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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION HELD ON FRIDAY, 15TH JULY,
2011 AT H.H. AGAH KHAN HALL, KISUMU**

PRESENT

Margaret Shava	-	The Presiding Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Ronald Slye	-	Commissioner, USA
Gertrude Chawatama	-	Commissioner, Zambia
Berhanu Dinka	-	Commissioner, Ethiopia
Patricia Nyaundi	-	Commission Secretary
Patrick Njue	-	Leader of Evidence

(The Commission commenced at 9.10 a.m.)

(Opening Prayer)

The Presiding Chair (Commissioner Shava): Welcome to the second day of the public hearings of the Truth, Justice and Reconciliation Commission (TJRC) here in Kisumu City. Before we begin, maybe, I will just restate some of our ground rules. For those of you with still cameras, while we allow photography, we ask that while the witness is speaking, please, do not take flash photography. I would like to ask you all now to please, switch off your mobile phones. I will give you a moment to just do that. The reason as to why we ask this is that even if your phone is on silent mode, it may still result in the disruption of our proceedings. So, I give you a moment so that you can all switch off your mobile phones, please.

You will hear testimony today, which may resonate with your own experiences and views. You may also hear testimony with which you do not agree. In each instance, we ask that you kindly treat the witness with respect. We ask that you listen in silence, and you do not interrupt.

I will now hand over to the Session Clerk to, kindly, swear the witness, after which the Leader of Evidence will lead evidence from the witness.

Mr. Patrick Njue: Hon. Commissioners, this is the witness serialised 4, and the witness's code is Kisumu 2.

(Mrs. Consolata Akeyo Masinde took the oath)

Mr. Patrick Njue: Good morning, *mama*. Kindly, for the record, once again, state your full names.

Ms. Consolata Akeyo Masinde: My names are Consolata Akeyo Masinde.

Mr. Patrick Njue: Where do you live?

Mrs. Consolata Akeyo Masinde: I stay in Luanda Nyamasare.

Mr. Patrick Njue: What do you do for a living?

Mrs. Consolata Akeyo Masinde: I do not do anything. I was a farmer.

Mr. Patrick Njue: You were seated with us this morning following a statement which you recorded with the Commission on your sufferings in the year 2008. Do you confirm this to be the case?

Mrs. Consolata Akeyo Masinde: Yes, it is true.

Mr. Patrick Njue: Kindly, begin your testimony, in so far as you are able to ascertain the date and the month, and proceed with telling us what happened on that day.

Mrs. Consolata Akeyo Masinde: On 18th January, 2008, I was near my house. I was cooking; I heard the sound of gunfire. I went into the house. I heard something explode. It hit me but I did not know that it had hit me. I saw something sparkling and I fell down. After I fell down, I lost consciousness. I did not know where I was. When I regained consciousness, I found myself in hospital, in Homa Bay. I found myself covered with blood. I did not know what had happened to me. When I regained consciousness the following day, that was when I knew that something had happened to me and I was in hospital.

Mr. Patrick Njue: I will proceed to ask you questions to clarify your testimony, after which our Commissioners may also proceed and do the same. What was the general situation on 18th January, 2008, around the neighbourhood?

Mrs. Consolata Akeyo Masinde: I stood near the road and heard people making noise. People were shouting. They were saying that there were soldiers who were shooting people. I heard the sound of gunfire and people were running. I did not know exactly what was happening, because I was outside my house. I was not near them.

Mr. Patrick Njue: For record purposes, just confirm that this was the period after the general election.

Mrs. Consolata Akeyo Masinde: Yes, it was after the elections, when the results were being awaited.

Mr. Patrick Njue: You said that something hit you, and you lost consciousness?

Mrs. Consolata Akeyo Masinde: Yes, I saw something twinkling on my eyes. I did not know that something had hit me. I lost consciousness.

Mr. Patrick Njue: So, when you came to your senses, what did you come to realise it was that had hit you?

Mrs. Consolata Akeyo Masinde: On the following day, I was told that I had been shot.

Mr. Patrick Njue: Who told you?

Mrs. Consolata Akeyo Masinde: I was told by the attendants at the hospital. My husband was not there. He was at the farm at that time. When I regained consciousness, I found my husband at the hospital. He told me that when he heard that I had been shot, he came running. He said that he found the same people, who hit him, and he lost his teeth. So, he was also unwell. He was also in hospital.

Mr. Patrick Njue: Talking of your husband, I notice that on your far right, there is a gentleman seated there. Could this be the man?

Mrs. Consolata Akeyo Masinde: Yes, he is the one.

Mr. Patrick Njue: When this incident took place, who was with you at home?

Mrs. Consolata Akeyo Masinde: I was not with anybody. I was with a kid, who was far away. He was in school at my brother's place in Migori.

Mr. Patrick Njue: Who took you to hospital?

Mrs. Consolata Akeyo Masinde: The people who took me to hospital were my neighbours, who were there. They reported the incident to somebody who had a vehicle. Many people came but I heard that my neighbours were the ones who took me to hospital in Homa Bay.

Mr. Patrick Njue: Again, for clarity purposes, you said that you were able to subsequently know that it was police officers who had shot you?

Mrs. Consolata Akeyo Masinde: Yes, my neighbours were sure that they were policemen. They were in a Land-Rover and were from Mbita. They were many. They hurt many people. One lady was killed and a man was shot on his leg. The lady died later. She was from Sakwa, Awendo.

Mr. Patrick Njue: Do you have any notes or document you want to share with us?

Mrs. Consolata Akeyo Masinde: I have a letter from the hospital where I was treated.

Mr. Patrick Njue: Presiding Chair, the document that Consolata is referring to is discharge summary from Homa Bay District Hospital. Can the same be admitted to be part of the record of this Commission?

The Presiding Chair (Commissioner Shava): The document is so admitted.

Mr. Patrick Njue: Consolata, as you sit with us today, what are your expectations from this Commission?

Mrs. Consolata Akeyo Masinde: You can help me. I have been sick since the time I was shot. The bullet hit me on the shoulder and came out at the front. I cannot do the work I used to do before the shooting. I feel dizzy. My heart experiences palpitations. I cannot stand any loud noise. I get sick. I now need treatment in hospital. That can help me.

Mr. Patrick Njue: Have you tried to follow up compensation or anything of the sort from any offices now that you know that it was police officers who shot you?

Mrs. Consolata Akeyo Masinde: I went to the Government but I was not helped in so far as treatment is concerned. I have gone many times but they have not helped me at all.

Mr. Patrick Njue: When you say that you have gone to the Government many times, which Government offices did you go to in particular?

Mrs. Consolata Akeyo Masinde: I have gone to Mbita three times. They told me that they had no way of helping me.

Mr. Patrick Njue: Which office did you go to in Mbita?

Mrs. Consolata Akeyo Masinde: I went to the DC's Office, Mbita. I also went to the police.

Mr. Patrick Njue: You have mentioned that your husband was also beaten up by the same people. Could you clarify that bit? Why was he beaten up?

Mrs. Consolata Akeyo Masinde: The police were just beating up whoever they came across. They did not know that he was my husband. They just saw him and beat him up. Our farm is not far from where we stay. Those who saw him running away told him: "Your wife has already been killed." He was running towards where I was, and he was also beaten up.

Mr. Patrick Njue: You said as a consequence of which he lost how many teeth?

Mrs. Consolata Akeyo Masinde: He lost five teeth.

Mr. Patrick Njue: I have no further questions for you. I am sorry for what you went through. I am sorry for your husband as well. Our Commissioners may now ask you questions.

The Presiding Chair (Commissioner Shava): Leader of Evidence, we think at this point, you may want to give Consolata's husband the opportunity to speak briefly, so as to confirm the events which we have heard.

Mr. Patrick Njue: Thank you for the guidance, Presiding Chair. Should he proceed to take oath?

The Presiding Chair (Commissioner Shava): Yes, please.

(Mr. Michael Wanyama took the oath)

Mr. Patrick Njue: How are you, Mr. Wanyama?

Mr. Michael Wanyama: I am fine.

Mr. Patrick Njue: Please, state your names.

Mr. Patrick Wanyama: My names are Michael Wanyama.

Mr. Patrick Njue: Mr. Wanyama, you have heard what your wife, Consolata, has shared with the Commission this morning. I kindly want to get an account of your experience on that day. Also, tell us in detail what you suffered personally, as you went to rescue your wife.

Mr. Michael Wanyama: I was at the farm tilling the land. I heard some gunshots. I put down my hoe. When I left the farm, I saw people running away. They told me that my wife had been shot. When I arrived at the place where the police officers were, I saw that I could use a path leading to where my wife had been; I was beaten up and thrown to the other side. When they left me, I boarded a motor cycle which took me to Homa Bay Hospital, where I found my wife alive. I said: "God, you have helped me." I called out her name. She responded: "I am alive." I said to her: "If you are alive, it is okay. You have been injured but I do not have any other means. I will just try to help you, so that you can get healed."

When she came home, she was not completely healed. We used to call a doctor to treat her at home. I would bath her and attend to her. There was nobody who helped her.

On my part, I did not know what to do. People told me that in order to get a P3 Form, I needed to have money. I did not have any money. So, I decided to leave it at that and concentrated on getting one for my wife.

I do not have any other issue to add to what I have said.

Mr. Patrick Njue: Let me seek just one clarification. On your part, what would you say are your expectations by way of recommendations to this Commission in the context of what happened to both you and your wife?

Mr. Michael Wanyama: Personally, I did not fill any P3 Form. I just worked on the one for my wife. I thought that we were giving our testimonies, so that you can hear what happened to my wife and to me as a person.

Mr. Patrick Njue: Once again, Mr. Wanyama, as I said to your wife, my empathy is for the suffering that both of you went through. Our Commissioners may ask you questions to clarify your testimony.

The Presiding Chair (Commissioner Shava): Thank you, Leader of Evidence. For purposes of direction, this would be a good time to introduce the Panel.

On my far right is Commissioner Ahmed Sheikh Farah. On my immediate right is Commissioner Ron Slye, who is an International Commissioner from the United States of America. On my far left we have Commissioner Berhanu Dinka, an International Commissioner from Ethiopia. On my immediate left is Commissioner Gertrude Chawatama, an International Commissioner from Zambia. My name is Margaret Shava. I am the Presiding Chair today. I am Kenyan.

Commissioners, I will start with Commissioner Farah.

Commissioner Farah: I have no question for the witness, Presiding Chair.

The Presiding Chair (Commissioner Shava): Commissioner Dinka?

Commissioner Dinka: I have no question for him, Presiding Chair.

Commissioner Chawatama: Thank you very much for your testimony. One thing I am happy about is to hear how your neighbours took charge, came to your rescue and took you to hospital. It is always good when people live in harmony. People might belong to different tribes, or different religions but when a neighbour reaches out to help another person, that is what is called “*Ubuntu*”. That is what differentiates human beings from animals. So, on your behalf, I thank the neighbours who came to your rescue. I only have a few questions to ask you.

I would like to know if there were any other members of your family who were injured, or killed, as a result of the incident that took place in 2008.

Mrs. Consolata Akeyo Masinde: Nobody else was injured. It was only me and my husband who got injured.

Commissioner Chawatama: In your testimony, you mentioned a neighbour who was killed. Do you know the name of your neighbour who was killed?

Mrs. Consolata Akeyo Masinde: The lady was visiting her uncle. Her uncle was my neighbour. They were the ones who helped me. I was with her in hospital. I was discharged. After two weeks, I heard that she died.

Commissioner Chawatama: When you were discharged, did you go back to your old home?

Mrs. Consolata Akeyo Masinde: When I was discharged, I just went back to my house, where I was staying.

Commissioner Chawatama: I would like to hear from you what you found. How were the people around your neighbourhood? Did life just continue for you as usual? What did you find?

Mrs. Consolata Akeyo Masinde: We stay well. They love me. They are my neighbours even now.

Commissioner Chawatama: In just over a year, elections are going to take place again in Kenya. What are some of your thoughts when you hear this?

Mrs. Consolata Akeyo Masinde: I vote all the time. So, I am not worried. I do not think anything will happen to me because of elections.

Commissioner Chawatama: Thank you very much.

The Presiding Chair (Commissioner Shava): Consolata, I just have one question for you. In the statement you recorded with us, which I have here, you said that you were discharged from the hospital before you had recovered because the hospital was full. Do you know why the hospital was full? Was it usually full, or was it an unusual situation? Why was the hospital full at that time?

Mrs. Consolata Akeyo Masinde: The hospital was full because many people were injured. Even when we were in Homa Bay, those who were discharged before us told us that bullets nearly hit them in hospital. So, the hospital was bad. They told me to go home, so that I could be treated from home.

The Presiding Chair (Commissioner Shava): Consolata, what you are telling us is that the reason as to why you were discharged prematurely was because, first of all, there were many people in the hospital who had bullets wounds; secondly, the hospital was not a safe place because there was gunfire even around it. Is that correct?

Mrs. Consolata Akeyo Masinde: They were following people even up to the hospital.

The Presiding Chair (Commissioner Shava): When you say “they” do you mean the police, the army or who?

Mrs. Consolata Akeyo Masinde: I heard that they were policemen. Those who were going outside were saying that the police were chasing them even into the hospital.

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

I would now like to also say to Mr. Wanyama that it is very unfortunate that you were denied P3 Form. That was very unjust. I would like to encourage you to look for that P3 Form even now, so that you can report what happened to you. It is not too late. We will do what we can to assist you.

Thank you both for coming here today, and for your testimony. I have no further questions for you. Leader of Evidence, please, stand down the witnesses and call the next witness.

Mr. Patrick Njue: Hon. Commissioners, the next witness is serialised 8, and his code is Kisumu/16.

(Mr. Jared Otieno Odhiambo took the oath)

Mr. Patrick Njue: Good morning Sir. Kindly, for record purposes, state your full names, where you live and what you do for a living.

Mr. Jared Otieno Odhiambo: I am Jared Otieno Odhiambo. I am a resident of South Nyakach in Nyakach District. I have been in Nyakach since I came from Nakuru and I am a farmer.

Mr. Patrick Njue: You are seated with us this morning following a statement which you recorded with the Commission on the sufferings that you went through in the year 2008. Do you confirm this to be the case?

Mr. Jared Otieno Odhiambo: Yes.

Mr. Patrick Njue: Please, tell us the date and month in so far as you are able to remember and proceed with your testimony.

Mr. Jared Otieno Odhiambo: I went to Nakuru in 1989 as a small businessman. I went on with the business while also doing other projects of welfare; Apollo Network, Nakuru. In 1992 during multi-party, I joined politics. I continued with politics and development projects in Lanet. There were peaceful elections and no other issues. In 1997 we continued with political and development issues. I was the Chairman of Kisumu District Welfare Association for around three years. We continued developing that side of Nakuru. Then there was NARC party and I vied for the seat as councillor but I did not succeed. I came number three among 14 candidates. From there, ODM came in 2002. We tried politics and just continued with my business. In 2007, I was in the presidential candidate's team in Ward 1. We continued with politics, but the presidential elections had

a problem. There was tension in Lanet. I was known as Councillor Japala. I was a very famous person in politics and welfare issues. Before the presidential election results were announced, there were conflicts here and there and people were calling me and asking: "Where are you? There were people who were talking about you in Stem Hotel. You have been listed with Councillor Ely Ochola, Onyango Henga and Lawrence Wasike. So, just try to keep yourself safe where you are." I did not see it as an issue. The presidential results were announced on 29th December and there were conflicts here and there. Every now and then people were calling me. They told me to seek refuge. I asked myself: "Now where do I go? Runda is so bad. The youths have been taken there." They told me: "You are one of the people who are being looked for." I moved from the centre and went to town in a certain hotel. I stayed there and after some time, my wife called me and told me: "There are people who have come twice to look for you but they have not found you. I told them that you have gone to seek refuge." I told her: "I am in a hotel and they cannot get me. I am in Muko Hotel." My wife told me: "Just stay there and do not come back home. I am with the children." The problems were too much in Runda. There was the army and policemen. When they arrived they started chasing those people who had been brought in lorries. When the army went to Runda, people were coming in lorries to attack Lanet and the army did not know. There were about 20 lorries. I tried to inquire about the other side but there was no response. I tried to call my wife but there was no response. I started to walk by foot. There were no people or vehicles on the road. I walked from town to Lanet and saw people by the side of the road in groups of five. I was surprised and at around 6.00 p.m. there were gunshots everywhere and the environment was full of smoke. At Section 58 there was just smoke in the air. I went to the police station. I told them: "I am a certain councillor from this area and if I continue with the journey, I will be attacked. Let me just stay here." I stayed at the police station the whole day. It became dark and that forced me to sleep at that police station. Going to see my family was difficult and I could not get her through the phone. The following morning, on 29th January, 2008, they attacked my place near Nakuru National Park. They went away with my wife and children. Up to date, we have searched for my wife and children but we cannot find them. We have tried our best, but up to date, I have not seen my wife and my three children. That is the problem that I underwent.

Mr. Patrick Njue: I sincerely empathize for the loss of your wife and children, who you say have disappeared to date. I will proceed to ask you a few questions to clarify your testimony before our Commissioners can do the same. You said that you used to receive phone calls. From whom were those calls being made?

Mr. Jared Otieno Odhiambo: The phone calls were coming from the people of Free Area who were just wishing me good luck. They were telling me: "There are people who are mentioning your name in a hotel. Please, take care. I hear your name is being mentioned and the *Mungiki* have been told. You are being mentioned in the hotel." The meetings were being held at Stem Hotel, County Hall and Farmers Inn. That is where people were meeting every evening.

Mr. Patrick Njue: Around 2007, during the campaigns, you said that you were in a Presidential Campaign team. Which team was this?

Mr. Jared Otieno Odhiambo: It was the ODM party.

Mr. Patrick Njue: The people who were after you, after being listed, in your own words, were from which affiliation?

Mr. Jared Otieno Odhiambo: They were from the PNU party.

Mr. Patrick Njue: Were they people that you knew?

Mr. Jared Otieno Odhiambo: Yes, I know them very well.

Mr. Patrick Njue: I take that to mean that you know them even by names.

Mr. Jared Otieno Odhiambo: Yes. I have said before this Commission and can still say that I know them.

Mr. Patrick Njue: I heard you mention them today. Are you comfortable mentioning the names?

Mr. Jared Otieno Odhiambo: Not before the Commissioners, but the statement takers took the names from me.

Mr. Patrick Njue: Have you said that you can mention the names today?

Mr. Jared Otieno Odhiambo: Yes, I can mention the names.

Mr. Presiding Chair (Commissioner Shava): The witness has given us the names in the statement. Let the witness understand that he may name these people in public if he is comfortable doing so, but he is not compelled to do so. So, maybe you can have a side-bow with him and then rephrase the question.

(Mr. Njue consulted with the witness)

Mr. Patrick Njue: Presiding Chair, Commissioners, he has confirmed to me that the names are as they appear on the statement and he wishes to leave it at that.

The Presiding Chair (Commissioner Shava): Okay. That is good enough.

Mr. Patrick Njue: Mr. Otieno, have you subsequently gone back to your hometown in Lanet where you used to live?

Mr. Jared Otieno Odhiambo: I went back in June last year after people had called me. I wrote a statement with the police. They are the people who called me yet they said: "Councillor you have come back, now it is your head." I switched off the phone and went

to record a statement with the police. I always report to the police, but they do not take it seriously. These statements are just written in the OB. There is even one I have here.

Mr. Patrick Njue: What exactly did you find when you went back, especially with regard to your house where you used to live with your family?

Mr. Jared Otieno Odhiambo: When I went to the plot for the first time to look for my family, what surprised me is that I found that all those people who were there had left. I found new people whom I did not know. What also surprised me was my neighbour who was a Kisii. When I went there to ask about what had happened, they told me: "It is a very long story; I cannot tell you at the moment. But it will force you to go back home. It is not all that good; just go back. What we have taken from your place is just this certificate of your elder child." When I spoke to him, his wife was crying. I do not know why she was crying. That is the situation that I got when I went back.

Mr. Patrick Njue: Mr. Otieno, reading from your statement, you say that your wife comes from Mukurweini.

Mr. Jared Otieno Odhiambo: She is from Mukurweini, Nyeri.

Mr. Patrick Njue: Is she a Kikuyu?

Mr. Jared Otieno Odhiambo: Yes, she is a Kikuyu.

Mr. Patrick Njue: Again, reading from your statement and what you have told us, you subsequently called her even during your time when you had sought refuge elsewhere. I am just wondering, within these three years she has not called back?

Mr. Jared Otieno Odhiambo: We have gone to her matrimonial home but we have not found her. We have searched everywhere. I just got married last year and have one child who is one-and-a-half years.

Mr. Patrick Njue: Have you changed your cell phone number?

Mr. Jared Otieno Odhiambo: No, I have not changed my cell phone number.

Mr. Patrick Njue: Mr. Otieno, with the oncoming elections, what are your thoughts having been a person who over the years has been engaged in politics?

Mr. Jared Otieno Odhiambo: It will be very difficult because now politics with such issues have made my family to perish. I do not know whether they were killed and thrown into pit latrines or the National Park. Nothing has been found up to date. It will be very difficult on my side

Mr. Patrick Njue: Lastly, seated with us today, what would be your expectations on the one hand from this Commission and, perhaps, having been a political person for

sometime, what are some of the recommendations you may give to this Commission going forward, that may help in averting matters like those that happened in 2008?

Mr. Jared Otieno Odhiambo: Those who did this to me are known. I would like them to be punished, so that it can be a lesson to other people. Secondly, I would like the Commission not to leave me behind, so that I may know where my family went. Did they die? I have tried from the Government side, but there is nobody who is even helping me. When I went to the plot and found this incident and went to the police, I was told to go to the mortuary and hospitals. There is no help that I can get from the Government. Maybe the Commission can help me. Did they die or where did they go? Ndege buried his family but I do not know whether my family was eaten by wild animals or slaughtered and thrown into pit latrines. The people who died in Nakuru were very many. There is a place called Sewage in Langa Langa which is very big.

Even if somebody is thrown inside, you cannot find him or her. Very many people have been thrown there. Where are my children and wife? I would like the Commission to help me find them. We have tried to go everywhere but we cannot find them. Even the money that was being paid for the IDPs, it is not there in our place. I am the Chairman of IDPs in Nyakach District but the money has not reached us. We have been told that this region is dormant and nothing is coming there; not even a shilling. There are people from Agro-forestry who brought clothes, mattresses and other facilities to me, but the Government has not helped me. I do not think the Government can help me anymore.

