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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION HELD ON MONDAY 18TH
JULY, 2011, AT THE AGA KHAN HALL, KISUMU**

PRESENT

Berhanu Dinka	-	The Presiding Chair, Ethiopia
Gertrude Chawatama	-	Commissioner, Zambia
Ahmed Farah	-	Commissioner, Kenya
Tom Ojienda	-	Commissioner, Kenya
Ronald Slye	-	Commissioner, USA
Patricia Nyaundi	-	Commission Secretary

(Opening Prayer)

(The Commission commenced at 09.20 a.m.)

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

The Presiding Chair (Commissioner Dinka): Good morning. We have two representatives from the Kenya National Commission on Human Rights (KNCHR) who are here with us. I welcome you and I would like to recognize you.

We have very important witnesses and as the truth seeking Commission, we would like every witness to be respected and given the dignity they deserve whether we like their testimony or not. Whether we agree with them or not, we should respectfully listen and no comments will be made during testimony and no unnecessary movements will be allowed in the hall so that they could testify without being distracted.

In connection with this, I would like everyone to switch off his mobile phones. For camera people, the video cameras will continue working. The still cameras can take pictures while the testimony is going on. However, no flash lights should be used. Anyone who does not comply with these instructions will politely be asked to leave the room.

I would like to ask if there is any counsel present. I see none. I would like to ask the Leader of Evidence if she would like to make any preliminaries. There is no need for preliminaries. Thank you very much.

So I would like to start the session by ask the Hearing Clerk to bring in the first witness and administer the oath. Thank you.

(Mr. Andrew Lawrence Odhiambo Njoga took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome to the Commission's hearing this morning. For the record, please, tell us your name, where you live and your current occupation.

Mr. Andrew Lawrence Odhiambo Njoga: My full names are Andrew Lawrence Odhiambo Njoga. I come from Jimo East Sub-Location in East Nyakach, Nyakach District.

The Commission Secretary (Ms. Nyaundi): Thank you very much. You have recorded a statement with the Commission concerning your detention following the failed coup attempt of 1982. I now invite you to submit your statement to the Commission.

Mr. Andrew Lawrence Odhiambo Njoga: I think I have submitted my statement to the Commission. Due to time and because I have stayed for long, I will briefly go over it.

I was on duty on 31st. In the evening, I completed my duty and went to my place of residence. I rested for a short time and after taking my supper, I went to sleep. At around past midnight, I heard a command: "Soldiers, go out to the armory and arm yourselves." I woke up and went to the armory as directed by the command, which was my usual place of duty. I was an Arms Photo Technician. When I went to that place, I was surprised. It was a place that you could not just enter that way; but all the doors were open and there was a rush of taking arms and ammunition. I armed myself and stayed inside there. Many soldiers were coming and arming themselves. That was not the routine order of the day there. The routine order of the day at that place was that when you enter, you write your name at the gate, then you write what you want to do inside and what you want to take. After that, you are given a chance to do so. Our names were written in a book and the type of weapon that we were taking, plus the number of ammunition. That was not the order of that day. I stayed in the armory up to around 4.00 p.m. That is when I heard that things were bad in town.

So, we went to a place next to the Sergeants' Mess where the white flag was raised. We gathered there and then we saw the marching orders of army officers coming towards our direction. We stayed there for long and many Air Force soldiers were gathered there. After a short duration, the army officers came next to us and ordered us to remove our clothes, shoes and the head dress. We remained with our inner pants and stayed apart. We were then told to move to the Sergeant's Mess Hall. We stayed there and after a short time, we were ordered to enter the army trucks which were standing by the door. We entered the vehicles and later, we were transported to Kamiti Maximum Prison.

While there, we were taken to Block C where we stayed for a number of days, then the interrogation started. I was later removed from Block C, Room 1 to Room 2. After that, I was called for interrogation and thereafter, I was taken to Room 3. We stayed there and then I was transferred to Naivasha Maximum Prison, where I stayed for over month while the interrogation was taking place again.

I was taken to Block A, Door 10; an isolation Block. I stayed there and then I heard somebody from outside calling Robert Odhiambo. I kept quiet because I was not Robert. Then I was informed by one of the officers that I was the person who was wanted. I told him I was not Robert. Then I realized I was the person who was needed. I did not hesitate but walked out with him. I was led to a Land Rover that was standing by the side of the door. I was then taken into a room for further interrogation where I found some other officers. They asked me my full names and my place of duty. I told them that I am Andrew Lawrence Odhiambo Njoga with a Service Number 024683, working in Eastleigh as an Army Photo Technician. They were convinced and then I was taken back to my room. I stayed there for a number of days again. Later on, I was removed from Room 10 to Room 23 upstairs which was in the same Block A. I stayed there for a number of days. Then I was called again after some time to go and record my statement. I went and wrote my statement and then I was brought back. All in all, I suffered greatly, but I knew nothing about the coup attempt. I suffered greatly because I came from Nyakach and I was having the name "Odhiambo".

I started experiencing eye problems when I was in prison. I tried to reach the doctor but it was very difficult. Later, after recording the statement, I was then transferred again to Kamiti Maximum Prison, and later to Langat Barracks for the Court Martial. We were not prepared for the court Martial.

We were not even given time to be represented. In Kamiti, I was informed by my colleagues that there was a magazine which said that I had already been sentenced to nine years imprisonment. To my surprise, when I went to the court martial, I was given nine years imprisonment. So I was later transferred to Industrial Area Prison where I waited to be taken to Shimo La Tewa Maximum Prison in Mombasa. I stayed there until the time when I was told that according to the documentation, my sentence was reduced to six years by the review.

My eye problem did not stop but it was difficult to access the doctor. The clinical officers who came to see us, they only gave us panadol. It reached a time that I could not even eat. So I was given time to be taken to the dispensary where I was admitted and all the eyes were closed with a bandage. I stayed in the dispensary for about four days. When the bandage was removed, I could not see. The clinical officer wrote for me a letter so that I could be taken to Coast General Hospital to go and see a consultant. I was given treatment and admitted at the Coast General Hospital. I was operated on my left eye but it did not succeed very well. The doctor recommended that I be transferred to Kenyatta National Hospital. I was then brought back to Shimo La Tewa where all the plans were being done so that I could be taken to KNH. While I was in Shimo La Tewa, a report came that I was going to be released. The Review had quashed my sentence. That was around 1987. I was released around 17th July, 1987. I was released and given a warrant to Nairobi. I could not trace my path properly. I asked good Samaritans to guide me. I went up to the Railway Station where I boarded a train to Nairobi. When I reached Nairobi, I asked good Samaritans to help me get to Kenyatta National Hospital. When I reached Kenyatta National Hospital, I met a consultant, Prof. Ochieng' Adala. Just because I was

nostalgic, I really wanted to see my people at home. I asked for permission and he understood my situation and gave me time to go home.

I went home and met all my parents and brothers, and I was so happy. I stayed with them for about a month and then I went back to Kenyatta National Hospital. I met Prof. Adala again and I was admitted. On that very, very week, my left eye was operated. The operation was successful. After about a month, again, the right eye was operated. I stayed in hospital for one month and then, I was discharged. Prof. Adala gave me a prescription to go and see the optician around Wilson Airport; that is, the Wheels Opticians. He gave me a lens which I used for sometime. That was positive 11. I think it was the last lens, the most powerful one. I used that lens and when it reached around 2005, the eyes started to diminish. I was unable to see the doctor regularly because of lack of finances. I went to Thogoto Hospital and the doctors there told me that my eyes were now beyond repair. I could not believe myself because I did not know how to help myself. I was now married with two wives and six children. I was declared blind and could do nothing. I was guided by the cousins whom we were with and I sought Prof. Adala again. By that time, he had left the Government and was having his clinic at--- I have forgotten the name.

When I reached that place, I got Prof. Adala. Just because he was my friend and my doctor, he told me, Bwana Andrew, you have delayed so much. There is no way I can help you. The only thing that you can do, I will write for you a letter to go for rehabilitation. He asked me the nearest place where I could go. He preferred Sikri, where I went. When I went to Sikri, they accepted me. I learnt to read braille and write, mobility, typing and the artisan skills of weaving.

I cannot still help myself because all the things I learnt in Sikri; the writing materials are very expensive. They cost about Kshs90, 000. The loom (weaving) machine is also very expensive. Up to now, I am at home. I am just being helped by my old dad who sacrificed and educated me. He spent a lot of his time and wealth on me. Instead of assisting him, he is still helping me. By bad luck, I lost my mom in 1991.

(Mr. Odhiambo wept)

Commissioner Syle: Let him take his time.

Mr. Andrew Lawrence Odhiambo Njoga: So up to today, I am asking the Commissioners to do the follow up. The truth has been known. I think reconciliation has been done. I ask the Commission to make the follow up not only on me but also to my fellow members who were victimized on the *coup de tat*. It is alleged but the truth has been known. We have suffered on the grounds that we did not know. On my side, I suffered because of the name Odhiambo but I knew nothing.

The Commission Secretary (Ms. Nyaundi): Thank you very much for your testimony and with great personal empathy, you will allow me to ask you a few questions just to enable us complete our record. The Commissioners may also ask you a few questions.

Mr. Andrew Lawrence Odhiambo Njoga: Yes, Presiding Chair!

The Commission Secretary (Ms. Nyaundi): You have said that on the morning of 1st August, there was a commotion and you got instructions to pick arms from the armory. Would you be able to recollect who was issuing those orders; was it a member of the Air Force or a civilian? Who was issuing the orders?

Mr. Andrew Lawrence Odhiambo Njoga: The orders were from outside. We were inside the house sleeping. It was at night. Automatically, you could not see who was giving the orders but the orders came from outside.

The Commission Secretary (Ms. Nyaundi): So is it the practice of uniformed forces that when you hear an instruction and you do not verify the person who is giving those orders, you just respond to the order?

Mr. Andrew Lawrence Odhiambo Njoga: According to the Armed Forces orders, you react to the order and then you later complain, if necessary.

The Commission Secretary (Ms. Nyaundi): Are you saying that as far as you are concerned, the first time you would have known that there was an intention to have a coup is when you were awoken up and told to take arms?

Mr. Andrew Lawrence Odhiambo Njoga: It is not that easy to enter my place of work. But when I went there, it was wide open. As I have said, during the previous day, I was on duty during the day. I handed over to my colleague, a Mr. Cheruiyot, who was on the night shift. But when I entered, I could not even see Mr. Cheruiyot. The communication system in the room was cut. The phones around that place were not working. So there was nobody to ask. There was movement up and down. So you could not have time to ask anybody.

The Commission Secretary (Ms. Nyaundi): Some people who formerly worked for the Air Force have said that prior to the events of 1st August, there had been some indication that there was going to be trouble. Were you probably one of those officers who were aware that there was an intention to overthrow the Government?

Mr. Andrew Lawrence Odhiambo Njoga: No!

The Commission Secretary (Ms. Nyaundi): Just to confirm the record, you were stationed at the Eastleigh Barracks?

Mr. Andrew Lawrence Odhiambo Njoga: Correct!

The Commission Secretary (Ms. Nyaundi): You said you picked arms at around 1.00 a.m. or 2.00 a.m. on the morning of 1st August and you stayed within the barracks till 4.00 p.m.?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

The Commission Secretary (Ms. Nyaundi): So what were the duties that were assigned to you?

Mr. Andrew Lawrence Odhiambo Njoga: There was nobody to assign me duties. As usual, I was supposed to report back to duty in the morning.

The Commission Secretary (Ms. Nyaundi): So you were holding a firearm and just sitting with it at Eastleigh Barracks?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

The Commission Secretary (Ms. Nyaundi): You were not given any instructions?

Mr. Andrew Lawrence Odhiambo Njoga: I was not given any instructions prior to the order in the morning that we wake up and rush to the armory.

The Commission Secretary (Ms. Nyaundi): Where were you stationed in the barracks? Were you stationed in the room or near the fence or where?

Mr. Andrew Lawrence Odhiambo Njoga: Where I was stationed in the barracks?

The Commission Secretary (Ms. Nyaundi): Where were you stationed?

Mr. Andrew Lawrence Odhiambo Njoga: In the barracks.

The Commission Secretary (Ms. Nyaundi): Inside a room or at the perimeter fence?

Mr. Andrew Lawrence Odhiambo Njoga: At the perimeter fence of the armory.

The Commission Secretary (Ms. Nyaundi): So was it your understanding that you had the gun with the intention of protecting anybody or preventing people from moving in a particular direction?

Mr. Andrew Lawrence Odhiambo Njoga: No, I just took it to arm myself but not to prevent anybody. There is nothing that I did with my weapon.

The Commission Secretary (Ms. Nyaundi): You said that you were interrogated in a number of places, including Kamiti and Naivasha Maximum Prisons. What was the nature of this interrogation?

Mr. Andrew Lawrence Odhiambo Njoga: To go deep into it, at Kamiti, I was just asked some few questions. One of the questions I was asked at Kamiti was if I had attended any meetings towards the coup, which I had not.

The Commission Secretary (Ms. Nyaundi): Then when you were moved to Naivasha?

Mr. Andrew Lawrence Odhiambo Njoga: In Naivasha, I was also asked the same question. Next, I was taken to identify somebody whom I did not know. Then I was also asked if I was Robert Odhiambo and I told them I was not the one.

The Commission Secretary (Ms. Nyaundi): Did you know Robert Odhiambo?

Mr. Andrew Lawrence Odhiambo Njoga: Yes, I knew Robert Odhiambo. He was working in the Safety Equipment.

The Commission Secretary (Ms. Nyaundi): And was he also detained for interrogation?

Mr. Andrew Lawrence Odhiambo Njoga: I have not seen him since.

The Commission Secretary (Ms. Nyaundi): Was this interrogation carried out by an individual or a group of persons?

Mr. Andrew Lawrence Odhiambo Njoga: It was a group of persons.

The Commission Secretary (Ms. Nyaundi): Were they civilians or members of the force?

Mr. Andrew Lawrence Odhiambo Njoga: I cannot tell whether they were civilians or members of the force but they were in civilian clothes.

The Commission Secretary (Ms. Nyaundi): Let us go back to the nature of interrogation. Did they simply ask you questions or did they apply any other methods to get information from you?

Mr. Andrew Lawrence Odhiambo Njoga: They used different kinds of methods. One of them was isolation. You were put in one room. I was also put in a small cell where water was poured on me when I was naked. I was also put in a dark room.

The Commission Secretary (Ms. Nyaundi): In your statement, you also made reference to physical torture. What did this involve?

Mr. Andrew Lawrence Odhiambo Njoga: No, there was no physical torture. At the time when we were being transported from Eastleigh, that is where we were given some beating.

The Commission Secretary (Ms. Nyaundi): So now when you were eventually presented before the court martial. What charges were read out to you?

Mr. Andrew Lawrence Odhiambo Njoga: The charge was mutiny.

The Commission Secretary (Ms. Nyaundi): Apart from you, were other officers affected by this?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

The Commission Secretary (Ms. Nyaundi): Would you mention a few, if you remember?

Mr. Andrew Lawrence Odhiambo Njoga: In Shimo la Tewa, we were with Daniel Kiptum, Samuel Cheruiyot, Sebastian Apua, John Ondier, Gerald Akinga, Jasper Ochieng', Samuel Njoroge--- We were so many.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Now you have not given them to us today but do you have the documentation for the treatment that you received for your eyes in the various hospitals?

Mr. Andrew Lawrence Odhiambo Njoga: I think if necessary, I can check for them.

The Commission Secretary (Ms. Nyaundi): We will be happy to receive them.

Mr. Andrew Lawrence Odhiambo Njoga: Okay.

The Commission Secretary (Ms. Nyaundi): You have said that you have two wives and six children?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

The Commission Secretary (Ms. Nyaundi): Did you marry your wives before or after you were released from prison?

Mr. Andrew Lawrence Odhiambo Njoga: After I was released.

The Commission Secretary (Ms. Nyaundi): What has been the impact of your experience upon your family?

Mr. Andrew Lawrence Odhiambo Njoga: I did not get the question.

The Commission Secretary (Ms. Nyaundi): You said that when you left the prison, you were blind and you were unable to make a living for yourself, but now you have two wives and six children. What do you think has been the effect of your illness or disability upon your family?

Mr. Andrew Lawrence Odhiambo Njoga: I joined the Forces when an agile, strong man. I could do anything to support my living but after the detention and the loss of my sight, I became a disabled person. But disability is not inability. I can do anything if I can get support.

The Commission Secretary (Ms. Nyaundi): Thank you very much. The Commissioners will now ask you some questions.

The Presiding Chair (Commissioner Dinka): Thank you very much, Leader of Evidence. Thank you very much also, Mr. Andrew Lawrence Odhiambo, for your testimony. Now I will give the opportunity to the Commissioners to ask you a few questions if they have some.

Commissioner Ojienda: Thank you very much, Andrew and Leader of Evidence, for the way the issues have been brought out. Andrew, I just want to share your pain and to express how sorry I feel for the occurrences that followed the coup that happened on 1st of August, 1982 and what you went through. I just want to clarify one or two issues that led to the evidence that you have given this Commission.

You said that you were arrested with a group of members of the Air Force and that this was undertaken by army officers. You also said that they were directed and thereafter you appeared before the court martial and you were sentenced to nine years. I do not know if you recall who was presiding during the court martial trials and who was prosecuting because you say that you admitted though you were not involved in the process.

Mr. Andrew Lawrence Odhiambo Njoga: I cannot remember because there was an influence that if at all we were not to disturb the court martial, we were to be reinstated. So I did not take interest on those who were handling the court.

Commissioner Ojiambo: You have blamed your arrest on two things: one is because you are named Odhiambo and two, because you are from Nyakach. What was it about Nyakach and the coup in 1982? Just explain that.

Mr. Andrew Lawrence Odhiambo Njoga: The name Odhiambo--- we greatly suffered because of Ochuka who was blamed as the ringleader and who declared himself as the President at that time. So Ochuka came from Nyakach and had the initial "O". So we, people, suffered because of our names beginning with letter "O".

Commissioner Ojienda: Did you know Ochuka before the coup?

Mr. Andrew Lawrence Odhiambo Njoga: Yes, I knew Ochuka before the coup. He was the chairman of the air men.

Commissioner Ojienda: Did you understand or did you come to understand his involvement with the coup and how he planned it?

Mr. Andrew Lawrence Odhiambo Njoga: Up to now, I do not understand. I just knew through rumours that he declared himself as the President but I did not know any plan. I did not even attend any of his meetings.

Commissioner Ojienda: Where is Ochuka?

Mr. Andrew Lawrence Odhiambo Njoga: I heard that he was killed.

Commissioner Ojienda: Lastly, you were asked about your condition. You lost your sight because of an illness that you contracted while you were in detention. What do you want the Commission to do for you?

Mr. Andrew Lawrence Odhiambo Njoga: All in all, my sight cannot be reinstated. Because the truth has been known, I just want some support because I have two wives and children to support and my old man too.

Commissioner Ojienda: Thank you.

The Presiding Chair (Commissioner Dinka): Thank you very much. Yes, Commissioner Slye!

Commissioner Slye: Thank you very much, Mr. Odhiambo. I want to join my fellow Commissioners in expressing my empathy towards you. We have had a number of people appear before this Commission, who like you, were arrested, tortured and whose life was fundamentally changed because of their alleged involvement in the 1982 coup. Like many of them, you are a man who was there to serve your country and then, unfortunately, your country turned against you. I know that was a difficult thing to experience particularly for someone who is committed to the welfare of the country. I just had a couple of questions to try and better understand your testimony. When the Leader of Evidence was questioning you, she asked you about the orders you had received when you were in your house to go to the armoury. You said that the order came from outside. It was not clear what you meant by that. Was it somebody from outside with this or was it somebody calling from outside your house? How did you hear it?

Mr. Andrew Lawrence Odhiambo Njoga: The order was from outside my house.

Commissioner Slye: So there was an individual standing outside your house who gave the order? Is that right? You were in your house and heard somebody yelling or speaking from outside your house saying, “wake up, come to the armoury”?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

Commissioner Syle: And when you went to the armoury, did you receive further orders while you were there?

Mr. Andrew Lawrence Odhiambo Njoga: No, there were no instructions or orders but soldiers were running up and down and others standing outside the camp with weapons.

Commissioner Syle: And were those people who were running outside with weapons familiar to you or they were people you had not seen before?

Mr. Andrew Lawrence Odhiambo Njoga: They were uniformed soldiers. It was dark at that time. I knew some, but not all.

Commissioner Slye: Looking at their uniforms, could you tell which part of the armed forces they were from?

Mr. Andrew Lawrence Odhiambo Njoga: We know air force have a light blue shirt and a blue long trouser. Technicians wore dark green uniforms. There is also the regular uniform for the military personnel which is greyish and dark green short.

Commissioner Slye: During that time people were running around with weapons, did you see people with those different types of uniforms or was it only one type of uniform?

Mr. Andrew Lawrence Odhiambo Njoga: I saw different types of uniforms.

Commissioner Slye: So, they were members of the Air Force, Army and other armed forces as well?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

Commissioner Slye: That was during the night. You woke up at 1.00 a.m., and then around 3.00 p.m., you thought it was a coup staged by military personnel. Is that right?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

Commissioner Slye: During that day before 3.00 p.m., were there still people running around?

Mr. Andrew Lawrence Odhiambo Njoga: I beg your pardon, Sir?

Commissioner Slye: Before 3.00 p.m., were there people still running around in uniform like what you saw during the early hours of the morning?

Mr. Andrew Lawrence Odhiambo Njoga: The commotion reduced as the day progressed.

Commissioner Slye: Were people still coming during that time?

Mr. Andrew Lawrence Odhiambo Njoga: People were still coming, but they were very few.

Commissioner Slye: They were coming as I assume to receive weapons and you and others handed out weapons to those individuals?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

Commissioner Slye: You were then arrested and imprisoned. You told us a little bit about that experience. I just want to get a better sense of the Naivasha Maximum Prison. You mentioned that you had stayed in the isolation ward in two different rooms; Room 10 and Room 23. To the extent that you can remember, could you describe those rooms to us? How big were they? How you were able to stand up?

Mr. Andrew Lawrence Odhiambo Njoga: In Naivasha, the isolation rooms were around 8 by 10.

Commissioner Slye: Is that metres.

Mr. Andrew Lawrence Odhiambo Njoga: About 9 by 10 feet.

Commissioner Slye: Were you able to stand up? Was the ceiling high enough for you to stand up?

Mr. Andrew Lawrence Odhiambo Njoga: Yes, I could stand.

Commissioner Slye: Were there windows?

Mr. Andrew Lawrence Odhiambo Njoga: No, the ventilation was poor.

Commissioner Slye: So, there were no windows?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

Commissioner Slye: Was there light?

Mr. Andrew Lawrence Odhiambo Njoga: In some rooms, there were lights. The other rooms did not have light. I was taken to one room which was dark. It was painted black completely.

Commissioner Slye: How long would you be left in one of these rooms before you were allowed to go outside?

Mr. Andrew Lawrence Odhiambo Njoga: In the dark room, I stayed for a week.

Commissioner Slye: So, in the dark room, you stayed for a week and you never went out the entire week?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

Commissioner Slye: Were you given water and food?

Mr. Andrew Lawrence Odhiambo Njoga: Water was pushed down the door. The door was opened a little bit and then it was pushed inside. After eating, they removed it. They came and collected everything again.

Commissioner Slye: Were you fed once a day, or more often than once a day?

Mr. Andrew Lawrence Odhiambo Njoga: About twice a day.

Commissioner Slye: You remember what kind of food you were given?

Mr. Andrew Lawrence Odhiambo Njoga: The food was not that much palatable. It was vegetable soup which so black. The ugali was not that much good.

Commissioner Slye: So, you were fed twice a day and the food was not very palatable. It was vegetable soup and ugali?

Mr. Andrew Lawrence Odhiambo Njoga: Yes.

Commissioner Slye: Was that sort of food the same when you were in the other rooms and not in the dark tinted black room?

Mr. Andrew Lawrence Odhiambo Njoga: Yes, the same food.

Commissioner Slye: I am sorry you may have said this earlier, but how long were you detained in the Naivasha Maximum Prison?

Mr. Andrew Lawrence Odhiambo Njoga: We were so many. I realized when we were removed from Block A to Block C. So, in Block C, the rooms were a bit bigger. We could stay about 10 people in a room.

In Block C, we were a bit removed to go and bask in the sun for at least ten minutes. Then, we were taken back to the rooms.

Commissioner Slye: So, in Block C, you had larger rooms, but you were held ten of you in a room, whereas in Block A, you were in a room by yourself. Then, in Block C, you were also allowed to go outside for ten minutes a day. Is that right? Could you remember how long you were in Block A and how long you were in Block C?

Mr. Andrew Lawrence Odhiambo Njoga: We stayed in Block C for about a month. In Block A, I think it was also one month.

Commissioner Slye: Do you know, or was it ever explained to you why you were moved from Block A to Block C?

Mr. Andrew Lawrence Odhiambo Njoga: There was no reason for that. I did not know.

Commissioner Slye: In your statement, you mentioned that while you were in Naivasha, you were physically tortured. Did they beat you, or was there any other sort of assault?

In your written statement before us, you said that you were physically tortured while you were held in Naivasha. So, I am just trying to get an understanding of what that means. Were you assaulted by any of the guards or the people?

Mr. Andrew Lawrence Odhiambo Njoga: The physical torture was bad. We were being put in very cold water.

