col. (Rtd) Frank Kariuki Muhindi: Not at all!

The Commission Secretary (Ms. Nyaundi): Not all. Okay. Now, on the last page of your statement, you said that the Government commissioned the Etemesi Inquiry. That is before your signature, the second last paragraph. Have you had occasion to look at the Etemesi Report?

Col. (Rtd) Frank Kariuki Muhindi: No!

The Commission Secretary (Ms. Nyaundi): We received the report from the Permanent Secretary, Office of the President and Ministry of Internal Security. I have a copy with me and I would like you to refer to some parts of that report. I do not know whether there

is an extra copy of the Etemesi Report so that we can save on time. If you look at the last page, you will see that it is signed by the members of the--- Can you see that?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): So, this came to us from the PS. If you look at page 8 at the bottom---

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): So, look at paragraph E at the bottom. It is says, "The PPO on receiving the information and while acting on the PSC's decision, released another message that time and the signal was attached." Etemesi then quotes what the signal that the PPO sent says:

"All the Degodians plus livestock in Griftu Division and adjacent divisions would be rounded up and would be treated mercilessly. Everybody plus livestock will be confined in the area; no mercy will be exercised. You will get more instructions from these headquarters in another two days' time. No nonsense will be expected. Further instructions will follow on the relief of the livestock; report progress daily."

Can you see that?

Col. (Rtd) Frank Kariuki Muhindi: Yes, I can see it.

The Commission Secretary (Ms. Nyaundi): So, do you have a recollection of a signal coming in on the 9th at around 8.20 p.m.?

Col. (Rtd) Frank Kariuki Muhindi: Unless it came to the Headquarters, I would have not had access to their signals.

The Commission Secretary (Ms. Nyaundi): Okay. Because Etemesi, in his findings he says that the PPO on receiving the information and while acting on the decision of the PSC, released a message at 8.20 p.m. Do you recollect on the 9th of February, 1984, having a discussion with other members of the PSC? This is because what is happening in paragraph D explains that the DSC had decided to mount an operation. So the OCPD released a message to the PPO and that message was sent at 17.40 hours.

Now, in paragraph E, the PPO was responding that Etemesi had said that he was acting on the decision of the PSC. This could have been any time from 17.40 hours. As a member of the PSC, do you remember receiving information that a signal had been sent by the OCPD?

Col. (Rtd) Frank Kariuki Muhindi: No, I cannot remember.

The Commission Secretary (Ms. Nyaundi): Okay. So, when was the first time that you heard that there was an on-going operation?

Col. (Rtd) Frank Kariuki Muhindi: On the evening of 12th February, 1984, I remember we were at Jamhuri Club; the civil Servants club at Garissa. I remember, at some point, just about 8.00 p.m., one of my people from my camp came to see me. I do not remember whether he was the duty officer or just an operator who was dealing with the communications systems. But I remember he came and asked for me, and I went outside and I met him. I do not remember who it was, but he told me, “Afande, inaonekana kuna mambo inaendelea Wajir.” Nilimuuliza, “Mambo aina gani?” Akasema, “Siwezi kukueleza, lakini inaonekana kama kuna mambo yanaendelea huko ambayo si mazuri.” I do not know how I can put it in English.

The Presiding Chair (Commissioner Ojienda): I think for the benefit of the international commissioners, relate the same in English.

Col. (Rtd) Frank Kariuki Muhindi: So, the officer, whether he was a duty officer or whoever it was, came to the club and he sent for me. I went out and I met him, and he told me, “Sir, I think something has happened in Wajir, but I do not know the details.”

I am not sure, but I think I went to the camp and tried to call, trying to get the officer commanding the unit. I do not remember getting him. I went back to the club and I called aside the PC, Mr. Kaaria, and I told him that, “I have heard something from one of our officers and I do not know how to take this information, but I think things may not be okay in Wajir. Because we do not have anything that has come in writing, I intend to go to Wajir first thing in the morning.” I do not remember if we gathered the rest of the PSC then, because really this was very scanty information. But I would expect the PC may have mentioned it to them. For one reason, they may not have been in the club that evening, but we were with Mr. Kaaria. So, I told him, “I want to go there personally to know what may have happened in Wajir.”

That is exactly what I did. Very early in the morning---

The Commission Secretary (Ms. Nyaundi): Sorry, just for clarity. I just want to finalize. When would have it been the first time, now that you--- We have just been referring, trying to clarify some of the findings of Mr. Etemesi. You have said it was on 12th---

Col. (Rtd) Frank Kariuki Muhindi: Yes, on 12th evening!

The Commission Secretary (Ms. Nyaundi): I will just refer you again to the Etemesi Report on page 9 at the bottom, paragraph (i). When Mr. Ndirangu testified, he informed us that he got reports from his man on the ground, beginning that night of the 9th, he also got one on the tenth, but beginning on 11th and 12th, they went quiet. Now, if you look at paragraph (i), of the Etemesi Report, page 9 at the bottom; it says, “The officer commanding the army unit in Wajir also kept Garissa informed of what was happening

and what he was doing, and there were signals that were available. So, the officer commanding the unit in Wajir, communicated with you in Garissa?

Col. (Rtd) Frank Kariuki Muhindi: If we remember, we were with a delegation on 8th at Wajir and on 9th we spent the night at Mandera. On 10th we were nearly entirely airborne; from Mandera to Takaba, Wataba, Liboi and then Liboi to Garissa in the evening. Are we together?

The Commission Secretary (Ms. Nyaundi): Yes.

Col. (Rtd) Frank Kariuki Muhindi: Now, if in the interim period there was something that came in my absence, surely, it would have been the responsibility of my people in Garissa. When they saw me arrive, they knew that I had arrived that evening, although immediately after arriving late in the afternoon or early in the evening, we went straight away for the reception at the Commissioner's residence.

If those signals from Wajir were in my barracks, then I did not see them.

The Presiding Chair (Commissioner Ojienda): Colonel Muindi, do not make it your business to avoid the questions; just answer the questions as asked! Do not offer long explanations that are purely intended to avoid questions.

The Commission Secretary (Ms. Nyaundi): Thank you Chair. I would thank you for that additional information; we will come back to it. But, who was the officer commanding Wajir and who would he have been sending reports to, because the Etemesi Report says that Garissa was kept informed?

Col. (Rtd) Frank Kariuki Muhindi: I do not know because I do not remember seeing them.

The Commission Secretary (Ms. Nyaundi): Apart from you in Garissa, who were the other officers and what were their ranks?

Col. (Rtd) Frank Kariuki Muhindi: There would have been the officer in charge of Garissa District, who was a major, but there is an office set up. There would be the adjutant and the adjutant is the one who receives all communications and disseminates the same to wherever it should go.

The Commission Secretary (Ms. Nyaundi): So, in that kind of set up, you came back and you were in Wajir on the night of 9th---

Col. (Rtd) Frank Kariuki Muhindi: No!

The Commission Secretary (Ms. Nyaundi): Yes.

Col. (Rtd) Frank Kariuki Muhindi: No, it was not on 9th.

The Commission Secretary (Ms. Nyaundi): In Garissa on the night of the 9th?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): Now, the OCPD sent messages to the PPO as his superior; and the Etemesi Report says that the officer commanding the army unit was sending messages to Garissa---

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): The adjutant receives letters -just to suppose that these messages were sent at the same time, receives a message at 17.30 hours, that is what was said and the PPO was responding at 20.20 hours. The Etemesi Report says that he had consulted members of the PSC. Now, between 17.30 hours and 20.20 hours, the message had been received in Garissa from the officer commanding the army unit in Wajir. Who are the people that should have received that message in Garissa?

Col. (Rtd) Frank Kariuki Muhindi: The immediate person would be, obviously the duty officer. If the duty officer receives a sensitive message, he would bring it to me.

The Commission Secretary (Ms. Nyaundi): Okay. In your own assessment, was it a sensitive message?

Col. (Rtd) Frank Kariuki Muhindi: It must have been.

The Commission Secretary (Ms. Nyaundi): It must have been a sensitive message. So, did you receive it on the 9th of February?

Col. (Rtd) Frank Kariuki Muhindi: I do not remember. In fact, why I am not comfortable with that 9th day, I do not know what the content of the message was; may be it would help me jog my mind.

The Commission Secretary (Ms. Nyaundi): Actually, what we told other witnesses that, there is an appreciation that this is 27 years after the event. And, therefore, we will be guided more by what the standard procedures were then; that is the existing documentation and, where possible, we will use documents to help us remember. So, for purposes of clarity, we would just want to be clear that it was a standard practice that when the duty officer receives a sensitive message he would be communicating it to you. And, in any event, supposing there was a failure on his part, is this the kind of message that the duty officer would say; "Oh I did not want to bother the colonel with this"?

Col. (Rtd) Frank Kariuki Muhindi: No, it would be unheard of.

The Commission Secretary (Ms. Nyaundi): It would be unheard of. Therefore, in all probability, if things were working and if the message had been received, you would have

been informed on the night of 9th February? Colonel, just for purposes of clarity of our record, I would then want to ask you, is it possible that you were given the message on the 9th of February, 1984, by the duty officer, and now 27 years later you cannot remember?

Col. (Rtd) Frank Kariuki Muhindi: Yes, it is possible.

The Commission Secretary (Ms. Nyaundi): It is possible!

Col. (Rtd) Frank Kariuki Muhindi: I would like also to clarify because I am sure you have the relevant information and you have heard it from several witnesses. May be this is why I am getting a bit confused because when I went to Wajir, I was informed that whatever operation that had been mounted, it did not start before the 9th. I was also informed, and from my own assessment, that the people who were at Wagalla Airstrip had been there for several days. My assessment is that they must have been there for at least three days. There was urgency in going to see what was happening there. That is why I say that if the operation was mounted on 9th, it means that they were there that night, on 10th, 11th and 12th. So, I think I must have gone there on the morning of 13th.

The Commission Secretary (Ms. Nyaundi): Mr. Ndirangu, who testified before you also indicated to us that he had travelled on 13th. Did you accompany him on that trip to Wajir?

Col. (Rtd) Frank Kariuki Muhindi: I do not recollect.

The Commission Secretary (Ms. Nyaundi): Do you remember whom you went with?

Col. (Rtd) Frank Kariuki Muhindi: I think I went alone with the pilot.

The Commission Secretary (Ms. Nyaundi): Are you aware that Mr. Ndirangu did not step out of the airstrip. He met with the District Commissioner (DC) on the morning of the 13th February at Wajir.

Col. (Rtd) Frank Kariuki Muhindi: I am not aware.

The Commission Secretary (Ms. Nyaundi): When you went there on 13th, you have said that you were unable to reach Major Mudogo. Are you confirming that from 9th February up to when Gen. Mulinge came, you never spoke to Major Mudogo?

Col. (Rtd) Frank Kariuki Muhindi: That is correct.

The Commission Secretary (Ms. Nyaundi): The Commission has heard that there was another army officer in Wajir at that time, Capt. Njeru Mugo. Did you meet him?

Col. (Rtd) Frank Kariuki Muhindi: Yes. He was Major Mudogo's deputy.

The Commission Secretary (Ms. Nyaundi): Did you accompany him to the airstrip?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): Major Mudogo is the officer of the army who was holding fort at the airstrip?

Col. (Rtd) Frank Kariuki Muhindi: No. There were no army officers there when I went. This was after the shooting incident.

The Commission Secretary (Ms. Nyaundi): So, when you arrived on 13th February, there were no army officers at the airstrip?

Col. (Rtd) Frank Kariuki Muhindi: There were police officers at the airstrip.

The Commission Secretary (Ms. Nyaundi): Were there some people at the airstrip?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): Did you have a discussion with Capt. Mugo and did he explain to you the role, if any, that the army had played in this operation?

Col. (Rtd) Frank Kariuki Muhindi: The army was involved in the rounding up of people in Wajir and taking them to the airstrip. After they had been rounded up, the army was given the responsibility by the District Security Committee (DSC) to go in the field and bring others from the suspected areas. Major Mudogo was in the field and that particular day I did not see him because he did not come and he also did not respond to my calls. I assumed that he was on duty.

The Commission Secretary (Ms. Nyaundi): We have heard from other witnesses that army vehicles were used to transport people to the airstrip. Did Capt. Mugo or any other officer confirm to you that military vehicles were used to transport people to the airstrip?

Col. (Rtd) Frank Kariuki Muhindi: I should think so because they had vehicles. Generally, the army would have more vehicles than any other department. After the incident, the army vehicles would not be available because they would be out there with him with the troops gathering other people.

