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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON WEDNESDAY 20TH JULY,
2011, AT THE ST. VINCENT CATHOLIC CENTRE, KISII**

PRESENT

Ronald Slye	-	The Presiding Chair, USA
Gertrude Chawatama	-	Commissioner, Zambia
Berhanu Dinka	-	Commissioner, Ethiopia
Ahmed S. Farah	-	Commissioner, Kenya
Tom Ojienda	-	Commissioner, Kenya
Margaret Shava	-	Commissioner, Kenya
Patrick Njue	-	Leader of Evidence
Simon Njenga	-	Hearing Clerk
Ababu Karani	-	Regional Co-ordinator

(Opening Prayer)

(The Commission commenced at 9.45 a.m.)

The Regional Co-ordinator (Ababu Karani): Presiding Chair, before I hand over the programme to you, I would like to request the Acting District Commissioner, Mr. Soi, to welcome us to Kisii County.

The Acting DC – Kisii Central District (Mr. Philip Soi): Thank you, Presiding Chair, Commissioners, the Vice-Chair of NCIC, Ms. Mary Anyango, UNDP Resident Representative, UN Resident Co-ordinator, Nairobi, ladies and gentlemen; good morning.

I am delighted to be with you. But I am so delighted that you chose to come to Kisii County to do exactly what is within your mandate.

This county is part of this country and we also have issues that touch on truth, justice, reconciliation and cohesion. On behalf of our Regional Commissioner who is not around, she had travelled to Nairobi, I want to again most welcome you, the Commissioners, to this County and Kisii Central as a district.

Ladies and gentlemen, I believe the audience which is here today will not let you down. This is a very elite audience. They will express their issues diligently and I do not think you will have any problem during your three-day stay here.

With those few remarks, allow me to say *karibuni*. Thank you and be blessed.

The Regional Co-ordinator (Mr. Ababu Karani): Thank you very much. I now hand over to you, Presiding Chair.

The Presiding Chair (Commissioner Slye): Thank you very much, Regional Co-ordinator. On behalf of the Commission, I want to thank the Acting DC, Mr. Philip Soi, for those welcoming remarks.

I will also like to recognize our delegation that is here from the United Nations Development Programme. As you know, the Commission cannot do its work by itself. We have many supporters and partners from the United Nations and in particular, the United Nations Development Programme has been a long standing and crucial partner and supporter of this Commission. We are grateful for the past, present and future support of our work. I would like to, in particular recognize the United Nations Resident Co-ordinator and Resident Representative of UNDP, Mr. Aineas Chuma. I want to ask if he would like to make any remarks.

Mr. Aineas Chuma: Thank you very much, Presiding Chair. The Truth, Justice and Reconciliation Commission and its staff, distinguished guests who are here today, members of the public, ladies and gentlemen.

I feel greatly honoured to be with you here today at the TJRC hearings in Kisii County. The work of the TJRC forms an important component of this period of Kenya's history. It is one of the critical instruments of restoring justice and reforms in Kenya. The work of TJRC compliments the work of other justice and reconciliation processes, such as the International Criminal Court (ICC); the National Cohesion and Integration Commission and even when the local tribunal will be established.

In our view as the United Nations, we think the work of the Commission is important for this country for several reasons. The purpose of the TJRC is to examine broad trends of historical injustices that resulted in the Post-Election Violence (PEV) that it is, unlike other process whose mandates are more specific, such as the ICC that seeks to answer the question of who is responsible for the violence. Meanwhile, the TJRC is more probing and it is the only process emerging from the PEV that looks at issues beyond the PEV. The TJRC is also unique as it is much wider than other processes. It provides a unique opportunity for the common person to be heard. It espouses the spirit of the new Constitution of Kenya that promotes citizen participation which is the cornerstone of the re-born Kenya.

Finally, unlike courts of law as we know them, a TJRC process is not adversarial; rather it is a safe space for Kenyans to tell their stories and to listen to each other with express purpose of acknowledgement of injustices that happened in the past and finding out the truth by providing testimonies with research and investigations and recommending justice as a way to achieve closer ties as individuals and as a country. This, we hope, will enable Kenya to move forward collectively as a nation. Truth, Justice and reconciliation processes have been undertaken in many other countries such as South Africa, Sierra Leone, Ghana and Peru, just to mention a few.

Lessons from these countries indicate that the idea of reconciliation process is noble and the process of implementation is often compromised. Kenyans need to examine and learn from these lessons.

Finally, Presiding Chair and Commissioners, I wish you well in the hearings and success of this process. I would like to urge the Commissioners to learn from the lessons of other TJRC processes to avoid undermining the objective of uncovering the truth, achieving justice and opening the way for community and national reconciliation. As the United Nations, we were very proud to be associated with this exercise, because we believe that it is important for healing and for national reconciliation as Kenya goes forward.

I thank you for your attention.

The Presiding Chair (Commissioner Slye): Thank you, Mr. Chuma, for those very kind remarks. I also want to mention and recognize the presence in the hall of other partners of the Commission including GIZ, which has been very supportive in providing technical systems and other assistance to the Commission. Also, I wish to welcome the people of Kisii who are here in the hall today. This is your process; this is your Commission, and we welcome you here to the first day of our public hearings here in Kisii. I would formally like to introduce the panel that will be hearing the witnesses today.

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

I would like to start by mentioning a few ground rules. As Mr. Chuma said, we are here to provide a safe and comfortable place for people to tell their stories; to speak the truth about historical injustices. In order to facilitate that, I would like all of you, please, to turn off your cell phones so that they will not disrupt the proceedings and recording of the proceedings. So, let me give you one minute to do that. Thank you.

Secondly, we are recording the proceedings in camera and video cameras are in use. We also have members of the media and others here covering our proceedings. We would like to ask those who are taking still photographs; while we welcome your presence here and your taking photographs, we ask you not to use flash because that will distract the witness and the audience.

Finally, I would like to ask all the members of the audience to listen attentively and respectfully to the witness and the witness' testimony. You may hear things here today that are familiar to you; you may hear people speak of experiences that are similar to your experience, but you may also hear people speak of things of which you may not be aware of or experiences that are totally different from yours. Sometimes you may hear things that are not consistent with your own experience. Regardless of where you fit within those categories, you should listen respectfully and quietly to the witness.

The purpose of this Commission is to highlight to all the people of Kenya the richness and variety of experience, and in particular experience with respect to historical

experiences. In terms of the proceedings, again, as was mentioned earlier, we are not a court of law. So, the proceedings you will see today may look different to what you might have thought they will look like. We will not have cross-examination of the witness, but instead, the witness will give his or her testimony. The witness will be assisted in giving testimony by our Leader of Evidence, the gentleman sitting to the right of the witness at the table to my right. After the witness has given his or her testimony, members of the panel may ask additional questions.

I would now like to ask whether there are any legal counsel present representing any individual and if they are present, let them, please, identify themselves and say who they are representing. I can see there is no legal counsel present. I would like to know from the Leader of Evidence if there are any preliminary issues that we need to address before we hear from the first witness.

Mr. Patrick Njue: They are not there at the moment, Presiding Chair.

The Presiding Chair (Commissioner Slye): Thank you, Leader of Evidence. I would like to ask the Hearing Clerk to, please, swear in the witness.

(Mr. Hezron Otachi Nyambane took the Oath)

Mr. Patrick Njue: Presiding Chair and Commissioners, this witness is serialized Kisii 4. We have the pleasure to say that the first set of speakers are elders from the Kisii Community being led by Mr. Hezron Otachi Nyambane, who will be giving us an inside of the ways of life of the Kisii Community and the general issues that affect them as a community after which his colleagues will add onto what he may leave out. Good morning *Mzee?*

Mr. Hezron Otachi Nyambane: I am fine.

Mr. Patrick Njue: I want to welcome you this morning to the Commission's sitting and we appreciate your being here. Like I have pointed out in my introduction, you are seated with us this morning as an elder from this community. Before you tell us about your people and your way of life as a community and the issues that affect this community, would you, please, once again, for record purposes, kindly introduce yourself by your names, tell us what you do and where you come from and also introduce the gentlemen who are accompanying you.

Mr. Hezron Otachi Nyambane: Thank you very much. My names are Hezron Otachi Nyambane. I come from Borabu District, Nyamira County. I have been accompanied by a former MP, who is the Chairman of the forum in Borabu. Another one is Mr. Onchwang'i Moronge, who is the former chairman of Tea Board of Kenya, and the secretary to the group.

Mr. Patrick Njue: As you introduce them, we would like to know who they are. Maybe they could stand up and wave to the people so that we see them and recognize them.

Mr. Hezron Otachi Nyambane: Before they stand, we have *Mama Nyarinda Moikobo* from Chabika, but we are expecting her to come. The other two are here. They can stand up and wave to the people.

*(Messrs. Ochwang'i Moronge and Omweri Kibwage
stood up in their places)*

This *mzee* here is an elder. His name is Mr. Omweri Kebwage, the Chairman of the forum, and here is Onchwang'i' Moronge, the Vice-Chairman of the forum.

Mr. Patrick Njue: Continue.

Mr. Hezron Otachi Nyambane: Okay. I have a very long history from Borabu. Borabu is a settlement scheme and our neighbours are the Kipsigis. Since we settled in Borabu in 1962, we have been conflicting with our neighbours for long time; the Kipsigis. There has been a problem of cattle rustling. Cattle can be taken away and when they are taken they have a very high value.

In 1962 to 1964, the situation deteriorated from our leaders and war erupted. There was one side which was incited by the leaders between the Kipsigis. They were saying that we move from Borabu as they considered that area to belong to them.

In history, Borabu highland was settled by the white people. The Kipsigis who are in Kericho County were in Nyanza then and not in the Rift Valley. When we attained Independence, they were taken to Rift Valley. Leaders in Kericho still maintain that Borabu area belongs to the Kipsigis. That problem went on and in 1997, a fight broke out between the Kisii and the Kipsigis people leading to bloodshed and torching of houses.

In 2007/2008, the situation worsened. People who were in the white highland regions like Molo, Njoro and Kitale, had their houses torched and others were killed. There was war and many people died, especially Kisiis. This was because of the incitement by people thirsty for power in Kenyan leadership. They said: "If you vote for me, all these people will be moved from here." It is only one person who said that and it is true, there was war when he failed to be the president of Kenya; because he incited people very much.

I have people here whose houses were burnt and members of their families killed. Even some of my children were killed. For example, in Kapkatet, and areas like Bomet, people had lived together for so long and they had bought land there and had even inter-married with the Kipsigis. They lost a lot of property and one of my sons died because of stress. His wife is in a? confused state and she is now mentally disturbed.

We have an elder called Osano who lives in Kineni part of Borabu; his house was torched and one of his workers was butchered and died on his way to hospital. They took time to burn his house and left a widow with very young children. Let the widow stand up so that she can be seen because she is here. Children are not being brought up well because

they miss parental care because of incitement from our leaders who want votes from the citizens. When the Commission first came to record statements, I wrote a letter and explained many things.

Borabu District comprises North Mugirango and Borabu constituency. There is no well murramed road network neither do we have water in that settlement scheme. The white men constructed dams but they have been destroyed and are full of silt. When you look for water, you cannot get it. Therefore, we have a big problem of accessing water.

With regard to health facilities, Borabu District Hospital is just a name because there is no equipment or even a doctor.

We were given land to cater for public utilities but some people grabbed it. We cannot do any development for the community in the area because there is no land as people grabbed everything and did private development. We do not have powers to ask those people to move out as the land was to cater for public interest. They have refused to move out and say that they were given that land by the Government. That is one of the problems we have here in Borabu. Public utility land is where we can construct schools, cattle dips, dispensaries and other facilities to assist the people. But people have gone to Nairobi and grabbed the land and converted it for private use.

Hon. Commissioners, the level of education in Borabu District is very low because schools cannot be expanded due to grabbing. There is Simbauti Farm, which has land of 1,100 acres and it belongs to the Kisii Farmers Union. From 1996 to 1997, the union officials said that they had debts to clear and advertised in the Kenya Gazette that they were selling 300 acres of land from the 1,100 acres. So, they were allowed to sell 300 acres to pay the debts of the union. The conmen have sold that land and only 200 acres is remaining now. We do not know where the land has gone to and the residents are still wondering. We are asking if we can be allowed to construct a university or a big hospital there because we do not have any other land where such facilities can be located. We are asking the TJRC to help us on this matter.

We have been talking about Commissions but these Commissions do not deliver the results. There is a time they came to Borabu and talked to us. We told them all the issues affecting us but nobody has benefited from those commissions. The victims of the PEV who came from places like Molo, Kitale and Eldoret settled in Borabu. We heard that there was some aid that was to be brought. When that aid comes, we do not know who gets it. Those people who moved from other parts of the country like Molo, Kitale and Miteitei did not get anything. We are being told that there is aid which has been brought to this area, but we have not benefited and, therefore, people are crying for help.

That is all I had. Thank you.

Mr. Patrick Njue: Thank you, Mr. Otachi, for that background. Before I can proceed to ask a few questions to clarify your background, I would like to invite the two elders who are flanking you to make the additions to whatever you may have left out.

Hon. Samuel Omweri Kibwage: Firstly and foremost, I want to clarify that the injustices are based on falsehood. The question of whether that land belongs either to Borabu people or the Kipsigis can be traced to historical times.

Before the World War II, the Kisii people lived up to the border of River Sondu. They had their hunting and grazing grounds. So, when demobilization from the World War II soldiers, the Kisii people were added back and there was a fence and a fallow enforced with a barbed wire. They were told not to cross any more. From the other side, the Kipsigis were not added because they were not removed from that area. So, our claim is that the land belongs to our ancestors. At Independence, and those who went to Lancaster House, the partition was a hot debate and the leaders from across the borders were fighting to take the white settlers' land. Because of that, Sotik West Settlement was divided into two. So, we remained with one piece and the Kipsigis got another piece. Then justice started prevailing there. For purposes of peace, we accepted the small bit that we got and we have never demanded to remove the Kipsigis from Sotik East. But the Kipsigis, including their leaders, have always been saying that we are not entitled to stay on that land; because Kericho District moved to Rift Valley Province at Independence. They wanted all what used to be called Nyanza County of the white people to go to Rift Valley. That must be very clear to the Commission. This has ignited fights and cattle rustling.

Therefore, we are not sitting on any Kipsigis land and we do not want any Kipsigis land. We are contented with what we have. So, if that is clear, I want to move to one point that my friend left out.

In 1992, we had a very bad war and four of our people were killed; like the late Osinde, and the rest. They were killed at night in their own houses and no compensation was given.

Nobody was compensated even for the damages of their crops, grains and huts. The Kiliku Commission was told all that. They were told that these people wanted to be compensated but no compensation was forthcoming. This is a very big commission. I will not even compare it with the Kiliku Commission. This is an international Commission. It should look into this problem fairly and find a solution. We hold our Government responsible for the damages and losses our people continue to suffer.

Honorable Commissioners, let me now turn to the recent commotion which we had in 2007/2008. It is really very, very disheartening to see that it happened during this age. If any of you had a chance to see how Chebilat Market was flattened and burnt completely, and then we are told to keep quiet, I think it is like adding insult to injuries. If you see some of the people who are here like Osano whose permanent house worth over Kshs3 million was flattened completely for no reason. It was not built on the other side of the border. It is on this side. If you go to the Late Clements's home, three houses and three vehicles were burnt down, crops were cleared in the farm and the granaries were also burnt. How do you reconcile such cases? How do you help? So we feel the Commission

should help us. Even if we are seeking peace, some of these people should be compensated just to comfort them and wipe their tears.

Presiding Chair, when we come to the question of stock theft, we follow stocks which are stolen across the border either to Bomet or Trans Mara District. When the footsteps are lost there, no arrest is made and the animals are not recovered. We feel that the Commission should find out why always the stock is crossing to the other side and none to this side. There has never been a follow up of stock theft from Bomet or Kipsigis area or Masaai area into Borabu. So why should we have this? Is the Government so helpless that it cannot stop it or is it that the Government agencies are compromised? So we would like to appeal that some compensation to these particular cases be given. Even those who lost animals, some of them have lost the entire herd, some maybe a few. But if they want to be compensated, they should be compensated. It is true we want peace and reconciliation, we want to trust each other but when these people suffer, even if you tell them to keep quiet and their animals will be recovered, it is like telling a hungry person to stay on and that the hunger will pass on. He will never forget. So we need to help some of the cases like those I have mentioned. Last time when you were in Kijauri, we gave the list to you. We gave even the estimates of the losses incurred. So, please, help us.

My friend has mentioned about development injustices including the political injustice. We sometimes say we are unrepresented. We feel that what he has said is clear. I do not want to add but we are very much hurt. We also recommend that in addition to the compensation, maybe we should have a permanent tribal committee to see how things can be upped up. There is an area which we did not mention. We want to give a reflection of what he said regarding Simbauti Farm. There is a lot of corruption going on there. The word corruption has killed this country. It gives us shame, those of us who travel outside the country when you are asked, "You are from the corrupt country"? It is really shameful. We will recommend that the Kenya Anti-Corruption Commission (KACC) establishes offices at the district level so that they can hear and see these things. When this word is spoken and heard, even if you cannot arrest a corrupt person, it is there and we will not surrender and assume that it is not there when it is there and hurting us. I think we have a lot of trust that your expertise put together will find a solution to this problem. Thank you.

Mr. Patrick Njue: Thank you as well, Sir. Maybe, you can just clarify for the record. You could, please, give us again your names.

Hon. Samuel Omweri Kibwage: I am Honorable Samuel Omweri Kibwage. I am a resident of Borabu and I know all these issues.

Mr. Patrick Njue: Thank you very much, Mr. Omweri.

Hon. Samuel Omweri Kibwage: The other thing I can add is that, currently, I am the Chairman of the Borabu Leaders Forum.

Mr. Patrick Njue: Thank you. We will again be coming back to you. I do not know whether my other elder has an input. Thank you, *Mzee*. I just wanted to ask that you start by stating your names again and then give us your input.

Mr. Johnstone Ochwang'i Moronge: My names are Johnstone Ochwang'i Moronge, I reside in Borabu. I am not here to prove what has been said but I am only confirming what my other colleagues have said. I only want to add one or two things. At Chebilat Border Market, there is a piece of land that was hived off from Nyanza Province when the road was being built in 1973. So this portion of land belongs to Nyanza Province. We would like to bring this to the attention of the Commission so that you note that we need our land to be brought to Nyanza. So there is a dispute with the last bit of our border at Ng'oina. Sometimes the Kipsigis come to Borabu and when we report to the administration from the Rift Valley Province, they prepare for war. We are not at war with anybody. Although so many of our young men have been killed, we keep the records.