Mr. Patrick Njue: What about the recommendations that you would share with us today, that would perhaps help the country or better inform us, as Kenyans, so that we may not go back to what happened in 2008, in your own words?

Mr. Jared Otieno Odhiambo: I am just cultivating at home and I do not have a way forward. I have a wife and young child to take care of. We were used to business and getting my own money. This idea of just begging can be very difficult. Who will I beg from? Who will give me today and tomorrow?

Mr. Patrick Njue: I am not quite sure if you got my last question. In terms of recommendations, as a country, what lessons can we learn and what can you tell Kenyans as you speak here today, so that we may not go back to what happened in 2008?

Mr. Jared Otieno Odhiambo: In this country, people do not do good things to others. There is a lot of impunity everywhere from the Government to the citizens. I was a businessman doing my own things and a little bit of politics as a normal Kenyan. There is nothing I did wrong or said to people. So, the Government should try its best so that this does not recur. Those people should be punished so that it can be a lesson to others.

Mr. Patrick Njue: Thank you, Mr. Otieno for your testimony. I empathize with the loss of your wife and children. It is my hope that someday you will get to find out the truth about their whereabouts. The Commissioners may now ask you questions.

Commissioner Slye: Thank you, Mr. Otieno for your testimony and willingness to come before us to share your story with us and the people in this hall. You, like many people in the recent history of Kenya, have paid the ultimate price for your own political activities with the loss of your family. You mentioned in your statements how, because of this, you are no longer involved in or even interested in politics. I wonder if you could say a little bit more about where you focus your energies now. What do you do to provide for your family? What do you do in terms of your local community given your history of having worked in the political and social service arena?

Mr. Jared Otieno Odhiambo: At the moment I am just at home. We are just doing some small-scale farming. I am also the chairman of the IDPs and still looking after them so that they can get something small. We have not found even a single shilling of the IDP money. We have very many people who have not been paid in this district. If you look at this list, these are people who have not been paid anything. If we can get money, we can improve our livelihoods. This is the list of people who have not gotten even a single shilling.

Commissioner Slye: I apologize if you have mentioned this before and I missed it. Are you currently working with IDPs in trying to assist them?

Mr. Jared Otieno Odhiambo: Yes.

Commissioner Slye: If a young person came to you today and said that she was very interested in improving her country, Kenya, and would like to do that through political activity, what sort of advice would you give to her?

Mr. Jared Otieno Odhiambo: You know in politics there are very many people. It is like business. It would have been better if development was given priority, so that politics can come second. I was the chairman of a self-help group and we have developed at Lanet in Nakuru. There were about 11 self-help groups and people were living quite well. I was one of the people who brought all that development. I think development should be given priority and then some little bit of politics. That can be better.

Commissioner Slye: So, if this person said: "I would like to become an MP or Councillor", what would you say to her? Would you encourage her to do that or to do something else?

Mr. Jared Otieno Odhiambo: You cannot tell someone not to join politics. If it is just back at home, it is okay. I cannot go to vie for an MP or Councillor's seat in those sides of Murang'a or even in Nyeri. That is something very open. It will depend on what kind of politics and where.

Commissioner Slye: There have been recent changes in Kenya, most notably, a new Constitution, which is still in the early stages of its implementation. Does the passage of the new Constitution and other related efforts of reform make you more optimistic about the future of the country and maybe the next elections?

Mr. Jared Otieno Odhiambo: I think things can change now because we have issues like counties. I think now money will not be taken to Nairobi Central. There will be circulation at the county level. I think there could be some kind of hope.

Commissioner Slye: Thank you very much, Mr. Otieno. Again, I am sorry for your loss. I am also sorry that as a result of that loss, your engagement with politics may be last, but I understand the activities you are engaged in. Listening to you speak here, you are engaged in politics at the local and productive level, and that you have found a way to channel your energies in a manner that I hope makes a difference in the actual lives of people within your community.

Thank you. I have no further questions.

Commissioner Dinka: Mr. Odhiambo, thank you very much for your testimony. In our hearings it is very rare – in fact, I do not remember many occasions when we heard about policemen in good light. In this case, when you took refuge in the police station, you spent one night there and the next morning a police officer gave you Kshs500 and sent you on your way. Do you remember the name of that police officer? I think when we hear this kind of thing we should also celebrate that kind of humane act on the part of a police officer. Do you remember his name?

Mr. Jared Otieno Odhiambo: The officer was called Oginga. He told me that he was a regular police officer from Nairobi. They came for reinforcement. He told me: “Just take this Kshs500 and run back to your home.” There was no vehicle on the road and so, it forced me to walk with the Kshs500. About two kilometres on the side of Salgaa, I found a lorry that took me to Kericho. They did not even charge me a single cent. I arrived in Kericho with the Kshs500.

Commissioner Dinka: When you went back to Lanet, you found somebody else in your house. Have you succeeded in getting him out at all or you just left the place?

Mr. Jared Otieno Odhiambo: Those that I found on the plot were all visitors. I found one person in my house and he said that he did not even find a spoon or chair. So, there is nothing I could ask him other than that. He found the house empty and went in to live with his family.

Commissioner Dinka: So, he still lives there?

Mr. Jared Otieno Odhiambo: Yes. I think he is still living in my house.

Commissioner Dinka: First of all, I share your pain and suffering of losing your three daughters and wife on the same day and having not heard from them until now. Have you been in contact with your in-laws and inquired maybe if they know something about it?

Mr. Jared Otieno Odhiambo: We have gone there several times with the elders. One is here with me. They told me to just get married and I remarried last year.

Commissioner Dinka: I fully empathize with you. It is a sad and very tragic loss on your part. I hope that you have started living. I would like to encourage you to continue living and hope for the best for your former wife and three daughters.

Thank you. I have no further questions.

Commissioner Chawatama: Thank you very much for your testimony, taking time to give a statement to the Commission and agreeing to come to testify before us this morning.

(The witness broke down)

The Presiding Chair (Commissioner Shava): Let the witness take his time. We will proceed when he is ready to do so. Please, do not rush him.

Mr. Patrick Njue: Mr. Otieno says that he is ready to proceed.

Commissioner Chawatama: Thank you, Sir. If at any time you wish to stop and take a break, please, inform the Leader of Evidence. We appreciate what you are going through right now. The loss of lives is not like the loss of a shirt or a pair of trousers that can be replaced. We are so sorry for your loss. You mentioned that in the neighbourhood where you lived, you lived with people who were Kisii, Luo and Kikuyu. How did you live with your neighbours?

Mr. Jared Otieno Odhiambo: We had no problem with the neighbours. There was one Kisii and another widow who was a Luo. The Luos were two and the other people were Kikuyus. We were just staying well and did not have any issues or conflicts with them.

Commissioner Chawatama: What would you say were the differences between yourself--- are you Kikuyu?

Mr. Jared Otieno Odhiambo: No, I am a Luo.

Commissioner Chawatama: What did you see as the difference between the Luos, the Kisiis and the Kikuyus as you were living together?

Mr. Jared Otieno Odhiambo: We were living in the same plot. There were no issues. This has all been brought about by politics after the results of the elections when the name of the winning presidential candidate was announced. "Now we have the Kamba, Kisii and the Luhya. The Luos should leave at once." That is when the conflict came about. They would come to the plot and when they found a Luo staying in a Kikuyu plot, all his property would be taken out and burnt. If they were Luhyias living in a Luo plot or

in another plot, the whole plot would be burnt together with all the property. That is what was happening.

Commissioner Chawatama: When you say it was politics, was it the difference in opinions or views or was it politicians?

Mr. Jared Otieno Odhiambo: It was a difference in political opinions and not the politicians. It is the political issues that brought all this after the announcement of the election results for the presidential candidate. That is when it was ODM versus the PNU. The people who were in the PNU were being counted to be the Kamba, Luhya and the Kisii. On the side of the ODM, they were being counted as mostly the Nandis and the Luos. These were the people who were being counted to be on the side of the ODM. So, it was ODM versus the PNU.

Commissioner Chawatama: I do not know whether this was done, but for the record, could you, please, give us the names of your wife and the children that you were talking about this morning?

Mr. Jared Otieno Odhiambo: My wife was called Lucy Nyaega Otieno. First born was Dorcila Atieno. The second born was Mercy Awuor. The third born was Esther Akelo.

Commissioner Chawatama: Commissioner Dinka already asked you a question related to the police. When you went to the police station, how many people were there? What was happening at that particular police station?

Mr. Jared Otieno Odhiambo: I hid in a police station in Section 58. I did not find my people there. However, when I went to the Central Police Station I found very many people; children and women. There were two or three policemen. I tried to explain my issues to the police, but they told me to go to the mortuary or to the hospital to look for my people. I was so discouraged. Here I was so desperate looking for my people and the police officers could not assist me. We checked the Occurrence Book and the crime office, but I could not trace them. So, I decided to go to mortuary, but there was no assistance.

Commissioner Chawatama: At the Central Police Station, you say there were many people. What were some of the things that you heard people talk about?

Mr. Jared Otieno Odhiambo: They had run there for help after the attack. That is why very many of them went to the police station.

Commissioner Chawatama: Did you see anybody mistreated by the police officers?

Mr. Jared Otieno Odhiambo: There were many people in that police station. I did not bother much to listen to what other people were saying. I had no strength to do so. I was only interested in my issue. As I said, there were many people at Central Police, Nakuru.

Commissioner Chawatama: When you finally got home and you spoke to your neighbour and you saw your neighbour's wife crying, what went on in your mind? What were your thoughts?

Mr. Jared Otieno Odhiambo: My neighbour was in Nakuru when I went to look for my people. I saw her husband talking to the Kisiis. I saw the wife crying. He was telling me: "Just go back home. This place is still not safe. Just go back home. Leave that issue alone. It is a long story. I do not want you to be seen here. Just go back home."

So, when the wife was crying I was surprised. I wondered what had happened. Maybe something bad had happened in the plot. Did they kill my people?

Commissioner Chawatama: Did you get a chance to ask her why she was crying?

Mr. Jared Otieno Odhiambo: We could not speak because the husband was telling me: "You are a famous person here and you are a very prominent person who the *Mungiki* are looking for. Do not stay here. Just go back home. The place is not safe."

So, I could not ask him a lot of questions. We could not go into a lot of interrogations.

Commissioner Chawatama: You have appeared before us and you have spoken. Usually when one person speaks, that person opens a door for many others who for so many reasons did not give us a statement nor are they here today. What would your message be to other husbands and wives who have been unable to trace their spouses or children? Where have you drawn your strength from and what would be your words to encourage such people?

Mr. Jared Otieno Odhiambo: I think I was born a leader. When I went to Lanet I was a very young man and I was very sharp. I used to speak in every meeting. I would speak in development meetings. Now the elders told me that I would just look after the upper Lanet on issues pertaining to welfare and development. They told me that they would be together with me because they saw that I was strong. People like me who lost their spouses and children should just come before the Commission because I do not think the Government can help many people. Ndege lost 11 people and yet the Government does not even know him. So, people should come before the Commission and the Commission should hold their hands and not leave them. I do not see any other assistance. The Commission should help them.

Commissioner Chawatama: I am really honoured to be able to hold your hand this day. I join my fellow Commissioner Prof. Ronald Slye in encouraging you to continue with politics. That is your passion and your calling. When people take up leadership, there is always a price to pay and you have paid dearly. However, for the sake of so many others who looked up to you in the past and who will continue to look up to you in future, I encourage you to carry on with your passion which is politics to help people and to lead people. I wish you all the best in your life and blessing upon you and your new family.

Thank you.

The Presiding Chair (Commissioner Shava): Mr. Jared Otieno Odhiambo, thank you for coming and speaking with us today. Your story is particularly painful because as you have said, whereas other people have lost their family members and buried them, you have not even been able to know what happened to your family members. You are tortured by this lack of information. Are they alive? If they are not alive, where are their bodies? You do not know anything. You do not have any information. This is one of the things that a truth commission such as this one is designed to do. So, we will investigate and try and see if we can help you to uncover the truth about this so that you can at least be at peace with the knowledge and be able to carry on with your new life. We thank you for coming and speaking on behalf of those who do not have the same courage to do so. You have described how it was like in those few days. Your testimony will permanently be part of Kenya's history. It is a good lesson for us so that we do not repeat the same mistake. Thank you very much.

Leader of Evidence, please, stand down the witness and call the next witness.

(Ms. Caroline Auma Aboka took the oath)

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

Ms. Caroline Auma Aboka: I am Caroline Auma Aboka. I live in Ugunja in Siaya District. I am a business person.

Mr. Patrick Njue: You are seated with us this morning following a statement which you recorded with the Commission on the killing of your husband in 2008.

Ms. Caroline Auma Aboka: It was 31st December, 2007.

Mr. Patrick Njue: Please, take us through your testimony and tell us the events of that day.

Ms. Caroline Auma Aboka: It was in 2007. By that time we were in Kisii. That is where my husband was working as an Administration Police Officer. He was in an AP camp in Jogoo in Kisii area.

He would mostly come back home in December. On 28th December, 2007, we travelled back home upcountry. He had a very good relationship with the youth because he was still young. So, he was very sociable with the youth at home. On 1st January, they always have a New Year celebration whereby they organize some celebration for the youth and hold talks with the youth. So, he was very much close to the youth.

As I said earlier, on 20th we travelled back home. On 25th, they had a celebration at home at the nearby market. At almost 1.00 a.m. they returned home leaving them celebrating.

When it was almost 4.00 a.m. he told me, “Carol I have received a call from Kisii from our station commander that I should go back to work because there is some duty to be performed during the election time.” So, the officers who had gone home were told to go back to their duties. So, I told him: “Fine, just go back because you have to take care of your job.” So, on 26th in the morning, he left back for Kisii. By bad luck his phone was stolen during the celebration. He travelled on 26th in the morning. He used his friend’s phone to communicate with me back home. He told me that he had arrived on that day. When people were waiting for the results of the election to be announced, he called me and told me that he would come before 1st January. He also called the youth at home and told them that he would come back during the New Year’s celebration. So, we were expecting him. On 31st he called me in the morning and we talked. He told me: “Carol, maybe I will come, but I may arrive home late because there are some duties that have come up.” There was one person who they had to escort to Kericho. My husband had a sister in Kericho who was working at the KWS. By that time, the election results had delayed and the country was in a tensed mood. People were just waiting to see who would be the next President. Everywhere there was tension. So, Kericho was very tense compared to other parts of the country.

He went to the office so that he could be given leave because he had not completed his leave. When he reached there, he was told to escort that man to Kericho, so that he could take his family with him. This man was working for the Safaricom company and his family was in Kericho. When this man saw that there was so much tension in Kericho and his family was there, he decided to go for them. So, my husband was among those officers who were to escort this man to Kericho. They were three officers. One of the officers was known as Mr. Peter Githinji from Kenya Police. They travelled together to Kericho.

He called me to say that he was going to Kericho. He told me that maybe he would come back with Julie, the sister, because she also intended to come back home. I told him there was no problem. So, he said he would come, but that he would reach home late. He called me at around 10.00 a.m. I called Julie to tell her that my husband was on the way to Kericho and as they had communicated she should be ready to be picked up. I was just at home waiting for him to call me, but he never called. I told my mother that David was on the way and he would arrive either at night or early in the morning on 1st January.

It was almost 7.00 p.m. I was just at home. I was in my house and my step mother was in the other house. I went there and found her with my father-in-law. He was standing outside the house and communicating on phone. I never bothered to find out whom he was talking to. I just entered the house because he was asking me what time it was. When I entered the house, I found my mother-in-law crying. So, I asked her what was wrong. She never told me anything; she was crying. So, I did not understand what was happening at that time.

My brother-in-law who is called Okong’o told me: “Carol, we have received information that David has been killed”. An elder brother-in-law told him to keep quiet. He kept quiet because he had been told to do so. By that time my father-in-law who was talking on the

phone outside the house told my mother-in-law that Abonyo had been killed. So, I asked her: “What are you saying?” I was in shock. I could not say anything. I did not know whether what they were saying was true. I was really confused. By that time I had no phone. I was so stressed because I could not call anybody. People started yelling at home. I found myself getting out and going to the homes of some youth in the village. I went to those young men and found myself just crying. I did not know where I was going. I found that sometimes I was talking to myself. Behind me people were yelling. I wondered if it was true that David had been killed.

I do not know how I reached home. I just found myself on a bicycle. When I reached home people had stopped crying. I never understood whether it was really true that David had died or not.

(The witness broke down and wept)

After that night the next day was 1st January, 2008. At almost 10.00 a.m. those people who were in church came home mourning. We had a funeral at home. There was no way I could follow up the issue because there was tension everywhere. So, I just stayed at home for the first several days. I remember it was on Sunday when I told my father-in-law that I could not continue staying there. I wanted to travel to Kisii. They told me that it was not easy for me to go to Kisii because there was a lot of tension in the country.

I moved out of that home on Sunday. I got a lift to Ambira Headquarters. I requested the commander of the station whether they could put a signal for me at Kisii Station, so that I could communicate with them to get information. He tried to call them, but at that time the network was down. So, they told me that they had heard about my story and that they would try as much as possible to get the right information for me. They told me to go back home. I travelled back home.

On the same day, Sunday at almost 6.00 p.m., I was called by Inspector Laurence Owino. He told me: “Mama Diana, we have got some information for you. Just prepare yourself. Tomorrow we have a programme at Kisumu. So, just make sure that tomorrow at 8.00 a.m. we will get you at Ugunja, so that we can travel to Kisii.” I told my mother-in-law and my father-in-law that since I had succeeded in finding means of transport I would travel to Kisii. So, I left home with my brother-in-law; Sylvester Okoth, the chairman of the youth group; Mr. Eric Otieno Oyube and my sister-in-law, Ms. Maureen. We travelled from home. We were three people who travelled up to Ugunja. I met Owino. Something that shocked me when I reached Ugunja was that the Land Cruiser that they had was the one that my husband mostly used. When I saw that Land Cruiser and those people who were working with him, I noted that my husband was not with them. I noted that my husband was not accompanying these people. It occurred to me that David was dead. I boarded the vehicle. We travelled to Kisumu. We ate lunch, but those people finished their mission late. We stayed here in Kisumu a bit. We left Kisumu at around 4.00 p.m. and headed for Kisii. On reaching the gate, I saw some speakers and benches next to my house. That was when I realized it was true that my husband was dead.

When I entered that house, I found that all the clothes had been hung there as usual. The house was not in good order as usual. The house is normally tidy because we always have some visitors who come there. That is when I realized that David was really dead. They told me that this was just something normal and that I should try to relax. I told them I could not spend the night there. I told them to take me to the mortuary, so that I could see the body. They told me that they could not take me to the mortuary at that time because it was a bit late. I told them I could not stay and if it was possible they should just take me to the mortuary. That inspector told me that they would try and talk to them, but that at that time it was a bit late. So, they took me to the mortuary. He was in a mortuary called Hema. I have never gone to a mortuary before and that was my first time to enter one. I had heard before that sometimes when you go to a mortuary you find bodies on the floor, but I never saw anything of the sort. I told them I wanted to see David Abonyo. That is when they opened the second drawer and pulled it out. When they pulled it out what I saw is something I will never forget until today. When the drawer was opened I saw my husband---

(The witness broke down and wept)

The Presiding Chair (Commissioner Shava): As we give the witness time to compose herself, I think at this time, it would be important for us to re-state some of the rules of these proceedings. Flash photography while the witness is speaking is not permitted in these proceedings. We have also said that when a witness is giving testimony we will listen in silence and respect the testimony of the witness. So, we will ask those of us in this hall who are not observing that rule to kindly do so. If they have other things to discuss that can be done outside. If the witness would like a longer break we can definitely accommodate that. If she would like to proceed, we can proceed at her own time. Please, do not rush her.

Mr. Patrick Njue: The witness says she is ready to proceed.

The Presiding Chair (Commissioner Shava): Please, proceed.

Ms. Caroline Auma Aboka: I know death is part of life and all of us one day will die. I have seen some corpses. But what I saw was a bit painful to me than what I usually see or hear. My husband was really badly injured. He used to wear jeans and T shirts. Those were his attires. When the drawer was pulled open, he had no shirt or vest. He was bare chested. He had no clothes. The injuries that he sustained made us want to know how people beat him. I heard that the Kalenjin people have arrows. It seems that maybe he was killed by arrows. Maybe he was also hurt using stones and pangas. He had a lot of cuts on his body. The body appeared to be deformed. The body was fresh, but there were injuries all over his body. My husband died a very painful death. That is something I never expected to happen to him. That is the first thing I saw when the drawer was pulled out. My colleagues carried me back home. The next day in the morning I felt that what I saw was not the right thing. I felt that maybe I should go back and see his body well, so that I can find out how they killed my husband. So, I told the officer that I had become strong and that I would like to see my husband again. It seems that I never saw him well.

Then they told me that I had gone to see him at night, but that they would take me there that day. So, that morning they took me back to the mortuary. I decided to be strong as I had prayed to God to be strong. So, I tried very much. When we reached the mortuary again, they pulled the drawer again. I decided to touch the body and noted that the body was very cold. I decided to shake his leg. I noticed that puss was coming out of his whole body. I said: "Oh God, please assist me so that I can see the state that my husband is in."

When I looked at the upper part of the head I noted that somebody had stabbed him with a spear. There was a very big hole there and some white stuff was coming out. There was also some blood stains. That is when I lost consciousness again. Then they took me back to the camp. That was my second day to see a dead body; that one of my husband. We started organizing to transport his body home.

We transported it on Friday. Post mortem was supposed to be done in Kisii. It was not done in Kisii, but in Kisumu. We travelled on Friday, 11th January to Kisumu. The post mortem was carried out in the New Nyanza Hospital. From there, we proceeded home. We reached home at around 6.00 p.m. I called my sister, Josphine Audi, who had accompanied me there. She used to visit me. She knew my husband. She knew how much we loved each other. I told her that David has been killed and I do not know if I will make it alone. So, when she came to Kisumu we met here and all the medical procedures, including the post mortem, were done. She used to help me very much. So, we reached home at around 6.00 p.m. When we arrived at Ugunja we tried to see how the situation would be because my husband was a man of the people. So, people were calling to inquire where we were. When we reached Ugunja we met bicycle riders and women walking there. I was with the driver and saw people yelling. We reached home. The body was lifted from the vehicle and taken to the house.

I buried my lover, David Abonyo Odhiambo on 12th January. It is true, he died. Sometimes I dream that I am with him; I am walking with him; maybe we are talking to each other, but I have never seen him again. That is the pain he left with me. He left me with four children, a son and three daughters. The last born is now four years old. That is what I have to say.