The Commission Secretary (Ms. Nyaundi): When you went there on 13th February and asked Capt. Mugo where Major Mudogo was, did he tell you whether he was doing things that were related to that operation or was he on other assignments?

Col. (Rtd) Frank Kariuki Muhindi: He was out on other operations.

The Commission Secretary (Ms. Nyaundi): Was it related to this operation?

Col. (Rtd) Frank Kariuki Muhindi: It could have been because they gathered people from Wajir Town and knew where the sub-tribes were and wanted to separate them. I knew he was in the field and I think his role was to bring people to Wajir for screening. That was my understanding.

Mr. Harun Ndubi: Mr. Presiding Chair, Sir, my apologies to interrupt but I would like to attend to something else right now. I should have said this earlier in the morning if I knew this would take long. My instructions from a client are to make presentations in terms of final submission regarding the Wagalla massacre before the conclusion of hearings. I have already indicated that to my colleague, Ms. Nyaundi. I would like some kind of indication, which I might as well get administratively, whether to file written submission or to come and do an oral submission. I might be free after 4.30 p.m.

The Commission Secretary (Ms. Nyaundi): The other witnesses had approached me on the same issue and what I had informed him is that my understanding of the procedures of the Commission is that you shall share preliminary findings at some point and that you may then wish to get feedback at that stage. That is what I told Mr. Kilukumi who was also of the view that he wanted to submit before the Commission. I indicated to him that apart from these hearings, the Commission will also be holding thematic hearings on massacres as a theme and may be dealing with other related issues such as the role of provincial administration as an institution, extra-judicial killings, marginalization and so on. So, it may be useful for Mr. Ndubi and Mr. Kilukumi to wait for the entirety of whatever else the Commission will be handling. That may enrich whatever submissions they may have, as opposed to limiting themselves to what we have done from April to date.

Mr. Harun Ndubi: Mr. Presiding Chair, Sir, then I do agree especially regarding the thematic hearings. We will particularly be interested to participate. My clients might want to make presentations as either expert witness or researched information and documentation to the Commission. So, we intend to participate at that level. The timelines are fine but in the context of sharing your preliminary findings for our feedback that is the one that I would probably have difficulty with because the context of my submission would be having some witness go through the transcript and state what the victims could find as the level of liability against the state or any institution. This will be able to assist the Commission to also assess evidence and information in the context of our eyes. That is what I am looking at. In terms of time, we are guided.

The Presiding Chair (Commissioner Ojienda): Thank you, counsel. I do not know whether Mr. Njeru had intended to address the Commission on the same point?

Mr. Elijah Mwangi: Mr. Presiding Chair, Sir, I just want to put it on record that I am accompanying Mr. P.C. James Ole Serian. We were not in record for the witness currently on stand, so we were limited in the way we could participate but I can confirm that Mr. Kilukumi had expressed similar sentiments to the Commission Secretary. We were waiting for direction just like Mr. Ndubi.

The Presiding Chair (Commissioner Ojienda): I understand that the counsel would want to provide a summary of the evidence and an assessment of what he sees as having been the testimony from the witnesses who testified and helped the Commission arrive at a finding on that report you are talking about. That is the script that Mr. Kilukumi is reading from. The Commission Secretary is saying that we will have thematic hearings and that in the end you will find time to contribute. Apparently, you sense that you will not have the opportunity to make a summary of the submission of the testimony of witnesses. The Commission's mandate under the TJRC Act is, at the end of the day, to write a report that will *inter alia* make recommendations contemplated under Section 48 of the Act. We should not bar counsel and other parties participating in this process from enriching the process or from contributing towards what we will find. We will communicate to both parties the appropriate time when you can make those submissions because you intend to assist this Commission to arrive at a finding that is reasoned. I think we would benefit, in the same breath, from the expert presentations that may be made to this Commission. We will communicate in due course the time when we will ask you to come before us. We know that witness want to know that they have had a final word in this process before we conclude.

Mr. Harun Ndubi: Thank you, Mr. Presiding Chair, Sir, we are pleased.

The Presiding Chair (Commissioner Ojienda): You are excused, Mr. Ndubi.

The Commission Secretary (Ms. Nyaundi): Thank you. We will continue from where we left.

We were just trying to see the information that you were able to gather. I was asking you whether Captain Mugo led you to form the impression that wherever Major Mudogo was, he was probably still working. Was he still going on with this operation or was he doing other operations?

Col. (Rtd) Frank Kariuki Muhindi: He was in the field which means that he was still on the assignment on behalf of the DSC.

The Commission Secretary (Ms. Nyaundi): In your statement, you have said that when you were unable to trace him or he did not respond to your calls, you felt sad. If you had formed the impression that what he was doing was related to the ongoing operation, why were you sad?

Col. (Rtd) Frank Kariuki Muhindi: I was sad in the sense that he was my right hand man in Wajir and if we met he could have explained to me in a language that I would understand better than speculating about what may have happened. Obviously, what had happened was bad or traumatic and I needed somebody who is under my charge and who is involved in the operation to be able to brief me so that whatever questions may come from Nairobi will be directed at me and if I do not receive a brief from my subordinate then it means that I would be as blank as those who are seeking information from me.

That is what made me sad because I should be having a flow of information on what was happening so that I could respond to any query.

The Commission Secretary (Ms. Nyaundi): Did you, at any time, get the impression that he was avoiding you?

Col. (Rtd) Frank Kariuki Muhindi: When you have people in the field and they have radios that would be the only means of communication. If someone is in the field he would be having his radio and the other subordinates would be having theirs. The other radios would be switched to his system because they communicate locally wherever they are. The only communication that would come to me is the one under his control. So, if I do not get through to him, then I am cut off.

The Commission Secretary (Ms. Nyaundi): Did you, at some point, feel that Major Mudogo should know that you are trying to reach him? You said that the subordinates would be recipients of your attempts to reach him and it would be your reasonable expectation that somebody must have told him that Col. Muhindi seeks to speak to you.

Was your sadness as a result of the assumption that he must have known that you were trying to reach him but he did not respond to any of your calls?

Col. (Rtd) Frank Kariuki Muhindi: That is correct.

The Commission Secretary (Ms. Nyaundi): We will discuss in detail what you found on the ground. Based on what you found on the ground did you think that he was avoiding you because of what was on the ground?

Col. (Rtd) Frank Kariuki Muhindi: It is likely. The sad thing is the fact that although he was involved in rounding up people and taking them to the airstrip, he left them in the hands of police officers when he went back with his troops to carry on with the operation. I was sad because he was not on the ground and yet he was my right hand man. So, obviously his brief to me on how they planned the operation and how they determined that it should be executed, I would have appreciated if it was him briefing me. That would have been helpful to me. At that point, I actually felt bad.

The Commission Secretary (Ms. Nyaundi): I see that it is now 1.30 p.m. and the witness has been sitting in the same spot for several hours and we have not inquired about the health and fitness of the witness.

The Presiding Chair (Commissioner Ojienda): Col. Muhindi, are you okay? How long do want to go, Commission Secretary?

The Commission Secretary (Ms. Nyaundi): I want to go on for a half an hour. Let us proceed.

You said that you went to their airstrip and you saw people. How many people did you see at the airstrip?

Col. (Rtd) Frank Kariuki Muhindi: It was not a very big crowd. They might have been between 70 to 100 people.

The Commission Secretary (Ms. Nyaundi): We have been told by some witnesses that the people were lying on their stomachs on the ground. Is this the situation that you found them in?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

The Commission Secretary (Ms. Nyaundi): Mr. Ndirangu told us that he had been there on 13th February, but did not go to the airstrip but when he was flying over, he was able to see a heap of clothes. Some witnesses have told us that people were lying on the ground naked. Were the people you saw naked?

Col. (Rtd) Frank Kariuki Muhindi: I think they were wearing *shukas* but the top parts of their bodies were exposed.

The Commission Secretary (Ms. Nyaundi): Did you see a heap of clothes?

Col. (Rtd) Frank Kariuki Muhindi: I cannot recollect that.

The Commission Secretary (Ms. Nyaundi): You have said that you saw blood. Was it at one spot or in different parts of the airstrip?

Col. (Rtd) Frank Kariuki Muhindi: There was blood on the airstrip because it is tarmacked. That was an indication that there had been more people on that ground than the ones present. When I went around, I could see blood on leaves. I presumed that it showed people were running away with injuries.

The Commission Secretary (Ms. Nyaundi): When you were seeing all these, you were with Capt. Mugo. Did you ask him to explain to you why people were lying naked and why there was blood?

Col. (Rtd) Frank Kariuki Muhindi: He could not explain to me why people were in that situation because he might not have been there that morning or the situation the previous day may have been different. The only thing I asked is how those people were being looked after. When I asked the police officers that question they told me what had happened.

The Commission Secretary (Ms. Nyaundi): Did you talk to the people who were lying down there?

Col. (Rtd) Frank Kariuki Muhindi: They were traumatized. It was a sight that you would not want to see again. They were weak and exhausted.

The Commission Secretary (Ms. Nyaundi): Some witnesses have told us that Capt. Mugo was very active in the torturing and aggressive interrogation of those people. Did any of the police officers tell you that?

Col. (Rtd) Frank Kariuki Muhindi: Nobody told me anything.

The Commission Secretary (Ms. Nyaundi): Mr. Ndirangu told us that he met the members of the DSC at the airstrip and they explained to him that they were going to call off the operation and people were being transported from the airstrip to their respective homes. Did Capt. Mugo tell you whether military vehicles were being used to transport people away from the airstrip to their respective divisions?

Col. (Rtd) Frank Kariuki Muhindi: There were no vehicles in the camp but the few that were available were being used for that purpose. So, it is likely.

The Commission Secretary (Ms. Nyaundi): Were you informed that dead bodies were loaded on to the military vehicles and transported?

Col. (Rtd) Frank Kariuki Muhindi: No.

The Commission Secretary (Ms. Nyaundi): Were you informed that some people had died at the airstrip?

Col. (Rtd) Frank Kariuki Muhindi: Yes. That is what I found on the ground.

The Commission Secretary (Ms. Nyaundi): Were you informed how those bodies were disposed of?

Col. (Rtd) Frank Kariuki Muhindi: I think I was told that some bodies were disposed of.

The Commission Secretary (Ms. Nyaundi): Were you told where those bodies were disposed of?

Col. (Rtd) Frank Kariuki Muhindi: No.

The Commission Secretary (Ms. Nyaundi): We have been told that some bodies were disposed of near the airstrip. Some witnesses said that bodies were dumped. I do not know whether you were told that bodies were dumped?

Col. (Rtd) Frank Kariuki Muhindi: The reason why I was sad when I could not communicate with my officer commanding, Major Mudogo, is because he is the one who would have told me how they disposed of those bodies, but I did not get him. I know Mr.

Njeru did not have enough vehicles at that time because most of the vehicles were out on operation by Major Mudogo. This was a joint operation which normally utilizes all the available material. I do not know whether Major Mudogo was on such an assignment of dumping.

The Commission Secretary (Ms. Nyaundi): A number of witnesses, including the Assistant Minister, Mr. Elmi, said that some locals got involved and were helping to transport the injured and even the dead with the help of Sister Analina who then took the bodies to a nearby centre. While you were in Wajir, did you hear about the work that Sister Analina was doing?

Col. (Rtd) Frank Kariuki Muhindi: I did not hear.

The Commission Secretary (Ms. Nyaundi): Therefore, it means you did not go to her centre there?

Col. (Rtd) Frank Kariuki Muhindi: I did not go there.

The Commission Secretary (Ms. Nyaundi): You returned to Garissa on 13th February and on 14th February at 8.45 a.m. there was a meeting of the Provincial Security Committee (PSC). Mr. Ndirangu had told us that the PC called the meeting because he had sent members of the PSC to find out what was going on in Wajir because communication was not flowing. You are telling us that you had a separate trip and you did not go with Mr. Ndirangu. On that day there were two meetings. The third meeting was there on the night of 15th February after Gen. Mulinge visited the airstrip.

Col. (Rtd) Frank Kariuki Muhindi: Maybe his memory was better than mine because they were together and they were consulting. I remember when I went to Wajir on 13th February, Gen. Mulinge came to Wajir. As I have written, it must have been on 14th February.

The Commission Secretary (Ms. Nyaundi): I want us to talk about the events of the 14th February. Do you remember that when you came from Wajir, the next morning there was a PSC meeting?

Col. (Rtd) Frank Kariuki Muhindi: It is likely.

The Commission Secretary (Ms. Nyaundi): I have a copy of the minutes here. I want you to confirm that they represent you as being present in the meeting of 8.45 a.m. We will then be looking at minute 1584.

