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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON MONDAY 25ST JULY,
2011 AT ST. MULUMBA PARISH KEGONGA, KURIA**

PRESENT

Margaret Shava	-	The Presiding Chair, Kenya
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Ronald Slye	-	Commissioner, USA
Tom Ojienda	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Gertrude Chawatama	-	Commissioner, Zambia
Patrick Njue	-	Leader of Evidence
Simon Njenga	-	Presiding Clerk

(The Commission commenced at 10.00 a.m.)

The Presiding Chair (Commissioner Shava): Good morning everybody. Welcome to our hearings today, the first day of our hearings in Kuria. Please remain standing for the National Anthem and Commission prayer.

(The National Anthem was sung and prayers said)

Let us take our seats. Once again, good morning everybody. The Commission is truly happy and honoured to be here today in Kegonga, East Kuria District. I would like to explain to you how we are going to proceed today. I will begin by introducing the panel before you.

*(The Presiding Chair (Commissioner Shava) introduced herself
and other Members of the Commission)*

I would like to introduce some of the rules by which we operate. We will be having several witnesses speaking to us today. We ask that when a witness is speaking, we accord that witness respect. We may hear things with which we agree and which reflect our own experiences. Equally, we may hear things with which we strongly disagree. In all instances, we ask that we respectfully listen to the testimony of the witness in silence. At this point, I would like to ask all of us with mobile phones to switch them off. Just give us a moment to do that. Do not put them on silent mode. Please, switch them off entirely to avoid disturbances during the proceedings. For those of you with cameras, while photography is permitted during the session, we do not allow flash photography while the witness is speaking.

The way in which the session will roll out is that the Clerk of the session will first swear the witness, after which the Leader of Evidence will lead the witness through the testimony, through a process of asking questions, so that we can understand the story that the witness is trying to tell us. Thereafter, the Commissioners may want to ask the witness questions.

Now, I hope all mobile phones have been switched off. I will ask the Clerk of the session to swear the first witness.

(Mr. Daniel Chacha Muherei took the oath)

Mr. Patrick Njue: Commissioners, our first witness is going to set a background on behalf of the Kuria Community, a presentation that was previously to be made by the area Member of Parliament. But much more on that, he is going to tell us.
Good morning, Sir.

Mr. Daniel Chacha Muherei: Good morning.

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

Mr. Daniel Chacha Muherei: My full names are Chacha Daniel Muherei. I live at Maeta. I am a nominated councillor.

Mr. Patrick Njue: Mr. Chacha, you are seated with us this morning on a presentation that you will be making on a memorandum on the plight of the Kuria Community; giving us a background of the same community and the general issues that face them. If you are ready, you may begin your presentation.

Mr. Daniel Chacha Muherei: I am going to read this memorandum on behalf of the area Member of Parliament (MP) who is not able to be here today with us because of unavoidable circumstances. I request that I read it the way it is.

Mr. Patrick Njue: Please, proceed.

Mr. Daniel Chacha Muherei: Memorandum to be presented to the Truth, Justice and Reconciliation Commission, sitting at Kegonga in Kuria East District.

PREAMBLE

All sovereign power belongs to the people of Kenya and maybe exercised only in accordance with the Constitution, Chapter 1, Article 1 of the Draft Constitution. The Kuria Community lives astride the Kenya/Tanzania border on the southern tip of Nyanza Province. It constitutes Kuria Constituency; a single Parliamentary electoral region and municipal council. Kuria Constituency is composed of two districts, namely, Kuria East and Kuria West. The 2009 census figures indicate that the community population is about 260,000 people who make up the seven administrative divisions of the larger Kuria. The Constituency has 25 electoral wards and 23 administrative locations. As at Kenya's Independence in 1963, the Kuria Community was lumped together, albeit against its wish, with two other communities, namely, the Kisii and Luo in the vast Nyanza Province. Despite the struggle under the repression of majority ethnic community in South Nyanza and ultimate Independence in 1993 when the then President Daniel arap Moi acknowledged the need to upgrade and grant Kuria a district status, the new Constitution has again put us together with other communities, hence, losing our autonomy. The Constitution makers did not give us a second thought while it recognized and gave the two other Nyanza communities their

due share of the counties. This was, indeed, an abuse of the people of Kuria when it was clear that electively, their number would not match that of our colleagues, given the patriarchal way of our politics and voting. While the Kuria County had been recognized in the initial draft unveiled on 17th November, 2009 by the Committee of Experts, it was deliberately ignored and instead created two Kisii counties namely, Kisii Central and Nyamira, while four other counties, namely, Migori, Kisumu, Homa Bay and Siaya were created for our neighbours. These are homogenous ethnic group counties. What was wrong with Kuria being given its own county when small populations like those of Lamu and Taita Taveta were considered? Is this not a clear case of an injustice and the gist of marginalization? The Kuria community views this blatant omission by Constitution makers as an affront on the integrity and Constitutional right of the good people of Kuria. The people perceive this as an illegality based on the common law grounds, on political manifestations quite akin to the post-independence machinations by a clique of politicians from South Nyanza to weaken the Kuria Community and compel them into submission of sorts.

As a community in Kenya, the Kuria people had high expectations that in the Constitutional dispensation they would be given a fair consideration and be allowed to exist independently as a county. We view this anomaly in the law as a negation of the spirit of the very purpose of Constitutional making which seeks to provide justice, fairness and equality among all Kenyans.

Historically, we were grouped together with people in Nyanza with whom we did not share any cultural interests and beliefs. This became an impediment to any sort of developmental attainment on our part due to, *inter-alia*, language and discrimination.

It is documented that in the early 1960s at the time that Kenya attained Independence, a delegation under the auspices of the Kuria Political Union sought the audience of *Mwalimu* Julius Nyerere on matters of seeking to be allowed to secede from Kenya and be placed under the administration of the Government of Tanganyika. It was, however, not accepted because the Nairobi administration promised to look into the affairs of the Kuria people which never happened.

Amid an avalanche of suffering, another delegation of the Kuria Community met the late President Kenyatta on November 3rd, 1969, purposely to request for their own districts and councils among other crucial issues. Suffice it to say that the need to meet the late President was prompted by the fact that in 1960 when the former South Nyanza District was splitting into Kisii and South Nyanza respectively, the Kuria people strongly objected to being joined to South Nyanza District and demanded to be given their own district.

It was at this moment that the wish of the Kuria people to secede and join Tanzania was expressed. The Kuria people decided to boycott joint political, social and economic activities. They also boycotted the South Nyanza District whose headquarters was at Homa Bay from 1961 to 1963 when they heeded the late President Kenyatta's rallying call for pulling together or harambee.

Let me now address myself to political injustices. Political injustices have been meted on us by our neighbours due to the fact that we are a minority within Nyanza Province and its administrative set up. All the chief officers of the County Council were from

the dominant community while the political wing of the council, for example, the position of chairman was always headed by a non-Kuria.

Perplexingly, the resources and revenues for the operations of the council did not and have never come from any other part of South Nyanza, except Kuria. As a community, the Kurias demanded for their own council in vain until 1993 when our request was considered and we were granted a district and a municipal council by the then President Moi.

Notwithstanding the fact that much of the revenue that build and developed South Nyanza County Council came from Kuria, the Kuria people never got their share of the council's assets at the time of separation in 1997. In fact, Kuria separated from South Nyanza unceremoniously and bare handed like a plagued wife. The creation of our districts and municipal council has demonstrated with alacrity the ability of the Kuria people to develop themselves without help from any other community. We were able to construct our own district headquarters where Kuria West is situated now. We were able to host practically all Government departmental heads with our own resources as well as building a municipal council complex.

Our council to date is able to sustain itself in revenue collection while the payment of workers' salaries and councillors' allowances is up to date. There are no salary arrears or allowances backlogs even as we speak now.

Our neighbours cannot claim the same as there are no meaningful administrative blocks and halls in their areas of jurisdiction. Under the South Nyanza County Council where we were thinly represented with only two councillors in the 19760s, no developmental issues pertaining to Kuria were pushed through, given their limited number of representation in the council. This will equally apply in equal measure, if not more, in the Migori County.

Kurias have always failed to garner enough votes to pass any bills in the county assembly with regard to matters concerning Kuria due to their limited numbers. To cite just one example, in 1973 in a memorandum presented to the then Nyanza PC by the then MP Mr. Samson Muita Marwa, the Kuria people complained among other things that in distributing the three special rural development projects, our neighbours got three projects while Kuria got zero. In the same memorandum, the delegation strongly raised their concerns over the distribution of water schemes which would have covered Taranganya, Nyarova, Igunga, Ntimaru in Kuria, but were instead diverted to Rapogi, Muhuru and Kadem, Usingo, Uriri, Oyani, Nyandiego and Gotgoch.

