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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION, HELD ON THURSDAY 14TH
JULY, 2011, AT H.H. THE AGA KHAN HALL, KISUMU**

PRESENT

Tom Ojienda	-	The Presiding Chair, Kenya
Gertrude Chawatama	-	Commissioner, Zambia
Margaret Shava	-	Commissioner, Kenya
Ahmed S. Farah	-	Commissioner, Kenya
Berhanu A. Dinka	-	Commissioner, Ethiopia
Ronald Slye	-	Commissioner, USA
Patricia Nyaundi	-	The Commission Secretary
Emily Kimani	-	Leader of Evidence

(Opening Prayer)

(The Commission commenced at 10.05 a.m.)

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

The Presiding Chair (Commissioner Ojienda): Thank you all, once again, and welcome to the hearing in Kisumu. Before we start, I want to invite the Senior District Commissioner, Mr. Mabeya to officially welcome us to Nyanza for the hearings. The floor is yours, Mr. Mabeya.

Mr. Mabeya: Thank you, Presiding Chair and the Commissioners. On behalf of the Provincial Commissioner, I wish to welcome you to Kisumu City. As you continue with your hearings here, we will give you all the support that you need. We believe that by your coming to Kisumu City, historical injustices will be recorded, considered and appropriate recommendations made to solve them so that our people here in Kisumu may stay in peace and move forward. This is a great country, we cannot be held hostages to the past, but we should be able to overcome and chart the way forward for the better of the people of Kisumu.

Karibuni sana!

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mr. Mabeya. Before I start I want to recognize the presence of certain colleagues amongst us who are important to part of the process that we are engaged in today. I want to recognize the presence of the vice-chair of the National Cohesion and Integration Commission (NCIC), Mrs. Mary Onyango. She is sitting right in the front.

I also want to recognize the presence of Commissioner Milly Luanga, also a Commissioner with NCIC. As you all know, the work of this Commission in finding and getting people to speak the truth as we seek justice is, to facilitate reconciliation amongst the people of this country and, that task, as you know, rests largely with the NCIC. That Commission will continue its work beyond the life of this Commission.

I also want to recognize a number of officers from GIZ and other partners who are in the room. Before we formally start, I want to explain to the public rules that govern our proceedings. The witnesses that testify before us have been identified through a mechanism after writing statements and they are representatives of many other statement givers who are not present with us today. We will hear their testimony in the following order.

The Leader of Evidence will lead the witness. The witness will testify to all the issues that he/she knows after which the Leader of Evidence may want the witness to clarify his or her testimony. The Commissioners may also ask the witness questions. At the end of that process, the witness will be stood down and the next witness called.

I want to plead with all of you to listen to the witnesses in silence. Please do not interrupt the proceedings. We must show respect for every witness testifying. I must also request all of you to switch off your mobile phones or to put them on a silent mode so as not to interrupt the proceedings.

If you want to take any photo in the course of the hearings, please do so without a flash as that may interfere with the proceedings. We hope that by the end of the day, we will have heard the witnesses that are in today's list.

Before we start, I want to recognize the presence of hon. Phoebe Asiyo, who has just walked in, and I think she will be our second witness, after the first witness has testified.

I can see the Leader of Evidence has called the first witness and he has taken his seat. Two Commissioners are not with us but they will join us shortly. Commissioner Judge Gertrude Chawatama, our international Commissioner from Zambia and Commissioner Margaret Shava, who is a Kenyan Commissioner. They are on the way from Nairobi.

At this point, I want to request the Leader of Evidence to lead the first witness. Hearing Clerk, swear in the first witness.

(Mr. Bernard Orinda Ndege took the oath)

The Commission Secretary (Ms. Patricia Nyaundi): Thank you and I welcome you to today's hearings. First, I would like to request you, before you tell us what you recorded in your statement, to state your names and where you are currently staying, for the record purposes.

Mr. Bernard Orinda Ndege: My name is Bernard Orinda Ndege. I was born in 1955, in Karachuonyo, Ko'bara Sub-location. I was born in 1955---

(Inaudible due to Technical hitch)

The Commission Secretary (Ms. Patricia Nyaundi): Thank you very much. Mr. Ndege, I now invite you. You had told us the year you were born. I now invite you to tell us about when you moved to Naivasha and what happened to you in Naivasha in January, 2008.

Mr. Bernard Orinda Ndege: I went to Naivasha in 1978 and, thereafter, we stayed there and I was doing fishing in Lake Naivasha.

On Sunday, the 27th January, 2008, we woke up alive and healthy and we agreed with my family that we would prepare and go to church that morning. That very morning we sent our eldest son to go and fetch for us water from the tap. He went and found that those who were at the tap were speaking in Kikuyu Language and they were saying that: “There will be a big war at Naivasha today that nobody will be able to help.”

When he came back, he asked us: “Is it true that today *Mungiki* want to beat us here in Naivasha?”

When I got out of the gate I found so many people in the street where I was staying, both inside and outside the street. I asked one of our neighbours what was happening outside there. He told me that: “You do not know that *Mungiki* have come and they want to attack us?” Before very long we saw policemen coming and the police asked us where the *Mungiki* were. We showed them where the *Mungiki* were and they moved to another side of the estate then the police came back when the *Mungiki* were now advancing to where we were.

We consoled ourselves by saying: “At least, it is at day time and they want to fight us at day time and all of us will be able to see, it is not at night.” The police sent us away and told us to go back to our houses because it was only the Government that will handle the matter. Since we also know that the Government is the one which is charged with law and order, we went back to our houses. It was only through the roofs of our houses that we saw what was happening outside.

In the estate where I was staying, we were about 20 people in that plot; we got out and ran to close the gate. They started beating us with stones trying to force their way inside the compound. It started in the morning and went on and on and I cannot know when it ended. At about 10.00 a.m., they overpowered us. They broke the gate where we were staying and came into the compound. I told my family and the other people we were with, that we are unlucky that day; I told them that we should find a way through which we could escape. We ran and entered another house where I was staying; a two-roomed house. We screamed and wailed asking for help but nobody came near as we closed the door from inside. The *Mungiki* came and closed the door from outside. They went round the window of the bedroom and broke it. I heard one telling the other people: “Give me petrol.” They poured petrol inside the house as we were watching. Then a voice asked for a match stick. They lit the fire and threw the match stick inside the house.

As we were screaming inside, they were also screaming outside the house. I do know how I got out of the house. The little I know is that I had an axe which I was supposed to use to set up my own homestead. I think that is what I used to hit the door and I got out of the house. All those people who were in that house with me, 19 people, got burnt completely. I came out and later found myself in hospital. I think the doctors were thinking that I did not have serious injuries. They removed me from hospital and

took me to the police station. Then I started asking about my people in the evening, no one told me about them for three days.

On the third day, the police came for me at 2.00 p.m. and asked me if I wanted to be taken to where my people were. I said yes, I would wish to see my people. About ten police men put me in Land Rover headed to town; all of a sudden I realized we were going to the mortuary. I told them: "This is not my house, this not where I stay!" They told me that they had gone there to sort out a small problem and that they were to take me to where I was staying after.

At that time there was a female police officer who came and asked me if I would wish to see my people. I said "yes". Before she talked again, I realized that the police had surrounded me and had put on the wall. They told me that: "If you are confident and if you have the strength, we can take you to see your people." I then fainted and fell down and I lost consciousness. They took me back to the vehicle and returned me to hospital.

Again, I asked them if it was possible to see my family. Once they knew that I was determined to see my family, they forced the mortuary attendant to open the door and show me where my family was. The mortuary attendant opened the door widely. He told me that all those who got burnt in Kabati are here. The policemen held me and took me by force to the mortuary until I saw where my people were. I found them lumped together the way I am seeing this thing in front of me now. I saw the bodies of my two wives and my eight children and a woman who died with her six-month pregnancy. They were burnt to ashes.

Before this Commission or before God, the God who I know will judge me on the day of the judgment, I am surprised at what the Government of Kenya did to me. I did not want anything in the Government or in the country, how could they burn my people to ashes; even the unborn children who are still in the womb of their mothers? Even the leaders that I am seeing in front here, all of them have children and wives. What did I do to Kenya so that they burnt my family?

*(Mr. Ndege was overwhelmed by emotions
and cried uncontrollably)*

The Presiding Chair (Commissioner Ojienda): It is okay. Just take your time.

Mr. Bernard Orinda Ndege: All my eleven children and my two wives were burnt to ashes. I remained with nothing completely like a naked person. The Government does not know up to today and has not done anything about it. The Government of Kenya does not even know that I exist. If this Commission can help me find out why my people were killed, the Lord who put up this Commission will also help me because I do not even know how to live. I am burnt all over and I cannot sit in the sun. I cannot sit in the sun even for one minute; otherwise, I will feel burning all over my body.

The Government has not done anything for me they do not even know where I live. It would have been better if I died with my family that time because there is nothing good I am seeing. What should I do in this world so that I am like other people? What

am I supposed to do? You are the people who can help me. But I will not forget about them until my death; we will meet during the Day of Judgment in heaven. If anybody has anything to ask me, you can ask.

The Commission Secretary (Ms. Nyaundi): *Bwana* Ndege, I want to once again, thank you for coming before this Commission to share your story with the country. In as much as another human being can tell you, we are really sorry for your loss. You will allow me to ask you a few questions because this Commission is required to come up with an accurate record and because of that I may ask you some questions. We will move slowly, if you want us to stop at some point, we will stop. After I ask you my questions, those Commissioners may also ask you additional questions. But we will only move at a speed that is comfortable to you.

So, I want to ask you, you said you were living in Naivasha. What was your occupation there?

Mr. Bernard Orinda Ndege: I was a fisherman.

The Commission Secretary (Ms. Nyaundi): You moved to Naivasha in 1978? Is it correct that you moved to Naivasha in 1978?

Mr. Bernard Orinda Ndege: That is correct.

The Commission Secretary (Ms. Nyaundi): In 1978, you were living in Kabati. Is that the same place that you were living in January, 2008?

Mr. Bernard Orinda Ndege: It is the same place where I was living.

The Commission Secretary (Ms. Nyaundi): In the same compound?

Mr. Bernard Orinda Ndege: I was staying in Kabati Gold Phase and that is where they killed my family.

The Commission Secretary (Ms. Nyaundi): How many families, apart from yours, were staying at Kabati?

Mr. Bernard Orinda Ndege: We were staying in one compound and we were eight families.

The Commission Secretary (Ms. Nyaundi): Were you families of different communities or were you of the same community?

Mr. Bernard Orinda Ndege: There was only one Luhya family with two children who also got burnt.

The Commission Secretary (Ms. Nyaundi): I want to understand - between 1978 and 2008, what was your relationship with the people in that compound and generally people in Naivasha and especially at Kabati; how did you relate?

Mr. Bernard Orinda Ndege: Truly, from 1978, we were at peace; even at night we could meet together as a group of families, visit one another and eat together. In that plot we were very peaceful with my family and that is why even the other women had gone to work on that day and they left us to look after their children as they were working. We lived together very peacefully.

The Commission Secretary (Ms. Nyaundi): Where we passed we have listened to people talking about the story of Kenya. They have told us that beginning around 1992, every year, when there is an election there would be tension between different communities. Was this your experience at Kabati, Naivasha, before 2007?

Mr. Bernard Orinda Ndege: What I know is that, from 1978, we were staying in peace and we were voting and coming back to our houses and we would wait for the results and we could know who had won and there was no violence. Until the year 2007 when the election results were announced and that is when there was violence. War started in Naivasha on the 27th January, 2008.

The Commission Secretary (Ms. Nyaundi): People who have told us their experiences tell us that even during the campaigns, there was some tension in some areas; that is, the campaigns leading to the 2007 general elections. What was your sense in Naivasha? Was there tension during the build up to the elections?

Mr. Bernard Orinda Ndege: I will say the truth even before God. And this is not the last court that I will speak to but I will say the truth even before God. We have never had any violence in Naivasha. People can just argue during campaigns but there has never been any violence. The only violence or fighting that I know of is that one of 2007/2008.

The Commission Secretary (Ms. Nyaundi): For instance, in September or October, 2007, what were the campaigns like in Naivasha? Did you attend any rallies, yourself?

Mr. Bernard Orinda Ndege: I was one of the people who were campaigning for peaceful elections. I was an agent of a Luo candidate called Ogendo, who was contesting for a parliamentary seat. After he was defeated in the party nominations, he gathered us together and told us to support someone called Mututho, who is now the Naivasha MP. We all supported Mututho and he defeated Jane Kihara. We voted and came back to our houses to wait for the results.

The Commission Secretary (Ms. Nyaundi): Even during the campaigns, you did not sense that there was any tension between the communities?

Mr. Bernard Orinda Ndege: The only problem was between the parliamentary contestants; Jane Kihara and John Mututho. That was the only problem.

The Commission Secretary (Ms. Nyaundi): So, you say you voted and you went back to your house. Now, between the day that you voted and on 27th January, 2008, in your statement, you say you woke up to watch television. Now even based on what you were following through the television on what was happening in Naivasha, what was happening before this date? Was it calm in Naivasha or was there some violence?

Mr. Bernard Orinda Ndege: There was no peace in Naivasha. The OCPD and the OCS took my ID and my telephone number because there was a day when those people came and started some skirmishes in the evening, and then we called the police. They sent the policemen who restored clam. So the OCPD and the OCS told us clearly that “nothing will happen in Naivasha; stay in peace”. We believed them and stayed in peace because that was a word from the Government. We could not doubt it.

The Commission Secretary (Ms. Nyaundi): You have said that these people who came, you have identified them as *Mungiki*. What is it about them that made you say these are *Mungiki*?

Mr. Bernard Orinda Ndege: When we heard that there was violence, we told the police that those were the *Mungiki* and they have come to beat us. The policemen also confirmed that they were *Mungiki*. That is why they sent us away. They told us that this was an issue which was going to be handled by the police. It is the duty of the police and not ours. However, I could not understand why the police sent us back to our houses and yet they are law enforcement agents. Then they left the *Mungiki* to kill inside our houses. We screamed from 2.00 O’clock and there was no police patrol in Naivasha until evening. What did the Government not know in Naivasha? If they had not told us to go back to our houses, we could have come out and fought. But they took us back to the houses and then allowed the *Mungiki* to descend on us.

I am sure the number of people killed in Naivasha surpasses any other place in the whole of the country. The bodies that were eaten by dogs were also so many and cannot even be accounted for. Those who were thrown in the pit latrines and were buried in the sand are also so many. That is why I have said I will say the truth even before God. After knowing the language you were speaking, they were leaving Kambas to go back to their houses. They were more concerned with men. Those are the ones that they were killing because they believed they are the ones who voted for change. They were even coming to the police station with machetes and *pangas*. When the police heard shouts of “*Mungiki! Mungiki!*” they would fire tear gas. They even killed people at the Catholic Church compound. I can assure you they killed more people than reported. I know *Mungiki* very well.