Mr. Patrick Njue: Thank you, *Mama Auma* for your testimony. I must first begin by expressing my empathy for the loss of David. I also wish to acknowledge and salute you for remaining steadfast with your children albeit the difficulty of having lost your husband and father to them. I also want to thank your sister, Josephine, who accompanied you. She stood by you ever since and even before. May God bless her.

Mr. Patrick Njue: Allow me to ask you a few questions, to clarify your testimony and then the Commissioners will proceed to do the same. My first question is: When you learnt of the news of the killing of David, you were told he was killed by whom?

Ms. Caroline Auma Aboka: Those people were killed in an area called Loreti in Bureti but as I said earlier, all the roads were blocked. The vehicles were not moving. When they moved from Kisii, they reached a place called--- Before, people were just passing

through that area and there was nobody who was killed there. The Safaricom man was never killed; it was the two soldiers who were killed. My husband was a Luo and he used to talk to them. The Luo, Kalenjin and the Kikuyu were neighbours. Therefore, there was that friction between; the Orange Democratic Movement (ODM) and the Party of National Unity (PNU). He was trying to talk to the people. The road was blocked and he was telling the people that he was a Luo; he was called Odhiambo and was in ODM. So, they reached Loreti Market and the road was blocked.

Very many people were there and they wanted to know everybody by their identity cards. Since those people were soldiers, then they were unlucky. They said that they were looking for the people of Kibaki. In Loreti, it was just mob justice that was going on. They were killed on the spot. The soldiers had pistols but they never killed anybody. They fired in the air to scare the crowd, so that they could escape. However, the crowd knew that those people did not have bullets and that was why they attacked; the Safaricom person threw some money outside and those people then started picking this money. This Safaricom person lay on the ground and pretended that he was dead. When the situation calmed down, some people came to save him; he told them that he was still alive but those two other people had been killed. That was how I was told they had died.

Mr. Patrick Njue: *Mama Auma Aboka*, again reading from your statement, I notice you have made efforts to follow up the employer of your husband for his benefits. Tell us a little of that.

Ms. Caroline Auma Aboka: I am continuing with that one. It is a bit hard. Sometimes, I go to Nairobi and I am told that his file cannot be found. They tell me to go home and they would call me. I have tried to follow up those dues. The Public Trustee gave me some money for my children but the others have not done so. I was in Nairobi recently and they just told me that Government offices are never in a hurry. They told me that if they get my money, they will call me; the process is ongoing.

Mr. Patrick Njue: Again, reading from your statement, it is indicated that subsequently, your husband's killers were made to face the law. Tell us a little again on this.

Ms. Caroline Auma Aboka: Some intelligence officer came to my home to write a statement. After a short time, I was called to the Kericho High Court where I gave evidence on how it was. We saw two people there. One was Robert Kiplangat and Aloice Kipng'eno Rotich. They were the ones who killed my husband in the company of others, but those two were found with some evidence to implicate them, like the phone of the Safaricom man. Safaricom tracked the phone to those people. The other one was a politician or a campaigner of an ODM aspirant. It seemed like he had promised the youth that he would give them money, but when he did not capture the seat, he never wanted to pay them. That was when that man killed him. That was when they got that pistol. My husband died with his pistol in his hand, but the one of the Kikuyu officer was not found. When he got the pistol, he went back and shot and killed the parliamentary aspirant. That was how those men were found. One was found with a phone and the other with a pistol, but the others were not arrested. It was only those two who were arrested because they

were found with the pistols. We saw them in the court but we never heard how the case ended.

Mr. Patrick Njue: Now, my last question. When you saw those two gentlemen, who were accused of killing your husband, what went through your mind?

Ms. Caroline Auma Aboka: I was really eager to see them because I was asking who they were. My intuition told me that one of them was the culprit, even before I was told that - but I could not identify who was Robert and who was Kipng'eno; but I told my sister-in-law, Julie, that one of them was the one who had killed my husband. I wanted to reach them and ask them questions on how my person was killed; unfortunately I never reached them. I felt very bad when I saw them. They were just polite youths who did not need to kill my husband.

Mr. Patrick Njue: Caroline, if I heard you right, you said to date you, do not know the outcome of that case. Is that so?

Ms. Caroline Auma Aboka: The case in Kericho was slated for 31st July. It was in the newspapers. In fact, I have that newspaper; I have photocopied it. I took it to the statement takers in Siaya. I have a document which I gave them about that case and the judge was Justice Mary Ang'awa. It came to a time when those people were sentenced to hang. They were given 14 days to appeal. I am told the President gave them amnesty; I do not know more about the case.

Mr. Patrick Njue: Again, reading from your statement, you have said that you have sought the intervention of your husband's employer in trying to get you a job. Was that rightly recorded and if so, tell us more on this?

Ms. Caroline Auma Aboka: My husband was employed in 1989. I got married to him in 1987, before he was employed. We met after school. He was jobless and we went on with our ordinary lives at home before he was employed. I hear that if somebody has not worked for the Government for more than ten years, he cannot be compensated. So, he had not worked for the Government for ten years. When he died, my last born was one year old and the first one was in Class Two. I asked myself how I could manage without him, since he was the eldest son in his family. I did not have any in-law whom I could depend on. I had no job. I started this business in order to take care of my children. After the burial, I went to Kericho Police Station and talked to the OCPD. I asked him how they could assist me. He told me that there was no way he could help me because they were not employing people. I went to the DC and asked for employment, even if it was a cleaning job. The DC told me that he could not help me. I talked to the OCPD again and asked him how I could go to Nairobi, and he gave me a letter to take to Mr. Mbugua. I have tried many times to reach him but I was told that he had travelled; I left the letter there. I decided to go to Embakasi Training College, but I did not succeed in seeing any officer. I was told I could not see the person in charge. Then I went back home; I never succeeded in getting any person to assist me.

Mr. Patrick Njue: Auma, when you talk of “Mbugua”, for the benefit of the public and the international Commissioners, do you mean Kinuthia Mbugua, the AP Commandant?

Ms. Caroline Auma Aboka: Yes.

Mr. Patrick Njue: What were the contents of the letter that you took to him?

Ms. Caroline Auma Aboka: I have a copy of that letter. It says: “This is the wife of the late David Odhiambo.” I have the original at home but I have a photocopy with me here. I went to Embakasi but I failed to reach him. Even the soldiers asked me what problem I had. They knew me very well.

Mr. Patrick Njue: Do you have a copy of the letter and any other document in your possession?

Ms. Caroline Auma Aboka: I have some of the documents here.

Mr. Patrick Njue: Could you share them with us?

(The Documents were handed over to the Leader of Evidence)

Mr. Patrick Njue: As you hand them over to us, just tell us what they are, so that we may appreciate them for our record purposes.

Ms. Caroline Auma Aboka: This is a letter allowing me to go and see the Commandant. This is the burial permit we were given when I was burying my husband. This is the bond I was given when I went to the Kericho Court. This is a police abstract showing how the police officers were killed, the vehicle they were in, those people who killed them and where in the Occurrence Book (OB) it was recorded. This is the death certificate that I was given in Bomet. I tried in Siaya but I was told that it could only be obtained from where a person was killed. This is a condolence message from Mr. Mbugua, the AP Commandant, whom I did not manage to reach. I have another condolence from the OCPD, Kisii, This is the post-mortem form that we were given at the New Nyanza Hospital. This is the identity card of my husband. This is a newspaper cutting of 2009 from the *Daily Nation* newspaper, page 7. This is a cutting from *The Standard*. It was on Friday, 2009. These are the pictures of how the funeral was conducted. This is my sister and me testifying to the mourners. This is my husband being taken to the grave and these are my in-laws and children. These are my children. These are the soldiers from Siaya who buried him, and this is how the coffin was lowered into the grave. That is how he was buried; these are the only documents that I have for presentation.

Mr. Patrick Njue: Do you have the original copies or you would like us to make photocopies and then return these documents to you?

Ms. Caroline Auma Aboka: I have already photocopied them. I have the originals. They can remain here.

Mr. Patrick Njue: Presiding Chair, you can admit the said documents.

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

Mr. Patrick Njue: *Mama* Auma, lastly, as you sit with us today, what are you telling the Commission? What are your expectations?

Ms. Caroline Auma Aboka: The problem that I have is about my children. I have come to believe that death is compulsory to everybody. People have told me that even if my husband was not killed, he still could have died. I know that I will also die but the only problem I have, are my children. At times, I sit down and ask myself how I will make my children go to school, because I have no way and life is not good without education. The Government is not helping to solve people's problems. So, I am asking the Commission to help me with how my children can go to school. Sometimes, I think it was better if I had not given birth. I ask the Commission to talk to the Government to educate my children. My mother-in-law was depending on my husband because he was the first born in the family. I have a problem; it is only that I am persevering. I ask the Commission to help because I went through this, and there will be another victim tomorrow. This is because I feel that such a thing may occur again. Help us out with how elections can be conducted and when the results come out, they meet the expectations of the citizens. My husband died because of the elections; if the elections were not there, he could not have died. I could not be a widow. My children could not be fatherless. I would still be having my husband. The people we want voted in are not voted in. You, as the Commission, should find a way to make sure that the rights of the common *mwananchi* are taken into account. That is on my behalf personally, as Caroline.

Mr. Patrick Njue: Thank you, Caroline. I will say that your testimony provides a new twist to the kind of evidence and testimonies that we have been hearing. They have mainly centered on other individuals and citizens and not necessarily police officers; but today, it is clear that there were also police officers who bore the brunt of the violence, and who lost their lives and who had families like your case. So, as you speak today, you are the voice of many families who lost their loved ones, who were serving in the forces. Mine is to express, once again, my sincere condolences for your loss; may the good Lord continue to give you strength to forge on with your family; all the best. Commissioners and Presiding Chair, you can now go on.

Commissioner Chawatama: Caroline, I wish to thank you for your testimony, and for finding time to appear before this Commission. It is very clear from your testimony that your husband was a good person. He was not only your husband but was your friend; you said that you lost your lover. From your testimony, it is clear that David loved the youth and encouraged them. It is clear that David, like the David of the Bible, was born a leader. So, I understand your loss. It was a great loss and I am so sorry for it. It was not only your loss but also the loss of your children, who should have been given an opportunity for their father to counsel them. It is sad for me to sit here and listen to your testimony and the loss of such a young life. I have one or two questions to ask. Do you know of any other women who lost their husbands, who worked as police officers?

Ms. Caroline Auma Aboka: The only woman I know is the wife to Peter Githinji; unfortunately, I have never met her. I hear that Githinji was in the Kenya Police and my husband was in the Administration Police (AP). I knew him but I do not know the wife. At the time when the body of her husband was to be collected, she was expectant and about to deliver. I know the father to Githinji; when I went to Embakasi, there was a lady who I used to spend nights at her home. She was called *Mama* Diana; she used to tell me that so many policemen had died, and that others had gone to Homa Bay and never came back. Some women tried to find their dead husbands but in vain. I am lucky since I found mine and buried him. We have others who died but their bodies have never been found. I cannot know who is a widow.

Commissioner Chawatama: In the documents that you gave us, you have not given us a document to indicate what was paid to you as part payment for your late husband. Do you recall what was paid to you? Do you have a document of acknowledgement of what was paid to you?

Ms. Caroline Auma Aboka: The documents are there but I never knew that they would be required; I have them.

Commissioner Chawatama: I think the documents will be helpful. I would also acknowledge your friend who has accompanied you today and who stood by you when you called her and told her you would not be able to make it because of the tragedy that occurred, and she came to your help. It is lives such as your friend's, that we ought to celebrate; in the midst of all the tragedies and the bad things that happen in life, there is always one person, or two people, who come to the rescue of others. As your friend, we celebrate her life and thank her for joining you during your time of need. I have no further questions.

Commissioner Slye: Caroline, I join my colleagues in expressing my sorrow. I particularly appreciate your presence here, which has served to celebrate the life of David, who was a very strong inspiration to you and many other people. He was someone who was trying to help a family when he lost his life. I want to ask you about the court case and what you experienced. Did the two individuals who were arrested for your husband's death, at any time come to the court proceedings to describe what they did?

Ms. Caroline Auma Aboka: I never talked to them because I was not allowed to question them, but the people who killed him were supporters of ODM. It was like the *askaris* were on the PNU side. The policemen were suspected to be Kibaki's supporters and the killers, of Raila.

Commissioner Slye: Is that something that you learnt from the court case, in particular from what they said, or did you learn that from someone else or somewhere else?

Ms. Caroline Auma Aboka: It was known that the country was full of tension as far as politics were concerned. They were charged with killing two police officers and one had

a pistol and a phone of the two dead officers. They were not charged that they belonged to ODM or PNU; it was because of the items that they had.

Commissioner Slye: Did your presence and participation in the court case help you to understand and come to terms with the loss of your husband?

Ms. Caroline Auma Aboka: It did not help me at all. It was of no use to me. It may have been a lesson to other Kenyans, but to me, it did not help me at all because it did not return my husband to me. They are not looking after my welfare. Even if those people are killed, my husband will not come back. I better, could have lost everything but not my husband. I am trying to be like David because I am a Christian. I am told of how Jesus Christ died for our sins. If David died for Kenya, then he died for peace. If through the death of my husband peace will come to Kenya, then that is fine.

Commissioner Slye: Thank you Caroline. I think as we sit here and listen to your story, we hear and see your pain; we have listened to the stories of many other Kenyans, who have suffered similarly and lost loved ones. It is my understanding that it is the hope of most Kenyans, as you said, that those people who died might not have died in vain. The loss you and others have suffered will lead this country to redouble its efforts to make sure that no one has to suffer the way you have suffered and no one will experience the sort of loss that you have experienced. So, we join you in that hope. I thank you for having the courage to come here and to take the time out of your schedule and struggles, to come here and share your story with us – a story of both pain and hope. I salute you for testifying before us.

The Presiding Chair (Commissioner Shava): Caroline, I do not have any question to ask you. You have spoken to us very clearly and you have presented us with documents. I think your story is very clear. When I listen to you, I just hear a terrible tragedy. I can see even now how much pain you are feeling; it shows you loved your husband very much and life has been very difficult trying to figure out how you are going to educate and support all your children alone. But what encourages me about your story is the way you have been able to come to terms with death; which, as you have correctly said, is coming to all of us.

We have heard what you have asked. You have said that you are not sure what has happened with the court case and that is something we can help you on. We can obtain for you a record of what has happened with that case so that, at least, you can know what has happened. You have said that you would have wanted to speak with those people who murdered your husband when he was on duty doing his work, so that you can know about the last moments of your husband. That is also something which is so important in putting to rest, some of this pain and allowing it to go on. You have made a recommendation which we shall take forward that, where officers die in the course of duty, the Government must take responsibility on how their families are going to carry on with life without them.

Our report will not be coming out tomorrow, but it will come out at the end of our term. So, we cannot promise you that this is something we will do immediately, but it is definitely a recommendation that we are going to make strongly because, as you have said, it is not only your husband who died; there are women out there suffering like you, with their children. This is something we think is very sad and very important.

We want to assure you that we are going to treat this issue very seriously.

Thank you for coming and speaking to us today. What my fellow Commissioners have said are also my own sentiments.

Thank you. Leader of Evidence, please turn down the witness.

We shall at this juncture, take 15 minutes health break to resume again before we break for lunch.

[The Commission adjourned for break at 11.53 a.m.]

[The Commission resumed at 12.15 p.m.]

The Presiding Chair (Commissioner Shava): Welcome back to the session. Please, let us take our seats. Session Clerk, please, swear-in the next witness.

(Mr. Mark Achoka Nyongesa took the oath)

Mr. Patrick Njue: Hon. Commissioners, this is witness No.096; code 9, Kisumu. Good afternoon sir?

Mr. Mark Achoka Nyongesa: Good afternoon.

Mr. Patrick Njue: Kindly, for the record purposes, once again, state your full names, where you live and what you are doing at the moment.

Mr. Mark Achoka Nyongesa: My name is Mark Achoka Nyongesa. I study at the Kenya Institute of Management.

Mr. Patrick Njue: Mark, where do you live?

Mr. Mark Achoka Nyongesa: I live in Manyatta.

Mr. Patrick Njue: Mark, you are seated with us this afternoon, following a statement which you recorded with this Commission on what happened to you sometime in the year 2007. Do you confirm that to be the case?

Mr. Mark Achoka Nyongesa: Yes. It was on 30th December, 2007 while I was in my room. As I was going out, I saw men loitering and making noise. So, I tried to find out

what was happening. My father is a Luhya and my mother is a Meru. At that time, my father was not around; so, I was to protect my mum because men were carrying everything they could.

My mother owned a salon and given that she came from a tribe that the people were attacking, as she was a Meru and the rest were Luos--- I decided to go and check what might have happened to her salon. I walked some distance of about 300 metres as the salon was about 500 metres from the house. Just 300 metres away, as I was walking towards the salon, following a backstreet route - I did not want to follow the main road---

I met with that crowd whose members were shouting “police police”. So, I turned and started running back and the person who was behind me was shot dead. I heard him say hey! And I saw him drop on the ground. So, I kept running and they shot at me. The bullet came from the back and passed through my abdomen. I was determined to go back home because my mum could not do without anyone, I staggered to my place.

When my mum saw me, she fainted because she thought I was dead. I was wearing a white shirt and it had turned to red. My younger sister got stranded and started crying. I tried to be strong and told her to go and call our neighbour who was a nurse. The nurse came and she took a *lesso* cloth and tied me across the stomach. So, I could not go to the hospital by that time. I was forced to wait until the right time.

When my mother came back to her senses, she called a friend who was a police officer to assist us because we could not walk alone at that time due to the danger that was there. Unfortunately, I fainted too. I woke up and found myself in hospital.

Mr. Patrick Njue: Thank you Mark for your testimony. I will ask you a few questions to clarify on the same. How old are you?

Mr. Mark Achoka Nyongesa: I am 23 years old.

Mr. Patrick Njue: On that day, 30th December, 2007 while at Manyatta, how was the situation then; days before and particularly on that day, in terms of security?

Mr. Mark Achoka Nyongesa: The security was okay and there was no problem; so, what brought the shooting was the election of that year.

Mr. Patrick Njue: To the best of your recollection, on the 30th of December, 2007, that very day, how was the situation?

Mr. Mark Achoka Nyongesa: The situation was very bad because houses were being burnt and the shops being looted, people being shot and others dying. The most painful thing was that when they came to collect the body, they could mix the person who had been shot in the leg with dead bodies. So, you could not know if they were going to kill him ahead or where they were taking him.

Thank you.

Mr. Patrick Njue: Mark, I salute your bravery. You took it upon yourself to go and find out how your mother and her salon were going on; whether they were affected or not. But in spite of these, did you not fear for your life as the situation was dense?

Mr. Mark Achoka Nyongesa: I just decided to go because there was none who could stand by my mother as my father was not around. But before I reached, I was forced to turn back because the situation turned bad. I thought the situation was, at least, fair but it was worse.

Mr. Patrick Njue: Again, Mark, here you were and you found people coming back shouting: “Police! Police!” Did you see the police?

Mr. Mark Achoka Nyongesa: I saw the police. They were in a Land Cruiser and they were wearing blue shirts; the same as the police uniform. One was putting on blue shirt and the police combat jacket. The vehicle they were having is the usual police Land Cruiser.

Mr. Patrick Njue: You said after you went home, First Aid was administered on you. You could not go to hospital then because of the prevailing security situation?

Mr. Mark Achoka Nyongesa: Yes. It was because of the security situation as nobody could dare take me out as my mother could not go out of home either. All my neighbours had locked themselves in their houses. She had to call for the police themselves to come to help her and they came loaded with guns. You can imagine how the situation was. So, they are the ones who took me to hospital.

Mr. Patrick Njue: Subsequently, upon getting treatment, were you issued with any treatment note?

Mr. Mark Achoka Nyongesa: I was stitched and I could not continue staying in hospital because I was told that it was a surgical problem. If I did, I could be infected with other diseases. So, I was stitched and discharged. Even today I visit them.

Mr. Patrick Njue: Do you have any treatment documents, especially those ones showing the need for you to continue seeking further medical attention?

Mr. Mark Achoka Nyongesa: Yes, I have the records. The stitch has not healed and I do not know why it has refused to heal. You can imagine four years down the line and you are still being treated. I have the documents.

Mr. Patrick Njue: Do you have them as we sit here?

Mr. Mark Achoka Nyongesa: No. I had given them out when we were being questioned. But I can organize and get the original copies.

Mr. Patrick Njue: Indeed, if you had given them earlier, I am sure they could be in our records. We will look for them. Better still, I appreciate the fact that you said there is need for you to furnish us with such copies. Please do so.

Mr. Mark Achoka Nyongesa: It is okay.

Mr. Patrick Njue: Have you and your family tried to make a follow up on your case with any authority?

Mr. Mark Achoka Nyongesa: Yes. In fact, I wrote a letter to the Attorney-General and I received a reply telling me to provide the P3 and everything I had in connection with this matter. I sent those records to them but I have never heard anything from them.

Mr. Patrick Njue: Are these the documents that you have shared with this Commission?

Mr. Mark Achoka Nyongesa: Yes.

Mr. Patrick Njue: Mark, as you sit with us today, what are your expectations from this Commission?

Mr. Mark Achoka Nyongesa: I believe in the Commission. According to what I heard through the Commission, we got to see what happened during the Wagalla Massacre. If they did something to the Wagalla Massacre victims, then they will help us. I believe they will do something.

Thank you.

Mr. Patrick Njue: If I could draw you into a little more detail on that, when you say: “You believe the Commission will do something”, what would that be that you want the Commission to do for you, just going a little bit further?

Mr. Mark Achoka Nyongesa: I have told you that I still have pains. So, through the Commission--- concerning the policemen shooting and everything else, for example, the police who was seen on camera shooting a civilian and then later he was set free because there was not enough evidence--- if the man was pointing a gun at the other man, which further evidence did they want?

If I say that I have found them and I know them and if they are found, how will people know where they will be taken? The other one was seen shooting a live bullet and he was set free. You do not even know how the deceased’s family is doing.

Concerning my situation, I am a student and I still need treatment. The Commission can help me where possible.

Thank you.

Mr. Patrick Njue: Thank you Mark. You have partly covered my next question, but we are looking into the next general election which is coming next year. As you speak today, you are speaking to Kenyans. What message do you have to tell Kenyans as a youth? What would you want to see during the elections; having been a victim of the Post Election Violence of 2007?

Mr. Mark Achoka Nyongesa: All I can say to the youth is that they should not injure each other during the elections. Let us maintain peace because what happened should never be repeated.

Thank you.