Col. (Rtd) Frank Kariuki Muhindi: I was present at that meeting.

The Commission Secretary (Ms. Nyaundi): We went through these minutes with Mr. Ndirangu and he confirmed that he was then giving a brief of what had happened. Did you give a brief of what you saw in Wajir in that meeting?

Col. (Rtd) Frank Kariuki Muhindi: Yes, I did.

The Commission Secretary (Ms. Nyaundi): In minute 1584, you were apprehensive that the situation may get worse and a decision was made to take additional troops there. Based on your recollection on what you saw in Wajir, that is, the desperate situation and it had even saddened you, why then were additional troops being sent to Wajir and what was their brief?

Col. (Rtd) Frank Kariuki Muhindi: First, the people who had planned this operation, in my mind, were kind of traumatized in the sense that their plans did not go the way they had intended. Obviously loss of life is not a pleasure to anybody because that is the same lives that they are supposed to be safeguarding with their property.

So, when something goes wrong, it can be very disturbing. If you have people on the ground who have been involved in a situation you would not call “pleasant”, surely, it would be foolhardy of you to expect them to continue performing in the normal way. In my mind, such people would require a time of healing. You have people who are traumatised because of what has happened, and you still expect them to continue with the mandate they have been given in their area of responsibility. Would you leave them to continue that way and appear not to be caring or would you make some people readily available in case of repercussion? Naturally, you would want to send some people to be readily available, in case of an uprising. Those traumatized people may not be able to continue with the mandate.

The Commission Secretary (Ms. Nyaundi): So, those were going to provide support to your forces in Wajir?

Col. (Rtd) Frank Kariuki Muhindi: But not for what had happened. Whatever had happened had happened. Those were just to go and provide support, in case of any eventuality.

The Commission Secretary (Ms. Nyaundi): In the pages that follow, it is indicated that you had another meeting on the same day. You had a joint PSC/DAC meeting, and there are some remarks which are attributed to you in these minutes. This is the meeting of 14th at 11.50 a.m. There was a simple agenda. On page two of those minutes, you stated that you had had a meeting of security personnel in the presence of the PSC, and that you had pointed out to them that “the Government expected 100 per cent loyalty from us all, and any black sheep in our midst will not be tolerated.” Those remarks were attributed to you. Who were the black sheep being referred to here?

(Col. Muhindi shook his head)

The Presiding Chair (Commissioner Ojienda): Col. Muhindi, are you acknowledging the remarks? I can see you shaking your head without speaking.

Col. (Rtd) Frank Kariuki Muhindi: Yes because, in the circumstances, you were either with the people on whatever you had planned to do, and whatever direction it took, or you were on your own. I would not exactly recall, because there are other remarks you make, which are not recorded. I do not know what would have prompted me to talk about black sheep, but I could probably have been implying that there could be somebody, or some people, who could give information to other people we were not aware of. When we sit together, as the PSC, and agree to take a certain line, you would expect people to be 100 per cent together come what may. That is what happens everywhere.

If you are a team that is working together, you agree on what to disseminate so that tomorrow, you do not come to Muhindi and ask him about A, B, C and D, which he does not know about. You would like to be in tandem with each other. If I am asked a question, another gentleman is asked the same question, and another one is asked the same question, our answers should not be different, if we are working together. So, there could have been something which may have prompted me to make that remark, because I am sure that I did not make it in a vacuum.

The Commission Secretary (Ms. Nyaundi): Based on what I have seen on page 19 of the Report---

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, you asked for 30 minutes.

The Commission Secretary (Ms. Nyaundi): Mr. Presiding Chair, Sir, when he answers this question, it will be the final one. We can then break for lunch and resume later.

The Presiding Chair (Commissioner Ojienda): We intend to proceed till the end. So, proceed.

The Commission Secretary (Ms. Nyaundi): So, on page 19, paragraph (d), the Report says:

“To avoid any adverse effect the incident may have on the locals and the civil servants, the committee recommends that small-scale transfers be effected. The officers, especially the Officer Commanding Army Unit at Wajir, Maj. Mudogo, should be severely reprimanded departmentally.”

Was it your impression at that time that, maybe, the army, through Maj. Mudogo, was being held responsible for what had gone wrong at Wajir?

Col. (Rtd) Frank Kariuki Muhindi: I would not say so.

The Commission Secretary (Ms. Nyaundi): Was it ever in any discussion?

Col. (Rtd) Frank Kariuki Muhindi: Here, we are talking about Maj. Mudogo, the Acting DC and the OCPD, right?

The Commission Secretary (Ms. Nyaundi): Yes.

Col. (Rtd) Frank Kariuki Muhindi: What is the question?

The Commission Secretary (Ms. Nyaundi): Did you at any time get the impression that, in terms of responsibility for what had gone wrong at the airstrip, the thinking was that the army would bear the most responsibility?

Col. (Rtd) Frank Kariuki Muhindi: I would not apportion blame to one arm of that organisation, because the operation was collectively mooted, collectively planned and collectively executed by the DSC.

The Commission Secretary (Ms. Nyaundi): Mr. Etemesi, in his Report, page 15, paragraph 25(a), also stated that there were no operational orders issued by the PSC. That is what Mr. Etemesi and his team found. Did you, at any time during this operation, recall, as the PSC, giving any operational orders to the DSC?

Col. (Rtd) Frank Kariuki Muhindi: No. Under normal circumstances, we would not issue operational orders to the DSC, because that was their operation. They planned and executed it. If we were to issue any operational orders, then it would have meant that the whole PSC was involved. The troops in Mandera, Garissa, Wajir and Moyale, plus all the attachments from the police and elsewhere would be involved, and the Commanding Officer would be in charge. That was the only time you would issue operational orders. You do not issue operational orders to the DSC. What would you base it on? They were the people on the ground. They knew what they wanted to do. They knew their problem areas, and they knew what they had. If they did not have adequate resources, including personnel, they could ask for more from the DSC. When they were up to the task, they did it on their own. So, there were no operational orders as such.

The Commission Secretary (Ms. Nyaundi): Mr. Etemesi had also recommended that disciplinary action be taken against members of the PSC and the DSC. At least, when the former PC, Mr. Kaaria was here, he was of the view that he was demoted as a result of this incident. Mr. Ndirangu said that he was moved away from the region. Mr. Tiema was sent on leave. Are you aware of any disciplinary action that was taken against Maj. Mudogo?

Col. (Rtd) Frank Kariuki Muhindi: I am not aware.

The Commission Secretary (Ms. Nyaundi): Was any action taken against you?

Col. (Rtd) Frank Kariuki Muhindi: Not that I can remember.

The Commission Secretary (Ms. Nyaundi): On 23rd February, 1984, again, there was a meeting of the PSC. It is indicated that you were present at that meeting. I will give you the minutes. Under Minute 26/84 (b)(ii), which is found on page two, in the last

paragraph, you said that arms were being recovered. There is a remark at the top of page two, the last paragraph of the first minute, where you recommended, as PSC, that “stiffer measures should be taken against the Degodia”. This was barely two weeks after the operation at Wagalla. What, in the thinking of the PSC, could have been stiffer than what had happened at Wagalla?

Col. (Rtd) Frank Kariuki Muhindi: Madam, I do not know whether you have read this in conjunction with the second paragraph, which says:

“Centrally, the Degodia have proved very adamant in surrendering firearms. The PSC pointed out that apart from refusing to surrender the firearms they are concealing and harbouring destructive elements, who are constantly harassing the Ajuran. They have not shown willingness to co-operate with the security personnel.”

I do not know what I am supposed to answer.

The Commission Secretary (Ms. Nyaundi): Beginning the 9th of February to 13th February, Degodia men had been rounded up; the minutes of the PSC show that, that was an operation aimed at getting them to surrender firearms. Other witnesses who have appeared before the Commission have said that out of that operation, it was possible to get between seven and 13 firearms. The number is not clear. So, you were sitting as the PSC. This was your first meeting, apart from the special meetings after the incident. You were all aware. In fact, Gen. Mulinge had come. You would have dealt with that operation. You had gotten involved as the PSC. You, yourself, had travelled to Wajir and seen people at the airstrip. But now you were sitting as the PSC. You were aware that the DSC had done that, and you were telling them to take stiffer measures. So, my question is: In your thinking at that time, what could have been stiffer than what had happened at Wagalla?

Col. (Rtd) Frank Kariuki Muhindi: If those skirmishes and use of firearms were still prevalent in the bush, it would have meant that we still had people out there with guns, and they would still want to use them against other people. So, it would indicate that they were retaliating and doing it against those who were purported to be destabilizing, and so we would want to continue with the exercise of mopping up those weapons; so long as there was the report of firearms getting into the area, it would mean that they were planning to wipe out the whole sub-tribe.

The Commission Secretary (Ms. Nyaundi): Thank you, colonel. I will stop there. The Commissioners will ask you questions.

The Presiding Chair (Commissioner Ojienda): Thank you, Leader of Evidence, for the time you have taken – I think it is more than three hours – to question the witness. I want to ask the Commissioners if they have any questions for the witness. I will start with Commissioner Margret Shava.

Commissioner Shava: Thank you, Col. Muhindi, for your patience and perseverance. You have been here for quite a while. I just have a few questions for you. Initially, before the Leader of Evidence sort of let us to clarify, there was a bit of confusion around two issues. One was when exactly you went to Wagalla. You have now clarified to one of us, by bench-marking certain events and indicating when exactly you went to the airstrip. That one is now clear for the record.

The second issue I picked up was when exactly you were posted to Wajir. My understanding now is that although you were actually based at Langata Barracks, because every six months people would be posted out to Wajir, it was in that manner that you came to be in Wajir. Is that correct?

Col. (Rtd) Frank Kariuki Muhindi: It was not a posting. It was going to carry out duties in designated areas. We go to some parts of Eastern Province on a rotational basis. You have one battalion taking charge for six months, after which it is replaced by another battalion to continue with the same routine.

Commissioner Shava: So, for the sake of people who do not have a lot of knowledge as you do, of the military, that is why you say, in your statement, that you were actually at Langata but you were physically present in Wajir?

Col. (Rtd) Frank Kariuki Muhindi: Langata Barracks remained my main base, but Garissa was my operational base.

Commissioner Shava: I am glad that is now clear, for the sake of the record. I would like to discuss some issues to do with command and control, and the relationship between the PSC and the DSC.

We have heard a lot about how the DSC was responsible for its own decisions and operations. However, former PC, Mr. Kaaria, stated categorically that the PC had the power to reverse orders of the DSC where he thought that it was right to do so, because he wore many hats as the PC, the Chairman of the PSC, *et cetera*. He also told us that when the signal that was read out by the Leader of Evidence was received – the one in the Etemesi Report – stating that all men, cattle, women and everybody from Gusto should be assembled; “we all met as the PSC and revised the signal to the one that was subsequently read out by the Leader of Evidence to a less severe operational order”. He said that they re-worded the signal. What I am trying to bring out is that the PSC, even at that stage, was clearly aware of, and had some input into the operation in Wagalla. Would you agree with that?

Col. (Rtd) Frank Kariuki Muhindi: If it is on record, it means that is how it was.

The Presiding Chair (Commissioner Ojienda): So, you agreed?

Col. (Rtd) Frank Kariuki Muhindi: Is that what he said or is it in the PSC records?

Commissioner Shava: What I am saying is what Mr. Kaaria, in his testimony before this Commission, said. He said, “We were all there.” In the Etemesi Report, you see the signals to which I am referring. The first signal, which was very severe, talks about people and livestock; the second one was reviewed. What Mr. Kaaria told us is that it was the PSC that immediately sat and did that review. That being the case, would you agree that the PSC did have input into, and knowledge of, the operation at Wajir at that time?

Col. (Rtd) Frank Kariuki Muhindi: When is it dated?

Commissioner Shava: This was any time in the evening of the 9th, because this was received during the reception dinner, which you said you attended. Correct?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Shava: So, it was at that time when you met. It was between then and when the operation started at 4.00 a.m. in the morning of the 10th.

Col. (Rtd) Frank Kariuki Muhindi: We met that evening of the 9th and the visitors were still with us.

Commissioner Shava: He was not very specific but when he says that the PSC met and reviewed the order--- Mr. Etemesi says that “a message was received at 092020C”. We were told that, that means the date and also the time.

Col. (Rtd) Frank Kariuki Muhindi: In this case, it was in the morning.

Commissioner Shava: It was in the morning of which date? Was it the morning of the 10th?

Col. (Rtd) Frank Kariuki Muhindi: It was in the morning of 9th.

Commissioner Dinka: In this case “09” is the date, and “2020” means 8.20 p.m.?