The Commission Secretary (Ms. Nyaundi): Thank you. The information you are giving us is very useful for the work that the Commission is doing. I want to thank you for giving us this information.

(The witness wept before the Commission)

Mr. Bernard Orinda Ndege: I was not born like this. I was not the way you are seeing me now. They burnt me for no reason. Who did I kill? Whose child did I kill? Why did they not arrest me and take me to the police and jail me instead of killing 11 members of my family - my wife and children and leaving me like this? Look at me!

The Presiding Chair (Commissioner Ojienda): We will break for 15 minutes. Mr. Ndege, we want to give you sufficient time. We want to listen to the details of the painful story that you have told us. It is very, very painful and---

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

[The Commission resumed at 11.30 a.m.]

The Presiding Chair (Commissioner Ojienda): Let us take our seats. Welcome back to the session. We took some time off and I have had very useful discussions with the witness. We have seen his injuries. In fact, we have seen that Mr. Ndege sustained about 90 percent burns. We have noted and recorded the state of his burns for purposes of our proceedings. It is important because at the end of this process, we will make certain recommendations. We need all the evidence to go into our final report and to inform our recommendations that include specific recommendations on reparation and rehabilitation.

At this point, I would want to ask the Leader of Evidence to proceed. But before then, I note that there are two Commissioners; the ones I introduced in absentia, are now here with us. Sitting to my left in the middle is Commissioner Judge Getrude Chawatama, an international Commissioner from Zambia. To my extreme right is Commissioner Margaret Shava. They will be with us throughout our hearings in this region.

Leader of Evidence, before we adjourned, you were about to wind up. In fact, you were still asking questions. Just confirm if the witness is ready to proceed.

The Commission Secretary (Ms. Nyaundi): Thank you, Presiding Chair. I am informed that he is ready. Thank you, Mr. Ndege. Before we took the break, we were talking about how you were able to identify the people that you say attacked you. Did you identify them by the language they were using or did somebody tell you that these are *Mungiki*? Did these people themselves tell you that they were *Mungiki*? How did you know that they were *Mungiki*?

When you say “*Mungiki*”, was this the only time that you saw them in Naivasha on 27th of January, 2008, or had these attacks been going on before this date?

Mr. Bernard Orinda Ndege: Since I was born, I had not seen *Mungiki* except on that day.

The Commission Secretary (Ms. Nyaundi): Just so that we are clear, the only day you saw them in Naivasha was on 27th January, 2008?

Mr. Bernard Orinda Ndege: That is true.

The Commission Secretary (Ms. Nyaundi): You also said that many people were burnt apart from the 19 people in your house. Are these people you saw for yourself or they are the stories that you heard?

Mr. Bernard Orinda Ndege: As concerns those who were burnt, it was only in my plot. They were 19 in total. Nobody else was burnt in the whole of Naivasha. The other people were being hacked to death using *pangas* and machetes. They were

hacking people with *pangas*. If they saw someone who is not their own, they used one language. They would say “kill!”.

They had very powerful machetes and *pangas*. They had been reinforced with some metal and so, they were very heavy. The truth that I know is that they would hack a person once and somebody would die.

The Commission Secretary (Ms. Nyaundi): Before 27th January, 2008?

Mr. Bernard Orinda Ndege: On that day when violence erupted, that is the day they started killing people. They had not killed people any other day. It was on 27th and they started the violence in the morning until it ended.

The Commission Secretary (Ms. Nyaundi): This compound that you were staying at Kabati, was it a house you were renting or was it a house you had built?

Mr. Bernard Orinda Ndege: The truth is that it was a plot owned by a Kisii, and I was just a tenant.

The Commission Secretary (Ms. Nyaundi): You have said that you lost 19 members of your family. Can you, please, tell us the names of each wife and her children?

Mr. Bernard Orinda Ndege: I want to help this Commission so that we reach an understanding. All those who died in the house where I was living were 19 people. My own family members were 11 out of the 19. The other eight were my neighbours. In Kokwanjo in Mawego, there is a woman who lost five children who were burnt. There was a Luhya woman who lost two children. Another one who came from a place called Store Pamba in Katito lost one child. The children of my neighbours were eight and mine were 11.

I know the names of my family members who perished. They include my first wife, Mary Atieno Orinda; my second wife, Janet Anyango Orinda; my eldest son, Silas Ochieng’ Orinda; my daughter from the second wife called Atieno--- Let me clear with the children of the first wife.

As I have said, my eldest son, Silas Ochieng’, Alex Ndege, Peter Odhiambo, Putt, and the last one was still unborn in the womb, so I cannot give the name, were all killed.

In the second house, the first one was called Atieno--- I wrote the names somewhere. I do not know, sister, if you have them. There was Albert and Ouma.

The Commission Secretary (Ms. Nyaundi): Apart from the members of the family, you also lost some property?

Mr. Bernard Orinda Ndege: I lost a lot of property because I had stayed there for thirty years and I had never taken anything home. In fact, I was planning to go home after the elections. I had bought 60 iron sheets for the two houses. All my property got burnt. I did not come out with anything.

The Commission Secretary (Ms. Nyaundi): Later you must have buried the members of your family. Where were they buried?

Mr. Bernard Orinda Ndege: I took the bodies home and buried them there at my home.

The Commission Secretary (Ms. Nyaundi): Komenya Village?

Mr. Bernard Orinda Ndege: Yes.

The Commission Secretary (Ms. Nyaundi): Have you remarried?

Mr. Bernard Orinda Ndege: Yes, I have since remarried. I remarried in 2009. The elders felt that I could not stay alone with all the difficulties. They knew I could think about my family and I could even die because of the thinking. Because of that, I married a lady called Alice Akoth Orinda. She comes from Awasi here in Kano. We have two children with her. The first one is Mary Akinyi and the second one, a son, is called Silas Ochieng. I named him after my late first born. We are with them and they are alive. If the Commission had told me that it would be this way, I could have come with them so that the public could see them.

The Commission Secretary (Ms. Nyaundi): Attached to your statement, I see there is a document entitled “information on damages” plus a list of the members of your family and also the property that you lost. I also see there are five burial permits of members of your family namely Silas Omondi, Alex Ndege, Putt Orinda, Mary Orinda and Silas Ochieng. Would you accept for the Commission to admit these documents to be part of their records?

Mr. Bernard Orinda Ndege: I do accept. That is why I have volunteered and my fate lies in the hands of the Commission.

The Commission Secretary (Ms. Nyaundi): I pray that you admit those documents onto the records of the Commission.

The Presiding Chair (Commissioner Ojienda): It is so ordered.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Ndege. The Commissioners will now ask you questions.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Leader of Evidence. Let me start by thanking Mr. Ndege for that detailed and painful testimony that traces the events of 27th January, 2008. I want to assure you, Mr. Ndege, that as you understand, the role of this Commission is not just to record the accurate history of this country but also, it will in the end make certain recommendations in line with our mandate, and the reasons why some of these things occurred. The Commissioners will ask you a few questions so that you clarify some of the testimony that you offered this morning so that they go on record. I will start with Commissioner Farah.

Commissioner Farah: Mr. Ndege, I empathize with your situation and the tragedy that you went through. It is a moving story and it really disheartened us. I have no

questions really to ask you because the story was straightforward. Mine is just sympathy but rest assured that we will do our work. Thank you very much

Commissioner Chawatama: I do not have any questions. I am sorry that I came in late and I missed most of your testimony. But we have travelled in a number of places in this country and we have met men and women who have greatly suffered. We have celebrated their lives and the fact that somehow, they have found the strength to carry on. So I consider it an honour and privilege to be one of the Commissioners to serve and to meet a person such as yourself who has gone through such a tragedy. I am searching my mind to find if I would have the strength and the will to carry on if I were in your position, and it is hard. But it makes this work worthwhile, that I can leave my country to come to another African country and to do the work that we are doing. I thank you for taking time to share with us, to reopen the wounds. We would be failing in our duties if we did not complete this work that we have begun and if we did not come up with the report so that what happened to you does not happen again. I celebrate your life. I also celebrate the life of your new wife and your children. In a way, it is a new beginning for you. I thank you.

Commissioner Dinka: Mr. Ndege, I also take this opportunity to join my colleagues to thank you for your testimony and for coming to the Commission and sharing the pain and the tragedy that you have suffered with us. I fully empathize with you, your experience, the tragedies and the losses that you have suffered. We have seen part of it during our short recess and we can see also the mental suffering that you have undergone when you lost your family and you continue to experience even now. I honestly and sincerely salute your courage and thank you very much. I encourage you to continue living and while you may never forget what had happened, look into the future and possibly, we hope and pray that because of the suffering that people like yourself and others have undergone, there will be a future better Kenya. Thank you very much.

Commissioner Shava: Mr. Ndege, I think my fellow Commissioners have spoken for me. I was working in Nairobi which is why Commissioner Chawatama and myself, who were in Nairobi came in late and missed the beginning of your story. However, I had met you a few months ago and I am familiar with your story. But even being familiar with your story, it does not get better. Every time, I think about what you have lived through and how you have to continue living with those memories, the tragedy is fresh. I salute your courage in coming and actually managing to speak about what you have gone through because, really, it is to all intents and purposes, unspeakable. The kind of things that were deliberately done to you and your family are completely inhuman. It is important for Kenyans in other parts of the country who are not familiar with your story to be able to hear that story so that when they are faced with the situation where they think that they have differing views from their neighbours, they do not take the kind of actions that your misguided neighbours took. So, I just want to thank you for coming and assisting this Commission with its work by revealing what it is that happened to you. I also wish you a long and happy life with your new family. Thank you.

Commissioner Slye: Mr. Ndege, it is sobering and humbling to sit here and listen to your story and to see the violence that was committed against you and your family inscribed on your body. It is difficult for me to think of adequate words that I can say

to express my sorrow and my feelings for you and your loss. I wish that I had a magic wand and when I use it, it would bring you back to the morning of 27th January 2008 when you were at home with all your family and all your neighbours. If I had such a wand, I would use it for you.

Unfortunately, I do not have such a wand, and I feel very inadequate in what I can say to you about what I individually and we, as a Commission, can do. I can say that we have all now heard your story to the Commission and there are over 100 people in this hall. As you see in front of you, there are television cameras from the media that have also been recording your story. I cannot promise that the media will highlight your story to the rest of Kenya, but I hope that they do, because yours is a story that all people of Kenya should know. We have travelled through parts of this country and we have heard stories of injustices in different parts of this country. I think it would help those people, for example, in the northern regions of the country where we were most recently, if they can hear your story, maybe, it would make them feel a little less alone in the pain that they have suffered and they continue to suffer. I also can say to you that your story would form part of our records and, therefore, would become a part of the special history of Kenya, so that the lives and the struggles of Benard Ndege will permanently be part of the history of this country. I know that having suffered the amount of burns that you suffered on your body, it is incredible. I think so and the healing of those wounds is also incredibly being so. Those are wounds we can see. I think that God must have had a reason to spare your life that day so that you would be a witness to the horrible atrocities suffered by you and your family. It is because you survived that you are now sharing your story with us. I hope people listening to your story will take comfort in your struggle to survive and take caution and learn a lesson from the senseless violence that led to such a horrible tragedy. If you will indulge me, I would like to ask you just a few brief questions so that I and the Commission can better understand your story and so that we can make the most complete record of what happened as possible. As you know, I am relatively new to this country and so I am still learning about the people and organizations of Kenya, including those who were involved in the violence arising from the 2007 elections. I have heard and read about *Mungiki*, but I wonder if you could share with us and tell us who are *Mungiki*. Some of us do not know much about this country. Who are the *Mungiki*? How would you describe them?

Mr. Bernard Orinda Ndege: *Mungiki* were youth that were sent to Naivasha to unleash terror on us. This was a group of youth who caused a lot of harm to us. I want to tell the truth and only the truth about *Mungiki*. I would not like to give false evidence to anybody.

Mungiki were bought by the rich men of Naivasha to unleash terror on us. They were being paid Kshs7, 000 at 6.30 p.m. every day. They were not taking people's property. While the rogue *Mungiki* in Naivasha would take our property, the real *Mungiki* would turn against them and kill them. *Mungiki* were saying very clearly that they had been sent clearly to kill the men. They were young men brought from Kinangop, Nairobi, and many other parts of the country. Why have I known *Mungiki* this much? At the police station, where we were, they were coming to get people and kill them as the police were watching. The day I was taken to see my family, I was taken back to Naivasha prison. Even at the prison, they were coming there for people insisting that they want to kill them. It is *Mungiki* who were ruling Naivasha from the

day of the violence until the end of the violence. These were young men who had been bought to kill. They were not from Naivasha, but other towns in the country.

Commissioner Slye: Thank you, Mr. Ndege. That is very helpful to me and helps me to better understand the context in which the atrocities you have described to us occurred. I just have two more questions. What are your feelings about the upcoming 2012 elections?

Mr. Bernard Orinda Ndege: I declared this even to Mr. Ocampo, when we were with him in Nairobi. If the Government or Ocampo does not try very hard so that those who killed people are not punished, if no action is taken against them, then I can say clearly now that the war that would come in 2012 will be worse than what happened before. Why am I saying this before God? In Kenya, there is something that if I am stronger than you, I will take away everything from you. That is what will make ordinary citizens like me and you, to rebel. Therefore, I wish this Commission will help Kenyans to live harmoniously and have a peaceful election in 2012. Kenyans do not believe that a person can win election without stealing. This is a bad tradition.

Commissioner Slye: You mentioned your desire for the Government, or Ocampo, to prosecute and punish those who were responsible for the election related violence. That is an important process. Of course, that is separate from our process. We have here representatives from the National Cohesion and Integration Commission (NCIC) and the TJRC. I wonder if you have any recommendations either for us or for them about what either Commission could do between now or 2012 elections to make more likely that there would not be the sort of violence that we saw in 2007/2008?

Mr. Bernard Orinda Ndege: There is something I would wish to clarify first before I answer your question. I have said that if the Government does not take any action to help the people, this problem will recur again in 2012. Why have I said that these people must be punished? If I go back to the Bible, God punished Cain for killing his brother, Abel, without any reason. Therefore, anybody who kills another person without any good reason must be punished. Why should he be punished? If he is not punished, tomorrow and many other days to come, there will be more killings. So, I have said that those who did this to us should go to The Hague. They must be punished so that other people who intend to do similar things will learn a lesson. It would bring peace to Kenya. It will be a big lesson to Kenya for many years to come even after we have long died.

Coming back to what you asked me, even as I sit, as I have told you, I have a wife and two children. When I buried my family, we had a fundraising and raised a certain amount of money. My area MP, James Gordon Rege, presided over the fundraising and he told the local councillor, given that this old man does not have a house or anywhere to live, rain and cold would kill him. I request you to come tomorrow and build for him a house with the money we have collected here. That money was used to build for me a house, so that I had somewhere to hide. It is a mud walled and iron-sheet roofed house. Now I sleep like a small child. I cannot work given my condition now. I want to take care of my wife and children. How will they live? Will they ever go to school? Will they be like you, Commissioners, who are learned? Should they be

condemned to a life of begging until the end of the world? If the Commission agrees to help me in this respect, I will wait for your response.