Mr. Patrick Njue: I too agree with you as a fellow youth. I think the message you should be preaching is that we should embrace peace and be positive in our dealings.

Lastly, you said that you are a student at Kenya Institute of Management (KIM); what are you studying?

Mr. Mark Achoka Nyongesa: I am a Purchasing and Supplies student.

Mr. Patrick Njue: I wish you the best, again, in your medication and your subsequent life. Let the injury not deter you from achieving your dream. You are a young man and certainly, you are headed for great things. I take it that your survival can only be a manifest of this fact that you are headed for a great destiny. All the best, Mark.

The Commissioners may now ask you questions. Presiding Chair, please!

Commissioner Slye: Thank you Mark, for coming here and testifying before this Commission. You have mentioned that you are still in pain. I wanted to make sure and study a little more about that. I thought you suggested that you still had stitches in your body. Is that correct?

Mr. Mark Achoka Nyongesa: No. The stitches I have are of a long time and the threads were removed. But it affected me.

(Mr. Nyongesa showed the Commissioners the affected body part)

This other part does not function any more. You can even insert a nail and I do not feel any pain; it is as if this part of the body is dead.

Thank you.

Commissioner Slye: You go to see the doctor once a week. Is that correct?

Mr. Mark Achoka Nyongesa: Yes. I normally go on Wednesdays.

Commissioner Slye: Do you go to the doctor to examine you or to do something to help your pain or help you with the problem?

Mr. Mark Achoka Nyongesa: He gave a lot of Vastam which is a drug. So, everyday, after I have finished bathing, I apply it. I go there every Wednesday so that the doctor can see how I am doing after applying the drug.

Commissioner Slye: Do you have medical insurance cover or how are you able to pay for medical care?

Mr. Mark Achoka Nyongesa: At first, when I was stitched with the threads, the doctor charged me. But after he saw that I was going there regularly, he decided to be giving me the drug in a bunch. The day when I go to visit him is when he charges me.

Commissioner Slye: So, every week when you go to the doctor, you are charged for that visit but at the moment, you or your mother is able to pay for that; is that right?

Mr. Mark Achoka Nyongesa: Yes. She can afford it. That is the reason why she always told me that it is better if we take the bunch of drugs than visiting the doctor because she will not afford. But when I take them in a bunch, she manages.

Commissioner Slye: Thank you very much, Mark. You were shot by the police and you have said that they were in a Land Rover, and that there was a crowd they were shooting into. Before that, as you went out to your normal day-to-day life, what was your impression of the police? What were your thoughts about the police before you were shot?

Mr. Mark Achoka Nyongesa: Before I was shot, I always knew the police to be killers. But I did not know that they could kill the way I saw.

Commissioner Slye: So, has your impression about the police changed because of that incident or it is the same?

Mr. Mark Achoka Nyongesa: It has changed a lot. After I was shot for a period of three years, I was up to date. Sometimes, I do have nightmares and I do see them in the dreams. I see them like devils and I wake up from the dream. The other time, my cousin told me that she wanted to be a police woman and then, I asked her why she wanted to be one. She told me that the police kill the people they hate and she hated somebody; so, she wanted to be a police woman. You can see how the killings are becoming many, done by the police.

Commissioner Slye: Would you like to meet the police officers that shot you?

Mr. Mark Achoka Nyongesa: I do not know. I think I would really want to see them.

Commissioner Slye: Is there anything that you would like to either say to them or ask them?

Mr. Mark Achoka Nyongesa: Why did they have to kill and injure many people when they are also human beings? That is the only question.

Thank you.

Commissioner Slye: Thank you Mark for your testimony. I know that from what you have said, and what we have read in your file, you have been trying to find out who those police officers were. You have also been attempting to achieve some form of justice with respect to what happened to you. We wish you the best and we hope that through our work, even in a small way, we can assist.

Thank you very much, once again.

Commissioner Dinka: Thank you very much Mark, for your testimony. It is very sad for a young man like you to have been shot by the police without committing any crime, while you were on your errand for your mother. I feel very sorry for you. I hope that, as a young man, you will get over it and grow to your full maturity and realize your full potential.

I have one or two questions for you. Did the bullet that hit you exit your body or did it lodge itself in your stomach?

Mr. Mark Achoka Nyongesa: It exited!

Commissioner Dinka: When the police took you to see the doctor, it was just cleaning up the wound and stitching it, not taking out the bullet?

Mr. Mark Achoka Nyongesa: Yes.

Commissioner Dinka: You had been wounded in the stomach and you were taken to hospital and they discharged you the same day; why did they do so?

Mr. Mark Achoka Nyongesa: I was taken to Aga Khan Hospital and patients there had different problems; some were suffering from malaria and others typhoid. So the doctor told me that I could be infected with other diseases in the ward. I went home and came back, so that the stitches could be removed. Because I was stitched, those stitches had to be removed.

Commissioner Dinka: So, you went home and came back. How many days did it take to have the stitches removed?

Mr. Mark Achoka Nyongesa: I came back after two days, and then it was removed. He stitched me again. I was still in secondary school and I was studying far away. So, I had

to go with it and immediately we closed the school, I came back. That was when those stitches were removed.

Commissioner Dinka: So, the doctor at the hospital gave you a discharge note which indicates all these treatments?

Mr. Mark Achoka Nyongesa: Yes.

Commissioner Dinka: Okay. There is something I see on your written statement and I want you to explain it to me. You were shot on 30th December 2007 but you recorded your statement at the police station on 28th March, 2008; three months later. Why was that?

Mr. Mark Achoka Nyongesa: At that time, I was in school and in Form Four. So, I had to come back for that. I came when we had some little break. That was when I came and those stitches were removed.

Thank you.

Commissioner Dinka: So, you were in Form Four at that time?

Mr. Mark Achoka Nyongesa: Yes.

Commissioner Dinka: How long after you were shot did you go back to your school?

Mr. Mark Achoka Nyongesa: I had to go. I was even walking with clutches.

Commissioner Dinka: After how many days after you were shot?

Mr. Mark Achoka Nyongesa: It was in February 2008.

Commissioner Dinka: About a month later?

Mr. Mark Achoka Nyongesa: Yes.

Commissioner Dinka: So, you stayed home for a month; you broke off from your school?

Mr. Mark Achoka Nyongesa: Yes.

Commissioner Dinka: What does the doctor tell you your current problems are, as a consequence of the shooting? Is it that your organs in your body were affected? What does he tell you?

Mr. Mark Achoka Nyongesa: He does not tell me anything. He just gives me drugs. When I ask him, he only uses some funny names.

Commissioner Dinka: Has he written it down or given you some kind of certification?

Mr. Mark Achoka Nyongesa: Yes.

Commissioner Dinka: I would encourage you to present the copy to the Leader of Evidence on that.

Thank you very much, and I wish you good luck.

Commissioner Chawatama: I join the other Commissioners in thanking you for your testimony. It is the police who shot you. How were you received at the police station when you went in March 2008 to make a statement and obtain a P3?

Mr. Mark Achoka Nyongesa: They were not very rude. At that time, they did not know if they were being investigated for the same because the previous year, they had killed. So, they were trying to play cool, hence they did everything for me. I paid for the P3.

Commissioner Chawatama: Thereafter, you have never been intimidated by the police?

Mr. Mark Achoka Nyongesa: I have never been intimidated.

Commissioner Chawatama: The Leader of Evidence asked you a question relating to a message to the youth, and your response was on maintenance of peace. As we draw close to elections, what is your message to the leaders of this nation?

Mr. Mark Achoka Nyongesa: The leaders should be good leaders and people should not elect somebody because of money. Why elect somebody who is going to kill you? Why should you vote and the vote will not help you? So, for one to be a leader, he must be elected. It is good to know the person you want to elect as your leader and know why you are voting for him. You should not vote for him because he has given you money.

Commissioner Chawatama: At your age, I am sure you will vote next year. I do not know if you voted last time. What are some of the attributes; what would you be looking for in the person that you will give your vote to?

Mr. Mark Achoka Nyongesa: I still have not thought about voting because of what happened. But for me to vote this time, it will really be complicated. I will vote for peace.

Thank you.

Commissioner Chawatama: I hear you. You will vote for peace and all the rest will flow from that. Before the general elections, I am sure you will know. We have friends from National Cohesion and Integration Commission here and I would encourage you to get in touch and to keep in touch with us. Who knows, maybe one day, you could be our ambassador for peace.

Thank you.

The Presiding Chair (Commissioner Shava): Mark, thank you very much for taking the time and the trouble to make the statement to the Commission and to come and talk to us today. You are a student, so you have other things which are important to your life that occupy your time. But it was important enough for you to come and share your experience and your views with us. We very much value the things that you have told us today. I have no questions for you. I just join my fellow Commissioners to empathize for what has happened to you and congratulate you for the attitude that you have adopted so that as you have said, the things that have happened in this country, the things that we saw in the post-election violence and which directly affected your life, should not happen to anybody in this country again.

Thank you very much.

Mr. Mark Achoka Nyongesa: Thank you.

The Presiding Chair (Commissioner Shava): Leader of Evidence, you may stand down the witness. We have now come to the end of this morning session. We will reconvene at 2.15 p.m. for the afternoon session. Thank you all very much for your patience.

[The Commission adjourned for lunch at 1.05 p.m.]

[The Commission resumed at 2.50 p.m.]

The Presiding Chair (Commissioner Shava): Welcome back to this afternoon session. Let us take our seats. Session clerk, please, swear in our first witness for this afternoon!

(Hon. Shakeel Shabir took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome to the Commission. For the record, kindly state your names and your current occupation.

Hon. Shakeel Shabir Ahmed: My name is Shakeel Shabir Ahmed. I have the honour of being the Member of Parliament for Kisumu Town East Constituency.

The Commission Secretary (Ms. Nyaundi): Thank you. Commissioners, for the record, this witness has on his own volition volunteered to appear before the Commission and I pray that the Commission records his application.

The Presiding Chair (Commissioner Shava): It will be put on record. Thank you very much for coming, *mheshimiwa*. We are ready to listen to you.

The Commission Secretary (Ms. Nyaundi): So, thank you very much, Hon. Shakeel. You have informed us that you would like, very briefly, to make a presentation touching

on this region which with a focus on the events of 2007/2008 that happened in this region?

Hon. Shakeel Shabir Ahmed: Yes, I would.

The Commission Secretary (Ms. Nyaundi): So, I invite you to make that presentation.

Hon. Shakeel Shabir Ahmed: At the outset, on behalf of Kisumu Town as a whole and my colleagues; hon. Olago Aluoch, hon. Fred Outa and hon. Anyang'-Nyong', I wish to welcome you to this county. Your honours, I have a presentation to make and I shall make it quite brief.

Since 1963 when we got Independence, we in Kisumu and Nyanza say we have never been independent. We have not had Uhuru. We have been isolated, marginalized by the Governments of his Excellency President Jomo Kenyatta, His Excellency President Daniel arap Moi, and during the first term of His Excellency, President Mwai Kibaki. We are very glad that His Excellency President Kibaki, saw it fit to go into a Coalition Government with us, ODM, despite the fact that we won the election, but we wanted development. In 1969, due to political differences, a number of Kisumu residents were shot dead during the visit of the Late His Excellency President Mzee Jomo Kenyatta. We seemed to get redemption in the year 2000-2005 but the development was rejected. Whatever developments were meant to come to Kisumu, were unfortunately ending up in Central Kenya but we saw that as one Kenya. But we realized that we were not one Kenya in December 2007. When the election results were announced, 87 people in Kisumu Town were shot dead. I have with me, a list of 87 people here who died. They were shot like dogs and no compensation has ever been given to us. If I may read them for the sake of recognition but I will give the copy to the clerk--- I have the opportunity of recognizing the following---

(Prolonged loud wailing in the hall)

The Commission Secretary (Ms. Nyaundi): Chair, with your kind permission, I am requesting that we be given time to assist those who are crying. Maybe, they can be taken to a place where they can get assistance.

Hon. Shakeel Shabir Ahmed: I think this is our expression of sorrow.

The Presiding Chair (Commissioner Shava): Thank you, Leader of Evidence. I hope our counselor is assisting those who are in distress. Regional co-ordinator, is there some assistance to be given to those in distress? I am addressing our Regional Co-ordinator, Mr. Babu Kala. Are those in distress being assisted? I think assistance has been rendered. You can continue, Leader of Evidence!

Hon. Shakeel Shabir Ahmed: Your honours, I want to beg your indulgence. This is the only time these people will be recognized. They are: Daniel Okoko, Daniel Otieno Orege, Kalpod Otieno, Jason Mark Okong'o, Antony Airo, Charles Odhiambo Obando, Richard

Otieno Aruma, Eric Owino, Aggrey Otieno Oloo Olao, Jackton Matende, Michael Omondi Oyugi, Meshack Ochieng' Odhiambo, James Orindo Washington, Jason Omondi Owuor, George Odhiambo, George Otieno Odire, Paul Ochieng' Omondi, Victor Onyango and Nicodemo Omondi.

The others are: Felix Otieno Owino, Walter Jalango Odera, Dan Ochieng' Ochonyo, Vincent Onyango Ogola, Richard Ouma Opiyo, Joseph Otieno Agala, Samson Ochieng, Bernard Otieno, Benson Ochieng' Oboro, George Otieno Obada, Stephen Omondi, Shem Oliech, Barbra Teresa, Elvin Ouma, Michael Segelo, Shem Omolo, Lazaro Ouma, Julius Ochieng' Otieno, Dennis Ochieng', Victor Gor, Elisha Olando, William Kendo, Quinta Akinyi Agweno, Irene Akinyi, Harun Omondi Oluoch, Henry Opondo and Andrew Onyango.

They also include: Kevin Odhiambo, Maurine Agayo, Bernard Okoth, Irene Akinyi, Kennedy Omondi Bindumbi, Tom Mboya Obwanga, Kevin Otieno, Paul Ochieng', Edwin Ouma, Michael Oyugi, Jason Omondi, Felix Otieno Owino, David Ochieng', Eliud Odhiambo, Boniface Otieno, Irene Otieno, Boaz Butem Sirianga, Judith Nyariaka, George Odhiambo Oduor, George Odhiambo Outa, Fredrick Ochieng' Sika, George William Onyango, Simon Juma Chacha, William Kendo, Tom Mbaya, Kennedy Omondi, Wycliff Odhiambo Ogelo and Ruth Akinyi Ouma.

These are the dead and there are seven names missing where the bodies were taken away before we were able to identify them.

Your Honours, I have photographs over here which I shall give you but the issue I want to raise to you is a photograph of one of my own team. This man died in my hands. He was amputated and he then tried to commit suicide. This man died in our hands. Among these others, there were many who died in hospital where we were taking them. I was the chairman of the New Nyanza Hospital and many died on the stretcher. I remember one, I will never forget in my life, who held on to me, a young child and asked me: "*Mheshimiwa, kwa nini tunakufa?*" Why were we shot like this? We tried to keep him alive but there was no blood. Why were we shot like this?

Your Honours, emotional as it is, I was in a meeting at the time when I saw people being shot. The meeting was with the Provincial Security team and we were also members of the Provincial Security team and the District Security team. We asked them why they were using live bullets. They agreed that they would no longer use live bullets. That was after we had talked to the Americans and that, you read in the Star yesterday. The US Ambassador told me personally that he had agreed with the Commissioner of Police that there was not going to be "shoot to kill" orders. But if you read from Wikileaks, which I did not know at the time, you will see that the Commissioner refused. At the meeting in Nyanza Club when they agreed not to shoot to kill with the PC and the others, they announced this on the police radio. They said no more shooting to kill. During the meeting, after about 45 minutes, my team called me and they are even here; that, there were two people shot in Nyalenda, one critical and the other dead. So, I asked the gentlemen to take the one who was critical to hospital and bring the corpse to where we

had a meeting. I showed them to the PC and the PPO, OCPD and asked them; “ but you told us you have already given the order.”

God is my witness. I was then told in frustration that those people were not taking orders from them. I was shocked to hear that police officers were not taking order from the PPO. I wondered where they could be taking orders from. Later on, I learnt that they were taking orders from the Commissioner of Police and the Commandant of APs. We later demonstrated demanding that they stop shooting at us. Hon. Olago and I led the demonstration. We took the demonstrators away from the city centre. To us, it was a service for Kenya and the people of Kisumu. We were constantly in touch with the police. We went on the Ring Road. At one stage the same police officers were following us. They made sure that we were not doing anything bad. Your honours, perhaps, God was with me that day because somebody was shot as I was watching. I was standing outside my car and the police were behind me. A lady wearing a police traffic uniform fired a teargas straight at my head. This is not a story. They had decided they would shoot teargas canisters at those Members of Parliament of ODM who were leading demonstration. This one missed my head. But our Minister Charity Ngilu was not so lucky. I was arrested together with Olago Alouch. We were the only two Members of Parliament in the whole country arrested. Were we the only ones demonstrating? Why did they target Kisumu? For a long time, people of Kisumu have really suffered under this Government. Anything that goes wrong in this country is blamed on people of Kisumu. We were arrested by Ugandans because I know all the police officers in Kisumu. These gentlemen could not even speak Kiswahili language. We were sorry there was looting in this town. However, we did not expect them to treat us like animals. We told them that we did not loot anything in town. We knew there were containers coming from Eldoret. They were parked near the cemetery. People were buying televisions for Kshs5,000. So, everything that was looted was taken there. Were we the ones who organized that? No. That is the gist of my presentation to you.

Hon. Commissioners, I thank you for giving me the opportunity to share with you my information. It is the same information I shared with Kenya Human Rights Commission, British Embassy, American Embassy, Chinese Embassy, Aljazeera, BBC, Voice of America and CNN. I am proud some of this information will be used against the Commissioner of Police at the ICC. This is the price he will have to pay because the buck stops with him.

Hon. Commissioners, the last thing I want to say is that we also have IDPs. Our customs, *Wajaluo*, you might find it odd that a Mhindi is talking about Luo customs, is that IDPs are assimilated within the family. So, we do not have IDP camps. That does not mean that we do not have IDPs. We have IDPs. I am shocked that people are talking about IDPs everywhere else, but not about Kisumu. Since this is TJRC, I want to take this opportunity on behalf of the residents of Kisumu to apologize to any of our businessmen of the Kisii origin, Kamba and Wakikuyu, who lost businesses in my constituency. We tried our best to prevail upon them not to leave, but they left. So, in the spirit of reconciliation, I beg that they come back and continue with their businesses.

On behalf of the other business people, I am told they will present their views to you. Since they are not in my constituency, I do not feel it appropriate to hold brief for them because they did not ask me to do so.

With those remarks, I want to thank the Commission for giving me this opportunity. I will present my full report to you in writing.

Thank you very much.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Shakeel. I just want to confirm that you want to submit all these documents that I see you with at a later date?

Hon. Shakeel Shabir Ahmed: Yes.

The Commission Secretary (Ms. Nyaundi): Now, you have said that you were arrested around the time of the crisis after the elections; were you charged in court?

Hon. Shakeel Shabir Ahmed: I was hidden at Railway Police Station by Kisumu residents. I want to thank my constituents. They all came to police station to demand for my release. About 500 of them came and surrounded the police station. I think that convinced the PPO to release us. We were to go to court but they withdrew all charges. They had no charges; so, I was not charged in any court.

The Commission Secretary (Ms. Nyaundi): You said that you were arrested by Ugandans. What uniform were those people wearing?

Hon. Shakeel Shabir Ahmed: They were wearing ill fittings of the APs and the police. They could not communicate in Kiswahili language. Even whatever they were wearing could not fit them. That was how we knew they were not Kenyan police officers. As you know, there were many of them in Kisumu. We arrested a few of them and took them to the police station. However, they disappeared in the thin air.

The Commission Secretary (Ms. Nyaundi): Thank you once again. I would like to thank you for volunteering to come before the Commission.

I would just reiterate that the documents and evidence that you have given the Commission are very important. My colleagues will be seeing you immediately after the Commissioners ask you some questions. We ask that you allow us to retain copies that may assist us. Other witnesses from this region will continue giving us evidence as we wait for your memorandum.

The Presiding Chair (Commissioner Shava): Thank you very much, *Mheshimiwa*. We really empathise with your situation. We can see that the things you are talking about are still very painful for you and for the people you represent in Parliament.

The Commission wants to thank you for coming forward and again, to empathise with your plight. We will play our part to do what we can. The Commissioners have no questions for you at this stage. We would await formal presentation of your memorandum at a later date. At which point in time, you can always come back and speak before this Commission again. So, we just want to thank you very much for coming forward.

Leader of Evidence, please, usher in the next witness. Please, stand him down.

Commissioners, we are now inviting Witnesses Nos.14, 15 and 16 on the schedule. They will all be making a single presentation.

(Dr. Odhiambo Olel took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you *Daktari* and welcome to the Commission. I request that for purposes of the record, you, please, state your name, where you reside and your current occupation.

Dr. Odhiambo Olel: Thank you. My full name is Dr. Odhiambo Olel. I am doctor physician. I have worked for a long time with the Government of Kenya and Local Government of Kenya. Currently, I am doing private practice in Kisumu, in Kibuye area, Sifa House, Mission Road.

The Commission Secretary (Ms. Nyaundi): Thank you very much. I have here with me, a statement that you have recorded with the Commission in which you speak about the period which you were tortured at Nyayo House and detained. It also shows various times that you have been to court. I now invite you to present it to the Commission.

Dr. Odhiambo Olel: First of all, I wish to take this opportunity to thank hon. Commissioners---

(A Mobile phone rung)

The Commission Secretary (Ms. Nyaundi): Sorry, *Daktari*, there is a telephone ringing. Please, switch it off. I hope we all have our cell phones off so as not to disrupt the proceedings.

Dr. Odhiambo Olel: I take this opportunity to thank the Commission for allowing me to appear before it. It is an honour to appear before you and share my bad experiences. I have visited dirty police cells four times. First, I was arrested in Nairobi in October 1971. I spent some few days in Kamkunji Police Station.

Again, I was arrested in May. I became a guest of police officers at Kisumu Central Police Station in May. The third time I was arrested was a bad one. I was arrested in Kisumu and spent many days in police cells. That time I was taken to Nairobi. In 1991, I was arrested in connection with the activities of the famous *Saba Saba* day.

Let us start with Nairobi when I was arrested. In 1971, we, as Kenyan doctors, engaged ourselves with the Government through the Minister for Health over our salaries. Our salaries were so low that we decided to strike. I was arrested and taken to Kamkunji Police Station. I was the first doctor to be arrested. We had agreed to treat serious cases like those of traffic accidents in accordance with our hypocritical oath. We declined to treat minor cases.