Commissioner Shava: The signal says, if I can just refresh your memory:-

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

So, that was the signal that was received on the night of the 9th, which caused the PSC to meet and have a discussion; this resulted in a further signal that went out on the 10th, at 8.40, in the morning, I believe, which says,

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

So, the first signal was on the night of 9th and the second one, in the morning of the 10th. The revision was caused by a meeting of the PSC, of which you were a member. So, my question is, Would you agree, given that evidence, that the PSC did have knowledge of, and input into, the operation in Wajir?

Col. (Rtd) Frank Kariuki Muhindi: I do not know whether old age is catching up with me, but the 9th was the same day we were at Mandera. When were we in Wajir? Was it on 8th?

Commissioner Shava: You were at Wajir, having dinner with the Provincial Commissioner, who sent a delegation. On the 9th---

Col. (Rtd) Frank Kariuki Muhindi: On the 8th, we spent the night in Mandera. On the 9th, we left Liboi in the evening. We got to Garissa and had the reception at the PC's Office, and that was when we were doing all this?

Commissioner Shava: My question is really a simple one. I am not even asking you to respond from memory. My question is, if these kinds of discussions were happening, whether they happened on whatever date or time, they are what happened. Would you agree that the PSC had knowledge of the operation, and had input into the operation?

Col. (Rtd) Frank Kariuki Muhindi: That is what it would mean.

Commissioner Shava: Thank you very much. My second question is to deal with the very serious issue of sexual assault. You are now a senior citizen. You are probably watching what is going on in the country. You probably have some thoughts about what is going right and what is going wrong, because you have been in public service. You can see that sexual assault is an issue that is really growing in gravity in this country. I am thinking about what you said to us – that you never received any reports about sexual violations by any of your officers, and that should such a report have been received, it would have been treated very seriously. Your words were that “it would be very severe”. So, my question is: in the hierarchy of offences within the military, where specifically were sexual offences placed, and what were the penalties for such offences?

Col. (Rtd) Frank Kariuki Muhindi: That is not a misdemeanour. That is a criminal offence. So, it would be treated very seriously in the hierarchy of offences.

Commissioner Shava: When we were to Moyale, there was one witness who chose to testify in public. She testified about very serious sexual violations that occurred, and it was done in a group. Her evidence was that women were taken out by the army officers, who first intimidated them by removing the covering on their hair and tugging their hair, and then violated them. Somebody in the hall was so moved by that testimony that she

stood up and said, "I want to confirm that, that is what happened." These are women. They are mothers. They are wives. They are grandmothers, and they were testifying in public.

That woman went so far as to demonstrate the physical position that the women were forced to assume after the violation. She did this in public. So, when you have a group of women being violated in this way, what would you expect would be the reaction of the military on getting this information, unless we are saying that the military did not want to hear? I am not saying that you were the officer on the ground, or the officer in charge. What I am trying to bring out is that this is a pattern of violations we are now uncovering. That was what was happening. If this information was not coming to the people in charge in the military, or if it was coming out and was being ignored---

You have said that at an individual level, the person who did such a thing would be guilty of a crime?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Shava: What level of culpability would you then ascribe to the military as an institution, if those were the kind of things that were going on and the leadership of the military either did not know of them or did not want to know?

Col. (Rtd) Frank Kariuki Muhindi: I think that is a question beyond me, because a crime is a crime. Whoever the perpetrators were, be they individuals or groups, they were culpable. I can assure you that if that kind of information is brought to the hierarchy of the military, those men would be dealt with severely because that is actually one of the crimes we do not try in the military. It is a civil crime. I do not know---

Commissioner Shava: I understand you, Col. Muhindi. If I may rephrase my question: do you think that the military has a duty to be proactive in trying to find out whether these kinds of events occur and involve their officers and try to, maybe, do some training or try to punish some individuals to show that they should take the issue seriously, and that they intended to bring about some sort of reforms in the military? What would your recommendation be in this situation?

Col. (Rtd) Frank Kariuki Muhindi: It is just education. As I have said, if such crime was reported to me, the first thing I would do would be to have the culprits charged. If the accusations were confirmed, they would be handed over to the police for investigations because that is crime against humanity. So, the police would be involved. The military can easily hand over the culprits to be dealt with by the police, or the military can go ahead and deal with them. But I would expect such cases to be dealt with by the civil authorities.

Commissioner Shava: So, if there were these allegations of crimes against humanity, do you think that the military would have an active duty to investigate, as opposed to waiting

to see whether a case would be filed in a civil court? Do you think the military has a duty to take any sort of action at all, in the light of these kinds of allegations?

Col. (Rtd) Frank Kariuki Muhindi: Generally, they would hand over this responsibility to the civil police.

Commissioner Shava: That is one side of it, but do you think that the military had any responsibility to try and improve the situation in any way, perhaps by carrying out their own investigations or introducing some sort of training or by even bringing these issues to light? Do you think that the military, as an institution, has any sort of responsibility to take any action whatsoever, in the light of these kinds of very serious allegations?

Col. (Rtd) Frank Kariuki Muhindi: I will repeat that any offence that is committed within the military hierarchy would be investigated. If it is anything to do with civil offences, it will be reported to the police, and the police will take responsibility from there onwards to see to it that those people are charged in civil courts. The military would hand them over to the police, if it was established that those people committed that kind of offence. You can even hand over a whole platoon to the police, if they were all involved. However, investigations must first be conducted to identify the culprits, so that you do not punish the whole lot because you might also bring harm to your organisation.

Commissioner Shava: If a whole platoon was handed over to the police, that would be a huge military scandal. Do you think there would then be cause for any sort of reforms?

Col. (Rtd) Frank Kariuki Muhindi: If they were all involved, that is the only recourse you can have so that justice can be done; it would be done. A platoon is about 35 people. It can be done.

Commissioner Shava: Thank you, Colonel. I now move to a different area, to do with reinforcement. I do not know if you still have the copy of the PSC minutes of 15th February, 1984. Let us look at Minute 15/84. It goes over the page onto page four, which is the final page of those minutes. You see, the kind of reinforcements that you were talking about earlier, which, in your view, were to assist the troops on the ground, who were a bit overwhelmed physically and emotionally--- It was decided that those were the reinforcements which should then be posted?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Shava: I am looking at item (d), which says, “one army platoon from Garissa”.

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Shava: How would this order have been operationalized? Once the PSC met and decided this, you as the co-ordinating mechanism for the army, to whom would you have given those instructions?

Col. (Rtd) Frank Kariuki Muhindi: I would get my Officer Commanding Garissa, if he had men on the ground, to produce a platoon to go to Wajir, because that was the only Company I had there.

Commissioner Shava: So, the Officer Commanding Garissa would then have moved those people, or caused them to move, to Wajir?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Shava: That person was, as at that time, Maj. Chebet, who is now Brig. (Rtd) Chebet?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Shava: If for any reason you were not physically present in the headquarters, to whom would you delegate your duties or parts of your duties?

Col. (Rtd) Frank Kariuki Muhindi: If I was going to be away for a length of time, I would get my Deputy Commander from my base in Nairobi to come and take charge. If I was not going to be away for a long time, I would designate whoever was the Officer Commanding there to take charge. But under normal circumstances, the Commanding Officer must be there. In the case of a lengthy absence, his deputy – in this case, my deputy from Langata Barracks – would move to Garissa to stand in for me.

Commissioner Shava: If it was for a short time, for example, when you got on the aeroplane and went to Wajir to see what was happening?

Col. (Rtd) Frank Kariuki Muhindi: The Officer Commanding the Company at Garissa would be in charge, in conjunction with the Officer in Charge of the Offices; the Adjutant.

Commissioner Shava: Together with the Adjutant for administrative matters?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Shava: For operational matters, it would be the Officer Commanding, Garissa?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Shava: Thank you very much, Col. Muhindi. I have no further questions.

Col. (Rtd) Frank Kariuki Muhindi: You are welcome.

Commissioner Dinka: Col. Muhindi, mine are very few questions, because you have been here for a very long time. Please, I just want you to separate two things – the actual massacre or the actual killings in Wagalla, which was on 12th.

Commissioner Farah: Col. Muhindi, mine are very few questions because we have been here for a very long time. I just want you to separate two things- the actual massacre or killings in Wagalla on 12th and the actual meeting, discussing, agreeing and authorizing the operation. If the operation to collect Degodia adults from as far as--- I believe you are very well acquainted more than me, because I have spent all my life in the sea. Do you know Giriftu and Eldas?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Farah: Have you been to Bute and Butelehu?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commission Farah: Good! What about Dambas and Elben?

Col. (Rtd) Frank Kariuki Muhindi: Are those in Wajir or Garissa?

Commissioner Farah: In Wajir. What about Tarbach?

Col. (Rtd) Frank Kariuki Muhindi: I have been to Tarbach.

Commissioner Farah: What about Arbajahan?

Col. (Rtd) Frank Kariuki Muhindi: I have been there.

Commissioner Farah: Those you will agree with me were both in Wajir West and Wajir East?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Farah: Actually, separate the two things; when the plan was made to go and collect Degodia adult men from all these areas and assemble them in Wagalla Airstrip--- That was a plan which you were aware of, even as you alluded to in your statement and in the meeting on 8th. You could see the DSC was discussing it in your presence. They gave the KIC and PSC a report and you were conversant with that area and, therefore, could see that there was tension between the Ajuran and Degodia?

Col. (Rtd) Frank Kariuki Muhindi: The tension was there.

Commissioner Farah: Good! It was explained to you by the DSC that the people who were the bad boys were the Degodias and they were hurting the Ajurans? The DSC was planning something? So, if that operation would have gone well and nobody died, today maybe, you would be sitting here and saying: “Yes, I knew all about it and we authorized

it.” But because it went wrong on 12th and people were fired--- As you have already explained to us, it was a very traumatizing site that if you were there, you would not have done those things. For the record purposes, you agree now that you knew about the planning of the operation and the approval of it well in advance? Separate them, please.

Col. (Rtd) Frank Kariuki Muhindi: I want to repeat what I said and wrote. The DSC had their own plan.

Commissioner Farah: And they informed you about their plan?

Col. (Rtd) Frank Kariuki Muhindi: How do they inform us? They do so by telling us that they are planning an operation against this whatever---

Commissioner Farah: This tribe.

Col. (Rtd) Frank Kariuki Muhindi: We are organizing an operation. I do not deny that because that is very important. When a baby cries for milk, do you deny him?

Commissioner Farah: No!

Col. (Rtd) Frank Kariuki Muhindi: These are your own people. You have authority over them but you have given them the mandate and jurisdiction of an area. In this case, we are talking about Wajir District. These people were responsible for whatever good or bad that was done in Wajir District. If there is anything that would make the PSC rescind a plan by the DSC, then it must be very serious. We were working with people who were on the ground and those who were suffering. If you appear not to give them the autonomy which is inherent in the responsibilities they have been given, it means you are tying their hands; that, whatever initiative they may moot, they cannot execute until they have been told by the PSC.

Commissioner Farah: Agreed. I do not want you to explain too much. All I want is you to separate the two issues. Had there not been even a single person who had died in that operation, today you would have been here sitting and saying, “Yes, they told us that we were planning this operation and we approved it for them and, therefore, it happened.

Col. (Rtd) Frank Kariuki Muhindi: Sawa.

Commissioner Farah: Good! Now, it is only you and Mr. Benson Kaaria who have agreed to that, and I wanted to put it on record. This is because there were some other witnesses earlier who had said other things. Thank you very much, because our job is to ensure that the truth is told and documented, and the history of Kenya is written.

Now, I respect you a lot because I know you are a professional infantry man. I know that you were trained in the United States of America (USA). In fact, you were first trained in the United Kingdom, in a college known as Sandhurst.

Col. (Rtd) Frank Kariuki Muhindi: Not Sandhurst. It is Mons.

Commissioner Farah: Sorry, it is Mons. I respect you for all that. You also trained in India. Indian soldiers are very professional, particularly the way they managed Kashmir. I really admire them because they go for the *Shiftas* and protect the civilians. Having been taught that, when you came back, as you were deployed to North Eastern, is it your childhood memory of the Mau Mau ways of doing things that really took you over and made you forget about the training of India, America and Britain or is it the normal way of doing things of the Kenya Army that actually swept you aside and you just followed? I am asking you this question because you talked of *Manyattas* and *Badia*. Do you know *Badia*? Bush--- It was the first time for my friend here to go to North Eastern Province when we went there for the hearings. One of the things he told me is that he saw all the trees being about the same size and as the vehicle was moving, he was seeing the whole world going round. You are a man who was used those bushes. When you were a 2nd Lieutenant, you used to crawl in those bushes going for the *Shiftas*?