ECONOMICAL INJUSTICES

Kuria Constituency has from time immemorial been the grain basket of Nyanza Province in its entirety, but due to the fact that all our produce was being marketed under the umbrella of the larger South Nyanza District, Kuria farmers suffered delayed payments and harassment for many years. Kuria farmers were forced to transport their agricultural produce all the way to Muhuru Bay and Homa Bay depots, about 50 kilometres and 70 kilometres, respectively, until the former President Moi directed the construction of silos in Kuria in the 1980s. Under this arrangement, a

Kuria farmer incurred huge transport costs, inconveniences and deliberate delayed payments and loss of man hours. It still continues to date given that our tobacco crop is being processed at Rongo Town, several kilometers away from where it is being produced. Natural law demands that a factory is located at the source of the raw materials and that would be Kuria.

Jobs for our people have been lost to other people who do not even know how tobacco is grown and processed. Kuria is the largest producer of cereals in the Nyanza region, producing about 30 per cent of the country's national grains. However, no Kuria, since Independence, has ever been appointed to sit in the National Cereals and Produce Board (NCPD) as a chairman, director or even as a mere member. Is this not an injustice committed against us because of our numbers? People from other communities in Nyanza Province sit in those boards yet their contribution is minimal in terms of production.

In the early 1980s, electricity supply under the Rural Electrification Programme was cleverly diverted to Bondo Location of Migori District instead of Kehancha Division. Government micro-finance programmes through institutions like the Kenya National Chamber of Commerce, the Kenya National Trading Corporation, the Kenya Farmers Association and the Agricultural Finance Corporation were tailored to favour non-Kuria business people, to the chagrin of Kuria people.

Let us now talk about education injustice and sabotage. While education is the key to success, Kuria was intentionally shoved off-target by our neighbours through deliberate designs schemed to obliterate our intellectual skills. Government schools were concentrated in other parts of Nyanza Province. For instance, in a memorandum dated 3rd November, 1963, and presented to the late President Kenyatta, the Kuria delegation complained of among other anomalies, educational marginalization. For instance, the single administrative division in the neighbouring Nyanza Division, for example, the then Central Division in South Nyanza District had nine Government-aided schools while Kehancha Division had only one partially aided school, Taranganya Secondary School.

In a teacher training intake, huge disparities occurred with other Nyanza communities grabbing most of the chances, including those designated for the Kuria students. For example, in 1973, Kuria was given five chances to train P3 teachers, but instead only two were taken and the rest of the positions were filled by other communities. Such a practice continued for a long time until former President Moi sympathized with the Kuria people and gave us our own Kuria District which became the focus for the teacher recruitment.

These are our requests to the Government through this Commission. We request the resolution of the Muyuyi, which is also called Moyoyi, land dispute. The Kuria Community needs urgent attention from the Government through this Commission to address the Ikwabe/Kuria land issue where thousands of our people were evicted from their own land which for several years has caused conflict between our people, the Maasais and the Kipsigis.

We have the Masurura, Mashangwe, Magena, Muyuyi lands which are currently in Trans Mara District. The Kuria people claim ancestral ownership of this land and

have records to support their claims. For example, Kenyans migrated to Tagota, Morogo from Tanzania in 1723 and 1843 and Maasais from other parts of Kenya came in 1911. As indicated in documents to be presented by other equally concerned parties, all the Kuria clans, including those living in Tanzania, claim the land as their land, their place of settlement and eventual dispersal during their movements. Those records clearly show that despite colonial boundaries that formed provinces, districts, divisions, locations, sub-locations, the Kuria people still dwelt in that land albeit being clustered as part of Rift Valley. These historical documents indicate that the current claimants of the land arrived in these parts of the world much later than the Kuria people.

The Action Aid Report, which I am sure you have already been served with, is clear in its findings that the Kuria people migrated to Tagota Logone from Tanzania between 1723 and 1843 while the Maasai migrated to that place in 1911, according to one historical narrative.

The report has quoted extensively from surviving individuals who were until 1989 living in the disputed areas and have names bearing places where they were born and bred. There is no doubt that there were several errors and omissions in the adjudication process of the area in question which deprived the evicted people of their right and fairness to lawfully being recorded and recognized as the legal owners of their pieces of land.

Secondly, there is also the Segegi, Area A, Area B, Ikwe and Lichoto. This land, in hundreds of acres, now belongs to our brothers in Migori County. Lichoto was forcefully taken by the Government to create a buffer zone between the Luos and the Kurias in the early 1970s, perhaps, to quell constant fights between the Luo and the Kuria. This is where the Lake Basin Development Authority Research Centre on livestock is situated. It was land belonging to the Kuria people, but unlawfully taken by the Government. Segegi is Kuria land that was craftily and through manipulation by the Lands Office, in cahoots with individuals from Migori, derived and deprived of its owners. They did the same thing with Area A, Area B and Ikwe, otherwise known as *Nyar Biro* meaning “you can come”. There have been fights recently and in the 1980s over the same land.

Thirdly, there has not been any tarmarcked road in Kuria since the world was created, apart from a small stretch that links Migori to Tanzania through Kuria. This was a road constructed in the early 1970s and does not very much serve Kuria apart from being a highway passing through Kuria. It is against such a backdrop that while we embrace nationhood, ethnic unity and patriotism, we similarly envisage with gusto unity in diversity, unity of purpose and equitable community development that is enshrined in devolved systems worldwide. It is a common constitutional practice even in powerful democracies in the world that fundamental rights of citizens are respected. It is our humble submission that while minorities’ rights are respected and recognized the world over, the Kuria people should be recognized as a minority and the marginalized whose rights have been abused. This will attract the equalization fund to fill in the gaps that were created by the successive regimes’ ignorance of our plight.

Finally, we request for our own county where we will be able to exercise our civil liberties with constitutional rights to govern ourselves by electing our own governor, senator and a woman representative. Thank you. God bless you.

Mr. Patrick Njue: Thank you, Mr. Chacha for that presentation following which I will make my comments before our Commissioners can proceed to make theirs out of it.

With me here is a copy of a memorandum which I would want you to confirm if it is the same as the one you have been reading from.

Mr. Daniel Chacha Muherei: It is the same.

Mr. Patrick Njue: Was it the wish of the area Member of Parliament that it formally, today, be admitted on the record of this Commission?

Mr. Daniel Chacha Muherei: Yes.

Mr. Patrick Njue: Presiding Chair, can this be admitted on the record of the Commission?

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

Mr. Patrick Njue: Mr. Chacha, for clarity of the record, for completeness, could you confirm, who is the area Member of Parliament?

Mr. Daniel Chacha Muherei: Dr. Wilfred Gisuka Machage.

Mr. Patrick Njue: Let me make my observation that the presentation has been clear. The memorandum itself is clear. It sets a general background, historical and present from which I believe the individuals that will be appearing before this Commission in the days that we will be sitting here will be able to build up their individual cases against the backdrop that you have provided. Positively, I must note that though there have been historical injustices I would say the presentation was climaxed by highs and lows in the sense that as a community, there are those things that you can proudly boast of and from which you are able to move on. Thank you, Mr. Chacha for your presentation. I have no questions, but our Commissioners may have questions for you.

The Presiding Chair (Commissioner Shava): The Commissioners will have the opportunity to ask questions.

The Acting Chairlady (Commissioner Namachanja): Thank you, councillor for the detailed memorandum. Which name would you like us to refer to you by?

Mr. Daniel Chacha Muherei: Councillor Chacha.

The Acting Chairlady (Commissioner Namachanja): I just have two questions for clarification. On the page on requests concerning Muyuyi or Moyoyi land dispute you say that the Kuria people were evicted from their land. When did this take place and by who?

Mr. Daniel Chacha Muherei: As I mentioned, this was back in 1989. It was the Maasai and Kipsigis soldiers as alleged who were among the people who were evicting the Kuria people.

The Acting Chairlady (Commissioner Namachanja): This was as a result of inter-ethnic conflict?

Mr. Daniel Chacha Muherei: There is land there as I have clearly stated in this memorandum. We believe that the land belongs to us. We believe it is ours by right. But because these people had more powers, they evicted us. It is a land dispute. We believe that our land goes up to Lolgorian and the other part of Muyuyi as I mentioned.

The Acting Chairlady (Commissioner Namachanja): Knowing the pattern of conflicts in Kenya there are issues that spark them up. I am just wondering, did the communities just wake up one day and start fighting each other or what was the context then?

Mr. Daniel Chacha Muherei: Somewhere, there were cattle rustlings between the two communities because a Kuria cannot just go and steal from a Maasai. The Maasai also steal from Kuria and somehow this contributes to it. It was from a few individuals.

The Acting Chairlady (Commissioner Namachanja): You also mentioned the land that was taken away by the Lake Basin Development Authority Research Centre. Were the communities or the families that lived on this land compensated at that time or were they given alternative land?