On the eve of our strike, I had the previous day performed about 8 operations which were minor. I carried out ward rounds. I saw my patients and prescribed relevant medications. Little did I know that the police were trailing me. They arrested me without a warrant of arrest. I pleaded with them to allow me drive my vehicle, but they refused. They told me they could take me back home after interrogation. This was a big lie. So, when we were taken to the CID headquarters, we met a Mr. Nderi who was the Director of the CID at that time. Dr. Sahota and I presented our case to Mr. Nderi. Mr. Nderi, the Director of CID was sympathetic to our case. He picked up his telephone and talked to Mr. Okelo, the then Minister for Health. Mr. Okelo, on the other line, talked to the Attorney-General, Hon. Njonjo. They were instructed to take me to Kamkunji Police Station. Dr. Sahota was released. That was discriminatory. I took some exception to that. I was taken to Kamkunji Police Station. I arrived around 2.00 p.m. The police cells were not at that time full. But by midnight, they were fully packed. We were packed like sardine fish in a tin. It was like a bag or sack with anybody that you could name, thieves, prostitutes and it was terrible. It was the worst experience in my life. You could not even answer a short call. I was interrogated in the morning. During interrogation, I learnt that other doctors had also been picked up. I spent three days in the cell. On a Monday, I was produced before a magistrate in a High court in Nairobi.

Fortunately, the Secretary-General of COTU, Mr. Denis Akumu stated categorically that he would bring the whole COTU fraternity behind the doctors because they were mistreated and working under very difficult conditions and that their salaries could not be at par with other civil servants.

As I said, I have four bad experiences. The first one was in Kisumu when I had left the Central Government and, at that time, I was working as the Medical Officer of Health there. I worked for Kisumu Municipality as the Medical Officer of Health for 15 years. In May 1983, these bad visitors came to my house at midnight and without warrant of arrest. They searched my house thinking that I was one of those publishing *Mpatanishi* and *Mapambano* magazines. I was arrested and taken in for interrogation. I spent a whole night being interrogated. They suspected me of being one of those people who published clandestinely those pamphlets to destabilize the legally elected Government of *Mtufuku Rais Moi*. I was transferred from Kisumu police cells to Majengo police cells where again I spent three days and apparently finding that the police had no substantive reason to charge me before a legal court of law, I was released and I continued with my work.

Again, on 20th March, 1987, police officers from Nairobi came for me at around 11.30 a.m. in my office. They did not have a warrant of arrest, but they searched my office. The town hall or Kisumu Municipality headquarters was surrounded by many plain clothes policemen. I knew some of them because I had worked there for long. Police officers from Nairobi identified themselves and asked me to accompany them to my house because they could not get anything from my office to implicate me with publication of those magazines. They told me I was under arrest. They searched thoroughly my house. Unfortunately, at that time my mother was sick. She was staying with us. So, you could imagine how pathetic the situation was. My mother, wife and children were affected by this search. After a thorough search, they did not find anything to show that I had anything to do with those publications. Later on, they asked me to accompany them to an unknown destination. So, I bade farewell to my wife. I told her not to worry very much because God was with me. I told her not to fear because I would overcome all these challenges.

They drove me down to Railways Police Station where we arrived about 2.30 p.m. They kept me there until 10.00 p.m. I was collected from there by three police officers. I did not know where they had come from. They advised me to lie on the floor of the Land Rover. I was blindfolded.

Since I had worked in Kisumu for a long time, I knew I was being driven around Kisumu streets. We stopped at the Central Police Station. I was still in the same position. From there, they collected Mr. George Odidi Kwanya. As he was thrown into Land Rover he was blindfolded. I did not immediately realize that he was George Odidi Kwanya because both us were blindfolded. He was asking them in Kiswahili Language where he could step because I was already lying on the floor. I only knew him when he was asking them those questions. He was forced into the Land Rover and told to lie next to me. He was also blindfolded. We were strictly warned not to talk to each other. So, we had our long journey. Again, knowing the Nairobi- Kisumu Road very well, we knew when we reached Nyamasaria, Ahero and Awasi. We knew even when they were fuelling the vehicle at Kericho. After that stopover, the journey resumed in earnest. We went through Nakuru, Gilgil and Sigona. We entered Nairobi City through the Aga Khan Hospital area. So, I could not exactly know where we were coming from. My mind was a bit distorted. From there, I did not know where we were being taken. They stopped the vehicle and we were told to come out. My hands were held. I came out still blindfolded. I was then pushed into a dimly lit cell and I was told to feel at home and make myself comfortable. How could I have felt at home in such an environment? At about 7.00 p.m., they gave me a cup of tea. I was hungry and miserable. After immediately taking that tea, they came back again for me. When they came, they were two officers; I was blind folded again. I was put into a lift. I did not know where I was. First, I thought we were in *Nyati House*, but later on, I realized I was on 22nd Floor of *Nyayo House*.

At that point, my hands were held. I walked again two stairs up and was ushered into a room. I was still blindfolded. It is at that point that my eyes were un-blinded and I found myself with a group of police officers in plain clothes. They started questioning me

saying that I was a doctor and I have been pretending to be a very good doctor but I had to tell them the truth about all my clandestine activities.

The Presiding Chair (Commissioner Shava): Excuse me. You will have to pose so that we get the correct interpretation of the word clandestine.

The Commission Secretary (Ms. Patricia Nyaundi): The witness will have to repeat that so that we get the correct interpretation.

Dr. Olel Odhiambo: They told me that I was involved in underground activities to overthrow the legally elected Government of Hon. Daniel arap Moi. They told me that I would talk whether I liked it or not. I told them I was not that kind of a person and that I was a doctor who was struggling to treat people. For a long time, I had been doing that and I had not had any adverse information on myself. It did not take long. They told me to remove my clothes and remain stark naked. They commanded me to do it very quickly. There is nothing I could do. I removed my clothes and was told to do 14 press-ups which were not possible. I tried to do about three or four but I fell down. They then started beating me with pieces of a broken coffee table. They kicked me and told me that I had to talk. They told me to tell them about my activities; mine and Jaramogi Oginga Odinga and "...some of your *Mwakenya* colleagues that you know we have jailed." I did not have a ready answer because I did not. They continued to beat me until I fell down. I was weeping and crying but they had no mercy whatsoever. They beat me like a snake. It was just like someone who wanted to kill an animal. After that, they blindfolded me. I did not have all my clothes on. I only had my underwear. I was taken downstairs using the same lift. When we went back, I was pushed to the cell.

By the time I went back, the cell contained water which went up to the level of my feet. I sat there throughout the night. There was no food. The following day, the same exercise was repeated. First, they tried to persuade me and told me that if I admitted, they could release me. They told me that they had released Mr. Othieng?? Othigo and Mr. Ogutu Andang'o and there was no reason why they could not release me because I had truly helped people; I had digressed and I was misled. However, I told them categorically that I did not know about *Mwakenya*. I was beaten again and taken back to the cell. The third day, I was not taken back but I was given milk only. On the fourth day, they took me for the same exercise. What surprised me is that they became slightly friendly and I learnt later when I was in prison that Jaramogi Odinga had made a scathing statement that attacked the Government of Hon. Moi leading to arbitrary arrests. They were arresting doctors who did not have bad history or any involvement in politics. I understand that the international media like the BBC caught it up, the Human Rights Organization and some friends we had in London too. I was informed later because the fifth day, I was removed from the water logged cell and taken to a dry cell. I searched my mind and remembered that I was already in cell for about six days and my relatives had not seen me. My wife was not even allowed to come and see me. I was kept *incommunicado*. Thinking in my little mind with the little law which I had learnt while attending some court sessions, I told myself that I should accept it so that I take issues with the Government. I was

incommunicado and in Nyayo House for 17 days when one good morning, I was told that they would take me to court.

At the time I had not accepted, I got beatings. They told me that if I accepted, they would not give me the seven years detention and since I was avoiding detention, I accepted. I had denied categorically through an oath. My oath was the hypocritical oath which I had taken as a doctor. I was produced in court around 6.30 p.m. The court took a long time when the Deputy Prosecutor, Mr. Justice Chunga, had a field day. After being prosecuted, a Principal Magistrate known as Buch was sentenced to five years and this was about 8.00 p.m. I arrived in Kamiti in the big Lorry No.1 with all the prison warders who were nine or ten. After we arrived, they shaved me clean and gave me their *kunguru*, their uniform and took me to Block E. I started my prison life and found my other colleagues. After the second and third day, I appealed against the sentence and conviction. I fought for 18 years and won the case. The conviction sentence was quashed in 1993.

Life in Block E was very horrible. The lights are on throughout the day. We were like birds in a cage. We were not allowed at all to come out of the cells. We would only come out to go and empty the small buckets that we were using. Each one was given one. There was horrible food in Kamiti and if you love your dog, you cannot give it to the dog. The beans we ate had weevils and the porridge was very bad. More often than not, we had diarrhoea and other bad illnesses. The bins we had been given to relieve ourselves were most of the time full. However, we could only be allowed to go and get them poured into the toilets---

The Commission Secretary (Ms. Patricia Nyaundi): Thank you, Chair. I think when you talked about bins for putting your waste the translator translated it as beans. I think he should get it right.

Dr. Olel Odhiambo: Those were the bucket like bins but very small ones, translator. They were just like the potties we use for our children. Sometimes, we could use the buckets and when it was time to eat, there was no soap to wash our hands. We were only allowed two hours in a day to go out. During weekdays, we were not allowed to come out at all. So, you can imagine our condition with the potties. On weekends, *uji* was brought about 7.00 am and lunch about 8.00 p.m. At 9.00 p.m., they would bring you supper. They expected us to eat and if we did not, one would be punished and told that they had refused to eat prison food. You can imagine that, sometimes, your potty was filled with faeces and food was brought there and you were expected to eat it. It was that kind of life. I spent part of my prison sentence in Eldoret prison where I was transferred. I was there for eight months but since I had appealed against my sentence and conviction, I was taken back to Kamiti. I was lucky, through lawyer, Dr. John Khaminwa, I managed to have my five years reduced to three years which I served and came out in 5th April, 1989.

That is my story on Kamiti and about my third arrest. The fourth arrest was after I had been released and was carrying out my private practice. That was with regard to the *saba saba* issue. During *saba saba*, most of us were arrested. Veteran Trade Unionist Denis Akumu, the doyen of multi-party politics, Jaramogi Odinga were arrested in Nairobi and

taken to Siaya. Imagine, his wife comes from Siaya and he was taken there in a pyjama. Veteran politician Achieng Oneko and many others were arrested. I also happen to have been arrested and spent five days in Kisumu police cells and in Ahero police cells. We were produced in court after five days, hon. Commissioners, and all this was done without a warrant of arrest.

With regard to the issue of warrant of arrests, I was released unconditionally as long as I kept the peace for six months. It was understood that my clinic was a political office and that I treated many patients free to entice them to Ford (K). That was the time that multi-partysm was ripe. I was released on those conditions. I think I have given the gist of it. Since I have other two colleagues here, Mr. George Odidi and Mr. Ong'ong'a who underwent similar processes, they could chip in later when we will be interrogating issues which I may have left out. I take this opportunity to thank hon. Commissioners and the officers. I have very sincere hope that your Commission will certainly come with recommendations which will give truth, justice and reconciliation.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you Chair. I seek your direction on whether I could ask Dr. Olel questions or if you prefer that we allow the other gentlemen to present first.

The Presiding Chair (Commissioner Shava): Thank you Leader of Evidence. At this point in time, I request a very brief, 10 minutes health break before we move on to further questions and testimonies.

[The commission took a break and resumed at 4.40 p.m.]

[The Presiding Chair (Commissioner Shava) left the Chair]

[The Presiding Chair (Commissioner Ojienda) took the Chair]

The Presiding Chair (Commissioner Ojienda): Welcome back.

The Commission Secretary (Ms. Nyaundi): Chair, I had sought your direction on whether we could proceed asking Dr. Olel questions or whether you would first prefer to hear out the other gentlemen that are seated alongside him.

The Presiding Chair (Commissioner Ojienda): For the completeness of record, let them be sworn in then we can ask them questions.

(Mr. George Kwanya Odidi took the oath)

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

Mr. George Kwanya Odidi: My names are George Kwanya Odidi. I reside in Mambo Leo Estate. My place of birth is Karachuonyo. I am a Water Engineer by profession. The Government retired me in 1998. Currently, I am a contractor doing some construction of some water works.

The Commission Secretary (Ms. Nyaundi): I have with me a statement that you recorded with the Commission speaking about your experience in the hands of state agents and about your torture at Nyayo House. I invite you to make that presentation.

Mr. George Kwanya Odidi: Thank you very much, Commissioners. My first surprise is that I was arrested when I was two months old in the country. I had gone to the UK for further studies and came back in January. I reported at the Ministry and they gave me some work which I would carry out until the end of January. I resumed work in February, 1989. When I reported to the Director of Water, he advised me to come and wait for my posting in Kisumu. I acted for the Provincial Water Engineer who had gone away.

On 13th while addressing the Kisumu Women Group which wanted some extension of water to various points, policemen came. I pleaded with them to allow me to finish the meeting with the ladies but they refused. They told me that the PC had a meeting and there is some information that they wanted me to provide. They said that the PC had halted the meeting because of me. I gave up and entered their Land Rover. We drove and passed the PC's office. As we passed the PC's office, I started asking them: "You said that the PC wanted me. Why are you passing?" By that time, they had changed their attitude. They were hostile and ordered me to keep quiet. They drove the vehicle to the Nyareri Police cells. I was locked there and I stayed there for about five days. In fact, as my colleague, Dr. Olel, has said, we teamed up. We teamed up on 20th for our long journey to Nairobi. I will not take a lot of your time by repeating what Dr. Olel has told you.

While he was with me in the same cells, probably the kind of torture differed from one person to the other. However, it was almost similar. The difference is that he stayed at the Nyayo cells for about 16 days. Mine were longer because I stayed there for about 51 days. While there, as he has told you, the battle with the policemen was either you accept what they wanted or you refuse and they take up a decision which would mean preparing you for detention. If you accepted, you would go to court which was done at odd times with our brother, Justice Chunga, prosecuting at odd hours. Nevertheless, I did not face the court because I totally rejected the allegations. So, they prepared me for detention. My major surprise was that I was only two months old in the country after staying in England for three years. The questions they were asking me connected to someone called Osumba who lived in London. They said that I was spotted visiting Eng. Osumba Langi's place at odd hours in England. Most unfortunately, I did not know any Osumba Lang'i in London. I did not know how he looked like. I kept on telling them that I did not know Osumba Lang'i but they attacked me with sticks and rubber things.

When *Daktari* was taken to court, I remained there. One sad thing that surprised me was that one night, at 1.00 a.m., they removed me from my cell and took me to an adjacent

cell. They drove a Land Rover near the cell. They told me to go into the cell. On entering, I found a dead body. I was told to load the dead body into the Land Rover. I was stuck with the dead body in the Land Rover. I was blindfolded again and put in the Land Rover and it was driven. After 50 minutes, I realized that we were in a mortuary. I was told to do the job again which I did. Getting a space for the body was difficult. They kept on opening the drawers until we found a drawer with only two corpses. I was told to put the body there and I did that. I was blindfolded again and taken to *Nyayo*. The next day, I realized that my moving this body had a purpose. When they took me for an interview on the 26th floor, they asked me to decide whether I wanted to die there or if I wanted to go further. I told them that the decision to die at that time or later--- I told them that, that would depend on the decision they made. I told them if I were them, I would take one leg, feed it onto the machines and clear me so that I no longer become a problem to them. One of them asked me: "Have you seen a dead body here?" I consented and said that I had seen a dead body yesterday. They asked me whether I wanted to die like that man and I told them that I had no option. The decision for me to die or not was theirs.

At that juncture, they told me to lie on my belly. I was naked. They started walking on me and some two ladies tried to electrocute me. One lady would come from one side with live wire and would hit me with it. I would make noise and they would carry me above the ground and drop me. On my left hand, there is a finger that cannot go back to its position because somebody took a long time with it. When they left me, I could not get a place to treat me. While at *Nyayo*, immediately after lunch, they collected the bodies, sent them to Karura Forest where they had dug a hole of about 10 to 15 feet. One day, they took me at about 7.00 p.m. to that area. They had a small ladder. They placed it into the hole and blindfolded my eyes.

I realized that I was in the bush. They told me to go down using the staircase. I rolled down and I landed on a hole. After that, they removed the ladder. There were ants in the hole. I was naked and the ants ate me everywhere. I tried to cover my eyes, but I could not. That lasted for about 30 minutes. Then they brought the ladder back. I was struggling with the ants trying to remove them from my body and to protect my eyes, but my body was full of blood. Blood was oozing from all over. The ants had cut me all over. Then they removed me and blindfolded me again, gave me my trouser and the shirt. The inner wear probably was lost on the way. They dressed me and took me back to jail. Then they gave me a thin layer of water on the floor of about 50 millilitre. In this 50 millilitre depth of water, I slowly ran my hand on the water to clean my body. When it was morning, I was not myself. Earlier, they were giving us a cup of tea after one or two days, but this time, I was not given anything. I realized I was losing the movement of my limbs. I could not move any of my limbs. I realized it was true what these people were saying that I was going to heaven. I prayed several times and asked God to send his angels to receive me where I was going.

The next morning, again somebody came and fed me with very little milk; almost a quarter of a litre. I realized that somebody was struggling to open my mouth to pour some liquid. To my surprise, when I turned, I found the liquid that was poured into my mouth coming out through my anus. I was releasing milk as I was given. After two hours, they

tried with vegetables, but to my surprise, it did not come out. I started gaining bit by bit. After a few minutes, they gave me another portion of milk and gradually, they rehabilitated my body until I was prepared to go for detention. They gave me several forms to fill and, in fact, I wrote a will to my children and wives. They also gave me another form which was pinkish and one of them told me that that was the last form that I was signing and the following day, I would no longer be a visitor; I would be taken to another place. I said it was all right.

The following day at about 3.00 o'clock, I was told that I was being taken to Kamiti to join other detainees and I said it was all right. When I was left at Kamiti, before they received me, a telephone call came which needed me back at *Nyayo*. I was taken back to *Nyayo*. Then after another one day, I was told that the President had pardoned me. They blindfolded me and led me out to the outskirts of Nairobi. I struggled back to Nairobi and I went to a relative who helped me to come back home.

That is in a precise form because I did not want to get into details which the doctor had given you. The difference is that I was first arrested on 13th and then I joined him when we were going to Nairobi on 20th. The other days, I was either in Railways Police Station or Nyangeta Police Station. Otherwise, I must say that I am very grateful that the Government is trying to reach us and has changed the Constitution. The new Constitution probably is going to bring salvation to our nation. As Commissioners, I plead with you to be serious with this kind of work, so that when you leave, Kenya should be a changed Kenya so that our children will find another nation which is different from the nation in the past. I am very grateful to the Commission for having convened this meeting.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Odidi. We will come back to you. We will now invite Mr. Wilson Ang'ong'a to briefly share his story after he is sworn in.

(Mr. Wilson Ang'ong'a took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome. I invite you to state your name, where you reside and your current occupation for the record.

Mr. Wilson Awour Ang'ong'a: My names are Wilson Awour Ang'ong'a. I am a resident of Kanyarere Sub-location, Kodelo Bala Sub-Location in Rongo District. Currently, I am a peer educator with KEMRI in Rongo District Hospital.

The Commission Secretary (Ms. Nyaundi): Thank you very much. I have with me a statement that you have recorded with the Commission speaking about your experiences around 1989. At that time, you were a prison warden. I invite you to make that presentation.

Mr. Wilson Awour Ang'ong'a: That is true. I was a Prison Warden in Nakuru GK Prison in 1989. I remember on 22nd September, 1989, I reported at work in the morning as usual because I was attached to the documentation office. I had the responsibility of

organizing the books or the daily releases. At around nine after organizing the books for the day, my Documentation Officer in charge sent for me to be called when I had left for my quarters. I came immediately because the report was that the Officer in Charge wanted to see me. I went to the Documentation Officer's office and he told me to go to the Officer in Charge, Mr. Peter Sakula. I went to him straight away. In his office, I found him with two civilian officers who he introduced to me as officers from the Central Police Station and that they had come to help me in an interesting case which I was following. I accepted that but the officers did not introduce themselves. He released me to go with them but on coming out of the prison gate, there was a white van which was waiting. We went straight to that van and I was sandwiched between the two officers at the back seat of the car. The car was driven up to Nakuru Town at a place called Evening Carry Bucks which was a supermarket but on top of it, there was a construction which was a private office for the Special Branch. I was taken to one of their rooms which had nothing except a bench. They left me there for some hours and by around 1.00 o'clock, they took me before their in charge for some interrogation. The windows in the office of the Officer in Charge were all covered with a white piece of cloth and on his table, he had a pistol.

He asked me to give him all the names of my friends and relatives in Nakuru. As I continued to give the names of my relatives who were in Nakuru, he stopped me and told me not to be smart. He told me that they had been following me for a very long time and I must know that they were the Government. Immediately, two of his officers took me back to the empty room where I stayed up to around six in the evening. Thereafter, they took me back to my house within the prison quarters, where my wife was told to come out of the house and the house was searched. Several of my photographs were taken and some of the books which I was reading as novels were taken away. All the documents that belonged to the Government because of the nature of my work were also taken away. Thereafter, they told me to take them back to my private house in town. They told me that they knew that I had a private house in town. I did not want to disturb them and I took them to a place where we were taking *chang'aa* where they really harassed those who were taking *chang'aa* there. They asked who did not have identity cards and kicked them and those who had their identity cards, their identity cards were confiscated and they were told to check them at the Central Police Station. The group which was with me was in about three cars.

They drove me back to their office in town and from there I was taken to the Nakuru Railways Police Station, where I was kept in isolation and without any meal. I stayed there for seven days and on the eighth day, they came in the evening with a green Land Rover. In this Land Rover, there were some people with big briefcases in the vehicle. I was told to get into the Land Rover and there was no communication between me and the others. The vehicle was driven up to Nairobi late in the night and on reaching Nairobi, they made a stop at a certain police station. Somebody was dropped and I was driven to Muthangari Police Station where I spent a night and the following day, they came for me at around six in the evening. In this police station, what shocked me was that I was booked in the OB but not with my real names. They came for me at the Muthangari Police Station. They booked me out, took me to their Land Rover and I was told to lie

with my back in the Land Rover and then my eyes were tied with a yellow ribbon and they started the journey from there. The vehicle was driven very fast and I did not know where they were going. I asked them but they did not respond.