Col. (Rtd) Frank Kariuki Muhindi: Yes.

Commissioner Farah: Why is it that the Army has changed its role of going for the *Shiftas*, but has started concentrating on collecting people in the town into an open ground and harassing them, particularly in Garissa, Gubai, Galmagala and Malkamari which you have just now mentioned in your statement, as a passing thing? It was a very serious massacre. Why did you not have an influence in changing the mood of the Kenya Army operation? Be honest, please.

Col. (Rtd) Frank Kariuki Muhindi: First of all, we talked about the code of conduct. Here, you are dealing with professional soldiers and talking about Guerillas. The Guerillas have no code. The Armed Forces have code of conduct and even code of engagement. But unless you are engaged in a battle; that you have been fired at and you must fire back and do all that appertains to winning a battle, it will be very difficult to put parlance between Mau Mau and the Army. Why is this so? I was not a Mau Mau but a child of Mau Mau. The role I played for Mau Mau was to keep sentry, not to engage in whatever they were doing and wherever they were going. Coming to the North Eastern Province, I would actually assure you that I would not expect children who are my age – when the Mau Mau was on – to be engaged in combat activities. But they would be used for surveillance. That is what I was doing during Mau Mau. They would be used and given signals for alerting their friends that there was danger. This is why even the children had to be taken with--- Particularly, if you saw them behaving weirdly and in the wrong places in the bush, then there is cause for you to suspect that there could be some base somewhere.

Commissioner Farah: Thank you. Now, when you were deployed from Lang'ata to Garissa for six months, you must have been given an operational order, the way I know the Army operates. Is that correct? You were given an operation order for the six months to come. Can you, please, describe what that is for the Commissioners? Can you get us one copy of a typical operational order? From your friends, yourself and memory, you

can reconstruct it for us. The reason we want to know how you were operating is because it appears as if civilians were controlling you. Instead of you having your own Army intelligence and going out for patrols and getting information, you were just in the towns waiting for DSC and PSC meetings. You would meet a PC who does not have a very good intelligence system, because even the Special Branch people never used to go to the countryside. All they used to do was stay in town, go to the club that you were talking of in Garissa – Jamhuri Club--- Obviously, they would have informers from within the community, but the information would only be within the town and not from the reserves. Is it not?

Col. (Rtd) Frank Kariuki Muhindi: With all due respect, you have every arm of the Government with you to facilitate any investigations, listen, bring information to you and go on the ground where possible; have people on the ground who will bring information to you--- That is generally what makes a situation get built to warrant action. If it is an operation, you must have gotten all this information coming from different directions.

Commissioner Farah: Now come to Wagalla. Assuming you have got beautiful information and you are looking for rifles, you go to all these places I have mentioned to you; surely, in each of these places there is life going on. People are selling to each other animals and buying goods. So, they will not be able to tell you about somebody in bush holding rifles and only comes to strike and runs away back to the bush. So, by collecting them--- You started with Bula Jogoo and burnt houses. That is what the Army and police did. Maj. Mudogo featured very many times in that evidence. Very early in the morning of that 10th, they went and burnt a lot of huts. In fact, there was a disabled man who was burnt in the house. They took men to Wagalla and brought together all the other men from all those distant places for interrogation. If you took me from my house and had no rifle and maybe, had some money which was taken away in the operation and maybe, my wife raped--- Was that a good way of doing things? It is not you but the DSC that planned it. If you were in charge, would you have planned such a thing?

Col. (Rtd) Frank Kariuki Muhindi: With hindsight?

Commissioner Farah: Looking back into it, if you were in charge, in looking for those rifles, would that be the way you would have done business or your operations?

Col. (Rtd) Frank Kariuki Muhindi: I would not do it alone. This is collective.

Commissioner Farah: Yes, collective but you discuss and you would have said, “this is not the correct way”. Would you not?

Col. (Rtd) Frank Kariuki Muhindi: No, I would not know that. It would depend on the situation on the ground. When you have skirmishes, like there were in Wajir, everybody from Nairobi and Garissa is on the back of the DSC. What is happening? Why are we hearing this everyday? There would reach a time when they would say, “If we do not react to these queries, we might lose our jobs. This is human. So, what do we do? We are the people who are involved and are sending troops to try and rein in those people and

bring the guns that are in the bush. We are not getting the guns, yet those same people who are purported to be attacking others are doing it using guns and not arrows, machetes or *rungus*. We have asked them to surrender the guns and they have refused. So, the guns must still be in the bush or *manyattas*. How do we get the guns out of them?

Commissioner Farah: Supposing they were not in the *manyattas*, the guns were in the hands of very bad people called bandits who were in the bush roaming. When they find an animal, they kill and eat it. They do not stay with the people in the *manyattas*, because they know they will be reported to the Government. Now, you are punishing the very people whom you are supposed to have got the information from.

Col. (Rtd) Frank Kariuki Muhindi: Commissioner, I think what we are forgetting here is the fact that no operation is mounted without intelligence.

Commissioner Farah: So, according to you the intelligence was good?

Col. (Rtd) Frank Kariuki Muhindi: Exactly. They must have carried out and sent their emissaries. They must have had their own people carrying out those investigations. That is what we call intelligence gathering. You cannot mount---

Commissioner Farah: Let me interrupt you a bit. We are trying to save time. Finally, the people who were collected together and, as the Leader of Evidence said, maybe, four rifles were recovered. In fact, I think none was recovered. Even those four rifles that were found there were planted on people in order to justify the operation. Our job as the TJRC is to recommend to the Government change of policy. In the next Government, we will have a Governor and not a Provincial Commissioner. For that county Governor with his security, do you recommend again that people must be rounded up and brought to an open school field and given collective punishment or should we recommend that the whole DSC system should be disbanded, because in North Eastern Province, it did not work properly for the people? In fact, people were alienated from the Government. Could I put it differently? You, Col. Muhindi and the Provincial Commissioner, Mr. Kaaria, were young in the Mau Mau era. Could it have been that you people were alienated from the public and were trying to remember how to do things during the Mau Mau time?

Col. (Rtd) Frank Kariuki Muhindi: No! It is a long time and people should have come back to life.

Commissioner Farah: What do you recommend for the new Government to be done?

Col. (Rtd) Frank Kariuki Muhindi: Commissioner, there is one thing that I would like to mention here. Had this operation succeeded, today we would be telling a different story. Maybe, there would be total peace in that area and those people would have been rehabilitated, brought together and educated on the necessity to live together. I am sure we would be celebrating something good that was done by the forces. But now because it kind of aborted, we must vilify them.

Commissioner Farah: Finally, if that operation had succeeded, meaning if there would have been no death, it would be a different story. To me, that story would never have succeeded anyway because collecting people from Butelehu – somebody going to buy animals with his cash – and bringing them to Wagalla Airstrip and making them to lie on their stomachs for three days would not be worth the effort and peace, just because of four or seven guns. So, really, let us now talk about succeeding because that operation was never ever planned to succeed, even if nobody would have died. But let us come to another issues, because time is really pressing us. I wanted your opinion---

Col. (Rtd) Frank Kariuki Muhindi: Mr. Presiding Chair, had that operation succeeded-- I think partially it succeeded because today the kind of skirmishes and insecurity that was obtaining then is not longer there. If it is there, there are very isolated cases. It is good to give that observation.

Commissioner Farah: Maybe, you retired and have forgotten. Do you know how banditry was finished in North Eastern Province? It was by appointing a Provincial Commissioner to North Eastern Province, Mr. Mahamud Ali Saleh, who is our current Ambassador in Saudi Arabia. Even now, the DC, Mandera, is a Maasai and understands the local people's culture. The PC here, Mr. ole Serian is in tandem with the people and understands the culture of animal herding and how a *manyatta* is erected, because the Maasai and Somali *manyattas* are almost the same. But for you, who was from Central Province--- In fact, when you say Mau Mau and the *wazungus*, that was a thick forest. Here in North Eastern, it is just a bush. I am glad all the Commissioners saw it. Anyway, that is my last question.

The Presiding Chair (Commissioner Ojienda): I think there are no more questions from Commissioner Farah. Commissioner Dinka!

Commissioner Dinka: Col. Muhindi, I would like to join my colleagues in thanking you for giving us your time and coming to testify before this Commission. The discussion we have had this morning and afternoon with you has given us a lot of clarity to the task we are pursuing. I have only a few questions. Actually, I have one or two questions. Was there a possibility of any kind of movement from, say, Moyale to Wajir or Mandera to Wajir in North Eastern Province without your approval?

Col. (Rtd) Frank Kariuki Muhindi: No!

Commissioner Dinka: It cannot happen?

Col. (Rtd) Frank Kariuki Muhindi: That is operational or going for operations?

Commissioner Dinka: Is there another reason they should go?

Col. (Rtd) Frank Kariuki Muhindi: Sometimes, you find some troops coming all the way to Wajir or going to Isiolo or Mandera to get re-supply or other necessities. But for operations---

Commissioner Dinka: No! No! For being stationed here for a while.

Col. (Rtd) Frank Kariuki Muhindi: For operations, like now the unit at Moyale, was under a different battalion with a different mandate, that is, Eastern Province. Now, anything happening in Mandera, Wajir and Garissa and the other new districts including Ijara and the rest---

Commissioner Dinka: Okay. Now, if you look at page 9 of the Etemesi Report, it says that, “as of 11th February, that is one day after the operation, the following number of troops was already in location: The Army in Wajir had 160 men; A Company plus a platoon from Moyale and Garissa.”

Col. (Rtd) Frank Kariuki Muhindi: I am not aware of that and I do not see how they would have come there on another assignment. There is no way anybody---

Commissioner Dinka: You remember earlier the Leader of Evidence mentioned to you that the DC or somebody from the DSC Wajir sent a request for reinforcement and then you said that they had everything necessary and did not need any reinforcement? That is why I am bringing this up.

Col. (Rtd) Frank Kariuki Muhindi: If you look at the point on the Army, we had 160 men of A Company which was stationed at Wajir. Then, you say there was a platoon from Moyale and Garissa.

Commissioner Dinka: That is reinforcement for the Army that was already there.

Col. (Rtd) Frank Kariuki Muhindi: I am not aware of this. The only reinforcement I know about is after the operation.

Commissioner Dinka: I will come to that, but this is the one that was sent before the killing started.

Col. (Rtd) Frank Kariuki Muhindi: I do not remember that.

Commissioner Dinka: In your discussion, you have said that the Police and AP were the ones who were involved in Wagalla Airstrip to guard these people. Again, if I go back to the Etemesi Report, it says that the guarding of the Wagalla Airstrip was entrusted to the Police, AP and Army. So, when you went to Wagalla Airstrip, did you see any Army people?

Col. (Rtd) Frank Kariuki Muhindi: I found the Police and APs.

Commissioner Dinka: Here, it says that the Army also was there.

Col. (Rtd) Frank Kariuki Muhindi: The Army was not there.

Commissioner Dinka: Then, it appears also that the Army was involved at that time in the disposal of the dead bodies.

Col. (Rtd) Frank Kariuki Muhindi: I would say that they were the people with mobility. If they---

Commissioner Dinka: Do not retract and so on. By the time you went there, you did not see the bodies?

Col. (Rtd) Frank Kariuki Muhindi: The bodies were not there.

Commissioner Dinka: But the Etemesi Report says, "In a state of panic and confusion, the DSC decided to dispose of the bodies." Then it says that this was done by Lt. Chunga from the Army and Inspector Wachira from the police respectively.

Col. (Rtd) Frank Kariuki Muhindi: I did not get to know who did the disposal, but I knew from what I gathered there that the Army vehicles may have been used.

Commissioner Dinka: What I am coming to is that starting from the Bula Jogoo incident, where Maj. Mudogo ordered to torch the huts--- Capt. Njeri was the first who went and surrounded the Bula Jogoo and later Maj. Mudogo came and ordered the burning of huts. From that time on, the Army was as involved as the Police and the AP in the whole process, from rounding up to guarding them at Wagalla Airstrip and then disposing of the bodies. So, this is what I discovered in our readings and investigations. You did not know that as the Commanding Officer?

Col. (Rtd) Frank Kariuki Muhindi: I did not know that. I came to know it when I went to Wajir.

Commissioner Dinka: Let me go to another issue.

Col. (Rtd) Frank Kariuki Muhindi: Mr. Commissioner, there is one thing I want to clarify here. When you talk about rounding up, on an operation like that, all those three arms would be involved. The Army's responsibility is to cordon off the area and stop any people from getting in or out. The job of searching is done by the Police. That is the normal standard.