Mr. Daniel Chacha Muherei: No, they are squatters.

The Acting Chairlady (Commissioner Namachanja): When did this take place?

Mr. Daniel Chacha Muherei: I will have to refer to this document.

The Acting Chairlady (Commissioner Namachanja): If you do not have it we can have that information later. Thank you, councillor Chacha.

Commissioner Ojienda: Thank you, councillor for your testimony that is very clear. I will just seek one or two clarifications because you have spoken so well. Clearly, there is a lot of marginalization in these areas as you drive from Migori, Ugonga, you can see it. I want just to confirm, it is with respect to the land in Moyoyi and Sagegi that Dr. Wilfred Machage spoke during the last campaigns. It is something that needs to be resolved once and for all.

I want to just confirm one more thing. You refer in your memorandum to an earlier meeting between Kuria leaders and Mwalimu Nyerere just around Independence. The Kuria wanted to secede to Tanzania because they felt marginalized. Do you think anything has been done by the Kenya Government to improve the well-being of this community from Independence?

Mr. Daniel Chacha Muherei: Very little.

Commissioner Ojienda: Thank you very much.

Commissioner Chawatama: Councillor Chacha, thank you very much for your testimony. For purposes of the record, in your preamble, when you talk about the fact that the new Constitution has again put you together with other communities, hence losing your family, what family is it and what benefits have been lost?

Mr. Daniel Chacha Muherei: As I mentioned earlier, when we were in Homa Bay, our revenues were up to date. The viability of our council is apparent and history has it that even between 2007 and 2010, Kuria was able to gather revenue of about Kshs 690 million. If you go to Kehancha, there is a beautiful building there which we built just the other day while our friends in Migori were given funds much earlier, with which they did no work. Go to Migori, and look for residential houses which were constructed when the district was first created. They are not complete but when you come to Kuria, we are finishing the DC's house now with the resources we have. So, we feel oppressed.

Commissioner Chawatama: Your efforts are noted. My next question is: You said that Lamu and Taveta are two places where the Government considered and gave the residents their own county. Do you know what the Government took into consideration, and could Kuria have qualified if the Government had taken those factors into consideration as well?

Mr. Daniel Chacha Muherei: The Kuria people have cried for so long to get their rights and to be independent. Compare the population of Kuria and Lamu and you will find that the former has more. In fact, we should be having even four constituencies. We could have Kuria East County and Kuria West County. While others have 18,000 registered voters, in Kuria we have over 70,000. They got counties and we believe this is injustice.

Commissioner Chawatama: My last question is to do with water schemes which you said were diverted, and three neighbours got three projects and Kuria got zero. Was any reason given for denying Kuria water schemes?

Mr. Daniel Chacha Muherei: It was because we are not well represented either in committees or in various small groups. No consultation with us took place. Even they have not told us why we were denied the county.

Commissioner Dinka: Thank you very much, Mr. Chacha, for your testimony. I have some questions for you to clarify. On page 1 of your memorandum in the sixth paragraph, you say the Kuria have been integrated into two different communities which are culturally not compatible. What do you mean by "given the parochial way of our politics and voting"?

Mr. Daniel Chacha Muherei: Essentially, we do not share with our brothers any cultural behaviour. You realize that they are in ODM and we are in a different party.

In any case, if we will vote for the governorship, we will be fewer and they will be many because voting is a question of numbers. It is a minority issue.

Commissioner Dinka: So, it is a question of political majority and minority and not culture.

Mr. Daniel Chacha Muherei: The cultural issue also exists. The minority issue exists. Marginalization also exists.

Commissioner Dinka: At the end of page two, you say that Kurias are very much under-represented in the Government, particularly at the county level and you have never been--- Are you saying that all finances come from the Kurias, yet they are not represented?

Mr. Daniel Chacha Muherei: What we are saying here, and I want to be very clear, is that at least we contributed 30 per cent of the revenues of the council in those days. I mentioned that we only had two councillors while the others had many. It was very difficult when it came to voting. Even if you vote for a project to come to Kuria and you are a minority in that committee, you stand to lose.

Commissioner Dinka: Are you saying Kuria contributed 30 per cent of the budget but had only two councillors? Out of how many councillors?

Mr. Daniel Chacha Muherei: They had more than us; Kuria had only two councillors. Definitely South Nyanza had had more councillors.

Commissioner Dinka: What was the total number of councillors?

Mr. Daniel Chacha Muherei: There were many. I will refer and tell you.

Commissioner Dinka: It will be very helpful if you give us the total number of councillors, so that it is clear that you paid 30 per cent, but you had only five per cent representation. Give that information to the Commission later on.

Mr. Daniel Chacha Muherei: I can give a copy now and you can see that there is an injustice in power sharing. They had 34 councillors and Kurias had only two councilors; later they had four councillors.

Commissioner Dinka: So, there were four out of 34?

Mr. Daniel Chacha Muherei: First, there were 32 councillors and then when were added two, they became 34, which means, later Kurias had four and the Luos had 30 councillors.

Commissioner Dinka: I have another question because you have not clearly indicated how and that is what I want to ask. On page 4, in paragraph 6, you talk about a micro-finance programme, the Kenya National Chamber of Commerce and Industry and the Kenya National Trading Corporation. You say "All these finance institutions were tailored to favour non-Kuria business people". How were they tailored?

Mr. Daniel Chacha Muherei: As I said earlier, since time immemorial we have not had proper representation. Of course a micro finance is a loan institution, and since we were not well represented, it had to come to Homa Bay. What the Kurias realized was that the programme was not in their place. After the district came to Kuria, I heard of the National Chamber of Commerce and Industry, but right now it is not very active. It is a question of being a minority.

Commissioner Dinka: You are saying that the negative impact on the Kuria people is not from formation of the policy, but from the operationalization of that policy? Is it deliberate?

Mr. Daniel Chacha Muherei: Yes, I think since we were not represented, it was deliberate. We cannot say it was not deliberate. It was deliberate because these people would meet minus the Kuria, make a decision and divert everything to where they wanted. I mentioned earlier the tobacco processing factory, which was supposed to be built just across here. We had land and it was provided for free, but Kurias realized the factory had been diverted. Even meetings which were held in the early 1960s, Kurias never attended, yet they were shareholders.

Commissioner Dinka: Just one final question on the eviction from land by the Maasai. You said the Kurias have been there since 1723 and the Maasais came in 1911. So, for 100 years you lived peacefully. What created the situation in which the Kurias were evicted from that land? How did it start? That was your ancestral land. I think that was in 1989 and they were assisted by the security forces.

Mr. Daniel Chacha Muherei: I think that question was asked earlier but I will repeat answering it in a different version. We believe our land goes up to the other part of Kuria. Beacons are there; there is a river here called Migori. I had said that there was cattle rustling. The Maasais would steal from this side and a few Kurians would steal from them; maybe they felt we had become a menace. They were the people in the government, and they felt that that the boundary should be the river. Those were the major reasons. Another fact was that since there was big land, we would lease land from them to grow crops, and at the end of day we would be denied the right to harvest. That is another fact.

Commissioner Dinka: Does the situation remain the same today?

Mr. Daniel Chacha Muherei: Yes.

Commissioner Dinka: I have no further questions.

Mr. Daniel Chacha Muherei: We have stopped the cattle rustling. We are very good people. We are very good friends these days; if the Government came and reallocated the land to the Kurias, we would be the happiest people. We have so many squatters living desperately.

Commissioner Dinka: Thank you, Chair.

Commissioner Slye: Thank you, Councillor Chacha. I want to join my fellow Commissioners in thanking you for your testimony. It is clear from your testimony that economic marginalization really continues to exist. We, as a Commission, have actually seen similar marginalization in other parts of this country. Such marginalization is not unique to this area alone. I say that to underscore the fact that you and the people of Kuria are not alone; there may be legal avenues even in your Constitution to build alliances with other people in Kenya who have been historically marginalized. I have a couple of questions to help me understand the history of the injustices in your presentation. In your presentation you mention memoranda in the 1960s and 1970s. In one section you mention records that support the very claim on the land. My first question is: Is it possible for you to make copies of those documents available to the Commission? You mentioned in your testimony about land injustices. They will help us in crafting effective recommendations on the injustices you have spoken about.

Mr. Daniel Chacha Muherei: They will be provided.

Commissioner Slye: Is that something we can get in your office or somebody will bring them?

Mr. Daniel Chacha Muherei: I will arrange with them.

Commissioner Slye: Do you mean that in this area people came to vote for only people from their own community? Is that what has caused under-representation?

Mr. Daniel Chacha Muherei: Hon. Commissioners, it is very clear in Migori County we now have eight constituencies. If every constituency will produce five county representatives it means we will have ten and they will have six more constituencies. That will mean that there will be 35 representatives against ten representatives. So, when it will come to voting for anything, we will stand to lose. I want to assure the Commissioners that we accept that we are in Migori and we will join them. We hope that, maybe, this Commission will make sure no injustice will occur; but we still cry for our own county.