They went and at some point, they moved very slowly. Later in the night, I realized that the vehicle was getting underground from the left and the other gate was swinging open. Thereafter, another gate was opened. This sounded like an electric gate. I was assisted to come out by two officers. When I came out, I was blindfolded. They led me to one of their cells at the far end. In this cell, they told me to remove all my clothes and my eyes were uncovered. They told me to start my life there. There was an electric button on the wall which they told me that if I had a problem I could push and somebody would come to help me. When they locked the door, I realized that there was no air in that cell. I started suffocating and there was no response. Later on, somebody came who was very wild and opened the cell. He told me not to disturb them. Later on, he came with a pipe and some cold water. He poured some cold water in the cell and told me to rest there and the air will come. I stayed there and the following day, nobody came for me.

The place was very dark. In the cell, I started forgetting the days because day and night were the same. During the night, the body could tell you that it was in the night. On the third day still at Nyayo House, I was still naked, then they invited me to one of the offices on the 24th Floor. I was led from this cell naked with my eyes blindfolded before a panel of about nine officers. Naked and hungry, I found these officers and they had roasted pieces of meat which they were biting and there was a stool in front of them where I was placed and my eyes were opened. They looked at me and asked me how I was enjoying the place and whether I had a problem. I told them I was a bit unwell and would like to see a doctor. They told me that there was no problem and that they would consult a doctor. They asked me if I was hungry and I told them that I was because I had not eaten for some days and I was growing weak. They looked at me and continued biting the meat. Later on, they left one by one and I remained with two officers there. My eyes were tied again and I was taken back to the cells. I told them to give me clothes to put on and they told me that that was not the lifestyle there; I should stay the way I was.

After two days, they brought me a cup of black tea which was quarter full and the officer who brought it said that it had poured and next time, they would bring a full cup. That was the life I lived until I was taken up one day before a panel of about seven officers. I was naked and blindfolded. On reaching the floor, my eyes were uncovered and I realized that these officers were interrogating somebody somewhere because some of them were walking out and coming out with pieces of paper and throwing questions at me. I tried to tell them that I did not have anything to do with *Mwakenya* but they told me to tell them how many *Mwakenya* meetings I had attended in Nakuru because they knew I had gone for several meetings in Nakuru discussing *Mwakenya* issues. I told them that I was a warden and I did not know about *Mwakenya* and I only had prisoners who had been charged for that offence and they were serving sentences of four and a half years. I only heard about *Mwakenya* through the media and I did not know anything about it. That was the time one of them fell on me with a slap. He was huge; about 6.2 feet. He fell on me with a slap and the rest of them started kicking me and throwing pieces of wood and

leaves at me. In fact, I was beaten for more than two hours. I was beaten on my legs until blood started coming out from my anus. It did not bother them and when I fell down, the man who was very huge stepped on my left cheek and a piece of my tooth came out. They saw that I was weak and they had beaten me so much. With blood coming from my anus, they saw that I was weak.

What surprised me was that one of their woman officers came and gripped my penis, tied my testicles with a rubber band and started stabbing my testicles with office pins several times. At the same time, the men officers were laughing and mocking me. Thereafter, most of the officers left and they blindfolded me. I realized that I was carried on a stretcher and I was taken back to the cells. I was put in the cells. After that, one of them came to inspect me and he found me very much swollen. My face was deformed because a piece of the tooth had remained in the mouth. I was unable to talk. He told me that one of the officers in charge wanted to see me and so, he had brought my shoes to put on. By that time, my leg was swollen and could not fit the shoes. He insisted that I must put on the shoes. I went with the shoes like slippers because the leg could not go in easily. My deformed face was blindfolded with a red ribbon. I was taken there and they were just assisting me because I could not walk. I was limping.

When I went before this man, they told me that either I remain there or I go to jail. There was no way they could handle me. I told them to pardon me because I was just a loyal warden. One point I am forgetting is that during the time the man was stepping on my left cheek, he made an utterance in my mother tongue which shocked me. He said: "You Luos when the Government is being toppled, you must be found." He said that in my mother tongue. He was a Luo. That shocked me and I realized that the story was somehow connected to politics. Thereafter, they took me back to the cells where I stayed and they told me to choose any type of meal that I wanted. I told them but they did not bring any. Instead, they came with a pipe of water and poured cold water on me. They realized that my health was getting bad while there.

One day around 1.00 p.m., they organized and took me to Kenyatta National Hospital, where the piece of tooth which was remaining in the mouth was extracted and I was given some medication. They refused to give me the tablets which I was given in the cells. I told them to give me the documents which the doctor had prescribed but they refused and told me that those were not my documents. One of them who was somehow friendly to me during the night came and told me that the man who was in charge there would not leave me. He told me that I had better decide to start a life in prison or I die there. I had taken about 19 days at the *Nyayo* cells.

They then came for me and took me to the CID headquarters and brought some documents. These were about six officers. They told me that they were instructed that I had to sign those documents. I told them that I had to sign a document which I had read, but they said that I was wasting time. I was forced to sign the documents under duress and later on, I was taken to court in the evening and a charge of being a member of unlawful outfit was read to me. Because I feared the life in *Nyayo* House, I just pleaded guilty and a sentence of four and a half years was given to me. I was taken to Kamiti

Maximum Prison and the following day I found myself in Block E. I started the imprisonment life there but later on, I was transferred to the Kamiti Medium Prison where I was placed in cell one in Segregation Block under isolation. That is where I spent my imprisonment life.

From cell one I was moved to cell three and then to cell number seven. That is where I stayed until 12th July, 1992, when they came and told me that I had been given presidential amnesty. They were telling me when it was very late in the evening and they told me that I had to leave the prison. I pleaded with them to let me spend a night in safe custody, but they refused. I was forced to take my clothes and wear and I was escorted to the main gate. This was around 9.00 p.m. I was left there and I had only Kshs80. Because I had stayed in jail for a long time, I told them that I was unable to trace my way back to Nairobi. I could not pass Nairobi easily. They told me that it was an order and I had to leave. Along the road towards Nairobi, I remembered that the mothers of the political prisoners were camping somewhere in Nairobi and I wanted to trace where they were. As I was walking towards Nairobi, a certain private vehicle came behind me and I stopped it. The driver stopped and I told him my story and he was very kind. He asked me about the imprisonment certificate and I told him that they had not given me but I had to go and trace where the mothers of political prisoners were. He asked me where I knew in Nairobi and I told him if he could drive me to the Holy Minor Basilica, from there I could ask where these mothers were. He accepted and drove me to the Holy Family Basilica and left me. From there, I traced where the mothers were and I reached the All Saints Cathedral where the mothers were camping. On hearing my report, the mothers received me and introduced me to the three who had been released, namely, the late Karimi Nduthu, Kangethe Mungai and Philip Tirop arap Kitur. They had been released earlier.

Therefore, I joined the mothers there. I stayed with them and after sometime the mother of former Nakuru MP, Monica Wangui, gave me Kshs400 to come and see my family at home. I came home. I joined my family but I was unable to go back there. That was the whole story.

I want to thank the Commissioners for the good work you are doing. I must, however, say that this Commission should be different from the past ones. Let us have good institutions that will guarantee that there is no repeat of the past. Even right now, if the perpetrators would come here, I would talk with them because this happened about 22 years ago and I have been continuing with life. I do not want to live in my past as a prisoner. I want to continue with life. Let the perpetrators come over so that we jointly foster for this reconciliation.

The Commission Secretary (Ms. Nyaundi): Thank you, very much Wilson. I will ask Dr. Olel some questions and then Mr. Odidi and finally, Wilson.

Dr. Olel, when you spoke of *saba saba* were you talking about the rally on the 7th of July 1991 at Kamukunji?

Dr. Olel Odhiambo: Yes. I was talking about that. But as I stated, that was the time that change was coming. Kenya was a single party State. There was political agitation which was very high. Ultimately, it forced His Excellency President Moi to call his KANU Executive Committee Governing Council and later on they had a meeting at Kasarani Sports Complex. They accepted ultimately that Kenya had now to become a multi-party State. Prior to that, the Government was still very rigid. That is why they rounded us up in November, 1991. I illustrated that even the doyen of opposition politics, the late Jaramogi Oginga Odinga was arrested with many of his colleagues.

The Commission Secretary (Ms. Nyaundi): Thank you very much, *daktari*. Were you yourself a participant in the push for expansion of democratic space?

Dr. Olel Odhiambo: That is exactly why I was one of the victims.

The Commission Secretary (Ms. Nyaundi): *Daktari*, you have spoken at length about the difficult experience especially when you were detained at Nyayo House, were you at any time either at *Nyayo* House or while at Block E at Kamiti given medical treatment?

Dr. Olel Odhiambo: Thank you for that question. I had left issues of my health deliberately. The torture that I received at *Nyayo* House made me sustain injuries to my left knee joint, my back (lumbar spine) and left chest. So these are injuries that were inflicted on me. When I came out I was treated for a long time and I am still treating myself up to now. I have not recovered completely, particularly my left lung needs surgery. There are other considerations too. I hope I have answered your question.

The Commission Secretary (Ms. Nyaundi): So for the record, you did not receive treatment?

Dr. Olel Odhiambo: I did not receive any treatment at all at Kamiti. We survived through God's providence. If we complained from Isolation Block E that we were sick, we would be herded like sheep and taken to the sanatorium- Kamiti Maximum Prison Health Facility. We had a colleague called Dr. Owino. This is the most negative doctor I have come across. I do not know whether he took the Hippocratic Oath to treat anybody. Anything that you could get that resembled a drug was Panadol. However, if you are given Panadol, you swallow it there and then. You were not allowed to take it to the cells. That was the condition.

The other best drug again was Piriton. I cannot remember any other drug that Kamiti Hospital could give to the inmates. That is the true story.

The Commission Secretary (Ms. Nyaundi): Thank you *daktari*. Now you said you appeared in court and you were charged. On the day that you appeared in court, apart from you, the prosecutor and the magistrate, were there any other persons in court?

Dr. Olel Odhiambo: It was only me, the police officers and the magistrate Mr. Buch and Mr. Chunga who was the prosecutor. He is the one who was playing the game. There

were also the prison warders who were waiting for me to be sentenced and convicted so that they could take me to Kamiti Prison, which they did as earlier stated.

The Commission Secretary (Ms. Nyaundi): You have stated that while at Kamiti what you used as a potty was again the serving dish for your food. Supposing they came to serve you food and maybe you had used it as a toilet, did you try and explain to them that probably they would allow you to remove waste before they put the food there?

Dr. Olel Odhiambo: I think you did not get me right. I am sorry maybe I did not frame myself well. I stated that we were provided with potty and each one of us was provided with one. They used to get full but they were not allowing us to empty and clean them. They would hurry you to empty the contents of the potty but they did not allow you to wash your hands. The food was brought in a different dish. It is the food which I described that even if you have a dog, you cannot feed it with that kind of food that we were being given at Kamiti. That is the story.

The Commission Secretary (Ms. Nyaundi): Thank you very much for that clarification.

In his statement Mr. Odidi states that at one time during his interrogation, he was brought into a room where he found you together with Apil Ayanga, Ogijo Odera, Ombeo Opar, Aduol Ogonda and Odungi Randa. He says that on that occasion, the rest of you were being interrogated and were admitting that he was the secretary of your party. Do you recollect that incident?

Dr. Olel Odhiambo: I think Mr. Odidi can clarify that. What I know is that we passed Nyayo House at various times. We travelled with Mr. George Odidi together in a police Land Rover as I stated. When it comes to Aduol Ogonda, Ombeo Opar and Apiyo Onyange, they passed via Nyayo House at various times. We knew each other very well. Aduol Ogonda worked under me in the health department in the municipality. Ombeo Opar also worked under me.

(Technical hitch)

Ah! Thank you I can proceed.

I said the names that you have mentioned, we worked together. Some worked under me. However, we did not have convergence in our writing of our statements. I may ask Mr. Odidi to clarify a point because this again is touching on him.

The Commission Secretary (Ms. Nyaundi): Thank you.

Other witnesses that we have heard, that have gone through experiences similar to yours state that sometimes this would have negative effects on their family; the confinement and labeling as a dissident. Did your wife or children go through some negative experiences? What was the impact of what you went through, on your family?

Dr. Olel Odhiambo: That is a relevant question. At the time of my arrest, my wife was the Deputy Principal, Kisumu Girls High School. She had a very bad experience. When I came out of prison, even my children who were schooling at Aga Khan Primary School at that time except my eldest son who was at Lenana School, were seriously affected. They were named *Mwakenya* and my wife tells me that her students would sometimes run hiding telling the others that, “Let us run away *Mwakenya* is coming.” That impact was very demeaning. As a medical officer in charge of the whole of Kisumu City the newspaper stories were not kind enough. During my trial some of the news that was splashed, for example, went like: “*Mwakenya* accused fled with Odinga.” Mark you with a handcuff. The repercussions were very serious for my family and my person in the city where I was the boss as a chief medical officer of health looking after the interests of each and everybody in Kisumu.

In short, the impact was rumpus. Thank you.

The Commission Secretary (Ms. Nyaundi): Finally, I see that you have a number of documents in that file that you have with you. My request is that as we ask Mr. Odidi and Mr. Wilson some questions, maybe you can organize the documents so that we can admit them formally to the records of the Commission.

Dr. Olel Odhiambo: It is my pleasure, Madam. Thank you.

The Commission Secretary (Ms. Nyaundi): Mr. Odidi, just a few questions for you. You have heard me ask Dr. Olel about the incident in your statement. Can you please clarify the number of people who were in the room when you walked there and they were admitting that you were the secretary?

Mr. George Odidi: In fact, it is unfortunate that Alfred probably recorded it wrongly. He asked me where was Dr. Olel when you were being interviewed? This was not a secret interview. This was an interview organized by the police themselves. They brought Apiyo Anyage, Ojijo Odera and Aduol Ogonda. They brought them into the interview room, Room 26. They put me in front and said: “Mr. Odidi you are denying you are not a *Mwakenya*. Apiyo Anyage do you know this guy?” He then said, “Yes, we know him.” “Who is he?” “He is Kwany Odidi.” “What does he do?” “He is the Secretary of Kenya Football Federation Association of Nyanza.”

He was asked, “Where do you meet?” He then explained that we would first meet at the stadium to attend a match and after the match, we would go for *Mwakenya* meetings in Miwani. Then Ojijo Odera was asked, “Is that true?” “That is a fact.” Aduol Ogonda who is still alive was then asked, “Is it true?” and he said, “it is true”. In fact, these people were being interviewed when sentences had been passed on them. So they brought them as witnesses to convince me not to deny that I was the secretary of *Mwakenya*. That is how Apiyo, Ojijo Odera and Aduol Ogonda’s names came in. When Alfred asked me; “Where was Dr. Olel by then?” I said Dr. Olel had been sentenced earlier. Dr. Olel was not there.

The Commission Secretary (Ms. Nyaundi): Thank you very much for that clarification. Now, your experience was significant in that you neither went on to detention or to prison and, therefore, you stayed for longer than other people at Nyayo House. I just want to ask you in terms of the policemen who were interrogating you, were they all cruel or were there some people that you met that treated you humanely or well?

Mr. George Odidi: Surprisingly, the man I knew was the man conducting the arrest. In fact, he was in charge of the operation. However, earlier on when I was working for the Government in Kisii District, this guy was my next door neighbour. He was called J. J. Opiyo. He even gave me his brother-in-law to employ in the Ministry of Water which I successfully did. If he retired he must have retired one or two years ago. That was the real brother-in-law of Opiyo J. J. In spite of that, he is the man who designed very bad penalties for me.

The Commission Secretary (Ms. Nyaundi): Thank you very much. I have seen in your statement you have named Mr. Opiyo. Just for clarity, would you feel more comfortable mentioning the names of officers that were helpful - in camera - to the Commissioners?

Mr. George Odidi: Opiyo was not helpful to me at all. Maybe a few of them were sympathetic but not Opiyo.

The Commission Secretary (Ms. Nyaundi): Thank you very much. I do appreciate. I will now speak to Mr. Wilson.

Mr. Wilson, you said that you previously worked at the GK prison and you were in the documentation unit and that part of your responsibility involved taking records of prisoners and some of them political prisoners.

Mr. Wilson Awori Ang'ong'a: That is true, Madam.

The Commission Secretary (Ms. Nyaundi): Can you mention a few of the persons who were detained in that prison?

Mr. Wilson Awori Ang'ong'a: Well in Nakuru, we had three prisoners who were charged with being members of an unlawful society called *Mwakenya*. They were the late Alex Okoth Ondewo, Peter Kihara Young and David Kesuse Masrai.

The Commission Secretary (Ms. Nyaundi): In your experience when you reported any illnesses, did the prisoners receive treatment?

Mr. Wilson Awori Ang'ong'a: We could report the illnesses but the matter was not taken seriously. It is after some time that they would be taken to the hospital.

The Commission Secretary (Ms. Nyaundi): I would like to thank the gentlemen. The Commissioners will now ask you questions.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Leader of Evidence. I am surprised and also in a state of shock at the testimony of the three gentlemen; Dr. Olel Odhiambo speaking so clearly and it is only at the end when he says that the effects of his experiences still live with him today that I realize that he is beyond what I expected. Not many people can speak about the issues he has in the manner that he has done. The same goes to George Kwanya Odidi. I also want to thank you very much for the testimony you have given. You underwent a lot of pain; torture that I do not think any person can withstand. Again, you have shared with the public and with us. I just want to celebrate that strength that you find in you.

Wilson Ang'ong'a, who also underwent torture at Nakuru. A civil servant who was honestly serving his country. He, again, spoke with strength and yearned for reconciliation. I want to thank you as well.

I want to ask the Commissioners to seek further clarifications from you.

Commissioner Farah: Dr. Olel, Wilson Awori Ang'ong'a and George Kwanya Odidi, my empathy for your cases is beyond description. The manner in which you were tortured at the Nyayo Chambers, other cells and even prison, you have so eloquently detailed to us so that really forms a picture in our minds and we empathize with you.

I have one question for each one of you. The order you will answer is as follows; Dr. Olel, I can understand or rather - even though there is no excuse for it - the way the Government arrested you after the doctors' strike and the manner the Asian doctor and you were arrested together is inexcusable; the Government could have used the reason of the strike. Were you in any way the leader of the doctors' association or if there was any official organization, were you an office holder? If so, can you please explain?

Dr. Olel Odhiambo: Thank you for that searching question. Our appeal for the adjustment of our remuneration was done under what we could call an *ad hoc* committee of doctors who were at the Kenyatta National Hospital (KNH). We coordinated with our colleagues in other towns like Mombasa, Nyeri, Nakuru and Kisumu. Those are the ones who had organized the strike. I was not myself in the Executive Committee, but I want to accept I was a very forceful speaker when we had our usual get together about the necessity that we should appeal to the Government to consider us for the danger allowance and many other conditions we were working in. Most of them were not conducive and could not be compared with the salaries we were getting at that time. That is the way I can answer that question.

Commissioner Farah: In the third arrest, you admitted a while ago that you were actually partly involved with *Saba Saba* or the struggle for pluralism. What I did not understand is the 1983 arrest when you were in Kisumu in church and yet at that time there was not much movement for change. Why did they suspect you for having published clandestine papers?

Dr. Olel Odhiambo: Suppression and dictatorial regime of His Excellency Daniel Toroitich Arap Moi's Government had gone beyond East Africa and the world. He was like a dying horse. On the 1st of August 1982, when there was an attempted coup, which aborted, Moi's Government was like a cobra that wanted to bite anybody who passes next to it. I know I was not an editor or publisher of *Mpatanishi* or *Mapambano* which were leaflets being circulated among those who were thought to be activists in churches. At that time, there was no other political party except KANU. Therefore, you can understand my position. Maybe through their systems, they suspected me of being a quiet activist. Certainly I was a great sympathizer and I was for change. It is this activism that helped Kenya after the aborted coup in 1982. From 1983, 1984 and 1985 you could not stop agitation through various groups; trade unions, churches and other groups. I hope I have answered your question.

Commissioner Farah: Thank you very much, Doctor. You have answered that. My next question is to Mr. Odidi. I know you denied, and you said that you had no knowledge at all of a person by the name Suba Lang'i.

Mr. George Odidi: Yes.

Commissioner Farah: But you were in the UK for three years?

Mr. George Odidi: Yes.

Commissioner Farah: The tentacles of Moi's intelligence were permeating in England. Is there any other person you associated with that could have suspected you other than Lang'i?

Mr. George Odidi: No, I did not really have friends. The only friend that I met was a former student, who is now one of the judges. He was a school mate while I was studying in the UK. We met and that is the man I went out with any weekend I was free because I found him in the UK and he had lived there longer. So, he could take me places. He was the only man I came across, otherwise, as for the rest of the people, I had some Akamba, Sudanese and Somali friends.

Commissioner Farah: Thank you very much. I think you have answered my question.

My last question is for Wilson Owuor. Please, I will explain later, but I am trying to find out. When they picked you and asked you; "Who are your friends?" and you told them all, and they thought that you were a joker, later on after you were released, when you reflected on the reasons for your arrest, could it have been that you were arrested because you had a friend somewhere who had kept your mind and had previously been captured or suspected to belong to *Mwakenya* or whatever the Government was investigating?

Mr. Wilson Awori Ang'ong'a: Thank you, Commissioner. I cannot answer that one, for sure, because as I have said earlier, I was a prison warden and I was working among other prisoners who had been convicted for the same offence. So, I did not know. I want

to say, for sure, that during that time, the KANU Government was not friendly to anybody who was having an opinion which was different from those ones of KANU. So, they could pounce on anybody and fix you, whether it was real or not, but may be somebody had reported you. I do not know whether I am answering your question.

Commissioner Farah: Yes, thank you very much. You have answered all my questions. The reason why I was asking the three of you those questions was just to see whether you were being picked up because you were friends. But you have answered the question, because I wanted to establish whether you were being picked because of being Luos rather than having a friend. I am 100 per cent sure that you have no regrets for that agitation for change that you used to make and I empathize with the suffering you went through. However, the consolation is that you now realise the era in which we are, the new Constitution and where we are heading. I think you are heroes.

Thank you very much.

Commissioner Slye: I want to thank the three of you for your testimony. It is difficult to think of words to say to you given the experiences that you have described and the experiences that you went through. Mr. Wilson was a warder and, so, he spent some of his professional life amongst the people who, maybe, committed those atrocities. Mr. Odidi, who appears to have left---

A Commissioner: He is coming back.