Commissioner Dinka: The searching, yes, but how about the torching?

Col. (Rtd) Frank Kariuki Muhindi: The torching now could come from any--- Maj. Mudogo was the overall commander of the operation. So, if he ordered the torching, then obviously--- Somebody must have ordered the torching.

Commissioner Dinka: Okay! The other thing is the issue of hierarchy between the DSC and PSC. If you go to page 9 of the Etemesi Report, it says,

“The operation started at first at 0400 hrs on Friday 10th February, 1984. The operation had not written operational orders and was mainly to be conducted--- The general instructions issued by the PSC and agreed upon by the DSC.”

So, it was the reverse; it is not the DSC deciding and PSC agreeing, but PSC instructing and the DSC agreeing.”

Col. (Rtd) Frank Kariuki Muhindi: That would be an anomaly.

Commissioner Dinka: Also, the Report found that from the very beginning, Garissa was informed. The police representative was reporting to the Provincial Police Officer and your man reporting to the Commander of the Army or battalion. the Special Branch reporting to the Special Branch head in Garissa. So, communication was going on continuously. When you get this information from different representatives, do you get together and exchange information and say, “Hey, guys, such and such is going on, what are we going to do or you just leave it until the next PSC meeting?”

Col. (Rtd) Frank Kariuki Muhindi: When the DSC plans the operation, the PSC should know but the nitty-gritty of the plan will not come to us. They have it there because they know who is going to do A, B, C and D. Even if it comes later, generally, it would not come. This is because whatever they are sending to the PSC is to inform them that we have planned for this operation and intend to carry it out on this day.

Commissioner Dinka: Then you get the information regarding the operation or everyone will get from his representative?

Col. (Rtd) Frank Kariuki Muhindi: That is the way it should be.

Commissioner Dinka: That is what this report says has happened. That is why I asked: What do you do when you get these reports everyday twice or three times and you see the trend going down and situations getting out of hand? Do you get quickly to decide something or you wait for the next PSC meeting? That is why I asked that question.

Col. (Rtd) Frank Kariuki Muhindi: When there is an operation going on, generally, all our ears should be open. So, whatever comes from the operational area should reach us so that we know what is happening. This information is generally sent in the morning, if there was anything at night and in the evening, if something has happened in the day. There is also a normal report on what is going on, on the ground.

Commissioner Dinka: Okay! I actually have one last question. What was the rationale for sending reinforcement 15 days after the Wagalla massacre and the two lorries? The interesting thing is that the number of soldiers are few and do not fit in two lorries. Why were the two lorries necessary, according to you? How many did you send?

Col. (Rtd) Frank Kariuki Muhindi: Two lorries---

Commissioner Dinka: One platoon is too few for two lorries.

Col. (Rtd) Frank Kariuki Muhindi: No, that is the standard transport for a platoon. In that area, you do not travel in a single vehicle. It must be a minimum of two vehicles. In case the first one has a problem, you have the other one to support them. That is the standard.

Commissioner Dinka: What was the rationale for sending this reinforcement at that time?

Col. (Rtd) Frank Kariuki Muhindi: One, these people were already traumatized in Wajir. You need to have people on the ground who can react to any other situation that may arise, because things can happen. People who are traumatized because of what they have done and seen, if another situation comes necessitating an immediate reaction to that situation – maybe an operation – surely, these traumatized people may not be generally very much up to it. You need to have some other people on the ground who would be able to help them should such a situation arise.

Commissioner Dinka: Thank you very much.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Colonel, for your testimony. I want to join my fellow commissioners in acknowledging your evidence, which I would describe in my own words – I see Njeru is sitting up there – as indeed a comedy of admissions and contradictions, but very helpful. It is very helpful because you are the first witness to openly contradict other witnesses. In the same breath, you started on a note of denial, but in the end, you have opened up and given us very useful information. I want to thank you sincerely for opening up. I just want to ask you one or two clarifications. The first clarification is on the admission. I said that your evidence is a comedy of admissions and contradictions. On the admissions, you admitted in the end that bodies were disposed of by some of the officers in the Army. Are you aware in what form those bodies were disposed?

Col. (Rtd) Frank Kariuki Muhindi: I think I did say, when I was on ground there, that they were disposed of by lorries. There was no other department that would have many lorries and also enough vehicles for escort.

The Presiding Chair (Commissioner Ojienda): Were the bodies buried?

Col. (Rtd) Frank Kariuki Muhindi: I do not know that.

The Presiding Chair (Commissioner Ojienda): Acknowledging that this is a part of the country where Muslims live and the mode of burial is, probably, different from what we do in the other sides of the country, do you think that the bodies that had been collected from the airstrip were treated with decency as would have been, had they died of other causes?

Col. (Rtd) Frank Kariuki Muhindi: I do not know.

The Presiding Chair (Commissioner Ojienda): What do you think would be your recommendation having been the person in charge of that area on the question of healing the wounds of the people of this region?

Col. (Rtd) Frank Kariuki Muhindi: That is something that would call for a research because either the Government prepares a programme for educating people in the area and even in other areas to learn to live together, co-exist as people of one nation and one area. That can only be done with civic education.

The Presiding Chair (Commissioner Ojienda): What about for the families whose members were killed by the Army and the police in the joint operation. What kind of healing would you recommend?

Col. (Rtd) Frank Kariuki Muhindi: To be honest, that would be an answer that would be best given by a psychiatrist or a psychologist because the rest of us have not been trained.

The Presiding Chair (Commissioner Ojienda): But Col. Muhindi, you have shared blame. You have acknowledged that the PSC and the DSC planned this operation. So, do you feel a share in the blame for what transpired at Wagalla; yourself, as Col. Muhindi?

Col. (Rtd) Frank Kariuki Muhindi: No, I do not. I said from the start that you cannot give somebody responsibility, a body like the PSC responsibility and give them instructions which they know inherently of their mandate. If we were to involve the PSC in the planning of every operation by the DSC, then there is nothing that will happen. Nothing will happen at all. It cannot happen. The DSC is a body mandated to plan their own operations and inform the PSC. That is the normal standard procedure; plan your operation and inform the PSC. If the PSC has any lacuna on it, then the PSC would intervene because they are the people on the ground. I want that to be corrected. The PSC is not on the back of the DSC for every move they make or for every operation they plan. They have the mandate to plan their own operations and execute them. Should they require any assistance or reinforcement from the PSC, then the PSC will look into it; either give it or deny it if the PSC thinks they have the wherewithal to carry out their mandate.

The Presiding Chair (Commissioner Ojienda): There you go again with the contradictions. Thank you very much for your testimony. We shall consider your testimony alongside the testimonies of the other members of the PSC, the DSC and all the other witnesses who have testified before us. I want to thank you for coming to the Commission and spending the day with us. Definitely, you have been informed that the Commission will make a finding in its report. As you are aware, the TJRC Act exists to carry out certain functions and to make certain recommendations. So, I want to thank you very much.

Hearing Clerk you may stand down the witness and call the next witness who shall be Mr. ole Serian. We are reliably informed that he will testify for a maximum of seven minutes and then he will be asked questions.

The Commission Secretary (Ms. Nyaundi): Chair, with your kind permission, I was requesting a five minute break and then we come back.

The Presiding Chair (Commissioner Ojienda): We shall adjourn for five minutes.

[The Commission adjourned briefly at 3.20 p.m.]

[The Commission resumed at 3.30 p.m.]

(Mr. James ole Serian took the oath)

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

Mr. James ole Serian: My name is James Serian. I am currently the PC, North Eastern Province. I am based at Garissa, Provincial Commissioner's Office.

The Commission Secretary (Ms. Nyaundi): I do have a statement that you have recorded and I am requesting that you accept that we have it as part of the record of the Commission?

Mr. James ole Serian: Yes, I accept.

The Commission Secretary (Ms. Nyaundi): I will, therefore, request that you, please, furnish me with a dated and signed copy. You could probably sign this one that I have and date it and then we will have it under the record of the Commission.

I will just ask you a few questions. You have said that you are the current PC of North Eastern Province. According to your statement, you were posted there in July, 2009. The Commission has held hearings in the northern region and we have heard testimonies from various witnesses touching on a number of violations that have occurred there from 1963, and in some instances, to date. So, I will just ask you as the PC whether you are aware of some of these issues and what steps you are taking or can take immediately so as to address these issues.

One issue that we heard repeatedly was that the people of the region feel discriminated against especially with regard to issuance of identity cards. They spoke at length about the vetting and how it is conducted. I will just ask you as the PC whether you are aware that there is vetting as relates to issuance of ID cards; whether you are aware of the process of that vetting and what, if any, recommendations you would be making towards the improvement or any other recommendation with regards to vetting.

Mr. James ole Serian: I am aware of the issue of vetting. Before I comment on the issue of vetting, I think it is good to go slightly behind and say that we have a real challenge in terms of identity cards in North Eastern Province. The starting point should be to realize that we have had some challenges in the past. The first one is that when we got independence, there are some Kenyans who left Kenya and went to Somalia. Those people who went to Somalia actually became Somalis of Somalia. Some even became very senior persons on the other side. One of them even became a Minister for Defence on the other side. When the Government of Siad Barre collapsed, some of them came to this side. When they came back, these are some of the issues we had to grapple with. Are they Kenyans or are they Somalis? That is why you sometimes have these grievances because we have some issues which sometimes are not clear. The first angle was that one of the people who went to Somalia first and they came back to this side. When they came back, are they Kenyans or not Kenyans?

The second issue is that of refugees. In the past, definitely, we made mistakes. When the government of Siad Barre collapsed some refugees came to Kenya. When they came to Kenya, some of them were given ID cards, got ID cards illegally through bribery and so on. So there is that group.

One of the challenges we normally have is that most of them came from Somalia when they were adults. When they came to Kenya, the father and the mother were given ID cards illegally and then after a while, the children of such people came to Kenya where they sometimes have problems with identification. If the parents got ID cards, do you also give them ID cards? These are some of the challenges we are facing.

Thirdly, there are also some Kenyans that decided to register as aliens in the refugee camps. We have three refugee camps in Kenya. So, some Kenyans decided to register as refugees so that they can get the small benefits that refugees are given like free food. They can also be taken abroad and relocated to other countries. So, these are the issues that create problems for us in issuing ID cards in the province.

Early last year, we had a problem whereby all these ID cards were processed at the ground and then they are brought to Nairobi for processing. There was a problem whereby the contract delayed, whether we should renew the contract or have a new contract. That delayed the issuance of ID cards not just in North Eastern Province but in the whole country. So, these are the issues that created a problem and led to these complaints. But the Government is now addressing that. That is why we have a screening committee. The screening committee is as a result of discussions we have had with leaders on the ground and I can assure you that majority of the leaders in North Eastern Province are of the view that we should have some kind of screening. Maybe what we can discuss further with them is whether we can refine the screening system.

What I just need to note since I was made a PC in North Eastern Province is that we have revised the system. I have disbanded all the committees that were there earlier on because the initial complaints I got was that aliens were getting ID cards. So, I disbanded all the committees. We put in place new ones. We also put in place new regulations. One of the

most important regulations is that the committee vets the people but after the vetting, the list is put on a notice board so that all members of the public can actually look at the list and give us recommendations on whether they have any person who they suspect is not a Kenyan. I think that is a very revolutionary idea because instead of just blaming the small committee, we have actually put up a notice board. If we vet people today, we should put a notice board in this building today where everybody can see. That has actually solved the issue of ID cards as far as the vetting part is concerned. The current big problem we have regarding ID cards now is that they are delaying in Nairobi. You are supposed to get an ID card within three months but I know in North Eastern Province, there have people who have stayed for one year without getting their ID cards. We are now discussing with the National Registration Bureau to ensure that ID cards are released as soon as possible. I think we have made some progress. According to my figures, in North Eastern Province, we have registered 43,000 people in the last two years and over half of those ID cards have been released but the other half are still detained in Nairobi. That is why we want them to be released from Nairobi immediately.

We have also registered all refugees. Initially, the refugees would come and stay in the country for a while inside the country and that gives them an opportunity to register as Kenyans. What we have done is that as soon as you come into the country, within the shortest time possible, we give you a refugee ID card. The refugee data bank is connected to the Kenyans ID card data bank such that once you are registered as a refugee, there is no way you can register as a Kenyan again. If you are registered as a Kenyan, you cannot register as a refugee again. This is very good progress that ensures that we do not have this complication of people trying to double deal. That is what I can say about the ID cards.