Commissioner Slye: Lastly, as you may be aware, part of our work is to make recommendations with respect to institutional reforms to prevent or lessen the possibility of someone suffering the same sorts of violations that someone like you suffered. As somebody who was in the military and someone who was punished by the military, I wonder if you have any ideas about how the military should be reformed to prevent something like this happening again.

Mr. Andrew Lawrence Odhiambo Njoga: The military personnel should be given time to interact and visit one another. They should be friendly and equal.

Commissioner Slye: When you say military personnel should be given freedom to interact, what do you mean by that? What will this accomplish?

Mr. Andrew Lawrence Odhiambo Njoga: The military personnel consist of the Air Force, the Army and the Kenya Navy. So, when we were in the training camps, we were treated differently. There was no equality. When the Air Force personnel they being trained, they are mistreated. Most of their trainers are from the Army. They are held in high esteem. So, this is where the difference occurs.

Commissioner Slye: If I understand you correctly, there is a hierarchy within the military among the different services. I gather that the Army may be considered more superior, or they see themselves as more superior than the Air Force.

Mr. Andrew Lawrence Odhiambo Njoga: They see the Air Force personnel as being superior to the Army.

Commissioner Slye: So, what is the consequence of that?

Mr. Andrew Lawrence Odhiambo Njoga: The consequence is that the Air Force people are mistreated seriously. They are not given proper treatment.

Commissioner Slye: Thank you very much, Mr. Odhiambo. Your testimony has been very helpful to me and to the Commission.

Commissioner Chawatama: Thank you very much, Sir, for your testimony. I really feel very saddened by the experience that you went through and by the loss of your sight. I only have one or two questions to ask you. When you went to the armoury and you found the doors open, what were your thoughts?

Mr. Andrew Lawrence Odhiambo Njoga: The happening was unusual.

Commissioner Chawatama: Was there a sense of panic or a sense of a serious event taking place?

Mr. Andrew Lawrence Odhiambo Njoga: Yes, the event was serious. All the time I was in the Air Force, I had not seen a scene as such.

Commissioner Chawatama: I know my friend asked you the name of the judge who might have presided over your court martial, but you did not remember the name. Do you know whether or not there was a judge or advocate present in the court martial?

Mr. Andrew Lawrence Odhiambo Njoga: I cannot remember.

Commissioner Chawatama: We have had witnesses who have gone through similar experiences and they were sentenced based on a plea of guilty or self-predictions. Some of them have told us how they received presidential pardon. You have told us that your sentence was quashed. Did this mean anything to you based on the experience that you had gone through and the fact that your sentence was reduced from nine years to six years? What did the quashing of the sentence mean to you?

Mr. Andrew Lawrence Odhiambo Njoga: It could be presidential pardon, but I was not informed. I was informed that my sentence has been quashed and I was free to go home. But it could have been a presidential pardon.

Commissioner Chawatama: My question is: How did you receive the news? What did it mean to you for your sentence to have been quashed at that time?

Mr. Andrew Lawrence Odhiambo Njoga: I was so happy.

Commissioner Chawatama: Do you think there was need to be grateful that your sentence had been quashed taking into consideration that you were innocent?

Mr. Andrew Lawrence Odhiambo Njoga: Yes, investigations also take time. I stayed long, but what is important is freedom. Staying behind the bars is something quite pathetic. It is something I cannot just explain.

Commissioner Chawatama: Based on your answer, the next step would have been to be reinstated or to be given full benefits. Did this happen?

Mr. Andrew Lawrence Odhiambo Njoga: No.

Commissioner Chawatama: Thank you very much for your testimony. I wish you all the best.

The Presiding Chair (Commissioner Dinka): Andrew, I also join my colleagues to thank you for your testimony and to express my own empathy with you with your suffering and pain, particularly with the tragic loss of your sight at this age.

I want to ask you just one or two questions. When you say you were awakened from your home, is that a private home or were you in your quarters in the Air Base?

Mr. Andrew Lawrence Odhiambo Njoga: It was the quarters in the Air Base.

The Presiding Chair (Commissioner Dinka): How far was it from the armoury?

Mr. Andrew Lawrence Odhiambo Njoga: It is not that much far. It is about 500 metres.

The Presiding Chair (Commissioner Dinka): Have you ever found out the person who called you?

Mr. Andrew Lawrence Odhiambo Njoga: No.

The Presiding Chair (Commissioner Dinka): You have asked or you never found out?

Mr. Andrew Lawrence Odhiambo Njoga: I never found him around.

The Presiding Chair (Commissioner Dinka): When you went to the armoury, did you find it opened or the Air Force people broke into it?

Mr. Andrew Lawrence Odhiambo Njoga: I do not know whether it was broken. I did not try to investigate, but the main gate was wide open. I think you know the place very well. It is a place when you went, there is an alarm bell where you press the button, then there is a bell ringing inside to alert the person who is inside to come and open the door. So, the main gate was wide open. The main entrance to the block was wide open. The entrance to main armoury was also wide open. So, everything was wide open. I cannot just say that it was partially open.

The Presiding Chair (Commissioner Dinka): Were you given a particular weapon, or you just went in and took whatever you wanted?

Mr. Andrew Lawrence Odhiambo Njoga: You know in the Air Force armoury, we have small arms. There are also cupboards for the small arms which are not open. There were rags where SRs were arranged. People were rushing to take the arms from these rags.

The Presiding Chair (Commissioner Dinka): Thank you very much. Your testimony has been very useful to us. It is true we have heard some of your other colleagues here and in other places as well people who are victims of the 1982 coup from the Air Force. We sympathise with you. I hope the Commission report on the consequences of that would be somehow helpful to you and your family.

Before I ask the Clerk to call the next witness, I would like to recognize the presence the Vice-Chairperson of the National Commission on Integration and Cohesion, Ms. Mary Onyango.

You can stand the witness down and call the next witness.

(Mr. Robert Onyango took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome to the Commission. I ask you to, please, tell us your name, where you reside and your current address.

Mr. Robert Onyango Wathuro: My name is Robert Onyango Wathuro. I was born at Kadero Village, East Kiguta Sub-Location, Nyakach District.

The Commission Secretary (Ms. Nyaundi): Thank you. We are in receipt of statement that you have recorded as the representative of the family of Hezekiah Ochuka Nyambogo. I invite you to make that statement.

Mr. Robert Onyango Wathuro: I am here before TJRC to talk on behalf of the family members of ex-senior private Hezekiah Ochuka. I am a nephew to ex-senior private Hezekiah Ochuka Nyambogo. Now being the eldest in our family, I want to talk about how death robbed us of a brilliant son. That is why I am here on their behalf.

I want to start by saying that on 1st August, 1982, the family members heard over the radio that the Government of Kenya had been overthrown by the Kenya Air Force (KAF) men. The family became worried since a member of the family was working in the KAF who was Ochuka himself. Then on Monday, 2nd August, 1982, there were rumours that Ochuka was among the soldiers who were killed in Nairobi. My father, Enock Akuro Nyambogo, decided to go to Nairobi despite the horrible situation to confirm the truth about it. He visited the mortuary, but found out that he was not among them. The following day, the family heard that ex-senior private Ochuka was among the soldiers that escaped to Tanzania. They were arraigned in court together with Capt. Pangerus Oteyo Okumu, and they were given political asylum in Tanzania. The family was relieved because Ochuka was now safe.

In 1983, *Weekly Review* carried a photo of Hezekiah Ochuka on front. The headline was: "The end of the game." That is when the family realized that Hezekiah Ochuka was among the people who were repatriated to Kenya. He was taken to Naivasha Maximum

Prison where he stayed for some weeks before he was transferred to Kamiti Maximum Prison. He was later arraigned before Langata Court Martial, charged with treason for trying to overthrow the Government of Kenya.

When he was at the Kamiti Maximum Prison, he invited the following members of my family: Hezron Omena, eldest brother, my father, Enock Akuro Nyambogo, Ochuka's mother, Wilkista Okech, and my sister, Mary Adhiambo, and others.

In 1984, he was sentenced to death by hanging. My father again visited him. He was in a jovial mood, and he even wrote a letter to our family stating that he would soon join them in building the nation. The letter was taken by a *Standard* journalist when he visited us at home. I can remember the name as Douglas Okwach. They took the letter and told us that they would bring it back to us, but up to now, we have not seen the letter again.

I said he was in a jovial mood. Ochuka said he was going to make an appeal against the judgement done by Major Mbewa. In 1985, my father, Enock Akuro Nyambogo, visited Kamiti Maximum Prison to see Ochuka, but he was turned away. The warders who used to welcome him turned against him with a cruel face. He insisted to remain and inquire from other warders. One of the warders told him that KAF soldiers who were facing death charges were removed from their cells and hanged. There were a lot of rumours countrywide that Ochuka was among the soldiers who were hanged. He returned home and broke the news to the family. The family members and other relatives gathered to mourn Ochuka. On the same day, a Land Rover full of combat policemen entered the family's compound and chased everybody away. They wanted to know how the family got the news. When they heard my father was the one who brought the news from Nairobi, they arrested him and Hezron Omena, Eli Otieno, who was a teacher, but cousin to Ochuka, Joseph Onyango, who is also a cousin to Ochuka. They were led to Ahero Police Station. They were interrogated for almost a week and later released. The policemen promised the family that they would officially communicate to the family about Ochuka's death which up to now we have not received anything.

I want to go into the harassment caused to the family. Immediately after the August coup, Kenya Army soldiers went to Ochuka's house in Umoja and stayed there. They chased away those who were staying in that house. Those who were staying in that house were my late cousin, John Okelo Angi and Harun Owuor. They destroyed cupboards and boxes and took valuable documents which were inside there. They took other things which we cannot know.

In 1984, his father Nyambogo Ochuka died out of shock when he heard that Ochuka was being charged with treason. In 1985, when President Daniel Arap Moi visited Nyakach Girls High School, I can remember my grandmother, Wiklister Okech, wanted to see the President about Ochuka's issue, then she was humiliated by the security forces and was forced back. Harassment of the family members and being held in pathetic situation made other relatives not to associate with the family. I can say that even right now, we have illiterate step father of Ochuka. However, because they were mistreated, they cannot come here and say anything for fear of being victimized or mistreated.

Request of the family to TJRC, the family wants justice to be done on Ochuka case. This is because a lawyer who was representing Ochukas was given by the Government itself. The lawyer was Hon. Moses Wetangula who is still alive. Hon. Wetangula never contacted anybody in the family. After the case, he has not shared anything with the family members. We feel that he is somebody who is having something that Ochuka may have explained to him as his lawyer. The family wonders how a junior soldier like Hezekiah Ochuka could organize a coup to overthrow the Government.

That shows that you respect the dead person. In the family, when family members come together in mourning somebody who is dead, many would accept that the person is dead and would not continue to live thinking on whether the person is alive or dead. That really interferes with the mind of those who are still living. There are some rituals like slaughtering a cow which give the dead person a peaceful mind after burial. I think that should be done to a dead person according to our customary law.

Commissioner Ojienda: You have said that the family may want to know where he was buried. Why would you want to know where he was buried?

Mr. Robert Onyango Wathuro: I just want to say that for us to believe that he is dead, that means that he was buried somewhere. Instead of removing the bones or his remains so that we bury him again at home, it would be good if the family would see the place where Ochuka was buried and believe that he was really buried.

Commissioner Ojienda: Robert, you have said that you would want, if at all Hezekiah Ochuka was buried, and that he accorded a decent burial at the place he comes from. Is that what you are asking for?

Mr. Robert Onyango Wathuro: No, I did not say that.

Commissioner Ojienda: Is it the wish of the family if, for instance, you knew that Ochuka was buried in Kamiti and that the body or his remains be finally laid to rest at his home or where he comes from?

Mr. Robert Onyango Wathuro: That is true if it is possible.

Commissioner Ojienda: You have talked about Ochuka's properties, bank accounts at Bank of Baroda, a car and a house in Umoja. Why has it not been possible to secure funds from his account? Just confirm this: has the family made any effort to secure his account or the house in Umoja?

Mr. Robert Onyango Wathuro: The family members have not tried that because all the documents that Ochuka had were left at the Kamiti Maximum Prison with the Prison authorities and have never been released to the family. Our hands are tied because we cannot access any of these properties because we do not have any documents.

Commissioner Ojienda: So, are you asking that those documents be released to you?

Mr. Robert Onyango Wathuro: We are appealing if they can be released to the family so that we can trace his property.

Commissioner Ojienda: Have you made an attempt to have the documents released from the prison authorities?

Mr. Robert Onyango Wathuro: The situation we are in at home cannot allow me to trace the documents.

Commissioner Ojienda: Robert, apart from yourself and you said that Ochuka's sister and your uncles have rested, does Ochuka have any other relatives?

Mr. Robert Onyango Wathuro: Yes, he has.

Commissioner Ojienda: Did he have a wife and children?

Mr. Robert Onyango Wathuro: By the time they were trying to overthrow the Government, we had engaged a lady who was at Nyabisawa High School doing her Form Six. The lady was called Margaret. I can only remember one name. After completing school, the lady visited us at home but after it was rumoured that Ochuka had been hanged, the lady moved away because she was discouraged by other people in the area that nobody would take care of her. Up to today, the lady still communicates to the family.

Commissioner Ojienda: I just want to join my fellow Commissioners in appreciating the family of Ochuka and in saying that the unfairness in which you say that your family has been stigmatized is most unfortunate. Whatever somebody does in his life, it is not fair that his family should continue to carry the pain and stigma many years after his death. I feel sorry for you. At the end of this process, we will be useful so that you feel that the matter has come to a closure after all the years.

Commissioner Slye: Thank you, Robert, for your testimony. I wanted to inquire on what my colleague was asking about, the stigma that your family has suffered because of your uncle. I wonder if you could share with us two or more specific stories in your life that you have suffered because of what happened to your uncle.

You said that owing to what happened, your family has suffered stigma, economically and socially. I wonder if you could share with us from your own experience how those impacts have been and stories of how your life has been affected because of what happened to your uncle.

Mr. Robert Onyango Wathuro: It is very true that our family members have really been affected because of being related to Hezekiah Ochuka. First, I would like to say that even our relative whom we consider should have taken the responsibility of the family

moved away fearing that he might be arrested as it had been done to other family members. The person I mentioned, Elly Otieno, is a cousin to Ochuka. He was arrested because he was with the family at the time of mourning. This has also made others to go away. They feel that if they come close to us, they will be victimized for associating with our family. This is something that happened since 1982.

Commissioner Slye: Are there things in your life that you would have liked to have done or opportunities that you would have liked to have that you feel you were denied because of what happened to your uncle?

Mr. Robert Onyango Wathuro: After completing school, I wanted to go for further training. However, here in Kenya, you must have a godfather for you to get something like a job or to enter any institution. Owing to that, I could not join any college. There are some jobs I had applied for while at home. There was a time I applied to be the chief of the area but due to the record of our family and being related to Ochuka, I was denied that chance. There are some places I have tried but I do not succeed even if I meet the requirements. So, I believe that I do not become successful in whatever I want to do because of that.

Commissioner Slye: Thank you for that. The details of what your uncle did or did not do, what he was charged with or whether he was guilty or not, obviously, members of this family had nothing to do with it. They should not be suffering the consequences of that. That is not right and we cannot call it justice.

You said that on. Wetangula was the lawyer for your uncle. When is the last time that your family contacted him to find out what happened during your uncle's court martial?

Mr. Robert Onyango Wathuro: Our family members have not contacted him but if he was representing Ochuka's case, he would have tried to know the family members of Ochuka even before representing him in that case. By the time Ochuka was taken to court, other relatives were also attending the court session. However, we feel that a lawyer representing a member of your family must know, at least, one person or a member of the family that he can ask a question in case of anything. Here is a case where he did not try to communicate to the family. So, that made us wonder whether he was representing Ochuka or whether he was there for the sake of it. That is our worry.

Commissioner Slye: Do you know how he came to represent Ochuka? Did Ochuka request him to be his lawyer?

Mr. Robert Onyango Wathuro: No. Ochuka was not given a chance to choose a lawyer to represent him. The Government chose for him a lawyer and that was hon. Wetangula.

Commissioner Slye: Did you ever hear your uncle saying anything with regard to what he thought about Hon. Wetangula?

Mr. Robert Onyango Wathuro: In the letter I talked about, there is a place where he wanted some lawyers to represent him or the family to negotiate with those lawyers and represent him. However, the family never got him a lawyer because the family could not even pay the lawyer. That situation was difficult and we could do nothing.

Commissioner Slye: When your uncles and other relatives went to visit your uncle, do you recall whether he made comments on the legal representation by Mr. Wetangula?

Mr. Robert Onyango Wathuro: He complained about it and even about the judge, Major Mbewa, who came from Nyakach, Kajimbo, not far from our place. Ochuka was not happy and it is as if they were using Major Mbewa in Ochuka's case. Ochuka complained about it but that was not heard.

Commissioner Slye: Who was Major Mbewa and what role did he play?

Mr. Robert Onyango Wathuro: Major Mbewa was a Major in the Army.

Commissioner Slye: Was he your uncle or was he one of the judges?

Mr. Robert Onyango Wathuro: He was one of the judges.

Commissioner Slye: My last question is, in your written statement, you said that you and your family have received many visits from many organizations and that those organizations have said that they would help you in knowing what happened to your uncle, but they have not done it. Can you remember who some of those organizations were?

Mr. Robert Onyango Wathuro: I can only say that on 1st August, journalists visited our homes. They interviewed us and promised to tell us what happened to Ochuka. Others told us that since they will broadcast the story, those who are concerned may let us know what happened. There is a time when some Human Rights people came from as far as Mombasa. They were in two vehicles. They had pinned the pictures of Ochuka and Oteyo on the vehicles they were travelling in. After interviewing the family, they promised that the truth would come out and they would try very hard to ensure that the family knows about the death of Ochuka. They took my phone number and I also took some of their numbers. After they went away, we never heard from them. We thought that they were taking the opportunity to do the job on behalf of an NGO. That is what we suspected. If somebody came and talked to you and even interviewed you, and then just went away, that means that they were following up on something. If they really wanted to assist us, they should come back and tell us where they have reached with the issue. As a family, we demand the following: We want official documents from the Government concerning Ochuka's death. That is what they promised to give us but, up to now, they have not delivered. We want to ascertain that Ochuka really died.

Members of the family would also want to believe once and for all that Ochuka was hanged and buried. The family also wants to carry out burial rites as it is required by the

Luo Customary Laws for Ochuka. Ochuka had a bank account with Bank of Baroda and up to today, the family members do not know anything about that account. Ochuka had properties like a vehicle, a tailoring business at Gikomba and even the house he was staying in Umoja One, was repossessed by the owner whom we do not know up to now. When he was repatriated back from Tanzania, he had some items which he registered under the Kamiti Prison Maximum Prison authorities which are being held up to now.

Finally, Ochuka being the breadwinner of the family, his arrest and subsequent death has impacted negatively on the family such that his family is languishing in poverty and unable to access basic needs like health care and education. I want to complete by saying that as young as I am, in the family, I have been given a responsibility I cannot hold. At this moment, I cannot help my brothers and sisters get to secondary school level. I did my Form Six in 1989. I had one principle and one subsidiary. Because of being in this family, I could not join any training institution and getting a job has been difficult because I am related to one person who was charged with overthrowing the Government of Kenya. We hope that justice will be done.

The Commission Secretary (Ms. Nyaundi): Thank you very much. I will ask you a few questions. How old were you in 1985?

Mr. Robert Onyango Wathuro: I was born on 30th October, 1969. The Government was overthrown when I was in Standard 6.

The Commission Secretary (Ms. Nyaundi): So, at that time, you were 13 years old?

Mr. Robert Onyango Wathuro: Yes.

The Commission Secretary (Ms. Nyaundi): So, when Hezekiah returned in 1984, you would have been 15 years?

Mr. Robert Onyango Wathuro: Yes.

The Commission Secretary (Ms. Nyaundi): When you reflect on it, what influence did Hezekiah have in your life? Did you meet him or interact with him?

Mr. Robert Onyango Wathuro: Yes. At the time I was in primary school, Ochuka used to come home. We used to go to the SDA Church together and he would coach us in some subjects. So, we were always together.

The Commission Secretary (Ms. Nyaundi): What values or lasting impression did you get from him?

Mr. Robert Onyango Wathuro: Hezekiah Ochuka was a strong Christian. He told us that every Saturday, we had to attend church. He taught us a lot of music. He also encouraged us to be respectful to our families. That is what I admired in him.

The Commission Secretary (Ms. Nyaundi): You have spoken about the need by the family to perform cultural rights. So that we are clear, is it the position of the family that they are awaiting official communication from the Government before you perform those rites or can you go ahead and perform them and all you want is an assurance that you will not be interfered with?

Mr. Robert Onyango Wathuro: Up to now, we still believe that it is rumours that Ochuka died. For us to believe that he died so that we can perform funeral rites for him, it has to be proven by the Government.

The Commission Secretary (Ms. Nyaundi): Thank you. Your statement was very clear. The Commissioners will ask you questions now.

The Presiding Chair (Commissioner Dinka): Thank you very much for your testimony. I will now allow Commissioner Farah to ask you questions.

Commissioner Farah: Thank you for your testimony, Robert. Have you contacted the lawyer, Hon. Wetangula, recently for him to explain to you the process of the court martial, who his lawyer was and that kind of thing?

Mr. Robert Onyango Wathuro: The family knows that Hon. Wetangula is the one who represented Ochuka. Up to now, we have not contacted him. We thought that as the lawyer who represented Ochuka, he should trace home and even know what other problems the home is facing or what other information we may want concerning Ochuka.

Commissioner Farah: You have said that for very long, the family had a lot of access to Ochuka for the period he had been jailed at Kamiti Maximum Prison?

Mr. Robert Onyango Wathuro: That is true.

Commissioner Farah: What did he tell you when you visited him in the prison? I know you said that he was jovial and in a good mood all the time. What did he tell you?

Mr. Robert Onyango Wathuro: When my grandparents and aunties visited him, those who saw him behaved as if they wanted to cry because of what they saw. However, Ochuka would encourage them not to cry.

Commissioner Farah: Thank you.

Commissioner Chawatama: Thank you for your testimony. I am encouraged by your strength and that, as a young person, you were willing to come and speak for your family. You have told us what your family has gone through since the death of your uncle. It is true, as Africans, that we always want to know what happened to a relative who has died to an extent that we want to know what his last words were. There is nothing wrong with the desires that your family has expressed and these questions should be answered. Apart from the lawyer, I have looked into the statement and you have said that persons to be

invited would be President Moi. If he was invited here today, what question would you put to him?

Mr. Robert Onyango Wathuro: I remember when Ochuka died, there is a statement which he made that there was a planned coup which was supposed to happen on 3rd August, 1982. They planned theirs on 1st August so as to thwart the one which was to happen on 3rd August. Therefore, we see as if Hezekiah Ochuka was just trying to prevent another coup which could have happened in Kenya during the time of President Moi. We thought that the President should forgive him if he thought that he wanted to overthrow the Government. We would also ask him why the Government hanged him even after he pleaded to be pardoned.

Commissioner Chawatama: Do you know whether or not he had his appeal heard?

Mr. Robert Onyango Wathuro: We heard that he would appeal because he felt that the case had not been handled properly. However, we do not know how the appeal went through.

Commissioner Chawatama: Thank you for your testimony. It is amazing that even if a member of your family did something wrong, the punishment should not go on from generation to generation. I do not believe that is justice. I thank you for coming to the Commission not only to seek the truth but also to seek justice.

The Presiding Chair (Commissioner Dinka): Thank you, Robert, for your testimony. I, sincerely, hope that out of this discussion will come the consequence that will give disclosure to the situation of your uncle, Mr. Ochuka, and to your family.

Commissioner Ojienda: Thank you, Robert. I feel your pain. Certainly the matter of Hezekiah Ochuka, just as you said, needs to come to a close. The family needs to move on. I will ask you to clarify a few things. You have been asked about your best memory of Hezekiah Ochuka and you said that you were not sure that he was hanged after 1985 or whether he is still alive. At the time the coup occurred in 1982, what could have been the age of Ochuka?

Mr. Robert Onyango Wathuro: It was said that he was around 29 or 30 years.

Commissioner Ojienda: Is that why you are wondering whether he could have planned and led a coup?

Mr. Robert Onyango Wathuro: I said that because he had bosses and he was an ex-senior private. Therefore, it would have been difficult for him to organize a coup without others knowing in the rank that he was in.

Commissioner Ojienda: Do you understand the ranking system in the air force?

Mr. Robert Onyango Wathuro: To some extent.

Commissioner Ojienda: How senior or junior was a private?

Mr. Robert Onyango Wathuro: I cannot really say.

Commissioner Ojienda: You have referred to certain rites that you say should be performed if and should the family confirm that Hezekiah Ochuka was hanged after the trial. What rites would these be and why would it be necessary for the family to perform the rites?

Mr. Robert Onyango Wathuro: Under the Luo customary law, if one of a family member dies, he or she is supposed to be given a good farewell or a good burial.

Commissioner Slye: With respect to this Commission, I cannot promise that we will find out everything that happened, but we will certainly try, with your assistance and the assistance of your family. We will try through our investigations and other activities to discover more about what happened to your uncle. Whether we discover more or not, before this Commission is over, we will be back in touch with you to let you know what we have found out or whether we found out anything. You should feel free to contact our staff later if you would like to get an update about where we are in terms of that. Finally, I have been told and I wanted it for the record, that Maj. Mbewa was the Military Prosecutor and not the judge during the court martial. Do you know whether that is a fact or not? Does that sound correct to you?