I will also add that out of those who suffered during the clashes last time, there was a young man who was killed when he was defending his father and brothers. He was brutally killed. The father is here and he is called *Mzee* Nyarunda.

Another thing I want to stress is that there are certain wrong information about our young men where they are equated with *Mungiki*. But they are our *Chinkororo*. These boys are not *Mungiki*-like, but when we are provoked, as I have said at Ng'oina and Borabu, we call them to come to our support. Whenever the war is over, they go back. So we do not want the Commission to think that we have vigilantes here who kill people. They are only called upon when we are provoked by our neighbours. So they should be taken in that light.

Lastly, I want to affirm our faith in the Commission which, as we have said, is an international Commission. We do not want it to be like the other Commissions whose recommendations are just gathering dust in the shelves of Government offices. We want to be serious and our eyes are on you and we wish you the best. That is all I wanted to say.

Mr. Patrick Njue: Thank you as well, Mr. Ochwang'i, for that input. I have noticed that we have been joined by the *mama* who *Mzee* Otachi had earlier referred to. *Mama*, how are you?

Ms. Nyarinda Moikobu: Fine. How are you?

Mr. Patrick Njue: We have been having *Mzee* Otachi, Mr. Omweri and *Mzee* Ochwang'i who have made a presentation on behalf of the Kisii Community coming from Borabu District. We have had a wonderful insight into appreciating this community. We were anticipating your coming so that at least you could as well give your input and more so on the plight of women and children. If you are ready, I will ask that you begin

by stating your names and tell us where you come from and what you do and continue to make your presentation.

Ms. Nyarinda Moikobu: Thank you very much for giving me this opportunity. My names are Nyarinda Mwikobu. I reside in Chebilat. I was a civil servant. I bought land at Chebilat on the side of the Rift Valley. When I retired, I took all my pension and built a school there. It was a very nice school with very many pupils. I also built my home there. In 1992, there were clashes that truly affected me. Everything was looted from the school and the school remained empty. I went back and rebuilt the school but in 1997, the place was again looted and all the property was taken from the house including cows and goats. I had four cows, the fresian type, and very many goats that were taken away, and also other properties were looted. I again rebuilt the school and replaced those properties. But somewhere in 2002, it was affected but not as worse as the previous attacks. In 2007/2008, that is when things went haywire. My home was looted again and everything was taken from the school plus all the properties from the house including doors, windows and iron sheets. That is where I invested all my pension. By good luck, God helped me and I ran away in the night. I had already sent the students home.

It was around 9.00 p.m., at the night and everybody had ran away from Chebilat. There was nobody there on the side of the Rift Valley Province but I thank God. I just went to the bush and because God is always wonderful, I found a person who was also running away from Chebilat. He had a Nissan vehicle and asked for a lift. If I had remained in the Rift Valley, my life would have been in danger. I thought that if I move to the Kisii side, they may think that I am going to steal from them. I could be speared. But by good luck, I got the lift and I did not go to Mrs. Omanga but just called her from the bush. I told the man to leave me in the forest because if I went to the houses, they would think I was a thief. Good luck, there was a phone and some little credit, so I called Mrs. Omanga who came and picked me from the bush at 10.00 p.m.

I stayed there, but before that, I started to take my properties with the tractor but it got stuck near the gate. After a short time, I saw four men from the Kalenjin community who came and told me: “Woman, do not go away. Please, do not vacate the place because there is calm now at Chebilat. There are no conflicts, there is no burning of houses and we are also taking care. We have taken charge of the area from KCC up to Nyachae’s place. That is why there is calm in Chebilat at the moment. Just take back the property into the house. If you go with the property, the Kisiis will think that we have chased you away and they will start the fight again. Please, do not incite the fight again.”

They had some chairs; we sat. I sent my child to bring us soda and some bananas which they took. They then reiterated that I take my property back to the house. Near the gate where the tractor got stuck, there was another Kisii elder whom I told what these people had told me and he responded, “If they have told you like that, please, just listen to what they are telling you because if you go, they will come at night and take everything and say that they had told you not to go and everything will be gone.”

Another tractor came which was in good condition and I used it to take everything back to the house as the elders had told me. They were elderly people who were my neighbours. In short, I tried after two days to get transport to take my property again, but on opening the door, more than 35 people came from the side of Dr. Manduku. We are just neighbours across the road. They emerged from the sugar plantation and chased away those who were trying to take the property. In the process, the driver ran away with the transport.

When we were at the roadside, they said, “You, woman, get into the vehicle. You are going to be killed.” We boarded the vehicle and went away. That was the last day I saw my home with my eyes. The house was looted completely. A few days before that, people would come and say that the people who are going to fight here are from Pokot; the *Ngorokos*. It is not us who will fight. They told us to vacate the area because we had grabbed their land. The person who told me that was my neighbour. That woman told me: “If you do not move away from this place at that particular time, you will die next week.” I was going to tell her to give me children to join the nursery school. Everything has been taken including the school. Standard Eight pupils could have sat for their first KCPE in 1998 but they went away with their teachers. Even my workers went away. I have an orphan I am taking care of. He also wanted to go there so that he could see what he could take from the house. That is when he found people who were putting things into the tractors and others carrying things on their heads including chicken and foodstuff. All the school equipment was carried away. He could not go there because he could have been killed. Now we have become IDPs. We have stayed at Borabu since that time. We were not at the camp. When there are donations from the Ministry of State for Special Programmes, we do not even benefit from it. We are very many people. Others have sick children, the women are sick, others have died and others have remained widows and injured, but we did not get relief which was brought for IDPs. Although mattresses were brought for the IDPs, when you go there, you find everybody is carrying six mattresses; three on one side and three on the other side yet the people who are expected to get that assistance, the IDPs, did not get anything including food. I cannot personally say that I got the food. The Non-Governmental Organizations have helped us. I want to thank NGOs like The Girl Child, the Catholic Relief Services and very many other NGOs. We thank them very much. But we have not been able to access food.

One day when we were in a group of the affected people, we got a report that there was some food from Nairobi; more than a 1,000 bags of maize. It was taken to Nyansiongo NCPB Depot. But at night, around 2.00 a.m., there were tractors just by the door and the maize was loaded into those tractors and taken back to Nairobi. We do not know whether it was taken back to Nairobi or to another place. There is one person who wanted to establish why the maize was being loaded into the tractors at night. He was ordered to move away from the place. He was chased away. As he left, he took the number of the vehicle. Even if we speak about that issue, nobody is assisting us. We went to Nairobi and raised this issue with the Ministry of State for Special Programmes when Dr. Shaban was the Minister in charge. We did not find anything regarding that issue.

There are people who have children in school while others are sick. Maybe the parents are sick. Where could we get assistance from? Mrs. Omanga really assisted me. There were other well-wishers and friends who helped us a lot. We have overstayed our hospitality. I am requesting the Government to assist us in Borabu. We have found that the Government has bought land and built houses for other IDPs. Are we not the same? We want to be assisted just like those other IDPs.

In conclusion, I would want to say that while people are going round asking for forgiveness, justice and reconciliation, if at all somebody is coming to say that “Nyarinda, I apologise”, he or she must confess what he did before I forgive him. If they tell me that they took my property, I am ready to forgive them. We are very ready to forgive but we do not want blanket forgiveness and reconciliation. Why are you asking for forgiveness? What have you done? Come out and say what you did, that is when we can see how we can forgive each other.

Very soon, we are going to elections in 2012. We also want to vote. What benefit do we have so that we can be free to vote again? For example, I am a graduate teacher who retired from the Kenya Institute of Education as a curriculum developer. If I am in the middle of the ladies selling vegetables at Chebilat Market, will anybody imagine this is a graduate and that this is somebody who had a home, opened a school and had struggled and she needs help? The women with whom we have struggled together are very many including those who were raped. We need psychological counselling. This is the time. Where is our Government? If you look around, you will see money going here and there. Why are we not taken care of? The Government of Kenya should treat us equally. Whenever I buy vegetables or kerosene with the little money that I have, I pay taxes. So why can we not be taken care of? Thank you very much, God bless you. Try to see that you make a follow-up so that the Government can help us so that we can move away from these IDP camps.

If a man has given you a house which was meant for his children, then he has been very kind to give you to give that little room. But for how long are you going to stay there? How long are you going to use the blankets of the children of that man? Kenya is not a poor country because when we look at the newspapers, we see money flowing back and forth. Please, help us. Thank you very much.

Mr. Patrick Njue: Thank you, *Mama*, for that wonderful presentation. You may continue. I will just make my observation or ask questions to clarify what you have told us. Mine are just general questions. In terms of Kisii County, maybe Mr. Otachi, you could help me to understand and those of us who are new in this region, how many districts do we have in the Kisii County?

Mr. Hezron Otachi Nyambane: Thank you very much, Presiding Chair. In the whole of Kisii, we have 13 districts but five districts are in Nyamira County and eight are in Kisii County.

Mr. Patrick Njue: I was asking that because majorly the three of you seem to be speaking from Borabu District. I was wondering how the other districts were affected. I do not know if you will be in a position to comment on that.

Mr. Hezron Otachi Nyambane: Presiding Chair, Kisii County borders Trans Mara. So there were Kisiis who were affected in Trans Mara. They moved to Gucha District. Kisii County has IDPs who came from Molo, Eldoret, Kitale and they have nowhere to settle. They are now camping here.

Mr. Patrick Njue: As a community, the Kisii people, do you have a council of elders and if yes, do you identify yourselves by a certain name like we know in Meru, there is Njuri Ncheke? Do you identify yourselves by a name and is there a council of elders within the Kisii community?

Mr. Hezron Otachi Nyambane: In the Kisii County, we have the Kisii Council which brings all the Kisiis together, that is in the counties of Nyamira and Kisii.

Mr. Patrick Njue: And the composition of that council has drawn its membership from various districts?

Mr. Hezron Otachi Nyambane: We have the chairman, the executive secretary and the treasurer who are from the different districts. We have the committee of the Abagusii Council.

Mr. Patrick Njue: What are the duties of the elders within the community? You have said that as you are here, you are also representatives in that top council of elders in the Kisii Community. I want to know what sort of duties you have as elders.

Mr. Hezron Otachi Nyambane: Mostly, we work for the council to enhance peace between the Abagusii and other communities because in the Kisii County, we have neighbours like the Maasai, the Kipsigis and the Luo. In the event of conflict, we talk with the elders from the other side and then we come together in unity and get a solution. But for the Kipsigis, we can talk to them today and when they come back, they take a different approach.

Mr. Patrick Njue: I know that *mama* wants to give her input here.

Ms. Nyarinda Moikobu: Thank you very much. Also we talk about how our children can get education and how we can improve the education sector in our area, we also talk of how to come up with schools and markets. For example, women do hard work like horticulture and finding markets for our produce. We also talk about health care issues especially in connection with maternity cases. We would like hospitals to be nearer us. For example, at the moment, one is forced to travel from Borabu to come here at Kisii for medical attention. If it is an expectant mother who wants to deliver, it is hard to cover the distance from Borabu to Kisii in labour pains. So it will be good if these services are brought closer to the people.

We also talk about the roads because it is very hard, especially when it rains, to get transport to hospital for treatment. We also discuss other development matters including encouraging our young girls to excel in schools.

Now the elections are just around the corner. We want women to vie for senatorship and governorship and so forth. But most women do not get this opportunity. Very few women hold qualifications such as degrees and masters' degrees. That is why we encourage the Abagusi Community to promote girl child education. We should also teach our children how to behave well and be good citizens.

We want our teachers to help the girl-child. We do not want them to be a problem to our children.

Mr. Patrick Njue: What has been the position of Kisii women in terms of leadership? Presently, for example, do you have any women councillors? Have you ever had women leaders in high level such as Parliament?

Ms. Nyakinda Moikobu: It is a bit hard to have a woman MP from Kisii Community. They do not take women seriously. We, as Kisii, have never elected a woman to represent us in Parliament. However, things are now changing. Our Constitution now provides for special seats for women. We hope to elect some from Abagusii Community. We have well educated women. We have women serving as Assistant Chiefs and Chiefs. For example, Ms. Mary is a Chief of Bonchari Location.

We also have women directors. It is only in Parliament where we do not have women.

Mr. Patrick Njue: Allow me to make the observation that I appreciate the role that elders play in fostering peace which you have alluded to. Even as we try to reconcile the cases that affect us within our communities, we appreciate that you continue playing this very important role as we continue to listen to the individual cases that will be coming up. It is important that you continue carrying out this very important duty as elders in promoting peace. We, as a Commission, can make final recommendations. So, I thank all of you for your time. I wish you the very best as you continue doing very important duties within the community.

Our Commissioners will ask you a few questions.

The Presiding Chair (Commissioner Slye): Thank you, Leader of Evidence. I want to thank the four individuals who have spoken to us. You have provided us with very important context for us to better understand the injustices that were committed against your community.

You have given us the background about many of the historical injustices of this area, including different periods of violence, not just the most recent post-election violence, but earlier violence. You have provided us important context with respect to economic

development and infrastructure with respect to access to medical facilities, education, water and other similar necessities. So, on behalf of the Commission, I want to thank each and every one of you.

I would also like to acknowledge the trust and faith that you have placed in this Commission. We are humbled by that trust and faith. I want to assure you that each and every one of us is committed to living up to that trust and faith.

Let me just take a minute to say something about our process. As each of you have said, your ultimate goal is peace, national unity and reconciliation. As you know, that is the goal of this Commission. This Commission is dedicated to furthering the process of national unity and reconciliation. But it is so eloquently stated that in order to have reconciliation, one needs to have some form of justice. If her water bottle has been taken from her, it needs to be returned or some compensation or reparation needs to be provided, but, of course, in order to have justice, one needs to know the truth to understand what happened and why it happened, the context in which it happened and who was responsible for this happening. That is the major point of our process at the moment. As you have mentioned, we have been here a number of times. We have been here conducting civic education and we have been here recording statements. Many people in this region have submitted statements to this Commission concerning their individual experiences with respect to historical injustices. This Commission has received over 30, 000 statements from people throughout the country. That is the largest number of individual statement that any Commission has ever received. I think that underscores the desire and importance of having a process like this in Kenya at this moment.

Here, we were conducting public hearings and we have drawn statements. We have drawn upon our own individual research and investigations to choose a few individuals who will speak here publicly to illustrate the types of violations that have been committed in this region. That is also to further the truth function. So, we are very much aware of the need for justice and that justice is a prerequisite for reconciliation. But we also need truth first. More specifically with respect to reparations, unfortunately, the Government has not given us the power to grant reparations ourselves although we would like to do that because we know that there are people here who suffered in the past. So, we want to assure you that we are aware of that situation but we do have the power to recommend reparations. One of you made a reference to the history of Commissions in Kenya. While the Government did not give us the power to grant recommendations, they had the foresight to say that our recommendations, would be binding as a matter of law. So, it is our hope and I think it is the hope of the people in Government who created us that when we give our recommendations with respect to reparations and prosecutions, with respect to further investigations, with respect to institutional and legislative reform, with respect to reconciliation and national unity, those recommendations will, in fact, be implemented. I want to assure you that each of us, even when we finish our work, will be watching this process closely to make sure that our recommendations are implemented.

Most importantly, it is the four of you and the individuals in this room that need to watch closely and to make sure that our recommendations are implemented. I want to assure

you that our report would not sit and gather dust on a bookshelf in a hidden room somewhere in Nairobi. We are obligated to make public our report to you, the members of the public. At the same time, we will give our report to the President. So, there is no chance that our report will not be seen by you and by the rest of Kenya.

I would like to ask if my fellow Commissioners have any additional questions for the four witnesses.

Commissioner Dinka: I would also like to associate myself with the Presiding Chair to thank the four of you for coming over and testifying to the Commission. Your testimony has really made a few things that we were not clear about very clear for us.

Hopefully, as the Presiding Chair said, some of the problems you have raised will be captured in our recommendations.

I have one or two questions to ask *Mzee* John. In your testimony, you mentioned something that the three have not mentioned. You said when the community faces some serious problems, it calls on the boys for support. What kind of support do they give?

Mr. Johnstone Ochwang’i Moronge: When provoked by our neighbours, we would call our boys for support. They are like a reserve force. They were just reserved waiting for provocation. After offering that support, they would retreat back to their places of work.

Commissioner Dinka: Were they trained? How was it done? How were they mobilized?

Mr. Johnston Ochwang’i Moronge: It has been there. It was just like your home; you had to be prepared for any aggression. Those boys had to be there because of our neighbours; Kipsigis and Maasai, who we perceived to be aggressive. We do not fight with Luos.

Commissioner Dinka: Were they armed by themselves or the community? Who armed them?

Mr. Johnston Ochwang’i Moronge: We had to look for weapons because we are surrounded by hostile neighbours. However, the Maasai are now becoming friendly to us. Last time when there was chaos, they did not attack us.

Commissioner Dinka: Why is it that you do not call on the police or even the army of the state to come and help you to sort out problems rather than calling on this kind community militia?

Mr. Johnston Ochwang’i Moronge: When we are provoked, sometimes it takes time for security forces to come to our aid. So, we cannot wait for them to come. Those neighbours come at night.

Commissioner Dinka: But what happens on the other side? Do they organize the same kind of militia from their side?

Mr. Johnston Ochwang'i Moronge: The other side also have their *morans*. So, we cannot just sit as if we have no hands. We have to be prepared.

Commissioner Dinka: Since we are living in the 21st Century, this may be not sustainable. How do you think we can get rid of the community militia, but at the same time, we aid the condition for stabilizing the situation and bringing about peace without the militia from either side? What will be your advice to the Government of the day?

Mr. Johnstone Ochwang'i Moronge: We are peaceful people, but we defend ourselves when provoked.

Commissioner Dinka: If you are asked by the President to advise him on how best to protect your community and how peace can be restored between your community and other communities without resulting to your militia, or the other side's militia, what advice will you give him?

Mr. Johnston Ochwang'i Moronge: First, I will prevail upon the council of elders from all those communities to preach peace. We want to live in peace with our neighbours.

Commissioner Dinka: Mr. Omweri talked about the need to establish permanent tribal committees for peace. Are you saying these committees will be meeting from time to time and discuss peace and resolve issues without resorting to violence? Are those the kind of committees you have in mind?

Mr. Johnston Ochwang'i Moronge: Yes, that is what we are proposing. These committees will be meeting regularly to review the situation and advise their members accordingly.