The Commission Secretary (Ms. Nyaundi): Another issue that emerged while we were in the region was that the witnesses that appeared before the Commission appeared to emphasize that they were of the impression that there was deliberate discrimination against that region in terms of access to resources, development. As PC, looking for instance at institutions like hospitals, schools, roads, access to water, what would your assessment be of the development of that region? In your view, as PC what things are within your power to do or to recommend to the Commission?

Mr. James ole Serian: First of all, I need to mention that, definitely, we had some problems in that region in the past. During the colonial time, the British actually ignored that area. That is the first thing. After Independence, there was a lot of insecurity in that area. Initially, there was the *shifita* war until almost 1967 and that really disrupted a lot of development activities in the region.

After the *shifita* war ended formally in 1967 or 1968, we had a good amount of banditry for quite some time. That also disrupted development in this region. I want to assure this Commission that currently the Government is doing so much to ensure that this part of the country is actually integrated to become part of Kenya.

I was just trying to get some of the figures on funds that the Government is giving ---

The Presiding Chair (Commissioner Ojienda): Mr. PC, this area is Kenya. It is not becoming part of Kenya. It is in Kenya.

Mr. James ole Serian: For a long time, there was this issue of down Kenya and so on, but I know they are part of Kenya. Even during the recent referendum for the new Constitution, it is North Eastern Province that actually voted 99 per cent in support of the Constitution. So, they are actually part of Kenya and they fully support the whole process of being Kenyans.

I also need to mention the kind of funds that currently are going to this area. We could be having maybe around Kshs2.5 billion or even up to Kshs3 billion going to this region every year. For example, every constituency is getting around Kshs60 million of CDF money and we have 11 constituencies. That totals to around Kshs750 million. There is also LATF. We have five counties which are Mandera County Council, Mandera Urban Council, Wajir County Council, Garissa Municipal Council and Garissa County Council. If you see the total they are getting it is around Kshs350 million.

There is also free education money. Every child gets Kshs1,020 in the whole country including North Eastern Province. In North Eastern Province, we have 142,000 primary school children and all of them are getting the Kshs1,020. This amounts to KShs146 million. That is for primary schools. There is also free education subsidy for secondary schools. If you see the money that goes to the education sector, it is around Kshs200 million.

There are a number of roads that the Government is currently working on. The Government will tarmac the road from Garissa to Modogashe later this year. I think they have allocated almost Kshs4 billion for that road. The Government is also discussing with the Chinese Government to see how they can tarmac the road from Modogashe to Isiolo. The feasibility study is already ongoing.

There are also other major projects that are ongoing in that region like the Garissa Sewerage works, that is Kshs800 million. We also have Wajir sewerage works which is starting with Kshs100 million, but I am very sure it will be almost Kshs1 billion.

There are also water projects that are ongoing at the moment funded by the Ministry of Regional Development Authorities through the Ewaso Nyiro North Development Authority. They are drilling almost 20 or 30 boreholes in that region. There are also water projects being funded by Coast Development Authority in Ijara and Fafi. There are also boreholes being funded by the Ministry of Water and Irrigation. The other day there was a dispute in Garissa because two funding agencies found themselves trying to drill the same borehole. There are so many boreholes we are drilling at the moment to ensure that there is enough water for our people. These are just some of the projects that are ongoing. These are just few.

There is also youth money and every constituency in the country is getting Kshs1 million or Kshs2 million. There is also women fund which every constituency in the

country is getting including North Eastern Province. Thirdly, there is also HIV funds; I think they are getting almost Kshs60 million.

Roads money is around Kshs500 million because every constituency gets an equal amount of money. If you add the total plus the big road projects, it becomes Kshs400 million excluding the Kshs4 billion for the construction of the Garissa-Modogashe Road.

There are also irrigation schemes in the current budget. I think it is some good money, almost Kshs1 billion, for starting of irrigation projects one in Mandera, another in Habaswein and another one in Garissa. We also have Kshs100 million for construction of irrigation scheme in Mbalambala and a contract has already been awarded. So, these are some of the funds that I just need to mention that the Government is trying to put a lot of effort to ensure that this part of the country also benefits and gets resources to make sure that the standard of living becomes as high as in other parts of the country.

The Commission Secretary (Ms. Nyaundi): Part of the evidence that we have heard shows that the region has a history of a multitude of operations. A number of the witnesses who have testified have made repeated reference to the history of the region saying that at Independence, they did not find being part of Kenya appealing, but preferred to move to Somalia and have appeared to suggest that the administration formed the opinion that people in that region were hostile to the Kenyan Government. This may have resulted in a number of operations. In much of the literature that we have seen, people in that region are referred either as *shiftas* or as bandits. Without the benefit of the current DSC and PSC minutes, I would want to ask you as the Provincial Commissioner, is that still the attitude of the Provincial Administration that you are dealing with *shiftas* and bandits?

Mr. James ole Serian: Definitely, I must admit that we had a problem in the past. I have not been in this Commission. I have not heard everything but I used to read in the Press and also saw some minutes in the past and we must appreciate that some mistakes were made and there was a breakdown of communication within the Government and the public. In the recent past, we have actually tried to change that and the Government is making a lot of effort to ensure that we have better communication and understanding between the public and the Government.

Two, when I was transferred, almost all the senior officers who were transferred with me are people with pastoral backgrounds. I am a pastoralist myself. The Regional Commissioner for Lower Eastern is also a pastoralist and the one for initially for Northern Upper Eastern was also a pastoralist. We also have a number of other District Commissioners and District Officers from pastoralist background such that they understand these communities.

We cannot just have pastoralists working in North Eastern. But we have a majority of them working there. For those who come from non-pastoral backgrounds, we normally give them a long lecture and seminars to ensure that they understand the pastoral system. That is why in my report, I actually said that one of the challenges we have had in the

past was failure to understand the pastoral system. That was a big omission on our part as the Government that we do not understand the pastoral system. A lot of people who went there thought that pastoralism as a system needs to be replaced but they seem to have no clear idea we will replace it with what. They also did not understand some of the issues that come up with pastoralism. We have told people to take children to school and they have been told to take children to school for the last 100 years. The British told us. Since Independence, the Kenya Government told us to take children to school. Even now we are telling them to take their children to school but the enrolment is still low. That is why we are asking ourselves a lot of questions and trying to see how we can address that. I do not think pastoralists are just foolish enough not to be able to take their children to school. I do not think they can be thick enough not to understand a message in 100 years. So we are trying to understand. The problem is the way the message is being given. Everybody now understands the value of education but I think the problem is that we did not appreciate the pastoralists. We did not try to understand the challenges they face and so on.

As I said in my report, in pastoral areas, we have a labour problem. It is a big area which has a small population. So, whatever you want to do, it takes you a long time to achieve that. If it is water, I know because I was a DO in Mandera, if you want water for domestic use, you can take six or eight hours to get that. It is supposed to be a very simple thing for people in Nairobi but for them, it takes 12 hours. So, for them to go to school and be able to part of Kenya, we need to address those issues to ensure that we reduce the time used in getting water and so forth.

We are making a lot of effort to ensure that we understand that. During my time, we will not have any person despising and being hostile to them.

Lastly, let me talk about the issue of operation. Since I came to North Eastern Province, we have not had any operation. It is my policy that we do not need an operation to achieve some of the objectives we are trying to achieve in some of these discussions. In my report, I have said that we retrieved 200 firearms in Mandera and Wajir but there was no operation. We met the members of public and told them that these illegal firearms are bad. We discussed with them and we allowed them to sit and internalize that. They just brought the firearms to us. We get elders and hold peace committees. We tell them that we have a challenge in terms of illegal firearms; they can be misused by individuals and they just go and give us the firearms. Not a single person will be beaten. Not a single security officer went to coerce anybody. It is actually possible for us to work with the public and ensure that we achieve peace in North Eastern without necessarily having these operations. When I was DC, Mandera, we never had any operation and quite a number of firearms were surrendered. What is required is to understand the issue of *shiftas*. I think it is a word which has been misused in the past. We tend to see any person with an illegal firearm as a *shifta*. But, to me, I think *shifta* can be divided into three or four groups. First of all, a *shifta* or a bandit is a plain robber according to me.

There are also people who keep firearms to protect their animals. They have some fear that their animals will be stolen and they keep the firearms to ensure that they protect

their livestock and property and also their clan. There is also a political bandit or poacher. There is that bandit that was involved in politics fighting for North Eastern to be part of Somalia. Then there are also smugglers. I can put that as another type of bandit. He purchases arms in Somalia and brings them to Kenya. He just wants to keep firearms. If you confront him, he will shoot you. He does not really want to kill you but he will shoot just to scare you.

I will put bandits into those four groups. There could be some gray areas. So, to address the issue of banditry, you need to understand the motive of having firearms. Once you understand the motive, then it becomes easier for you to address the issue that made him have an illegal firearm. For example, if the problem is fear that your animals can be stolen, the solution is not necessarily to take his firearms, but to provide him with security. Once you provide him with security, he will just naturally surrender the firearm.

The Presiding Chair (Commissioner Ojienda): Sorry to interrupt. Do I hear you as apologizing on behalf of the Government for certain policies that were not properly used or that did not suit certain intentions for the people of North Eastern Province? Because I hear you talk about certain things that were done in the past that were not done properly and that would have been done better. I also hear you say that you have, for the same problem, used an approach that seems to have yielded results and resonated very well with the people. Is that what you are saying?

Mr. James ole Serian: Yes.

The Presiding Chair (Commissioner Ojienda): Thank you, very much.

The Commission Secretary (Ms. Nyaundi): Mr. PC, you have mentioned a number of developments that have occurred over the year. When we were in the northern region, according to some of the witnesses that we heard, it was clear that women as a group suffered specific violations. Although the region faced challenges but you could identify that women also suffered gender-specific violations. There were reports of sexual violation. By virtue of the lifestyle then, women were exposed to certain risks. My question then would be: even now as you are moving towards addressing some of these issues, can you maybe share with the Commission measures that have been taken that specifically target women?

Mr. James ole Serian: Women have a lot of challenges in some of these regions. In North Eastern Province, the literacy rate is fairly low. I think it is seven per cent. So, 92 per cent of the people there are illiterate. In that group, the majority are women.

I also need to mention that we have not had gender balance in terms of employment and participation in the Government by women. For example, when the Commission came to North Eastern Province, I mentioned that we do not have a female chief in North Eastern Province. Currently, we have just three female assistant chiefs. When I went there as PC, I discussed with the Government, raised these issues and said that we have to take some action to redress that imbalance. I started immediately to change that. One is that we have

more women now in the vetting committees. Initially, there were very few women. My policy was that we should have 30 per cent women participation in the vetting of applicants.

We have also ensured that we have at least 30 per cent gender participation in the relief committees. After all, we need to have even 50 per cent because the issue of food is actually women's issue.

I also need to mention that when I went there, we decided to appoint three women assistant chiefs. Initially, there was a lot of resistance from members of public. The first lady we appointed as the Government was chased away. She had problems but ultimately we talked to the members of public until they accepted her and that was big giant step for us because in the whole country, I think it is only in North Eastern Province that we do not have women administrators at all. Therefore, it is a big step. We appointed one in Habaswein and another one in El Wak. I think we will appoint a few others in the course of this year. The biggest problem for us is starting. Once you have started, it will be easier to tell others that it is possible for a lady to be appointed as chief. In fact, we hope we will appoint a lady chief this year.

We also intend to bring more administrators there at the higher level; at the level of the DO or DC to North Eastern Province. We have already discussed this with the PS who has been very supportive. Every time we see there is a lady who has applied for a post of chief or assistant chief, we always consider and give them first priority in terms of appointment. So, we are really making a lot of efforts to ensure that we include women in participation in all activities.

We have also ensured that we have women in the peace committees. Every district has a peace committee and we ensure that there is gender participation in this. In all leaders meetings, we always ensure that there is a lady also speaking. In national celebrations, there is always a lady speaking. There is a conscious effort to ensure that we redress the problems we had in the past.

The Commission Secretary (Ms. Nyaundi): By the mandate of the Commission, we are required to look into historical injustices; we found a number of women who are still bear on their bodies the consequences of some things that occurred to them. For instance, in Wajir, we came across women who said that they were raped during the Wagalla incident and had developed fistula and, therefore, they have had that complication from 1984. We also came across some in Garissa who were also sexually assaulted and had never obtained treatment and, therefore, have those complications. They explained to us that owing to their culture, these are not things that they will discuss publicly. However, I am wondering, as part of bringing healing and dealing with some of these issues, whether you, as the Provincial Commissioner (PC), are aware of these issues. Even if you are not aware of them, I wonder whether you can probably bring these issues to the people within your region, so that the Provincial Administration at that level can seek to deal with them. Our experience, as a Commission, is that these women were still crying. Some of them showed us those injuries that they have and we saw them. As the PC, do you think this is

a matter that you can take on, and have these women sought out so that they can get medical attention?