Mr. Robert Onyango Wathuro: Even if I cannot remember whether he was a judge or a prosecutor, there is a major role he played in Ochuka's case leading to him being sentenced to death. That is the belief of the family.

Commissioner Slye: It seems from our information that he was the prosecutor. In which case, he would have played a large role and there was a judge advocate who was the presiding judge and that was Brigadier Musomba. Does the name "Brigadier Musomba" mean anything to you? Do you remember hearing of him or if he was there as well?

Mr. Robert Onyango Wathuro: I cannot remember others except the one I have mentioned.

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

Commissioner Dinka: Thank you very much Robert for your testimony. The Commissioners have no further questions for you. Hearing Clerk, you may show the witness back to his seat and call the next witness.

(Mr. Edwin Onyango Radier took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you very much and welcome to the Commission. Please state your name, your current occupation and where you are staying.

Mr. Edwin Onyango Radier: My name is Edwin Wilfred Onyango Radier. I am a businessman in Kisumu and I live here.

The Commission Secretary (Ms. Nyaundi): I notice that you are accompanied by a gentleman who is seated to your right and there may be other members who have accompanied you and are seated in the hall. I ask you to introduce those who have accompanied you and those who are in the hall can stand as you tell us their names.

Mr. Edwin Onyango Radier: With me here is Mr. Adhiambo Lomo. He is a resident of Kisumu. In the audience, there is Mr. Odungi Randa who is also a resident of Kisumu and Mr. Ogindo Oyamo a resident of Kisumu. All of them have been involved in Kenya politics and they were at the center of activities when the massacre occurred in Nyanza Provincial Hospital.

The Commission Secretary (Ms. Nyaundi): Thank you very much Mr. Radier. We are in receipt of a memo that you have presented touching on the unfortunate incident on the 25th of October 1969 at the Nyanza Provincial Hospital. I now invite you to make that presentation.

Mr. Edwin Onyango Radier: Thank you. Perhaps it is important to mention that I was elected a councillor of Kisumu Municipality in 1965 and I was the chairman of the Public Health Committee and as such, the development of the hospital was very much connected with my responsibility.

The Commission Secretary (Ms. Nyaundi): Mr. Radier, I am sorry, but with your kind permission, I will interrupt you. The Commissioners do have a copy of this memorandum so I will ask you if you can just go straight and pick out the main points and what in your understanding was the cause of this massacre, the persons you hold responsible and the actions you would like the Commission to take. If the Commissioners are unclear on any point in the memorandum, they will ask you questions. I hope that is useful.

Mr. Edwin Onyango Radier: I said that I was a councillor and Chairman of the Public Health Committee, a position that gave me direct connection in the growth of the hospital. Similarly, the hospital was a donation from the Russian Government. It came about because at independence, Jaramogi Oginga Odinga went for a visit to the Soviet Union and negotiated help for our young country. One of the projects he achieved was the development of a hospital and this hospital came to be developed in Kisumu. There in between, political relationship between Jaramogi and Mzee Jomo Kenyatta was not cordial. As a result, Jaramogi resigned from the Government. By the time the hospital was being opened, Jaramogi was in the opposition but because this was a public project, we did not look at it politically. We felt that a head of State was coming to open an institution that was going to benefit the general public. Not only did we feel so, but Jaramogi took time to meet party leaders and supporters and he advised that no politics should be brought up during that occasion. We went there knowing we were going to

receive our head of State who was going to perform a function that was very important for all Kenyans.

To our surprise, when we were seated and Kenyatta was approaching, we heard noise at the entrance. We later came to learn that some people were shouting party slogans and that there were people who were donned in party uniforms. This is something that Jaramogi had advised against. We were all shocked with what was happening, but later on, we came to learn that this was a scheme by the same Government and we were trying to find out why they should scheme that. We came to learn that Kenyatta and his Government were scared of the popularity of the new party Jaramogi had formed. The party was very strong, because at Kenyatta's own backyard, Bildad Kaggia, with whom they had been detained was the Vice-Chairman of this party. The party had political personalities from all over the Republic.

The issue settled and we came to the opening ceremony and the Minister for Health J.D. Otiende stood up. In his speech, he tried to cool down the tension. He pleaded with Kenyatta to behave in a fatherly manner, implored him to ignore what had happened and go on to perform the opening ceremony. He even stressed the importance of the occasion and told Kenyatta that what was important was the service that his subjects were going to get out of this institution. When Kenyatta rose, he looked furious and he directed his anger at Jaramogi and told him that if he were not his friend, he would have crushed him like maize flower. Jaramogi did not take this kindly and from where he was seated, he reacted and told Kenyatta that the people of Nyanza were also not happy with him because he had failed them. However, he was welcome.

We thought the matter could end there, but when the occasion ended and Kenyatta left, chaos broke. There were indiscriminate firings. As a result, additional deaths were recorded. There is an Asian businessman in Kisumu whose home is not far from the Russian Hospital. Those days, Asians did not attend functions, but his only son was shot in their compound and died. Several deaths like we have recorded here occurred along the way. There was shooting along the way from the Russian Hospital en route through to Jubilee Market, towards Ahero and these deaths were recorded up to the border of Luo and Kalenjin. It is only past Awasi that we did not hear of deaths.

This thing happened a long time ago, but it was the beginning of open discrimination of members of the Luo community. After that, being a Luo alone was a crime in a way and, in fact, it went to the extent that some Luos were already beginning to avoid their names which would identify them directly with the Luos. I remember a friend of mine whose name was Chuony Orach, he later decided to register his name as John Marachi to avoid being a Luo because there was no Government office where you could be treated without suspicion if you were a Luo. I will leave it at that so that my friend can also add.

The Commission Secretary (Ms. Nyaundi): Thank you. I will ask you a few questions and Mr. Adhiambo Lomo is free to respond to them. Because of that, I will invite the clerk to swear him so that if he is going to respond to any questions, he will have taken the oath.

(Mr. Muga Odhiambo Lomo took the oath)

Thank you. In your statement - I am looking at page four - you state that when the late President arrived at the hospital, there were people chanting “*Tunataka Mboya, tunataka Mboya, tunataka Argwings*” and also chanted “*ndume, ndume*”. At that time did you understand what it was that people were talking of Mboya and Argwings?

Mr. Muga Odhiambo Lomo: We did not understand and we were surprised because the people we knew as belonging to our party were not among the people shouting.

The Commission Secretary (Ms. Nyaundi): So are you saying that you were at the hospital on that day?

Mr. Muga Odhiambo Lomo: Yes, I was. I joined Jaramogi’s motorcade right from his home at the lakeshore to the hospital.

The Commission Secretary (Ms. Nyaundi): Was this visit by the President on 25th October, 1969, after the death of Tom Mboya and Argwings Kodhek?

Mr. Muga Odhiambo Lomo: Argwings Kodhek had died the same year in January and Mboya had died on 4th April the same year.

The Commission Secretary (Ms. Nyaundi): Were these chants referring to Tom Mboya and Argwings Kodhek or in your understanding they were referring to another Mboya and another Argwings?

Mr. Muga Odhiambo Lomo: In our understanding, they should have been referring to Tom Mboya and Argwings Kodhek.

The Commission Secretary (Ms. Nyaundi): The persons who were chanting, were they within the hospital compound or outside the fence?

Mr. Muga Odhiambo Lomo: They were scattered from the gate right into the compound.

The Commission Secretary (Ms. Nyaundi): So they went past the security into the hospital while chanting?

Mr. Muga Odhiambo Lomo: They did.

The Commission Secretary (Ms. Nyaundi): Were the persons chanting at any time arrested and escorted away or what was your observation on that day?

Mr. Muga Odhiambo Lomo: No arrest as far as we know took place to date and nobody has been taken to court for interrupting the presidential function.

The Commission Secretary (Ms. Nyaundi): Based on your observations that day, when Mr. Radier was talking, there were two incidents of shooting. The first one appears to have been triggered by this chanting.

Mr. Muga Odhiambo Lomo: Yes.

The Commission Secretary (Ms. Nyaundi): The people who were shot the first time, were they within or outside the compound?

Mr. Muga Odhiambo Lomo: A few were within, but most of them were outside the compound.

The Commission Secretary (Ms. Nyaundi): Before the President addressed the gathering, were those people within or outside the compound?

Mr. Muga Odhiambo Lomo: They were scattered. Some were outside the compound and a few were within, but the shooting continued all the way to the Nyanza border.

The Commission Secretary (Ms. Nyaundi): That is correct, but based on Mr. Radier's testimony and we are just confirming for our records, these people were chanting and there was shooting then calm was restored. The President addressed the gathering and then he left and then there was a second round of shooting. Is that what happened?

Mr. Muga Odhiambo Lomo: Yes.

The Commission Secretary (Ms. Nyaundi): In the second incident of shooting, based on your observation that day, what provoked it?

Mr. Muga Odhiambo Lomo: Nobody knows. We think it is just a prejudice and impunity that the people who were shooting had. To shoot, for example, up to Patel flats nearly a kilometer away close to the market, could have had nothing to do with the shouting there.

The Commission Secretary (Ms. Nyaundi): Did you accompany the motorcade until it left Nyanza?

Mr. Muga Odhiambo Lomo: No. We learnt about the deaths as they went out and we could not manage to follow them.

The Commission Secretary (Ms. Nyaundi): Did Jaramogi accompany the motorcade?

Mr. Muga Odhiambo Lomo: No, he had nothing to do with it.

The Commission Secretary (Ms. Nyaundi): We are just trying to understand, when the President left the hospital - I am assuming on that same day he left Nyanza - according to

your memorandum, he drove to Kericho on the same day. Did any of you accompany the motorcade of the President to Kericho?

Mr. Muga Odhiambo Lomo: None of us did.

The Commission Secretary (Ms. Nyaundi): And neither did Jaramogi?

Mr. Muga Odhiambo Lomo: No.

The Commission Secretary (Ms. Nyaundi): You stated on page 6 of your memorandum that there was a Cabinet meeting that was held and a decision was made that there would be a curfew in Kisumu from 6 pm to 6 am.

Mr. Muga Odhiambo Lomo: This was announced the same evening over the radio and through the media.

The Commission Secretary (Ms. Nyaundi): Was it implemented immediately?

Mr. Muga Odhiambo Lomo: With fury.

The Commission Secretary (Ms. Nyaundi): Who enforced the curfew?

Mr. Muga Odhiambo Lomo: The police.

The Commission Secretary (Ms. Nyaundi): How long did the curfew last?

Mr. Muga Odhiambo Lomo: I do not remember well, but it was about two weeks.

The Commission Secretary (Ms. Nyaundi): On page six of your memorandum, the third paragraph, you said that it lasted two months and only came to an end upon the intervention of *Mzee* Fanuel Odede.

Mr. Muga Odhiambo Lomo: I think that could be right because we really suffered during the period, but Odede intervened later on.

The Commission Secretary (Ms. Nyaundi): When Mr. Radier was talking he mentioned that for the people of this region, your understanding was that after that, you were marginalized. Was there ever an official statement by the leadership saying that they had taken this position on the people of Nyanza or what is the basis of this perception?

Mr. Muga Odhiambo Lomo: In my opinion, the incident was not the beginning of marginalization. It had started. A lot of bad things had started happening to us. No announcement was needed because whenever we went to Government offices to be served, we did not get any service. Whatever we did, we could not utter a word to criticize anything. Once we did it, we were taken to be anti-Government and some action

would be taken against us. Fear was cultivated amongst the Luo community to the extent that we felt that we were marginalized. As I said, this thing happened before the day.

The negotiations Jaramogi undertook in Russia that resulted into the hospital were meant to cover about 20 acres and you can notice that it was to be in three phases. Only one phase was opened and nothing more was done. Together with the hospital, a rice scheme that would have covered 10,000 acres was replaced by Ahero Pilot Scheme and this scheme has remained pilot to this day, over 40 years later. There was also a polytechnic that was to accommodate over 10,000 students. This was replaced by the miniature Kisumu Polytechnic which was squeezed in a corner of the town. This was meant to make the Luo suffer.

The Commission Secretary (Ms. Nyaundi): When I look at page five of your memorandum, the second paragraph, the third sentence from the bottom, you state that in his speech, the President did not make reference to the shooting that had happened in his presence. To your knowledge, has there ever been an official inquiry into what happened in 1969 or an official statement on the incident that occurred in 1969?

Mr. Muga Odhiambo Lomo: Not as far as we know. There has been no inquest concerning these deaths just as there was no inquest concerning the death of Argwings Kodhek, a whole minister who was buried like a dog and no inquest was conducted.

The Commission Secretary (Ms. Nyaundi): This marginalization that you have made reference to, was it limited to the Presidency of the late President Jomo Kenyatta?

Mr. Muga Odhiambo Lomo: No. May I say that there are two presidents, in my opinion, who have squandered the opportunity of uniting Kenyans. They are Kenyatta and Kibaki. They found people had united and then gave them an opportunity to lead, but instead they moved into cocoons of tribalism. Moi was following *Nyayo* so he was not doing anything different from what he found.

The Commission Secretary (Ms. Nyaundi): Thank you very much. The Commissioners will now ask you questions.

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

Commissioner Ojienda: Thank you very much Mr. Onyango Radier and Odhiambo Lomo for that detailed presentation from the memorandum that we have on the Kisumu Massacre that occurred on 25th October 1969. I want to emphasize how useful your testimony is. Perhaps for the first time, you are publicly talking about this massacre and this is also the first opportunity for this country to record in its history what occurred from 12th December 1963 to 28th February 2008. That is one of the functions of this Commission. You have added two lines and more to the dark history of this country and I want to thank you for that.

I want to find out a few clarifications. One question that I want to ask Onyango Radier and to which Adhiambo Lomo has alluded to is the question of governance in this country and the question of missed opportunities. Onyango, you have referred to systemic marginalization of the people of this region. What are those particular things that you want to point to after the incident of 1969 that you say was the beginning of marginalization of the Luo people?

Mr. Edwin Onyango Radier: In terms of development, my friend Lomo has mentioned the Government programmes that had been announced and we knew the Nyanza General Hospital popularly referred to as Russia Hospital was going to be developed in three phases. We knew that eventually, the head from the Russian Government was going to enable us put up a school to train doctors here. This programme was never talked about and eventually, only a nursing home was developed there.

The Ahero Irrigation Scheme has been mentioned here. This is a scheme which was supposed to take greater part of Kano and extend to the lower parts of Nyakach. Like my friend has mentioned, this project remains a pilot scheme to date.

In terms of opportunity to serve in the Government, at the time of attainment of independence, it was common knowledge that the Luos had the highest number of academic giants. It totally became impossible for the Luos to assume senior positions in the Government. We know the first senior people in academics. These are people like Prof. Wasao and Prof. Ominde who could not even have a chance to lead university in Kenya. Despite those high academic qualifications, you could hardly find a Luo in a senior position of administration like a PC and DC. A few who got their chance to be in those positions were openly hostile to their communities because that was the only way they could maintain their positions.

It did not end there. There was a time that even though we were under political Government, the word “politics” was an abusive word. The common reference was, “*Wewe hapana leta siasa ya Wajaluo hapa*”.

There was a common saying from the Government officers which was used to demonize the Luos. Whenever a Luo raised a dissenting point, he was told not to bring Luo politics into that issue.

Commissioner Ojienda: What did that mean Mr. Onyango?

Mr. Edwin Onyango Radier: It meant that the Luos are only known for opposing. To them there was nothing like constructive opposition.

Commissioner Ojienda: Moving forward, I do not know whether that position has changed, in your view. You have lived through the Kisumu Massacre to date. Depending on what you tell me, I want you to give me a prescription for a united Kenya.

Mr. Edwin Onyango Radier: Perhaps, I may say that by 1959, I was the personal aide to Jaramogi Oginga Odinga. Mr. Odinga was a member of the Legislative Assembly representing the greater Central Nyanza. At parliamentary level, there was a caucus of elected members. This caucus was called African Elected Members Organization (AEMO). Mr. Odinga was the chairman of this organization. I had the opportunity to move with Jaramogi in the entire Republic of Kenya in his efforts to unite Kenyans. I also had the opportunity to go with him to a delegation in Uganda when Uganda got her independence. Now, it was at a time when the colonial Government allowed Kenyans to have a national party. That is what gave birth to the formation of KANU. When KANU was formed, the first Executive officer who held that position in an acting capacity was called Collins Omondi. He was a lawyer by profession and he came from Luo Nyanza.

However, Jaramogi insisted that there is no party without membership. The people who were awake to the issue of becoming members were mostly Kikuyus. This is because KAU which was formed long before was formed as a Kikuyu Association and only later converted to Kenya African Union (KAU). The members of Kikuyu community were paid-members of that organization. So, according to Mr. Odinga, he wanted an Executive Officer of KANU to be a Kikuyu. He went out to search for that person.

When we went to Uganda, he approached Prof. Wasao and told him he had been advised that there was a young Kikuyu man who was assistant lecturer at Makerere and he wanted to talk to him. This young man turned out to be the present President of Kenya who is Mwai Kibaki. Mr. Kibaki came to our hotel when it was late. We were about to go to a farewell party that Mr. Obote had organized for Jaramogi. They made an appointment and Kibaki assured Jaramogi he was going to come to Kenya.

When he came to Kenya, Jaramogi sold the idea to him. To quote Jaramogi's words he said: "Independence is now around the corner. When independence comes we will need people with educational background like you to come and run our Government." He went on: "I want you to come and become our Executive Officer." The response from Kibaki was, "It is a good idea but I cannot do it. This is because I have only three months to be confirmed. When I get confirmed I shall have the privilege of buying a car." Jaramogi then offered and bought a Peugeot Station Wagon for Kibaki. The Peugeot was bought at Kshs9, 500. I am the one who went and paid this money at Marshalls. This is something I am saying because I want to show that Jaramogi had the intention of uniting Kenyans. He wanted all Kenyans together. He preferred that one is used where he is useful. However, selfish and tribal politics have destroyed this.

The only good thing I can say is that Kenyans did not lose hope. A struggle had been waged. The second liberation has gone through half-way. Kenyans are now free to make independent decisions. We are now living in a country where there is freedom of expression. People talk sense and nonsense but the public are left to decide on all these. I believe that by the next elections, the people will decide and give Kenya direction by choosing the correct leaders. Majority of voters today know about the struggle for this country.

Thank you.

Commissioner Ojienda: A lot of words of wisdom there from Mr. Onyango Radier. As the PA for Jaramogi Oginga, you have lived his wishes and dreams as you have said. In your memorandum it says: “Before the stampede, Odinga in response to Kenyatta said, Nyanza people are angry with you because of their unfulfilled promises, otherwise, they welcome you.” What were these promises?

Mr. Edwin Onyango Radier: Before Kenyatta was released from detention, at the formation of KANU, Odinga campaigned vehemently and insisted that the first President of KANU had to be Kenyatta. It is at the Limuru Conference where Kenyatta was named the first leader of KANU. It is the same Odinga who insisted that since Kenyatta was in detention, James Gichuru would act in his place. He reasoned that Gichuru was a leader of KAU when Kenyatta was abroad but when he came back, Gichuru resigned. He could trust Gichuru to leave the position for Kenyatta when he came.

The Colonial Government refused to register Kenyatta as the first chairman of KANU. They said his party was outlawed and so he was not allowed to hold any political office. That is why history today says that it is Gichuru who was first chairman of the party. After Kenyatta came from detention, the first tour outside Nairobi was Kisumu. We toured the whole of Nyanza. At every meeting Kenyatta was pleading for unity of the country where all Kenyans would have equal opportunity. However, immediately Kenyatta became the Head of State, from nowhere a Kikuyu was made the Commissioner of Police. A majority of key positions in the Government were taken by Kikuyus. I think it is the same trend today.

Generally, Kenyatta betrayed people by breaching unity which was there when he was in detention. That is what Odinga was referring to.

Mr. Muga Odhiambo Lomo: I want to add three things as prescriptions. I suggest that the management of political parties be stressed to the extent that a party sponsoring a presidential candidate must not only be seen but be felt nationally. I want us to imagine what current parties like UDM, PNU, ODM(K), FORD(P) and all those tribal parties would behave like given the opportunity to have a president. Parties should be free from tribalism and party nominations from the grassroots must be free from the use of money and force.

There should be a clear-cut legislation against tribalism and ethnicity. Even tribal languages should be controlled in official places. Tribalism should not be seen in appointments, award of tenders and economic opportunities, generally. I have mentioned the party campaigns; all these should be enacted as laws and implemented to the letter so that we have qualified people elected to leadership positions.

Commissioner Ojienda: I just want to ask my last question. The question is to Lomo and both of you. I do not know whether any of the families of those who were killed

during this massacre are present in the room. You have a long list of about ten people; Oyoo, Oyomo, Odunga, Arodi, John, Christabel and others.

Mr. Edwin Onyango Radier: It is a long time now, however, one of the people mentioned here was a relative of Mr. Odungi Randa who just stood there. Mr. Odungi Randa is in the hall.

Commissioner Ojienda: Thank you very much. I just want to wind up by thanking you for having time to speak to us on the Kisumu Massacre and the advice that we get from you on unity. You know that this Commission exists to finally force reconciliation. We need to find the formula that will get us to the answer to reconciliation. I think as elders, you have provided very useful insight.
I thank you.

Commissioner Slye: I also want to thank the two of you for coming forward and not just speaking to us about the Kisumu Massacre but about a large part of Kenyan history that you have lived. Both of you have seen the length and breadth of the history of this country. There is much we can learn from you. I just want to start by asking how old each of you were on December 12th 1963 at the time of Kenya's independence.

Mr. Muga Odhiambo Lomo: I was 23 years old.

Mr. Edwin Onyango Radier: I was also 23 years old.

Commissioner Slye: Do you remember where you were that evening when independence was declared?

Mr. Muga Odhiambo Lomo: I want to say that I witnessed the Union Jack being lowered for the last time and the Kenyan national flag being hoisted for the first time at Uhuru Gardens in Nairobi. The two national anthems; the British one; "God Save the Queen" was sang for the last time and "Oh God of all Creations" sang for the first time.

Mr. Edwin Onyango Radier: As I said before, I was a personal aide to Jaramogi. This is the time politicians were getting into Government. I was part of his support team. I was with him in Nairobi and I witnessed everything.

Commissioner Slye: Can both of you remember what your thoughts were at that moment? For those of us who were not there and some of us who were not born then, can you describe to us what your feelings were about that event and what your thoughts were about the future of this country?

Mr. Muga Odhiambo Lomo: Incidentally, I made some notes about it. On that occasion, I will talk about the Luo/Kikuyu relationship. Before that, the elections that preceded, the Luos and Kikuyus were together. On the eve of Madaraka Day, that is the night when Maisori Itumbo was declared the winner of Kuria seat. I was in Jericho, Nairobi. We joined together; Kikuyus and everybody else from Jericho to Milimani and

back. It was raining. On the eve of the elections, if you treaded on the toe of a Kikuyu, both of you would say sorry simultaneously. Such a thing cannot happen now. About my view on the future; I expected a united Kenya with equal opportunities and very fast development. There was no corruption during that campaign. I did not expect a future where elections would mean buying votes. The list is endless.

Mr. Edwin Onyango Radier: Just like my friend has said, there was a strong bond between the two major tribes in Kenya; the Kikuyu and Luos. The Kikuyu and Luo leaders were talking the same language. They were publicly expressing their intention to unite the country. I imagined personally a country that would be so united, a country that would be so strong because of unity and expected an African was going to get rid of poverty. It is regrettable that a majority of Kenyans are languishing in poverty. To the Luos, it is worse and it has come about deliberately. Even a potential Luo entrepreneur could not get a loan from financial institutions simply because he was a Luo.

Commissioner Slye: Both of you have described to us the optimism at the time of independence which slowly disappeared and relationships among various ethnic groups deteriorated. There was corruption and others things. The purpose of my question is not to try and establish who was responsible for that, although that is a very important question that we need to answer. In hindsight and with the benefit of sitting here today and knowing the future, we can all look back at earlier parts on our life and see things differently and also think about things that maybe we could have done that might have made the future different. It is not necessary that we should have seen those things done but now we can see what could have been hard to see then.

I wonder whether, for each of you looking back at the time of independence and what happened afterwards in this country, there are things now that you think you could have done or people close to you could have done that might have made a difference and might have made the history of Kenya a more positive one than it turned out to be.

Mr. Edwin Onyango Radier: I think at independence, one important thing was missing; Kenyatta had been identified as a man championing freedom for Africans. He was arrested, tried and jailed. However, when he came from jail there was very little time for people to know him as a person. Therefore, I can say that Kenyans did not elect a person they knew. As a result, the person who was elected did not live to the expectations of the people. The present Kenyans have had the opportunity of participating in a long struggle. They have a better chance of electing their leaders. I am happy that so many people are aspiring to be president. I hope that people are informed enough to be able to make informed decisions. It is only through that, that we shall avoid a repeat of the past.

Another point is that at independence, there was too much trust in an African Government. The Constitution gave a lot of leeway. However, recently, Kenyans went for a new Constitution. What Kenyans need to observe and be careful about is unnecessary amendments that will water down the provision in this Constitution. Otherwise, the current Constitution would ensure checks and balances on leaders.

Mr. Muga Odhiambo Lomo: One thing that I think created the opportunity that damaged Kenya was too much amendments of the Constitution. I think the amendments were strategized to give room for mismanagement. I particularly think that the needs of the regional Government which we have managed to reinstitute as counties in the new Constitution--- If the *Majimbo* Government was there, there would not have been rampant land grabbing. That allowed a few people at the centre of the Government to play around with the land as much as they wanted.