Commissioner Dinka: Thank you very much. I have no further question.

Commissioner Ojienda: Thank you very much, Mr. Ochwangi, Mr. Otachi and Ms. Nyarinda for your testimony.

I just want to ask a follow-up question to what my fellow Commissioners asked. Mr. Ochwang'i, do you have a number of the *chinkororo*? How many were they? You said they were able to protect the interest of community. You also said they are not like *Mungiki*.

Mr. Johnston Ochwang'i Moronge: They were scattered in their villages. However, when we were provoked by our neighbours, we would easily assemble them.

Commissioner Ojienda: You also said if your neighbours lived in peace, there would be no need for the *Chinkororo*?

Hon. Samuel Omweri Kibwage: Just to help my colleague, your question is very good. We have been asked this question before. At school, when you were provoked, your eyes would turn red because of anger. But in Kisiiland, if our community is provoked by our neighbours, the *Chinkororo* come together to protect their community. These are young men who use crude weapons and stones. That is how the word *Chinkororo* was coined. It is not a battalion. These young men are not trained.

In 1997, when the new DC at Masaba and the OCPD were looking for *Chinkororo* in Machoge and Bobasi, our brothers from Nyaribari and Keroka pelted them with stones. So, *Chinkororo* are everywhere in Kisiiland. As I said, it is not a trained battalion.

Commissioner Ojienda: My understanding then is that any Kisii youth can turn to be *enkororo* if provoked or does that include elders?

Hon. Samuel Omweri Kibwage: Even women.

Commissioner Ojienda: So, in other words, you are saying that when a person from Kisii is angry they become *enkororo*.

Hon. Samuel Omweri Kibwage: Yes. In 1992 when Mr. Osinde and his group were killed, we all turned into *Chinkororo*. Women were carrying *uji*, old men carried stones and sticks. The young ones were the one who pelting police officers with stones. In other words, women were feeding them and elders were supplying them with crude weapons. It was the youth who were in the front line. Who was not *enkororo* at that point in time?

Commissioner Ojienda: Thank you very much. I understand now how *Chinkororo* used to operate.

I want to ask you another question, Mr. Omweri. Now that you have taken the seat, both yourself and Mr. Otachi have spoken about violence and politics. I think *mama* has also touched on the same. There were spates of violence in 1988, 1991, 1992, 2002 and 2007. Violence occurred during election time. The border point has always been volatile. What do you see as the real cause of violence in the Chebilat border?

Mr. Samuel Omweri: It is true that during election period, the situation worsens. During other times, we have stock theft or stock clashes. But during campaigns certain leaders who live on falsehood, who expect to gain certain leverage think that land is one issue. They cheat their people that if elected they will repossess the land and give it to them. So, across the border, land is used as a political weapon. But from our side, we have never told our people that if they elect us we would get them land on the other side. So, if this Commission can prevail upon leaders to stop these falsehoods or propaganda about land, we will have answers to our problems.

Commissioner Ojienda: Why has the *mama* not returned? I have known the pain associated with that. I have seen her struggle to speak. But there is relative peace now, but she has not gone back to her home since 2007.

Mr. Samuel Omweri: It is not only *mama*. We have three others who have not gone back to their homes. If I can remember, Hon. Kombo had a school which was destroyed. He has never gone there because Kipsigis cannot allow him to repair it. He has been warned not to go back there. Another example of a person who has not gone back to his home is Mr. Osoro. We have a pharmacist who had a very good chemist, but he has not gone back. There are several people who have not gone back to their homes and businesses. The situation is not yet conducive. There is no peace. The situation is still tense.

Commissioner Ojienda: My assumption is that all of them have title deeds to their land. Do you think this proposal for a permanent tribal committee for peace or the proposal to have elders on both sides to find a solution will help *mama* and others to return to their homes?

Mr. Samuel Omweri: When they sit, they will address all injustices on both sides. They will also look into the origin of these problems and involve the Government and probably come up with a lasting peace in the region. I believe they will be able to reconcile all the communities living along border. With involvement of the political leadership, they will succeed.

Commissioner Ojienda: I hear Ottachi say that whereas there seems to be no problem with your Luo neighbours, there seems to be a solution with the Maasai neighbours, there seems to be an unresolved problem with Kipsigis neighbours. What solutions do you prescribe? What administrative and other solutions do you prescribe?

Mr. Samuel Omweri: Before I come to administrative issues, I would like say during the last violence, Kisiis who lived in Kisumu had their houses burnt. They came back home. But we appealed to everybody in Kisii not to touch any Luo man or woman who was living here before the problem. I stand before you to be proved wrong if there was any Luo who was molested or his property destroyed. But we lost a lot in Kisumu for no reason.

For the Maasai, I do not know whether I would be right to speak on their behalf. But from our perception, we saw they had a political issue they wanted to square out with the Kipsigis. So, they wanted a friend. The nearest was the Kisii. So, they did not want to fight us. They had their political war on the other side.

In regard to administrative solution, I think we have District Security Committees. What do they do? Luckily some of those districts have been created because of security issues. But is the DC up to the task? Are the police up to the task? There is the need to have committed officers who can offer solutions to our problems.

In 1992, the DC Nyamira called for help from Kisumu. The Kisumu PC had no force. We had police officers from Nakuru. They came and arrested the situation. So, administratively, I think the officers have a lot to do. I hope I have answered your question.

Commissioner Ojienda: I just want clarity on a few issues from Otachi as well. You have referred to land in Borabu as having been grabbed. Do you have any documents showing the specific pieces of land and who grabbed them? Also, have you filed any claim or taken any step to get back the land as a community?

Mr. Hezron Ottchi: Thank you very much. Borabu is a settlement area. From 1992, there were problems caused by the leaders. A leader told Kipsigis that their boundary extended to Borabu. That was how he incited them to demand land in Borabu. In 1997, there was a big problem.

The second problem in Borabu came in 2007/2008. We had two “spots”. It was the people in Borabu which is in the Rift Valley. We asked ourselves: “Who are these “spots’ ”? and he said: “If you give me this opportunity to lead you, these people should be removed”, and he incited the people: “You know that land is like gold. If you get land, you have gold.” He said that leadership should not go to other people. That is the big problem that came in 2007/2008.

It was so bad because many people moved to different areas. For example, people were burnt in churches. This is something that is known by all Kenyans. The Commission knows all these things. This is a part of the history of the Kipsigis. Since the days of our grandparents, these people have been carrying out cattle rustling and killing each other. Women from Kipsigis are in Kisii and the Kisii women are in Kipsigis. But in 1992, the umbrella of Kenya decided that the Kalenjin--- Kisii boundary is known. That is what really happened and caused the clashes. That is how it was in 1997, 2007 and 2008.

Commissioner Farah: Thank you very much for the *wazees* who have come forward to do the presentations today. I have a few questions. I will start, first of all, with a simple one for my own education and it can be answered by any one of you. You are saying that there were eight districts in Kisii County. How many districts are there in Nyamira County?

Mr. Hezron Ottchi: In Nyamira County, we have five districts.

Commissioner Farah: My other bigger question is: It appears from your presentation that the marginalization that you mentioned like bad roads, fewer primary schools and bad hospitals, all that – for my own education – is in Nyamira County, Borabu District but the bigger Kisii County is okay. Is that my understanding?

Mr. Hezron Otachi: Thank you very much. In Borabu District which is in Nyamira County, we do not even have all weather roads. We also do not have a district hospital called Borabu. We have one but there is no equipment, medical officers and even the

construction is very poor. But the name is there. If you say that you are at home yet you do not have a house---

Commissioner Farah: We understand that before Nyamira and Kisii came into existence, the whole place was known as Kisii District; it was one large district. Why was Borabu - perhaps those days it was a division or a location, left behind by the rest of the Kisii?

Mr. Hezron Ottachi: Borabu District was left behind because we have an area which is known as Borabu/North Mugirango, where Borabu has not been separated to have its own MP. The MP for Borabu which is in North Mugirango comes from North Mugirango. So, to vote for him becomes hard. To tell him that money for CDF can be used to construct all weather roads becomes very hard because he comes from Sondu, which is almost like going to Kisumu, and extends to Trans Mara. So, it becomes very hard for him to reach this area and, therefore, he wants to settle at North Mugirango. Recently, it was announced that Borabu will get a constituency. So to reach him is hard for us and there is no other way or action that has been taken.

Commissioner Farah: I have noticed the sadness of Borabu marginalization but do you see light at the end of the tunnel in future with Nyamira County and Borabu Constituency? Do you think things will improve?

Mr. Hezron Ottachi: When it was announced that there will be Nyamira and Kisii counties, we decided to wait and see the results because it is something new to us and we will see how it takes us.

Commissioner Farah: The other question I want to ask is about IDPs. You said that Kisii IDPs who fled from Kitale, Njoro, Molo, Nakuru, Kapsabet and Eldoret came back to Kisii. Were the Kisii IDPs only from those areas or there were some other Kisii IDPs from Kisumu where, already, one of you has said that some houses were burnt? Are there IDPs from places like Nairobi or Mombasa? Were there any Kisii IDPs from Central Province?

Mr. Hezron Ottachi: The IDPs from Kisumu and Muhoroni are here. We have others who settled in Muhoroni; they are still there and they have constructed their houses and worked there. But later their houses were burnt down and they are here now. Others who came from other areas that I mentioned are here inside this hall.

Commissioner Farah: Were there any Kisii IDPs in any camps of IDPs anywhere in the country or they only came back home and were assimilated by the larger Kisii community? You said that the Kshs 10, 000 which was supposed to have been given to Kisii IDPs went to the wrong people; that is what you said in your statement. Who are those wrong people and why was it given to the wrong people?

Mr. Hezron Ottachi: That money never reached us. It was channeled to other Government sectors; maybe the Government people who got the money did not release it

to the real victims. We never know whether those people were given the money because the real victims were not given the money. The IDPs who came from other areas constructed their tents inside Kisii, some in Keroka and Ekerenyo. Those people lived there for more than 30 years and, maybe, their parents even died there. Their children never knew another home. They were born in those areas but when they came back, they were sent away. They were asked where their land was and they are just now roaming around here in Borabu because we have more. It is a bigger area than Kisii. You will find that people here have two or three acre pieces of land but at the settlements, people have up to 14 or 30 acres either in highland areas or waterfall areas. A majority who are there are the ones who were not given anything.

Commissioner Farah: My last question is: Recently there were political rallies where it was insinuated that the Kalenjins are apologizing to the Kisiis for the sins committed. How have you taken this? Is there a real effort towards reconciliation before the next general election or how do you view it?

Mr. Samuel Omweri: We consider that to be an insult. Our lady colleague said earlier: “Admit your mistake, admit your wrong actions and, if possible, explain why. Then you can look for reconciliation and forgiveness.” But a blanket reconciliation or forgiveness, we call it in English “lip service” and it is not from the heart. So we are waiting to see if they can produce those who can admit that they did wrong and they want to be excused or forgiven. We are ready to have that. But in the air, who do we forgive? We do not forgive a Kipsigis tribe. Those were individual criminals. At Borabu, we were attacked by the youths not from Bomet but from the hinterland. People who had no boundary problem! We are told that some of those even came from Keiyo. So, there was a plan! Who brought them? There was that kind of direction or sign; there was an organized plan to attack the Kisiis. Let them tell us and we say “please, we forgive you, do not repeat” and that will be reconciliation. But we do not want *hii ya mdomo*.

Commissioner Farah: As my Presiding Chair earlier on said, you should continue on the reconciliation path; any signal you are given from the other side of raising a white flag, you must also raise another white flag. You must send the correct signals and we have noted all your complaints this morning. I have no further questions.

Commissioner Chawatama: *Mama*, we will give you an opportunity to address us on what Commissioner Farah has brought up. So, let me also ask a further question. In our custom, where I come from, when a young man wishes to marry a young lady, they send a little plate with a token inside it for the purposes of “can you loosen our mouths so that we can come and tell you what we want; that we want to marry your daughter”. Why was the effort of the Kalenjin not seen as such a token; that they wanted the door to be opened for further discussions? Why was it interpreted as merely lip service?

Ms. Nyarinda Moioibu: I have not understood your question.

Commissioner Chawatama: I gave a scenario of what obtains in my country culturally or traditionally. When you want the other side to loosen their mouths so that they can

speak and tell you what they want, you send a plate with a token inside. Now, the efforts of the Kalenjins have been interpreted as lip service; that they did not mean that they want to be reconciled with the Kisiis. Why was that conclusion reached that it was merely lip service? Why was it not seen as opening slightly of a door so that the two can come together for further discussions and to further reconciliation?

Ms. Nyarinda Mojobu: If we look back, long time ago when I was a little girl, there was theft across the borders. The Kipsigis would take cows and goats from the Kisiis, and if the Kisiis killed one or two of them, there would not be much dispute. If a Kisii killed a Kipsigis, he killed him as a thief and it never caused mass killings. So, when something of this magnitude happens the best thing would be reconciliation. Elders from both sides should come together and talk. Let us find out what happened. At the same time, we would like to have what was stolen. I know most of the things are not perishable. Certificates of children and family pictures can be returned. Let people come forward and say: "This is what I did!" As Mr. Otachi said, there was the word "*madoadoa*" which was used. It meant the Kisiis, yet they lawfully bought that land. It was a willing seller, willing buyer deal.

If you want to claim it back, you are going to buy it from me.

So, the dispute between these two groups or tribes started during the political campaigns where you campaign and tell people: "If you do this for me, this is what I will do!" So, to get out the stains is to move the Kisiis from the Rift Valley where we had bought land. A Kisii is a hard working person. He buys land, fences, farms, keeps livestock, builds a home and continues with life.

Commissioner Chawatama: What I was aiming at in asking that is when an opportunity presents itself, to be able to look at the opportunities that present themselves for reconciliation. I will come to my next question which is also directed at you. There was mention of a market that was flattened and I believe that this is a place where mostly many women did their selling and earned money to educate children and provide other necessities of life for their family. I have not heard that this market was rebuilt. So, I am wondering what has happened to the people who were selling at this market. What are they doing now in order to earn a living?

Ms. Nyarinda Moikobu: Some have gone back to roasting maize or selling vegetables. But those who had businesses like shops and homes have moved to Borabu where the headquarters is. When most of them lost everything, there was no other source of income from where they could restart their business of selling produce, food or anything else. I gave you an example of myself. As I retired, I put everything in my school. In my home I built everything; I was very comfortable after retiring. But when I lost everything before I got any income from the project, I was very desperate. So, most of these people are desperate. They go and do *kibarua*; they are casual labourers, weeding somebody's home or taking care of somebody's home or babysitting somewhere and it is Kshs50 per day. The *gorogoro*, the two-kilogramme tin of maize, is Kshs150. That is why some cannot

afford to go to the hospital or take their children to school. Those are the people who are crying for help.

Secondly, I will add a little bit on Borabu Constituency – I call it so because I hope it will become one – we had seven locations in Gusii. When people heard that Borabu was on sale, anybody could buy land there, people went and bought it. They were from Greater Gusii, North Mugirango, Kitutu, Nyaribari and other places. So, those are the people who accommodated those *waathiriwa*, IDPs. That is why you do not see them now in one place. We say that because we were not in the tents, we need help. We are more than 400. I have a piece of paper here with the names but some have passed away. When some go back like me, I am a woman who is on my own. I cannot go back to my parents to claim land. Of course, the Constitution guarantees that but I had established myself but now I do not even have money to go to Daraja Mbili to buy bananas and sell them in Chebilato or Borabu. That is because everything was destroyed. So, we have women there; some have come back although many in tears. If you go there--- Just stop there because it is on the way to Nairobi and see for yourselves. In short, they are there. Some have been taken care of by relatives and they have gone back to their homes maybe in Nyawanjare and they are told: “You sold land and you went to buy in the Rift Valley, we do not have land for you.”

Commissioner Chawatama: Thank you very much and I am sure the Commission will benefit from the list because I think even in getting supplies to the IDPs, it will make life a little bit easier for the Ministry concerned if they had a list and know where these people can be found. I would like to thank all of you for your testimony this morning. I had an opportunity to meet you when you came for civic education and I am so happy that you are able to come today as promised and hold these hearings.

The Presiding Chair (Commissioner Slye): I would like to thank each of you for appearing before this Commission and sharing with us not only your own stories but the stories of your community. We have heard about the many grievances and many injustices you have suffered. We have heard of different suggestions on how to begin to address them and that is very useful for this Commission. I just wanted to say one small thing about Njoro that was mentioned earlier. When individuals are attacked or provoked, they can and should defend themselves. Those individuals and communities have the right to defend themselves. But we also know that, sometimes, when people defend themselves, they themselves also hurt others. They are perceived to hurt others. You spoke of the young men and others throwing stones, for example.

Sometimes, we throw stones and our aim is good and sometimes we throw stones and our aim is less good. I do not say this because I know much about this particular group or particular conflict; so I am not here to say who is right or wrong. What I am here to say as *Mama* has so eloquently said before is that, in order for people to start to think about reconciling, they need to know what happened. They need to know who did what and then they need some form of justice, some form of reparation. So, all that I would like to humbly request here is that those of you who are familiar with these conflicts and are familiar with individuals, maybe some of whom are here in this room and were involved

in that conflict, to reflect upon where we are today and to reflect upon the need expressed here by many of you for national unity and reconciliation and to take advantage of this Commission to come forward to us, either publicly or privately, talk to us about what you saw, what you experienced and what you did. Let me assure you that while I make this request here to the people here in this room, we make this request and we will make this request in every part of the country where we go. So it is not and it should not be that only one people or one group should step up and the others do not. Everybody needs to step up. Everybody needs to take the risk. One takes risks easily for conflict; one also needs to take risks for peace and so this is just a humble plea for those of you who are here. I know you are here because you want peace, because you want national unity and because you want reconciliation.

We ask you to take advantage of this process and of this Commission because if you do so, I can assure you that we will do everything within our power and abilities to assist you to reach that goal. Again, I want to thank each and every one of you for being here.

The Commission will now take a break for lunch and we will return to the hall at 1.45 p.m. But before we break I would like to recognize Ms. Mary Onyango of the National Cohesion and Integration Commission. That is another Commission that was set up under Agenda 4 along with the TJRC. Unlike our Commission, it is a permanent Commission. So, they are working with us and we are working with them so that when we finish our work, they can continue with the work that we started. It is very much the work that we have been talking about in terms of national unity and reconciliation. So, I just want to acknowledge her presence here and I am sure that if any of you would like to speak with her or to make connections with her Commission, she would be very open to that.