I lost 11 members of my family plus my property. How will this Commission help me to live again in peace? How will I ever trust this Government? Should I just forget about members of my family and my property? How can I heal the wound which was inflicted in me? I cannot imagine this happened to me during the reign of Kibaki and Raila. Why have they abandoned me up to now? I have tried to get their attention, but all in vain. They have not replied. They do not know me and it looks like they do not even want to know me. That has taken me back to the popular Luo proverb that if a strong man breaks your mother's smoking pipe, there is nothing you can do. As I end, I request this Commission to assist me. I am with you until the end of the world. If I die tomorrow, I will die in your hands. I have not gone to school, so I do not have any way of following up my rights. There are many people who have also benefited from my plight in Kenya. They come and take photographs of me. They go away saying that they are coming to help me, but nothing comes. Please, do not abandon me. Go out and help me. Do not leave me to die like my children and family died. Please, help me. May God bless this Commission.

Commissioner Slye: We hear your plea. I wish we could provide you with immediate concrete assistance. The Government has not given us that power or resources. What the Government has given us is the power to make recommendations. Those recommendations will be, as a matter of law, obligatory. In other words, the Government and anyone else will be obligated to implement our recommendations. We will make recommendations for reparations. I can assure you that your case will be part of those recommendations. However, it may take some time before those recommendations are, in fact, implemented.

We have been able to establish relationships with a number of social service agencies who can help individuals like you who are in need of shelter, assistance, education for their children and medical assistance. We cannot tell you what they can do, but we know they will be able to assist. However, I promise that we will put you in touch with such organizations. We will do everything we can to help facilitate assistance to you.

The people in this hall are hearing your story, and I hope the members of the public who will be seeing this on television or hearing it on the radio, or reading it in the newspapers, will find it in their hearts to provide some assistance, however, small to you.

Lastly, if the individuals who did this to you stand before you now, is there anything you would like to say to them or ask them?

Mr. Bernard Orinda Ndege: If it was possible, I would like them to be taken to court. They can either be tried in The Hague or here in Kenya. I will be ready to ask them questions in Ocampo's court or a local court here in Kenya. I am ready to ask them questions if I can see them seated the way you are seated. I will be glad to do so.

Commissioner Slye: Would you like to share with us some of those questions you would ask them given a chance? Would you like also to share with us the statements you intend to make if you had that opportunity to speak to them?

Mr. Bernard Orinda Ndege: After seeing them and confirming that they are the ones who did this to me and my family, I will, first and foremost, ask them to identify me. Who am I? What did I do to deserve this kind of treatment? Why was my whole family burnt like charcoal? Why was I not taken to court and a legal process instituted and I be convicted? Why did you have to do this to me? Why have you done all this to me? So, between me and you, what is the next move? What are your views on this? What is the way forward for us all? So, therefore, I really feel I should go to court and face those people. If God grants me this opportunity, I feel I should not miss it. I want to face the people who did this to me and ask them a few questions. I would like us to meet face to face. Instead of them seeing me on television or listening to my voice over the radio, I would like to meet them. That is why I requested Ocampo, and I am also requesting this Commission now, to make sure that those who the Waki Commission listed as the culprits are taken to court. Let me be given chance to ask them a few questions. They are the only ones who can answer some of these questions. I look forward for the day I will ask them those questions.

Commissioner Slye: Thank you, Mr. Ndege. I hope that one day, you will be able to pose those questions to those individuals. It will either be before a court of law or another forum. I hope you will be accorded an opportunity to do so. I have no further questions. I want my fellow Commissioners to acknowledge all that you have gone through, all the pain you suffered; the pain inflicted on your body, soul and spirit. We can see how you are struggling to survive and heal. Your spirit and willingness to come here and tell us this very painful story is inspiration to me, and I am sure, to everybody listening to your story. So, thank you very much.

Mr. Bernard Orinda Ndege: I just want to add one thing before the Commissioners can ask me questions. I would not like my fellow citizens to undergo what I have gone through. Let no other Kenyan suffer the way I suffered. Let me be the last person to go through this very painful experience. Let others be free and free forever and ever. That is why I have volunteered to be a lesson to the whole world. Nobody in the whole world should ever suffer the way I have suffered because it is only God who can take away our life. Human beings are not allowed to kill their brothers. That is what I wanted to add. Let no ordinary human being suffer the way I suffered, not just in Kenya, but the whole world.

May God bless this Commission. I support you in your work. I pray God to give me long life so that I will see the conclusion of this process. I do not want to die before I see justice done to me and my family. God bless us all.

The Presiding Chair (Commissioner Ojienda): Thank you, Mr. Ndege, for your testimony. Once again, I want to join my fellow Commissioners in empathizing with your pain and situation. You have been to hell and back. In fact, to say that your life is a living hell is an understatement from the tales that you have told us. You are a brave man. You overcame the pain of the loss of 11 members of your family. You now have a young family. I think just as you have said, you require support to be able to move on. You have said that we are the anchor that you see. I hope and pray that we would

provide that beacon or ray of hope that you need at this point. I think now you need to speak it all and liberate your heart. I know you relieve the pain, so that you heal.

However, I want to ask you a few questions. I want to take your memory back to 27th January, 2008. When you break down, just know that it is human to do so. We all are human beings. In breaking down and in pain, we find healing. I want to find out from you whether you have been able to return to Kabati after burying your family.

Mr. Bernard Orinda Ndege: People from KTN came and took me back there. They wanted me to talk at the site, where I lost my family. I have gone back there.

The Presiding Chair (Commissioner Ojienda): Did that provide any form of relief that you went back to see where your family of 11 met this sad fate?

Mr. Bernard Orinda Ndege: When I entered my compound, I wailed, collapsed and lost consciousness. They carried me and returned me to the vehicle. They took me back to where I used to work on the shores of Lake Naivasha. This is where I used to fish. When I reached there and saw women who used to trade together with my wives, I broke down again. Even though they tried to comfort me, I could not be comforted. They took me away. Since then, I have not had peace. That is why you even saw me cry when I was being interrogated about my family because it is as if I was seeing them as they were. I could imagine how we used to live, how my children would come and meet me in the evening. Therefore, I cannot say that I am comfortable.

The Presiding Chair (Commissioner Ojienda): I can see the pain. Would you live in Naivasha again?

Mr. Bernard Orinda Ndege: Even if I were to go there now, I think I will die. I do not want to see Naivasha with my eyes. That is why I told KTN people that it was wrong for them to take me back there. The policemen who accompanied us also broke down. I asked them what the unborn child and the mother had done, so that they would burn like this. Therefore, I would like to tell this Commission not to take me to Naivasha. I do not want to go to Naivasha again. It is my prayer that my child should not work in Naivasha. He can work in America, or any other part of the world, but not in Naivasha, because of what I saw there.

The Presiding Chair (Commissioner Ojienda): Mr. Orinda, this incident occurred on 27th of January, and the elections were held on 29th December. It was almost a month. Were there any reasons, or was there any person who warned you that *Mungiki* would attack?

Mr. Bernard Orinda Ndege: When they announced in the evening at 6.00 p.m. that Kibaki had won the election, the Kikuyus started celebrating because their son had won. We went to the OCPD and the OCS and wrote our names and told them that we could be attacked any moment because we had heard that there was violence in other parts of the country. So, we could not take chances. The OCS gave me his mobile number and told me that from 6.00 in the evening, I should call him. The truth is that at 6.00 p.m., it is the OCS who called me. He asked me, "old man, how are you doing"? I told him that we were okay. At 6.30 p.m., the police had surrounded our compound. They told me that if there was anything I needed from the shops, I should

send my wife before it was late. We were very happy because we were assured that the Government was in charge of our security and our lives. We were very happy. The OCS told me that he was the one who was in charge of Nairobi and that the *Mungiki* sect could not do nothing in Naivasha and that he would defeat them. He said that there is nothing they could do. The Government tried so hard and picked those people and took them to a seminar in Nakuru.

I declare that I will clarify anything I say and even before God. After it was discovered that the OCS, OCPD and the Commander of Naivasha Prison had been taken to a seminar in Nakuru, that was the best opportunity to attack Naivasha. They went for the seminar on Saturday and Sunday. Even though I am ignorant about Government procedures, I think this should not have happened. That was the night that the Mungiki descended on Naivasha but they did not want us to know. Let us assume that I am telling a lie. Why could the police not save us and yet they are the ones who told us to go back to our houses? Why did they let out people be killed? Before this Commission, and that is why I want to go to court, I would like to ask the OCS on duty and the OCPD these questions so that they can answer me in court. All their reports were written in the occurrence book (OB). Even if the OCS and the OCPD are dead, the report should be there. That is why I would like to know why those officers told us to go home. Is it not because they wanted to give the *Mungiki* Sect time to kill people in Naivasha? That is why I would like to face these police officers and ask them those questions. If you have any other question, you could ask.

The Presiding Chair (Commissioner Ojienda): Mr. Ndege, it appears that both the OCPD and the OCS were known to you. Could you share with us their names?

Mr. Bernard Orinda Ndege: They did not give me their names. The OCS gave me his telephone number. What will help me when I face him is the fact that on the day of the violence, he was there. The court can easily know who the OCS in Naivasha was at that time and that is the OCS who can also tell us which officers were on duty on that day.

The Presiding Chair (Commissioner Ojienda): Mr. Ndege when the Mungiki came into your compound and you said there were many people, of course, you did not have time to count and know how many they were. Apart from the weapons and machetes, were they carrying anything else?

Mr. Bernard Orinda Ndege: What I know is that they were using machetes. They used them to cut people and anything that could kill people.

The Presiding Chair (Commissioner Ojienda): Why is it that it was in your house that eight people came in and took refuge? I am asking this because you were staying in an estate. Why did those people choose your house?

Mr. Bernard Orinda Ndege: Those are people we were staying within the same compound. My house was at a corner. The other woman's house was near the gate. We were living in one compound. They were working in the flower farms. They had gone to work very early on Sunday morning the way they were used to doing. I am the one who had requested to be left with their children. When violence broke out, I am the one they were depending on. They kept on screaming and telling me that I

should not let them be killed. They also told me to try and save everybody's life. We locked ourselves in the house.

The Presiding Chair (Commissioner Ojienda): Mr. Ndege, I also want to find out from you something. You said that you were supporting Mr. Ogendo in the campaigns and later shifted your support to the current MP, Naivasha. What kind of politics were in Naivasha at that time?

Mr. Bernard Orinda Ndege: The reality of politics at that time is that we wanted change in Kenya. Therefore, Mr. Ogendo was contesting on an ODM ticket and we were supporting Raila. We wanted to support Raila and vote for him. When Mr. Ogendo was defeated in the nominations, he called us together and told us that he had lost and he asked us to vote for Mr. Mututho. We then agreed with him. I was an agent of Mr. Ogendo and later on, I became an agent of Mr. Mututho. Mr. Mututho knows me. Later on, he told me to go to Naivasha. After voting was over and the election results were released and declared that Mr. Mututho had won, Mrs. Jane Kihara came to the gates of Naivasha District Hospital. Even if the Commission wants me to go and point at the spot where Mrs. Jane Kihara was standing, I am ready to go now. Mrs. Jane Kihara said that Luos had teamed up with Luhyas and other tribes and that had made Mr. Mututho to win and Luos would not live in Naivasha. So, our killing in Naivasha is attributed to Mrs. Jane Kihara because she was defeated by Mr. Mututho. Mr. Mututho knows about this thing very clearly. I am not afraid to say that the machetes that were bought in Naivasha--- I cannot remember the time and the date but when we came from Lake Naivasha on Saturday, we entered the supermarket and found the cashiers of the supermarket asking why people had bought many machetes. They were asking where the machetes were being taken. As we came from the lake, we were also asking the same questions. We wondered why the people at the supermarket were saying that all the machetes had been bought. Before God, I would like to say that those are the machetes that were used to kill our people. That is why I want to go to any court in this world, without any fear and say that Mrs. Jane Kihara is the one who cleared the whole of Naivasha.

The Presiding Chair (Commissioner Ojienda): Thank you, Mr. Ndege, for your testimony. I would like to ask you a question regarding your family. If you were to make a request today for the one thing that you would like to be done, to remember the 11 people plus eight, the 19 people who were burnt in your house in Naivasha and the ones you buried at home, what is the one thing that you would ask for remembrance that would live with you for the rest of your life?

Mr. Bernard Orinda Ndege: I would ask that the life and the lives of my present family members, for the period that God has allowed us to live in this world, we have a good life. My wish is that my child can go to school and eat. Everybody would like to be happy in this life until God takes his life. So, if I can get a peaceful life with happiness, I would not ask for anything else.

The Presiding Chair (Commissioner Ojienda): You have also referred to medical treatment and that you have not been treated. What type of treatment would you require? Before you answer, have you received any form of psychosocial support?

Mr. Bernard Orinda Ndege: Mr. Commissioner, even you cannot lie to these people regarding how you have lived your life and your family. When somebody is healthy, that is when he feels like a human being. So, if I can get treatment so that my body can be restored as it was, I would be grateful to them forever. I cannot dig nor do anything. If it were possible, I would like a doctor to tell me what is wrong with my body and treat me until I heal and go back to my normal life like everybody else. As I am now, I do not know the extent of my sickness. I do not know whether it has gone to my heart or anywhere else. Tomorrow, I may die and yet I am not aware. The doctor is the one who can give me information regarding my current situation and how I can heal depending on the extent of my illness.

The Presiding Chair (Commissioner Ojienda): Thank you, Mr. Ndege, for your in-depth testimony and response to the questions asked. At this point, I would like to ask the Leader of Evidence to step the witness down and call the next witness.

It is 1.00 p.m., and I am not sure that *Mama* Phoebe wants to start giving her testimony. I know that she has travelled from Kisumu and there are people in the crowd who belong to some faiths and would like to go for prayers.

The Commission Secretary (Ms. Nyaundi): Thank you, Presiding Chair. We are consulting with *Mama* Phoebe Muga Asiyo about that.

(Ms. Nyaundi consulted Ms. Asiyo)

Thank you, Chair. *Mama* Phoebe Muga Asiyo says that she will be guided by your convenience.

The Presiding Chair (Commissioner Ojienda): *Mama* Phoebe Muga Asiyo, I have seen you seated here since morning. I do not know if you mind coming back at 2.00 p.m. so that we first take a short break. We will resume at 2.00 p.m. I know you have a lot to tell us and I want to prepare myself for it.

[The Commission adjourned temporarily at 1.05 p.m.]

[The Commission resumed at 2.00 p.m.]