The other thing that I think was missing in the original Constitution or it was amended to the advantage of dictators, was the human rights aspect. Laws were made that allowed detention without trial and so on. I think the rampant and illogical amendment of the previous Constitution was the cause. It is my pleasure that corrections are being made.

Commissioner Slye: I want to thank you both for being here and sharing your wisdom with us. I think there is much that we can learn from you both about what happened in the past and wisdom about what should happen in the future. I think we can stand all day with you. I hope that we will have another opportunity to speak to you at that point. I think as you both have said, with the new Constitution, there is a new opportunity for Kenya to really move forward to achieve the ideals that the two of you and many other Kenyans felt back on the 12th of December 1963.

This Commission, though a temporary commission, will do what we can to help further that movement. We have here representatives from the National Cohesion and Integration Commission which is a permanent Commission who have been working very hard on issues of national unity and reconciliation. They are working with us and we are working with them. They will be able to work with you and the rest of Kenyans in moving this process even further than we will be able to move it.

Thank you.

Commissioner Chawatama: I join the other Commissioners in thanking you for your time and all that you have said to us. I think I can only sum it up by saying that my tribe the Bemba would say; what we have heard from you today is wisdom and knowledge the way it would flow from a hill to a brick. You are representing the hill and we are representing the brick.

Is the passing of legislation against tribalism and ethnicity? You went on to say that even tribal languages in office areas should be avoided. I think you said “official”. I am trying to imagine a situation where a lot of legislation is passed to change the way I think and behave and I am thinking that is the way out for Kenya. When I have the answer, I will surely call you and we shall speak. I thank you very much.

The Presiding Chair (Commissioner Dinka): I, too, take this opportunity to thank you, Mr. Radier and Mr. Lomo, for your testimony, which is very unique, in that you were present both at the creation of Kenya and at the creation of dissension which developed later on. You are also witnesses to the Kisumu Massacre. So, your insight is not only

going to enrich our insight--- Your wisdom will foster that development of that insight in all of us.

Secondly, your suggestions for the future of Kenya; how to consolidate the unity of this country and the cohesion amongst its people on the basis of democratic equality is extremely important and we have taken very careful note of that. It is my hope and prayer that Kenya and the people of Kenya, in your lifetime, will see that kind of consolidation of unity and the cohesion amongst its people.

I thank you very much for your testimony. I have no questions for you because you were very clear. You have shared your wisdom and your insight with us without restraint.

Thank you.

The Leader of Evidence, we have about half an hour to go. You can get another witness so that we can finish in the next 30 minutes.

The Commission Secretary (Ms. Nyaundi): Thank you, the Presiding Chair. As that witness makes her way here, I am making a request that we admit some documents onto the record of the Commission. There is a witness who had testified before the Commission, Dr. Ollel, and has presented a charge sheet in Criminal Case No.1536 of 1987. He has also presented the petition of appeal in High Court Criminal Appeal No.427 of 1987. He has also presented a judgment of the Court of Appeal at Nairobi in Criminal Appeal No.54 of 1989. He has also presented a certificate of imprisonment from Kamiti Main Prison dated 6th April, 1989. He has presented newspaper cuttings from the *Daily Nation* of 21st June, 1988; the *Kenya Times* of 3rd July, 1988; the *Standard* of 3rd July, 1988; the *Daily Nation* of May 17th, 1988 and the *Standard* of 7th April, 1987. I ask that you admit them onto the records of the Commission.

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

The Commission Secretary (Ms. Nyaundi): Thank you, the Presiding Chair. There is also another witness who appeared before the Commission. He is Hon. Shakeel. He has submitted a bundle of documents relating to the number of persons who sought medical treatment and whom he intervened for. I request that you admit them as a bundle of documents.

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

The Commission Secretary (Ms. Nyaundi): Thank you, the Presiding Chair.

The next witness, Commissioners, is No.4 in the serial, Kisumu memo. It is Serial No.11 in the original list. Commissioners, we do not have the memo in your files.

(Mrs. Nerea Akinyi Odinga took the oath)

Thank you and welcome to the Commission. Please, state your name, your place of residence and your current occupation.

Mrs. Nerea Akinyi Odinga: Thank you. I am Nerea Akinyi Odinga. Currently, I live in South West Alego Location, Uranga Division, Siaya District, Nyanza Province. I am a teacher by profession, but I have now retired. I am a retired principal.

The Commission Secretary (Ms. Nyaundi): Thank you, *Mwalimu*. There is a statement that you have prepared regarding the mass rape of students at Hawinga Girls Secondary School in 1993. I now invite you to make that presentation.

Mrs. Nerea Akinyi Odinga: Thank you very much. I want to say that I was the Principal of Hawinga Girls Secondary School from 1989 to 1999. The school was unfortunately attacked by robbers and I have this to say. On 13th January, 1993, the school was attacked by a gang of about 30 robbers. At around 11.00 p.m., strange hooded men came to my house and demanded that I open the door. When I refused, they forced the door open and started beating up everybody. They were carrying clubs, spears, *jembes* and *pangas*. As they were beating us mercilessly, they asked for money. They took Kshs8, 000 from me and demanded more. They then frog-marched me to the office and this time, they had hit me on the head and I was bleeding profusely. My daughter, who is here with me, who by then was an undergraduate had a lamp because she was preparing to go and do teaching practice at Kisumu Girls. They snatched the lamp from her and hit her with it. She got burned seriously on her arm. I did not include this, but I want to say that she also broke the other arm. In the office, they opened the cash safe and took all the money I had collected that day. They took a total of Kshs51, 000. As we were being frog-marched to and from the office to the house, they took my personal effects namely radio cassette, clothes, bed sheets and any valuable items they could lay their hands on.

Meanwhile, a group of robbers went to the dormitories, where they beat up students, took their personal belongings, money *et cetera*. It was during this time that they attacked some of those students sexually. At the time the robbers attacked the students no neighbours attempted to come to our aid as some robbers had taken strategic positions to ward off those who could help us. We were simply helpless.

Commissioners, allow me to also state that we went to the hospital where we stayed for one week before we were discharged. The same also applies to my daughter. I have put the effects of the attack as follows: I have a big scar on my head and my daughter still has the burn scars, but the psychological effects were great. We were brutalized, tortured, traumatized, very much dehumanized and stigmatized. The school has not been spared either. Those who want to join the school as teachers are told the story and so are the would-be students. This has affected enrollment for a long time.

The Government action was commendable. As soon as news reached the arm of the Government, the police swung into action. The perpetrators were hunted down and taken to court. There were long court cases and the culprits were jailed but after a short while they were released. I want to add that, that marred their swing to action because justice,

according to me, was not fully done. I have also put this as the way forward. First, to deter such barbaric behaviour from recurring, the culprits should be dealt with according to the law. In some cases, justice was not done neither was it seen to be done.

Secondly, the evil society should be curbed through proper counselling, discouraging use of drugs *et cetera*. The Church should play a significant role in molding not only the youth, but everyone to avoid such devilish acts. Thirdly, there should be equitability of wealth to everyone so that, at least, each one of us has something to eat. I have put that recommendation because that year, there were very many attacks in schools due to the fact that schools were seen to be a place of wealth in a society where poverty reigned.

Last but not least, the feeling of the society against the female must be addressed properly. I want to add that this is the core of the matter.

Thank you very much.

The Commission Secretary (Ms. Nyaundi): Thank you very much, *Mwalimu*. I will ask you a few questions just for clarifying our record. So that we can recognize your daughter, what is her name?

Mrs. Nerea Akinyi Odinga: Pauline Odinga.

The Commission Secretary (Ms. Nyaundi): *Mwalimu*, you have said that this incident occurred in 1993?

Mrs. Nerea Akinyi Odinga: Yes.

The Commission Secretary (Ms. Nyaundi): You were also, I am sure, aware of the incident that had occurred in Meru at St. Kizito in 1991?

Mrs. Nerea Akinyi Odinga: Yes.

The Commission Secretary (Ms. Nyaundi): Where, again, a girls' school was attacked and there was mass rape?

Mrs. Nerea Akinyi Odinga: Yes.

The Commission Secretary (Ms. Nyaundi): I do not know whether you are aware of an incident that occurred at Kangubiri Girls High School in Nyeri in 2006, where, again, girl students were raped?

Mrs. Nerea A. Odinga: I am aware.

The Commission Secretary (Ms. Nyaundi): You are also aware of that incident. Within that context, I just want to ask you; in terms of security arrangements for girl schools, for

instance, at Hawinga, how many watchmen were assigned and where were they stationed within the compound?

Mrs. Nerea Akinyi Odinga: At that particular time, we had two watchmen and when the robbers came, the watchmen were scared and they ran away.

The Commission Secretary (Ms. Nyaundi): What was the total acreage of your school?

Mrs. Nerea Akinyi Odinga: It was 3.5 acres.

The Commission Secretary (Ms. Nyaundi): And the watchmen that you had, were they from a security firm or were these just individuals whom you had hired?

Mrs. Nerea Akinyi Odinga: At that time, the school was still very young, but we employed the people who had been trained as watchmen. So, we were sure that they were going to handle the situation according to what they were supposed to do.

The Commission Secretary (Ms. Nyaundi): I know it is a long time ago, but would you remember what kind of training situation they had been through?

Mrs. Nerea Akinyi Odinga: One of them was trained in Nairobi and the other one here in Kisumu. I cannot remember now where specifically because it is a long time ago. I am retired and I have taken time since then.

The Commission Secretary (Ms. Nyaundi): What did they have in terms of working tools?

Mrs. Nerea Akinyi Odinga: They had a whistle, spears and arrows. They were provided with those weapons.

The Commission Secretary (Ms. Nyaundi): Was there a back up apart from these two watchmen? Did they have a system like, for instance, when they were overwhelmed, they were able to trigger for assistance?

Mrs. Nerea Akinyi Odinga: That incident was something unheard of in our area and we were not expecting such a thing. At the same time they had the whistles which they whistled. As I stated in my memorandum, those 30 people could not allow anybody to assist us because they made sure they stationed themselves in strategic positions. So, whoever came to assist was rebuffed.

The Commission Secretary (Ms. Nyaundi): What was, may be, the environment of the school? Was there sufficient lighting?

Mrs. Nerea Akinyi Odinga: No, we were using pressure lamps but, fortunately, I want to say that after the incident, the Government installed electricity in the school.

The Commission Secretary (Ms. Nyaundi): This incident occurred after the one of St. Kizito, which had happened in 1991. In your recollection, were there any sensitization forums that were conducted for those of you who were heading institutions for female boarders? Do you recollect, maybe, the Government saying: “This has happened at St. Kizito and, so, these are the measures you will take as heads of schools to protect the female students?”

Mrs. Nerea Akinyi Odinga: When it happened at St. Kizito, we had a discussion with the heads in our conference. But, you never know when a thief will come and during that time, I would not say that it was only Hawinga. It was unfortunate that Hawinga was attacked. But Ramala, which was just adjacent, was also attacked that particular period. In fact, I wanted to attribute it to the political atmosphere at that particular time. You know, elections had just been done and it was very violent, and apparently, people were not satisfied with what had happened or taken place. You know, there was this land issue; there was this injustice and what have you. So, the society was, in fact, very chaotic and unstable. I also remember that we had a lot of hunger in the country and what have you. So, despite the fact that we had discussion about this, surely, that did not prevent us and other schools from being attacked. I will not say that we were careless about that.

The Commission Secretary (Ms. Nyaundi): No! What we are trying to do, as you must be aware of the mandate of the Commission, is to make sure that certain things do not happen again. In this country, there appears to be too many situations where, especially females are exposed to sexual violence, and the concern is that it is happening within the setting of a school environment. What the Commission would be interested to know is whether in a country where there is history of vulnerability of women towards sexual violence, whether special measures are taken to protect women and institutions of learning. Therefore, the intention is not to place blame on you or on anyone, but to really understand whether, as a society, we live conscious that females would be vulnerable to sexual violence. So, that is the discussion that we will be having.

Mrs. Nerea Akinyi Odinga: I quite agree with that, Commissioners, and I would like to reiterate that, that is why I stated very categorically that the feeling of the society against the females has to be addressed fully. If this Commission can assist, we shall be very grateful because we are seeing that we are very vulnerable and it keeps on happening in every society. So, despite the fact that we are trying to protect the institutions that are trying to protect the students, the whole thing still happens; it comes. We are trying our best and the institutions are trying their best. They have put up measures against that. In fact, there was a time when the students were being taught *karate*. We had lessons about *karate* because of this kind of things so that, should such a thing happen, the females would be able to defend themselves. I want to say that I do not know what the Commission would do, but I want to put it very clearly, as a Kenyan citizen, that unless our society and this country addresses gender issues and thinks of the females as human beings, we shall continue to have these problems however much we try. It is not only the schools which are attacked; women are attacked everywhere as they go to work, *shamba*, markets and what have you.

So, it is my prayer that a way is found where we can live, not as females who are vulnerable, but as Kenyans who will be able to develop this country so that we are not looked down upon; that we are people who can just be handled the way the society is handling us.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you very much, *Mwalimu*. How many students did you have at the school at the time?

Mrs. Nerea Akinyi Odinga: I want to say that we are protecting our schools by employing watchmen who can cope with the situation should it arise. We have even trained our students and warned them against taking chances so that they are aware all the time. But the issue I want to reiterate, surely, should be taken into account. We are becoming helpless in our own country, and that is very unfortunate!

The Commission Secretary (Ms. Nyaundi): Thank you very much, *Mwalimu*. You have spoken very clearly on that point. How many students did you have at Hawinga in 1993?

Mrs. Nerea Akinyi Odinga: We had 165 students.

The Commission Secretary (Ms. Nyaundi): And this being a secondary school, the age of the students was between 13 and 18; is that correct?

Mrs. Nerea Akinyi Odinga: Yes, that is correct.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Did you have occasion to determine how many students were sexually assaulted?

Mrs. Nerea Akinyi Odinga: They were over ten, and I want to whisper to you that some of them were infected and have even gone to rest.

(Mrs. Nerea Akinyi Odinga whispered to the Commission)

About ten girls were sexually attacked.

The Commission Secretary (Ms. Nyaundi): And when these people were charged, with what offence were they charged?

Mrs. Nerea Akinyi Odinga: They were charged for robbery with violence and sexual attack. I tend to believe that justice is coming in this country. I do not know whether it is coming – but during those days, justice was not there. So, even if they were charged with those offences, there was nothing serious that was done to them to discourage them. That is why I have said that there should be action that deters such like people not to do it again. But we have such things happening and justice is not done and so they keep on doing whatever they have done!

The Commission Secretary (Ms. Nyaundi): So, what you are saying is that, as far as you are concerned, they got lenient sentences?

Mrs. Nerea Akinyi Odinga: Definitely. That is what I have conveyed.

The Commission Secretary (Ms. Nyaundi): So, were they found guilty of both robbery with violence and rape or only of the robbery with violence?

Mrs. Nerea Akinyi Odinga: The rape case was played down while the robbery with violence case was highlighted.

The Commission Secretary (Ms. Nyaundi): What sentence did they get?

Mrs. Nerea Akinyi Odinga: They got jail sentences of 18, three and seven years, but they did not complete the sentences. Some of them came back very soon after the trial.

The Commission Secretary (Ms. Nyaundi): About the female students who were sexually assaulted, are you aware of any support that they got, for instance, medical treatment and counselling?

Mrs. Nerea Akinyi Odinga: Yes. Immediately after this incident, there was counselling and although I was not sexually attacked, I felt like my life was not worth living. So, we had counsellors who came to our school, they counselled and comforted us and so on and so forth. The girls were also counseled and comforted. But as for treatment, my daughter and I were taken to the hospital, we paid our bills ourselves and we got out. The girls were also taken to the hospital, they were checked and they were found that they had been sexually attacked and treated. That was the end of the story.

The Commission Secretary (Ms. Nyaundi): If you can remember, was it possible to track the girls who were affected to determine how this incident affected their lives?

Mrs. Nerea Akinyi Odinga: Yes, indeed! Although I did not mention that I am now retired; I have left the school. So, tracing these people within this short time has not been possible. But given the chance, I would do it. There were girls who were affected and their lives were actually ruined. Some of them, as I have told you, died because of the effects.

The Commission Secretary (Ms. Nyaundi): Thank you very much. We hope that we can see you even later and you can give us the names of the girls who were affected and, probably, the court proceedings of the case that arose out of this incident. The Commissioners will now ask you questions.

The Presiding Chair (Commissioner Dinka): Thank you, Mrs. Odinga, for your testimony.

Commissioner Ojienda: Thank you, Mrs. Odinga for sharing the story of the girls of Hawinga, who were sexually violated by robbers. I just want to empathize and join you in stating the need to ensure that there is sufficient security for children in school, especially those who are females. It behooves upon all of us. It behooves upon the society to protect the girl child because for any nation that prides itself of a future, we cannot afford to see wasted lives such as the ones that you have related to us. I just feel that when the law creating this Commission was drafted, a special inclusion of sexual violence was included to take care of situations such as this. And I hope that your testimony and theirs will influence policy and the law in dealing with the aggressors and serious perpetrators of sexual violence.

To your daughter, I just want to laud her and to recognize her for holding on despite the burns sustained during the incident.

Thank you.

Commissioner Slye: Thank you, *Mama Nerea*. You mentioned one of the things in your recommendations on the way forward is to change the feeling of the society against women. I do not expect that you have a very clear answer to this question, because it is a question that I think many societies or all societies continue to grapple with. But in your view, why do you think that some men or, maybe, many men treat women with such violence?

Mrs. Nerea Akinyi Odinga: Thank you Commissioners. It is unfortunate that such things can happen in our society. However, I must admit that our society has become rotten. This is because we have cases of drug addicts. A drug consumer can do anything without realizing the effect. Ours is a paternal society and, therefore, it seems to downplay the role of women. They are taken to be people who can be played about with at the man's whims. On the cases that have been coming up of women being attacked, I want to attribute that to the society. I believe that the society has something which if not dug out and found, we will continue to have this kind of thing.

To answer your question, something somewhere is wrong in our society. There is queer behaviour taking place against women. If you read newspapers about what is happening in Kenya, you will find that there are many cases of drug trafficking. So many people are hauling?. Recently one person was caught with very many kilogrammes of a drug. These drugs are given to men. So, it has become a normal situation in the country. Even the people who attacked us were not in their normal senses. I have a very big scar on my head. I was hit by a man who I realized was not in his senses. I was bleeding profusely, but he continued frog marching me. I am glad I am safe now. God is great. I would have committed suicide. I am a saved person and I pray to God because he helped me that day. It was an unfortunate and pathetic situation. I do not believe in crying because Shakespeare once said, "Your cries are womanish." Having read that line, I tend to believe that it is not only women who cry. It is very difficult for me to cry. I do not want to relieve that situation. Sincerely speaking, I do not want. When I was coming here I asked God, "Am I going to relieve that situation again?" Anyway, here it is again.

I, therefore, want to attribute that behaviour of men to the fact that the Government has not taken control of the vices in society. They should control the drugs and misbehaviour. When there is injustice, persons perpetrating have a chance to continue doing injustice. I am glad that now there is justice in this Commission. You need to do something so that justice is seen to be done properly. That way, we will curb this behaviour.

Commissioner Slye: Thank you, *Mama Nerea*. We appreciate and acknowledge what it must take to come to a public hearing like this to relieve an experience such as yours.

Kenya has a new Constitution now which has specific provisions with respect to the representation of women in positions of authority. Do you think that will assist in addressing the problems that you are talking about? If not, what else would you recommend be done at governmental or institutional level to assist in changing the perspective of society in respect to the treatment of women?

Mrs. Nerea Akinyi Odinga: I have a lot of confidence in this Commission. I believe that after you have completed everything you will come up with something that will enable the country to move forward. I do not know whether I am answering your question, but, please, recommend that women are involved in these issues. I tend to believe that when you give women the chance to do some of these things, those respectful and able women will be able to help. I am sure there are men who are not seeing these things the way useless men see them. There are some men who are very sympathetic to the women folk. I am sure if they are put together, they will be able to assist. So, what you are saying can be done.

Commissioner Slye: Thank you. The robbers who did this to your students and to you, were they captured, prosecuted and convicted? I understand that they have, perhaps, not been punished in a way commensurate with the gravity of what they had done. Did either you or some of the students attend the court proceedings for their prosecutions?

Mrs. Nerea Akinyi Odinga: I attended most of the court cases. Some of our students also attended. In Kenya you know that court cases *blah blah blah* and at the end of it all nothing happens. You can have beautiful cases. You can actually see that you are going to win a case, but at the end of it all you do not win it. I am sure you have witnessed this, Mr. Commissioner. It is not something that I am creating. A person is released mysteriously even after being jailed. What do you do when you are a commoner like me?

Commissioner Slye: Did you learn anything more through the court cases about why they did what they did?

Mrs. Nerea Akinyi Odinga: Yes and no. This is because the court cases were there, but there was nothing serious about them. I left the courts knowing that justice will not be done. That is exactly what I saw. There was no remorse on the people. You have attended court cases. There are very ugly words especially during rape cases. A criminal would come with a very big word before you and some of us who are Christians shy away. You

wonder if the person is serious with what he is saying and because the law is an ass, very little can be done. Those people were not remorseful. When they were taken to jail, they knew that they would be taken to jail and find their way out. I do not know if you are a Kenyan, but during those days very many things were happening that would surprise one. I hope I will not go to jail for that particular statement.

Commissioner Slye: Thank you *Mama Nerea*. I am not a Kenyan, but I have been here for almost two years now and I am learning a lot about the history of this country. I knew some before I came here, but as you can imagine, I have learnt an enormous amount.

Mrs. Nerea Akinyi Odinga: But you have read the history of Kenya.

Commissioner Slye: I have read the history of Kenya and I have listened to people like you who have been kind enough to spend time to educate me and my fellow Commissioners about the history of this country. I want to thank you for coming here to share your story with us. I have no further questions.

Commissioner Farah: Ms. Nerea, I join my fellow Commissioners in empathizing with you and the girls of Hawinga School. Indeed, you know that something is very wrong with our society. You will hear that an old man of, say, 73 years old has defiled a young girl. This is what this Commission is all about. We have noted it. I have no question for you. I hope you have recovered by now.

Thank you very much.

Mrs. Nerea Akinyi Odinga: It is very difficult to recover. It is about that insecurity and stigma. "This one is from Hawinga and this is what happened there." Sometimes you do not want people to know that you were there. It is difficult to recover but we are living with it. God will help us live.

Commissioner Chawatama: Thank you very much for your testimony. We thank you and your daughter for coming here to share with us your experience. We have sat here and we have heard from a lot of women on the experiences they have gone through, that is, the injustices and the violations. You have opened the door – I did not know that there were schools that were attacked in the manner your school was attacked.

We have spoken about writing a report specifically on women's experiences. I hope that this will properly highlight the violations and injustices that women have gone through. I hope you will see the change that you are hoping to see during your life time and you will have cause to celebrate.

The Presiding Chair (Commissioner Dinka): I take this opportunity to thank you and your daughter not only for coming here to share your story with us, but also for your courage to relive that experience again. It is a very traumatizing experience. I want to thank you for speaking on behalf of those unfortunate young ladies of the High School

that was attacked. I hope you, your daughter and the young ladies will have a bright future and nothing of this sort will ever happen again.

We will now adjourn for lunch and come back at 3.15 p.m.

[The Commission adjourned temporarily at 2.00 p.m.]

[The Commission resumed at 3.30 p.m.]

The Presiding Chair (Commissioner Dinka): Good afternoon all of you. Please, take your seats.

Leader of Evidence, you may call the next witness for this afternoon.

The Commission Secretary (Ms. Nyaundi): Our next witness is Serial No.10.

(Mr. Peter Odede Ouma took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome to the Commission. We are in receipt of the memo you prepared with other members of the family of the late Tom Mboya. I invite you to first tell us your name, where you reside, your current occupation and then you can proceed to make your presentation.

Mr. Peter Odede Ouma: Thank you very much. My names are Peter Odede Ouma. I currently reside in Nairobi. I come from Rusinga Island, Suba Community. I am a retired officer from the University of Nairobi. I am ten years old in retirement. Besides that I am also a trade unionist. I am here to represent the family and the Rusinga and Suba Community.

The Commission Secretary (Ms. Nyaundi): Please, proceed and make the presentation you had prepared about the life and death of the late Tom Mboya.

Mr. Peter Odede Ouma: I will just give highlights because already, what I have documented is contained in the memorandum.

I talked about the early life of Tom. He was born on 15th August, 1930 at Kilimambogo Sisal Estate in Thika. He was born of illiterate parents who were devoted Christians – Catholics.

I said that I come from Rusinga in Suba. I have looked at the schedule detailing the subject matters that have been discussed. I find it interesting that more emphasis has been put on the Luo factor and Subas have been sidelined. Further, it is interesting that out of the list, it is only me who is going to present a matter regarding Tom Mboya. That makes me believe that the author of *Tom Mboya: The Man Kenya Wanted to Forget*, is very factual. It is also true that many times, even our politicians including our trusted Prime

Minister, Hon. Raila Odinga, find it hard occasionally to mention Tom's name. To that extent, we feel that something is wrong somewhere.