Commissioner Slye: Okay. Mr. Odidi apparently knew Mr. Opiyo and he was maybe a very close friend at some point. Having gone through what you went through, having lived as long as you have lived and being educated and wise people, I assume that you, at some point, either during or after those experiences, may have reflected upon the question about how one human being could commit such atrocious acts of violence against another human being. I wonder whether you would be willing to share with us what your thoughts are about that; about how some of the things you have described so incredibly cruel and so incredibly designed to dehumanise, to strip away any small remaining shred of humanity and dignity that you might have at a particular moment. What is it that leaves an individual or which allows an individual to be able to do that?

Dr. Olel Odhiambo: Thank you very much, Commissioner, for this searching question. In some civilized societies, the happenings in Kenya cannot be understood, particularly, where multi-partysm was banned through an Act of Parliament. The leader we had at that time, his Excellency President arap Moi, became a dictator and the one party system became the only religion in a country where there was no freedom of worship; where if you are an Anglican, a Catholic, or a Pentecostal, you could not be allowed to go and worship with your flock in your Church. You had to be KANU *damu*. *Damu* is blood and, therefore, if you were a KANU member, you had to be KANU with your blood. Therefore, there was ruthlessness; and the party stalwarts could expel anybody, even if you were a KANU member and you were not toeing the line. As a result of that, corruption in Kenya I think became the highest in the Continent of Africa. These are the

things that heightened, if anything, activism. This is what brought about clandestine papers that were being written to act as civic education and also to politicize the masses, to make them understand the dictatorial degree to which KANU had attained. Therefore, the answer to the Commissioner's question is "Yes", that was possible because everybody was *Nyayo*. That is a KANU member and corruption permeated from the presidency to everybody else, the lowest that you could imagine.

Because there is a slogan in Kenya called *Harambee*, which is self contribution--- That is, you contribute and contributions became the order of the day and there was no politics altogether. The Provincial Administration – that is the PC, the DC, DOs, the chiefs, sub-chiefs – exploited people ruthlessly. Because if a DC wanted some money, there was a *Harambee* on a weekly basis and in that *Harambee*, the sub-chiefs and chiefs had to contribute and, therefore, people were forced to catch their chicken, take them to the market to sell in order to give the chief money, who would give the DO, who, in turn, would give the DC. The DC would in turn give the money to the PC and the PC gave the money to the President.

So, my word may be a humble one, and it is of great appreciation that through activism, parties were born. There are very many parties in Kenya now. This created what we see as our new Constitution. Some of us who are still alive are very grateful for getting the Truth, Justice and Reconciliation Commission (TJRC). We are very lucky because the truth must be unveiled, justice must be practiced and let us reconcile. If you find the facts, reconcile us! But get the truth because Kenya has been a terribly corrupt country. It started during Mzee Jomo Kenyatta's regime. He was also called *Mtukufu*, which is a name for Jesus Christ. We had a hospital called Kiambu and I had the pleasure to work in Central Province in Kirinyaga and there was rotation every week. Kiambu people would go to Mzee Kenyatta's home every Saturday, Nyeri people would come the following Saturday, the Kirinyaga people would follow and it would all be a cycle and you go with those to entertain the President like a king. That was one. So, you do not open your mouth because Kenyatta is the king. When you went there, you contributed towards the *Harambee* for Kiambu District Hospital, which was being built with money from the annual Budget. So, Moi became a child of Kenyatta and practiced that.

In short, we say that we are lucky that we have you. We pray and we cherish this Commission very much and we have a lot of respect and faith in you. Do the best to help Kenya. And with us, who suffered, we cannot beg because we are sick people. See what you can recommend for us because we cannot beg you. We are also patriotic and we feel for our country. The former President Moi ruled this country for 24 years and he has got land all over the Republic of Kenya running into billions. Our only President whom we also cherished has land that is almost the size of Nyanza Province in total, and the problem that we have had in Kenya and which engrossed the first national liberation movement like the *Mau Mau* Uprising in the 1950s--- These things came as a result of the ruthless exploitation by colonialists at that time. When Kenyatta came he perpetuated this ruthlessly and brought in ethnicity by preferring his Kikuyu community as opposed to others. This is the case and yet he was the leader for the whole country. The TJRC will have these facts, and it is the land issue which was like an electric shock; it is a bomb!

What has caused this emotive problem in Kenya, like what we had in November, 2007, and in 2008, the post election violence? It is the land issue. I have a lot of respect for my former presidents, but if one had 10,000 acres of land, why not buy even 2,000 acres? Do not take them freely. The Government should have money to buy 2,000 acres and leave 8,000 acres. The Government should allocate the 2,000 acres to those people who do not have land. It should also give those people a loan to develop it so that we minimize poverty. We should strive to minimize cases of those people who come and attack us at night because they have children and wives that they want to feed them. It is incumbent upon you; it is your time and it has come at the right time. The onus is in your court.

Thank you very much, Mr. Presiding Chair, Sir.

Commissioner Slye: Thank you, Mzee. I think you have demonstrated what you have said before, which is what a precise speaker can be.

Mr. Odidi, how can an individual in effect torture another individual? What allows an individual to do that? In your case, you had mentioned how you knew and you were quite close to Mr. Opiyo and you even befriended him. I assume that during that time, he came across as a very decent human being; yet that same decent human being was involved in perpetrating terrible atrocities and the question I was posing was, what is it that allows one human being to do that to another? Can you reflect on that? Mr. Odidi, can you comment?

Mr. George Odidi: Thank you very much, Commissioner, for the question. In fact, it is a behaviour which, while I condoned it by then, I still wonder because this gentleman was very friendly to me when we worked in Kisii District. He headed the Special Branch offices and I was heading the water offices at the district level. So, we were doing nearly everything together. When he got a transfer, I also got a transfer. We went and worked in Kiambu. I went away, stayed out for three years and when I came back I found my men lined among the people who were suspected to be *Mwakenya*. I think he was in a better position to protect me and say, “No, this guy has been my friend and he worked here and the Government gave him a scholarship to go and finish his studies and he cannot be a Mwakenya.” He did not. So, at times when I was thrown into the 26th room – the torture room – what surprised me is that, as I was being “opened”, he walked out. And he was not going out completely; he was going out to open a slot and to make sure he sees these people being done the way he had instructed. He was opening a slot at the door and seeing me being beaten and he laughed. I was surprised! But as the Commission is going round now, we need people like Opiyo, if he is still alive, so that we reconcile with him. Because somebody somewhere who wanted me punished must not have been Opiyo; but he is a messenger of somebody – a political machine somewhere was pushing the bell to have me arrested and beaten. So, may be, he was carrying out the instructions of a boss, but it was excessive. My concern is that it was excessive. But I think if he can reconcile, then we might be lucky to end up this talk of you are a Kikuyu, you are a Luo or you are a what. This Commission can bring that to a halt. If we can really get ourselves disciplined, I do not think the generation of our children is worried about a Kikuyu or a Luo. But it is us, this generation, who benefitted from bad rulers who are still spreading

this message of “You know you are a Kikuyu; you know you are a Luo.” This should go. As we get these young boys and children mixing up in various colleges, this question of who is coming from where is going to end. I think if you handle the Commission very effectively – and I think that since you started the interview about two months ago, the brains that you have engaged are people who are out to work--- When I came late from the Bondo Water Project which I am doing, I found the Commission employee still waiting for me although it was late and that showed commitment. If you can have such commitment in your workers and you leave us with a well prepared document--- If somebody is not going to undermine or criticize it and it is implemented, I think we are going to end up being one united nation.

Thank you.

Commissioner Slye: Thank you.

Each of you, either in your testimony or in your statement, when you spoke or wrote about the torture that you underwent, you mentioned that there were women who participated in the torture. I wonder if you noticed any differences between women and men in the way they approached that activity.

Mr. George Odidi: First of all, it is a big embarrassment and it is against the African ethics that you take a grown up person and remove even his inner wear and undress him to stand before the people, and amongst the people giving the order are two women. When you subject them to a condition where they are thoroughly abused and subjected to a situation where a woman takes control, men do not take it lightly. One pretends she is walking to that corner and the other to the other corner, and they signal one another to come and meet at the target and electrocute the target. You see, it is quite embarrassing. It is a scene that, if exposed even to your wife, you will say that you were not a man. Why could you not die there and refuse to be humiliated? It reached a point I told one of the guards: “Feed your machine with one piece bullet and kill me,” because I could not take it anymore. At times, it is very painful. That is why I remember the two ladies who were in my interviewing panel tried very hard to electrocute me, but I became just wild, and ran to the floor trying to avoid them. I would rather be beaten than be electrocuted. That was very sad and I still remember it. But I battled with it, even if my fingers got dislocated.

Commissioner Slye: My last question is specifically for you, Mr. Odidi. As the Leader of Evidence said, you are the one who seemed to have been in captivity and in Nyayo House the longest. Based on your testimony and your written documents before us, it appears that there were times when people suggested to you that you could have been released; that you could have confessed to things that you had not done; you could have co-operated, if you would and in a way, the individuals who were interrogating and torturing you, maybe, would have given you better treatment. At one point, I think in your statement, you said that you wanted to take up a gun and shoot everybody there and

then you stopped yourself. Why did you not take advantage of those opportunities? What was your thinking? What gave you the strength?

Mr. George Odidi: It was not thinking about that because I took a longer period. They first start when they are very rough, then they change and become friendly for a day or two. Then, again, they become very rough. At times, they take a little time to send one or two people to come and talk to you very kindly so that you can be remorseful and say something. But if you did not know those things and you still wanted to stick to your dignity, you told him “No”. But, honestly, as you said, if I had a chance, I should have picked a gun and felled a few of them and killed myself. I was also told that somebody had picked a gun and killed some guards and others ran away. So, they changed their habit of leaving the gun on the table carelessly. Their tables were now far from where they were dealing with their prey. So, that is why I had that wishful thinking, but I was unable to reach the table and get hold of a gun. But if I had one, I should have been dead by now.

Thank you.

Commissioner Slye: Thank you. I want to thank the three of you and as the Presiding Chair said particularly with Mr. Wilson, I have heard this now from I think the three of you. It is very humbling to hear your stories and also hear you talk about the desire for reconciliation. I think the doctor maybe said that the process of reconciliation requires, first, that we have truth and then some form of justice. That is exactly the approach of this Commission. At the moment, we are getting the truth and, may be, stepping into a little bit of the justice phase of our activities. But it is humbling to hear people like you who have suffered over a long period of your life to come here and speak about these acts with very little bitterness and say: “I would like to meet these people and reconcile with them.” I just want to salute you and thank you for that. I have no further questions.

Commissioner Dinka: Dr. Olel, Mr. Kwanya and Mr. Wilson, I truly and sincerely thank you for taking time to come to talk to the Commission and going through the suffering that you have experienced once again for the sake of enlightening the Commission. Thank you very much.

The humiliation, the mental and physical torture that you have been subjected to is truly horrendous. It is beyond human capacity to endure, but you survived because you had the will to survive under that kind of thing. Your will to survive and your patriotism, which is very evident, and your optimism about the future of your country; of reconciliation and your expression of readiness to forgive and to reconcile is also something that we all would like to celebrate. I salute the three of you for that.

I just want to ask a single question, and that is: Have you seen or met anyone – from that torture chamber – who were torturing you and giving you the kind of food and treatment that you are talking about? Have you met anyone of them since you left or since you were released?

Dr. Olel Odhiambo: That is a good question, Commissioner. I met Mr. Chunga, but I avoided him because of the bitterness when I remember what happened, which you described as horrendous. Anyone of us would tell you that Mr. Chunga acted not as human being. When he was prosecuting, he had a lot of vigor for malice, particularly for me. He took up my case through the High Court. I have never come across such a malicious person who does not display professionalism. His was to see to it that you were destroyed! That is why we are saying that your Commission has come at the right time and that you will help us with the truth, justice and possibly, reconciliation. Because you cannot be beaten throughout your life, you must sometime train your mind to be understanding and reconcile for the interest of our nation and, of course, of the 43 ethnic communities and in the interest of our children. This is what Mr. Odidi Kwanya spelt out very well. But we do not want this thing called “tribalism” at all. This is because some of us do not see it as an issue. We are one people but it is only some malicious individuals who have tried to promote it.

Thank you.

Commissioner Slye: Thank you very much, Doctor. Is there anyone who wants to add something to this?

Dr. Olel Odhiambo: Mr. Presiding Chair, Sir, I request Mr. Odidi Kwanya, maybe, to say the last word and also thank you on our behalf.

Mr. George Odidi: Thank you, Dr. Olel. First of all, thank you, Commissioners. I would like to say that when we heard over the radio that you were coming to Nyanza, many people got prepared and were really waiting to give their experiences. But I really thank you for coming here because you are reconciling us. Your main duty is to get the truth about us and reconcile us. If you can go a little further and reconcile us with the Government so that we are properly reconciled as opposed to me taking the Government to court, it will be very good.

When you labour and you go home empty handed, you cannot convince your family that you went hunting. It is your duty to get the truth from us and then reconcile us. For those of us who have suffered, you need to see to it that we move forward.

Commissioner Dinka: Thank you very much. The Commission will do its task as much as possible. Reconciliation and integration is not an event. It is a long-term process. So, we will do our best. It is an honor sitting here to listen to the three of you narrating the story in your own words and getting it into the consciousness of all Kenyans. Thank you very much for coming.

Commissioner Chawatama: I want to thank you for appearing before us today and for engaging with this very important process. By hearing you, our work is made worthwhile. One of the things I will take away from my interacting with you is that we should never give up. I pray that I will forever remember this day. I admire the three of you greatly.

With the new Constitution in place, could you briefly reflect on the type of judiciary you would like to see and the type of police reforms that will enable this nation not to walk this path again?

Dr. Olel Odhiambo: We have had bad experiences, but with the new Constitution as a result of which we are seeing new Bills which are fundamental, we hope to succeed. Although we still see a lot of tug of war from those causing impediments, Kenya has come a long way.

We will be very happy to see an independent judiciary. Already, we see that independence coming. The judiciary is an institution. We pray and hope that the people who are going to compose the judiciary will be good. That is what we want to see. For now, we say that it is good.

It is the same for the police force which has been horrible. If you look at the corruption index, you will find the police are in the lead. We have seen vetting going on. We pray and hope that the vetting will enable us get good people. It will take time because teaching an old dog new tricks is difficult. Bear with us. We will be happy to see a vibrant good judiciary minus corruption where you will be treated well from households to any level. People should be treated equally. We have had very bad cases. Some of you, Commissioners, are not Kenyans. We have had scandals such as the Anglo Leasing and the Goldenberg. One wonders how busy our judges are such that they cannot even sit for a month and dispose of such cases. Definitely, something is wrong at the Attorney-General's Office, the police, and the Judiciary.

We need people to put politics aside. We need to enhance civic education from household to high levels particularly targeting the youth who are the majority. They need to be empowered to understand their political rights because they will help Kenya change for the better. Those who are corrupt have amassed a lot of wealth and have subjugated the common man to poverty so that they can buy them and perpetuate bad governance. With governance devolving to counties, we hope that people will take charge of their problems. We hope that with enhanced civic education, things will be okay. It is a long process, but that is what we would like to see.

Commissioner Chawatama: Thank you. You have answered me adequately.

The Presiding Chair (Commissioner Ojienda): Thank you, Dr. Olel. This is the first time I have listened to you and I think you belong to Parliament or elsewhere. You are so clear in your speech and convincing in your argument; so eloquent despite what you have experienced in the torture cells in *Nyayo* House. I have questions for all of you just for clarity.

You are all familiar with the Heroes Day. Has any of you been honored as a hero? This is with regard to what you have done in contributing to the struggle.

Dr. Olel Odhiambo: Mr. Presiding Chair, we do not think we belong to that rank yet in Kenya. However, we are all right because we are recognized by our people for our little contribution in a little way. I personally feel good.

The Presiding Chair (Commissioner Ojienda): I would like to acknowledge the three of you for what you consider as a small struggle. However, I want to assure you that it is not a small part. If we did not have people like you standing up against bad governance, we would never have had change. You should feel that your contribution is not as small as you feel.

You have talked about reconciliation. If you were to be given an apology, Dr. Olel, who in this country would you like to acknowledge the kind of painful and horrendous experiences that you had? In what form should that apology take?

Dr. Olel Odhiambo: Mr. Presiding Chair, it is like asking me to choose the kind of food and quantity and who should cook it. I think it is important if you sincerely apologized. It comes from the State. That is what you would consider to be inclusive.

The Presiding Chair (Commissioner Ojienda): I believe that is the same for Mr. Odidi?

Mr. George Odidi: No, mine is slightly different. My apology will be to the Government which served and thought it right to form the Commission which first sat in Nairobi and discussed the changes. It is the Commission which was led by the late Odhiambo Mbai. That Commission came up with two proposals and parliamentarians saw it fit to kill one and come up with one. The referendum was supportive of the one which was chosen. From there, the Government was influenced. These Commissions are really the way the new Constitution puts it. A Commission has a period of time within which it must finish its work. It is not like the old days where a Commission was formed and its report was kept in the Cabinet. The present Commissions will write reports which will be implemented.

One day, we told the Prime Minister that Agenda IV is what we started when we wanted change. Agenda IV was existing long before. Some Kenyans did not want it, but with the new Constitution, Agenda IV is now here at the door and we are going to implement it. I thank those who recognized Agenda IV before the real time.

There is an oversight Commission looking at you. You will hear Mr. Nyachae say, "As per the Constitution.." He does not fear anybody whether it is Raila or Kibaki. That teaches our people that nobody is above everything. People must tone down and must be sober as they work for this nation.

The Presiding Chair (Commissioner Ojienda): What about you, Wilson. Where would you like it to come from?

Mr. Wilson Ang'onga: I think for us to get reconciled, a representative of the State must give an apology so that we accept it and we move ahead.

The Presiding Chair (Commissioner Ojienda): Dr. Olel, I am back to you. Chunga and Buch(?) tried you. You did not say at what time, you were tried.

Dr. Olel Odhiambo: It was dark. It was just around this time. I went to court around 6.00 p.m. and Chunga was so eloquent. He was loquacious and he vomited all the venom he had. It is unfortunate nobody has had experience with him except us. By the time, he finished it was 8.00 p.m. We arrived at Kamiti some minutes to 9.00 p.m. in the big lorry. When I arrived, there was the *kunguru* – prison uniform - for me. I still had a lot of hair and it was not like a football field like now. It was all moored. I was barefoot and I walked to Block E, the punishment block. It was very late.

The Presiding Chair (Commissioner Ojienda): Trials during the dark is a very unusual thing. If you met retired Justice Chunga today, what would you tell him with respect to that process?

Dr. Olel Odhiambo: You know I am a religious person. I have no bad feelings for Chunga nor for my former Presidents. What we are doing here is to help this Commission achieve the truth and reconciliation aspects. That is the purpose. We have to talk the truth. I have no problem with Chunga. It is only that he was very malicious. It is not only Chunga who was malicious. Even in our homes, you could have a brother or sister who is malicious and that will not stop you from talking to them. I will treat him as a human being.

The Presiding Chair (Commissioner Ojienda): Mr. Odidi, you have said that you are prepared to reconcile with Mr. Opiyo.

Mr. George Odidi: Surely, that is the truth.

The Presiding Chair (Commissioner Ojienda): And that you are prepared for true reconciliation?

Mr. George Odidi: Yes.

The Presiding Chair (Commissioner Ojienda): Have you had an opportunity to meet Opiyo since your release? Do you know where he is as we speak today?

Mr. George Odidi: I have made an effort. I have gone to Opiyo's place. Unfortunately, since I had not given him an appointment, he had gone to a short safari.

The Presiding Chair (Commissioner Ojienda): Where is Opiyo?

Mr. George Odidi: He lives at a place after Rongo called Ranen. If you are at Ranen, you take the road going up the hill at the border of Kisii and the Luo. There is a small market there where he has a home.

The Presiding Chair (Commissioner Ojienda): Wilson, you are a warder who had only worked for six months when you were arrested in Nakuru and taken to the Special Branch offices and accused of being a member of *Mwakenya*. Before then, who were the people that you used to meet in the cells in Nakuru?

Mr. Wilson Ang'ong'a: As a warder attached to the documentation office, I was meeting different convicts on a day to day basis. Those who were convicted, say, today, their sentences were commuted the following day. They were to be deployed to various activities within the prison. I was meeting different categories of prisoners on a daily basis.

The Presiding Chair (Commissioner Ojienda): Do you remember any particular persons who had been arrested because of political reasons?

Mr. Wilson Ang'ong'a: I had even mentioned the three who had been charged for being members of an unlawful society. They were the late Alex Okoth Ondo. He was serving four-and-half years imprisonment. There was Peter Kihara Young serving the same sentence, and David Gesusu Mazirai who was a former student leader of University of Nairobi serving the same sentence.

The Presiding Chair (Commissioner Ojienda): There was a common trend of torture. It appears like that the cells you were taken did not have sufficient air. It also appears like you were blindfolded and driven for long distances. It appears like you were all stripped naked and humiliated before panels. It also appears you were starved. In the case of Wilson Ang'ong'a, people ate as he watched and he was not given food. In Mr. Odidi's case, he went without food at some point beyond 11 days. Why do you think this was their choice of instrument of torture?

Mr. Wilson Ang'ong'a: Well, this was a common trend especially with the Special Branch policemen who were managing *Nyayo* House as well as *Nyati* House.

Dr. Olel Odhiambo: These were tactics not only for humiliation but also to psychologically break you down and make you receptive. They had to go extra measures. Those who were enduring like my brother Odidi, who apart from the beating was placed in cold water, they drove him out of the city to a forest in order to break him. Those are tactics used by many others.

Hardcore robbers with whom we shared Block E were also subjected to the same tactics. They practiced very cruel acts on them. So, I feel it was in their training that the more one is humiliated, the more they make you weak that your brain is under nourished. That way, they thought, they would get from you as much as they wished.

The Presiding Chair (Commissioner Ojienda): Thank you very much. It is disheartening to note that while all this was happening, Kenya may have been party to the African Charter on Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture. It is very unfortunate.

I want to wind up by thanking you sincerely for finding time. Just as you have wished, I want to assure you that this Commission has powers under Section 48 to make certain recommendations which must be implemented. We intend to work as you prescribed and to undertake our work seriously and honestly as you have spoken.

I thank you.

Call the next witness, Leader of Evidence.

The Commission Secretary (Ms. Nyaundi): There is a representative from Yimbo.

(Mr. Salim Odeny took the oath)

Mr. Patrick Njue: Good evening, Sir. Kindly for the record purposes, do once again state your name.

Mr. Salim Odeny: My name is Mr. Salim Odeny and I come from Bondo District. I work with an institution known as I-Lake. I also work with a community organization called Salode Youth Initiative which is based in Usigu Division in Bondo District.