Thank you very much and we will see you at 1.45 p.m.

[The Commission adjourned temporarily at 12.20 p.m.]

[The Commission resumed at 2.15 p.m.]

The Presiding Chair (Commissioner Slye): I welcome you to this afternoon's hearing in Kisii and on behalf of the Commission, I want to apologize for the lateness of our return. I also would like to introduce an additional Commissioner who has joined us this afternoon. To my far right is Commissioner Margaret Shava, who is one of the Commissioners from Kenya. I would like to ask the Evidence Leader if there are any preliminary issues we need to deal with.

Mr. Patrick Njue: There are no preliminary issues.

The Presiding Chair (Commissioner Slye): Can I ask the Hearing Clerk to, please, swear in the next witness?

Mr. Patrick Njue: Commissioners, this is witness serialized 20 Kisii 13.

(Ms. Alice Moraa Koskei took the oath)

Mr. Patrick Njue: Good afternoon! Kindly for the record purposes, please state your names, where you live and what you do for a living.

Ms. Alice Moraa: My name is Alice Moraa Koskei. I am a veterinary technician and I offer private veterinary services. I am staying in Borabu but I was born in Kisii Central.

Mr. Patrick Njue: Welcome *Mama Moraa*. You are seated with us this afternoon following a statement which you recorded with this Commission on sufferings that you went through during the post election period. Do you confirm that, that is the case?

Ms. Alice Moraa: Yes.

Mr. Patrick Njue: I will ask that if you are ready, you proceed to make your presentation.

Ms. Alice Moraa: I am going to talk on the raping of women during the post election violence in December 2007 to early 2008. Before voting, there were campaigns by politicians who used inciting language and called other tribes thieves and told their supporters to remove the thieves from their midst. That is when the ODM youths took advantage of the announcement of the presidential elections which they claimed later to have been rigged. That is when rioting started. Youths who were holding arrows and spears started fighting other tribes and since I am a Kisii married to a Kalenjin, they counted me as a Kisii. When I tried to move out of the place to rush to the DC's office, Mr. Nakitare of Sotik District, he refused to evacuate me and my family. I rushed back to my house and I found that my niece had been raped. I was unable to take her to hospital. We sneaked to Kapchekor Forest and stayed there until Mr. Kipkalya Kones, who was the MP for Bomet and Magara, who was the MP for South Mugirango came to Sotik and held a meeting at the market ground. That is when I sneaked to Cheplat to ask for help.

I met the Administration Police of Mongori Chief's Camp. I talked to them and told them that I needed help. The AP's asked for a tip of Kshs 4,000 and Kshs 10,000 for a vehicle. There was nothing I could do. So, I gave them the money because I wanted my family to be evacuated to a safer place. I went with the APs and evacuated my family with other people who were also in that crisis of post election violence. We were taken to Mongori Chief's Camp. The fight intensified to Mongori. I tried to move to Kijauri Market in Nyasiongo Division of Borabu where I am staying up to now. When I was in Borabu, I managed to take Fena Gisare to the Kisii Level Five Hospital. She was tested and was found that she had been infected with HIV/AIDS by the youths who raped her. After six months, Fena died in Level Five Hospital because of the stress, trauma and injuries that she got during the time of post election violence. I also fell sick and I was treated.

The Presiding Chair (Commissioner Slye): The sound is not coming over channel one anymore. It makes me wonder if the Hansard is getting the testimony.

Ms. Alice Moraa: When I took Fena to Level Five Hospital, she was treated but on testing, she was found to be infected with the HIV/AIDS virus by the youths who raped her. She continued with treatment after which she died. Because of that stress, I got sick and I was also treated in Keroka IDP Camp by a clinical officer called Mr. Mogere. My young daughter was also treated there.

When I heard that the Government was giving between Kshs 10,000 and Kshs 25,000 as compensation for the houses that were burnt, I went to the DC's office in Sotik because my house was also burnt. I talked to the DC and told him that I had not been given any compensation. I was with Julia Nyakundi who was also affected. She is a widow. Her properties were destroyed. But the DC refused to compensate us. Instead, he told us that he would return the Kshs1 million to the Treasury and he does not know why we were disturbing him. Then we felt that the DC was inhuman because the money was for the IDPs and we were IDPs.

I am telling the Commission that women and children are defenceless. When the post election violence took place, we really suffered and up to now, we have not recovered. Some require more medical attention because we are traumatized. When I went to Keroka IDP camp, I noticed that many women were suffering. Some were raped and sexually harassed and humiliated. Their rights were violated and their children were suffering. I am also suffering because I do not stay with my husband. The post election violence separated us. I have never gone back to my matrimonial home because tribalism is still there. Now, because I do not have a home and I have an orphan who was left by Fena Gisare, I do not know what to do. I accommodate that child in a rental house I rented in Borabu. I had bought a piece of land in Sotik and that is where the house which was burnt was standing. I am a veterinary technician and Sotik is a potential area for dairy farming. That is where I was earning my living. For now, I am very frustrated because I do not have enough money to buy drugs to go to the field.

I thank the TJRC for their work. Let us speak the truth so that the truth sets us free. It shall set us free from fighting one another and destroying properties that cannot be recovered. I have heard the Finance Minister talking about Kshs4.2 billion which he gave the Ministry of State for Special Programmes. I wonder whether I am among the beneficiaries of the Kshs4.2 billion. That is because we hear of the money but we have never been compensated.

When we fought during the elections, the post election violence affected the children and women most. We ask the Commissioners to find a solution so that this thing does not happen again. I hope that TJRC will advise the Electoral Commission that anybody who incites should be disqualified from the election race. That can save Kenyans from fighting one another.

I now want to thank this Commission for bringing this session here today so that they can hear our grievances and how women suffered because, up to now, we have not healed. Thank you.

Mr. Patrick Njue: I also thank you, *Mama Moraa*, for that presentation. Let me first begin by expressing my sincere empathies for the losses that you suffered following the post election violence and, more so, with the loss of your niece, the breakup of your family and even the subsequent suffering that you continue to undergo in your state as an IDP. I will proceed to ask you a few questions to clarify your testimony before our Commissioners can also do the same.

When you went back home and found that your niece had been raped, did she tell you whether she was able to identify those youths?

Ms. Alice Moraa: I talked to her but she could not identify the youths.

Mr. Patrick Njue: From your testimony, it is apparent that it is you who was constantly moving from one office to another seeking help. I am wondering before you left home, how far was your husband able to assist you?

Ms. Alice Moraa: My husband was working in Mombasa. He is there even up to now.

Mr. Patrick Njue: So, when all of this was happening, he was in Mombasa and you were in Sotik?

Ms. Alice Moraa: Yes. My husband is a police officer. He is called SSP Koskei. He could not come because he was also on duty on the other side. What surprised me was that after the post election violence, Koskei could not communicate with me again and I heard from relatives that he has married another woman. So, I cannot access my matrimonial home.

Mr. Patrick Njue: I am just wondering, for how long were you married and how was the relationship before the violence?

Ms. Alice Moraa: I was married in 1990 and at that time, I was working with the Government. That is where I met Koskei and we were living in harmony until the post election violence brought hatred and enmity between the tribes. I think he was pressured by his tribe to marry from his tribe because he has now married a Kipsigis.

Mr. Patrick Njue: Still on him, did you try and ask him if you could go to Mombasa immediately after the chaos broke out and what was his response?

Ms. Alice Moraa: I have even tried to go home, but it is impossible.

Mr. Patrick Njue: You have said that you are now living in Keroka IDP camp or where are you living at the moment?

Ms. Alice Moraa: I am living in a rental house in Borabu.

Mr. Patrick Njue: What is the situation with your family at the moment and who are you living with as your family?

Ms. Alice Moraa: I am living with my three children and this child here who was left by Fena Gesare, the deceased.

Mr. Patrick Njue: Is he attending school?

Ms. Alice Moraa: Yes, he is in class four. I decided to bring Kevin Babu here so that the Commission can see the problems that I am undergoing. I am an IDP and I am not living with my husband because of the post election violence. I have Babu in my family and he has never been compensated. Life is hard and sometimes when he is sent away from school, it is difficult because I also have other children to educate.

Mr. Patrick Njue: With me here are some documents you had previously shared with us, and which I have not heard you talk about. I would want you to take a look at them and tell us what documents these are before I can comment on them.

Ms. Alice Moraa: I brought these documents to the Commission because when my house was torched, I reported to Keroka Police Station. I was sent to report to Sotik Police Station. I was given this official receipt by the OCPD. Another one is for Fena showing that I took her to Level Five Hospital. Another one is from the chief because I had to report to the chief where I was born that I had been sent away because of post election violence. Another one is from Adara which identifies me as an IDP. Another one is a title deed showing that I bought that land and I hold the title deed. Another one is a land agreement showing I bought a piece of land in Eldoret. Another document shows that I was treated at Keroka IDP camp. Another is for Victoria Chepchumba, my daughter, showing she was treated at Keroka IDP camp. Another one is a form that we were given in Sotik which is written Sotik constituency showing my properties. It is signed by the Chief, Assistant Chief, District Officer and the Area Councillor.

I would also like to talk about my daughter who was working at Moi Teaching and Referral Hospital. Enmity continued between the tribes. My daughter had been working well before the post election violence. But after the violence, some security guards at the hospital started to harass her sexually. When she refused, they implicated her that she had discharged a patient called Beatrice Koskei. They were matching the names because I am Alice Koskei. So, they thought that Beatrice Koskei is the mother of Daphne. They used different names to write her letters and finally, they dismissed her from work.

I am telling the Commissioners that this tribalism cannot end in our country if the public is not going to be taught thoroughly that we are all Kenyans belonging to one country and we have to work together. I was given another paper which has information on land and damaged crops. Four acres of maize were destroyed and some were harvested by people I do not know. My AI and veterinary drugs were destroyed, my house was burnt and now I am homeless.

Mr. Patrick Njue: Do you want these documents formally admitted to the records of this Commission?

Ms. Alice Moraa: Yes.

Mr. Patrick Njue: In relation to the said documents, Presiding Chair, could the said documents be formally admitted?

The Presiding Chair (Commissioner Slye): So admitted.

Mr. Patrick Njue: Thank you. *Mama* Moraa, in relation to the said documents, the title deed that you talked about, is in relation to what parcel of land or where is the land situated?

Ms. Alice Moraa: The land is in Sotik along the Sotik-Litein highway. The title deed number is Kericho/Chemager 2982.

Mr. Patrick Njue: Was this where you used to live prior to the post election violence?

Ms. Alice Moraa: Yes, I had settled there because I wanted to work there. That is because I had seen that Sotik is a potential place for dairy farming.

Mr. Patrick Njue: At the moment, who resides there?

Ms. Alice Moraa: Nobody. It is empty but there is a neighbour who is a DC. I noticed that they have cut my fence and now they are grazing animals. It is empty because the house was burnt and everything was destroyed.

Mr. Patrick Njue: Supposing there was a way to get you back there, would you consider going back?

Ms. Alice Moraa: No.

Mr. Patrick Njue: Why is that?

Ms. Alice Moraa: I fear for my life.

Mr. Patrick Njue: You have also talked of a sale agreement among the documents that you have just admitted and you said it is in relation to land in Eldoret. What is the situation in this land? Had you previously settled there?

Ms. Alice Moraa: I had not settled there. I bought that land with money that I got from supplying fruits to Rift Valley Technical Institute. I got some money from there and I bought that land in Eldoret.

Mr. Patrick Njue: Have you previously cultivated it?

Ms. Alice Moraa: No.

Mr. Patrick Njue: Would you consider settling there?

Ms. Alice Moraa: If I am assisted by the Government.

Mr. Patrick Njue: Is it safe to say that the land is still within your control? Can you actually access it at any time?

Ms. Alice Moraa: Yes.

Mr. Patrick Njue: The other things I want to comment on in the documents are the letters that highlight your daughter's plight and her dismissal. I note from the said letters that the dismissal took place sometime in 2010. The year 2010 falls beyond the Commission's mandate but be that as it may be, it tries to link this to what happened during the post election period. That it is an on-going suffering that you associate with that same period. Maybe, the Commission can, on the strength of this very document, form the basis for further investigations. I am sure recommendations will be given in that regard. You have also given a strong recommendation that the electoral body mandated to conduct or supervise our elections, does issue punitive measures against individuals found to perpetuate incitement.

Perhaps it disqualifies such individuals as a key recommendation. I am just wondering whether you have any other recommendations that you would want to speak to Kenyans today so that we may not get back to the period that we did in 2007/2008 as a parting shot. Closely with that, could you once again enumerate your precise expectations for this Commission?

Ms. Alice Moraa: In Kenya, if somebody is employed as a clerk, he should not be a doctor because he is a clerk. If you are employed by the Government as a civil servant, you are not part of the Electoral Commission. I was an agent during the "No" and "Yes" campaign and I noticed that Kenyans like mischievous things. If somebody is saying "Yes", let him mark the "Yes" and if somebody is saying "No", let that person mark the "No". Do not tell him or her what to do. I noticed that even the clerks of the Electoral Commission also misbehave by telling people where to put their vote and I think that also brings conflicts between the parties.

Mr. Patrick Njue: Thank you for your testimony. We want to particularly salute you for taking in Babu and continuing to take care of him by providing for his basic needs. I encourage you to continue doing the same. The Commissioners will proceed to ask you questions.

The Presiding Chair (Commissioner Slye): Thank you Evidence Leader and thank you *Mama* Moraa. I want to thank you in particular for having the courage to come here and share a very personal story to both this Commission and the public. Your story is one of

many we have heard that illustrates the tremendous personal cost that many people have suffered during the recent post election violence. You and your life also illustrate to us, as others have, incredible strength and perseverance that people like you can have when faced with such adversity. As the Evidence Leader said, taking in a small child and supporting your own children, we commend you for that. I would like to ask whether my fellow Commissioners have any additional questions for you and I would like to start with Commissioner Shava.

Commissioner Shava: *Mama Moraa*, thank you for coming today. I would like to associate myself with the views expressed by the Presiding Chair. Your story is a sad one and I am sure that you speak for many women and families who have been affected as you are. I only have one question to ask you: when the Leader of Evidence asked you whether you tried to go to Mombasa to join your husband, you said it was impossible. Perhaps you could tell us a bit more about why it was impossible so that we can understand what it is that was going on in the relationship that you had with your husband that you have described as harmonious before the post election violence but after that, the relationship broke down. When you tried to join your husband, what was it that made it impossible for you to join him in Mombasa?

Ms. Alice Moraa: Before the post election violence, we used to communicate with my husband and he used to send me money for personal use and for school fees but after the violence, he refused to communicate and to pay school fees. Like now, Daphne is doing a Conflict Management course in Eldoret but he is not supporting me. I am the only one who is paying school fees. I tried to call him but he switched off his phone. Before the post election violence, he used to visit us and we could also meet at home but since then, he refused to visit us as a family and I cannot access my home because there is another wife there.

Commissioner Shava: Thank you but I am not sure I have completely understood. You told us that your husband is a policeman. Had you ever gone to visit him where he lives when he was in Mombasa?

Ms. Alice Moraa: I have never lived in Mombasa but I had stayed with him in different places where he had worked. When he was working in Nakuru, we were staying together, when he worked in Nyamira, we stayed together and when he got transferred to Mombasa, I was working in Bomet. I also got a transfer to Kerugoya and later to Sotik. I was retrenched when I was in Sotik then I embarked on my private veterinary services. For all this time, we had stayed in harmony and during the post election violence our relationship broke apart.

Commissioner Shava: That is very sad. So you had stayed with your husband in all these different places where he was posted? How long had your husband been working in Mombasa before the post election violence?

Ms. Alice Moraa: Before the post election violence, he had worked for almost one year but he would come home.

Commissioner Shava: But you and the family never went to visit him there?

Ms. Alice Moraa: Due to my work, I could not travel with the children to Mombasa because the work of a veterinary technician, if you inject an animal today, you are supposed to repeat it for three days and so if you miss, the animal will die. If I had gone to Mombasa I would not have rendered services to my farmer. We were relying on my husband to come back home and visit us because Mombasa was far.

Commissioner Shava: What about Sotik because you said that it is impossible to go to the matrimonial home because there is another wife? You said your husband does not communicate with you, has he or anybody else from his family told you expressly or in any other way not to go there?

Ms. Alice Moraa: I said that the house in Sotik was destroyed so there is no house in Sotik so if I want to go home, the home I am speaking about is in Bomet because my husband was born in Bomet, Central Division.

Commissioner Shava: Has anybody told you not to go to Bomet? Have you received any sort of indication that you would not be welcome in Bomet?

Ms. Alice Moraa: I have tried twice.

Commissioner Shava: What happened?

Ms. Alice Moraa: I tried to visit my mother-in-law who was sick and when I reached there, the woman who was at home refused me to enter into the house.

Commissioner Shava: Was there any other family member around to witness this?

Ms. Alice Moraa: Yes.

Commissioner Shava: Who was there?

Ms. Alice Moraa: I talked to my elder brother-in-law.

Commissioner Shava: Did he ask you to come in or what did he do?

Ms. Alice Moraa: He said that in December, they will sit and talk about it.

Commissioner Shava: What happened on the second occasion?

Ms. Alice Moraa: On the second occasion, I had given money to my brother-in-law's son to go and do some work in my farm. That woman sent some people to chase them away and not to work. Then I saw that this was bringing pressure so I decided not to go there because it seemed that there was still a problem.

Commissioner Shava: Thank you very much. I have now understood. I do not have any other questions.

Commissioner Dinka: Thank you very much Ms. Moraa for coming and testifying and going through your suffering and pain again.

(The witness broke down)

The Presiding Chair (Commissioner Slye): *Mama* Moraa, please take your time and if you want more time or you would like to have a break, just let us know because we can give you that time. Just let us know when you are ready.

Ms. Alice Moraa: I am okay. We can continue.

Commissioner Dinka: Thank you very much. What happened to you is a serious and very difficult tragedy. You lost your niece, you lost your property, your marriage broke down and you lost your employment and ran to the bush to save yourself and your children. I empathize with your pain and your suffering. I just want to tell you to keep on. It is very difficult to raise four children by yourself but do whatever you can. You are very hard working and keep hope and never despair. Go on with your life. Thank you very much, I have no question for you.