The Presiding Chair (Commissioner Ojienda): Welcome to the afternoon session. I want to start by apologizing for the slight delay. I believe we will be in time.

Ms. Emily Kimani: Thank you, Chair. Our first witness will be Serial No.1 as per the course list.

(Mrs. Phoebe Muga Asiyo took the oath)

Ms. Emily Kimani: How are you, mum, this afternoon?

Mrs. Phoebe Muga Asiyo: I am very well, thank you.

Ms. Emily Kimani: Could you, please, give us your full names for the record?

Mrs. Phoebe Muga Asiyo: My names are Phoebe Muga Asiyo.

Ms. Emily Kimani: You are before us today because you were to make a presentation regarding the historical and contextual issues affecting the Luo Community. Is that correct?

Mrs. Phoebe Muga Asiyo: Yes, that is correct.

Ms. Emily Kimani: Maybe, before I invite you to speak, I can see that you are accompanied by a gentleman. Could you, kindly, introduce him to us?

Mrs. Phoebe Muga Asiyo: This is Charles Omondi Oyaya who is a colleague and also a consultant. He will be giving further details of what I will talk about.

Ms. Emily Kimani: You can proceed and give your presentation.

Mrs. Phoebe Muga Asiyo: Thank you, Presiding Chair, for giving me this opportunity to say a few words about historical injustices against the Luo people in this province. The role of the Luo Community in the struggle for Independence of Kenya cannot be overemphasized. At Independence, the whole of Kenya saw the Luo as the most educated community with probably the highest number of university graduates, faculty heads and professionals in almost every other field. The Luo Community produced who was who in all sectors of the economy, political, economic and intellectual fabric in the Kenyan society. Fifty years down the road, the Luo Community is bedeviled with every other conceivable societal ill languishing at the bottom of the ladder of progress. Luo Nyanza, as Joseph Kaguthi, former Provincial Commissioner called it, is today one of Kenya's most undeveloped with all the development indicators grim. Poverty is rife in Luoland. The disease burden is very high; mortality rate is higher than it is in most provinces and life expectancy is low. All health indicators are at their worst compared to the national indicators. The question that has repeatedly been asked is: Who is responsible for the sorry state of the Luo people in Kenya? The answer to this question reveal a litany of systematic official policy to oppress, subjugate and dehumanize the Luo people which would have largely been profiled as follows: economic emasculation, mental and psychological warfare, utilization and murder of Luo leaders and political marginalization. Going back to the murder of the Luo leaders, I would like to say that the assassination of Tom Mboya, who was the first Minister for Economic Planning and Development, was the biggest blow to this community followed by the assassination of the Foreign Affairs Minister, Dr. Robert Ouko. But even then, during the discussions of the Constitution at the Bomas of Kenya, the then Chair of the Devolution Committee, Prof. Odhiambo Mbai, was shot dead. These are some of the issues that have caused us a lot of concern.

There was the massacre of the people of Kisumu in 1969 which very little has been said about. In the early 1970s, there was the massacre of Uyoma people, the most brutal where so many women were raped and children born called *johnnies* because they were born out of such rapes. I would not like to go further and would like to call Mr. Charles Omondi Oyaya to give the details. However, I would like to say at this stage that we are in the process of preparing a very detailed memorandum that we will hand over to this Commission before the end of your sittings this week.

(Mr. Charles Omondi Oyaya took the oath)

Ms. Emily Kimani: How are you this afternoon?

Mr. Charles Omondi Oyaya: I am fine, thank you.

Ms. Emily Kimani: Could you tell us your names again for the purpose of record and a bit about yourself?

Mr. Charles Omondi Oyaya: My name is Charles Omondi Oyaya. I work for the International Institute of Development in Africa. I am here as part of *Mama's* team. So, whatever I will say is adding on to what she has said.

Ms. Emily Kimani: Thank you for that. You may now proceed.

Mr. Charles Omondi Oyaya: Thank you, Commissioners. I will proceed from where *Mama*, as we call her, has left. We thought that it is important to give what we call perspective testimony.

As it has been said, the people we are referring to, the Luo people, have been known for certain virtues which I will not hesitate to say, have been on attack for the last 50 years. The Luo people in Kenya were known to be hard working and honest people. They are known to be open minded. They are also known for their generosity. They are known for fairness and truth and for their social support systems. That has been summarized in a few words, that they are proud people. However, the people we are referring to today are hurting because of the many things that *Mama* has already referred to.

As they say in their local language, “a dog that has eaten properly does not bark”. During the sitting of this Commission here, perhaps you may not get as many people coming to testify because they are used to their hurting and they do not see any reason to come. They have also developed survival strategies and this is captured in three sayings. One, “*adak kata ionge*. Whether you support me or not, I will live on”. Number two, and number three, “*Achandora to ang'iyogo, od wadu*”. Those are the three survival tools.

Commissioner Chawatama: Leader of Evidence, you may want to take into consideration that there are some international guests. We are not capturing the translations.

Mr. Charles Omondi Oyaya: Thank you. I was assuming that it was translated. Just to get back, the first point that I said was that as part of survival strategy of the Luo people in a very difficult environment is demonstrated in two ways. One is that they are hurting to an extent that they do not bother to say that they are hurting. Two, they have developed a strategy that says “I will live on with or without you”. Related to that, “I may be suffering but I am used to suffering”.

Lastly, “you mind about your brother’s house”. I am saying this because the strategy that has been developed and clinically executed over the years is sixfold. *Mama* has

already referred to them. I want to pick each one of them and demonstrate how this has been executed. If I start with the mental and psychological warfare which is linked to two other strategies, namely, education policy, media propaganda and misinformation and which is closely related to rewriting the history of this country, our people, because of persistent and consistent exposure to negativity, have come out to be stigmatized, isolated, uprooted and made hopeless. As a result of this, all the negative adjectives have been used to describe them, and which unfortunately they have come to believe and even talk about. Among them is that they are lazy. This is diametrically opposed to their virtue of hard work. Two, they are lovers of good life and thirdly, they are unenterprising. Fourthly, they are too cultural or too traditional. Fifth, they are immoral, proud, antagonistic, empty hero worshippers, backwards and wallowers in political adversity. They are too communal. All these have been summarized that a Luo should not even have a place in this society. They cannot even occupy leadership positions. Psychologically, this is what the people have believed and they live with it.

Commissioners, this is closely related to the question of economic emasculation. If you have taken the mind and soul of a person, what remains is a hopeless shell. This region is known for a lot of potential. It has some of the best natural resources one would need in any given country. We are just sitting at the gulf of Lake Victoria which is rich in fisheries resources. You might want to know that unlike all other resources that we have that are productive, until only five years ago, we did not have a fisheries policy. We did not have a marketing instrument or structure. The whole of the Lake Victoria circuit had no *motorable* road, no electricity. So, it means that their resource could not be used. This region was known for producing the best quality of cotton. I say this with confidence because I was involved in this sector. I was shocked at the quality of the produce of cotton in this region. We know that the cotton sector died through systematic policy inaction and lack of State support.

We know that this is the area that produces sugar cane. All the factories are on their knees through receivership. On the contrary, the region has been presented to be unproductive, full of lazy people who cannot produce anything. The Kenya Revenue Authority records show that actually, Nyanza is No.3 in revenue generation after Nairobi, Coast and then you go to Western. In our minds, these are the poorest areas, but it does show that they produce but nothing comes back.

On the question of brutalization and the killing of our leaders, *Mama* has spoken about this. The only thing that I would add is the fact that these are vaguely recorded massacres and brutality. If you *google*, you will find that they are not listed among the massacres that have taken place in this country. It is not a secret that from Independence, there is no change process that has not been oiled by the blood, mind and soul of the Luo people. It is like the fertilizer and it makes us happy that we are here today because of that struggle. It is important that probably as part of documentation of the history that things are put the way they are. On the contrary, in every stage, anchored on the open-mindedness of the Luo people, they have paid very dearly because of this. Again, this brings us to the question of political marginalization. There is a mindset that these are very bad people who should not be seen anywhere in the corridors of political dispensations. It is not, therefore, surprising that almost for five decades after Independence, these people have been in the periphery of our politics. Those who have been used to perpetrate this from within

us say that we are hostage to self-defeating ideology based on just a few leaders that we know. Again, we have paid very dearly for this.

In public administration, if the last audit of the Public Service is anything to demonstrate the reality of the problem, on one hand, they are very educated and on the other hand, they cannot be employed within the Public Service. Again, some of us are probably a testimony to this. You have the skills, the qualifications, but because of what I call being “L-Positive”, meaning “Luo-Positive”, you become unemployable, which has also given us a good opportunity to think beyond employment. I would want to conclude that this is the time to come to justice. I believe this Commission is going to deliver on that without fear or favour and to ask justice without repentance may not be justice enough. Somebody must be able to repent for having perpetrated injustice on our people. I do not know how it would happen but even the testimony that we have this morning was very clear that there is a person called the State that must come out clear to repent and apologize so that reconciliation can take place.

We would want to propose that as far as addressing the historical injustices at the very personal level, we must come up with a framework and an instrument for compensation and reparation. It cannot just happen in a vacuum. If the testimony we heard this morning is anything to go by, we are operating in a very difficult environment, but our people who have been brutalized, maimed, killed and dislocated from their points of economic survival at a very personal level in relation to their families, whether they are alive or dead, there must be a deliberate policy for compensation and reparation. That was the cry from this morning’s testimony and many others that are yet to come.

As far as the communal economic injustice is concerned, we are aware that it may be difficult to say that this is how we are going to compensate and redress some of those injustices, but the new Constitution has clearly defined a framework for equalization of opportunities and affirmative action. This must be clear and deliberate. We know the parameters or criteria might change. If I may just give an example, when the CDF came and there was an instrument to give resources to areas that have been marginalized, the poverty in Nyanza in one year dropped from 72 per cent to 42 per cent. If for nothing else but now, why do we want to affirm the marginalization? We think the equalization instrument and affirmative action may provide a framework for this.

As far as the psychological aspect is concerned, I do not know what would happen in this aspect, but I think there should be a clear strategy for confidence building that would instill a sense of self worth and enable psychological reconstruction. The other one is a very difficult one, but I think it is possible. So, in all, people may be well dressed as you see them here, but they say that the clothes hide a lot. This Commission should be assured that the people here are hurting and it can no longer be taken for granted.

We want to thank you that even this opportunity has come to pass, and that we can listen to ourselves and say, “as a people, our destiny is in our hands. If we write justice in it, we will harvest justice”.

Thank you very much.

Ms. Emily Kimani: Thank you very much for that enlightening presentation about some of the injustices facing the Luo Community. I now wish to ask you a few questions so that we may be able to understand some of the issues that you have presented before us today. My question is directed to *Mama* Phoebe Asiyo. With your rich background in leadership, maybe you could tell us some of the issues that face the Luo women.

Mrs. Phoebe Muga Asiyo: The Luo women are faced with all those societal ills that face other Kenyan women, but they are mostly faced with poverty, lack of clean water, ill health and lack of communication infrastructure.

Ms. Emily Kimani: In light of that answer, what do you think the Government should do to foster the rights, not only of the Luo women, but also the women in Kenya as a whole?

Mrs. Phoebe Muga Asiyo: The Government needs to do more, especially in the implementation of the new constitutional dispensation which has given a great deal to the women of Kenya. My only fear is that the next five years will be lost years for the women of Kenya, not only the women in this province, if no real massive civic education about the new Constitution is carried out before the next general election. We could even end up not having that one-third representation that has been given to the women. I can see some excuses being made that the women were not there and, therefore, we can wait for the next ten years and then they will come round. I am very worried about this fact.

Ms. Emily Kimani: I once again want to thank the two of you for the very articulate presentation. I have no further questions for you. I now wish to hand you over to the Commissioners who may ask you some questions for clarification. Thank you.

The Presiding Chair (Commissioner Ojienda): Thank you, Leader of Evidence. Let me start by thanking Hon. Asiyo for her testimony and Mr. Charles Omondi Oyaya, the consultant. I was just looking at the Act and before I ask my colleagues to seek any clarifications, as you all know, the TJRC was created at the background of the events of December, 2007 and January, 2008, but we are looking at issues that stretch back to 12th December, 1963. It is the first time, indeed, that we are engaging the people of Kenya in writing the history of this country in the context that emerges from the people, so that, Charles, for the first time, you can give us the proper perspective that you want to be written about the history of this region.

Specifically, if you look at Section 6(j) of the Act, it says that we are mandated to investigate any matter that we consider relevant for the promotion and achievement of national reconciliation. Under Section 6(p), we are mandated to inquire into and establish the reality or otherwise, of perceived economic marginalization of communities and to suggest ways of redressing those incidences of marginalization. Of course, this is besides the other functions of looking at gross human rights violation and other economic crimes.

I will be asking questions later, but at this point, I want to recognize three people who are sitting here, namely, Aora Tukungo Igwe from the Office of the High

Commissioner for Human Rights and Clarice Oganga from FIDA and UNDP and of course, Betty Okello from the CSO Network. These proceedings are the first in this City and we welcome you accordingly. Before I ask my colleagues to ask questions, I just want to ask Charles Oyaya to share with us a comprehensive memorandum in the end. You could give us the statistics for the years in question and then all that you have said will be in context and would help us much more. I now give Commissioner Farah the opportunity to ask a question or clarification.

Commissioner Farah: Thank you, Hon. Phoebe Asiyo and Charles Oyaya for your eloquent presentations. I was following the beautiful presentation. You have mentioned the ills that have bedeviled the Luo Nyanza. If we concentrate on Luo Nyanza, we have noted the systematic political marginalization to ensure that no Luo rises to the highest office of the land. We have noted with sadness the deliberate killings of heavy-weight political leaders of Nyanza. We know very well that Argwings Kodhek is one of the leaders who are always forgotten but who was eliminated earlier during Independence. We have also noted the economic marginalization that you have mentioned which has resulted in retrogression of development; even the high education that you started off with at Independence.

What has worried me is that with the heavy number of Luos who are highly educated, why is it that when you *google* today as you said, you do not find any massacre that has happened in Luo Nyanza, yet the Wagalla Massacre is highly publicized? Was it a deliberate effort even after multiparty came into existence or was it negligence by the locals themselves?

Mr. Charles Omondi Oyaya: Thank you. I will just attempt and *Mama* will also put in her contribution. First, what came from Commissioner Tom is that we are going to present, as *Mama* had said, a comprehensive memorandum with all the facts and figures. So, be assured of that. I spoke about the spirit of uprootedness and which is located on the mental and the psychological warfare that in many ways has led to one thing; self denial. Many of those very educated people, because everything else was bad, went into a mode of denying that they are part of that bad life. So, we have the reality of uprootedness and some people have even said that even the post-election violence has contributed positively by bringing back all these people who had nothing to do with their roots. I will attest to you that many of us who are very well educated look at our origins or villages as centres of problems and those who have remained there are those who had nowhere else to go. So, my middle name is Omondi and they have been called Omondi because they wake up early in the morning and go nowhere, because they have no education. That is one aspect of it.