Tom now has a family of mature people but at the time he was assassinated, he had a young family. His first daughter, my first wife, Alaki Mboya was then 14 years old. Judge Maurine Odero was under 7 years. The late Peter Mboya was under 6 years. Dr. Susan Mboya was about 4 years. His surviving son, Lucas was one-and-a-half years old when Tom Mboya died. Before I came here, I got in touch with the family. They told me that as far as they are concerned, they had left everything to God. Whoever planned and executed the death of Mboya knew what he wanted to do. They were too young and they cannot remember what happened at that time. They say that they think and hear about their father the same way as those of us who did European history heard of Livingstone.

In the contemporary history, nobody, by my standards, can supersede the legacy of the late Tom Mboya. As Shakespeare puts it in *Julius Caesar* at the time when Mark Anthony was eulogizing Caesar, he says: "The good things that people do are left behind, but the bad things they do are buried with their bones." Why is it that a person who thought and worked tirelessly starting from age 22 years old--- I know we might find in this hall, one or two people who are of that age. However, the emphasis is that leadership should be left to the youth. I want to challenge the youth not to overstress the youthfulness; it is just, but a passage. Nobody came to this earth an old person.

I was 23 years old when Tom was assassinated. I had just joined his Ministry of Economic Planning and Development as a Senior Clerical Officer in the then Statistics Division which is today the Kenya Bureau of Statistics. That Saturday on 5th, I did not go to work. There are many ways through which I remember my cousin, Tom Mboya. If you look at me, you will realize that I have a serious dental problem. I was feeling unwell that time. I had arrived from Addis Ababa. The Government was working on a 7day week. So, at 1.15 p.m. that day, I was having lunch at my uncle's place in Makongeni. Then there was a radio announcement. My uncle did not have a radio. A neighbour residing opposite my uncle's house banged our door and asked us: "What are you people doing here? Do you not know that Tom has been shot?" The best answer he was given was: "When did he come from Addis Ababa?" The lady just walked out on us.

When I talk of these things, it looks as if it happened yesterday. The glass which I held dropped off my hands and cracked. Since none of you was there, you will be excused if you thought I was exaggerating. We went straight to the City Centre. Two things happened. I have an uncle who is based in the USA. He was a teacher at Pumwani Secondary School and he was living at Pumwani Estate while I lived in Makongeni. We just arrived at the site of the vehicle at one go. We found blood on the Mercedes Benz, Registration No.KME, 627. He held my hand. The blood was still coming from the chemist to the street. We walked straight to the KENATCO depot and hired a vehicle at Kshs15 to Lavington. That can tell you how the cost of living has risen. As we arrived at the compound, Mrs. Mboya had just come from Nairobi Hospital. As we got in the house, Mboya's younger brother, the late Alphonse Okuku, cried like a baby and Mrs. Mboya gave us the key to the study room. All of us were still very young. I saw people like the

late Zachary Ramogo, Dennis Akumu, Jeremiah Nyagah and others. They were crying like babies as if the world was cracking. Indeed, the world was cracking. We were lost and we did not know what to do.

I came here because I think I have a debt to pay. If it was Tom living today and it was my case to be handled, he would have been here. Why am I speaking so passionately about him? Tom is my aunt's eldest son while I am his uncle's eldest son. So, that is to say that my father is the follower of his mother. I started politely by saying that the Suba people have been marginalized.

Allow me to give a critique to the Commission. We thought that the Commission will come closer to Rusinga. Granted, we have technological devices. I was 23 years old when Tom died. Majority of the people manning this Commission today, I do not think they were older than 10 years. So, the people with concretized information about Tom are computer illiterate, including me.

The people of Suba were anxious to meet you on the ground. Now that you are unable to reach there, they have sent their greetings, but they said that they would not like the establishment of another Commission to harmonize their feelings with the Luos. The Luos are natural allies. We are one and we share the same. We are all in Homa Bay County. Let nobody assume that Homa Bay County is made of one tribe. We are two tribes and that is not debatable as a matter of faith.

Tom, as we all hear, went to school up to Form II. He dropped out of school not because he liked it but because of the meagre resources of the parents. He left school at St. Mary's Yala and joined Jean's School, Kabete. That was where he trained as a health inspector, having been brought up and cultured in a poverty oriented family, his father working as a sisal cutter.

During the colonialism, Mboya encountered racialism, discrimination, oppression and exploitation of the African people. Once in a while, he could go back and visit his parents. He could see how the whites were shouting at the workers. So, he declared that three enemies have to be fought; disease, famine and illiteracy. He thought that things would improve when he was employed by the County Council of Nairobi. Again, he met segregation, even from his colleagues whom he had trained with. As a health inspector, his functions and duties were to test and inspect milk and also premises. That was at the height of serious racialism. Sometimes, his colleagues could tell him to stay in the car while they went to inspect premises but he refused. That was why he was called *Nyategererwa*. In Suba, this means that person who does not take nonsense.

While that was happening, he organized workers and formed City Council Local Government Association. He realized that the organization was not effective because it had no mandate and its jurisdiction was not known. So, he transformed it into Local Government Workers Union, of which he became the first secretary-general in 1952. At that time, the colonial government was embarking on suppression on the independence struggle. They banned KAU. I do not want to belabour on KAU because some people had

already explained what it was. With the banning of KAU the leaders were arrested and detained. Only one official was not detained at that time. That was the late Walter Fanuel Odede. Odede identified Mboya's competence and invited him to join him and he agreed. When he was brought on board, the party was banned and a state of emergency declared. When the state of emergency was declared, all political activities were banned. Mboya chose to use trade unions as a vehicle to fight for independence. At the age of 22 years, it is a challenge for the youth but at that time, he had formed one union.

At the age of 24 years, he formed the first umbrella trade union called Kenya Free Trade Union. He used the same vehicle to engage the colonial government to negotiate and agitate for the right of the Africans and other Kenyans. That agitation culminated into a constitutional plan which allowed for the first election of the first eight members. The eight members were the members of the Legislative Council. At the age of 27 years, he was a member of Nairobi Province which is now split into eight constituencies. The entire Central Province was represented by Bernard Mate, Rift Valley was represented by Mr. Daniel arap Moi, Coast Province was represented by the late Ronald Ngala, Eastern Province was represented by Muini and North Nyanza which is now Western Province was represented by the late Masinde Muliro. We have agreed to call this place Luo Nyanza. The Commission needs to address that issue. That so called Nyanza, that is Central Nyanza from Katitu to Budalang'i was represented by the late Jaramogi Oginga Odinga. The Great South Nyanza from Kericho to Sirare was represented by the late Lawrence Gordon Oguda. So, you can see that in that arrangement, there were two Subas and one Luo. I am wondering why today, nobody is remembering that we are in Suba.

It is the labour movements that negotiated and agreed with the colonial government to lift the emergency. When the emergency was lifted, the national political activities began. This was where Mboya's star started rising. It is natural that nobody is expected to have 100 per cent support. So, the first opposition that he faced was from within the trade union, arising from the jealousy of people who thought that he was too young to be in the forefront. Without mincing words, the late Jaramogi Oginga Odinga had a share in that opposition but we can give him the benefit of the doubt because that is politics. In politics, every politician has ambition. Analytically, you can see that Mboya was in his twenties or early thirties and Mr. Odinga was older.

By the Luo norms, where an elder sits, a young man needs to wait. In 1960, they went to Githunguri where one national party was to be formed. Before that day, they met at Mboya's private office. It was in Alvi House. That was where people from Western Province, Nyanza, Coast, part of Eastern and a few from Central Province met and agreed to form one political party. They agreed that they were going to use Mboya's party called Nairobi People's Convention Party (NPCP) because it was a parliamentary party. Although Odinga's party was also a parliamentary party, it was rural based. The late Agwings Kodhek had not been elected but he had a party which was also urban based. So, they agreed that they were going to take NPCP.

That party was modeled along Ghana's People's Convention Party. What came as a shocker was that as they had agreed in their lineup that Jaramogi Oginga Odinga would

be the president of the party and Mboya would be the Secretary-General, Osogo or Sagini to be the treasurer--- They agreed to meet at 8.00 a.m., before they went to Githunguri. Unfortunately, Jaramogi Oginga Odinga left the party and went ahead of time and tried to resuscitate KAU which had been banned. Someone called Mboya and his group, asking them where they were. Mboya told him that they were waiting for Jaramogi. He was informed that Jaramogi was already there with the Central Province people. So, those people went and when they reached there, they told Jaramogi that he had betrayed the youth and that the youth would betray him. Those were the words of the late Agwings Kodhek. Mboya told him that he will never find him sleeping again, except maybe, when he is dead.

I am saying that Mboya's achievement did not augur well with everybody. I also want to say that what I am saying does not mean bad. I think Jaramogi Oginga Odinga enjoyed competing with someone but did not intend to have him eliminated.

I want to briefly go to the events that led to Mboya's dislike by friends. In 1967, he had been elected a member of the Legislative Council. The first African meeting took place in Accra under the auspices of Pan-African movement. Mr. Mboya was just from the USA to attend a trade union meeting. As he was flying to England, there was a problem with the weather. Their plane was forced to land in Iceland. They were delayed there for a week. When they set off, they went directly to Accra. He was elected in absentia as the chairman in that meeting. He only realized when he landed at Accra and the reception was overwhelming. So, he asked what was happening. He was told that he had been elected the chairman. That did not augur well with Mr. Kwame Nkrumah. At that time, Mboya met Nnamdi Azikiwe of Nigeria, Apiti of Dahomey, George Padmore of West Indian Pan-African affairs and advisor to Nkrumah. He also met Julius Nyerere of Tanzania. He also met William Shayman, an American. At that time, Shayman had written a will that where Mboya will be buried, he also wants to be buried there. So, next to Mboya's mausoleum, there is a grave of William Shayman.

I wonder why such a person should be forgotten. We from Rusinga and Suba wonder why our own people are also forgetting him. Many times, even the Prime Minister, when talking about political assassinations, he starts with Pio Gama Pinto, J. M. Kariuki, Robert Ouko, Muge and Odhiambo Mbai. From the analysis, it shows that from 1965 to 1975, Kenya never witnessed an assassination and yet, there was an assassination that any Kenyan cannot forget. I am saying that because the day that Mboya was assassinated, the Commonwealth Conference was taking place in Lusaka. When they heard of the assassination, the former President of Uganda, Dr. Obote supported by Harry Kambula, walked out saying that they could not sit with murderers, in reference to the Kenyan delegation.

The current President, Mr. Kibaki was also leading a delegation in London on economic issues. The moment he heard the news, he said that Parliament today is full of empty *debes* and wanted to come home but he was threatened with arrest. At that time, there was negotiation between the Nigerian Government and Biafra in Kampala. Adeniji was leading the Biafrans and when he heard the news, he walked out. How can one justify

forgetting about that? It is the duty of this Commission to make sure that we know the circumstances under which Argwings Kodhek died. That was one person whom we can compare with Mandela and Oliver Tambo. He used his firm to represent Kenyans who were being oppressed but does anybody ever think about him? We also want to say that at the national level, communal and individual level, the loss is so big. That was a man who had a vision. We recognize that there is competition and he had foreseen the success of Sessional Paper No.10 on African Socialism and its application to the development in Kenya. The paper was forwarded by Kenyatta but never saw the light of day.

What we are talking about today with regard to the equal distribution of resources, was all contained in that paper. If you read it, you will realize that we are going back to 1965. However once in a while when you listen to Parliamentary proceedings, you may find few Members of Parliament like Prof. Anyang' Nyong'o and Member of Parliament for Mathira referring to that paper. The rest do not care.

Apart from being a cousin, a friend, a role model and a person who cared, why should we think that he was great? That was the man who usually had a memorial lecture, although he died when he was a Minister. The last lecture is borrowed by the Ghanaians. As far as I know, and I stand to be corrected, the next annual memorial lecture is Nkrumah's which was also started at the Cape Coast University. That is an institution that Nkrumah himself started. In Kenya, it is being run by the Kenya Institute of Management which was the brain child of Mboya. Look at the way mausoleums are mushrooming. They are all borrowed from Mboya's mausoleum. They are built using state funds or family funds but Mboya's was built in recognition of his participation as a trade unionist. The people who were competing with him are asking questions.

Columbus, who was a Spaniard, discovered America. At that time, the Portuguese were richer than Spaniards. So, he was hired by the Spaniards. When he submitted a report, one person called Fernando Gole, who was very rich and one of the financiers of the exploration said that if Columbus can do it, then he can do it very many times. That challenge is like the one I am giving to the young people. Columbus told him to give him an egg and he gave him seconds to break it but he did not break it. Columbus told him that their methodologies are not the same. If somebody wanted us to forget about Mboya, maybe, he does not understand what he is talking about. Mr. Mboya had several attempts made on his life.

In 1967, he had a planned road accident at the escarpment. A lorry was driven into his convoy and it was supposed to ram into the vehicle and roll. Fortunately, that did not happen. His vehicle, a black Mercedes Benz, registration number146, model 90 was extensively damaged. What became so interesting about that accident was that the driver of the lorry was not charged with a traffic offense. So, I am asking; was it because the chairman of the Transport Licensing Board (TLB) was Mr. Joseph Gatuguta, who was the Member for Githunguri at that time? The second attempt to assassinate him was in 1968, where a guard in his home fired at his vehicle but Mboya was already in the House. It was his brother who was in the car but he was not hurt. That guard was never charged. He was temporarily dismissed and thereafter he was redeployed. The fatal one came on

5th July, 1969. When Mboya was shot dead, there was an announcement on the radio at 1.15 p.m. The nation was informed of Mboya's assassination.

What we want this Commission to address is that at 2.30 p.m., there was a special edition of the *Daily Nation* newspaper on the streets, complete with the editor's editorial together with Mr. Kenyatta's eulogy. I am a printer and I trained in printing technology in the polytechnic. During that time, the fastest machine that could work at such speed was called Monocaster. One wonders because at the speed with which the Monocaster could work, it could not produce an editorial and a eulogy within one hour. That one was impossible. So, one wonders whether somebody knew that there would be death of that nature, so that an editorial was prepared. To crown it all, at 4.00 p.m., the late president was on air officially announcing the death to the nation. He was appealing to the nation to keep peace.

These were his words:-

“Dear Kenyans, I regret to inform you that my Government has lost one of my ablest Ministers and I take this opportunity to express and extend my condolences to Mrs. Pamela Mboya and the family and all Kenyans. However, death loves young people.”

So, one would ask why there was so much emphasis on the young people and not old people. Come the trial of Njenga, he asked pertinent questions. He asked why someone picked on him and not the big man. Mr. John Bell wanted to follow that statement but he was told to stop and he resigned. The late Obote brought in a forensic expert whose major function was to come and photograph the face of Mboya but he was blocked. Mboya's family lawyer was blocked from interrogating Mr. Njenga?

Two days ago, I was listening to Ramogi FM and I heard the chairman of TJRC pleading with the media that they should as much as possible, avoid sensational reporting that can translate into hate speech. Let us take the title of the Commission: Truth, Justice and Reconciliation. How do we marry the three words? How do you reconcile with somebody whom you cannot identify? How do you harmonize the justice if the aggressor does not identify himself and ask for forgiveness? It seems that this Commission like other Commissions before, may make very descent and pregnant recommendations to the appointing officer but the recommendations may not be executed or see the light of day.

Surely, you need to identify the person who wronged you. That person must have come from a community. The constitutional amendments done on the old Constitution were about 19. Most of them were geared towards blocking other people from certain communities from ascending to power. Look at the insertion of Section 2A in 1982. That was the Section that made Kenya a *de jure* one party state. Why was it introduced? It was brought in because Kenyans were then tired of a dictatorial regime.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Odede. The information you are giving us is extremely useful. We thank you for it. Unfortunately, we have a number of other witnesses we would wish to listen to, this afternoon before we

finalise. I have gone through your memorandum. A number of the issues you are raising are in that memorandum. I assure you that the Commissioners have copies. Therefore, I want to request you most respectfully that, because of time, if you could, please, very briefly, state the specific issues that you want the Commission to deal with as far as the death of Tom Mboya is concerned.

Mr. Peter Odede Ouma: Thank you, Madam. I would have gone on and on. I thank you because I was getting out of myself. What we want the TJRC to do is; one, could the TJRC tell us whether they have the capacity, which we want them to have, to bring those people who plotted and executed the late Tom Mboya to book? Secondly, we would like the TJRC to consider telling the Government that we need compensation. We are not talking of monetary compensation. We are saying that the vision of Tom, which was on agriculture---

You can remember pyrethrum being grown in Kisii but the processing plant is in Thika. The fishing industry is mainly in Nyanza, but the processing plant is in Thika. We would like to get answers as to why, although we are the producers of these commodities, we have been denied the right to benefit from them. We also want to suggest to the TJRC that the sugarcane industry was deliberately destroyed when the Government established the Kenya National Trading Corporation (KNTC), which became the sole Government agency through which sugar could be sold. It is our considered opinion that it was established to allow Government cartels to import sugar.

There was a road network which was supposed to run along the lake shore from Busia to Muhuru Bay. Three years ago, when the mausoleum was being taken over by the Government to become part of the National Museums of Kenya, the people who were supposed to be there could not come because of a bad road network. Electricity, which was then being gotten from Jinja, was supposed to be connected from Busia to Muhuru Bay, but the decision was suppressed. That was meant to empower the economic position of the people. There is no injustice which can be compared to that one. Today, 42 years down the line, the Government is tarmacking the Mbita Homa Bay Road. In the books, Road C19 has always been reported as having been done and forgotten.

We also want the TJRC to use its good office. When Mrs. Pamela Mboya was dying, she confided to a friend that she had written a letter to the Ministry of Justice, National Cohesion and Constitutional Affairs, demanding to know the cause of death of the late Tom Mboya. Since she went to her grave, she never got a response. Also during that time, she was in the process of writing a book about the assassination of Tom. We would like the TJRC to use its good contacts and find out where that information could be.

At the time when the research and legal team visited Mbita, the Mboya statue was being erected in Nairobi, but it was neglected and was almost vandalised. We recommended to the TJRC that they find out why the erection of the Mboya Statute is not going on. As I speak, it is being done. It was supposed to be erected on 5th of July but due to the busy schedule of the President and the Prime Minister, it could not be done. We are requesting

the TJRC to recommend to the Government that you cannot have a statue on a road that does not bear the name of the person whose statue is erected there.

It is the feeling of the Suba people that the moment that statue is erected, Moi Avenue should change its name to “Tom Mboya Avenue”. Tom Mboya Street should become Moi Street just as is Kimathi Statue on Kimathi Street. I also want to suggest to the TJRC that there are people whose names had been recommended to the TJRC. Those people are privy to more information than me. Three of them were beneficiaries of airlifts. Some campaigned during Tom’s time. Due to age and distance, they could not be here. The group was waiting to meet the TJRC team in Nairobi. I would be very willing to give the Commission their contacts, because I have spoken to them.

Among the people I have in mind, are the first Private Secretary to the late Tom Mboya - a Mr. Joshua Mo, who is now with COTU and the last Private Secretary to Mboya, Mr. Otieno Nundu, who is in Kisumu but who is now based in Rusinga Island. Unless the Commission completes its job now, to advance what we are saying, it would only be noble if it could also check the facts we have enumerated here.

Otherwise, I thank you very much for according me the opportunity to state what I have stated. To whoever may have felt touched or offended, I apologise but I will not regret what I have said.

Thank you very much.

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Odede. I hope it is your feeling that you have done justice to the memory of the late Tom Mboya. I just have two or three questions. I want you to confirm that when you say “KNTC”, you mean “Kenya National Trading Corporation”?

Mr. Peter Odede Ouma: That is true.

The Commission Secretary (Ms. Nyaundi): And when you say; “KAU”, you mean “Kenya African Union”?

Mr. Peter Odede Ouma: Yes, Madam.

The Commission Secretary (Ms. Nyandi): There is your memorandum here. You have mentioned that there is a friend to whom Mrs. Mboya had said that she had written a letter to the Ministry of Justice, National Cohesion and Constitutional Affairs. I want to ask that if you know the name you, kindly, write it on the memorandum and then we will admit it into the records of the Commission. You need not say the name publicly.

Mr. Peter Odede Ouma: I will do so, Madam.

The Commission Secretary (Ms. Nyaundi): Thank you very much. The Commissioners will now ask you questions.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Peter Odede Ouma, for your testimony. I will now ask my colleagues to ask you a few questions if they have some gaps to fill in the information you have given the Commission. At the same time, I would like to ask them to respond to the questions you have raised.

I would like to call upon Commissioner Ojienda to start.

Commissioner Ojienda: Thank you very much, Leader of Evidence. To the witness who has just testified, I want to acknowledge that the assassination of Tom Mboya is recorded in the history of this country, and that as long as it remains unresolved, questions will always be asked by every person seeking solutions. The memorandum you have presented is very detailed. It clearly shows how close you were to the late Tom Mboya, because you were agemates. You are only one year older than him.

I just want to ask you a few questions for clarification. The late Tom Mboya was a trade unionist. You have narrated the beginning of his involvement with the trade unions. What is not clear is what his philosophy was, and what you think were the good things and the vision that Tom Mboya had for this country. I just want you to share that bit with us.

Mr. Peter Odede Ouma: Presiding Commissioner, allow me to make a correction. Tom was much older than me. He was born in 1930. I was born in 1947. So, I was 23 years old when he died. It was only that closeness that made me have a passionate view about him.

On the issue of trade unionism, Tom's vision was based on one industry, one union. That is to say, the platform on which he operated in the trade union movement was that he did not like the idea of the British Government type of unions, which were called "craft unions". Today, the union leaders who are there, and the Government, have allowed the mushrooming of trade unions.

A case in point is public universities. There is the University Academic Staff Union (UASU), which takes care of the teachers in public universities. Then there is UNTENSU, which takes care of the middle grade university staff. The university subordinate staff are represented by a union called KUDHEIA. The reason as to why the late Tom Mboya did not like that idea was that in every industry, the employer is one. That was meant to avoid delay in negotiating collective bargaining agreements.

On the question of his vision for Kenya, the late Tom Mboya was for one nation and one people, something his competitors did not like. You can even see that today, we have got "KKK", ideally to prevent or rather block Raila Odinga from ascending to power. If you reflect back, you will realise that the amendment to raise the age for presidential candidates to 35 years was also meant to block the late Tom Mboya from vying for the presidency.

So, his vision was economic empowerment and unity of purpose.

Commissioner Ojienda: Thank you. I will ask you my second question, based on your memorandum. You have written in your memorandum that after Tom Mboya died, no person had access to his compound, and that the then Vice-President, Daniel arap Moi was slapped by a woman when he attempted to get out of his car to get into the compound. You also write that the late President Jomo Kenyatta was hit on the forehead by a woman who removed her shoes at the Holy Family Basilica. I want you to explain these occurrences and their significance, and confirm if you were there.

Mr. Peter Odede Ouma: I was at the Lavington Home and I confirm that it is true. Maybe, I used the wrong word but it was emotional. It was spontaneous because Mboya's assassin was Nahashon Isaac Njenga Njoroge, a Kikuyu. The President was Jomo Kenyatta, also a Kikuyu. So, at that time, the Luo were in a war mood. As per the customs, traditions and beliefs of the Luo people, that was part of the war that they could fight. Nobody held a meeting to say that they should not come.

A message had been sent through the late Onyango Ayodo, who was the Minister for Tourism and Wildlife. He was specifically told to tell the perceived organisers of the assassination not to step into the compound of the late Tom Mboya – that whoever did that would do it at his or her own risk.

The incident at the Holy Family Basilica happened on the day the body was going to be transported home. When the President approached the compound, women wailed bitterly; men sang war songs. The university students rioted. So, one lady removed her shoe. That was the only weapon she had, and that was what she used to hit the President. Fortunately, as the guards pulled out their guns to shoot, the President himself shielded the lady.

I confirm that I was an eye witness of that incident.

Commissioner Ojienda: Thank you very much for that confirmation. You seem to have seen it all. You have been around for a long time. You have also given us advice on wasted youth. You have said that the late Mboya took part in the political movement in this country during his youth. I want you to just offer some advice to the youth, especially on the question of reconciliation.

Mr. Peter Odede Ouma: On the question of reconciliation, I think the youth are now in the mood of wanting one Kenya, one nation, one people but tenable reconciliation can only come when justice has been done, and has been seen to be done – when those people who acted in a manner that made the communities disintegrate own up and apologise to the victims. Should they refuse to do so, the youth should ignore them and go ahead.

My further advice to the youth is that they should not be begging to be in positions of authority. Handing over is structured. They need not say; “get out of our way, we are now the people” because the majority of the youth are comparable to the number of children one has. I want them to take note of that fact. After I got married and had the first child, my wife and I were the majority in the house. When we were blessed with the second

child, the number was equal. When we got the third child, my wife and I automatically became the minority in our house, although we were the managers.

So, the number of the youth is not debatable. It is like a herd of cattle. If you do not have heifers, you do not have bullocks, you do not have cows, you do not have bulls, then you do not have a herd.

Let me give another example. Just the other day, we had the presidential campaign in the United States of America (USA). Look at the Republican candidate; John McCain was 72 years old. His running mate was 40 years old. Obama was about 47 years old. His running mate at that time was 65 years old. What does this authority tell the people? Leadership is not dependent on your age. Chinua Achebe says in *Things Fall Apart*: “A chick that will grow into a cock is spotted the day it hatches”.

So, you can fall on your laurels and complain of your position. We will not give it to you because it was not given to us. Work for it.

Commissioner Ojienda: Thank you, Peter Odede Ouma. We will work for it. Thank you very much for your memorandum and the honest communication that we have had.