Mr. Patrick Njue: Mr. Odeny, you are with us this evening on behalf of the Yimbo Community Usigu Division. You have prepared a memorandum which you wanted to present formally before this Commission. I will ask that if you are ready, you may briefly make your presentation.

Mr. Salim Odeny: Thank you so much. I will be brief and on record. I will give a brief background of Yimbo. Yimbo is a sub-tribe of Luo and they are the dominant inhabitants of Usigu, a geographical area which is also called Yimbo. Yimbo is the same as Usigu Division. Of the 11 locations in Bondo District, five are in Yimbo leaving only six in Sakwa. I further wish to state that in Bondo District, there are two communities; the Yimbo and Sakwa. Sakwa is the dominant community.

Having said that, I wish to say that the presentation that I will make here is based on four issues and I will mention them very briefly in passing. One is about historical injustice and marginalization. Critically, there is also the case of the Yala Swamp and the post-election violence. Regarding historical injustices, I wish to say that the Government of Kenya in 1991 unleashed terror against its own people in north and east Yimbo locations because a Government gun had been stolen. Several people were maimed and some lost their lives during that Government terror. The people who suffered include the following: Maurice Otimbo Odonyo, Zael Akumu Ogola, Odero Bonde, Samuel Okoth Omolo and Lucas Adipo Ahomo who was seriously beaten and maimed in Masamba Village. All these people are still alive and they can be easily reached by this Honourable Commission.

On the second issue which is about the marginalization of the community, I would want to say the following: There is no clear common interest in Bondo other than

administrative and political boundary. As I had mentioned before, there are two communities with two distinct interests. The first interest is Sakwa interests for Sakwa community, that is, Nyang'oma and Maranda Division. The second interest is the Yimbo interest which I want to talk about. The Yimbo community has been constantly marginalized in all fronts be they economic, social or political.

Politically, Yimbo has constantly lost in the political representation. Previously before Rarieda was hived from Bondo, there were four communities: Uyoma and Asembo, which are now in Rarieda. Yimbo and Sakwa are still in Bondo. All these communities except Yimbo have had a chance to represent the greater Bondo in Parliament. Yimbo is the only sub-tribe in Luo community in the entire Nyanza that has never had representation in Parliament.

Regarding the boundaries, the geographical boundary of Yimbo has been shifting. To the north the natural course of River Yala was the boundary between the people of Alego in Siaya and the Yimbo in Bondo. It was agreed during the submission by both Alego and Yimbo communities to the Interim Independent Boundaries Review Commission. The boundary had been moved to the artificial course of River Yala in the late 1960s. About 3,000 acres were hived off. To the east, there is West Sakwa and South-West Sakwa which are no longer in the map. I wish to table a map which is called Yimbo 115/1 and Samia 101/3 of 1953. You will realize that the villages that are in Sakwa, whose names begin with letter "U" were in Yimbo. That includes, but not limited to, Utonga, Ugambe, Usire and so on. To the west, six islands have been taken away in unclear and questionable manner to Uganda but with Yimbo community still remaining as inhabitants. People in this island are never included in the Yimbo statistics. Some of the administrators who were governing these islands are still alive. All these point to a total neglect by the Government.

Regarding marginalization again, there is the issue of redistribution. Yimbo is the economic powerhouse of Bondo and the entire Bondo depends on Usigu beyond 60 per cent, but in terms of redistribution Yimbo gets back below 30 per cent. It is the big brother who distributes the benefits. Therefore, I would say that a clear look at Yimbo will reveal a deserted community.

I will give a very critical example. Yimbo has beaches that produce a lot of fish from Lake Victoria but the fish processing company is not in Yimbo but in Thika. So you ask yourself: Why should it be in Thika where there is no lake? Another example is that this community had to raise money to take electricity over 30 kilometres from Bondo to Got Agulu.

I want to deal with the case of Yala. The Yala Swamp is a very serious matter. I am saying so because the witnesses who have just spoken talked about the issue of land. Land is critical and can be a source of violence. Yala Swamp is about land and it must be viewed as such. I want to say that it is shocking that Dominion Farm was awarded 3,700 hectares of wetland at a price of Kshs1, 254,782 per annum for 25 years. If you look at that amount, you will realize that the cost is equivalent to a cost of putting up two

classrooms. That is too little for that big land. The same cost is equivalent to what a Chief Executive Officer (CEO) of an average bank is carrying home every month. It is equivalent to a salary for one person but here, it is meant for the entire land that was helping the community. If that money is calculated well, it translates to Kshs137 per hectare per year for 25 years. In fact, that land was given out for free. This the lowest price of land in Kenya. Even deserts are not valued that low.

There are a number of issues on the Yala Swamp but I would not go through the memorandum because you have it. I will only go through the salient points. Before Dominion came, the people here were making their living and drawing water from River Yala. They were surviving on farming and they raised livestock alongside fishing. When Dominion came, things changed because there is no access to the land. They could not access the land because it had been given to Dominion without consulting the people. That is in total contravention of the law. This is under the Trust Land Act.

There are issues about the loss of livestock and chicken. In Adua, Magombe and Yiro villages in East Yimbo Location, several families lost their livestock and chicken due to floods and aerial spraying of chemicals. This happened between 2006 and 2008. Some of the families that suffered this loss include but not limited to: Alfonse Achungo Aweda, Erastus Odindo and Jackson Owari, among others.

When it comes to fishing, the communities that look upon Lake Kanyaboli for their survival can no longer fish in that lake. What is the reason? It is because the lake has been partly-privately owned by Dominion Farms and also partly gazetted by Kenya Wildlife Service (KWS) as a national reserve. I have attached that gazettement. People were relying on that for their livelihood. We are talking about food here. Therefore, several communities that use that lake have been seriously affected.

Let me touch on the effect of chemicals. There is total disregard to environmental impact assessment report that highlighted a number of issues. The due process was not followed in clearing dominion projects. Several severe effects of chemical use have been witnessed. These include the death of fowls, cattle and unexplained sicknesses. I wish to table before this Commission a documentary that is called "My Share of Yala".

(Mr. Odeny tabled the document)

At an opportune time, the Commission will have the pleasure of watching this and listening to the critical issues that affect the communities living around Yala. I table this.

(Mr. Odeny tabled the document)

Alongside this, I have also recommended to the Commission to follow up the documentary called "Good Fortune". In the memorandum, I have given the link on how you can get to it. Alongside that, I also wish to table before this Commission, a signed report that was done by SIAG Kenya which documents those issues about Yala. I also table it.

(Mr. Odeny tabled the document)

I also wish to state that one of the partner organizations that we work with, Action Aid International, supported the examination of water sample by the Government laboratory and the results were pathetic. I will be presenting that report here on Monday. I will present here a signed report from the Government Chemist. Still on the issue of Dominion Farm, I wish to talk about inhuman compensation. People were compensated about Kshs40,000 or Kshs45,000 per acre and there were no consultations. They were just going around and taking people's land. They coerced people to accept the Kshs40,000. They also threatened to open the waters. I want the Commission to note that the homes that they were chasing people from are not part of the land that Dominion Farm was given. This was privately owned land but that is what happened. You will get a chance of watching it in the documentary. The money that is being paid to the county councils of Bondo and Siaya does not help the members of the community who were initially relying on the same swamp for their livelihood. That still begs a lot of questions.

Towards the end of the Yala issue, I want to note that there were forced evictions through flooding and Dominion Farm controls water through contours. When it opens water, it causes floods which affect the neighbouring homes, forcing them to flee and there is no compensation. I have said this and I wish to repeat it for the record that the homes affected do not constitute whatsoever the land given to Dominion Farms but the Government has constantly failed to intervene. For example, in Adua Village, East Yimbo Location, Usigu Division, the family of the widow, Mary Oware and her son Jackson Oware, have suffered damages on their houses twice due to the floods caused by the opening of the weir. This happened between 2006 and 2009. At around 2008, there were two cases in Bondo and three cases in Siaya Law Courts. These cases were between the members of the community who had refused to be evicted out of their land and the Dominion Company who was the respondent. Mr. Richard Ogambi of Adua Village lost his hotel due to floods. This affected the entire family that depended on the business for livelihood. I would also wish to promise that if I get an opportunity, I will look at the Business Week article where the CEO of Dominion Farm, Mr. Calvin Badges, had been quoted as having written, and I quote:-

“It is true that a few did not take the money for their land but it is still held in trust for them.”

How can a private company hold money in trust of the community? Which trust?

There is a violation of Labour Laws also because of poor working conditions and non compensation for overtime. Most of the people working in Dominion Farms, especially the casuals, are subjected to pathetic and inhuman conditions. This includes old women. They work in cold waters in rice plantations for very long hours for a meagre pay of Kshs120 per day or even less. Labour Laws are not followed and these workers are not paid for overtime. They are also not allowed to join the labour union or even to speak to

anyone, I guess, including this Commission about the conditions they work under. They do not have protective gadgets and workers handle corrosive chemicals with their hands.

Finally, there is ancestral attachment. Yimbo community is Luos and so there is a very strong attachment between the bereaved families and their deceased according to the Luo culture and customs. Most of the communities living around Yala Swamp had buried their loved ones in those lands but they must move away from them to give room to Dominion Farm. This is in total contravention to our culture and customs which I believe is similar to other cultures across Africa. We are attached to the dead and we love them.

The last aspect of Yala Swamp is brutality against the locals and inhuman treatment. I have pointed on a specific case which was on 18th April, 2008 where the Administration Police from Siaya under Inspector Sang' with the help of Siaya Police and Dominion guards drove 278 cattle, 15 sheep and three donkeys which were grazing outside the perimeter fence to Dominion Farm and finally took them to Siaya police station. The members of the community and the owners of these cattle were arrested. The three prominent people I want to mention are Charles Onyango Apiyo, Alois Waka Otieno and Otieno Okumu. These three were arraigned before Siaya Court on Monday, 21st April, 2008 before the Principal Magistrate, Mr. Mwaura. The charges were malicious damage to property, trespass on private property and grazing. They took pleas and were given a cash bail of Kshs10,000 without the option of surety. The last thing is that this company decided to operate in total disregard to the environment impact assessment report. All over Kenya, and I believe all over the world, there is nowhere where you will get the fuel tank on the ground except in Dominion Farm. That is a serious danger to the community. It should be sunk below the ground. We have the same laws in Kenya. If you go to Dominion Farms tomorrow, you will get the fuel tank on top of the ground. Even if you go today, you will still see it on the ground. We have complained to the Government but it is silent.

The last issue which I want to cover is the post-election violence. The Yimbo were equally affected when the members of the public were shot dead by the police officers who were well known. One of them was an old man who is called Mr. Edward Smith Mbira. He was shot dead at his home by a police officer who is known. He was buried but the police officer has never been charged anywhere. The other case is of a fisherman. He was a young person who was shot dead by a police officer who was attached to Usenge Police Station. The best the Government did was to transfer the police station to another area. We believe that this case must be followed.

The last thing about post-election violence is that during that time, Felix Otieno Odhiambo, the son of Mr. Joshua Odhiambo Olang, who was then in Class Eight, went missing from Kisumu and has never been traced. The parents have gone everywhere in search of this young boy. They have gone to mortuaries, police stations and everywhere else. They can also be reached by this Commission so that they can also testify. Our call on the people who were affected by the alleged violation, the Commission should actually consider where necessary, compensation. Further, affirmative action should be taken to cushion the Yimbo community even as we move to Siaya County. We have

always made a recommendation that we should be given back our islands which are six in number and some are even bigger than Usigu Division. We should be given a chance to represent ourselves because the big brother may not allow.

Finally, some of the perpetrators of inhuman acts against the community, especially police officers, should face charges and if found guilty, they be dealt with in accordance with the law. The victims and witnesses should be given an opportunity to testify before this Honourable Commission for reparation and reconciliation. I rest my case.

Mr. Patrick Njue: Thank you, Mr. Odeny, for that eloquent and brief presentation. I have a copy of a memorandum here. I would like you to confirm whether it came from you or from the people of Yimbo. Is it what you have been reading from and do you want it to be formally presented to the Commission as part of the record?

Mr. Salim Odeny: Yes, it is the memorandum from the people of Yimbo and I want it to be part of the records of the Commission.

Mr. Patrick Njue: Presiding Chair, Mr. Odeny also presented a documentary and a report from Siaya Kenya together with the memorandum. I wish to request that it be admitted as part of this Commission's record.

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

Mr. Patrick Njue: Mr. Odeny, I just want to mention that we are expecting a memorandum on the case of Dominion Farm. I am sure that many concerns are likely to come up during the said presentation of the memorandum. All that will be keenly looked at by this Commission and I am sure appropriate recommendations will be made.

I have no questions for you because your testimony was clear but the Commissioners may ask you questions.

The Presiding Chair (Commissioner Ojienda): Mr. Odeny, I want to thank you for presenting your memorandum. However, I am saddened by the fact that you have chosen to present it at night when there is no press. The issues you have raised are very serious. The issues surrounding the operations of the Dominion Farm are very serious environmental issues.

Commissioner Chawatama: I have no questions but, as a good judge, I just wish that you would appear in my court and represent somebody with such passion. Your submissions appease my heart. I just feel that we need to do something seriously about all the concerns that you have raised. So, you have a vote in the Commission. Thank you.

Commissioner Farah: I have only one question. The Dominion Farm environmental issue is very obvious, but on the marginalisation side of your presentation, is it more of having been subjugated or rather having been sat on by the larger Bondo Constituency with its national leaders, who also had their own marginalisation? Indeed, the whole of

Nyanza region has had its own marginalisation. So, you were talking about marginalisation within marginalisation. Is that true?

Mr. Salim Odeny: Yes.

Commissioner Farah: If so, your marginalisation issues can be solved through local mechanisms, and not through the nation. Do you agree with me on that one?

Mr. Salim Odeny: Unfortunately, no!

Commissioner Farah: Now that we are going to have counties, in which case power will devolve, how do you see your marginalisation issue within the larger Bondo County?

Mr. Salim Odeny: Thank you so much, Presiding Chair. I wish to agree with you that our case of marginalisation is, indeed, that of marginalisation within marginalisation. But I have mentioned that the Yimbo Community is the only sub-tribe of the larger Luo community that has never had representation in Parliament anywhere, even when election is done in Nairobi. Probably, the first one would have been if Dr. P.L.O. Lumumba were elected Member of Parliament for Kamukunji in the last election. That would have been the first Yimbo son to be elected elsewhere in Nairobi, or in the “Diaspora”.

I want bring to your attention the fact that back in Yimbo, our “big brother”, the Sakwa sub-tribe, with whom we share the constituency, from 1969 to 1992, Jaramogi Oginga Odinga was not in Parliament, and he did not have opportunity to contest for a reason best known to even the Commissioner as it is known to me, but what did he do? He was going round the entire Luo Nyanza and anointing people to be elected. He would say this year, elect so-and-so. From 1969 to 1992, he never did that for the Yimbo community. During the presentation that we made to the ECK, the then Vice-Chairperson, Mr. Gabriel Mukele, told the Yimbo community: “This is the community that I would give constituency number one. If it was within my powers, I would have given you a constituency straightaway. You deserve it, but it all depends upon your political leadership.” That was still our “big brother”, who would not allow us to go. So, that still remains the issue.

Finally, on the same question, the six islands that I have talked about, if they are brought back to Yimbo, that would give Yimbo the political power to unseat the “Big Brother” and, therefore, the “Big Brother” will not even talk about the six islands. He would rather talk about Migingo Island in Migori County and forget about six islands in Bondo District, Siaya County.

That is my take, Hon. Commissioners.

Commissioner Farah: Yes, but you also understand that politics is about numbers. I notice that your population is 90,000. Going by the standards of the Andrew Ligale Commission, a constituency would be given to people who are not less than 160,000. As

I have said, politics is about numbers. If you have the six islands in Yimbo, will you raise the requisite number to qualify for a constituency?

Mr. Salim Odeny: Hon. Commissioner, first of all, let me clarify the issue on the Ligale Commission. The Ligale Commission recommended that Vihiga Constituency be divided into two. Vihiga Constituency has less than 90,000 voters. That is where Ligale comes from.

Budalang'i Constituency, which neighbours us, has less than 40,000 voters. So, if the islands are brought back to Yimbo, we will definitely meet the threshold. We will be far much ahead of even the Sakwa community.

Commissioner Farah: Thank you very much. That is the end of my questions. I will now hand you over to the other Commissioners.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Salim. Let me just take you through your testimony in a few questions. I want to find out which son of Yimbo, if any, took part and has been part of the struggle? I am raising this comparatively because marginalisation can be a deliberate act by certain powers, but it can also be an act that is perpetuated through numbers. The numbers are probably the problem here. I know that there are gallant sons of the Yimbo community but has there been any person from the community who ever ran and was excluded from leadership?

Mr. Salim Odeny: Presiding Chair, I am not getting this question very well. Do you mean somebody who ran for a political seat and was excluded?

The Presiding Chair (Commissioner Ojienda): Yes. Has there been any actual injustice committed against any person from Yimbo, who aspired to political office within the larger Siaya County?

Mr. Salim Odeny: Yes, I would definitely mention a case. There are a number of cases but the one I would mention is that of political representation for the years 2002 and 2007. I would mention Gideon Ochanda. I would give evidence very clearly.

During the nomination of ODM in 2007, our Returning Officer was somebody called Wakla, a lawyer by profession and a son of Alego. He came very late on the fateful day and told us that the ODM Headquarters had delayed him because there were not enough ballot papers. If anything, he had only come with 10,000 ballot papers. The people agreed to vote. After voting, Ochanda got 6,000 votes. There were four contestants, namely, Dr. Ochanda, Dr. Oburu, Agunga Nyadimo and Jalang' Anyango. Three of the four contestants were from the Sakwa community. Ochanda was from the Yimbo community. If Ochanda got 6,000 votes on that day, I leave it to you to calculate for the answer but still Ochanda was not cleared as the candidate for ODM.

If you allow me, Presiding Chair, recently, there was an issue when the same Ochanda applied and, indeed, was shortlisted for a job by the IIEC. The issue was that Ochanda

had run for a political seat. There was another candidate called Oswago. Oswago was vehemently defended. Ochanda was left to fall. The accusations against the two were the same, but Ochanda was left to fall. Oswago was seriously defended and he got the job. So, there are a number of people who, given time, I will bring to the attention of the Commission, including their contribution to the historical struggle. Even during Independence struggle and the Second Liberation, I will tell the Commission about the contribution and participation of the Yimbo people, so that they are not seen to want to reap where they did not sow.

Thank you, Commissioners.

The Presiding Chair (Commissioner Ojienda): Thank you, Salim. I want to believe that you have made the point. That is why I said your memorandum is so substantive. You should have appeared on Monday and made your point because I can see that you want to serve your community. The Vice Chairperson of the National Cohesion and Integration Commission does not come from Yimbo but advises that it is possible for Yimbo to be a special case for consideration under the Constitution of Kenya, 2010, for a sub-county, so that you can reign over your affairs. I feel that if a young person like you can defend Yimbo on this platform--- I know that there are other gallant sons of the Yimbo, namely, Mr. Isaac Wango, Prof. P.L.O. Lumumba, Dr. Ochanda, and others. Clearly, you also speak for many people.

I said I would ask you only three questions. I am just winding up. This is going to be the second-last question. On the Dominion Farm, please, make a very detailed memorandum, to assist us. I want to believe that a full environmental impact assessment was undertaken because by the time the Project Report was filed by Dominion Farms, a full environmental impact assessment must have been undertaken. All the lead agencies should have been involved in the process. We read about injustices by the Dominion Farms, but we, probably, do not understand to the extent that you have explained. I think it is a serious case of violation.

I wonder why you have not taken these specific cases for the individuals to court, so that you get damages for them. Why have you not stopped Dominion Farms from flooding people's homes? Chapter Five of the Constitution offers you reprieve in terms of protecting environmental rights. I think you should take advantage of that chapter, engage in public interest litigation, which also protects some individual rights. I also propose that you share your memorandum with the national Constitution Implementation Commission (CIC) as well. I think there are issues which the CIC can probably deal with.

Otherwise, I want to thank you. I do not know whether you have a last response to those issues, so that we can close. I can see that the Lead Counsel is getting very tired.

Mr. Salim Odeny: Presiding Chair, I will respond to the last one very fast. I will undertake to do as you have instructed – sharing this memorandum. With regard to why these cases have not been taken to court, there are cases in court. There is a case in the

High Court, Kisumu. There are three cases in Siaya, and two cases in Bondo. Unfortunately, they are taking too long to be disposed of.

With regard to EIA, yes, it was done and Dominion Farms was cleared to undertake rice farming. But immediately it was cleared for rice farming, it began doing other things for which it was not cleared. This includes fish farming, among many other things it was not cleared for.

The Presiding Chair (Commissioner Ojienda): So, why do you not go to the National Environment Tribunal and challenge the EIA licence? It is that simple. Once you file your case with the Tribunal, a stay will be granted automatically and the activities will stop. Mark Oloo knows that.

Mr. Salim Odeny: Presiding Chair, I thank you for that advice. I will take it up with other stakeholders, so that this is undertaken.

Thank you very much.

The Presiding Chair (Commissioner Ojienda): We have come to the end of today's session. It is now 8.30 p.m. I want to thank Consolata Okeyo Masinde, Michael Wanyama, Jared Otieno Ojiambo, Carolyn Auma, Mark Achola Nyongesa, hon. Shakeel Shabir Ahmed, MP; Dr. Odhiambo Olem, George Konya Odidi, Wilson Kangong'a Ochieng and, of course, Odenye Salim, who has presented a brilliant memorandum.

Master of Ceremony, close the session.

Mr. Patrick Njue: Presiding Chair, before we close, with your indulgence, we have received three memoranda.

The Presiding Chair (Commissioner Ojienda): Do you want to admit the documents that we have just received? What do you intend to do? Do you want us to continue?

Mr. Patrick Njue: No, certainly not. Just to mention for the record that we received three memoranda during the day.

The Presiding Chair (Commissioner Ojienda): Where are the people who presented the memoranda? Are they here?

Mr. Patrick Njue: They have been sitting with us the whole day.

The Presiding Chair (Commissioner Ojienda): Where are they? We have Monday. I direct that no memorandum be submitted without the makers. Let the memoranda be submitted on Monday. These are issues of extreme public importance. They cannot just be handed in like that.

Mr. Patrick Njue: We are guided, Presiding Chair.

The Presiding Chair (Commissioner Ojienda): Master of Ceremony, close the session.

(The Commission adjourned at 8.35 p.m.)