Commissioner Slye: You have described under-representation. What is the cause of this under-representation? Is it because you are fewer in numbers and, therefore, you have fewer representatives?

Mr. Daniel Chacha Muherei: Under-representation is a fact and we feel that our brothers, because we do not share with them any cultural interest, hate us. They call us *Jamuok* while we just call them our brothers, the Luo, and we have no other name for them.

Commissioner Slye: What is the body that constitutes the county structure? Is 10 out of 30 an actual description or you are projecting the future when the counties become operational?

Mr. Daniel Chacha Muherei: I have given an example of when the county system will start working; I also want to say strongly that this has always happened. When

you hear us crying for our county, we are foreseeing what will happen. We know it unless the Constitution will really save us.

Commissioner Slye: If the Kuria community had ten representatives in a body of 30, they would not be able to do anything constructive because of inadequate representation. Is that so?

Mr. Daniel Chacha Muherei: The Constitution states that every area will have to get its share but if it is violated, we will see that ourselves. There is even no TJRC representative from Kuria who can speak for us. You can see even the dates were changed. Initially they were for Kuria West and we had to insist that you give Kuria East a chance.

Commissioner Slye: What is the reason if you have a third of representation of a body? Does that mean the interests of the community cannot be considered?

Mr. Daniel Chacha Muherei: As I have stated, we already have accepted to be in Migori County. We have already sent a group of leaders to negotiate with our brothers and at least draw up a MOU to make sure we are well represented, and so that what has been happening does not happen again, but we still insist we want a county and we have a right to it.

Commissioner Slye: How are the negotiations going on with the people in Migori, or is it too early to tell?

Mr. Daniel Chacha Muherei: We are going on well but we have not reached a consensus, especially on the elective posts; but, as I told you, it always goes by numbers. If we all want to have a governor, when you have two suggestions you go into voting and you lose.

Commissioner Slye: That makes sense to me now. I hope the negotiations will be fruitful, even if the Government does not provide you with your own county which is your first choice. On top of page 3, the resources and revenue are for the operation of the council. You say that 30 per cent of the resources come from Kuria. Is it so?

Mr. Daniel Chacha Muherei: Hon. Commissioners, during the post-election violence, we were excluded from Migori. They forgot that they were locking themselves from getting food from us. When they realized they were dying, they opened up the way. They said we could join them. For sure, Kurias are good people.

They realized they were dying and they opened up the way. They said, "you can come". For sure, Kuria people are good farmers. We grow tobacco, maize, cassava, potatoes, name them. Everything, which is grown in the world, can be grown here and this one, for sure, gives us a lot of resources. We are not saying that we hate our brothers. The truth is that they do not know how to do farming, which is not a crime. If they have money to buy from us, it is okay.

Commissioner Slye: I think my confusion is the distinction between the financing of the Council, which is what I originally thought you were talking about. That sounds to me like what you are saying is that, in terms of the productive activities, Kuria is the

bread basket of Nyanza. About 30 per cent of food production comes from here. Is that direct financing of the council or general contribution to the overall economy that you are going to?

Mr. Daniel Chacha Muherei: I mentioned it in this memorandum that, revenue collection, if there is more farming, the revenue goes up. A Kuria is person who is honest, especially when it comes to paying tax. We do not know how to hibernate. So, when the revenue is higher, and the whole of it is transferred to the other part of the country, Kuria stands to be a loser. I mentioned this sometime back. Our council, even as I speak today, as a councillor, I already have my allowances in my pocket. Go to Migori, I know they have arrears.

Commissioner Slye: Two quick, follow-up questions: Do you know who has statistics showing the different revenue amounts from the different communities in Nyanza?

Mr. Daniel Chacha Muherei: For now, I do not have. But I can easily give you a breakdown.

Let me start from 1999, when we were able to collect, Kshs 11, 948,048.388. Then 2000 to 2001, we collected over Kshs 12 million. In 2001, 2002, we collected over Kshs 14 million. In 2002/2003, we collected Kshs 6 million. The following year, it was Kshs 18, 849,000. And the following year, 2004/2005, it was Kshs 19, 400,000.

In 2005/2006, it was Kshs 27, 139,000. Then the following year, it declined a bit to Kshs 19 million. In 2007/2008, it was Kshs 20 million. In 2008/2009, it was Kshs 39, 729,560. By January 2009/2010, we had Kshs 24, 588230. You can have a short breakdown of maize production from the National Cereals and Produce Board. Let me start from 2006---

Commissioner Slye: Could we just get those numbers from you, rather than have you reading them all out; unless you want to read them out. I do not want you to stop.

Mr. Daniel Chacha Muherei: I am almost through.

Commissioner Slye: Okay, go ahead.

Mr. Daniel Chacha Muherei: We had 281,641 bags, which is equal to 16 tonnes valued at Kshs 236, 133,000. Then, in 2007, it came down a little bit as we had 106 bags; 926 tonnes, which cost, Kshs233, 334,000. In 2008, we had 14 tonnes valued at Kshs 31 million. There was drought. In 2009, we had 66,000 bags. Again, it had started going up, where we got six tonnes, which had a value of Kshs152, 862,000.

Hon. Commissioners, this is just a breakdown, up to 2009. So, the total bags for those four years is Kshs 468, 640,000; which were 33.2 tonnes valued at Kshs 654 million.

Commissioner Slye: The first number you mentioned is revenue. Is that revenue going to the Council, or to the national Government?

Mr. Daniel Chacha Muherei: If I talked of 200 bags, for example, 16 tonnes would definitely be revenue to be charged.

The Cereal Board has to remit the revenue to the municipal council, likewise Mastermind Tobacco has to do the same.

Commissioner Slye: So, the maize is sold to the NCPB and the NCPB takes some of the revenue and gives it to the council. You have no representation in the NCPB in terms of determining how the money is distributed. Is that right?

Mr. Daniel Chacha Muherei: When the revenue is collected, it helps in paying council employees. I think as you were coming, I mentioned about roads. You can see how our roads look like.

I am surprised you do not have dust because you were driving big vehicles. There is a lot of dust, my friend. So, the revenue assists in at least opening up the small roads to reach these poor wananchi, who are marginalized. Basically, that is how it is spent.

There are other things. You can see our bus park. You can see we are building a new modern market, although we have little money from Local Authority Transfer Fund (LATF). We have no penalties, and when our budgets go to the Ministry of Local Government, it is approved. That is how we are able to get the LATF and other funding. But if we have penalties, it would mean we do not get the LATF and it applies to the other side.

Commissioner Slye: For us it would be useful to get comparable numbers from other parts of the country, not just this region. To get a good sense of how Kuria has been treated compared to other places.

My last few questions would be pretty brief and straight forward.

On the second page of the presentation, third paragraph from the bottom you mentioned about a boycott of political, social, and economic activities, handled from South Nyanza. You referred to 1961 and 1963, I just want to make sure that those dates are correct; so that would be the pre-independent boycott, not the first independent boycott?

The third paragraph states the Kuria people decided to boycott joint political, social, and economic activities--- I just wanted to make sure, whether that was a pre-independence boycott.

Mr. Daniel Chacha Muherei: I said we decided to boycott joint political, social and economic activities handled from South Nyanza.

This is very clear. It means since time immemorial, there was this problem. Then, it was after, we decided to refuse, at least, that is when we were a bit considered, because we were fighting for our rights. So, it has been there. Even after independence, it is still there, and it is mentioned clearly. The memorandum I was referring to was presented to the Committee of Experts. It is just details that will assist us. We have had very many memoranda which are not heard.

Commissioner Slye: I think it would be useful to get a copy of that as well.

If I understand you correctly, the boycotting of the joint political, social, and economic activities continued after independence, and maybe it continues up to today.

Mr. Daniel Chacha Muherei: If you cannot beat them, join them. We joined them later. Even now, we are put together. The saying goes, if you cannot defeat them, join them. We are trying the much we can to work together with them. We do not hate them because they are human beings like us. We are only crying for our rights.

Commissioner Slye: The way I read it is that there is a boycott of joint activities, headquartered in South Nyanza during the colonial administration of this country. The way I read this is that within their tandems, the boycott stopped, and you just said, “we try to work with our neighbouring friends”. Is that the correct interpretation?

Mr. Daniel Chacha Muherei: Yes, that is what we did, which has not effectively worked.

Commissioner Slye: That is clear. Thank you. On page 3, you talked about 1993; when you were given a district and municipal council by the former President Moi, but you also referred to a separation in 1987 that is the third paragraph from the top on page 3. What is the separation that happened? Is that different from creation of some autonomous local government structures?