One of the functions of this Commission is to document the history of this country. We now have the accurate history of Tom Mboya. You have told us more than we expected to get, and we are grateful to you. We will, of course, at the end of this process, also make certain specific recommendations on some of the issues you have raised.

I thank you once again.

Commissioner Slye, USA: Mr. Odede Ouma, I, too, want to thank you both for appearing before us and testifying about the death of Tom Mboya, and the events surrounding his assassination; the events afterwards as well as for the memorandum that you have given to us.

When I first came to Kenya, one of the first books I read concerned Tom Mboya and his wife, his history and his death and the events surrounding his death. I want to assure you that this Commission takes very seriously the issue of his death. I think the death of Tom Mboya, like a few others seen in the history of Kenya, is one of those events that everyone in Kenya points to, as a significant event in trying to understand the historical injustices of this country.

You have been here testifying specifically about his assassination. You are not the only one who has appeared before us and spoken about his life and his death. Today, we heard individuals speaking about the massacre that happened during the opening of the Russia Hospital. You know the events around that incident were very much related to the untimely death of Mr. Tom Mboya.

We have heard others before us here in Kisumu, talking about economic marginalisation in Nyanza; aspects of people's presentations pointed to the death of Tom Mboya. Even when we were in the northern parts of the country – Wajir, Mandera, Moyale and others – people mentioned the assassination of Tom Mboya as another example of state violence in Kenya, the truth of which is still not completely known.

You asked about the relationship between the key foundations of our mandate. The reason as to why you asked that question is that you want it answered in the way we would answer it but, ultimately, we will work towards reconciliation and national healing. In order to have reconciliation and national healing, one needs justice. Of course, in order to have justice, one needs to know the truth, because if we do not know who was responsible for what, we cannot reach justice with respect to a matter. If there is no justice, then it is unreasonable to expect people to reconcile.

You asked whether this Commission has the capacity to bring the individuals responsible for Tom Mboya's death to book. This Commission does not, itself, have the power to prosecute anyone. In fact, our major purpose is to uncover the truth and to provide space for people to come forward and tell the truth. But we can recommend that individuals be prosecuted or be investigated for possible prosecution. I can assure you that if we receive information concerning who was responsible for, in this case, Mr. Tom Mboya's death, and with the evidence needed, we will certainly recommend further investigation and or prosecution.

It is important for us to understand the truth. Your presence here, and the information that you have provided to us – I hope that you will continue to provide more information to us – as well as the information others will provide to us, and what we will discover through our own investigation, will allow us to answer some of the many questions that you ask, with respect to the death of Tom Mboya.

You also mentioned the issue of reparations or compensation. The Commission also can recommend reparations and compensation. You personally said that reparations are not necessarily monetary compensation. Reparations can take the form of symbolic memorials. You spoke of a statute and a name change to a street and use of mausoleum. You have spoken about lectures. There are many ways that one can think about honouring an individual like the late Tom Mboya.

In addition, you mentioned economic development, the road network, processing plant and the sugar board. That is also something that is clearly within our mandate. One of the things this Commission is focusing on is how to make sense of the desperate economic underdevelopment throughout Kenya. We have now seen firsthand and experienced such deprivation of economic development in different parts of this country, including the northern region, Western Province and Nyanza Province.

When one thinks about particularly, someone like Tom Mboya and the ideas he represented, which included improvement in the area of economic development not only

for Nyanza Province but for the whole of Kenya, it would be a very great tribute to him and what he stood for.

I think I have responded to most or all of the questions you have directly asked of the Commission. If there are others, please, remind us. I did have one very minor question for you. Maybe, I missed it. You mentioned three additional people who would have as much information as you do, if not more. You mentioned the first Private Secretary and the last Private Secretary. I am not quite sure I heard the third individual.

Mr. Peter Odede Ouma: Thank you very much. The third individual was Mr. Philip Ochieng Otani, who was the first beneficiary of the airlifts. Having been a journalist and still is, he has a lot of graphic information. I do not have his contacts but you can get him through *The Daily Nation*. Before I leave here, I can give the names of the people who can be contacted for further information.

Commissioner Slye: Thank you, Mr. Odede. Just in closing, one of the many things that Tom Mboya did was the student airlifting, which you have just referred to. Some of my friends in the United States worked with Tom Mboya to make those airlifts possible. I think one of the most important legacies that anyone can leave is education for the youth. I know that, that airlift and the efforts of Mr. Mboya touched many people. One still sees the impact of those actions, even in some of the leaders in Kenya today. I can tell you that in the United States, there are some people that still firmly remember Mr. Mboya and that airlift. They too, were touched by him and his actions.

Thank you very much.

Commissioner Farah: I have got only one question. First of all, I want to join my fellow Commissioners in really empathizing with you. The loss of the late Tom Mboya was a national loss. However, as you said, it is a long time ago and a number of us were very young at that time and do not remember the facts very well. What became of Mr. Nahashon Njenga Njoroge?

Mr. Peter Odede Ouma: I was taking you through the incidents; we are also questing whether he was really hanged. I remember in the early 1970s, rumour had it that he was exiled in Ethiopia. As a result of that rumour, it was alleged that an Asian businesswoman by the name Asan Ali, who was running a business on Koinange Street, where Nginyo Towers now stands, might have seen Njenga in Ethiopia and confided the same to his friends. Incidentally, Asan Ali's family was wiped out. To date, nobody can tell what happened and where he was.

As late as 2001/2002, there were rumours that Njenga had been identified in Nairobi. He was frequenting restaurants on Kirinyaga Road and I came to get that date when I was serving as the branch chairman of Kenya Union of Domestic Hotels Educational and Hospital Workers Union. So, really, I cannot be accurate in saying where he is. The Chair talked about the mandate of the TJRC and we are looking forward to your further investigations into that.

Your question reminds me of an area which I ought to have mentioned. When Mrs. Mboya was being buried at her home in Lambwe, the Minister for Lands, Hon. James Orenge, made a statement to the effect that the bullet that hit Mboya was recorded at the State House and that made the Deputy Prime Minister and Minister for Finance, Mr. Uhuru, who was present, to react very bitterly. So, at the time we met in Mbita, we recommended, and that skipped my mind when I was preparing this document--- I would also like to put it as a recommendation from us to find out why he had to react that way. I think that is how I can respond to that question you have put to me.

Commissioner Farah: Thank you very much. That was the only question which I had, that was bothering my mind. I thank you again, for the eloquent evidence you have given us. I hand over to the Judge.

Commissioner Chawatama: Sir, I would like to thank you very much for your testimony and for re-introducing us to a great man who loved his nation and people. I would like you to know that when growing up, I often walked on a road in my country in Zambia, in a town called Ndola, which is named after Tom Mboya. For me, what that means is that he was not just a great man or son of this country, but he was recognized as a great son of the continent.

You also mentioned that one of his dreams was for a one nation and people. Again, growing up in my nation, our first President, Dr. Kaunda, had one slogan that he repeated again and again, which was "one Zambia, one nation". We said it so often that we actually believed it. That is how we have lived. I think this nation can further honour this great man by being one nation and one people. I would like you maybe, to just say in one sentence; if he was alive today, what would he tell the Kenyan people, taking into consideration that they are going for elections next year?start here

Mr. Peter Odede Ouma: I think Tom would have told Kenyans to elect meritocracy as opposed to mediocrity, so that the nation can prosper as one nation, one people.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Peter Odede, for your testimony. You have given us a lot of facts about the late Tom Mboya, a man who dedicated his life to the service of his nation, but was removed at a very young age, which was unfortunate not only for his family, but for the country and, indeed, the entire continent. As my colleagues have said in response to your question, the Commission will do everything possible to get to the bottom of it; to search the truth and make the necessary report of past injustices, including this one. We will make the appropriate recommendations at the end of it.

The TJRC, in its report, will be different from previous Commissions in the sense that the Report will be made public as soon as it is handed to the President. The people of Kenya will know because the whole report will be published in three major newspapers for a number of consecutive days. This means then that, every Kenyan would know the contents of the report and the extent of the recommendations on each and every subject

that we have dealt with. So, it is not only the mechanism that will remain behind the TJRC to monitor the implementation of these recommendations, but the entire population of Kenya will become now a new constituency; the implementation of those recommendations. This is because the mechanism that will remain behind will make quarterly reports to the panel on what has been implemented and not implemented and why and when it is going to be implemented. So, it is going to be a proper national compensation for quite a while. What the people of Kenya will do in the final analysis to enhance the monitoring capacity of that mechanism, will in the final analysis determine to what extent the recommendations are implemented.

I just wanted to say this to you and thank you very much. Everyone who was growing up in those days; going to school or university, remembers the name of Tom Mboya. I am sure the coming generations will also remember and talk about Tom Mboya and his contributions to Africa and his country.

Thank you very much.

The Commission Secretary (Ms. Nyaundi): Chair, with your kind permission, the witness has included the information that we sought – a copy of the memorandum that he has given me – and I ask that you admit it onto the record of the Commission.

The Presiding Chair (Commissioner Dinka): It is so admitted!

The Commission Secretary (Ms. Nyaundi): Thank you, Chair. He had also expressed concern about representation of the Suba. I would like for the record, to inform him that Witness/22 will be dealing directly with the issue of the marginalization of the Suba and, hopefully, we will hear him tomorrow or later today.

The Presiding Chair (Commissioner Dinka): Very good.

Thank you.

(Mr. Zakayo Idi Abdul took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome to the Commission. Please, state your name, place of residence and your current occupation for the record.

Mr. Zakayo Idi Abdul: My name is Zakayo Idi Abdul. I stay at Kibos. I am a proprietor by profession.

The Commission Secretary (Ms. Nyaundi): Thank you very much. I have with me, a memo that you have presented on behalf of the Nubian Community in Kisumu. I also will inform you that the Commissioners have this document, together with the Press cuttings and the memo that you submitted to the Commissioner of Lands. You have also given the National Civil Society Conference on Land Reforms, the Nubi land issue. This will be

admitted onto the records of the Commission. So, I will just invite you, only because of time, to state very precisely, the issue that you want to bring before the Commission and the specific recommendations that you are making on behalf of the Nubi Community.

Thank you very much and welcome.

Mr. Zakayo Idi Abdul: As I wrote down the report, I stated that the Nubian Community arrived in Kisumu in 1890 and were settled at Dunga. They stayed there for seven years and there was an outbreak of diseases together with plague that came from the rats. It actually killed many of the Nubian people. From there, they tried to go back home, but being on duty – they were in the British Military and constructors too, they were re-shifted again or settled at Bananjoro near the hill, which is today known as Kodiaga. They stayed there for another ten years and Mr. Kodiaga or Bw. Odiaga, bought the land. It forced the British again to shift them to Old Kisumu at a place called Kogony, which is now the new airport. They stayed there until 1937 and then before the World War II, the British wanted to expand the airport, which took a big part of the land. They had to be shifted again. The British relocated them to the Nubian Estate. In the Nubian Estate, the British Government constructed 40 buildings for them. The 40 buildings were not enough and the condition was that if you were a junior officer, you were to share the house. Remember, those people were moving with their families. They went on strike against that. Then, they only left the Nubian Estate for 15 officers who actually resettled there. The second alternative was to be resettled again in the sugar belt; one at Kibos and another one at Kipgori (?). The condition was: “You rejected our houses and so, we are giving you land and you have to construct by yourselves.” They agreed and were allocated 109 acres at Kibos where they resettled. Remember, those people are Muslims and Muslims stay together. They could not stay apart or scattered. In the 109 acres, they stayed in only 14 acres. They left the rest as land for cultivation. In the old days, people depended on farming. So, they had to cultivate the rest of the land.

I want to talk about the present situation. I am the fourth or fifth generation. I was not there when that was being done, but I was born in this. We have grown under a lot of frustrations. You know the military heads and the bitterness in their hearts. As they were given the land, there was no good document for them. They did not find it necessary because there was frustration; that, we do not belong here. It is true that we do not belong here, but we were Sudanese who were brought here. Being the fifth generation, we do not know where we belong in Sudan. So, due to the frustration of being told that they do not belong here, the old men saw no need of getting documents, because they knew that one day, they would be back home. They preached of going back till we were born. All of them are gone and we are still giving birth and the population is growing.

If I go back to the Nubian Estate, on the 40 buildings that we were given, of late, land has been taken by the people and some Government officers and tribe-mates. The Nubian Estate consists of around 700 homesteads, but the Nubians own only 13. We do not understand how this is so, because all the rest of the families own title deeds, yet we, the inhabitants, own nothing? At any time, you will find people coming with the title for the land we are staying in. You will find somebody coming with a title to the land that we

were given in 1938 and claiming it. What is our fate? We have tried to talk to the Government officers to give us some documents on these lands because we are giving birth and at the end, we will have nowhere to live. As you know, if you do not belong here, how can you get a job here?

Now, I would like to put it clear before the Commission. In the document, I have the names of the people who have been taking the land. In 2002, an Army officer came to claim their own land that he was given by the President and said that we do not belong there. He managed to knock down four buildings which were constructed by the British. We reported this but nothing was done. He managed to sell the land to people who are staying there. We being Muslims, there is a part of land that we set aside for construction of our mosque, which was taken by one of the officers and sold to somebody. The person has constructed buildings on the land and we have no mosque there.

Still on Nubian Estate, I could not have managed to get the map which I could have presented here but I would kindly ask the TJRC--- The map has been changed several times, but if you can manage to get the map of 1971, you can see how the British settled us there. Until 1978, it still reflects the same. Today, we get different things. To your surprise, you can go to Nubian Estate thinking that you are meeting the Nubians, but you will talk to over 300 homesteads before you can get a Nubian. Why am I saying so? In the report of the National Civil Society Conference on Land Reform, on page 16, the second paragraph, it reads:

“To address the plight of the Nubians, the Government organizations and individuals ought to decide whether the Nubians are part and parcel of the Kenyan society or not. It did not escape the research that many Kenyans including Government officials, do not regard Nubians as true Kenyans.”

One of the officials from the Ministry of Lands in Kisumu Town kept on referring to the Nubians who do not have genuine land in Kenya. This attitude seems to have replicated itself among many Government departments, including the Immigration Office, National Registration of Births and Deaths and the Provincial Administration. From this observation, we believed that to solve the Nubian land problems, the Government and Kenyan citizens ought to decide whether Nubians are citizens of Kenya. So, that kept us at bay for a long time.

From then, I want to justify to the panel that, that made us decide to intermarry, so that we get to throw out the Nubian gene, in order to get ourselves fixed somewhere. I am one of them. I am not fully Nubian. I would say that I am a half-cast of a Nubian. This is because my father saw the situation and decided to throw the seeds out of the Nubian community. I am a mixture of Luo and Nubian. It was advice from my father that in future, there was going to be a problem with the Nubians. I also married a Luo in order to go further away from Nubians. But still, I could not rub the blood in me. Thank God, on 23rd April, Nubians got rights over the passport.

The Office of the Prime Minister, Ministry of State for Planning and National Development--- The document for 23rd--- It reads:

“I refer to your letter dated 23rd April, 2009, and you subjected the---
On this document---

Mr. Zakayo Idi Abdul: Okay, I will not read it, but this document states that the Nubians are now considered to be Kenyans. I have faith that now, we are fully Kenyans. We felt we have a right to claim the lands because we are already considered as the 43th tribe of the nation. That is why I am talking about our land, where we were settled. I have mentioned only the Nubian Estate.

When I go to Kibos Estate, whereby I produced a land map to the TJRC, reflecting 109 acres that belong to the Kavirondo Native Reserve--- We only occupy 14 acres of land. The rest are not ours. So, my prayer is; if the TJRC can assist and help us to push for getting the title deeds, so that we have the right of ownership, although people are staying on that land. Some of that land was sold to them by the chiefs and other village men who felt they were more Kenyans than we are. That is all I have to say for today.

The Commission Secretary (Ms. Nyaundi): Thank you very much, for that very eloquent presentation, Mr. Idi. Do you have a Kenyan identity card?

Mr. Zakayo Idi Abdul: Yes, I do.

The Commission Secretary (Ms. Nyaundi): The issues that you have raised, do they affect the Nubians across the country or is it unique to the Nubians in Kisumu?

Mr. Zakayo Idi Abdul: This is a problem the Nubians across the country face.

The Commission Secretary (Ms. Nyaundi): Thank you very much; the Commissioners will ask you some questions.

Commissioner Ojienda: Thank you very much, for your testimony. You have struck a blow for the Nubian community in addressing the history of the Nubian people in this country, since they arrived from Sudan - in clearly setting out the process that has been used to marginalize the Nubian Community and to deprive them of land initially allotted to them. So, I note that you have said that you have now decided to abandon the Nubian culture by intermarrying within the community where you live. I just want to say that the identity of a community is very important. One of the functions of this Commission is to recognize those marginalized communities and to listen to people like you who are in a community that raises the possibility of total assimilation.

Thank you, Mr. Idi, for your testimony.

Commissioner Slye: Mr. Idi, I also want to thank you for your testimony and for the memorandum and other information that you have presented to this Commission. I would also like to thank you for representing your people here. We have some members of the Nubian Community in Nairobi. So, the Commission is somewhat familiar with some of

the issues that you have raised here. You have added to those issues and you have added to our historical understanding to know how the Nubian Community got to where it is today.

On one hand, there is a major issue that you raised with respect to land and title deeds and with respect to security in the land. It is an issue that we have heard in many parts of the country with respect to many different types of communities. In your case, because the community is so small, that lack of security of Kenya has other effects that are less present in some of the other cases we have seen. As you pointed out, this is related to issues of employment, economic well-being and issues of preservation of culture and our people. So, I want to assure you that we take cognizance of the plight of the Nubians and issues that you have raised. Again, I want to thank you for representing your community here so well.

Thank you very much. I have no questions.

Commissioner Farah: I just want to join my fellow Commissioners to thank you for your testimony. We have Nubians in Nairobi and other towns in the country. Their cause wherever they are, is very alike. So, thank you very much for coming forward in Kisumu to tell us what is going on in one of the settlements of the Nubians. You have come to the right place. Now, leave it to us.

Commissioner Chawatama: I have two short questions and they both relate to the letter and the newspaper cutting. There is a place where it says that you got respite for the passports. Is this a reality? Is it now easier for the Nubians to get passports?

Mr. Zakayo Idi Abdul: It is written so, but when you go for it, the process we undergo is hectic. We are asked to produce a lot of documents.

Commissioner Chawatama: I do not know whether that is contained in the memo, but when you have time after this, just write down the procedure that you follow, so that we can see how cumbersome it is and maybe, compare it to the other Kenyans. So, please, do that for us.

Secondly, the letter from the Office of the Prime Minister was written to the Secretary, Kenyan-Nubian Council of Elders. The secretary was told that there was need to sensitize your community on the issue of having been encoded as the 43rd tribe of Kenya; was that done before the census date?

Mr. Zakayo Idi Abdul: Actually, the letter was written two weeks before the census. All along, we have been counted as “other tribes”. We try to sensitize our people and a good number of the Nubians know that they are the 43rd tribe of Kenya. But whenever the census is held, they indicate that there are 42 tribes in Kenya. So, I do not know if this was put straight to the other Kenyans too.

Commissioner Chawatama: That is something else that we should look into. I will encourage you to continue sensitizing your people on this matter. I am sure, it is just a question of time; the whole of Kenya will know that there is a 43rd tribe.

Thank you very much.

The Presiding Chair (Commissioner Dinka): Thank you, Mr. Idi. I have no questions for you, but I would like to join my colleagues in thanking you for coming to talk to the Commission and to enlighten us on the history of your people and the challenges that they face all over the country. We hope to be able to contribute to relieving that pressure and the nature of the problem.

Thank you very much.

(Mr. Meshack Were Oluoch took the oath)

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

Mr. Meshack Were Oluoch: My name is Meshack Were Oluoch. I am a resident of Yala Swamp which is in Yimbo, Usigu Division, Bondo District. I am an employee of the Ministry of Water and Irrigation.

The Commission Secretary (Ms. Nyaundi): I notice that you have two gentlemen to your left. I am informed that there are also other people that have accompanied you that are seated in the room. So, I will ask you to introduce the two gentlemen seated on the right and then, you will invite the people who are seated in the audience who are affected by the Dominion Farms to, please, rise up so that they can be recognized by the Commission.

Mr. Meshack Were Oluoch: I have my colleagues by the names of Thomas Achando on my immediate right and Odeny Salim. I also have my colleagues who came from the swamp with me. I am asking them to stand up, so that they can be seen. I think some have left.

The Commission Secretary (Ms. Nyaundi): I now invite you to present the memo to the Commission. As you have heard us tell other people who have testified before the Commission, the Commissioners are in possession of the memorandum. It is part of the documentation of the Commission. Therefore, I will ask you to make a summary presentation, just highlighting what the issue is with the Dominion Farms and the recommendations that you wish to make to the Commission.

Mr. Meshack Were Oluoch: First of all, I am very thankful to appear before the Commission today. I have been longing for this day, but it was very unfortunate that I did not get direct communication to appear before the Commission today. So, I was just

worried that I would not appear because the issue at hand is very pressing. We have tried to move here and there so that it could be solved, but we have not got any assistance from anywhere. So, today, I was longing to appear before the Commission while it is here in Kisumu.

The memorandum I have today is a bit in-depth, more than the one I presented earlier. I am, therefore, asking the Commissioners to allow me present this document in addition to the one I presented earlier.

In my brief testimony of the said document, Yala Swamp wetland is a trans-boundary wetland lying between Siaya, Bondo and Busia Districts. It is located on the north eastern shoreline of Lake Victoria. It is a delicate ecosystem biodiversity conservation habitat for indigenous and endangered fish, birds and mammal species. It is one of the most important riparian - wetlands around the lake. It is the third largest in Kenya after Lolion Farm and the Tana Delta. It covers an area of approximately 38,000 to 52,000 hectares. The swamp forms the mouths of both River Nzoia and Yala and is a fresh water deltaic wetland arising from the backflow of water of Lake Victoria as well as the river flood waters. The swamp contains three fresh water lakes: Kanyabuli which is 1,500 hectares; Sare and Namboyo. It stretches 25 kilometres from west-east and 15 kilometres from north-south at the lake shore.

When jumping to outline the issues that have brought us here, the Yala Swamp consists of various wetland resources - saddled between Bondo, Busia and Siaya districts of Nyanza in Western Kenya. The swamp has served the adjacent communities from time immemorial and is a source of fish, water, agricultural land, pastures, wild animals, plants for construction of houses, source of wood fuel, medicinal plants and so on.

The Yala Swamp is one of the most fragile ecosystems around Lake Victoria. To conservationists, the swamp should be taken as a Kenya East Africa's national heritage because it is shared resource of Lake Victoria and one of the wetlands in East Africa with the highest number of biodiversity on museum for lost species of Lake Victoria.

The swamp has a filtering effect on the waters draining into Lake Victoria. It buffers the lake by retaining nutrient sediments and prevents organic pollution from reaching the lake. The lake is at risk of over-exploitation of natural resources by a heavy investment by Dominion Farms.

It is a group of companies, a host of other private developers as well as the communities within that fragile ecosystem. The issues of concern to the communities residing within and around the wetland area include unclear boundaries of the Yala Swamp. Under the provisions of the new Constitution, the Yala Swamp falls into the category of a community land. It is, therefore, a community reserve that should be used sustainably for the benefit of current and future generations.

However, the wetland is shrinking with time. It is no longer clear how big the wetland is. There are varied views in different documents on some sightings between 38,000 to

52,000 hectares. Others, 21,765 hectares and others 17,500 hectares. These facts are corroborated by London office.

Dominion Farm was allocated 6,900 acres of the swamp in 2003 under the lease agreement. It is also paying for the land in Phase I, totaling Kshs3,700 hectares. Clause B of the memorandum of understanding, Exhibit 2 which I will produce, signed between the Siaya and Bondo County Councils and Dominion Farms describes the parcel of land as falling under Part 4 of the Trust lands Act. With a sum of Kshs1, 254,782 per annum for 3,700 hectares translating to a mere Kshs28 per hectare per month, Dominion Farms has not paid a sufficient amount of money for leasing that land. There is nowhere in this country that such highly productive arable land can be got for such a low price. This is an economic injustice not just to the councils, but also to the communities in whose trust the councils sought the land.

The boundaries for the land in Phase I and II of the Dominion Project are not clear. Under the MOU signed between the Dominion Farm and the representatives of farmers in Siaya and Bondo Exhibit 3 which I will produce, they have not directly compensated the community for some 300 hectares that was to be used by the community. This is still pending nearly five years since the signing of the MOU. The physical location of that land as well as its boundaries also remain unclear. The wetland boundary tussle between Siaya and Bondo County Councils also remains unresolved. This affects the sharing of the profits from the profits from the lease. This means that the sharing of what accrues from the lease is not equitable.

We propose that it is imperative that the boundaries of the wetlands are urgently re-established. Meanwhile, the only original map of the farm should be availed to the community. The area allotted to Dominion Farms needs to be properly valued to ensure the councils are paid the actual lease amount for the land.

While the council and Dominion Farms are negotiating a new memorandum of understanding, it is mandatory that the communities participate. The land rate under the new constitutional dispensation stipulates that the land in question is community land and the Constitution is very clear on participation.

Since the communities around the wetland are heavily dependent on its natural resources for their livelihood, it is important to ensure equitable access to and use of the resources, so that the communities are not further impoverished.