Commissioner Ojienda: Thank you very much, Alice for your testimony. It is clear from your testimony that you are exposed and suffered untold pain and suffering in dimensions both known and unknown but you survived the violence. You now have the son of Fena that you take care of. One of the functions of this Commission when we finally make our report is to make certain recommendations that would touch people like you. I just want to urge you that you probably need to make a decision with respect to your land Kericho/Chemager 2982. In law, the land still belongs to you and you have a copy of the title though there are people grazing on it.

You can still make decisions with respect to that land. I just want to say with respect to the number of issues you have raised, as we embrace reconciliation, we must find justice for victims like you because every citizen of this country should be free to live anywhere and that is why this Commission exists. Thank you.

Commissioner Farah: Alice, I join my fellow Commissioners in empathizing with you. The institution of marriage should be between two people and not between two clans or tribes. It is sad to note that a father has abandoned his own children. You are a brave woman and I think if you were a man, you would have become alcoholic by now. What is keeping you strong is the instinct of motherhood. Keep on the strength and God will be with you. As my fellow Commissioners have said, you have come to the right place, your case is within our mandate and it is one of those cases we shall really look at very seriously. For the members of the fourth estate, they should highlight this case as an example of future reconciliations. Thank you very much.

Commissioner Chawatama: Alice, I join the other Commissioners in celebrating your life as a woman, a mother and even as a wife. We have heard testimonies from your sisters in the areas we have had our hearings and we have heard of how homes have been destroyed because of the post-election violence. We have heard from your sisters on the fright that they fear even to vote next year because they think that because they voted, then they invited this problem. We have heard you, as a Commission, but I just have a few questions to ask.

I want to have a clear picture of how many people were affected because you said that when you were evacuated, it was your family and other people. Can you recall how many other people were there apart from your family when you were evacuated?

Ms. Alice Moraa: I evacuated fifteen people.

Commissioner Chawatama: You have mentioned the fact that you have three children. What are their names and how old are they?

Ms. Alice Moraa: Daphne Chebet Koskei is 25 years, Kipkoech Koskei is 14 years and Victoria Chepchumba Koskei is 7 years. I now have Kevin who is 11 years.

Commissioner Chawatama: Thank you very much for sharing that information. How old was your niece at the time of the incident of rape?

Ms. Alice Moraa: She was about 26 years old.

Commissioner Chawatama: I would also like you to speak to the people of Kenya when you answer this question. What are your views now on mixed marriages based on your experience? Is it something you would encourage or discourage?

Ms. Alice Moraa: I will not discourage the marriages because love does not have boundaries but what makes me wonder is that during post-election violence, people became wild and called others ticks. This made them worse. It is not fair to ask somebody who has been married since 1960 to go back to where she came from with the children. In my case, my children heard people screaming saying that the fight is continuing when we were at Mongori Chief's Camp. They asked me where are we supposed to be because the other side were calling us "*kosobindet*" which means in Kalenjin that we were Kisii and where we are, we do not speak the language, so where are we? I really got stressed and then I told my children that it is only God who will help us. I thank God that I am saved. I go to Christ the King Church and it is God's will that I am surviving up to now because the stress was so strong.

Commissioner Chawatama: We thank you very much for that positive message that mixed marriages are a good thing and I hope that many Kenyans would be encouraged. My next question is that next year, this nation goes for elections. What are your thoughts on that and what would you urge the Kenyans to do?

Ms. Alice Moraa: I urge Kenyans to take their voting cards and to vote peacefully. The Electoral Commission should put rules and regulations that will govern their operations and those who want to be elected should not incite Kenyans. They should not incite Kenyans in order for them to enter State House or Parliament. It is the common man whose property is destroyed, but for the big people, their property is guarded by police and other security men.

Commissioner Chawatama: Thank you very much for your testimony. I see a woman of great strength and great character.

Commissioner Shava: Thank you. Through the Chair, I think there is a problem with the translation. The witness was referring to people being called ticks and the translation that I heard was, people being called thieves. Can we correct that for the record?

Ms. Alice Moraa: I would like to elaborate more. When I say ticks, it is the politicians who were using these names. They also used another name called “*kwekwe*”. They meant that the ticks are these other tribes who went to live in the Rift Valley and bought land there. They were cultivating the land and making profits from there. So it seems as if they were sucking them. That is what I mean.

Presiding Chair (Commissioner Slye): Thank you, *Mama Moraa*, for that clarification. I just had one question I wanted to ask you. In your testimony, you mentioned how you went to the DC to ask for assistance and the DC did not provide any assistance to you. Have you seen that individual since that day?

Ms. Alice Moraa: I went to his office twice. The first time was when I went to ask for assistance to be evacuated to a safer place. The second time, I went to ask for compensation that IDPs were given in Sotik District. Because my house was burnt in Sotik, I was to be paid in Sotik but he refused.

Presiding Chair (Commissioner Slye): I am asking since that last time you saw him when he refused to assist you, have you seen him since?

Ms. Alice Moraa: No, I have never seen him again.

Presiding Chair (Commissioner Slye): Thank you. I have no further questions and I want to join my fellow Commissioners in thanking you for coming here and sharing what I know is a painful story to this Commission. I want you to know that we very much appreciate it and that by telling your story here, your story and the story of your family, including the story of your late niece, are now part of the official history of Kenya. I want to thank you for having the courage to come here and share your story with us. Hearing Clerk, you may escort the witness back to her seat and bring in the next witness.

Mr. Patrick Njue: With your indulgence Presiding Chair, the witness said she omitted a small bit that she wants to make a presentation on.

Presiding Chair (Commissioner Slye): What is it on? Do you know what the subject is?

Mr. Patrick Njue: She says it is on the dismissal of her daughter.

Presiding Chair (Commissioner Slye): If it could be brief, sure, we will be willing to hear.

Ms. Alice Moraa: I am talking about this letter that Daphne was given. I saw that it is just enmity between the tribes that was continuing because in an office, a letter cannot be written on 3rd June 2010; that is when this letter was forwarded and then the letter stayed for two months in the office before it was dispatched. That is why I saw that this is enmity between tribes because a letter cannot take two months in the office before it is dispatched. The first two letters that she got, she was called on phone to pick the letter and sign the book and take the letter but she was not called to pick the last letter. This letter was completely suspending her from the job. I am now asking the Commissioners to look into this case because for now, I am an IDP and Daphne was assisting me. I now do not have any assistance. I am really stressed. Thank you.

Presiding Chair (Commissioner Slye): Thank you, *Mama Moraa*. As the Leader of Evidence had mentioned before, even though the dismissal of your sister is after 2008, which is after the time of our formal mandate, we do have some discretion to look into events related to events within our mandate. It appears from what you have presented to us that this may be such a situation, so we will look at it very closely. We want to thank you for bringing it to our attention. You may now escort the witness back to her seat and bring in the next witness, please.

(Ms. Alice Moraa was stood down)

Mr. Patrick Njue: Commissioners, still under the same theme of post-election violence, our next witness is serialized as 17 Kisii 19.

(Mr. John Lenaro Agufa took the oath)

Mr. Patrick Njue: Good afternoon, Sir?

Mr. John Lenaro Agufa: Good afternoon.

Mr. Patrick Njue: Kindly for the record, once again state your full names, where you live and what you do for a living.

Mr. John Lenaro Agufa: I am John Lenaro Agufa. I come from Osingo South Sub-Location, Suna East Location, Suba Central Division, Migori District, Migori County.

Mr. Patrick Njue: Mr. Lenaro, you confirm having recorded a statement with this Commission on what happened to you precisely on 19th of January, 2008. Will you confirm having recorded such a statement?

Mr. John Lenaro Agufa: I confirm having recorded that statement. Before 19th January, 2008, I vied for the position of a councillor for God Jope Ward through a KANU ticket. The elections went on well but with the usual mistrust and political bad blood amongst residents of Migori Constituency. This time around, I thought things would not be bad because Luhyas in Uriri and Migori constituencies were followers of Hon. Mudavadi, who is an ODM member. Democratically, some Luhyas, including myself, chose to support parties of our choice.

As I had retired from my employment as a teacher, I thought it was wise to try the political waters through KANU by standing as a candidate for councillor for God Jope Ward. As you all know, hell broke loose after the declaration of Hon. Mwai Kibaki as the President. As quickly as lightening, a scheme was hatched for non-Luos who might have voted for PNU and the Kikuyus whose son had become President to be evicted. The Luhyas were baptized *kayongo* and they were to be uprooted from the Luo soil.

In Nyanza Province, generally, and in Migori Constituency in particular, standing for the post of councillor on a KANU ticket, I had broken a political law. Because I was not a son of the soil, I had to face drastic measures, even death, and 19th January 2011 was my day. Hell broke loose from the neighbouring villages of Mapera and Ondong'. Non-Luos were being attacked. The following people and homes belonging to Luhyas and Kisiis were attacked: James Kengere, Samuel Aluru, John Boge Idambo, Jackson Maina, Nyamau, Walter Owane Dana, Japheth Ombede, Hellen Jopher, Ruth Nyanduko, James Angima and John Lenaro Agufa. The attacks started as early as 8.00 pm.

A group of about 100 youths and middle aged men with their wives were armed to the teeth. They had wheel barrows, bicycles and motorcycles to ferry goods they looted. My home was attacked towards the end of the commotion. We were warned by shouts that, "We are not going to the home of their leader *Mzee* Agufa". My family and I ran away and left the homestead vacant. The hooligans came and did their work properly. My permanent house and other houses were broken into. They entered the house and took each and every household item. They carried away the light sofa sets. The heavy ones were burnt. The roof was destroyed. When I saw things were serious, I called the OCS Migori Police Station. When he picked my phone, I told him: "Sir, we are being killed". He asked me: "Have they removed the stones from the roads?" I told him I did not know.

I sneaked and walked on foot for about 18 kilometers to Migori Police Station. That was around 2.00 a.m. I reported the matter. I was asked to spend the rest of the night there. The next morning the DC came with his security officers and Red Cross members. They took me back to my home. I was worried because I thought perhaps these people had killed my people. When I reached home, I found there was nothing there. All my things had been taken. I praise God because nobody was killed. I have even come here with my

wife. I nowadays call her my grave mate. I baptized her my grave mate because on that day, we could have died and be buried together.

I was given some assistance. We were given tents because we could not sleep in the house. All the doors had been removed. The roof had been destroyed. We were also given utensils, blankets, clothes and some food. The people I read had been attacked were assembled at my place and given whatever assistance.

When I sat down, I had to find out how much I had lost. I found that I had lost property worth Kshs 8 million. My wife and I have served this nation as teachers for 29 years and 34 years respectively. All the wealth we acquired plus our hard-earned pension were destroyed in hours. I had ten grade cows. My children used to enjoy taking milk. Even my grandchildren used to enjoy milk. They have nothing to eat now.

My children who had not finished school cannot go to school now because I have nothing to put my hands on. As things stand now, it seems the Government does not know that in Nyanza, we have PNU followers who had been molested. Their property and homes were burnt and businesses destroyed. The Government seems to have forgotten that we had ODM supporters who were killed, raped, rented houses burnt, property looted, for example, in Naivasha, Nakuru and Kibera. IDPs are fed up with the Government's plan of buying land for resettlement of IDPS in Rift Valley. These are IDPs from one tribe. It is good that KKK Alliance has healed the wounds of the IDPs who ran away from the Rift Valley. I pray that the Government lets the IDPs in Rift Valley settle in their former lands. If that is done, the Government will only remain with one problem: to compensate all IDPs in Kenya.

The people who looted my things are my neighbours. As I said, I was a teacher. Most of the youths are my educational grandchildren because I taught their fathers and mothers. They came and took all my things. Some of my things are just in their houses to date. I do not have the powers to go and take them. I do not want to mention the people I know. Their names are in my statement and the Commission will follow it up.

Lastly, I would like to submit that before I tried my hands in politics, I had served this nation for 34 years till I retired. All the property that I acquired during all this period and my wife, including my retirement benefits were destroyed in one night. I was left naked as I was born. The scars inflicted on me during the dreadful night are all vivid and harmful to my conscience. I have not received anything for compensation apart from the Kshs 25, 000. I, therefore, ask the two principals whose term of office will end next year: "Is it a sin if I am compensated?" If I am compensated, I would be very pleased indeed. I can then regain my life from where it was.

May God bless this wonderful Commission.

Mr. Patrick Njue: Thank you, Mr. Lenaro, for your prayers for the Commission. My sincere empathies for the suffering and losses that you have counted both in terms of monetary with the figure that you have given and even the sufferings of your family.

I will proceed to ask you a few questions to clarify your testimony before our Commissioners can do the same. To begin with, you said that---

The Presiding Chair (Commissioner Slye): I am sorry to interrupt, but I just want to thank the delegation from the UNDP led by Mr. Chairman, Ajala for being here and for their support. We know that they have busy schedules and they have to leave now to deal with equally important issues. We appreciate them being here and gracing the Commission with their presence.

Thank you very much.

Mr. Patrick Njue: Mr. Lenaro, for clarity of the record, the sad day was on 19th January 2008 or 2011?

Mr. John Lenaro Agufa: 2008.

Mr. Patrick Njue: Again, as you began your testimony, there is a term you used which I want you clarify or give us the meaning in English. This is the word, *Kayongo*.

Mr. John Lenaro Agufa: Yes. *Kayongo* is a weed. It is a soil parasite. It feeds on the soil nutrients and where you find it, even if you plant maize or anything else, it does not prosper. Therefore, the Luhyas and Kisiis in Migori were called *Kayongo* because they took land there and they must be uprooted so that the soil can be good.

Mr. Patrick Njue: Thank you for that explanation. The youth who went round and attacked people on this fateful night, you said are people who are clearly known to you and were armed. What weapons were they armed with?

Mr. John Lenaro Agufa: They had arrows, *pangas* and spears. They also had *rungus*.

Mr. Patrick Njue: You said luckily none of your family members was physically injured. But you also talked of other homes that were similarly attacked.

Mr. John Lenaro Agufa: I have stayed with Luo people for more than 50 years. As a teacher, I trained at Ng'iya Teachers College. Down in Migori, I have stayed for about 50 year. Luos do not kill people unnecessarily. As I see it, most of these people have sold their pieces of land. When they were selling this land, they thought the Luhyas and Kisiis would stay there for a period and go but now people have stayed. I have been there for 20 years and I have bought a lot of land. I have different pieces of land totaling about 50 hectares. So during every election since 1992, we have been having this problem. We are attacked, some people run away and others remain.

Most of these people who attacked us, I can call them thieves and those lusting for their lost land. Nobody was killed because my friends, the Luo, fear blood. Migori Town was attacked, all the Kikuyu shops were looted but nobody was killed.

Mr. Patrick Njue: Again, I want to appreciate the present plight of your family. You have talked of your children who had not gone to school who were affected and were not able to continue with their education. Do you have any other children who have been able to excel in other spheres of life?

Mr. John Lenaro Agufa: I have a big family. I have about six sons who are employed by the Government. I also have my daughters who are about three and who are working. The children I am talking about are those who were born later on and could not get education because whatever I thought I could educate them with was destroyed.

Mr. Patrick Njue: I do not want to seem to look like I am intruding into family affairs and matters but would the six sons and three daughters be supporting them in furthering their education?

Mr. John Lenaro Agufa: What I am wondering about children of these days is that they seem to care about themselves more than others. Even now, I have one in Nairobi who did his O'Levels last year and got a C+. I have sent him to his brothers in Nairobi. I wanted them to make him computer literate. He has been there for three months but nothing has taken place. I have now called him back home.

Mr. Patrick Njue: Again, you talked of compensation and that you were given Kshs 25, 000. For clarity of the record, who is this who gave the Kshs 25, 000?

Mr. John Lenaro Agufa: This money was given by the Government. It was meant for resettlement of IDPs. I am very pleased because I bought some iron sheets and repaired the roof of my house. I am living in that house now although it has a lot of wind because it has no doors and windows.

Mr. Patrick Njue: Mr. Lenaro, as you speak to us today, what would be your message to peace loving Kenyans alongside the theme of peace and reconciliation and also forecasting to the oncoming general elections in 2012?

Mr. John Lenaro Agufa: Apart from being what I am, the chairman for Luhya Council of Elders, Migori County, I started looking for peace, especially political peace. I have even gone as far as making meetings with the ODM chairmen. I even had a memorandum presented to the chairman ODM Migori Constituency by the Luhya Council of Elders. This was done on 28th August, 2008. I was following up what had taken place. If you look at it, it is signed by me as the Chairman and Zedekia Bagada as the Secretary. I wish there is peace.

We, the Luhyas, are living down there because the Constitution of Kenya states vividly that, a Kenyan can live anywhere in Kenya. Upon that philosophy, I wish Kenyans could live like that. I told my wife the same because she has refused and said that she would not vote again. I told her that she should remove that satanic thought in her mind. She should vote according to the Constitution. Kenyans should embrace peace and democracy. In

Nyanza here, people should be left free to support any political party they wish to. If that happens, there will be no problem.

Mr. Patrick Njue: I hope the message is out and Kenyans, wherever they maybe, who may be watching us or reading about this will be able to embrace your call for peace.

Mr. Lenaro, do you have any political ambitions in 2012?

Mr. John Lenaro Agufa: I said I tried the political waters. I have seen the pain it has. It is not like teaching. If somebody is wise, he should forget about it.

Mr. Patrick Njue: Lastly, I just want to once again thank you for coming forth and I take positive the challenge you have thrown to the young generation of today that we need to embrace family values and take up the shoulders of our young ones when our old folks seem to be retiring. I also salute *mama* for coming and escorting you. You have referred to her as your grave mate, sadly, because you would have lost your lives on that very day. Also positively, I want to associate this term to wishing you a long life together. It is my prayers that you will be able to live long enough together side by side.

Mr. John Lenaro Agufa: When I wrote my statement, I attached some documents. I do not know whether you have them.

Mr. Patrick Njue: Maybe you could tell us what documents they are.

Mr. John Lenaro Agufa: I attached the list of the things that were destroyed. The list is signed by my Chief. I attached the KANU nomination forms to prove that I actually tested the political waters. I also attached an agreement with South Nyanza Sugar Company (SONY) to prove that 3.5 hectares of sugar cane farm was burnt. I also attached police abstract forms to prove that what I said was true.

Lastly, I would like to tell Commissioners that in Migori, people live very peacefully but when it comes to elections, that short period, people become enemies. If you come to Migori now, even those who stole my things come to my home and we eat together. So there is no permanent enmity.

Mr. Patrick Njue: That was a powerful parting shot. Again, I would ask if you would formally want these documents to be admitted to the record of this Commission.

Mr. John Lenaro Agufa: Yes.