Mr. Daniel Chacha Muherei: When you are put together, it is like a father who is rich. As a family, you would always invest together. When you want to divide wealth, we say: “You will get this little because you were tough headed when I sent you.”

When we came from Homa Bay, we had houses there. We invested there but came bare handed. We have rental houses to date there. So, we expect equal division.

Commissioner Slye: I understand that division or separation was unequal. Was there a separate district created in 1987? What is the separation about?

Mr. Daniel Chacha Muherei: That is when we got a county council

Commissioner Slye: So, you got a county council in 1987, and then in 1983, you got a district and municipal council. Is that right?

Mr. Daniel Chacha Muherei: That is when our Moses came.

Commissioner Slye: If you know, give us a little bit of a picture of what medical facilities exist in Kuria and how easy they are for people to access them.

Mr. Daniel Chacha Muherei: We have very few health facilities. But wherever there is a health facility, as I had mentioned earlier, the municipal council helps to open the small routes to access those health facilities. So, we have roads which are maintained by the council. However, we do not know if it that council will continue after 2012.

We have a sub-district hospital here. There is a road coming here, direct to that place. But this hospital has never seen an ambulance since we got a district here. Therefore, our people are suffering. So, I say it is an injustice. Our people are dying here; if we do not have money and there is a Government facility here. A mother comes to deliver and dies, when you are just looking at her. Sometimes, she loses a child. It is a pity!

Commissioner Slye: Just on that, I think as we communicate with you, in getting the additional document, and information, if you have more information about the number of health facilities, how well it serves the local population, the number of people that have died through preventable deaths such as child births, they would be very helpful to us in instructing our final report.

I want to thank you. I do not have further questions.

Mr. Daniel Chacha Muherei: This information can be found from the records. It would depend on how fast you need them.

Commissioner Slye: As fast as possible.

Mr. Daniel Chacha Muherei: We would do that.

The Acting Chair (Commissioner Namachanja): Councillor Chacha, I just have one observation and two follow-up questions for you.

As you were coming from Isebania, we observed marginalization in terms of roads. I felt like I was back in North Eastern, Mt. Elgon or Teso District. When we arrived here, we asked our senior staff, who are from Kuria, Madam Rahab Robi, as to why she chose this venue for us to come here. Her answer was that she did not want us just to hear about marginalization. She wanted us to experience marginalization. Indeed, I thank her, and we have experienced it.

Women in Kenya have suffered a similar way in the way minority communities have suffered in terms of marginalization and political representation. But with affirmative action, which is now within the Constitution, we see there is a light at the end of the tunnel. In the event that Kuria does not get its own county, what affirmative action would you like to be put in place so that there is no continued marginalization but fair political representation? I do not want you to answer that now. This is something that you can reflect on.

Mr. Daniel Chacha Muherei: I have a direct answer. We would love to have a sub-county.

The Acting Chair (Commissioner Namachanja): In the event that you do not have a sub-county, what laws do we need to enact to guide the relationships between minority groups within the county so that we do not continue experiencing marginalization and political representation?

I want you and others to thoroughly reflect on this so that it comes back to us, as another form of memorandum, so that it forms our recommendations at the end of this.

The Presiding Chair (Commissioner Shava): Councillor Chacha, I would be the last to ask you questions and I would try to brief.

Mr. Daniel Chacha Muherei: I am not a Member of Parliament. Let your questions be short.

The Presiding Chair (Commissioner Shava): There is a time you said that your people are referred to us *Jagwa*. Could you just clarify for us what that means?

Mr. Daniel Chacha Muherei: It means a different tribe which we do not share any common interest.

The Presiding Chair (Commissioner Shava): So, in your view, is it a derogatory term?

Mr. Daniel Chacha Muherei: It is an abuse. I am a human being, why can somebody not call me a Kuria!

The Presiding Chair (Commissioner Shava): Thank you. I have understood that. You gave us the population statistics of Kuria, I think it was 260,000 or thereabouts. How many non-Kuria people did you count, among the same population that you served? How many people reside in the area that you have served, who are not Kuria by ethnicity.

Mr. Daniel Chacha Muherei: Presiding Chair, I cannot give you the figure now. We have many and we host them. Even during the post-election violence, this was heaven for many.

The Presiding Chair (Commissioner Shava): I congratulate you for that on behalf of this Commission.

Linked to that question, councillor, as a politician, you believe that it is only Kuria political leadership who can develop Kuria?

Mr. Daniel Chacha Muherei: Not really.

The Presiding Chair (Commissioner Shava): Question to the follow-up question that was asked by the Acting Chair, now that you find Kuria in Migori County, as a politician how do you plan to use the new constitutional arrangement to promote equitable distribution of resources and implementation of development projects to benefit people of Kuria?

Mr. Daniel Chacha Muherei: Presiding Chair, I am not ashamed to tell you that other than me reading the Constitution on my own, I have never been taken even for a small training. These people you see here, I do not think there is anybody who can testify that civic education has been conducted on the new Constitution. When we

were voting for “Yes” and “No”, you can remember, “Yes” was funded properly, while “No” had nothing. So, most of our people cannot interpret the Constitution. We do not know what it is. You tell somebody to define for you devolved government, but we do not know. We have all the reasons to cry.

Then, if you want to assist us, recommend that the Government disburses funds for civic education to the grassroots, so that we can know what is in that Constitution. There is a word in Kiswahili, which says you enclose a goat in a sack, yet you do not know whether there is another goat inside.

The Presiding Chair (Commissioner Shava): Thank you very much, councillor. That is very eloquent. We have taken note.

There was a small issue in the memorandum that you presented when you talked about teacher training. My question is about that particular question, but even if you do not have those facts, just generally, you said that there were five slots for teacher training candidates from Kuria. Have you been able to find that place? I think it is on page 4. There were five slots for teacher training in Kuria, but Kuria only filled two of those slots. Why would that be? Is it because Kuria was unable to provide qualified candidates because of marginalization or other issues, or were they provided and somehow they were shunted aside? What happened in that instance?

Mr. Daniel Chacha Muherei: The issue of believing that we do not have Kuria people who have gone to school; of course, a Kuria would not have failed to provide a person to train as a P3 teacher in 1973. My father finished his Standard 8 in 1965, and he was employed as a teacher, and there were many of them. Why not this year? It is the question of marginalization. By then, they were coming from Homa Bay. Maybe, they believed they had many than us, or either more qualified but we believe we were able to provide.

The Presiding Chair (Commissioner Shava): Councillor Chacha, we have no further questions for you. We would just like to thank you very much for coming here today to present your views and those of your Member of Parliament.

You gave us a very detailed and excellent memorandum. It has provided us with a lot of background. We have taken a lot of time with you, because as we have been doing in the other places, where we see this kind of memorandum provides us with a lot of texture of what it is that has been happening in this area. We do not expect to hold you long. You have given us a lot of facts. We would also like to thank you very much for demonstrating an interest in this session. We were happy that we were able to respond to our request and to be here today. We would do our best to ensure that the interest of the people of this area is considered within the terms of our mandate. Thank you, very much.

Mr. Daniel Chacha Muherei: I would be happier when Kurians are compensated, and their land allocated to them, and the political injustices solved.

The Presiding Chair (Commissioner Shava): We have heard what you have said, and we will make sure that this is repeated in our recommendations.

Thank you.

Mr. Patrick Njue: Closely, following that presentation, Commissioners, our next witness would also be making presentation on behalf of District Peace Committees.

(Mr. Matiko Bohoko took the oath)

Mr. Patrick Njue: Good afternoon, Sir?

Mr. Matiko Bohoko: Good afternoon to you.

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

Mr. Matiko Bohoko: My name is Matiko Bohoko. I stay in Kuria. I do not know whether you are particularly interested in the village where I come from but I live in Kuria and I was born in Kuria. I work as a peace monitor under the National Steering Committee on Peace Building and Conflict Management.

Mr. Patrick Njue: I welcome you, Mr. Matiko. It is for the very reason of your being a peace monitor that I believe you are here with us today to make a presentation on behalf of the District Peace Committees (DPCs). Would you confirm that to be the case?

Mr. Matiko Bohoko: Correct!

Mr. Patrick Njue: Kindly, if you are ready, you may take us through places.

Mr. Matiko Bohoko: I will present on behalf of the Peace Committee on behalf of the District Peace Committees of both Kuria East and Kuria West. My two chairmen of those two committees are here. So I have the authority to speak on behalf of my committee and my chairmen.

Mr. Patrick Njue: Maybe you can just introduce him to us. They could stand wherever they are and let us recognize them and appreciate their presence.

Mr. Matiko Bohoko: Let me start with the Chairman, Kuria East DPC, his name is Mr. Chacha Mangiteni. I should think the Chairman of Kuria West DPC is around; Mr. Keraka Chacha. I am told he is outside there. We will not wait for him but if there is any other DPC member here, they could perhaps stand up and wave to the Commissioners. He is from Kuria West. He is also from Kuria East and they are so many. There otherS coming in but they are being stopped at the gate. Thank you.