Illegal/unprocedural lease of trust land to Dominion Farms by the Bondo and Siaya county councils: The land given to Dominion Farms was public land belonging to the community and merely held in trust for them by the county councils. Before the transfer, therefore, there ought to have been public participation in the decision-making process. With the expiry of the MOU, there is an opportunity for wide participation. Participation is a very clear fundamental principle in the new Constitution. The communities in Bondo and Siaya, though highly dependent on the wetland resources, were not involved in the negotiation of the lease agreements and the MOU.

While the activities of the Dominion Farms have a huge impact on the communities in Busia, they were completely ignored. No valuation was done to ensure that the lease amount is commensurate with the actual value of the land. The wetland has further been illegally encroached on by other private developers with the full knowledge of the councils; encroachment into private land belonging to poor peasants resulting to displacements, unprocedural evictions and loss of other property. Dominion farms has also encroached on private lands belonging to poor local communities.

In Siaya, the adjudication and registration of land was concluded in 1986. The Government bestowed absolute ownership to individual community members. However, sometimes in 2003 or thereabouts, the director of survey opted to retrace three DIs, thereby excising parts of some parcels of land bordering River Yala and created another parcel. That was done long after the completion of the adjudication and registration of land in Siaya without consultation with the affected community members and, therefore, amounted to unprocedural and illegal compulsory acquisition.

With regard to registration area alone, a total of 169.01 hectares was excised from the community. I will produce Exhibit 4 and my colleague will produce the map to that effect. A letter from the Dominion Farms to the chair of Siaya County Council dated 11th May, 2005, acknowledges that the community people were duly allocated land upstream off the area. The letter indicates the intention of Dominion Farms to flood the affected areas. That is Exhibit 9 which I will produce. The reply from Siaya County Council dated 4th October, 2005, Exhibit 10 which I will produce, clearly indicates that, that was not part of what was allotted to Dominion Farms and, therefore, it was wrong for Dominion Farms to flood it. Mr. Ochieng Agila, Ochieng Odongo, Ongilo Sira and Stephen Omondi formally complained to the District Commissioner, Siaya about water backflow to their farms. This is corroborated by a letter from the office of the District Commissioner to the Chief, South Alego, dated 26 October, 2006. I will produce Exhibit 11. A similar encroachment was also experienced in Yimbo and Nyamonye, which lie in Bondo. However, the adjudication in Bondo was not complete. We have provided a list of some of the individual community members affected both in Siaya and Bondo, as well as the respective parcel numbers of their land, Exhibit 4, which I will produce. There are beacons erected on private land in Korobet, Exhibit 12, Video Documentary Entitled "South Yala". I will also produce it. The Memorandum of Understanding (MOU) between Siaya and Bondo county councils and M/s Dominion recognizes in Clause "J" that--- The user of the land in question then organized settlement and agricultural demonstration. This is further corroborated by the Yala Farm Investments Plan under the Environmental Impact Assessment developed by Dominion Farm Treaty; but the entry of Dominion Farm led to the unprocedural eviction of many families. A meagre Kshs45, 000 per acre was paid to some of the families whose private land was encroached on.

Most of the land was acquired under duress and intense pressure. It is regrettable that no valuation was done to ensure fairness in the compensation. Dominion Farm used its own surveyors and valuers to ascertain the size and value of the land. It is our firm conviction that the compensation for the land was not fair and equitable as alleged by Dominion

Farm. Land was acquired from the community fraudulently, using threats and other forms of coercion.

The Presiding Chair (Commissioner Dinka): Excuse me, Leader of Evidence. I think we have a memorandum which every Commissioner can read. Can you summarize instead of reading it.

Commissioner Farah: Just give the recommendations.

Mr. Meshack Were Oluoch: One recommendation is that the community would prefer to the repeal of the MOU that was signed between the councils and Dominion. Two, is removal of dammed water on the private land and community land. Compensation for the loss full cost of the land and payment of damages for private property, crops and homes. They should stop divide and rule tactics to get what they want and leave Phase II to the locals. They should stop destroying the ecosystem of the Yala Swamp, stop using water as a tool to fight people. I think I will stop there.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Were. There are a number of documents that you have said you will be submitting to the Commission. I invite you to give us those documents now, together with this new memorandum.

Chair, with your kind permission, I ask that you admit into the record of the Commission a memo dated 18th July, 2011. There is also a CD containing some documents and a bundle of documents that the witness has brought.

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

The Commission Secretary (Ms. Nyaundi): Now, in this memo that you have given us and in your submission, you have stated that apart from Dominion, other private developers have encroached onto community land. Because you have not mentioned these developers earlier and you, therefore, have not notified them, my question to you is: If they are known to you, can you note them down in this memo so that they are part of the memorandum?

Mr. Meshack Were Oluoch: I will leave them here.

The Commission Secretary (Ms. Nyaundi): As you are doing that, I will invite the Commissioners who have questions for you to ask you.

The Presiding Chair (Commissioner Dinka): Thank you, Leader of Evidence. I will start with Commissioner Farah.

Commissioner Farah: Thomas, thank you very much for your good presentation. We are familiar with the issue because Salim presented the other time on the other angle of the swamp. You have further added to it. You have enriched us on the issues. We will

look into the recommendations and we will see what we will do. Thank you very much. I have no questions.

Commissioner Chawatama: I also do not have any questions but I would like to thank you for your presentation. It was very easy to follow. The documents are very well prepared; I note the lack of community participation. That is the question I wanted to ask, but you clearly indicated to us that although the council owned the land in trust, there was no community participation when they signed an agreement with Dominion. Everything was clear. I have no questions.

Commissioner Ojienda: Mr. Were, thank you very much. The Dominion Farm is a familiar swamp. We heard about it on Friday. So, we have a lot of facts about the issue surrounding Dominion. I know there are people who lost their land through flooding, and those who were paid compensation as little as Kshs45, 000 per acre and you have referred to it. Did any of you lose land around the area of the farm?

Mr. Meshack Were Oluoch: Yes, we are here; we did.

Commissioner Ojienda: Have those particular people recorded separate statements with the Commission; that is, those who individually lost land?

Mr. Meshack Were Oluoch: No. They have not.

Commissioner Ojienda: I advise that they record their individual statements as well because in as much as you have the memorandum by Dominion, there are people who have lost specific things, and I advise that you also record those specific issues with the Commissions. I note that you also reached out to the Kenya Anti-Corruption Commission (KACC); state agencies and certain NGOs have also been helping your cause. As was said to us on Friday, there was no full environmental assessment, and this process commenced with the project report that was approved and, therefore, the claim by a number of NGOs that Dominion is engaging in acts that have not been approved, and in respect of which the National Environmental Management Authority (NEMA) has not granted them a licence. We were told all that, and I have one question: Is there anything good about Dominion?

Mr. Meshack Were Oluoch: Before I answer that question, I would like to tell you that there is an PIEA which has been presented as an exhibit for you to go through, because there is conflicting information in that PIEA. I have not seen what is good in Dominion; I have not seen it because the poverty level of the local community is high. In fact, some pupils have left school because of lack of school fees. People have become poorer, yet the Dominion came to improve the living standards of the local people. So, I can say there is nothing good and when they hear we are meeting people like you, they will start employing people on a casual basis, so that those people will support their cause. In fact, that is what they normally do to cushion themselves, and to silence the talk of the local people, but totally there is nothing good from them.

Commissioner Ojienda: Now, who is the main beneficiary of this project? Who are the beneficiaries? Who is the company?

Mr. Meshack Were Oluoch: Dominion Farm Limited.

Commissioner Ojienda: I know that, but who are the people who run this farm? Who are the people who should listen to the grievances that you raise?

Mr. Meshack Were Oluoch: There is the president of the company called Calvin Budget.

Commissioner Ojienda: I am asking this because there will be specific remedies or prayers or recommendations to specific entities. I note that under the new Constitution, specifically under Chapter 5, we have community land and, therefore, your claim has a new dimension now and you can actualize the provisions of the new Constitution even beyond this memoranda through a legal process. Have you ever sought structured legal advice or filed a claim in court?

Mr. Meshack Were Oluoch: In fact, as I have said before, the community around has been rendered poor. They do not have anything to assist them in looking for legal redress.

Commissioner Ojienda: There are *pro bono* lawyers even here in Kisumu. Have you gone to them?

Mr. Meshack Were Oluoch: We have not.

Commissioner Ojienda: Thank you very much. I would advise that you try that route that will have actual results. Of course, we will strive in line with the mandate that we have to make appropriate directions and recommendation in our report once we go through your documents. I thank you very much for coming and making the observations.

Mr. Meshack Were Oluoch: I will further comment on the communication from the TJRC. It is not good at all. In fact, we could not have come.

Commissioner Ojienda: I apologise for the mix up. We hope that we will do better and that you will find your way back home.

Commissioner Slye: Thank you. I just wanted to thank you and your colleague for bringing the issue to our attention. You have submitted some documents to us which we have not had a chance to look at. The information will be useful to us once we have read it. I will point out some of the documents that will be useful to us and you will not answer any questions. I want to focus on page 4 of the memo that you have submitted. You mention a number of people who have died from the effects of the swamp. It will be useful to know the dates of those deaths. You have Ms. Noah and Mr. Oponde. You also mention the number of livestock that have died. So, we want the dates of those deaths. You mention the amount that Dominion Farm obtains, roughly Kshs28 per hectare. Quote

how you knew that, so that we can make recommendations. Further down, you have talked about construction of storage units which interfere with the natural flow of the water. Indicate when they were constructed, where specifically they are, and how they do interfere with the river. You have also indicated that Dominion Farm led to resurrection of the canal; when did that happen and the flooding damage.

Lastly, you mentioned families losing property. You and other families lost posho mills. When was the date of that? Again, I do not want any information from you now, but I think if that document is submitted to us, this memo will be detailed and it will strengthen the truth of what is happening now as well as provide a stronger basis for us to make a very detailed recommendation on how to solve the problem. I think the issue is very important to us because it lies within one aspect of our mandate. These are issues of land, property, employment, public health and unemployment. I think it is a very rich case study for us and; therefore, it will be incredibly useful to us when we make our recommendations. I thank you and your colleagues for brining this up. I join my colleagues in apologizing for the miscommunication between us and you. It was not by intention; it was due to negligence and other mistakes, but we will correct that.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Meshack and your colleagues for your testimony and memorandum, which has clearly put the case before us. We will try to find out the truth and come up with the necessary report and recommendations. Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you, Commissioners. We will take your direction. We had two matters that we had listed for today that are pending. I notice that it is ten minutes to seven and I take your direction.

The Presiding Chair (Commissioner Dinka): We had agreed through the note that I sent to you that we were to work until 8 o'clock, because tomorrow we have a lot of work also.

The Commission Secretary (Ms. Nyaundi): The next witness is Number 7, coded Kisumu Witness No.37.

(Mr. Benjamin Onyango Outa took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome to the Commission. Please tell us your names, where you reside and your current occupation?

Mr. Benjamin Onyango Outa: My names are Benjamin Onyango Outa. I live in Seme, Sipika Sub-Location, Olago Village and currently I am a peasant farmer there.

The Commission Secretary (Ms. Nyaundi): Thank you. We are in receipt of your statement that touches on what you say was unfair dismissal and non-payment of your benefits. I invite you to make that submission.

Mr. Benjamin Onyango Outa: Thank you very much Commissioners. I joined the Kenya Government as a primary school teacher in January 1974, and worked until 1986. Later I transferred my services to the Office of the President as an Assistant Chief, Grade 1. I worked as an Assistant Chief for eight years, when I was promoted to be a Senior Assistant Chief. By that time, I was the only chief who had been trained as a teacher. During 1994 when multiparty politics was being introduced in Kenya, things started going bad in my life, just because of the relationship that I had with Prof. Anyang'-Nyong'o as a cousin of his. His home and my home are adjacent and there was no way I could avoid him. So, wherever we had a funeral, we had to be together and that was mistaken to mean I was associating with him politically. This made my political enemies to be against me. At that time, the KANU Government was terrorizing people. In my constituency, Prof. Nyong'o was an elected Member of Parliament, and hon. Ndolo Ayah was a Minister who had been nominated by the Nyayo Government. On 12th January 1993, there was a *Harambee* in my sub-location since a roof of a school had been blown off by the wind. The committee had requested me to be the guest of honour. I had to be there as the Government representative. The *Harambee* was done and it collected 32 iron sheets. This was not good to the hon. Minister and his KANU stalwarts. On 28th January, 1993, the same month, the DO of Maseno, Mr. Francis ole Nyangume, wrote to me a letter asking me why I supported the Opposition. The letter is here and it can be produced. In replying to it, I denied the accusation and said that I was just performing community duties. On 11th February 1993, I got a letter from the DC, Kisumu, Mr. Godfrey Mate, who wrote on the same topic that I supported the Opposition. I still denied it but on 2nd May, I got another letter from the PC, Nyanza, who asked me why I could not be removed from the service and I was given 14 days to reply to the letter. I replied and denied the allegation. On 30th November, 1993, I got a letter from the Permanent Secretary, Office of the President, that I was being retired in public interest since I supported the Opposition. This really shocked me and made my family to be perplexed.

So, I decided as a human being to go and see the DC, Mr. Mate, so that I could plead with him to give me a hearing, but he did not accept that. He told me that he could not sympathise with an Opposition sympathizer. So, on the same day, I decided to go and see the PC, Mr. Kaguthi. I approached his secretary who gave me clearance to see the PC, but she warned me that the PC had been on leave and had just come for some time in but I still went in. When I got into the office, I met him. He asked me who I was and I told him. He asked me what I wanted. I produced the documents narrating how I was removed from the job. He told me in a good way that he could not sit at the same table with an Opposition sympathiser. This made me think that he might have communicated with the DC on the same issue. When I told him my name, he told me that I had to go back to my FORD people and not KANU. He told me that there was a KANU Government and I should not play with it.

As I hesitated to explain, he ordered the APs to come in. Six of them came in a line. One of them saluted him and then he told him that he should remove me immediately from his office. Those people mishandled me. Some grabbed my hands and head. My head was facing down. The other AP grabbed my legs. They wanted to tear me into pieces. They tossed me like a ball, hit me with their *rungus* and frog marched me. At that time I did

not have any strength. They hit me and took me out to about 200 metres and they left me there to die. I was unconscious at that time until one good Samaritan told the other people that I did not seem to be a criminal; the police would not have left him there if I was a thief or if I had done something wrong. Somebody said there must be something wrong. Maybe I was right and the police were covering up something. So, they took me to an Indian clinic in the centre of the town. That Indian doctor referred me to another hospital, where I was treated for two days. Now, when I was discharged, I was not feeling well. I was weak and some people were telling me that I could not fight with a Government. So, I feared going back to the Government.

I stayed at home for three years, with my children not going to school. I was not given my retirement benefits. Later on, I had to seek advice from a lawyer who advised me that we should sue the Attorney-General. We wrote a letter to the Attorney-General intending to sue them. Now, my lawyer went and talked with one of the senior officers; he was a Deputy Secretary, the late Ben Makosewe. Mr. Makosewe advised me that I could not have a case against the Government, and that we should solve it in a friendly way, using our friends. So, he approached his colleague who was in the OP, who was called Paul Lagat. He narrated my problem to Mr. Paul Lagat and then Mr. Lagat accepted to take my case to the PS. The PS at the time was Mr. Wilfred Kimalat. Mr. Kimalat was the one who fought for my removal but when he was given time to study my files, he found that there were no reasons why I should have been sacked. So, he told me to see him after two weeks in his office in Nairobi.

When I went back he rang the PC, Nyanza. He told him that he retired me, yet there were no reasons, or proof, to show that I was in the Opposition. There was also no record or tape recording. So, he asked the PC how they knew that I was in the Opposition. He told him that the PC was the one who retired me in public interest, and he was the one to reinstate me because the Government had been misled.

I came to the Provincial Commissioner (PC) Nyanza, Joseph Kaguthi and he ordered the Administrative Police officers to beat me up. When I approached him, first he became very friendly, and asked me “gentleman, you went to Nairobi to accuse us?” I told him; “No, Sir, I just wanted my rights.” He told me that: Your position as an Assistant Chief has been occupied by somebody else. So, I am going to take you somewhere else.” He told his driver to take me to the office of the registrations of persons.

When I reached the office of registration of persons, I was called by my name: “How are you, Chief Ben Outa?” I wondered how I was known even before I introduced myself. I was told: “Now you are staff here.” I thought that was not bad because it could be a transfer of service with all my benefits. I worked there for eleven months without any communication. The first communication I got was a pay slip of a low Job Group, low salary and new employment. I wondered how that could happen because I had served in the Government for almost 20 years; then I was being told to start afresh!

I started writing letters protesting about it and nothing was coming out. My advocate advised me not to abscond duty; but just continue writing letters. So, I kept writing letters, I wrote many letters but nothing promising came out.

After I had served for fourteen more years, in the office of registrations; there were some seminars we attended which made other officers to be promoted but mine was coming in red papers but no action was taken. So, I remained at Job Group `D` until I left the service.

On 23rd July last year, I got a mobile phone notice from the registration co-ordinator, Nyanza, my boss, telling me that he had got a telephone notice as well from the Headquarters Nairobi; that I should retire. So, a civil servant should not be given some days to prepare for retirement. That is how they retired me. When I went to Nairobi, I was told that I was supposed to have retired at the age of 55. I wondered why they were doing that to me because I am a human being and a Kenyan who has responsibilities of a husband and a father. What about if this was being done to other people like they did to me? They tortured me physically and now they are torturing me psychologically. So, up to now, they have not given me anything. That is what I can say.

As far as the work of chiefs was concerned, during the Nyayo Government, this was not a friendly government to her people. We administrators were used by Nyayo Government to mishandle the citizens. There were forced Harambees; the chiefs were forced to bring Harambee money to their seniors under the guise that they were going to do some Harambee elsewhere. This made chiefs to raid chicken, goats and even cows from citizens. The communities were in a helpless situation because there was no way they could complain.

Two, there were KANU stamps which were a must and everybody had to buy them. A chief was given 1000 stamps to sell in two weeks. So they could get Kshs10.00 for each. How he was to get it was not their problem. So, they had to go and force people to buy the stamps. If they found that their community had got the stamps, they went along the roads or market places and got people who had no stamps and forced them to buy them. That time, the administration was serving the Nyayo administration not the Government. Every worker was expected to be a Nyayo follower. If you were not a Nyayo follower, you were to be removed from your job. This trend was witnessed by many civil servants and those who were working in parastatals. Those who resisted were dismissed or retired aimlessly in public interest.

Up to now, we are still being regarded as destitute because our children are not being employed in Government. I can give you an example of my own child who managed to get a Higher Diploma at Kenya Polytechnic because that was the much I could do in his education. About seven years down the line, no job for him and he had done civil engineering. So, up to now I am just like this and I am asking the Commission that, it would be better if the Government gave you teeth to assist the helpless. We are really helpless as there is no way we can assist ourselves. We will rely on you. We have come here with the hope that you will be our saviour. If we cannot be saved by you, we may

endanger our lives more. Kindly, may God bless you as you do the good work of assisting the helpless people.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Outa. There are few questions I want to ask. There a number of documents you have referred to and I would to ask if you could please organize them so that you can also have them admitted into the record of this Commission.

You said that you received a letter in 1993 retiring you in the public interest and then you were reinstated. This was sometime in 1995,

Mr. Benjamin Onyango Outa: Yes madam, it was in 1995.

The Commission Secretary (Ms. Nyaundi): Were you paid any money for the period that you were not working?

Mr. Benjamin Onyango Outa: No!

The Commission Secretary (Ms. Nyaundi): Were you later paid the salary for the eleven months that you did not work?

Mr. Benjamin Onyango Outa: No! In fact, for the eleven months I worked with the registration of persons, I was given money in lumpsum.

The Commission Secretary (Ms. Nyaundi): You were given money in lumpsum?

Mr. Benjamin Onyango Outa: Yes.

The Commission Secretary (Ms. Nyaundi): You said that, when you were a Senior Assistant Chief, you were in Job Group `G`?

Mr. Benjamin Onyango Outa: Yes, Madam.

The Commission Secretary (Ms. Nyaundi): How much were you earning then?

Mr. Benjamin Onyango Outa: By that time, it was about Kshs4, 000 in 1991 to 1994.

The Commission Secretary (Ms. Nyaundi): When you were engaged as sub-ordinate staff, what was your salary in Job Group `D`?

Mr. Benjamin Onyango Outa: After I had stayed out for three years, the salary had also risen for Job Group `D` and it was about Kshs3,000.

The Commission Secretary (Ms. Nyaundi): So, Job Group `G` had risen to what amount?

Mr. Benjamin Onyango Outa: It had risen to about Kshs7, 000.

The Commission Secretary (Ms. Nyaundi): I trust that you have your pay slips and you will be giving them to the Commission also?

Mr. Benjamin Onyango Outa: I have given them.

The Commission Secretary (Ms. Nyaundi): Okay. Do you have your treatment record? You said you were assaulted when you went to see the PC?

Mr. Benjamin Onyango Outa: Yes. I had some documents and it is long time, but I can see if I have some.

The Commission Secretary (Ms. Nyaundi): We will appreciate if you can avail them to us.

Mr. Benjamin Onyango Outa: Those people who assisted me also took the initiative of seeing the doctor.

The Commission Secretary (Ms. Nyaundi): When you say that the “Nyayo Government”; are you referring to the time when Daniel arap Moi was the President of this country.

Mr. Benjamin Onyango Outa: Exactly!

The Commission Secretary (Ms. Nyaundi): Did you, as a chief, also participate in the selling of KANU stamps?

Mr. Benjamin Onyango Outa: Yes I did.

The Commission Secretary (Ms. Nyaundi): Who were you handing over that money to?

Mr. Benjamin Onyango Outa: The money was transmitted to the DO, DC, PC and so on.

The Commission Secretary (Ms. Nyaundi): So, when you gave it to the DO, did you get a receipt?

Mr. Benjamin Onyango Outa: You were only given other stamps to replace the ones you had sold.

The Commission Secretary (Ms. Nyaundi): Did you sign for the stamps that you were given?

Mr. Benjamin Onyango Outa: Yes, we signed.

The Commission Secretary (Ms. Nyaundi): If you did not dispose of whatever you had, you would account for them?

Mr. Benjamin Onyango Outa: You would also account for them. Many chiefs were dismissed because of the KANU stamps.

The Commission Secretary (Ms. Nyaundi): According to your testimony - if I understood you correctly - you said you were victimized because it was perceived that you were sympathetic to the opposition?

Mr. Benjamin Onyango Outa: They thought so.

The Commission Secretary (Ms. Nyaundi): Okay. Were there other persons whom you are aware of who were affected in a similar manner?

Mr. Benjamin Onyango Outa: Yes. So many people were affected. There was one who was next to my sub-location, but he was rescued by a prominent KANU person from his village who assisted him get reinstated.

The Commission Secretary (Ms. Nyaundi): What was the effect of this experience that you went through upon your family?

Mr. Benjamin Onyango Outa: It was very bitter and painful. My children went without proper dressing; they could not even go to good schools. The maximum academic level they could reach was Standard Eight.

Unfortunately or fortunately, I had two wives with thirteen children. Five of them who were ahead during that time went without proper education. That was the time when the first born children were joining secondary education and, therefore, they could not go to school. They reached Standard Eight and dropped out.

The Commission Secretary (Ms. Nyaundi): Thank you very much. This is a bundle of documents; correspondences between the witness and the provincial administration in the period between 1992 and 23rd June, 2010. I can see there are letters in July. I pray that you admit this into the records of the Commission.

The Presiding Chair (Commissioner Dinka): So admitted.

The Commission Secretary (Ms. Nyaundi): The witness is also submitting a copy of his letter of appointment.

Mr. Benjamin Onyango Outa: This is a letter of continuation of service from Public Service Commission (PSC) and that was a new appointment which was temporary.

The Commission Secretary (Ms. Nyaundi): As an Assistant Chief and also when he was appointed to the National Bureau of Registration.

Mr. Benjamin Onyango Outa: This is what I did before promotion and when I was promoted, but I never---

The Commission Secretary (Ms. Nyaundi): There is some documentation which says that he was promoted but that was never effected. I pray that you admit this document also into the records of the Commission.

The Presiding Chair (Commission Dinka): So admitted.

Mr. Benjamin Onyango Outa: Those people whom I was together with in Job Group `G` in 1993; some of them are now in Job Group `K`. But mine was reduced to Job Group `D`. So, I pray that, I should also be considered as a human being. When they were promoting the rest, they could have taken me Job Group `K` as others, before being retired.

They broke my ribs and my upper teeth; the upper and lower jaws as well. They pulled my leg on the right side and it is depressed, but this one is---

*(Mr. Benjamin Onyango Outa
displayed by X-Ray how he was hurt)*

The Presiding Chair (Commissioner Dinka): Leader of evidence, there must be an interpretation of this X-Ray by the doctor. I think we should have an interpretation report, not the X-Ray!

Mr. Benjamin Onyango Outa: I can bring it.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Outa. We will be getting in touch with you so that we get the medical treatment notes. At this time the commissioners will ask you questions.

Commissioner Ojienda: Thank you Mr. Outa. I want to walk you through your testimony, sentence by sentence. I note that you have suffered gross abuse of human rights.

Mr. Benjamin Onyango Outa: Yes, Sir.

Commissioner Ojienda: You have been exposed to the most degrading, in-human treatment and violation of economic rights. I share your pain. You have shared with the Commission a letter which retired you in the public interest.

Mr. Benjamin Onyango Outa: Yes, Sir.

Commissioner Ojienda: Is the public interest spelt out in that letter? Does it say, the public interest in respect of one, two, three and four, or is it just general public interest?