Mr. Patrick Njue: Presiding Chair, I request that these documents be admitted to form part of the records of the Commission.

The Presiding Chair (Commissioner Slye): The documents are so admitted.

Mr. Patrick Njue: Thank you.

Thank you once again, Mr. Lenaro. Our Commissioners may now ask you questions.

The Presiding Chair (Commissioner Slye): Thank you, Mr. Lenaro, and your dear wife for being here with you. I would like to ask if any of my fellow Commissioners have questions for you.

Commissioner Chawatama: *Mwalimu* John Lenaro Agufa, I have no questions for you. Your testimony has been very clear. I would just like to say that from your testimony, it is very clear that you are a patriotic Kenyan. You embrace democratic principles. You have read the new Constitution and it seems that you have always lived by those kinds of principles.

I admire the spirit of reconciliation that you have. When you have built up so much and you have managed only to re-roof your house, the wind is still whistling through it, you can still share with the neighbours who stole from you. I think that is really admirable. I do not know how many of us have it in ourselves to be able to do that. If we could, then maybe we could move on as one nation.

Having said that, I think it is also a very sad commentary on state of our social fabric that a *Mzee* such as yourself could be subjected to such treatment by young people who should be looking up to you and respecting your achievements; and trying to live by the kind of principles that you have tried to lay down.

I think that for us in this Commission, as we watch you trying at this stage of your life to rebuild your life after serving this country through education, we at the Commission will do all we can to assist you.

Commissioner Dinka: Thank you, *Mzee* Lenaro, for coming forward and giving us your story. It is an honour to sit here and listen to the voice of reason; voice of peace and reconciliation, like yourself. I join the Leader of Evidence to wish you and *mama* a very happy long life. I am sure that when you go back to your home, you will continue to strive for peace and reason to prevail in your area.

Thank you. I do not have questions for you.

Commissioner Ojienda: *Mzee*, thank you very much for sharing your testimony with us. First, would you like all those people who took away your things to be called? Would you want to see them? Would you want to ask them questions?

Mr. John Lenaro Agufa: As I said, these people were thieves and, perhaps, they were diverting their anger to the lands that I hold. What I know is that even if I called them to court and I jailed them, that enmity will continue. What I am praying to the Commission is only to find ways and means of compensating my lost property so that my old age continues.

Commissioner Ojienda: So, you are not interested in specifically getting these things back?

Mr. John Lenaro Agufa: Even if I can get them back, they would not be what they were. For example, my ten gradecows, even if I got them now – and I am not sure that I can get them--- The only easiest way I can get all these things is through compensation by the Government.

Commissioner Ojienda: You have given us a list of things. My second question touches on the seven PNU councillors who were elected in Migori. They were all Luo. Is that right? I recall that after the elections, their homes were destroyed and they all fled to Tanzania. Just tell me what became of them. Where are they and what happened to them?

Mr. John Lenaro Agufa: They are back home. They have come back to their homes and they have rebuilt their homes. For them, it is better because they are earning.

Commissioner Ojienda: I thank you because you have advised the people of this region to accept diversity. You have said that they should respect different political opinion. I think if all Kenyans said that, we would not have violence; we will accept each other and we will live together happily forever.

Thank you.

Commissioner Farah: I have only one question. The information you got out about the sponsor of those boys – the ex-councillor – do you know him?

Mr. John Lenaro Agufa: Very much.

Commissioner Farah: Have you met him?

Mr. John Lenaro Agufa: Very much.

Commissioner Farah: Okay. Anyway, I have no further question, except to say that what happened to you is very sad. You are a strong man and you have a strong woman behind you. So, we will pray for you that you go on with your life. We have heard your story.

Thank you very much.

Mr. John Lenaro Agufa: Thank you.

Commissioner Chawatama: Thank you very much, Sir, for sharing with the Commission your experiences of what happened to you. I thank you for bringing along your lovely wife and by asking her to stand and be acknowledged by ourselves. I see a lot of love between you. Please, continue. Thank you very much for the words of wisdom

and encouragement. We accept your blessings and it is these blessings that will see us through in times of difficulty. We shall remember you and your words to us. Thank you.

The Presiding Chair (Commissioner Slye): *Mzee*, I also want to add my voice to those of my fellow Commissioners in really sympathizing with you for having lost all that you lost. Although as you noticed, what you lost is just material goods. You still have your family and that is something to be quite grateful for. But it is, as one of my fellow Commissioners said, quite sad and traumatic that a man, his wife and your family that contributed so much to educating so many people and accumulated so much – you accumulated so much in order to share with them and with others – now you are in the end of your life. Again, you are working to accumulate so that you can help others.

I hope that even your spirit of optimism, reconciliation and your comment that you do not necessarily want the same material goods back, is really a very wonderful attitude. It is one that I think we should expect everybody to have but it is quite admirable. It is one that we should all strive for because at the end of the day, it is people and not things that really matter and we can always get more things, but we cannot get those people back if we lose them.

We want to thank you again for appearing before us and modeling this behaviour both to us and to your fellow Kenyans. As my fellow Commissioner said, we will do everything that we can to assist you as you move forward to rebuild your life.

Thank you very much.

I would now like to ask the Hearing Clerk to, please, escort the witness back to his seat and to swear in the next witness.

Mr. Patrick Njue: Commissioner, the next witness is serialized 12, and that is Kisii 14, still under the same theme of post-election violence.

(Mr. James Osano Masanya took the oath)

Good afternoon, *Mzee*?

Mr. James Osano Masanya: Good afternoon.

Mr. Patrick Njue: Kindly, for the record, do once again state your names, where you live and what you do for a living.

Mr. James Osano Masanya: My name is James Osano Masanya. I live at Borabu in a place called Isoge Kinyenyu. I am a farmer, but a long time ago, I was in the military.

Mr. Patrick Njue: Welcome, Mr. Osano. You are here this afternoon following a statement that you recorded with the Commission on what happened to you on 8th January, 2008, being the post-election period. Do you confirm that to be the case?

Mr. James Osano Masanya: Yes, that is true.

Mr. Patrick Njue: Could you take us through the events of that day? Can you give us a little insight into how things were just before the day? Again, for clarity of record, could you tell us what this day was and proceed telling us what happened to you?

Mr. James Osano Masanya: As I have already explained, it was on 8th January, 2008, and it was at night. I was at my home with my children and my wife. My brother's son by the name of Joshua Nyarunda, was also there. We waited for them that night, but they did not come. The following morning, a big crowd of people came in vehicles. I am just near the border. They crossed to the other side of the border and about 100 people came to my home. One of them had a gun and he shot Joshua Nyarunda at the chest. This forced me to look for a vehicle to take this boy to hospital. While on the way, the boy died in my hands. I took the body to the mortuary before going back home. When I got home, my friend called me and told me that my houses had been torched. It was a permanent house and they had burnt it. There was nothing left. I told them: "Run away, do not stay at the home." For sure, when I went home, I found the whole house had been burnt completely. I even have the photographs of the burnt house. I persevered because even if I cried, it would not help much because already, all had been lost. This is the photograph of the burnt house. The Commission can look at it and see how my properties and houses were destroyed.

I found that everything had been burnt when I went home. That included the stalls and the maize. I never took anything from the house. I also ran to other people at a place called Nderema – that is where my wife ran to – and I stayed there for two years without my children. My children and workers stayed away from me because I rented a very small house. I could not stay with the children because Kisii culture and traditions state that you cannot stay with your daughters in the same house. So, I decided that they should stay with their mother. I have just persevered but God has helped me and I have gone back to that home. I have tried to reconstruct the place and that is where I am staying and moving on with life.

What I would like to tell the Commission that has come to our assistance is that everybody is looking for a way of survival in this world. Everybody wants to lead a good life; that is both the Kipsigis and the Kisii. However, the politicians from the Kipsigis side are the inciters. The Kipsigis are not bad, but they are being incited by politicians. That is what I know because I stay at the border with my neighbours.

Mr. Patrick Njue: Mr. Osano, have you finished your testimony?

Mr. James Osano Masanya: I have finished because I do not want to speak a lot. That is what I saw. I do not want to talk a lot because I might be lying but I am really suffering. The Government gave me Kshs 25, 000 but we were supposed to be given Kshs 35, 000. So, we did not get the balance of Kshs 10, 000 and we do not know where it went to.

Mr. Patrick Njue: Mr. Osano, I will proceed to ask you a few questions to clarify your testimony. But, first, let me sympathize with your suffering and the losses. Again, maybe you said it and it just passed me, but did you say that you knew the group of people who attacked you that very day?

Mr. James Osano Masanya: No, I did not know them. I think they were the Kipsigis. They were very many and I could not even go near them.

Mr. Patrick Njue: And the person who was shot, what was his name?

Mr. James Osano Masanya: Joshua Nyarunda.

Mr. Patrick Njue: Was he your relative or what was your relation to Joshua Nyarunda?

Mr. James Osano Masanya: He was one of my family members and we were staying together.

Mr. Patrick Njue: You have presented us with photographs which are similar, and I note an incomplete house. Was this house complete or was it in the state it is at the time of the attack?

Mr. James Osano Masanya: That house is where I was living. It is just because it was burned down. It is because of the burning that it has no roof. There is nothing; everything was burnt down. When a house is burnt, it is no longer a house.

Mr. Patrick Njue: From what I gather is that, you wanted these photographs admitted formally on the record of this Commission?

Mr. James Osano Masanya: Yes, I would like that.

Mr. Patrick Njue: The Presiding Chair, may the photographs be admitted formally on the records of the Commission?

The Presiding Chair (Commissioner Slye): They are so admitted.

Mr. Patrick Njue: Mr. Osano, what would you put as the estimated value of the loss?

Mr. James Osano Masanya: The house is estimated at Kshs 2 million but when I put it together with the other properties, it can go up to Kshs 3 million.

Mr. Patrick Njue: I have no further questions for you, Mr. Osano. I just, once again, empathize with your loss. Your testimony was clear and I do hope that in our recommendations, we will be able to meet your expectations. Thank you for coming this afternoon. Our Commissioners may ask you questions.

Yes, the Presiding Chair!

The Presiding Chair (Commissioner Slye): Thank you, the Leader of Evidence and Mr. Osano. I would like to ask my fellow Commissioners if they have any additional questions for you. I will start from my left this time round.

Commissioner Chawatama: I would like to thank you for taking time to come and share your testimony with us. I have one or two questions. I would like to know whether you felt that you had been targeted and if so, why?

Mr. James Osano Masanya: It was just political issues. As a Kisii, they were saying that we were in the PNU, but we were not in the PNU because most Kisiis voted for the ODM. I do not know why they were fighting us or burning our houses. I even do not understand.

Commissioner Chawatama: So, you did not get to learn, even later, why this incident occurred?

Mr. James Osano Masanya: This incident was just political. As I have explained, they said that we voted for PNU, but we did not vote for PNU. Some Kisiis voted for PNU while others voted for ODM. We do not know why they were fighting us.

Commissioner Chawatama: Kenya goes to elections next year, what would you like to say to your fellow Kenyans?

Mr. James Osano Masanya: I would like to tell this Commission that we would like to have a person who should be a leader and who should take care of us because we are Kenyans. As you can see, I was a military officer in the Army and we were really taking care of Kenya. We were not looking after one tribe but we were looking after all the tribes. So, the Government should take care of us and they should protect all Kenyan citizens. You cannot believe in this world that any person who wants leadership starts fighting us, we are affected and we are suffering.

Commissioner Chawatama: Thank you very much for those words of encouragement for peace.

I have no more questions.

The Presiding Chair (Commissioner Slye): Thank you. Yes, Commissioner Shava!

Commissioner Shava: Thank you, Mr. Osano. I just have a few questions for you. You said that your wife went to live in Nderema and you also went to live there, and that you had to live separately because the accommodation was quite cramped. Just for my own understanding, what distance did you move? Where is Nderema?

Mr. James Osano Masanya: Nderema is far. It is like two miles from where I was living. When the houses were burnt, I was assisted by a certain person whose wife stayed in Nderema. I was also assisted by other neighbours. I really suffered.

Commissioner Shava: We are very sorry for the suffering and the loss. You said that your neighbour, who was also your relative, died in your hands; Joshua Nyarunda. How old was he and did he have a family?

Mr. James Osano Masanya: He had a family. He had a wife and children. The children are now suffering because there is nobody who is assisting them.

Commissioner Shava: Did you say that they are here today?

Mr. James Osano Masanya: Yes, the wife is here.

Commissioner Shava: Could you ask her to stand up so that we can recognize her?

Mr. James Osano Masanya: Yeah, she is there. That is the wife to the late Joshua.

Commissioner Shava: *Pole, sana mama.* From where you were living, how far was the nearest police post, administration police post or patrol post? How far was the nearest security institution?

Mr. James Osano Masanya: The police are in Manga or in Keroka, which is about eight kilometers from my home.

Commissioner Shava: Did the police, in fact, come and assist you at any stage when this was going on?

Mr. James Osano Masanya: Yeah, they came after everything had been burnt and destroyed.

Commissioner Shava: Thank you for making those clarifications. I have no further questions.

The Presiding Chair (Commissioner Slye): Mr. Osano, you mentioned that you had served in the military. Could you tell us a little bit about the time you served and where you served?

Mr. James Osano Masanya: I worked in the military for 12 years in North Eastern Province. There is nowhere I have not worked in Kenya. However, in all the regions, there were no political conflicts like now. When we were working, we were just maintaining peace. A Kenyan is a Kenyan and he has to be protected. We were ensuring that there was peace, and we were not separating Kenyans.

The Presiding Chair (Commissioner Slye): During your time here in Kisii prior to the 2007 elections, had there been much conflict, violence or tension among people in your community?

Mr. James Osano Masanya: No, there was nothing. We did not attack the Luos. We were together with the Kikuyus and there was peace. Even the Kalenjins were here, and we did not fight them.

The Presiding Chair (Commissioner Slye): Mr. Osano, I also want to thank you for being here and for sharing your story with the Commission. Yours is a story unlike those others that we have heard concerning the loss of your property, but also the loss of family members. The fact that you tried, I know, as hard as you could to save Joshua's life, I think it is some comfort to him that, at least, you were there in his last moments. Again, on behalf of the Commission, I would like to thank you for being here and for sharing your story with us. We very much appreciate it.

The Leader of Evidence, you may assist the witness back to his seat and swear in the next witness.

Mr. James Osano Masanya: Thank you very much.

Mr. Patrick Njue: The Presiding Chair and Commissioners, in the list of witnesses, we will be highlighting the suffering under the theme of the 1982 Coup. We have lined up four gentlemen who are serialized No.1, who is Kisii 1; Serial No.8, who is Kisii 9; Serial No.10, who is Kisii 10 and Serial No.10, who is Kisii 11. We will move step by step as I give out the individual accounts after I establish the order in which they are sitting.

Under your direction, Presiding Chair, we suggest that they all be oathed after which they will, again, give their individual accounts. Following that, I will ask my questions to the eight of them and the Commissioners may proceed to ask their questions.

The Presiding Chair (Commissioner Slye): Yes, the Leader of Evidence. I think each should swear the oath now and then if the first person who speaks could give a general overview of what the 1982 Coup was so that others do not have to repeat that and they can then add to their own specific experiences.

Mr. Patrick Njue: Thank you.

(Mr. Wilson Masara took the Oath)

Commissioners, this is Kisii 9.

(Mr. Bernard Orina Onchari took the Oath)

(Mr. Nelson Onduso Onchombo took the Oath)

(Mr. Samuel Nyang'au Nyachiengu took the Oath)

Mr. Patrick Njue: Good afternoon, Sirs? I want to welcome all of you to this Commission. I want to start with you, Mr. Wilson Masara, who was the first person to take the oath. I will ask that you once again state your names for the record, where you live and what you do for a living.

Mr. Wilson Masara: My names are Wilson Masara. I live in Manga which is the new district cut off from Nyamira. I do farming to sustain myself.

Mr. Patrick Njue: Mr. Masara, together with your colleagues, the reason you are seated with us this afternoon is to share with us your plight or sufferings under the theme of detention and torture following the 1982 coup. On your own account, do you confirm that to be the case?

Mr. Wilson Masara: Yes, that is true.

Mr. Patrick Njue: For the public that is here and whom you would like to appreciate the 1982 coup in brief, I wish to note that, as a Commission, we have been to other places as well and we heard about it. But for the benefit of the public here, maybe you begin by providing us with a brief background of the 1982 coup, what was happening around then before you can proceed to tell us your individual account in terms of what happened to you.

Mr. Wilson Masara: I can say that in that year, 1982, I was a civil servant and I worked with the Kenya Air Force. On 1st of August, 1982, we were woken up very early with the siren and we were told that the Government had been overthrown. We did not know who had overthrown the Government, but we just found ourselves in the commotion and confusion because no one was telling us exactly which battalion had overthrown the Government. So, in the state of confusion, when such a thing happens in whichever battalion especially with security in any government and if you have no idea, you are put on high alert to protect the Government but no one told us what to do. So, some of us – as we are here the four of us - were in Eastleigh while others were in Embakasi. My friend Orina and I were in Nanyuki. So, we all gathered together because when the siren goes on, you are all supposed to assemble in a particular place which we know. So, we waited but we did not get any direction.

At around 6.00 p.m., we heard an announcement from the radio that the Government had been taken over by the Army people. From there, we waited to hear which force had overthrown the Government. At about 10.00 p.m., we did not know exactly what was going on; the Kenya Army came to our barracks in Nanyuki. Because we did not understand what was going on, we had not armed ourselves and we did not have any enmity with them. So, we just invited them in but they had a plan to arrest us. So, we gave in and they arrested us and took us to different prisons. Some were taken to King'ong'o where they were tortured. We were undressed and left naked. You know that in prison, there are men and women. So, we were put in the cells and we waited until we

were removed and taken to different prisons. So, they started scrutinizing who and who had an idea of the coup and we were now put in different groups. They started torturing us so that we could tell them what we knew. We were put in small cells, the doors were locked and they would bring soil up to two feet. They would then pour water into the cell so that we could not sit down. We just stood there for two days and then we were taken for interrogation. After the interrogation, we were taken to different rooms or cells. Eventually, some were charged in a military court. I was not taken there. Others were jailed for one-and-a-half years and the last person was jailed for 25 years while some, in the other groups, were released. So, the last group, where I was, we were told that we had been detained. I was detained from 1982 to 1986 when we were granted presidential amnesty. We did not communicate with our families while we were in detention because they cut off all communication. The food was horrible in the prison. I was taken to Naivasha Maximum Prison. Now, I want to give my own personal account because I have given an overview of what happened in general.