Mr. James ole Serian: It is always possible to help them to seek medical attention. That is possible.

The Commission Secretary (Ms. Nyaundi): Now, this is my last question and it was an observation that I made as we moved around. Even when we invited people to sing the national anthem when we begun our sessions, some of them did not sing it. When some of them came to talk as witnesses, they said they cannot sing the anthem because they do not own it. They do not feel part of the country. So, you, as the PC, have you seen that withdrawal? People feel that they have had such a negative relationship with what is called the Government of Kenya (GoK)? Have you sensed that as a PC? Secondly, if you have sensed it, or if we tell you, as a Commission, that we saw evidence of it, what will you be able to do as a PC even before the Commission makes its recommendations to address that issue?

Mr. James ole Serian: That is a very long question though understood. Definitely, if you look at the history of North Eastern Province (NEP), as I said earlier on, during the colonial times, the British really did not try to do much in NEP. There was no education. It is just an area which they did not know what to do with, but they knew it was part of Kenya. When we got Independence, there was the problem as to whether they should secede or be part of Kenya. Then immediately after Independence, there was the problem of the conflict. I can assure you that there was a lot of bitterness on both sides. A lot of issues came up and there were a lot of issues between security agencies and the public, and that really strained the relationship between the two. Personally, I was a District Officer (DO) in Banessa, which is towards Moyale. I was passing inside the town and I saw a small kid of around three years of age trying to throw stones at me. You know traditionally when a small child sees a vehicle, she runs away, but when you see a small child trying to throw a stone at you, then that is in the past. Therefore, it requires us to make a conscious effort to ensure that we really reduce that tension. I can assure you that there are quite a number of things we have done to ensure that, that strained relationship is dealt with.

Personally, I ensure that everybody has access to my office and I have tried to befriend and talk to as many people as possible. I can assure you that I have given my telephone number to virtually everybody in NEP, so that they are able to call me any time. Even those who do not have money send me the message "Please Call Me", and I always call them. I want to address any grievance or issue they have and ensure, on a daily basis, that they tell me what is happening. We have made a lot of progress. Recently, about five days ago, there was a security incident in NEP and the first person to call me and tell me what had happened was not the Provincial Police Officer (PPO), but a member of the public who sent me an short message which read: "Bwana PC, are you aware of what has happened?" I think this is to show that we are making some good progress to actually integrate them in the security apparatus. In fact, it is not just one member of public but about six of them called me and told me that there was a problem. We are also making

progress in terms of appointments in the Government. At Independence, for example, when the Government wanted to discuss a political solution to the problem of secession to Somalia, there were very few Somalis the Government could negotiate with; there were not many of them who were educated at that time. I can assure you now that the Government has made a lot of progress, for example, in appointing Somalis to the Government. If you allow me, I will read out a few of them. We currently have two Ministers in Government, that is the Defence Minister and the Minister in charge of Northern Kenya affairs. We have three Permanent Secretaries. We have one PC and one Regional Commissioner. We have almost 20 District Commissioners (DCs) from the Somali community. We have quite a number of parastatal heads and the Somalis are also represented in almost all the commissions that we have had. They are represented in this Commission. They are in the Interim Independent Electoral Commission (IIEC). They are also in the Revenue Allocation Commission. They were also in the Interim Independent Boundaries Commission (IIEBC).

So, I think we are making some good progress in integrating them into the high level parastatals. For example, I think the Chairman of the Teachers Service Commission (TSC) comes from there, and he has been there for quite some time. Earlier on, we had a chairman of the Public Service Commission and also the Managing Director of the National Hospital Insurance Fund (NHIF). So, we have made some good progress in terms of integrating them into the mainstream leadership. Also, in the security agencies, we have quite a number of Somalis in the Army, Police, Administration Police. The Commandant of the Administration Police (AP) College is a Somali from NEP. So, there is actually a lot that has been done to ensure that they are also part of the system. In fact, if I sensitize members of the public about some Government policy, they may not take it as seriously as if a local Somali comes and tells them about. That is why sometimes when we have a problem, we invite local leaders like those in the parastatal sector to come and help us. I also wish to mention that the Secretary-General of the Inter-Governmental Authority on Development (IGAD) is also a Somali. So, there is a long list of Somalis from NEP in top positions.

I also need to mention two other things which are good. For example, there is a very big Somali diaspora within the country now, and Kenyans have actually accepted Somalis. There are so many in Nairobi and almost every market in this country now has a Somali. They are normally friends of mine. Mombasa, Kitale, Eldoret, Nakuru and Kisumu have Garissa lodges, and members of the public have actually accepted them. In Mt. Elgon District, there are two Somalis who are friends of mine. In Cheptais, there is a Somali. So, they have actually been accepted in all parts of the country. I also need to mention the other angle. There are also non-Somalis who have gone to NEP and the Somalis have accepted them. There are a lot of non-Somalis in Garissa, Mandera, Wajir and Hulugho who are trading. So, I think we are accepting each other and working as one nation.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mr. Serian, for that evidence. I want to thank you on behalf of the Commission for the good work you have done in the NEP. Clearly, the road to healing begins with one step and the pain we had in the last few weeks from the testimony of the witnesses--- There is a cry that needs

to be answered. This is the cry of belongingness, discrimination, pain, torture and death. The pain that has been experienced in that region has been assuaged to an extent by what you have told us. I think that is the measure that we are looking for and we hope that when we finally sit down to write our report, we will also look at those good things that will go along in healing this country. You remember the objective of this Commission is to foster healing among the people of Kenya by every recommendation that we will make within our mandate as envisaged by Section 48 of our Act. We will take one clarification from Commissioner Dinka and then we will end the session.

Commissioner Dinka: Just one clarification, I am very happy to say that whoever talked to us in the NEP when we were there, your name was always mentioned in positive light, and I am very happy to hear your future plans in terms of development and understanding the pastoralists, their needs and challenges that they face. This is what we need in places like that one. The road from Mandera to Moyale is 320 kilometers and is 17-hours drive. Now, you are talking of road tarmacking, which is great news to us. During our hearing here in Nairobi in the last few weeks, we have been talking to former PCs, DCs, policemen, security men and so forth. What we have been hearing is, of course, contradictory in a number of ways. One thing is that everybody insists the DOs are almost independent of PCs; whatever a DC wants, he can do it and there is nothing the PC can do to stop him from doing it. I hope that is not the case. Do you have DCs, the police, the army or AP commanders in the NEP who follow your guidelines, really understand your thoughts and try to emulate you? How would you ensure that they follow your very important leadership, which you have just mentioned to us?

Mr. James ole Serian: My understanding is that I do not think the DC is independent of the PC. From tradition, I know that you are supposed to call your boss every morning and not just at the level of DC and PC. If there is any incident, the assistant chief reports to the chief. The chief reports to the DO. The DO reports to the DC. The DC reports to the PC. The PC reports to the PS and that is supposed to be done every morning. So, I do not expect you to report to me what happened two days ago since that will be too late and it is not good. So, you must report to me immediately. In the past, there was a problem of communication. It was by radio set. So, you would send a signal if there was a banditry incident and I am sure it would be on the same day. I do not see any reason why you would send it on the second day.

Secondly, the PC supervises all the DCs and I do not see any DC doing anything without telling me, and that applies to the DO who must do the same. I will be very surprised if anything appears in the Press on any day without me knowing. That would be very wrong.

Commissioner Dinka: Thank you very much. This is great news to us on the way it should be.

Mr. James ole Serian: On the last one, maybe just to clarify, my understanding of Government policy and management at the district level and provincial level is that there was a Government circular which was issued during colonial times and it still applies as

of now. If, for example, we have a Provincial Security Committee (PSC) meeting in this hall and maybe we cannot agree on which policy to follow, the Government's policy is that the PC's view prevails; but all of us will consult our bosses and that will be very important. We all report to our bosses that we sat, discussed and we did not agree but the PC's policy prevails.

Commissioner Dinka: Thank you very much.

Commissioner Farah: Thank you very much, Mr. Serian. Mine is not a question. It is just to congratulate you. You said you went to the province in July 2009 and that was when we were also appointed. Thank you for doing a good job. Continue doing so. Those of us who come from there can see the improvement since 1984, but maybe my other Commissioners cannot see it. Anyway, you need to remove roadblocks, because they have been criminalized since corruption is committed at them. We counted a lot of them. A long time ago, there was one just outside Garissa and another just before you enter Wajir, but now they are very many and I do not know how much money traders are parting with, because money changes hands at every road block.

Secondly, you know the culture of the people and I am glad we noticed that quite a number of officials from the pastoral communities understand, as you told us, and that is the way to go. Once security meetings minutes are generated, those who come later will just follow them. In a witness's testimony, you heard him saying that it was difficult to tell who was a Kenya Somali and who was a Somalia Somali. At that time, things were like that and you wonder where they were getting that intelligence information from. Well done; I congratulate you. Make sure you are not removed from there soon; in case you are, please take a very long time with your reliever to ensure that he is inducted.

Commissioner Shava: I just have one question and one comment. My question is to do with the counties. When we went to Fafi - I think there are two Fafis - we noticed that the place is a few kilometers from Garissa, but to get Government services, residents were required to travel all the way to Coast Province. They were told they were in a different part of the country. Before the county governments kick in, this is something that should be addressed. When somebody is five or ten kilometers away from one county headquarters and is told to get services, he must travel elsewhere, is there anything you have put in place to ease that transition since we know what is coming with counties?

Mr. James ole Serian: I do not know why they should go to Coast Province because all services are provided in the NEP. The only thing I know about Fafi is that there is a court in Hola; it is actually nearer. You just cross the bridge and then you go to Hola, but from Garissa is a long distance.

Commissioner Shava: Those who find themselves in Tana River District are required to go to the Coast?

Mr. James ole Serian: Tana River is in another province. I do not know how they will arrange delivery of their services, but there are other services for which people forced to cross to another province; an example is Moyale.

Commissioner Shava: I am informed the place I am talking about, and to which we went, is Madogo. How far is it from your area?

Mr. James ole Serian: Madogo is in Coast Province. That is not my territory, but it is a town almost the size of Garissa. I think these are arrangements which can be made within the Government to ensure that instead of going to Hola, people can actually come to Garissa and get the same services. There are some services they share. For example, until almost mid last year, the PPO of NEP used to cover and administer that area up to Bangalle. Bangalle is towards Mwingi. Since the PPO is very far in Mombasa, the Government thought it wise to have the NEP officer serve it. So, there are certain services which can be shared across the borders like courts and banks. Even people from Bute go to Moyale for their banking and legal services. So, I think arrangements can be made.

Commissioner Shava: That is encouraging. I want to join my fellow commissioners in thanking you for your patience. You were with us during the launch of our work at Garissa. We saw you at the KICC and here. I hope affirmative action in your area also benefits other people like Boranas and not only the Somalis. We saw improvement like in construction of roads and electricity supply. We hope that health services will improve, particularly those for women as the Leader of Evidence indicated. We met one gynaecologist who covers a huge area and we hope he will get assistance. We also read in the papers that in Buna, there is a clinic but it only has one ward. It is a mixed ward, and so people do not access health services well. We hope that this will improve. We thank you for coming here and giving us another side of the story, because the truth is going to be constructed from both sides of the story.

The Presiding Chair (Commissioner Ojienda): Thank you very much. We have come to the end of this session. I want to thank Mr. *ole Serian*, PC, NEP, and also Colonel Muhindi, who earlier on testified. I also want to thank Njeru who has been with us, and who raised, in the past very important issues, and his colleague, who has no name.

Mr. Ishmael: I am sorry, Commissioners, my name is Ishmael.

The Presiding Chair (Commissioner Ojienda): Thank you very much. You have been with us. Also I thank the interpreters, Leader of Evidence and the assisting legal officer. Mr. Clerk, lead the witness to his seat. Leader of Evidence, do you have something to say?

The Commission Secretary (Ms. Nyaundi): Yes, Chair. I just want to formally admit the statement. Earlier when the witness, Mr. Benson Kaaria, was before the Commission, we had a bundle of newspaper cuttings and we had not admitted them into the records.

The Presiding Chair (Commissioner Ojienda): For purposes of the record, they are admitted. We have come to the end of this session. I want to thank everybody for braving these hearings. They have been long and tiring. Mr. Abdinoor, I want to ask you to pray so that we end the session.

(Closing Prayer)

(The Commission adjourned at 4.25 p.m.)