The second part is that so many people have tried and I said I am one of them. You try as a person and you find the environment just drives you out of any engagement. Even in this audience today, we have somebody who was a leading contractor. He was very successful, but as he was becoming more successful, everything was engaged to run him out of business. He had to run into exile. That is no other than a person called Benjamin Okang' Tolo. If you go back to your public records, you will find that BOT Construction Company was one of the leading local contracting companies around. We cannot forget even such institutions such as Thabiti Finance. In the latter years during the Moi regime, if you were very successful and you benefited from Government contracts, you were told you had achieved and had arrived and you could

not go any further and your next point of self actualization is to go into politics. So, all these politicians were pushed to go into politics. You find the powers that be, in your own campaign without any hope of winning and at the end of the day, you are broke and a vegetable. So, there were many strategies employed.

I will give the last example which has been used politically and that is the molasses plant. Spectre International bids like any other company, wins the tender and they tell you that you have won the tender but you have the factory without the land. So, there are so many things that I can talk about. An ordinary onlooker will come back and say: "These people never work. They are not enterprising and they cannot do business". Last but not least, there is what I call intellectual enterprise. That is the field that I am involved in. We have doctors and they open clinics, but they are told that that is not business. We have lawyers who have law firms, but they are told that that is not business. You cannot even qualify for finance. You have no control of financial instruments and when you apply for it, the general attitude is that you are a high risk customer. If Charles Oyaya is given a loan today under the banner of enjoying good life, I will be marrying a second wife. It is only those who are not faint hearted that are doing something without giving up.

I would say that there are a lot of things. Some can be said but some can only be felt. On the question of historical issues, it is no secret that our eminent historians in Kenya come from this region, but for some strange reasons, which mostly were beyond them, they decided to write the correct history and those of us who can read tried to justify even what was going on. So, as a researcher, I am not surprised that a lot of things are not documented. I would not want to mention names, but we know some of the eminent historians that we have. So I just rest it there. Thank you.

Mrs. Phoebe Muga Asiyo: Thank you, Commissioners. You mentioned about the massacres and I want to take you to the *Daily Nation* newspaper of Monday, October, 27th. 1969, two days after the massacre in Kisumu. Like Charles was saying, the headline was: "All quiet in Kisumu, but 12 hour curfew stays on". That was the headline. Then the Provincial Commissioner says that "the official figure was 44 injured but hospital staff said last night that the figure exceeded 60, many of them children. Although the results of the postmortem on the victims were not released, at least one person died after being trampled on by the stampeding crowd". In this paper, nobody is mentioned; the number of Kisumu people including children who were shot by the so called stray bullets.

Although the results of postmortem on the victims were not released, at least one person died after being trampled on by the stampeding crowd. In this paper, nobody is mentioning the number of Kisumu residents, including children, who were shot by the so called stray bullets. There was a very dignified Asian businessman in Kisumu; Mr. Abduldare. His young boy was standing on the window of their home about 150 yards away from the hospital. The boy was shot dead. The shooting continued all the way from Kisumu Town to Ahero and nobody knows up till today how many people were shot by the police on that day. This is all that the *Daily Nation* newspaper told us and I would like to pass this to you when bringing you the detailed memorandum that we have prepared. If the media did not capture the number of those shot, where else would you get the information?

Commissioner Farah: Thank you very much. My last question can be answered by anyone of you; it is a bit hypothetical but it is part of our mandate. In the North Eastern Province we discovered that their biggest problem has been banditry and illegal arms. However, after NARC came to power, a PC was sent there. He was born there and, therefore, a local; he disarmed everybody without having to fire one bullet unlike what used to be done previously. How did you rate the appointment of Mr. Raburu who hails from Nyanza and is one of your sons as the PC of this place? Did he make a difference in development or in marginalization? If so, then we are looking into the future when the counties come. Will that be the day for the people of this province?

Mr. Charles Omondi Oyaya: Sometimes they say that you send the known to camouflage the unknown. I am saying this because it is not a secret but we also know that a number of high ranking people who were appointed not so long ago were appointed on the basis of one thing; that they will be able to facilitate State policy. I believe that the PC who was sent to the North Eastern Province was probably sent under circumstances that there was genuine policy need to do exactly what you have said. We know in this context, whoever was appointed a Minister, a PC, a DC or any other position was somebody vetted and known who would actually take forward the State policy. So people may probably say there was no fundamental difference between PC Kaguthi and PC Raburu. They worked on Government directives and would respond to the hot line.

Commissioner Farah: *Mama*, do you have anything to add?

Mrs. Phoebe Muga Asiyo: I think Charles has said it. I wanted to move to the issue of *Mwakenya*. You know, *Mwakenya* was not known in this province. It was not a Luo movement. Nobody in Luoland knew about *Mwakenya*. I happened to be a Member of Parliament for Karachuonyo Constituency where Mr. Orinda Ndege comes from and some very prominent people from Karachuonyo were arrested for being members of *Mwakenya*. These people were taken around all over this country. Eventually, they came back home. Most of them are dead today. We do not know what the cause of death was. The only one who is still living, and I hope he can come and give evidence, is Councillor Joash Ogweni. He is now about 90 years old. *Mwalimu* Charles Adongo died. Opiyo Anyange died, Herbert Kwanya died, *Mzee* Joash K'Oyoo died and a few others. Up till today, we do not know what the causes of deaths were. However, it was after they had been taken in for being members of *Mwakenya*, which I knew personally was not true.

One day at 3.00 a.m. in the morning in my house, the police came to my home. I was the Member of Parliament for Karachuonyo. They told me to get out. They were brought to Kisumu. I was in my pajamas and house coat. They said: "Come to the sitting room, we want to talk." They chose a day when my husband was not home. I was taken to the PC's office. The PC was drunk even at that time of the night. He could hardly raise his head but when he did he asked me: "Are you the woman who wants to get rid of the Government of Kenya?" I did not respond because I was not a *Mwakenya*. I did not know about the activities of *Mwakenya* and God knows this is the truth. I had a very hard time---

(Hon. Phoebe Asiyo broke down in tears)

I could not come out of the PC's office because I was naked; I did not have clothes. There were mobile phones those days. I did not have my car and my driver was not there. So I was forced to walk on my slippers to Jubilee Market. The humiliation and indignation was too much. I know that whatever these people who have died went through must have been terrible. I was only there for one night and it was bad. I was so dehumanized and did not even want to look up to my people as their Member of Parliament.

I am really hoping that all these issues will be looked into by this Commission. Thank you.

Commissioner Farah: I have no further questions. I empathize with you and thank you very much for the eloquent presentation.

Commissioner Chawatama: Thank you very much for your testimony. I see your pain and it's pain that you have carried for so long. My prayer is that this Commission has given you a platform to talk about your experiences personally and even as a people. My prayer is that something will come out of this process that will bring some healing to you personally, and to your people. The testimony that we have heard from both of you, for me, will give me an understanding of all the witnesses who will appear before us for these three or four days. You have laid a good foundation and when they speak, I will understand where they are coming from.

You spoke of the role of the Luo people in the struggle for the independence of this nation. One thing I would like to know is how soon after independence it became apparent that the Luo people were marginalized and that there was a lot of discrimination and injustice. Thinking back, can you pinpoint the period or an event that took place that brought the Luo to this place?

Mrs. Phoebe Muga Asiyu: It was soon after the assassination of Tom Mboya and the detention of Oginga Odinga that the real marginalization of the Luo started.

Commissioner Chawatama: What triggered the massacre of the 1970s? Is this the same massacre you referred to of 20th October, 1969?

Mrs. Phoebe Muga Asiyu: It is the same. On the Uyoma Massacre, I would really hope that this Commission can get somebody from Uyoma to discuss in detail the brutal massacre in Uyoma in the early 1970s. The 1969 massacre happened when the then President of this nation came to officially open the Russia Hospital in Kisumu. This hospital was built with the help of the Russian Government and people.

Commissioner Chawatama: Who was the President then?

Mrs. Phoebe Muga Asiyu: President Jomo Kenyatta.

Commissioner Chawatama: What was it about his visit that triggered this massacre?

Mrs. Phoebe Muga Asiyu: As I have said, I have the newspapers here and would like to pass them on to the Commission. *Mzee* Odinga was at the hospital because he had initiated the funding of the hospital by the Russian Government. There was some

disagreement between him and Kenyatta. Therefore, hell broke loose. The very innocent, especially school children, were the most hurt. The shooting went on from Kisumu all the way to Ahero.

Commissioner Chawatama: One of the survival strategies which was mentioned as number four by Charles is that you mind about your brother's house. In the understanding of the Luo people, who is your brother?

Mr. Charles Omondi Oyaya: Before I respond to the last question, I just want to mention that – and I say this because as we are speaking, I am just finalizing a study on constitutional development in Kenya from the colonial times to date – through that I have had the benefit of capturing the history of our constitutionality and nationhood. Some of the things that we saw in the after-independence period are actually traced back to the Lancaster House constitutional negotiations. If you go back to the records you will find that the last two negotiations in Lancaster House, the Kenyan delegation went as a divided house based on ethnicity and driven largely by the anticipated windfall that would come with independence. So they agreed to get independence and then sort out everything else that they disagreed about.

There were two kinds of people: the side that believed genuinely that independence meant the liberation of our people from three enemies thus; disease, poverty and ignorance. This was the real true liberation. There was the other group that believed that independence meant that you just replace but everything else becomes the same. That is the principle of just taking everything to yourself and forgetting about the people.

So with independence we had these two sides. Unfortunately for us, one side was led by Jaramogi Oginga Odinga; the other side was lead by President Jomo Kenyatta. Therefore, from the very beginning that is where the problem began. The Late Jaramogi even went ahead to write a book, “Not Yet Uhuru”. If we have time we can read through that so that you can see where the problem began.

What I would want to say in short is that the period between 1964 and 1969 you find the parameters that we are talking about today. Again, these are documented. So from 1966 the Luo became victims of wanting multi-party democracy in this country because they supported the Kenya People's Union (KPU). All these things are found within that. It may not be lost that Tom Mboya was actually the champion of seeing that the country was transformed. He was on Kenyatta's side but it became very evident that he also had ambitions of his own. So he had to clear way and so he did.

The 1969 massacre that we are talking about was like provocation. The President came to Kisumu soon after killing Mboya. Again, the inquest and everything to date have never been concluded and nobody knows. We can only speculate. I think it is important to understand that. So for the Luo, the difference is the same. It is a lose situation. Whether you are supporting the establishment you are only good to the extent that you do not show you can also make a step of your own, when on the other side, the same applies. Even the murders that Mrs. Asiyo referred to, all of them are people on either side. That is something that I just wanted to highlight.

On the survival strategy, I would request you to repeat the question again.

Commissioner Chawatama: You had mentioned that one of the survival strategies of the Luo people is to mind about your brother's house. I am sure that apart from the Luo there are other tribes that live here. I just wanted to understand, who is your brother? When you say that, what do people understand?

Mr. Charles Omondi Oyaya: I would want to respond to that in two ways. When you are under extreme threat what provides solace are those who are around you. It is like a chicken that is threatened and all go under the wings of the mother hen. That is one level. However, at that level, because of some of the virtues that I talked about, in the public domain the Luo believed that whoever you give work is somebody who actually deserves to do that work. So I will not tell the son of my sister that come in and be this which I know he is not. Some of the other people did not have problems with that so at that level one of the virtues that Luos lacked in the public service and they were blamed for it, and yet it is one of the virtues of public service, was that a Luo will not help you if he occupies an office and he thinks you do not have the qualifications.

At that level it is said *Jaluo* does not like his brother or sister yet it is one of the virtues of public service. At the very local level, the reason probably we have survived is that if you are to take a roll call on each and every person who is seated here, you will find that they are wherever they are because somebody else who is not their father or mother, who may be an uncle or an aunt, distant or close, took their hands, took them to school and sacrificed everything. That is to me one of the secrets of their survival. They have invested in education. So, each of these people here will give you their testimonies; they sacrificed everything they had for others. If that was not the case, I would be imagining where the place would be.

That is what I want to respond to in relation to that.

Commissioner Chawatama: Maybe looking at the other side of the coin, you do not think that maybe this could have contributed to being misunderstood? There are quite a number of words that you used that are used to describe the Luos. I get a sense of isolation because of where you are coming from. Would you say that this may have contributed in some way to being misunderstood as a people?

Mr. Charles Omondi Oyaya: You are right. Isolation was one of those strategies and they say "give a dog a bad name and then hang it".

Commissioner Chawatama: You also talked about reconciliation, repentance and apology. You looked at it as a way forward. Maybe it will come in this order; repentance, apology and reconciliation. Now in the state that the Luo people are in, we have used the word "isolation". How will you come to that place where reconciliation can become meaningful? Who would you want to repent and apologize?

Mr. Charles Omondi Oyaya: As had been mentioned, this process in its own is like a dream to many. If you saw *Mama*, you would not know she went through what she went through. You would see just this very focused woman leader, very humble and very sober in her approach. But if we did not have this opportunity, nobody would

know the humiliation she went through. It does not matter how long. We know as it is now, it will be very difficult to expect the Government of Mwai Kibaki to come up and apologize to Mr. Ndege that “we are sorry we did this to you”. They may be in a state of denial. They may be in a state of self preservation. But as long as they are recorded, a leader will come 100 years from now who will tell the people at that time: “We are sorry for the things we did.” That has recently happened in Australia. It has happened in the USA. It has happened in Canada and many places. Leaders came centuries later to repent and apologize. So we see this as a long term thing. As long as they are recorded, our children’s children will come to know about them. That is what I would say.

Thank you.

Commissioner Chawatama: My final question is to *Mama*. There always comes a time and one hopes in one’s life that a time for closure will come on a personal level. What will it take to bring healing and closure to what happened to you and what has been happening to women in general?

Mrs. Phoebe Muga Asiyo: I have a strong feeling that the healing will come only after all these things are put in place and women given their due place and opportunity in the society. I also would like to feel that before I die, I would like to see my children being accommodated in Government like all other children without any stigma whatsoever. I want to feel that a time will come when Kenya will no longer be tribal-based but one nation. That is my prayer and wish.

Commissioner Chawatama: Thank you very much, mom; what you have said is what I or the Commission heard in North Eastern and for me it shocked me that there could be citizens in Kenya who do not feel Kenyan. It shocks me further that I am so many miles away from North Eastern and I am still hearing this.

I thank you very much for making time to come and give us your experiences and your testimony. It is my prayer that this process makes a difference to your people.

Commissioner Dinka: Hon. Phoebe Asiyo and Charles, thank you very much for your testimony. We heard very few presentations like this which usually come at the beginning of our sessions and give us a general framework of what we are going to look into in the next few days. You have set the stage for us. You have made it very clear as to what details we are going to hear from different people.