Mr. Benjamin Onyango Outa: Public interest for having supported the Opposition.

Commissioner Ojienda: First of all, who has signed that letter? Is it from the PC Nyanza, or right from the Permanent Secretary (PS), Office of the President, Provincial Administration?

Mr. Benjamin Onyango Outa: It was from the PS

Commissioner Ojienda: From the PS upon instructions from the PC Nyanza?

Mr. Benjamin Onyango Outa: Yes Sir.

Commissioner Ojienda: Okay. At that time 1993, what political parties were active in the country?

Mr. Benjamin Onyango Outa: FORD Kenya and KANU.

Commissioner Ojienda: So, you were accused of supporting which party?

Mr. Benjamin Onyango Outa: FORD Kenya.

Commissioner Ojienda: Were you at that time a member of FORD Kenya?

Mr. Benjamin Onyango Outa: No. I was an administrator; therefore, I could not be a member.

Commissioner Ojienda: And you were selling stamps on behalf of KANU?

Mr. Benjamin Onyango Outa: Yes.

Commissioner Ojienda: When you say that you were associated with Prof. Nyong'o because you are cousins and you appeared in his rallies. Was that the sole reason why you were suspected to belong to FORD Kenya?

Mr. Benjamin Onyango Outa: That was the main reason.

Commissioner Ojienda: I wonder why you did not have this matter raised in Parliament. Did you tell your Member of Parliament?

Mr. Benjamin Onyango Outa: The advocate advised him that he will worsen the situation because Mark Osewe was negotiating for my return to work.

Commissioner Ojienda: You informed Mark Osewe and Godfrey Mate. You said that he instructed the lawyer? Who was this advocate who did not file the suit for you?

Mr. Benjamin Onyango Outa: Mr. Tom Kopele who is here.

Commissioner Ojienda: But he did not file any formal suit?

Mr. Benjamin Onyango Outa: He only wrote a letter intending to sue the Attorney-General.

Commissioner Ojienda: The notice under the Government Proceedings Act?

Mr. Benjamin Onyango Outa: Yes Sir.

Commissioner Ojienda: Kind of I do not understand why you were beaten when you went to PC, Kaguthi's office. When you say the Administration Police (AP) Officers manhandled you; do you remember how many APs they were?

Mr. Benjamin Onyango Outa: They were five and on the way we met another one making them six and they carried me carelessly and frog-marched me up to the place where they left me.

Commissioner Ojienda: Is there any of those APs whose name you can remember or whose identity you can remember?

Mr. Benjamin Onyango Outa: At that time, I was working in a rural area and these were town people, so I could not even know them as they mishandled me. It was a sudden raid, I got people mishandling me and I did not even have time to recognize them.

Commissioner Ojienda: Were you mishandled on the direction of the PC Kaguthi?

Mr. Benjamin Onyango Outa: They just caught and roughed me up, closed the door and then mishandled me, carrying me aimlessly with my head down.

Commissioner Ojienda: So, in 1994, when you went to Kimalat, Kaguthi was ordered to reinstate you?

Mr. Benjamin Onyango Outa: Yes Sir.

Commissioner Ojienda: Why do you think PC Kaguthi singled you out in all this?

Mr. Benjamin Onyango Outa: It is not that he singled me out, there were many people who were also retired or dismissed like that, but maybe it was because I went to his office.

Commissioner Ojienda: But you were an administrator; were you not?

Mr. Benjamin Onyango Outa: I was. I went to his office to ask why I was being retired in public interest without proper reasons.

Commissioner Ojienda: You said you broke your ribs. How many teeth did you lose?

Mr. Benjamin Onyango Outa: Three teeth; two in the upper jaw and one in the lower.

Commissioner Ojienda: And you have supplied all the records there?

Mr. Benjamin Onyango Outa: Yes Sir.

Commissioner Ojienda: What form of treatment did you receive? Did you fully heal from the injuries?

Mr. Benjamin Onyango Outa: I first attended a medical clinic and then later went for herbs as the wounds could not heal. I went for traditional treatment for dislocations and fractures.

Commissioner Ojienda: After being out in the cold and then reinstated; when was the last time you earned a salary?

Mr. Benjamin Onyango Outa: It was June last year.

Commissioner Ojienda: When were you told that you have been retired?

Mr. Benjamin Onyango Outa: It was on 23rd July, 2010 and it was done on phone.

Commissioner Ojienda: How old were you on 23rd July, 2010?

Mr. Benjamin Onyango Outa: I was born in 25th November, 1952. By the time I was being retired, I was 58 years old.

Commissioner Ojienda: Despite this, you are aware that the retirement age is 60 years this time.

Mr. Benjamin Onyango Outa: Yes, it is 60 years.

Commissioner Ojienda: You still suffered the same trend of discrimination and you were told you have been retired. Did you do further communication when you received the letters?

Mr. Benjamin Onyango Outa: Yes, I went to Nairobi to find out.

Commissioner Ojienda: Were you served with an official letter. You said that initially it was oral communication. Were you served with an official or formal letter for retirement?

Mr. Benjamin Onyango Outa: No.

Commissioner Ojienda: That has not been done to date?

Mr. Benjamin Onyango Outa: Yes, it has not been done to date.

Commissioner Ojienda: And you do not receive a salary?

Mr. Benjamin Onyango Outa: I do not.

Commissioner Ojienda: I empathize with your situation. I just want to find out more - you received the initial lumpsum between the time of service and the time you were stopped. Did you receive any lumpsum amount?

Mr. Benjamin Onyango Outa: When?

Commissioner Ojienda: At the first termination of service.

Mr. Benjamin Onyango Outa: No. When I was retired in public interest, they said that I would be given my retirement benefits, which they never did because I had started pursuing how I could be reinstated. So, it never came up; what I got was the second employment where I had stayed for eleven months. That was the accumulation, I could say.

Commissioner Ojienda: You said your first five children suffered and they dropped out of school. What effect did that kind of situation you went through have on your two wives?

Mr. Benjamin Onyango Outa: I was forced to go back to farming. First I went to Nairobi to look for a job and I could not fit in because every prospective employer took me to be a dissident because whenever I went asking for employment in any office and mentioned that I had been working as a chief; the first question was why I left the office. If I said I was retired, I could be asked why. So, by explaining this, I was taken as a dissident.

Commissioner Ojienda: So, you suffered stigma. Apart from asking for direction so that you can get paid your benefits and unpaid salaries; what prayer do you want?

Mr. Benjamin Onyango Outa: First of all, I want to be paid my good salary because I was laid off wrongfully. Then the difference between Job Group `D` and `G` for the period I was demoted; then promotions that other colleagues we were with 1993 who are now in Job Group `K` ; continuation of both teaching administration and registration.

Commissioner Ojienda: Thank you very much. I would prescribe, besides this process, an instant legal remedy because you have suffered and you have rights that can be

reinforced through courts of law because there is no reason why the Government can subject its own employee to the kind of pain and mistreatment you went through. I feel sorry for you and your family.

Commissioner Slye: Mr. Outa, I also want to join my colleague in expressing my sorrow for the situation that you found yourself in. Your situation is very important for us. It shows how what initially seemed a small event; in this case invitation by a politician to a fundraiser for a school can have far-reaching consequences on an individual and family.

Your testimony has also, in addition to raising issues of suffering, been very informative to us in understanding the structures of Government that led to some of the abuses that this Commission has been hearing over the last few months. We thank you for that. The issue of chiefs and the pressure to raise money; I suspect, resulted into many people, apart from you, being placed in similar situations. What I have gathered from your testimony is that, your case is not in any way unique. That is very important to us because part of what this Commission wants to investigate and highlight are systematic violations of human rights that affected a large number of people. So, your story this evening is a story on behalf of many people.

We thank you so much for coming and sharing with us here and opening our eyes to the abuses that you and others have suffered.

The Presiding Chair (Commissioner Dinka): Commissioner Farah, you have the floor.

Commissioner Farah: Mr. Benjamin Onyango, I do not have any questions. I enjoin my fellow Commissioners in expressing my sorrow also. In the hearings that this Commission has heard so far; we have heard cases like yours from the Police, teachers, and civil servants who have been wrongfully dismissed or denied their rightful benefits. Initially, we thought we were going to investigate human violation by the Government to its citizens, but now we know civil servants were not spared. You have come to the right place and your case has aspects of many things; denial of your rights, mental and physical torture; name it.

Thank you very much for your presentation.

Commissioner Chawatama: Mr. Outa, I join my colleagues in thanking you for taking time to come and testify before us. As a person who has sat in the industrial relations court for five years, it has been easy for me to follow the statement you gave us and it was also easy to note the following issues; that you were unfairly or wrongfully dismissed and that there was discrimination, you lost a number of opportunities and promotions. There was a variation of your terms and conditions of service, underpayments and others, as Commissioner Farah has mentioned.

We thank you. It is my hope that this is one of those cases that the Commission will look at carefully and make the appropriate recommendations. Thank you.

The Presiding Chair (Commissioner Dinka): Thank you, Mr. Benjamin Onyango. I also want to join my colleagues to express my sorrow for your suffering and the suffering of your family due to your unlawful dismissal. You have not received your salary and retirement benefits. That really is double punishment. So, the Commission will take it from here and your narrative will be part of our story also to the Kenyan people and appropriate recommendations will be made not only in your case but, generally, in the cases of this nature. So, thank you very much for coming and sharing your story with us.

Leader of Evidence, you can now stand down the witness.

The Commission Secretary (Ms. Nyaundi): Commissioners our last case will be Kisumu/22.

The Presiding Chair (Commissioner Dinka): Let us have the last one then.

Commissioner Chawatama: Through the Presiding Chair, please, guide the witness. Sometimes it is very unfair. At this point as we come towards the end of the day, we are fatigued. So, lead the witnesses, please, based on their statements.

The Commission Secretary (Ms. Nyaundi): Presiding Chair with your permission, there are witnesses; Serial No.25, the ones who presented a memo on behalf of the Dominion firm also had here photos and video. I request that you admit it to the records.

The Presiding Chair (Commissioner Dinka): It is so admitted.

(Mr. Kenneth Oduor Ouma took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome to the Commission. Please, state your names, where you reside and your current occupation. I also note that you are accompanied by a gentleman who is seated to your right and after you introduce yourself, I will ask that you introduce him.

Mr. Kenneth Oduor Ouma: Thank you very much. I will begin by introducing myself but before I do so, I will appreciate the Commission for the wonderful work that they have done. As I said, my name is Kenneth Ouma. I am a pastor by profession. I was born in Suba and, therefore, I am a Suba by origin. I am accompanied by Mr. Charles Juma Oyugi. He is a colleague who also comes from Suba. He is a skilled artisan in dress making. He is also the chairman of Bunge la *Wananchi* and I am also the secretary of the Central Division FBO.

Presiding Chair, it is my pleasure to stand before you just to testify on a few items and at the end of the day, we feel that our issues will be addressed. I cannot forget to thank my colleagues from Suba; Mr. Peter Odede, the cousin of TJ, who said a lot about the Abasuba Community. Actually, the community has been so much marginalized. I therefore wish to read a memorandum and we also have some supportive exhibits.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Oduor. Because the Commission has the memorandum and it will have occasion to look at it, you will allow me just to ask you questions and at the end of it, if you feel that there is an issue we have not addressed, then you can raise it.

Mr. Kenneth Oduor Ouma: Thank you.

The Commissioner Secretary (Ms. Nyaundi): So who are the Suba people?

Mr. Kenneth Oduor Ouma: Abasuba is a bantu community who live in the Suba District. They speak their own language, they have their own culture and even their systems of life. Thank you.

The Commission Secretary (Ms. Nyaundi): And so basically what you are saying in your memorandum is that your people feel threatened both in terms of loss of culture and failure to appreciate their distinct way of life? You feel that you have been swallowed by the Luo as a tribe?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): I see also in your memoranda, you have made reference to a grievance around where the headquarters of Suba District should be. And so your position is that the headquarters should be at Gingo?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): And the recommendation you are making to the Commission is that the headquarters should not be moved away from Gingo?

Mr. Kenneth Oduor Ouma: Actually, yes.

The Commission Secretary (Ms. Nyaundi): Looking at the memoranda, another concern you have is that politically, you are situated within Gwasssi Constituency?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): And your concern is that the name Gwasssi does not recognize that there is another clan referred to as Kakasingiri?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): And your recommendation is that even in the name of the constituency, the clan that the Suba belong to, that is the Kakasingiri, should be recognized?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): And you have made reference to other constituencies in the country that recognize other communities?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Ouma. Now I see you have also raised the issue of misappropriation of public funds under the Constituencies Development Fund?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): And it appears that--- and I hope you have documents, that what you are raising before the Commission is that resources either cannot be accounted for or they have been misappropriated?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): And your request to the Commission is that the Commission investigates and determines what has happened?

Mr. Kenneth Oduor Ouma: Yes.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Ouma. I hope that in this manner, we have addressed what the salient issues were in the memorandum. I will now be requesting you because you have a document with attachments whether we can now admit the larger memorandum that you have and we probably would want to highlight the attachments that you would wish to draw the attention to the Commission to.

Mr. Kenneth Oduor Ouma: Thank you. I also have another attachment here. This is the physical plan for the proposed District headquarters. I also have an explanation of the report from the CDF on the status of the projects that were identified and funded by the Government.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Ouma. Chair, I request that you admit the memorandum together with the attachments, the map that has been submitted and the evaluation of the CDF for Gwassu Constituency for the financial year 2009/2010.

The Presiding Chair (Commissioner Dinka): It is so admitted!

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Ouma. The commissioners will now as you questions.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Ouma. Yes, Commissioner Ojienda!

Commissioner Ojienda: Thank you very much, Mr. Ouma, for your testimony. You have highlighted a very important subject. One of the functions of this Commission as you know from the TJRC Act is to look at the economic violations. And you have highlighted the misappropriation of CDF money. I think this is a matter that the Commission takes very seriously. I just want to walk you through your testimony so that you clarify a few questions. You have referred to your colleague as belonging to Bunge la *Wananchi*. What is that and where is that and what does it do?

Mr. Kenneth Oduor Ouma: My counterpart is the Chairman of Bunge la *Wananchi*. Bunge la *Wananchi* is a forum owned by the public or the community whereby we discuss issues and problems affecting the community and then we get a common way forward. So, it is a community-based forum.

Commissioner Ojienda: Thank you very much. I want you to confirm to the first point that you raised on page one of our memorandum on the question of the establishment of the district headquarters at Gingo; you say this was done through a gazette notice way back in 1995. What happened at Gingo because you appear to be saying that the headquarters were not constructed as intended? What is in Gingo?

Mr. Kenneth Oduor Ouma: It has been our concern because 15 years down the line, since the time we were given our headquarters for Suba District, the community met under the chairmanship of the first commissioner Mr. Obondo Kajumbi and a resolution was raised among the proposed stations that Gingo shall be the headquarters of Suba District. But it is surprising that since that time to date nothing has happened. The Government has been allocating funds while the community donated land, compensations were done, the physical plans was drawn for the headquarters, but up to date, nothing has transpired.

Commissioner Ojienda: Where are the headquarters of Suba District now?

Mr. Kenneth Oduor Ouma: Basically, we are lying in between because most of the Government operations are being done at Mbita. Mbita was our divisional headquarters previously and still up to today, most of the operations are being done at Mbita. There was a coincidence. After DCs had been posted to the Suba District headquarters, a Provincial Commissioner by name Mutie, directed that they relocate the headquarters to Magunga.

There was a DC who was posted to the headquarters of Suba and he was supposed to begin his work seriously because at that time, the Government had allocated Kshs33 million, but coincidentally there came a directive from the Office of the PC directing the DC that with the powers given under the hands of the PC, he has to relocate the headquarters to Magunga.

We were left surprised because after the DC had come, we now had plans to begin construction. So when I come back to your question, I want to say that there is a District Commissioner residential house that is constructed at the headquarters and it is halfway done. We also have the Suba County Council offices just next to the DC's residential house. That is all I had.

Commissioner Ojienda: I want to move backwards before I move forward. The backward question that I want to ask is: You have talked about marginalization and the loss of identity of the Suba People. What are those cultures that identify the Suba People? As far as I know, most young men in your age speak the Dholuo language very fluently and behave Luo.

Mr. Kenneth Oduor Ouma: Yes!

Commissioner Ojienda: So what is it that you have yourself as a Suba, and which you want to preserve? What is it that you are unhappy about this new culture that you have acquired?

Mr. Kenneth Oduor Ouma: I just want to say that I am proud to be born a Suba but by way assimilation, the history of our language and even the ability to speak my language has been something I have been struggling with. But because of pressure and influence, we have not been able to come out of that. I also want to say that as a community; the Bantu speaking group, my grandfather used to tell us that we had the culture of circumcision. This one was also taken away with time and we are no longer circumcised. Therefore, there is nothing that we can identify ourselves with except from the history that we get from our forefathers. Thank you.

Commissioner Ojienda: So you have lost everything?

Mr. Kenneth Oduor Ouma: We have lost identity and we are almost losing everything.

Commissioner Ojienda: I want to ask another question about Magunga. Between Magunga and Gingo which is more central, because you seem to suggest that there has been some push and pull over Magunga and Gingo?

Mr. Kenneth Oduor Ouma: Gingo was located in the Central Division and the name Central Division means that Gingo was at the centre. Magunga is also within Suba District but at the far end towards the border of Suba and Migori.

Commissioner Ojienda: And where do the MPs come from, the nominated one and the elected one, Gingo or Magunga?

Mr. Kenneth Oduor Ouma: We have an elected MP who comes from Suba but on the Magunga side towards the far end of Ogol Muok, just at the borders of Migori and Suba.

Commissioner Ojienda: On the question of the name of the Constituency, both Kaksingri and Gwassi are Suba?

Mr. Kenneth Oduor Ouma: Yes.

Commissioner Ojienda: So, is there some exclusion of not including Kaksingri in the name?

Mr. Kenneth Oduor Ouma: There is an exclusion. That is why up to today, I will be very categorical to say that with Kaksingri being a clan, composing Suba District, and also with Gwassi being a clan, there was no need for one to be made superior to the other. As such, many things have happened which have totally marginalized the other clan. In most cases, you will find that now Suba, according to the latest statistics, is now almost being named Gwassi District.

Commissioner Ojienda: Which clan is bigger in terms of population, Gwassi or Kaksingri?

Mr. Kenneth Oduor Ouma: I will say that there is no much difference but Gwassi has got a slightly bigger population but the margin is not so much.

Commissioner Ojienda: I want to move to the meat of the issue now and the reason why you are here. It is the misappropriation of CDF money. These projects seem to have occurred between 2007 and 2008. Who is your member of parliament, who should have oversight over all these projects?

Mr. Kenneth Oduor Ouma: I want to say categorically that from 2002 up to 2007, our area MP was hon. Zaddock Syongo. And when it came to 2007-2008 after the general elections, our MP became hon. Mbadi. So, most of the projects that were started by our former MP, you will find that they were abandoned. And just to justify on other items, you will find that between 2007 and 2008, additional grants were also earmarked to facilitate the construction or the continuation of other community owned projects like youth polytechnics. When you go to Sindo Town, the polytechnic is conspicuously bare and has stalled despite the fact that a substantial amount was earmarked for it.

We tried to enquire from our MP and the Funds Manager. They said the fault was on the community. Their problem was not to know who received the funds but the fact remains that the project was funded. Just to hit the nail on the head, I would say that to our surprise, most of these projects that we have identified were alleged to be funded but in the actual sense, they were never funded.

Commissioner Ojienda: Where did the money go?

Mr. Kenneth Oduor Ouma: We have tried to question ourselves and even ask the committee responsible. Even there was a time that hon. Peter Kenneth visited Gwassi when he came for a fundraising to help the Sindo Youth Polytechnic. He knew that the

project was going on. But just from the community, he was also disappointed to realize that the project was reported to be ongoing while it had stalled. He, therefore, made an appeal to our area Member of Parliament to reorganize the CDF Committee so that they could be taken for training and know specifically how to utilize the funds. Up to now, we do not know where these funds are and the projects have stalled.

I also want to say that under agriculture, it was also alleged that the Government had donated nine tractors which were supposed to be used to improve agriculture. The role of the CDF Committee was to take part of the money and rehabilitate the tractors. To our surprise to date, no tractor has been seen and the project is not known to the community. That is the fate of the CDF money.

Commissioner Ojienda: I just want to indicate that the process of spending CDF money is done through legal entities. I think you need to go further and identify the specific companies that won the tender and that are undertaking these projects. You can even go further and find out who are the directors of these companies so that we get to the root of this matter. But all in all, I want to thank you very much. You have been very very helpful. I want Chairman of Bunge La Wananchi to just say something.

The Presiding Chair (Commissioner Dinka): But please, be very brief.

Mr. Charles Juma Oyugi: Thank you very much for giving me the chance to talk about our area and so I will speak about the Suba Community for a few minutes. I am Charles Juma Oyugi from Suba. I am going to talk about the People's Parliament as its chair. We realized that we needed to start a people's parliament so that people could have a forum to share what is going on in the country about the Government and how the Government and the people can work together to improve the welfare of our people. So when we read newspapers and see that there is something which needs to be done in our area, we talk about it and then we find out where the project is. If we do not find it, we make a follow-up. We make a follow-up but we do not get an answer.

The other thing is that we realized that the CDF is a community development fund. However, in our area, it is IDF or Individual Development Fund because people are using this money for individual gain. It is not taken as community money. The projects that are supposed to be done remain mysterious to the people as they do not know what is going on. It is only the committee which knows what is going on. We just wake up and find that something has been written that a project has been done. As you said earlier on, there was money put aside for the youth polytechnic and if you see the amount that was given out, even the committee cannot answer whether this money came into this project. It is just lies. If you go to the site, again, here, money was also given out in the Sindo Women Resource Centre. It is alleged that money was given out and the project has stalled. There is no sign a project is going on.

On the other side, if you look at the money that was given to agriculture, it is said that it was meant to be used to rehabilitate tractors but those tractors have not been seen. We do not know where they are and yet this money was given out. We do not know who was in

this meeting or who made the decision that Kshs9 million should be used for that purpose. This is what I mean by saying that the CDF money is individuals' money and not people's money. If it was the people's money, it would have been used in projects that were going to benefit *wananchi*. That is all I wanted to say.

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

Commissioner Slye: Mr. Ouma and Mr. Oyugi I want to thank you for appearing before the Commission. My colleague has fairly exhausted any question that I might have had for you with respect to the issues that you have raised. They are very important issues that are really at the core of our mandate concerning economic marginalization and corruption. We appreciate you have brought them here and we hope that the documents you have also submitted will have even more details for us in terms of the issues you have raised. But again, I want to thank you for representing your community here. It is something that is very much appreciated and it has been very helpful to us. Thank you very much.

The Presiding Chair (Commissioner Dinka): Thank you. Commissioner Farah!

Commissioner Farah: Thank you very much. I do not have any questions to ask you. Your presentation was very clear. We were waiting for a Suba presentation. After we heard about Tom Mboya's assassination, at the time of that case, there were questions we were waiting for. I think you have answered them all. Thank you very much. I have no questions for you.

Commissioner Chawatama: I too have no questions but to thank you for taking the time to come and testify before us. I admire your determination in not being assimilated by the Luo Community. The person that we are is determined by God, and where we are to be found is also determined by God. So I encourage you that this is the right spirit and I look forward to seeing you in a certain chapter in our report. Thank you.

The Presiding Chair (Commissioner Dinka): Thank you very much. I, too, have no question for you but to thank you for coming here. By presenting this memo on the Suba community and the land issue, you have enriched knowledge of the Commission. You have expanded our horizon which is very good of you. As my colleague has just said regarding your culture and identity, while living in a community peacefully and harmoniously is important, maintaining and developing your identity and culture also are important not only to you but to the rest of mankind. Cultures are disappearing very fast; so those that we can save, we must save them. So I thank you very much.

Yes, Leader of Evidence!

The Commission Secretary (Ms. Nyaundi): Thank you, Presiding Chair. Witness No. Kisumu 4 had been requested to present to the Commission the vetting process for the persons of the Nubi Community. He has presented a document dated 18th July detailing the vetting process and I ask you to admit it on the record of the Commission.

The Presiding Chair (Commissioner Dinka): It is admitted!

The Commission Secretary (Ms. Nyaundi): That is all with the witnesses for today.

The Presiding Chair (Commissioner Dinka): Thank you very much. So we come to the end of our session for the day. We have heard nine witnesses and they have covered a range of issues from the 1982 coup to the Kisumu Massacre and the high school robbery and mass rape, the assassination of Mr. Tom Mboya, a memo on Nubian community and the Dominion Farm International issue, unlawful dismissal and the memo on the Suba Community. This is a very varied range of issues. For that, I would like to express my thanks on behalf of the Commission and the commissioners to our witnesses; that is, Mr. Andrew Lawrence Odhiambo, Mr. Robert Onyango Wafula, Cllr. Onyango Gladwel and Odhiambo Lumo and to Mrs. Nerea Odinga, Peter Odede Ouma, Mr. Zakayo Idd Abdul, Mr. Meshack Were, Mr. Benjamin Onyango Outa, Mr. Kenneth Oduor Ouma. I also want to thank the interpreters, the secretaries, the cameramen and everyone that made our work easier because this was a long session. I would also like to thank, last but not least, the Leader of Evidence and Hearing Clerks for the effective and efficient work. I would like to ask the master of ceremony to close this session with a prayer.

(Closing prayer)

(The Commission adjourned at 8.30 p.m.)