The Presiding Chair (Commissioner Shava): Can our co-ordinator facilitate the entry of that member of the peace community? We would like to see him.

Mr. Matiko Bohoko: Yes, he is one and there is another one who was sent back.

The Presiding Chair (Commissioner Shava): Okay. You can continue.

Mr. Matiko Bohoko: I have been cautioned to be a bit brief on my presentation but I think it is important that I give the introduction of what the DPC is like.

The memorandum is addressed: “Conflict Resolution, Peace and Reconciliation along Kuria-Trans-Mara Common Boundaries”. It had been developed after observing what has been going on and, of course, attempting perhaps to give solutions as to what can be done. That is as far as peace is concerned. There may be other minor issues that cause conflicts around but as the committee, we have chosen to address the main ones.

So, let me give the introduction of the DPCs. The concept of the DPCs started sometime back in 2000 when the Government felt that it was important to incorporate the communities in resolving their issues using their traditional machinery so that they can be at peace. Until that time when the DPCs came up, the issues of security were basically the preserve of the Government and the end result of this kind of monopoly by the Government on security issues was that indeed, there was no peace. Instead, the Government tended to terrorize instead of harmonizing DPCs in the communities that had issues. Until that time, at around 2000, the Government thought it was wise enough to adapt the more broad and holistic approach, which involved communities. In a nutshell the stakeholders’ collaboration has grown from just a small thing in Wajir in North Eastern Province to a huge thing with results which have been very commendable.

Currently, we have about 17 districts under the DPC piloting system with an aim of intending, perhaps, to broaden it to all over the country. In Kuria, the DPC phenomenon hit the ground in 2009 with remarkable results on the promotion of peace and stability.

Early this year, Kuria East DPC was awarded a UN peace award through the UNDP and the National Steering Committee on conflict management and peace building. This is because of how they handled the 2008 skirmishes in Kuria and along the Trans-Mara-Kuria border.

I will then have to give you a brief on the mandate of the DPCs. The DPCs mandate is, up to now or among others, to identify the root cause of conflict, provide strategy for resolution of such conflicts, educate communities on peace matters, play facilitation role in peace-making and dialoguing.

The DPCs also develop strategic plans. They network with other communities in the region and hold regular peace meetings with neighbouring districts as need arises. They work in close partnership with the Provincial Administration, the police, the community policing and CSOs. The DPCs also make conflict early warning and early response reports against which background that I wish to make this anatomical statement.

As I have done peace issues here particularly in Kuria East, one major problem that we have had is about the land that is in Trans-Mara but between Kuria and the Masaais. Over the years, the Kurias have always believed that this is their land based on the basis that their ancestral land stretched to that place. The land in question is around this part behind here and perhaps, I would request this Commission at one

point, if it could rise and tour that particular land that has brought a lot of chaos here. The Kuria claim ancestral ownership of that land. They have a lot of documents to prove that. Historical records indicate that indeed, that was the ancestral land of the Kuria people.

I will quote heavily from some scholars including one Wanguhu Ng'ang'a who has written a book on Kenya's Ethnic Communities: *Foundation of a Nation*. I will also quote from Prof. Atieno Abuso who did a book on traditional history of the Abakuria. I will also quote from John Osogo whose book I read when I was in Standard 5 who gave an indication that the Abakuria people's ancestral land was in a place called Butula. This Butula is within the area that is being disputed up to now. It is an area that all the Kuria settled before they moved to other places. That gives me a lot of nostalgic memories; particularly it is said to be in a different province. I have annexures to that effect which I will give to you to prove this history that claims that this land belongs to the Kuria people.

I have also quoted from a report done by Action Aid. It is a special report that has detailed all the injustices that have been done to the Kuria people particularly with regard to that land in dispute. Perhaps just to quote one, it is in Annexure 7 that I will provide to you. It says that the Masaai group moved to neighbourhood and the Purko Masaai came in 1954, the Moitanik Masaai came in 1955, whereas as indicated, the Kuria were here from as far as 1723. One wonders whether it is the case of which one or who came first, the egg or the hen? And indeed who raises more ancestral claim to this land, the one who was there earlier or the one who came later?

So against that background, the Kurias always quarrel. Armed with those kinds of documents, they have always thought that if the Government cannot intervene, then they have nothing they can do; either they attempt to go to court or they go and farm parcels of land. This one now triggers the conflict that we have had for a long time. This is apart from the other things like cattle theft and watering points.

Following the report of the Action Aid, the report says that there were errors and omissions that were committed during the adjudication of this particular land. I have read some small part of it; that the Land Adjudication Act of 1968 requires the adjudication officer to publish a notice in respect of each adjudication section defining as clearly as possible the area of adjudication section, interest of land within the adjudication section but it will be ascertained and recorded in accordance with the Act. He is also to publish the period within which a person claiming an interest in the land within the adjudication section must make his claim to the recording officer either in writing, in person, or by his agent as authorized according to the law. This report of Action Aid says that there were errors and omissions that were committed during that period and people of Kuria were evicted from their own land.

These are our prayers as the DPCs:-

- (i) THAT, the Government moves in quickly and uses the power of the state to extinguish or compulsorily acquire the titles of the land in question for a public purpose.

- (ii) THAT, the Government establishes the legal and administrative framework to investigate documents and determine the genuine IDPs for settlement.
- (iii) THAT, the Government develops a legal and institutional framework for handling land restitution, to restore land rights to those who have unjustly been deprived of their rights.
- (iv) THAT, the Government uses the win-win conflict resolution method to resolve the conflict.
- (v) THAT, the Government encourages and facilitates alternative dispute resolution mechanisms such as negotiation, mediation and arbitration.
- (vi) THAT, in resettling the people of Kuria, the Government incorporates community dispute resolution methods to avoid any further conflict escalation.
- (vii) THAT, in restitution process, the Government facilitates a flexible and negotiated cross border access to water resources and other utilities among communities.
- (viii) THAT, the land being a finite resource, only those who owned land in Trans-Mara before the eviction are settled in their pieces of land.
- (ix) THAT, Kuria-Trans-Mara land conflict, and this is a serious prayer, be categorized under the historical land claims which arose from 1895, which was the year that Kenya became a Protectorate under the British East Africa Protectorate with powers to enact policies and laws under the Crown.

Indeed, colonial practices and laws certainly informed the genesis of the deprivation of various communities of their beloved land.

So, Commissioners, as a peace monitor, my work is to identify areas that could cause conflict. As I move towards the next stage, I want to say here that the County of Migori is definitely a potential conflict trigger on the basis that the Kuria people opposed the constitution, that they demanded to have their own county for fear that perhaps they could be dominated by their neighbours. I want to talk about delimitation of county wards' boundaries which I think one of the presenters also emphasized so much on. I want to reiterate that the Task Force on devolved Government has already submitted its report indicating that constituencies may have at least five to eight wards represented at the county assembly.

I will be giving you a newspaper cutting that the Hon. Mudavadi made a pronouncement from one of the Bills that the Task Force developed. With this kind of situation around, there is growing anxiety around Kuria that they will be overwhelmed at the County Assembly due to their numbers. 10 wards from Kuria against 57, that is going by the number five of which Kuria East and West will produce only 10 members of the County Assembly and the other six constituencies producing 5 each making a total of around 57 or even 50. It is indeed some kind of mockery of democracy and representation of the Kuria people, because it will appear like the same rigmarole going on and on and on like a circus.

The community would, therefore, wish to request through this Honorable Commission that because the Kuria people are a minority, they are categorized as a minority in the Migori County and indeed, marginalized. In the Migori County with a population of

about 250,000, Kuria people are about 250, 000. They are feeling that between 10, 000 and 15, 000 could make a county ward. There are a total of about 25 local authorities wards which could be left intact and not to be combined, one ward to be combined with the other and then those that have bigger populations of about 20, 000 to 30, 000 could be split into two so that we can create some semblance of equity within that County Assembly.

Kuria is together with six other Luo constituencies heightening the thinking amongst the population that they will be dominated given the large number of representation expected to emanate from the other constituencies. Thus, Kuria could be comfortable with elective 20 to 25 county wards in view of the fact that there will be 67 wards in the entire County of Migori. That means if Kuria has a representation of about 25 in that County, the others will be around 40. If the Kuria people are clever enough to take intelligent people, then they could survive the onslaught.

Now, let me talk about the Equalization Fund.

(Translation hitch)

I know Kiswahili *kidogo* but I am not quite sure whether that is the correct interpretation of Equalization Fund.

The Presiding Chair (Commissioner Shava): You can help us, how would you call it?

Mr. Matiko Bohoko: Ule mfuko wa kugawiya maeneo ili kuleta usawa.