The food was terrible in Naivasha Maximum Prison, and I was not allowed to communicate with my family. We were tortured. I could be locked in a room or cell and there was no opportunity of leaving the room. We just lived in the room with hardcore prisoners who had been given sentences of up to 20 years or even life sentences. Those are the prisoners we shared a cell with.

Mr. Wilson Masara: The food was terrible and we were tortured. We had been locked in a room and there was no leaving. We lived with the hardcore prisoners. They only allowed us to sit in the sun for ten minutes in a heavily barricaded house. There was a lot of torture and the blankets were old. A panel that was set up by the Government came over to see us. I remember seeing the late Kilonzo who was at that time an Assistant Commissioner of Police. There was also Justice Miller. They would come to ask us questions. As much as we gave our recommendations, it would take time for them to be implemented. We told them that we were never involved in the coup and that we wanted to be taken to court to be charged.

After five years we were granted presidential amnesty in June, 1986. Not all of us were released though. The panel visited us in 1983 and 1984 and released two people. In 1985 it made recommendations and released four people. In 1986 I was released together with 14 other people.

The Government mistreated us and yet we were not involved in the coup. I had no idea what was going on. I was arrested and detained for five years for a mistake I did not commit. I was given a certificate of dismissal. The coup happened on the night of 31st July. In my dismissal letter it is stated that I was dismissed on 1st August, 1982. I was surprised that I was being dismissed on the same day there was the coup. When was the case done? Justice had not been done. When the army came to our camp, they took everything from us. They took my academic certificates. Although I got presidential amnesty, I cannot get employment because I have no certificate. They were burnt.

I have a family and I have struggled to educate and feed my children. They were selected to join Government schools, but I cannot take them there because I am not working. I just take them to day schools. My life has been very hard. If you are a parent and you cannot even feed your children, then you cannot have a proper relationship with your wife. She expects me to look after our family, but the truth is that I cannot match the responsibility.

When I was in the cells, the lights were on the whole night. My eyes were affected and in 2005, there was a group from IMLU which called us to go to Nairobi. I realized that because of stress I had developed ulcers and my eye-sight had a problem. They prescribed glasses for me, but I could not get a pair because we were many of us. The state of my eyes deteriorated and in February, 2011, I went blind. I went to Lions Hospital, Nairobi and I was operated. One eye can see, but the other one is still problematic. An X-Ray was taken and it was found that my stomach had problems. I have the X-Ray sheets and the documentation for the other treatment in the file.

The Government sacked me illegally without any explanation. It never presented me to court to defend myself against the coup charges. So, the Government should compensate me because my life is horrible. I was a worker and everywhere I pass I see people look at me. They say that I wasted my chance and betrayed the Government. On the contrary, I was a straightforward person and I had taken an oath to serve the Government faithfully. I was at the Kenya Air Force and if it was a matter of fighting, we had the ability to do so because we had planes. However, we felt that there was no need to fight those who had come to arrest us because we never understood the origin of the coup. We kept quiet and surrendered. We waited so that they could tell us what was going on. That is evidence that we did not have any prior knowledge of. If we had planned to overthrow the Government, we would have fought the group that came to arrest us.

I want the Government to compensate me. I want to thank the Government of Hon. Mwai Kibaki because it has been transparent. This is something we never experienced in the Government that I served in. I want to thank Kibaki's Government because it has enabled us to give our suggestions. I thank him together with the person they are running the Government with. I also want to thank the TJRC for coming out to disclose things which had been hidden. Many Kenyans now realize that if we continue with this Government, many things will improve.

Lastly, I wish to say that the Constitution which we passed should be supported by the MPs and all those concerned because it will protect the common man. We are already seeing its fruits.

Mr. Patrick Njue: Thank you, Mr. Masara. We will come to you later to seek clarification on your testimony. I now move to the second witness who I will ask to give an individual account now that we have received the background from Mr. Masara.

Mr. Bernard Orina Ochari: My names are Bernard Orina Onchari. I come from Nyamira County and I am a farmer.

My friend has mentioned very many things that we went through and I would not like to repeat that. I can only add a few things. We used to be taken to different places. I and my colleague were in different sections and I was dealing with guns. They realized that the guns had not been removed. I went with Major Kiviya who was in charge of the guns. We were taken to Nanyuki Prison that night. The following day we were taken to King'ong'o Prison in Nyeri. On the way, we would be made to lie down and then they would cover us with a red cloth. We reached King'ong'o Prison at night.

We were beaten up and we cried a lot. God helped us. They would beat us with an intention to kill us. They hit sensitive parts of our bodies. I was in King'ong'o Prison for ten days and then Major Kiviya and I were taken from there. It was alleged that we were among the planners of the coup and yet we said that we did not know anything. We told them that the armory had not been opened and it was intact and no soldier had taken any firearm. It is the 1 KR people who came to arrest us. From King'ong'o Prison we were brought to Naivasha Maximum Prison. We were tortured terribly. There was a room whose floor they had poured water that reached the height of our waists. We were made to sit in the water for seven days and we were given little food. Our hands were getting paralyzed and our legs froze. This was done to us so that we admit what we knew about the coup. I kept saying that I did not know anything. We were junior people and we would not have planned to overthrow the Government.

Since we did not tell them anything, they took us out of the water. Major Kariuki was the head of the Kenya Air Force then. We were taken to him and he said that I was too junior. From there we were taken to Kamiti Maximum Prison where we were tortured heavily. We were undressed and we slept under a sisal sack. One morning, I was told that I was to appear before the court martial.

If I can go back, when the ten of us were being arrested we wanted to leave. I was not living in the barracks but I was living with my wife and one child. When we were trying to leave, the soldiers from 1 KR confronted us. They were shooting at us. I was the only survivor. The other people, three Luos and four Luhyas and some Kisiis died on the spot. I found myself down on the ground. When they were taking the bodies, they realized that I was still alive.

Before the court martial, I met Justice Bosire. I was told that I had been used and I was, therefore, sentenced to six years in prison. I was taken to Shimo la Tewa Prison in Mombasa. All this time, my parents and brothers had no idea where I was. I was later seen in the newspapers. They had looked for me in mortuaries without success.

I stayed at Shimo La Tewa for six months. From there I came to look for my documents. We had been educated by our parents and we had certificates. However, all our certificates had been torn. We were released by a Luhya man called Mutsotso. I do not know whether he is dead or alive. We went to ask whether our documents could be traced but we were instructed to go to the Headquarters in *Ulinzi* where we were not allowed in despite us telling them that we were members of staff. They demanded to see our IDs. From that time my colleagues and I tried to present our case to the Government. We even

hired lawyers. From 1983 our case was just being mentioned. Even as I talk to you now, we are just going on with the mentioning of the case. They do not care.

We were given discharge letters. I do not understand that term. I think when you are discharged it means you are going away. There is no single coin we were given as we were being discharged. According to the statement I gave the TJRC, 1st August, 1982 is the day the Government was overthrown. It is the same day I was being discharged. I do not see the truth in that.

I want to thank the TJRC. When we heard about you, we went to Nairobi to make our statements. Here in Kisii we also made our statement. We have now come to testify before you.

I have five children and all of them passed their examinations very well. They have been selected to join good schools, but not even one of them has been able to join the schools. My first born got a B(Plus) and was admitted to the university, but I could not afford to take him there. We have gone through very many problems. If this is what the Government of Moi meant---

Let me say that at least now we can see some fruits. That is the plain truth. The Coalition Government of Kibaki and the Prime Minister is trying. I live in poverty. You know that when you are poor, you do not have an understanding between you and your children and your wife. You quarrel all times. My friend Major Kariuki who trained in Britain told me that I was too young and should not give up in life. I told him that I was not going to give up. If I did not die that day, I wish to request the Government through you to help us. We do not want our children to turn into thieves. The Government should assist us. I was never sacked from the Kenya Air Force that employed me. There was nothing like 82 Air Force. When salaries were increased, I was aware that my salary was being increased. I have my friends who died and we still meet their widows as we go for the court case. When we die, we have the documents and our children will follow up the matter until the end.

God bless you.

Mr. Patrick Njue: God bless you too, Mr. Orina. Again, we will be coming back to you for questions to clarify your testimony.

We will go to the next witness.

Mr. Nelson Onduso Ochombo: My names are Nelson Onduso Ochombo and I live in Nyamira County. I am a farmer and I keep cattle. I realized that is what I could do on the small farm. I only keep cattle because they can be sustained in a small place. That is how I get money to educate my children.

On 1st August, 1982 I was off duty. I was stationed at Eastleigh Headquarters and my work was intelligence. I have friends living in Eastleigh Estate and people from my

village. Since I was off duty I slept there and that morning, I heard gunshots. I realized that I could not leave the place because I would easily get into trouble. That morning I went to our main gate. I was told to raise my hands and surrender to the Army officers there. I was put in a cell near the main gate and our names were taken down. A lorry came and we were taken to Kamiti Maximum Prison. No one touched me then.

In Kamiti Maximum Prison, we were presented before a panel. We were put in a cell, searched and questioned. They asked me if I knew Anyona. I told them I did not know him and I never worked for politicians. I told them that I was not even related to him since he came from Kitutu and I am from West Mugirango. I was put in a room and after two days we were taken to Naivasha.

We found an interrogation team in Naivasha. They asked me if I had taken any arms and I told them I had not and in any case I was not there. They asked me to leave. They took me to a room filled with water. A prison warder told me to admit that I had a gun so that they could leave me alone but I refused. I was in the water for seven days. I later admitted that I had a gun. I said that if you are a soldier, you must carry a gun and it is not an offence for a soldier to carry a gun.

One day we were woken up very early, put in vehicles and taken to Lang'ata. I had not been told that I was being taken to court. I appeared before a court martial. I had already admitted that I had a gun. They read me the charges that I was in Eastleigh and I was armed illegally. They asked me, again, if I had a gun. I admitted because I had been tortured. I was sentenced for nine years at Kodiaga Prison in Kisumu. We sought an appeal. We were taken to Kakamega where Justice Gicheru was the presiding judge. The sentence was reduced to five years.

Later on, we were told that we had been granted permission to go home. We were released five people each day until everyone was released. We were set free in April, 1986. We had stayed in prison for four years. I read in the media that the President knew the people who were involved. We were arrested and yet we were innocent. There was hatred between the Army and the Air Force. The Army people got the chance to torture and humiliate us. They knew very well the people who were involved. They were saying that the Air Force people were proud and educated, that they fly planes and do not go to the bush. That is all it was about. They said that we addressed them in English. The hatred is still going on to date.

We do not have certificates and my wife left me. There was a lot of tribalism. I had married a Luhya and when she heard that I had been sentenced, she ran away. I had to remarry. I now have five children and I am more than 50 years old. If I had a job I would have done many things. I have tried to take care of myself through farming. I cannot get a job because I do not have any certificate. We still have our job IDs.

When you are discharged, you are supposed to be given all your things. You are cleared and you return the job ID card and hand over everything. You are then paid your benefits. We were not given any benefits. Maybe they squandered it. There are no records. If you are dismissed, you are not given anything. Because this case is in court and they know we

will win the case because we did not do anything--- They did not take steps against those who attempted to overthrow the Government. They took all of us who had no idea about what was going on. So, I want the truth and justice to be done and we are given our dues. If we are paid our money we will do very many things and continue with life well. We love peace and we have lived with people comfortably. Why should I overthrow the Government? What was there for me to gain? I had no intention of doing that.

Thank you very much.

Mr. Patrick Njue: I thank you, Mr. Onduso. We will come back to you for further questions.

We will go to the next witness.

Mr. Samuel Nyang'au Nyanchiengo: My name is Samuel Nyang'au Nyanchiengo and I live in Nyamira. I am very grateful because today I have been given a chance to speak the truth on how we were tortured in 1982. Most of you had not yet been born but it is good for you to know what happened. I was serving in the Kenya Air Force in 1979. I was young then and I had just finished my studies. I went to Lanet for basic training then I was posted to Eastleigh where we continued with training to upgrade our skills.

Let me now tell you what happened in 1982. I was on duty that night and as I was moving from the main gate to go and sleep, when I arrived at home I heard some gunshots and I was shocked. By good luck my wife was from Uganda where there was a similar conflict. I wanted to go to the base for rescue but she advised me against it. So, I slept. At around 6.30 a.m., I heard footsteps of people running. A neighbour came to my door and asked me why I was sleeping and yet the Government was being overthrown. I woke and ran to the guard room. When I went to the guardroom, I found the duty officer Lieutenant Muthomi. I asked him what was happening and he told me to arm myself. At that time, there was no gun in the armoury. He told me to find a way of arming myself so that I can defend the base. We took a military Land Rover and went to Eastleigh. I found so many soldiers who were already armed. I went to the armoury and took a gun. Since I was on duty, I had to go back to my base. They told me that the Government is under the military control and I should defend the base, that is, Embakasi base. In the forces, you have to take orders and complain later. We were supposed to make sure that nobody enters the base.

We went to Embakasi and joined the air cover battalion. Lieutenant Col. Muthondu was the Commanding Officer in that base. Lieutenant Gitundu was the Commanding Officer of the air cover battalion. We had blue uniform and they told us that we should wear another uniform. We thought that it was good advice. The people from the General Service Unit (GSU) came and wanted to attack us. At around 6 p.m. we went to the base and found only the army people. I was afraid because I was only three years old in the service. I thought that I could be killed so I went to hide. Some soldiers came and told us to come out and go to the parade. The people from the army were armed and we were ushered into lorries and taken to Kamiti Maximum Prison. They pushed us in like

prisoners. We were ushered into a small cell. We were forced to crowd in the small cell and we stayed there for a whole week. We were called one by one for interrogation. When I was called, I gave my statement about what had happened.

We were being given red cards, green cards and yellow cards. Red card means that someone had prior knowledge about the coup. I was given a yellow card and I was taken to King'ong'o Prison. Later on, I was taken to a court marshal. I tried to look for someone to defend me but there was none. In the court there was Major Gicheru and Samuel Bosire. He read for me the charges that I armed myself unlawfully and went to town. I told him that I armed myself and went back to Embakasi. He asked me whether the charge sheet had wrongly been written and I said yes. He adjourned the court until 2.00 p.m. We were being represented by the advocates from the army. They told us to go plead guilty. So, when I went back I pleaded guilty. My judgement was read out but after thinking over the matter, I told him that I had pleaded guilty but under duress. But since I had pleaded guilty I was given a jail sentence of ten years.

I was sent to Industrial Area Prison, then to King'ong'o and Kamiti Maximum Prison. I made an appeal and the jail sentence was reduced from ten to four years. In prison, I got saved and became a pastor. I had left behind a wife and a child. When she heard that I had been jailed for ten years, she started loitering around and later on she ran away. I had already been dismissed from work and my certificates had remained at the base. So, I was wondering how to start a new life. I underwent a lot of suffering. I was taken to Naivasha and put in cold water. I stayed for seven days without food. I stood in the water for a long time. They tortured me so that I could accept that I knew about the coup. All I know is that I did not have any knowledge about the coup. The law of the armed forces is that when they are told to go and arrest they do so without question. When you are given an order you have to follow. I was given an order to take the gun and that is why I took it.

When I came home, I did not find my wife. I stayed for about ten years without marrying again because I was unable. Lastly, I remarried a wife but she ran away because life was difficult. I was not able to provide. Later on, I got married to another woman and my last born is in baby class.

I was dismissed from the force after the 1982 coup but I do not know the reason why. When I left, I had nothing with me. I left empty handed. I do not know why I was dismissed from the Air Force.

Right now, we have a sympathetic Government and it has appointed this Commission so that it can address the issues of people who have been suffering for a long time. So, I am grateful because the youths now can know how life was in Kenya. It is my prayer that the Government should have sympathy for those people who had been employed by the armed forces because we were tortured. Even up to date, I cannot walk properly because of the torture. I request the Government to have sympathy on us and compensate us with our terminal benefits so that we can build the nation together. The present Government is very sympathetic and it is development oriented. We should be able to invest in our future generations. I do not have much but I only ask that I be given my benefits and

compensation for all the time I have been out. I was supposed to retire in 2014. I have lost about 384 months. I do not see what I did wrong to the Government. I am very grateful for the Commission and God bless you. Wherever you go, pray so that this life that we are undergoing can change.

What happened in 2007/2008 post-election violence should not come back again. I hope that next year God will enable us to do our things in peace and that violence should not recur.

Mr. Patrick Njue: Thank you, Mr. Nyang'au for your testimony. I would like to ask you some questions but let me first start by expressing my empathies for the things that you went through. Let me also say that your testimony will go a long way in enhancing what we have gathered from other areas, from people who went through similar torture and detention. It is my hope that in the final report, the recommendations that will be forwarded to the Government will be able to address your issues.

You have talked about cards that were given which were supposed to determine where you will end up. Could you tell us what other colours were these cards and what each colour signified?

Mr. Samuel Nyang'au Nyanchiengo: There was a red card for those who were thought to have done something criminal. The second colour was yellow for those who were armed but did not do anything. Like me, I was armed but I just went back to my base. The person who had a green card was the one who was not armed and was arrested while in the camp.

Mr. Patrick Njue: What colour did you get?

Mr. Samuel Nyang'au Nyanchiengo: I got a yellow card. Those who armed themselves and went to town were given red cards. Those who were given green were not armed.

Mr. Patrick Njue: What would happen to those who got the green card? Were they just left to go home?

Mr. Samuel Nyanga'u Nyancheingo: Those ones were left to go home and others were even reinstated.

Mr. Patrick Njue: You had provided us with some documents and we have copies here. I want you to look at them and tell us what they are before I can make a comment on them.

Mr. Samuel Nyang'au Nyanchiengo: I know them. The first one is the certificate of service from the military. The other one is a recommendation letter also from the military. The other one is a certificate of discharge dated 3rd August, 1982. The next one shows my rank which was of a senior private. All the other certificates show my personal profile like where I was born, where I went to school and so on.

Mr. Patrick Njue: Could you confirm if that one is the certificate of service?

Mr. Samuel Nyang'au Nyanchiengo: Yes.

Mr. Patrick Njue: I beg that these documents be admitted as records of this Commission.

The Presiding Chair (Commissioner Slye): They are so admitted.

Mr. Patrick Njue: The next witness is Mr. Ondusu.

Mr. Onduso, you said that your first wife left you and you have talked of a new family where you have five children. Are these children from the previous marriage or the present one?

Mr. Nelson Onduso Ochombo: I married the present wife when she had two daughters then I got one daughter with her and two sons. So, they are now five children.