I only have one question: I think it comes from myself as a person. I am always very optimistic. So I can understand very well your description of what had happened frankly. I have served in several African countries both for my country and on behalf of international organizations like the United Nations (UN), the AU and so on. I have seen a number of countries in Africa have had exactly similar problems. These problems, I think, originate a few years after independence where leaders struggle in unison for independence and then embark upon very serious nation building efforts. Unfortunately in Africa, what we have seen throughout is that a few years after independence things begin to change. Those in power want total monopoly and want to establish some kind of system where they can pass it on to their children or

somebody from their community continuously for ever. That has created a lot of problems in Africa; civil wars.

Just to mention a few, including my own country Ethiopia, Nigeria, Sudan, and Uganda they have gone through wars because of these kinds of things. After suffering unnecessarily for a long time, they came to their senses and started rebuilding their nations in a more equitable and fair basis. In Kenya, the new situation has arisen recently with the new Constitution; reform of Civil Service which is beginning to take place, reform of the Judiciary and security services. More importantly, there is the devolution of power to counties. Do you see in your own community in Luo Nyanza people are more optimistic because of the future? This is extremely important. So far they have created their own coping mechanisms and survival strategies but that is a zone of no development. If they are optimistic for the future, I think we are on the right track. If that is not the case, then leaders like yourselves should become like communicators to both sides in Nairobi as well as your own people about what to do and what to correct. To the people, you should tell them how to make their expectations realistic.

Right now when you look at Nyanza and their people, are they hopeful of the future of their children or do they think nothing will change? That is important for this Commission because if people are not optimistic, you can share with us your views on what we should recommend to the Government in order to make people more optimistic and more hopeful and therefore, more peaceful.

Mrs. Phoebe Muga Asiyo: I see a lot of hope in Nyanza, especially Luo Nyanza, amongst our people. This is especially because of devolution of powers and resources. Maybe this is what should have happened when we got our independence. We were fools to accept that we were one nation. There was a group at the time of independence who knew very well it was not going to work; I was not one of them. I opted for central system of governance and I am very disappointed now and I regret that I did. However, we have an opportunity for the younger people to embrace the new dispensation and especially the clause that deals with devolution of power as well as resources.

I only hope that resources given to the regions will be a lot more than what has been stipulated in the new Constitution because, truly, this is where the success of Kenya will lie. Like you have rightly said, we have seen not only this country, but many countries even in West Africa, which have lost many generations of wonderful people who would have built those countries because of what our leaders have done to Africa; plundering our resources and encouraging only their relatives to occupy positions of power and leadership even where they have no idea of leading those positions. I really hope and pray that this new dispensation will come to pass and I know that the Luo Nyanza people are waiting for the devolution of powers and resources so that we can harness and also safeguard our people's health and welfare under the new dispensation.

Commissioner Dinka: Does Mr. Charles have anything to add?

Mr. Charles Omondi Oyaya: Just a little and, probably, *Mama* did not say, but she was a Commissioner with the Constitution of Kenya Review Commission (CKRC)

that actually crafted the basis upon which the current Constitution is built. I also worked with it and I was in charge of research and, therefore, what the people said was clearly documented. It was clearly drafted into the Constitution in its architecture and everything else. Our people are hopeful but they are also very cynical because they have been cheated very many times. There is a lot of doubt on whether this is going to be. This may have nothing to do with the Constitution, but it has got to do with the kind of leadership that we have had. I would say that, in its design and its architecture, the Constitution effectively takes care of some of those fears. So, it is like a sieve; some will go through but there will be another sieve to sieve it, and so on and so forth. But I think this is something that *Mama* had mentioned before; that the difference will lie on how best and how prepared we are to provide civic education to our people so that they do not make their decisions in terms of leadership, in terms of just looking at the governance from a point of ignorance, but from a point of civic awareness and knowledge, so that they engage meaningfully.

One fundamental thing that I think is very key that we should take into account is how the paradigm has changed. In 1972, we had the Ndegwa Commission. That Commission made one fundamental decision that has made us be the way we are; that decision brought the economy, politics and public administration together. So, you are a public administrator, you are a politician and a businessman. Later on, our former President, Moi, told us “*Siasa mbaya maisha mbaya*” meaning bad politics results to a bad life because if you are in bad politics, which we were “known for”, your economy is affected and you cannot be in public administration. The Constitution has been designed in a way that separates economy, politics and public administration. If this works and the leadership is held accountable, then the first five years is foundation, the next five years and so on, and so forth, people will start seeing why they have struggled for very long. This was the basic reason why for over 40 years, we have been struggling for it. Even after the passing of it, we are all aware that there is still that struggle. Your own Commission has gone through it, so we cannot even belabour that. So, that is the scenario, but the good thing is that we have structures and instruments to ensure that all those forces are checked.

Thank you.

Commissioner Dinka: I am grateful to both of you. I am grateful particularly to you for your very clear answers and also for your optimism and hope in Kenya which you have expressed. Thank you.

Commissioner Shava: Hon. Phoebe Asiyo and Mr. Charles, we would like to thank you both for speaking with us today and as my colleague has said, outlining for us the kind of issues that we are going to deal with in this area. My first question is to Mr. Charles. As a researcher, I wonder whether you could just shed some light on the Uyoma Massacre. In particular, *Mama* Phoebe said that there was rape and there were children of rape. I wonder what caused this incident and who are the protagonists? We have seen in other parts of our country children being stigmatized because they look different. I wonder whether these children also look different. They would probably be in their 30s now. Do you have any idea how they have been living?

Mr. Charles Omondi Oyaya: Thank you. As it has been said before, the anatomy of the massacre is not documented. But the experiences are captured by the people who

witnessed it and the people who went through this. I believe that is why *Mama* said that, probably, we need to get testimonies from the survivors. The reason for it is just because a policeman was killed and the GSU, who were called “*Majohnny*” by the local name, were unleashed on the people, punishing them for killing a policeman. Therefore, under the dictum of public order and security that was part of our former Constitution, this was done under the banner of keeping law and order. So, on that basis, it is not very much recorded. I think it is a subject for further investigation.

Commissioner Shava: Thank you very much. That is also very valuable to us because one of the things that this Commission is doing is documenting our own history as Kenyans as written by ourselves and not as written for us by other people or omitted or revised by other people. So, we will definitely be taking up that issue.

Hon. Phoebe Asiyo, you spoke about how the 1969 Massacre in Kisumu rolled out. I do not have a question on that. I just want to affirm that, that is also my own understanding, not only from reading articles, such as the one you read out to us, but also from reading a book by one of our most renowned writers, Marjorie Oludhe McGoye, which is called “Coming to Birth.” She describes the situation just as you are saying, how the shooting went on over a long period on the road to Nairobi. It also describes how a young child who was very precious to the mother – all children are – was killed. So, I just wanted to affirm your story of how that happened. Then, I just have one question for you. Would you remember the PC who was inebriated at that time of the night?

Mrs. Phoebe Muga Asiyo: I remember his name, but he has since died.

Commissioner Shava: What was his name?

Mrs. Phoebe Muga Asiyo: Amos Bore.

Commissioner Shava: I do not have any further questions, but *Mama* Phoebe, I would just like to recall that I worked with you in January, 2008, at a time when our country was burning and women got together to try and see what we could do to help bring peace. You are a national leader for whom I have a lot of admiration and respect. I am personally distressed and shocked to hear about what the cost has been for you to participate in the leadership of our country and to affirm that we really value your leadership. My generation of women stand on the shoulders of women like you; women like Grace Onyango, who have led from the front, and I just want to say that we believe that your contribution is so valuable to the makeup of this country because if women like you were not there and did not refuse to be intimidated, the women of my generation would, definitely, be very far behind compared to where we are now. So, I would like to thank you for coming, for sharing your story and for encouraging us.

Thank you.

Commissioner Slye: I also want to thank both of you for your testimony and I look forward to reading your more formal and detailed submission with respect to the issues that you have raised; issues that really are at the core of many of the parts of our mandate. I just have a simple thing that I wanted to get clear in my mind. When

Mama was speaking during her initial testimony, she referred to--- My question concerns the object of your respective inquiry. So, *Mama* referred to Luoland and I was not clear whether she was referring to the set geographical place in which many Luos live, others of different ethnicities live, or whether that referred to the Luo people. Mr. Oyaya referred more to Luos, I think focusing on ethnicity and I assumed that Luos throughout Kenya are more than that. But I just wanted to understand what the focus of the inquiry is.

Mrs. Phoebe Muga Asiyu: The focus was on the Luo people. You will remember that in the 1992 elections, very many Luos who lived in Mombasa were kicked out of Mombasa and many of them found shelter in churches and other places. So that did not just occur in Luoland, it happened to all Luo people in Kenya.

Commissioner Slye: And lastly, *Mama*, you, in a very articulate way just a few minutes ago said something about your hope that Kenya will not be a tribal nation one day. Some might say that focusing on one tribe or ethnicity might be counter to moving towards that and others might say that it is actually a means towards that goal. I gather you would take the second position and I wonder if you could just say a little bit more about that; a little bit more about your vision of what the future should be and, maybe, a little bit about what strategy you recommend to reach that vision or goal.

Mrs. Phoebe Muga Asiyu: To create a critical mass of Kenyans who will appreciate the culture of all tribes of this country so that we can celebrate our tribal cultures and not condemn them or make them hurt those tribes. This is something that can be done from primary school all the way to universities. Unless this creation of awareness of the Kenyan people is deliberately carried out, the possibilities are that the animosities will continue. Today, even as your children play, you will hear some children in the city calling the Luo children "*Jadhe*." Already, they are growing up with it and I am very worried about this perpetuation of tribal animosity, which can actually be brought to an end by deliberate creation of awareness and creating a real critical mass that will make sure that we celebrate the good things about our tribal differences and desist from the negative ones.

Commissioner Slye: Thank you, *Mama*. I do not know whether Mr. Oyaya has anything he wants to add to either of those?

Mr. Charles Omondi Oyaya: Thank you. Just to demonstrate, I talked about education policy, why we are where we are today and a generation that is young - that is not Kenyan. In 1985, I was doing my Fourth Form at a school called Agoro Sare High School". We filled application letters to join high school and we were told "you are free to choose any school from any part of Kenya". I remember in my case, I chose a school called Kabianga High School. The same year after we had done exams, we had set our goals where we wanted to go to school but a policy came that said that 85 per cent of candidates in any particular district would remain in that district. Our vision was scattered. I was condemned to remain where I was. I went to Agoro Sare High School and I was called back to Agoro Sare High School, but I refused to go there and asked: "What value will it add to me by going back to the same school I had been for four years?" So, I forced my parents to look for another school and they found Usenge High School just across the lake.

Suppose I went to Maseno University, I graduate as a teacher and then I am posted to Nyamira High School, what do you want to tell me about Kenya? We have a generation which is told that they are Kenyans, but they do not know what Kenya is. But coming back to your question, our Constitution in the preamble says: “PROUD of our ethnic, cultural and religious diversity---”. It does not presuppose that one Kenya means a faceless Kenya, but Kenya that is united by core values that bring all of them together as they celebrate their diversity. Again, I would like to say that we have a lot of hope in the Constitution; that it has created structures that celebrate diversity but also unite Kenyans on the things that unite them, and education is one of them. So, it is not by default that two key institutions are not devolved; education and the Judiciary, and I think this is key. We cannot afford to be a divided Kenya. I would like my child to be proud of who he is as much as he is proud of being a Kenyan. At the moment, if you ask any Kenyan “Why are you a Kenyan?” he or she will say that either because he or she has an identity card or, by accident, he or she was born in Kenya. That is something we cannot pray for.

Thank you.

Commissioner Slye: Thank you. I think the vision that I hear from both of you is one that emphasizes diversity and respect for others and in an understanding of the richness of what it means to be Kenyan; and that there is no one Kenyan but there are many Kenyans. I gather from your testimony that there is a need, at least, within your community, to strengthen a sense of self and to strengthen a sense of confidence and pride, if you will, in the Luo. Then, obviously, the other side of that – and *Mama* referred to this – is also understanding those of other ethnicities and tribes and also having those of other tribes understand those of your own community. I wonder whether either of you are aware of efforts or whether either of you are involved in efforts to make that cross-group communication and understanding; either helping Luos to understand those of other ethnicities or those of other ethnicities, in turn, understanding Luos as being part of Kenya?

Mr. Charles Omondi Oyaya: Since the problems of the 2008 elections, all of us have been engaged in one way or the other in the healing process, and this has taken a very long time. The healing is not yet through and I am really hoping and praying that once we heal our people, that we must go back to our communities and tribes and let them know the values that there are in the cultures of other tribes; that the other tribes will do the same so that we begin to start appreciating and celebrating our values.

Commissioner Slye: Thank you.

Mr. Charles Omondi Oyaya: We have the information that it is a good initiative and that it came up and it has come to pass that we now even have an institutional framework, and I think this is where Mrs. Onyango belongs – the National Cohesion Commission. I think it is a step in the right direction. I would not say that I know what their programmes are, but I think it would be a very useful thing to have exchange programmes, which some people have started at the very basic level I think, really, out of initiative. But I think it would be useful, first, as I said, to relook at our education policy and system – and I think the Commission has already spoken to that – at the same time create a framework for, if you like, cultural exchange between

different people; that is the young, the old. It is not rare that if my son wants to marry, let us say from Central Province, he will be told all the wrong things. And when you go there, you actually do not see some of those wrong things. I think that is something in the structure that is already in place; we have somewhere to begin.

Thank you.

Commissioner Slye: Again, I want to thank both of you. I guess I will end my remarks by saying that as you are working on the submission, if there are ideas that you have that either this Commission or the National Cohesion Commission or others, whether governmental or non-governmental bodies could engage in or should engage in to further that agenda – to further the progress towards the vision that you have articulated – that would be very helpful to us. As you know, we are a Commission that is limited in time because we will make recommendations, maybe, along any areas that we have just been discussing, it will probably be taken up by the National Cohesion Commission. But there are maybe others, whether it is the Ministry of Education, Local Government, the Central Government or what have you--- So, if you could give some thought to that and include those recommendations to us, that would be very helpful to us.

Again, I want to thank both of you very much. I have no further questions.

The Presiding Chair (Commissioner Ojienda): Thank you, Commissioner Slye, for that. I have a couple of questions to both *Mama* and Charles. I think I want to ask one of them a question that came from your last remark. You have referred to the acronym “*Jadhe*” and you said it has some connotation. I just want you to walk us through this. What do you read from that and what impact do you think it has on these children?

Mrs. Phoebe Muga Asiyo: It is very disturbing on the children. I have grand children and their mothers are not Luo; one is a Kalenjin and another one is a Kamba. They keep asking me: “Grandma, who are we and where do we belong?” Yet, in the eyes of other children, they are “*Jadhes*” and in school, it affects them very badly psychologically. If my grand children are affected this much, how about the other children? I think it is a very serious issue that we cannot sweep under the carpet; that our children should grow with this feeling of not being equal to other children and asking questions all the time about who they are and why they are who they are. I think somebody has to address this issue urgently.