(Power failure)

The Presiding Chair (Commissioner Shava): I think the power has been restored, we can now continue!

Mr. Matiko Bohoko: I was talking about Equalization Fund. Honorable Commissioners, the Kuria people are the worst hit victims of Sessional Paper No.10. Of course you know Sessional Paper No. 10 crafted it. When I get pissed off, I call them President Kenyatta's spanner boys, the likes of Tom Mboya, who crafted that Paper to give money to the empowered areas in the guise that once those areas got rich, there would be some trickle down effects to peripheral communities like the Kuria people, including some of our colleagues in Migori County. It never happened. That being the case, then we submit here that a huge share of the Equalization Fund is allocated to Kuria through the decentralized subcommittees to cushion the gapping development holes that still exists in our midst. As you clearly mentioned, our roads are pathetic, we have no clean water. You can imagine there is no piped water in Kuria including in the towns. Our environment is gone, the multinationals in terms of tobacco companies have malnourished the forests of Kuria.

Our schools are extremely poor in performance as they are poorly equipped. All this is a result of marginalization due to that Sessional Paper No.10. Finally, hon. Commissioners, may I assure you that even looking at the attendance of this day, these people are enthusiastic and anxious that this Commission, at the end of the day,

will give recommendations that will facilitate, that will quicken the process of the provision of justice, reconciliation, and lasting peace that has eluded them for so long. May God bless you. On behalf of the DPCs, my two chairmen Chacha Mangiteni, and Keraka Chacha, I wish to submit this document as a memorandum on behalf of the Kuria DPC. Thank you.

Mr. Patrick Njue: Thank you as well Mr. Matiko. I must say that was also another eloquent and coherent presentation and following which I will just seek a few clarifications before I hand you over to the Commissioners. I will begin from the point where you left, where you said you want us to hand over formally the memorandum.

Mr. Matiko Bohoko: Correct.

Mr. Patrick Njue: Please, look at my copy here and confirm that it is similar to that which you have been reading.

Mr. Matiko Bohoko: They are similar only that my signature is photocopied.

Mr. Patrick Njue: So you would want the one bearing your original signature?

Mr. Matiko Bohoko: That is crucial, yes.

Mr. Patrick Njue: And you have also talked of other documents that you would want to share with us, whether it will be that you would run copies of them or those are copies that you want to submit as well?

Mr. Matiko Bohoko: I have enough documents in form of annexures to my claim and memorandum. If you have facilities around, perhaps we could make copies after this and I release them.

Mr. Patrick Njue: That will do. We have facilities but for the record purposes, maybe you can tell us what documents they are so that they are admitted. Of course, we will run copies and return the originals to you.

Mr. Matiko Bohoko: These are extracts from a book authored by Wanguhu Ng'ang'a, the one I mentioned. I also have extracts from Prof. Otieno Abusu which will actually give the Kuria people the audacity to claim that land. I also have copies from the Action Aid report, and I will then will submit them when you allow me.

Mr. Patrick Njue: Please, you can just submit them for admission. Presiding Chair, I request that these document be formally admitted on the records of this Commission as Mr. Matiko so wishes.

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

Mr. Patrick Njue: There is the actual report that the court dealt on. I wonder who it was meant for and, perhaps, for what purpose.

Mr. Matiko Bohoko: I forgot to mention. I am very sorry for this. The report from a group called *mnyonge hana haki*. This is a civil society group that has been involved in researching as to the cause of the conflicts between Kuria and Trans Mara. I think what triggered the preparation of this report was the rude eviction of the Kuria people from their own land.

Mr. Patrick Njue: Again, coming to your work, where you worked as District Peace Committees (DPCs), I want to appreciate the level at which the Deputy PC has permitted to even involving members of the community. I have seen you have said, that among other partners are CSOs. Do you work with community elders?

Mr. Matiko Bohoko: Our laws are such that we must have women in the DPCs. We must have elders in our DPCs. We must have FBOs in our DPCs, CSOs and others.

Mr. Patrick Njue: Do you think this is something that should be in every other district in Kenya? I am asking this because looking at the level of success of DPCs, I wonder what it is that has stopped this being replicated in every other district.

Mr. Matiko Bohoko: That is a bit tricky. Let me try to answer although it should have been answered by my boss, Mr. Maina, who is in Nairobi.

There is something called the National Peace Policy that is being developed. I think our DC is also in Nairobi for the same. Alongside with that, we will be soon launching the District Peace Committees in Kenya (DPCs). I mentioned earlier that these 17 districts are on pilot basis. They broaden them to encompass the entire country. I think with the entrenchment of the counties, we are going into what we call the County Peace Committees.

Mr. Patrick Njue: Again, from your presentation, indeed, from the title of our memorandum, I know you have quite dwelt on the boundary issues, but generally, as a peace monitor, what are some other instances of conflict have you come across? Perhaps, you would tell us whether they are prevalent or not.

Mr. Matiko Bohoko: There is a quite a lot, but I thought out well on the most importance ones.

What really eats me as a peace monitor, particularly here in Kuria, we have smaller districts with boundary disputes, cattle rustling, intra community cattle theft and inter community like the Maasai and the Kuria.

In my own view, the issue of cattle theft is something that we can finish. However, we need more involvement by the Government to sort out this problem here. As an early warning, if this land issue of Moyo is not resolved, there will always be problem between those people and the Kuria people. That is where the people go to farm. That is where they graze their cattle. That is where they water their animals. So, there will always be conflict unless proper demarcation is done and people resettled on their land.

Mr. Patrick Njue: My next question would have been what the situation is with the other boundaries, and I know you have alluded to this. Let me get this right, the main community living there is the Maasai?

Mr. Matiko Bohoko: The immediate neighbours in Transmara are Kipsigis and Maasai. The Kipsigis borders us to the south and Maasai to the north.

Mr. Patrick Njue: The other boundary to Kuria is western side. Who are your neighbours on western side?

Mr. Matiko Bohoko: On the western side, we have Tanzania, which is inhabited by Kuria people of Tanzania which we normally have conflict over cattle theft and to this other side, we have our brothers Luos.

An area this Commission should strongly recommend is the issue of Migori County being addressed in a manner that there has to be proper representation of the Kuria people in that county. I know the Constitution talks about affirmative action. However, in the event that our people do not know what affirmative action is the likelihood is that other people may take advantage as the Kurias continue to languish.

One presenter talked about an area called Sagegi. Until recently in the 1980s, the Luos were fighting with the Kuria people over that land. That land is being claimed by Kuria people and the Luos as well. The claims are such that title deeds have already been acquired for that particular land. The owners are now destitute of some nature. There is, indeed, a land problem in that area. I can ascertain here that Luchota is an area that historically belongs to the Kuria people. There was war between the Luos of Migori and Kuria. The Government moved in to quell the situation, but they evicted the Kuria people and created a buffer zone of some kind. They put what they called Lake Basin Authority just for purposes of wanting to separate these two tribes so that they stay far apart. Those are areas that we have conflict on.

Mr. Patrick Njue: Let me come back to the Kuria and Transmara common boundary. How is the situation between these three communities as far as social facilities are concerned? When I say social facilities, I mean schools, hospitals and churches? Do you share this or each community has its facilities? Do you have common facilities?

Mr. Matiko Bohoko: I would put it clear here. That until the DPCs moved in to bring some semblance of peace, the Masai never crossed this side. The Kurias also never crossed to the other side. When a Kuria is seen on the other side, he is labelled a cattle pincher. He is going to pinch cattle. I am sure even in the nearest part of Maasai and Kipsigis, there are no common schools. They do not share schools. This is because nobody would go to those schools.

On the Kuria side, there are a few schools which, of course, are not patronized by Maasai. They fear that those are their enemies and they cannot easily mix with them.

Mr. Patrick Njue: My last question is drawn from your closing remarks. In your presentation, you are asking the Commission to make recommendations, but even before it can make its own recommendations, as a peace monitor who sits in the DPC, what are some of the suggestions on the issues of boundary and land that can help us

or inform us? As you tell us, you would be speaking to the Kuria people and the nation at large on some of the recommendations for lasting peace.

Mr. Matiko Bohoko: I pity this Commission. I have been around long enough to understand. But, indeed, this is the only kind of truth and reconciliation since I was born. Perhaps, it may be the only one until my son who is about four years gets to the age of around 47 like me.

I have seen many Commissions come and go. However, I trust this one. With the current constitutional dispensation, this will bring food on the table. What I envisage is that the recommendations that you give, let it be recommendations that can act upon immediately. You may not be in the Government to implement your recommendations. But amongst you, I know there are lawyers. Look for a way you can tie the Government through your recommendations. Tie their hands so tightly so that the moment the report lands on the President's hands, make it look like it is even a crisis that if these things are not addressed, the world could break and people would sink.