Mr. Patrick Njue: My question was, do you have any children from the previous marriage?

Mr. Nelson Onduso Ochombo: I had two children in my previous marriage.

Mr. Patrick Njue: Where are they?

Mr. Nelson Onduso Ochombo: I do not know where they are. I was told that they went to Nairobi.

Mr. Patrick Njue: You have also talked about a case in court, could you also clarify whether it is from the 1982 coup and whether you are all under the same umbrella?

Mr. Nelson Onduso Ochombo: Yes, we are all under it. It is in Nairobi but it was stopped temporarily and we are hoping that it will continue.

Mr. Patrick Njue: I notice that from your statement there are some documents that you had supplied to us. We have copies here but could you confirm to us what they are?

Mr. Nelson Onduso Ochombo: The first one is the certificate of service in the armed forces and the second one is about my credentials in education. The third one is the certificate of discharge.

Mr. Patrick Njue: I beg that these documents be formally admitted as records of this Commission.

The Presiding Chair (Commissioner Slye): The documents are so admitted.

Mr. Patrick Njue: Do we have a problem with interpretation?

The Presiding Chair (Commissioner Slye): Sometimes there is a problem while switching. The HANSARD does not pick what you are saying. So, the interpretation should switch over quickly when the Leader of Evidence is speaking.

Mr. Patrick Njue: Thank you for that direction. My last question to Mr. Onduso is that you do not have an identity card because it was confiscated?

Mr. Nelson Onduso Ochombo: When I was in prison it was taken away.

Mr. Patrick Njue: Mr. Nyang'au, do you have your identity card?

Mr. Samuel Nyang'au Nyanchiengo: I have it. When I was released from prison, I was given back together with the discharge certificate.

Mr. Patrick Njue: Thank you very much. Let me now go to Mr. Orina. There are documents here which I want you to confirm what they are.

Mr. Bernard Orina Ochari: The first one is the certificate of service, the second one is the certificate of discharge and the third one is a profile of my academic qualifications.

Mr. Patrick Njue: I beg that these documents be admitted as records of this Commission.

The Presiding Chair (Commissioner Slye): The documents are so admitted.

Mr. Patrick Njue: Mr. Onduso, when you met Gen. Kariuki back then, he told you not to give up in life. I want to borrow the same words and encourage you not to give up in life. This again goes to Mr. Masara, Mr. Nyang'au and Mr. Onduso.

I would like to ask Mr. Masara if he has his identity card.

Mr. Wilson Masara: I have it.

Mr. Patrick Njue: Mr. Masara, you have equally submitted some documents. I want you to confirm if you know what these documents are.

Mr. Wilson Masara: The first one is from the Independent Medico Legal Unit (IMLU). When I was in Nairobi, I went to them for further treatment because I was unwell. The second one is a certificate showing the grade that I held while in service. The third one is a diagnostic evidence of the doctor. It is the doctor's report.

This is the report he wrote to the doctor who was going to treat me, to see what I had been diagnosed with. So, this is the problem that I had. I was not in a position to eat. The

next time I saw an eye consultant and complained that I had eye problems. When he looked at me, he actually confirmed that I had eye problems. He then wrote a report indicating that I had a problem with my eyes.

He referred me to get spectacles. People used to get them for free from the IMLU people. The glasses would cost Kshs 6, 100. When I went there, I found that the glasses were finished. I was told that I would be called later on to get a pair, but I was never called. That is why my eye problem worsened. I went completely blind. In February, this year, I went for an operation. The eye was operated on in Nairobi. I have with me a certificate of service in the Kenya Armed Forces; it has my number and name.

Mr. Patrick Njue: Mr. Masara, from your document, I note that you have quite a number of medical related cases. Do you have any present or future medical essentials?

Mr. Wilson Masara: Yes, I was diagnosed with stomach ulcers, for which I was put on treatment. I have an ex-ray picture here, which shows that the ulcers had progressed. I have wounds. So, they did not heal completely. I require further treatment, which I cannot afford because I do not have money. I have copies of the X-ray.

Mr. Patrick Njue: When you appeared before the panel and gave your testimony, what were the findings of the panel? What did they charge you with?

Mr. Wilson Masara: I was not charged with anything because I did not appear before any court. From Nanyuki, I was taken to King'ong'o. From King'ong'o, I was taken to Naivasha. They started questioning me, and we were graded differently. Regarding the cards that my colleague has mentioned, I was not given any card. My group members were not given any cards. People were making inquiries and arranging us in groups. My group was the last one to be told that we had been detained. That was after all the people had been jailed, others released and others told to continue with their work.

The group that was detained comprised of only a few people. Members of my group were not sentenced. We were just detained. They did not tell us for how many years we were going to be detained. When you are detained, you are not told for how long you are going to be detained.

Mr. Patrick Njue: From my observation of the four of you this afternoon, it is evident that you have denied any involvement in the 1982 coup attempt. You have further gone ahead to give the plight of your families – how they continued to suffer during your incarceration. You have given your expectations to this Commission. You have further given details of the torture that you went through. It is my hope that in the final report, alongside the many other names that will be mentioned in relation to the 1982 coup attempt, you will find your names there, and that appropriate recommendations will be made; they will be fulfilling to your heart. I wish you the best in life. Do not give up.

The Commissioners may proceed to ask you questions.

The Presiding Chair (Commissioner Slye): Thank you, Leader of Evidence. I want to thank the four of you for coming forward to this Commission and sharing your experiences at personal level. It is evident that your experience is central to the history of Kenya, and to the history of the injustices that this Commission is looking into. As you know, we have heard from individuals in other parts of the country, who were also affected by the 1982 coup attempt, including some, I believe, in Nairobi before this hearing here today.

I want to assure you that the amount of time we have spent with you individually and with others throughout the country--- I am sure that the 1982 coup attempt and the events around it, including the injustices committed against each of you, among others, will be included in our final report, again with appropriate recommendations.

I would now like to ask my fellow Commissioners if they have any additional questions for you. I would like to start with Commissioner Farah.

Commissioner Farah: As the Presiding Chair has said, you went through a great ordeal, particularly in the detention in prison. That is not the way to treat suspects. So, we empathise with you. As the Presiding Chair has also said, you are not the first group that has appeared before us. We have had quite a number of other presentations from people from the then Kenya Air Force, who were victimised and wrongly dismissed or discharged, whichever the case.

My question to you is this: Prior to the 1st of August, 1982, was the coup attempt plot known to the authorities? If it was known, do you think that nothing was done about it? The question may be answered by anyone of you; perhaps, by the gentleman who was from the Military Intelligence Unit.

Mr. Bernard Orina Onchari: Commissioner, I have not got the question.

Commissioner Farah: Before the coup attempt, was there anything that was heard or known about it, and if so, why do you think the authorities did not do anything about it?

Mr. Bernard Orina Onchari: We came to hear about this later on after we had been arrested – that there had been an attempt. We had no idea.

Commissioner Farah: My second question is why you think service men who were not on duty, or who had performed their duties up to midnight and left for home, did not do anything about the coup attempt. Why do you think they were victimized?

Mr. Bernard Orina Onchari: We did not know what they were looking for; it was just hatred. They just wanted us sacked, so that they could be seen to have worked; they were just mistreating us. They knew the people who were involved. We read from the media that even the President was told. So, the ones who told the President about it knew the people who were involved.

Commissioner Farah: During the interviews, was anyone of you told that there were other service men who had mentioned you, or it was just about “where were you” and what have you?

Mr. Bernard Orina Onchari: No one mentioned me, and I did not mention anyone.

Commissioner Farah: I think you said you were asked “Do you know George Anyona?”. Since you all come from Kisii, do you think that you may have been wrongfully connected with him?

Mr. Bernard Orina Onchari: Even the Luhya detainees were being asked about the politicians from their areas, like Shikuku. They thought that we were working with politicians. They just asked us general questions.

Mr. Wilson Masara: Another thing is that they would ask you to tell them your tribe before they would ask you questions. At the time we were taken to Naivasha, George Anyona had been detained there. There was a Luhya who had also been detained there; I cannot remember his name. He was a politician. If a Luhya came, he would be asked whether he knew the Luhya detainee. They just wanted to know whether Anyona knew of the coup attempt, or whether the Luhya politician knew of it. If it was in respect of a Kikuyu detainee, they would ask: “Do you know whether this person knew of the coup plot?”, so that they could inquire more about him. They were just looking for information to establish whether the coup attempt had anything to do with politicians.

Commissioner Farah: It is now a bit clearer. I appreciate that. I have no more questions. Thank you very much.

Commissioner Chawatama: You mentioned that you have filed a case in court. Do you know the number of people from the different parts of Kenya, who make up the 1982 alleged coup plotters? What is your number?

Mr. Bernard Orina Onchari: The people who appealed are very many. We have names that we have published. We have advocates. Some of us have copies but we did not remember to bring them with us. There are people in the rural areas, who did not come to register with the advocate, so that their names can also go into the case. There are others who are sick. Others died. Their spouses just depend on us to file their cases, so that if we win the case they can also bring their names. There are others who are deep in the rural areas, like Migori. They have not come out to register their names.

Commissioner Chawatama: One of you mentioned the fact that you served four years imprisonment and then got a Presidential pardon. I thought you had served your four years. So, what was the meaning of that Presidential pardon? Were you told why the President was pardoning you?

Mr. Samuel Nyang'au Nyanchiengo: I had been jailed for ten years, but my term was reduced to four years. My appeal was rejected when I went to court. When I went back to

jail, I stayed for two months because my term was reduced from ten years to four years. I completed the four years in 1986.

Commissioner Chawatama: You also got a Presidential pardon?

Mr. Samuel Nyang'au Nyanchiengo: No, I did not mention that in my testimony.

Mr. Wilson Masara: I am the one who got a Presidential pardon. If you were detained, you would not be told how many years you were to serve. It was the President who would grant you amnesty. So, I got Presidential amnesty after serving detention for five years.

Commissioner Chawatama: Thank you very much. The facts of your testimony are well understood by me. I thank you.

Commissioner Shava: I thank you for coming here today and giving your stories very clearly. Your stories resemble those of many people who were with you, and also many others who did not survive. We have heard of a raid in an area where Kenya Air Force service men were staying; there was indiscriminate shooting. In that raid, only one person came out alive only for him to suffer detention later. It was really ironic that people who took an oath to defend their country, and who were in the service of their country, were treated in this manner; there was a blanket accusation. Due process was not observed. People were court marshaled, but they were not given an advocate of their choice. The advocate they saw misled them. They were not even prepared or told that they were going to court, so that they could prepare themselves.

It is very sad that the incident has clearly disrupted your lives and the lives of your families. This incident happened at a time when Kenya was clamouring for change, and those who staged the coup attempt did not go about things the right way. That was not a democratic way in which to change a regime, neither was it democratic for every person associated, in any way, with uniform to have been picked up and treated in the manner you were treated. I wish you the best of luck in proving your court case.

As one of you has said, if you did not do anything, the truth will come out. The certificate of discharge does not say anything about you being guilty of any offence – either a criminal offence or an offence within the terms of the military service. So, to simply send people home was a shot in their back. I think it was something that was clearly and manifestly unjust. You have suffered injustice, and I really empathize with you. As a Commission, we will do our best to play our part and ensure that you and your families receive justice.

Thank you.

Commissioner Dinka: I would also like to join my colleagues in thanking the four of you for coming and narrating your story to us. Your story is very sad. You wanted to serve your country and, in good faith, you joined the Kenya Air Force. In 1982, some nightmare happened. You were picked up and, because of that, you suffered. Your

families suffered. It is a very sad story. It was not the first time things happened to people who honestly served their country. Things, which have no meaning whatsoever, happen to people. They create a situation of suffering for those people and for their families. I would like to encourage you to continue living your life, and remembering the service you have rendered. There is nothing shameful you have done. So, I wish you all great success in your endeavours. You are not very old yet. So, you have your life ahead of you. I wish you and your families a happy life.

Thank you very much for coming.

Commissioner Ojienda: I want to thank you for your testimony. As the Presiding Chair said, we have previously heard testimonies on the subject of the coup attempt of 1st August, 1982. The third witness to testify told us about armoury, where weapons are kept. It clearly appears that none of you was aware of the goings on. When you were arrested, you were tortured for acts you did not commit.

I just want to find out from Wilson Masara, who said that he was arraigned before Judge Bosire, who was chairing the Court Marshal; and that he had to plead guilty to the charges as read. How long did this process take – between the time you were taken before the Court Marshal and the time you were convicted? Was the sentence just read and you were taken away?

Mr. Wilson Masara: When they took us from King'ong'o to Naivasha, we had spent about a week behind bars. We spent five days at King'ong'o, after which we were taken to Naivasha. We stayed there for between five and six months. Subsequently, we were told that we had been detained.

Commissioner Ojienda: I am talking about the trial, when you appeared before Justice Bosire. How much time did it take from the time you appeared before the court marshal and the time the sentence was passed?

Mr. Wilson Masara: I was not taken to a court marshal personally. My case was different from that of my other colleagues. My colleagues were taken to a court marshal. I was in the group that was told to sit and wait; it was subsequently put into detention. I was not taken to any court. These colleagues of mine were the ones who were taken to a court marshal after being tortured. We just found ourselves being told by the driver to go to Langata. Someone would come and interrogate you: "Are you so-and-so?" Then you would say: "Yes." They would tell you: "We have found out that you had a weapon on that day. Where were you on that day?" You would answer: "I was at the camp as usual" and so on. You would then be told that you had been sentenced to six months. There was no time to defend yourself.

For instance, I was working in the armoury section. I was told that I was the one who was supposed to take care of the weapons. In that area, the military police would always be there. Officers would be issued with weapons to guard the area on a daily basis.

Commissioner Ojienda: Does any of you remember who tortured you? The four of you talked about torture. Do you remember any particular person who tortured you?

Mr. Nelson Onduso Ochombo: All of them were military or prison officers. Initially, we were tortured by Kenya Army officers. When we were taken into the cells, it was prison warders who tortured us. The cells were specifically for prisoners.

As my colleague has said, the torture we went through was so much that we could not identify any particular person who tortured us.

Commissioner Ojienda: I want to assure you that we have a new dispensation. The rights of any person who may find themselves in the position you were in at that time will be protected. The things you went through can no longer be done to any citizen of this country, or any other person before or during a process. That is what Article 50 of the new Constitution states. It is sad to learn that you were victims of the previous system. Thanks to you; this country has changed.

As a lawyer, however, I would advise that, looking at the papers that you have, and looking at the provisions of the previous Employment Act and the Employment Act, 2007, which is the current employment law, your cases stand on very firm foundation. Any court that hears your case, will find you innocent. So, there is light at the end of the tunnel. I hope that at the end of that process, your tears will be wiped; you will look around and say that it was worth waiting.

Thank you.

Commissioner Shava: Presiding Chair, I think the question that Commissioner Ojienda was asking is very important. May be, I can be of assistance in trying to ask for clarification. For the two witnesses who were subjected to a court marshal, what we want to know is what that process was like, because from statement, it seems to have been a bit of a strange process. It was not the way court marshals are conducted.

For example, if you said that you have testified before the TJRC, you would say that you came here in the morning, you found some other people before the Commission and then in the afternoon, it was your turn. For about two hours, you spoke to the Commissioners and the public and finished giving your testimony.

So, if I can ask any of you two gentlemen who were subjected to court marshal proceedings, where Justice Bosire was presiding, how long were you before that court marshal? Did you go in the morning? Did you go in the afternoon? When you went in the morning, were you there for five minutes? Were you asked something? Were you given the opportunity to respond or did you just walk in, saw this judge and people said things to you and then you were taken away without being given an opportunity to respond? How long did it all last?

Mr. Bernard Orina Ochari: When we appeared before Justice Bosire, as we entered into the venue, we were escorted by soldiers. Personally, I was escorted by seven soldiers. Once you were in, you would be asked: “Are you so-and-so? You replied: “Yes.” You would then be asked: “Were you in the camp on that day?” You say: “Yes.” Once you were judged guilty, you were not given a chance to defend yourself or say anything else. There was nothing you could say before Justice Bosire. You would just see people writing things down and they you would tell you that you had been sentenced to one year or two years. That was what was happening.

Commissioner Shava, Kenya: So, once you had been removed from the room, that was it? You would never see that man again?

Mr. Bernard Orina Ochari: Hapo nje?

Commissioner Shava: When they had written things on paper and then you had been removed, that would be the end of the process?

Mr. Bernard Orina Ochari: After being taken out of the court room, you would be taken to another room to wait for vehicles to come and take you to Industrial Area Prison to serve your sentence. Once you were in Industrial Area Prison, you would remove your personal clothes and put on the a prisoners’ clothes.

Commissioner Shava: So, all this happened within one hour or one morning or one day or one week or how long?

Mr. Bernard Orina Ochari: It was not taking even 20 minutes. The longest it could take for a case to be disposed of was five minutes.

Commissioner Shava: Thank you very much. That is what we wanted to know. You have explained it very well. We have now understood.

The Presiding Chair (Commissioner Slye): I would like to thank the four of you for your testimony before us here this afternoon. As I said, this forms a very important part of the history of Kenya and the history of this Commission. So, we very much appreciate your co-operation and presence. I express again our sorrow, on behalf of the Commission, and I think probably on behalf of most of your fellow Kenyans because you suffered so unjustly. So, thank you again.

We have now come to the end of our sitting today. We had 11 different individuals today. We started with four individuals, who gave us an overview of the issues here in Kisii. Those individuals were Hezron Otochi Nyambane, the Hon. Samuel Kabwage, Johnson Otwangi Morongi, and Nairebwenda Mokobo. We heard three of you who said they suffered after the 2007 elections, during the post-election violence. Those individuals were Alice Moraa Kosgey, Joan Bunoro Nyagutha and James Busono Musanya.

Finally, we ended with the four gentlemen before us here today, concerning the 1982 coup attempt and the events that followed that coup attempt, which visited detention, torture, maltreatment and other injustices on these individuals. They are Wilson Masara, Bernard Orina Onchari, Nelson Onduso Ochombo and Samuel Nyang'au Nyanchiengo.

I sincerely want to thank those of you who are still here, the witnesses whom we have had. I also want to thank the members of the public who have sat through most of the day with us until now, the end of today. We will be re-convening here tomorrow morning, at 9.00 a.m., to continue these hearings. I would like to now ask the Master of Ceremony to lead us through a closing prayer.

(Closing Prayer)

(The Commission adjourned at 6.50 p.m.)