The Presiding Chair (Commissioner Ojienda): Thank you, Hon. Asiyo. I want to ask Charles because he is a policy person and has spoken a lot of things about policy. Charles, my first question to you and this touches probably on the work that Mary Onyango does is: What are those policies that, in your view, should be put into place to foster sustainable reconciliation amongst the people of Kenya? How do we bring the people of this country together over a period of time?

Mr. Charles Omondi Oyaya: Thank you. First of all, probably to make a reference, at the National Constitutional Conference, there was a task force that was convened, that was called: “Culture Task Force.” At the time, people were wondering whether the question of culture was of any importance as compared to issues of Government structure and so on and so forth. The work of that task force is documented and it

generated the basis for the formation of a fully fledged committee that was the Culture Committee. It led to the drafting of a full chapter in the Constitution on culture. So, if you got hold of the Bomas Draft, you will find a full chapter there on culture. Some of the things that we are talking about were drafted there. That report is in place; if the Commission does not have it, we can make it available, because I was responsible for it. As I had said before, the issue that we have dealt with, not only among the people of Luo but as a Kenyan society, is what I would call identity crisis. We do not want to come out and say who we are. So, even in terms of the ethnic communities that we have, we talk about 42. Our audit found that we have 97 indigenous communities of Kenya with their own distinct languages and distinct cultures. Some of them are even 300 but we do not know them. You will never even meet them anywhere. So, that is the reality we have. So, if you go to the CKRC First Draft of 1992, you will find that the First Schedule was the listing of Kenyan communities, both indigenous and immigrant communities. So, I would suggest that from a policy perspective, probably that Commission, because of our political reality, they are focused more on hate speech because everybody is pushing them. "Did you hear what Oyaya said?" But, probably, they are not really looking at what will keep this country together. These documents have clear recommendations; both policy and institutional and how to bring them both into the legal domain. That is what I would say, but it is an urgent area so that, as Kenyans, when you are asked: "Are you proud of being a Kenyan?" You do not say that: "I am actually suffering by being a Kenyan! *Ninafanya nini? Sio kujivunia? Navumilia kuwa Mkenya!*"

The Presiding Chair (Commissioner Ojienda): Thank you very much for that response. I want to walk Mama Phoebe through her testimony now. *Mama*, I know the role you played in the Ghai Commission and I know the beacons that defined the kind of contribution that you made. But, remember, we are investigating historical injustices. You were an Hon. Member of Parliament and we are looking at the period between 1963 and 2008. You served in Parliament for some time and you have shared with us some of the pains that you went through. But I want to hear more from you. Share with us your highest lows in the political struggles and the injustices that you watched happen during that time.

Mrs. Phoebe Muga Asiyo: The highs and the lows are very many and I might not be able to recollect all of them right now.

The Presiding Chair (Commissioner Ojienda): Can you focus on the highest lows or the lowest and the most difficult?

Mrs. Phoebe Muga Asiyo: I think the most difficult was when Tom Mboya was gunned down along Government Road. That was the lowest in my life and, I guess, the life of many other people. That was a man who gave all his life for this country. He was one man who championed the sitting down in Lancaster House to discuss the Kenyan issue. He was one man who asked the warring sections to stop war; he was the one who persuaded the British, I think, amongst all other people, that sitting down on a round table was, perhaps, the best option. But that day, they shot him dead. Up to today, nobody has told us why Mboya was killed. That was the lowest in my life.

Another very low time was when Jaramogi Oginga Odinga resigned from the Government. That was the lowest again. I was in the Ministry and I really tried to persuade Jaramogi not to quit, but I think he had done more than enough. So, he quit.

The Presiding Chair (Commissioner Ojienda): Why did he quit?

Mrs. Phoebe Muga Asiyo: But that is history. You know, I was there the day he decided to quit because I was one of the executive officers in his office. I remember, there was a function somewhere between the Police Headquarters and the current Ministry of Foreign Affairs offices. Jaramogi was supposed to address a very important forum and everybody was seated, waiting for him to come and address the audience.

Instead, the Minister for Defence came and without Jaramogi's information, addressed the forum. There must have been other issues going on but I think, that was what broke the camel's back. The humiliation was too much to bear. Whatever differences they might have had with Kenyatta; that was the man who had told us that Kenyatta was a second God. He was the same man who refused to take over the leadership of this country because he saw in Kenyatta, a greater man than himself. So, that hurt deeply.

The Presiding Chair (Commissioner Ojienda): Mr. Charles Oyaya, you referred to the three sayings that informed the Luo person. I want you to focus on the first one. What is the genesis of this first saying? Does it have a political connection or philosophy?

Mr. Charles Omondi Oyaya: I would say yes to all that you have made reference to. As we said, that was a mental survival strategy anchored on the principle of self reliance, irrespective of one's situation. So, at the political level, it has informed to date. The position that the community has taken irrespective of the dangers, they have remained focused on the reform agenda. I imagine if they gave up because of lack of philosophy that guided that, we would not be where we are today. So, we are celebrating a philosophy that has guided us.

At the livelihood level, one of the virtues of the Luo is really being open-minded, but also proud. You do not want to present yourself as useless. So, your life and livelihood does not depend on somebody else. In terms of philosophy of life, it has maintained various individuals, irrespective of their situations to hold some level of self dignity. An example is a man who was a Minister from our community. On his way home, he met a guy who was from the *shamba*. He stopped his Volvo car and talked to the gentleman and gave him some money. The guy said "thank you". But he went ahead to tell this gentleman: "What I have given you, you can use to buy decent clothes." So, the peasant farmer told him: "Sir, thank you for what you have given me. First of all, I did not ask you for it but because you have given it to me, do not tell me how to use it. So, if it is for that reason, you can as well take back your money because I did not tell you that I do not have clothes." That is the principle of *Adak Katiyo*.

So, it has defined so many things but the flipside of it is that some people have seen it as a way of people not being very thankful for what they get.

The Presiding Chair (Commissioner Ojienda): Have you had sight of the trend of revenue allocation to various development projects? I am thinking of time since Independence. When you talk about economic marginalization, you should be talking about figures. Maybe, *Mama* will answer this. We have a clear budgetary process under the Constitution of Kenya 2010, so that you can now trace what funds are taken to what projects in what part of the country. Under the old Constitution, Parliament voted funds to various Ministries. What did you feel as an MP that funds were channeled to different provinces in this country differently?

Mrs. Phoebe Muga Asiyo: During my time in Parliament, you could not trace where monies were sent by the Treasury. Yes, you passed the Bills but the Ministries did whatever they wanted with those monies. I will give you an incidence or two that took place in my constituency. Money was allocated for rural electrification in Kendu Bay. All the equipments were delivered together with the poles and everything. Because I did not quite agree with everything the establishment said and I was critical of some of the policies of the Government, some very big vehicles came and took away all the poles and equipment that would have given the people of Kendu Bay electricity in 1980. It is only this year that Kendu Bay is getting electricity and yet, that allocation was made in 1980. You can count how many years it has taken for electrification to get to Kendu Bay.

The Presiding Chair (Commissioner Ojienda): It is 31 years!

Mrs. Phoebe Muga Asiyo: There was a road from Oyugis to Kendu Bay which was allocated funds for tarmacking. The funds were raised by Tom Mboya when he went to the USA. In 1971, that road was supposed to be tarmacked. The money for that road was used to tarmac a road in Thika and yet, the road would open up South Nyanza to Tanzania. Up to this minute, the road remains untarmacked. These are some of the issues we raise when we talk about marginalization of Nyanza Province. Of course, there are much bigger issues; for example, the irrigation of Kuja/Miriu. It was intended to provide light and irrigation for Nyakach, all the way to Kobala in Rachuonyo. Today, that face of it is out and nobody is talking about that irrigation and yet, it was key for food security in that very dry area. So, I am just mentioning the few instances in my constituency where the Government has withdrawn money and even equipment and taken them to other areas. There are much bigger development programmes that were taken away from Luo Nyanza to other areas on the pretext: *Siasa mbaya, maisha mbaya*.

The Presiding Chair (Commissioner Ojienda): *Mama*, the county governments are coming into place before August next year and the Kangu task force is working on the Bills on devolution. Professor did his bit in your time and he was killed in unclear circumstances. If you were first Governor of a county in this region or if you were to advise governors in this region, what would you prioritize as those things that must be done first?

Mrs. Phoebe Muga Asiyo: First, I would ask for that Equalization Fund. This is because Luo Nyanza is very far behind other regions in this country. That fund should be put to full use in this province.

Secondly, I would like to look at infrastructure. That is what has made it impossible for our people to even market their fish and wares that they get from their farms. The prices that they get locally cannot sustain them. I do not know why the Government would want to keep that big margin of our national budget when we have devolved to various regions. At least, it should be a minimum of 35 per cent to 40 per cent given to the counties.

The Presiding Chair (Commissioner Ojienda): Thank you very much Hon. Phoebe Asiyo for shedding light on some of those historical injustices that we know have remained unresolved. For some reasons, none of the assassinations that occurred in this region have been resolved, despite the appointment of commissions over the years. You have also shed light on issue of economic marginalization and stigmatization of the people of this region.

Charles has also given insight on the philosophical issues underlying marginalization and the architecture and design of that process.

Thank you for defining the paradigms.

Yes, the Leader of Evidence!

Ms. Emily Kimani: Mr. Presiding Char, Sir, before I stand down the witness, in addition to the memorandum she has said she will submit to us later, she has referred to some newspaper articles which I now wish to ask her if she wishes to adduce the same as part of her evidence before this Commission.

Mrs. Phoebe Muga Asiyo: Yes.

Ms. Emily Kimani: Mr. Presiding Chair, Sir, I request that the newspaper caption of Monday, 27th October, 1969 be admitted as part of the record of evidence before this Commission.

The Presiding Chair (Commissioner Ojienda): It is so directed.

[The Commission adjourned temporarily at 5.10 p.m.]

[The Commission resumed at 5.15 p.m.]

(Mr. Gregory Onyuro took the oath)

Ms. Emily Kimani: Please, tell us your full names again for the record.

Mr. Gregory Onyuro: I am called Gregory Onyuro Goche. I am from Kolwa Central, Kisumu, Kasagam.

Ms. Emily Kimani: You recorded a statement with us touching on a wider ray of issues, ranging from the Kisumu IDPs network, death of your nephew in the Kisumu Massacre, the Kolwa and Kajulu evictions, marginalization of the Luo youth during the Kenyatta regime and also an individual account of the post-election violence. Is that correct?

Mr. Gregory Onyuro: Exactly.

Ms. Emily Kimani: Why and when was the Kisumu IDPs network formed?

Mr. Gregory Onyuro: The group was formed in 2010. I realized that it would be good for IDPs to have a group because I realized that very many people had problems. They did not have documents such as police abstracts that they would need before they are assisted. We also have victims of rape who are now separated from their husbands. We also have children who do not go to school and victims of police shooting. I felt pained and I, therefore, formed the group.

Ms. Emily Kimani: What was the genesis of their displacement?

Mr. Gregory Onyuro: They are from different places. Some are from Kisumu. They were shot by the police. Others are from Naivasha, Eldoret, Limuru, Mombasa and other areas. When they came to me, I had to make them join the group. They are still there.

Ms. Emily Kimani: What is your manpower like?

Mr. Gregory Onyuro: I am the Chairman of the Kisumu IDPs.

Ms. Emily Kimani: Do you have people assisting you in running this group?

Mr. Gregory Onyuro: Of course, we have. We have a secretary, treasurer, and a committee which helps in running the group.

Ms. Emily Kimani: How many IDPs does your group support?

Mr. Gregory Onyuro: In Kisumu we have almost 700 people. They could be more than that. Already there are others who want to join the group as members.

Ms. Emily Kimani: Who funds the Kisumu IDPs Network?

Mr. Gregory Onyuro: There is nobody. In Nyanza Province, the IDPs are really suffering, compared to the IDPs in other regions in Kenya. The IDPs in other places have been given land and shelter but here in Kisumu, the IDPs have nothing.

Ms. Emily Kimani: You have referred to Kshs35, 000 that has been set aside for the IDPs. Do you wish to confirm that the people under your care never received that amount of money?

Mr. Gregory Onyuro: Some of them received the money and not all of them.

Ms. Emily Kimani: How many of them received the money?

Mr. Gregory Onyuro: I cannot tell you the exact number. If you go the DC's office, you will find a record. Some got while others did not. Most of them did not receive the money.

Ms. Emily Kimani: What attempts have you made in terms of reaching out to the Government for support?

Mr. Gregory Onyuro: We have complained. I have been attending many meetings in Nairobi to submit my complaints but nothing has happened to Nyanza Province. There is a saying that there are no IDPs in Nyanza Province while on the contrary, most of the people seated here are IDPs.

Ms. Emily Kimani: Have you, today, been accompanied by the people you support?

Mr. Gregory Onyuro: I know they are here. This time you know, most of them have gone home because of time. They have been here.

Ms. Emily Kimani: What have been the achievements of your group since it commenced work?

Mr. Gregory Onyuro: We have been recommending the people to write statements with the TJRC, so that their views are recorded.

Ms. Emily Kimani: You say the IDPs came into being after the post-election violence in 2007.

Mr. Gregory Onyuro: That is true. Many of the IDPs were shot by the police. A number of them are disabled. Women were raped and they have been left by their husbands. In Kondele, a boy was shot by the police.

Ms. Emily Kimani: What recommendations can you give to this Commission?

Mr. Gregory Onyuro: There should be proper civic education conducted to all our communities so that they understand issues. Secondly, parliamentarians should sit down and apologize to Kenyans. Thirdly, we need to look for a donor who will empower the youth and all those who were affected during the violence.

I would also like to say that the formation of TJRC is the best thing that ever happened. I have not been happy with other commissions that have been set up in the country. I believe that if TJRC is given a chance, it will do great things.

We would like the President and the Prime Minister to come to Nyanza Province and talk to the IDPs in this region. They need to tell us that they are in power because of us. They need to apologize to us. This is because they are earning while we are suffering. Look at me here. I urinate here. I smell urine just because of post-election violence and I cannot perform sexually because of the post-election violence. How do you think my family feels? My children cannot go to school. They will now turn into thieves because I cannot help them. Women are becoming prostitutes! I want the President to come to Nyanza Province and apologize because my vote made him to be the President!

Ms. Emily Kimani: You talked about the death of your nephew in the Kisumu Massacre.

Mr. Gregory Onyuro: Yes. That was the son of my brother. When President Kenyatta came to open Russia Hospital, chaos erupted. My nephew was trying to run away. He fell down and got injured. When he was taken to hospital, he was pronounced dead. He was called Vincent Otieno.

Ms. Emily Kimani: You say that in 1969, during that occasion, the security forces opened fire. Who specifically did the shooting?

Mr. Gregory Onyuro: The police who were escorting the President to open the hospital.

Ms. Emily Kimani: Were you present during that occasion?

Mr. Gregory Onyuro: Of course, but I was not there.

Ms. Emily Kimani: What do you mean?

Mr. Gregory Onyuro: I was alive. Can I say that? I was not at the scene though.

Ms. Kimani: Who informed you about what happened?

Mr. Gregory Onyuro: We got information after the child was injured and he died.

Ms. Emily Kimani: How many families were affected by that incident known as the Kisumu Massacre?

Mr. Gregory Onyuro: That one I cannot recall. I might give a wrong figure.

Ms. Emily Kimani: Other than your nephew, have you heard of other families that were affected in the Kisumu Massacre of 1969?

Mr. Gregory Onyuro: Of course yes, but not their names.

Ms. Emily Kimani: You also talked about the people of Kolwa and Kajulu who were moved.

Mr. Gregory Onyuro: I am one of the victims. The Government removed us from where we were staying. The area was set aside for the development of the town. The land is being divided and given to individuals. Why were we moved from that land? My children cannot get land to build shelter and yet, that land is being given to other people – they are buying that land for millions of shillings.

Ms. Emily Kimani: Where is Kolwa and Kajulu?

Mr. Gregory Onyuro: They are in Kisumu. You can get more information at the DC's Office in Kisumu.

Ms. Emily Kimani: You testified before us that you are one of the victims. Were there any consultations? Was any notice given to you? How many people were affected by that?

Mr. Gregory Onyuro: Very many people were affected. We were told that the town was to be expanded. My father, who is now deceased, was given that information.

Ms. Emily Kimani: What could be the number of the people who were moved and the size of the land you were moved from?

Mr. Gregory Onyuro: I do not have more to say but that is what I know.

Ms. Emily Kimani: Could you tell us tentatively, the number of people who were moved and the size of land which you were moved from?

Mr. Gregory Onyuro: They were very many and I cannot recall the number. There is even a group whose case is still pending in court. There is no progress but people are suffering and their children are becoming thugs because they do not have anywhere to stay. This is not only for Kolwa and Kajulu but also Nyamthoi. There are frequent floods there. The people there do not even have title deeds. My family suffered while there and also this side. I always say that the bullet which shot me should have killed me.

Ms. Emily Kimani: You said that the land is for development but were you given sufficient notice or formal communication by the Government? Were the people given alternative land or compensation?

Mr. Gregory Onyuro: No. If somebody else was given, I do not know. Even right now, I do not have land. If that alternative land was there, why am I suffering with my children? It is not only me but there are very many people who are suffering. The Government wants to develop the city but people cannot even get shelter. Why should you develop a city and people do not have shelter. Development starts with the people, from the people, with the people, by the people. But here in Nyanza, we do not know how the Government is looking at things. The Ministry of State for Special Programmes is there and is giving people food but it cannot even come to Nyanza. In fact, Nyanza is going to leave this country and start another country and we leave for them this country. I am talking like that because I am bitter. It is not only me but there are other people.

Ms. Emily Kimani: Thank you very much, Mr. Onyuro for that answer. In your statement, you talked about the marginalization of the Luo youths during the Kenyatta regime. Could you shed some light on that?

Mr. Gregory Onyuro: The marginalization happened like this: if you want to get a job, you had to give yourself a name like Maina or Njenga before being employed. Is that not marginalization?

Ms. Emily Kimani: Do you have specific examples of people who changed their names so that they could be employed?

Mr. Gregory Onyuro: I know but now, how can I bring it when you had not told me earlier? There are so many and even their certificates read Maina or Njenga. They did that, so that they could graduate. That is not something that I can just talk about. Do investigations and you will find out what I am saying. You will get that there are some Luos who are called Njenga or Maina. They did that because the names starting with “O” were not being considered. That is why I am saying that the Luos should get their own country, rather than remaining in Kenya. If they remain in Kenya, then nobody should be superior to another one. We are the same. God created us in the same way. I talk bitterly because of what I have seen happening to my family.

Ms. Emily Kimani: In light of that marginalization in terms of employment, with regard to Luos, you have said that most women turned to prostitution and also became susceptible to wife inheritance. How prevalent is wife inheritance in this region?

Mr. Gregory Onyuro: Generally, if you come to this region, there are many Luos dying because of HIV/Aids because the Government is the one causing the Luo women to become prostitutes. Let me add some other information. If there is anything that is supposed to come to Nyanza, it is usually diverted to another region.

Commissioner Chawatama: Through the Chair, I would like to tell the witness that this testimony is very important and we need to hear his experiences and what the Luo people have gone through and especially, those of us who are not from here, we want to be able to follow. So, please, let the witness answer the questions as they are put by the Leader of Evidence, so that the testimony flows for our benefit. All that you are saying, we appreciate the gravity of it, but I am struggling to follow. So, let the witness be led and he should answer the questions as they come.

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, please go to the last page. That is where the issues are.

Ms. Emily Kimani: Could you take us through your individual account which happened on 17th January, 2008?

Mr. Gregory Onyuro: On 17th January 2008, I was shot by the police, then I was taken to hospital where I stayed for almost one week. I was to take more than one month but when I thought about the bill, I had to leave. I was given a bill of almost Kshs8, 000. I knew that my son was not going to manage to pay. I asked them to waive for me the fees. I was discharged but outside, it was so hostile. Later, I came to know that people had looted my property.

Ms. Emily Kimani: At that time, what was the mood at the place where you were living?

Mr. Gregory Onyuro: It was hostile. There were so many people who were being killed by the police. The group that was disputing the election results was also demonstrating.

Ms. Emily Kimani: Do you know the police officer who shot you?

Mr. Gregory Onyuro: When I was shot, my son came to collect me. Then, I saw two police officers passing but I could not tell who they were.

Ms. Emily Kimani: Were you the only victim and if not, do you know other people who suffered the same fate as you?

Mr. Gregory Onyuro: I was not the only one. Even in the ward, we were very many. At that time, the Prime Minister and other officials came to check on us. I saw them but I cannot recall them by their names.

Ms. Emily Kimani: In your statement, you said that you cannot provide for the basic needs of your family as a result of the shooting. What was your occupation before you got shot?

Mr. Gregory Onyuro: I used to own a tailoring shop but the looters came and took everything. Property belonging to customers was also looted.

Ms. Emily Kimani: Do you know the people who looted your property?

Mr. Gregory Onyuro: I do not know them because it happened when I was in hospital.

Ms. Emily Kimani: How has your life and your family's life changed after the shooting?

Mr. Gregory Onyuro: It is now very bad. We now relate very badly because I cannot afford to provide for them. Some of my children have become street boys and girls.

(Inaudible)

Commissioner Slye: The Hansard is not picking up the sound. It seems there is a problem with the channel.

The Presiding Chair (Commissioner Ojienda): Proceed now.

Ms. Emily Kimani: I was asking you what your current medical condition is. Do you still go for further medical attention after the shooting?

Mr. Gregory Onyuro: I am supposed to be seeking medical attention but I cannot make it because of financial problems.

Ms. Emily Kimani: You have given three recommendations. One of them is that the Government needs to construct a local tribunal to prosecute injustices other than go through the International Criminal Court (ICC) process. Could you shed some light on that?

Mr. Gregory Onyuro: I think that those who have already been taken to the Hague, their cases should continue but there were people who burnt and looted property. There are those who raped women. These people should be dealt with. Therefore, a

tribunal is necessary or else such things might recur. The youth of today know that if there is chaos, then they will loot very many things. That is why I want the Government to form a tribunal to deal with those ones but the process of ICC should continue.

Ms. Emily Kimani: After the police shot you, did you take any action like recording a statement?

Mr. Gregory Onyuro: The first people whom I reported to were the police but there is nothing they did. They did not carry out any investigations. They did not even come to the scene. I am telling you, if this Government does not change, then there is no need to go there because there are so many people who reported but nothing happened.

Ms. Emily Kimani: For the other recommendations, you proposed that the Internally Displaced Persons (IDPs) need to be treated equally, so that the issue can be resolved. Also, you said that a resource centre should be developed in Kisumu for further reference on injustices. Is that correct?

Mr. Gregory Onyuro: That is correct. I stated that because I see other regions are being recognized, supported, women and youth being empowered but it is not happening in Nyanza. I am requesting the Government to give equal distribution of resources to all regions. If the Ministry of State for Special Programmes is for all Kenyans, let it distribute resources equally.

Lastly, we want a resource centre, whereby we can see what has been happening in Kenya. We want our youth to be trained in that centre so that such things are not repeated.

Ms. Emily Kimani: Mr. Onyuro, what is the one thing that you feel the Government should do, so that you can feel that justice has been done in light of what happened to you on 17th January, 2008?

Mr. Gregory Onyuro: Compensation and justice.

Ms. Emily Kimani: When you talk of justice, what exactly do you mean?

Mr. Gregory Onyuro: Justice is to know how this thing happened and who caused it. Something cannot happen without a cause. Even a disease has a cause and if you want to treat it, you have to know the cause.

Ms. Emily Kimani: Thank you very much, Mr. Onyuro, for your testimony before us today. I have no further questions for you but I wish to hand you over to the Commissioners who would wish to ask you some questions.

Commissioner Farah: Thank you very much, Mr. Onyuro, for your evidence. I really sympathize with you for the things you went through, particularly the shooting on your abdomen. It should not have happened. I can understand that there are IDPs who came from other places to Nyanza but who are the IDPs from within? How did IDPs come from within and yet, there are only Luos here?

Mr. Gregory Onyuro: They are a mixture of tribes in Kisumu who became IDPs.

Commissioner Farah: They are all your members and you are the Chairman?

Mr. Gregory Onyuro: Yes, Sir.

Commissioner Farah: Do you have the total number of figures of those who came from outside but who were integrated in the local community?

Mr. Gregory Onyuro: We do not have that number but we can give it later.

Commissioner Farah: The Commission needs to know, so that we can take it up with the Ministry of State for Special Programmes. We need the number, their names and identity card numbers.

Mr. Gregory Onyuro: I am happy for that.

Commissioner Farah: You should jot them down but they should be real ones. I do not have any other question but I sympathize with you.

Commissioner Dinka: There is your nephew who died in the stampede in 1969; how old was he?

Mr. Gregory Onyuro: He was 21 years.

Commissioner Dinka: When you were shot by the police on 17th January, 2008 at the period of uncertainty in the country, what was the situation like in the area where you were living? Were there demonstrations?

Mr. Gregory Onyuro: On that day, 17th January, 2008, I had decided not to go out because the situation was so hostile. I was just within my home and the gunshots were heard. My children were scared and ran into the house but a bullet got me. Some bullets even reached the cows in other homes. There was nothing around the area. We do not know why those people came in the rural areas. From my home to where the people were demonstrating, it is far away.

Commissioner Dinka: How far is your home from the place where people were demonstrating?

Mr. Gregory Onyuro: It is about two kilometres.

Commissioner Dinka: Do you think those bullets that hit you were targeting you or were they just stray bullets?

Mr. Gregory Onyuro: I cannot say it was targeting me.

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

The Presiding Chair (Commissioner Ojienda): Mr. Onyuro, I empathize with you and the painful experience that you underwent. You have made many highlights but the one of 17th January, 2008 is a very painful one. That is what made you what you are today. Were you using any crutches before that incident?

Mr. Gregory Onyuro: I was paralyzed when I was taken by my parents to the hospital and the doctor injected me in a wrong manner. He is the one who made me lame. I was born a normal person like you but the doctor injected me in a wrong manner and again, I was shot.

The Presiding Chair (Commissioner Ojienda): You have said that as a result of the shooting, you can no longer control your urinary system?

Mr. Gregory Onyuro: Even now, I smell of urine because it just comes out.

The Presiding Chair (Commissioner Ojienda): Have you sought any medical attention or is it that you cannot afford?

Mr. Gregory Onyuro: I cannot afford. The little I get cannot pay the bills. At one time, I went to find out how I could be treated but what I was told was too much and I just went away.

The Presiding Chair (Commissioner Ojienda): So, your first urgent request would be some form of specialized medical attention?

Mr. Gregory Onyuro: I need that, so that my urinary system and even sexually, I can be treated.

The Presiding Chair (Commissioner Ojienda): When you say “sexually”, what do you mean?

Mr. Gregory Onyuro: I cannot perform now.

The Presiding Chair (Commissioner Ojienda): How old is your youngest child?

Mr. Gregory Onyuro: He is 11years old.

The Presiding Chair (Commissioner Ojienda): How did your wife take that after the incident? How is it for you as a married person?

Mr. Gregory Onyuro: I do not know how to answer that but if something has happened to you, what do you do? You just carry it as your cross? Your wife has to understand. That duty is necessary for all these women. Do you not know that?

The Presiding Chair (Commissioner Ojienda): I am just sharing the pain that you go through on a daily basis and how that exposes you because of the shooting of 17th January, 2008. I do not know what you would tell the police officer who shot you if you met him today?

Mr. Gregory Onyuro: I am a Christian and I am a person who understands. I can only ask for forgiveness but if I can know the person, I want to tell him that if he is shot like he did for me, how could he feel? I forgive him.

The Presiding Chair (Commissioner Ojienda): What is the one thing that you pray for to improve your life apart from the medical treatment that you have mentioned?

Mr. Gregory Onyuro: I do not want to be a beggar. You know that the disabled people are not recognized in this country. They just say that they will assist them but the reality is that very few are assisted. I want the Government to assist me to continue with my project which can enable me to provide for my family because I know they will not come and provide for them. So, let them help me to bring up my business and continue providing for my family. I also do not want anybody to come and provide for my family because I want to do it myself. All I want is my business to be set up again. I do not want to be assisted in terms of being given Kshs 5.

The Presiding Chair (Commissioner Ojienda): Which projects are you doing?

Mr. Gregory Onyuro: I want to continue with my project of tailoring. I had a tailoring shop. If I can get the sewing machines and materials, I will continue. That is what I do best. I do not want to be a beggar because I have been that way for too long. If they can recognize me, let them come and assist me. That is why I want to talk directly to the President and the Prime Minister. The whole community wants assistance, so that they do not beg.

The Presiding Chair (Commissioner Ojienda): I know the burden on your shoulders is heavy and you are still in pain. You were shot and you are now suffering from the disability.

I want to thank you and also thank all those who have testified today. We have come to the end of today's hearing. I want to thank Mr. Bernard Ndege who testified in the morning, Mrs. Phoebe Asiyo, Mr. Charles Oyayo who testified in the afternoon and Mr. Gregory Onyuro Ongoche who is now disabled out of injuries sustained by police shooting on 17th January, 2008. We will convene tomorrow at 9.00 a.m. We are now adjourned.

(The Commission adjourned at 6.10 p.m.)