As a peace monitor, I think an issue I am requesting that you, perhaps, rise one day and address; this issue should not wait any further. Until last week, we were sorting a problem in a place called Witembe, that mischievous Kuria person, just because he believes that land was ancestral land, went and uprooted beans and threw them away. They belong to the Kipsigis. This was because of that feeling that that land belongs to a Kuria person; a stubborn Kuria man walks up one morning with about 50 cows of his, he goes to feed them on a *shamba* of Kipsigis, just to provoke war so that they can fight. We know the mischievous people are always the thieves. When there is war between the Kuria and Maasai or Kipsigis, they get a chance to steal more cattle from the other side. But the trigger is that piece of land.

I know you will get presentations from surviving people here, who I am sure will shed tears saying how many people they lost during that eviction period, and the properties they lost. They will tell you even the names because they have them right now and they bear the land marks of Kuria people in that other place. Therefore, the thinking of this man is that, that land is not his, but he would like to get a share of it.

Commissioners, I know people have title deeds here. But you can understand the person sitting in Nairobi has some link with some people here on the ground, acquires a title deed of a huge chunk of land and because he has powers, he influences the Provincial Administration. He wakes up one morning and commands, the PC, DC and DOs to unleash policemen and Administration Police and GSUs to come and burn houses of people on the basis that when land adjudication was done, these people were found to be in Rift Valley. We know, of course, Rift Valley was a preserve for the Maasai, according to the thinking of the colonial man.

Therefore, any other tribe that is found within that area, whether born there or not, that is Rift Valley. You have to go and look for where you came from. That is what exactly transpired here.

The eviction of 1989 was done when President Moi was in power. We had bigwigs. We call them in the journalistic jargon, the likes of Sunkuli, who was working in the

Office of the President. He was the Member of Parliament for this area. You can imagine the immense powers that this man wielded. One is bound to ask the question, how people like Dr. Manduku who is from Kisii was able to acquire huge chunks of land here. He has a title deed for that land. They cannot even physically locate where that land is.

You would remember the history of Father Kaiser. He was a parish priest here, Magina, where you will be shown his faithful were evicted. He made a lot of noise until he died. That is a clear indication that Father Kaiser had goals for the Kuria people. What I am precisely saying is that, that mentality of a Mkuria person that he has been rudely evicted from his own land and he may die, but the spirit will not die, is very strong. His children and grandchildren are now living in deplorable condition as IDPs.

For the sake of peace, Commissioners, if you can, on the first page of your report, put Kurias' case as priority number one. I know once there is peace here, we will prosper as Kuria people and our neighbours. I am a peaceful man because I am God's man. I want peace to prevail here so that our children can go to school. Last year, for example, the performance of the pupils in Kuria East was pathetic because of skirmishes.

I think I have answered most of the questions. Perhaps, I will take more questions.

Mr. Patrick Njue: They will be posing questions to you, that I can assure you. However, in a line or two, talk to the people of Kuria and give them a message of peace and reconciliation. That I have not heard you put it across.

Mr. Matiko Bohoko: I would like tell people of Kuria that justice will be done. Justice will not be done by you picking your weapons, and going to the Maasai or Kipsigis. Justice will be done through this kind of forum and even courts. With our new Constitution, we will have better courts that will listen to our grievances. If we remain peaceful, everything will be possible. These Commissioners are serious people. My friend, Tom Ojienda, is there. I believe it will not border on corruption, if I come to your office and ask you to expedite the process of Kuria, so that justice is done to us.

Mr. Patrick Njue: Thank you, Mr. Matiko. Allow me to end my clarification from you. You have said Commissions have come and gone, but whatever they recommended is yet to be implemented. Yes, we have come and we will go because we have a definite mandate. However, let me mention that with our recommendations, our Act is clear that the implementation is mandatory. Further within the same Act, it provides for what I will call a monitoring and evaluation exercise to gauge the Government of the day or the implementing agency to see how far we have come in terms of implementing those recommendations. In that very sense, that provides distinction between us and other Commissions. I do not know whether it serves you to give you briefs, but certainly, I know whatever recommendation we will come up with, will be for the better of Kuria people and the nation.

Thank you for your time, Mr. Matiko, Commissioners can now ask you questions.

The Presiding Chair (Commissioner Shava): Thank you very much, Mr. Matiko for that very eloquent testimony. I would now ask my colleagues whether they have any questions. I start with Commissioner Dinka.

Commissioner Dinka: Mr. Matiko, thank you very much, for your testimony. You have presented the memorandum and it is very clear.

There are non Kenyans among us, but you have put a very important light on very complex problems. I have one or two questions to clarify certain aspects. You said in one paragraph of your memorandum that the Government should make special intervention to review the principle of absolute sanctity of forest registration and registration of land act. Are you suggesting that the Government does this for the entire country, or only for areas where there are conflicts?

Mr. Matiko Bohoko: I think these things have not only been done to the Kuria people. There are many other areas where people have been deprived of their rights. So, let this recommendation incorporate other areas. While plots were being hatched at Nakuru, at the provincial headquarters, that time, perhaps, somebody else in Meru was hatching the same plot for other people elsewhere.

Commissioner Dinka: I asked that question because the issue of title deeds and land in Kenya has become so entrenched that I do not know how one can pick one case and leave the other. We do not want to create more situations of conflict than peace.

Mr. Matiko Bohoko: I understand, Sir. There are particular areas that can be addressed specifically for that purpose.

The issue of creating more chaos may not arise due to the reason that if the Government repossess that land, the Constitution, which I have a copy of here is very clear. For example, even in the case of Manduku who unlawfully acquired land here, he will say he acquired it legally because he has a title deed to it. But he can be compensated by the Government. I think it is the responsibility of the Government to identify those hot spots, repossess that land, compensate the people and settle the landless.

If you look at the memorandum, I have said after the land has been acquired by the Government and the owners compensated, the surrounding community will be involved in that negotiation process because they understand who owns land in their area.

In one of my recommendations, I talked about a win-win situation in a conflict management. Win-win situation is not win-lose neither is it lose-lose situation. If the Government repossess this land, it will make sure that it is distributed in a fair manner, so that communities live in peace.

Commissioner Dinka: Thank you for that answer. My second and last question is actually what you just mentioned. You suggested a win-win situation; what looks like a win-win situation sometimes can be lose-lose situation to the other people. In this particular case, if the Government takes the land to which I have title deed, declares it some kind of State domain, takes it away from me and pays, forces me to accept cash

for a replacement of land somewhere, and then gives it to you, who has been claiming this land forever, then I may not necessarily consider it a win-win situation. That is why that question was put to you by the Leader of Evidence. Three out of six here are foreigners, and we are prepared to make the necessary recommendations to the Government. As the Leader of Evidence said, implementation of recommendations is mandatory because there will be a mechanism to even monitor the implementation process.

As a man who has been involved in peace-making process or as a member of District Peace Committee, give us the best suggestion. I do not believe what you said, that the Government taking and giving you is the best suggestion. That is like robbing Peter to pay John. That will not work. Give us suggestions that will bring a lasting peace to Kenya as a nation.

Mr. Matiko Bohoko: I will give an example from Kuria before I go elsewhere. Some of this land that is being claimed by people who were evicted, is not claimed by a Maasai or a Kipsigis. Actually, the person who has a title deed is not a Maasai or a Kipsigis. This is a different person who is only known on record. Even the Maasai have a problem over the same. When they start imagining that is their land, it is not their land on paper. It belongs to somebody else. They are mere agents and brokers between the absentee landlords and any person interested in going to do business there. So, in a situation like that, if that land is taken by the Government, this person in Nairobi is compensated as the Constitution requires. The Maasai, the Kipsigis, the Kuria and the Provincial Administration will sit down and come up with the best ways of subdividing that land once it has been repossessed. They will be told the land that had been taken from them has been repossessed. They will be asked to give suggestions on how best it can be distributed among Kurias, Maasai and Kipsigis. I think that will be the best approach.

Commissioners, when the real victims start speaking here, I am sure they will name owners of that land from where they were evicted. They will tell you that they have no problem if they are given back their land. They will not care whether it is a Maasai or a Kipsigis who gets it. He will only want his piece of land. The rest of the piece of land can be given to a Maasai, a Kuria or a Kipsigis if he lays any claim to it. They will live together as one nation.

Commissioner Slye: Thank you, Mr. Matiko. As I understand, the issue relates to the 1989 eviction which is really the focus in terms of land issues here. The local communities, that is Maasai and Kuria are all victims. I am just trying to understand your testimony. You spend sometimes in your memo also talking about historical and land occupation. You said this happened between 18th Century and maybe to 19th Century. But according to you, the Maasai Community came in the early 20th Century. Is that relevant in trying to resolve the land issue here? Do I understand that correctly or is there some significance that you place on the fact that Kuria were here before the Maasai?

Mr. Matiko Bohoko: The basic reason of having to dwell on historical records as I put it here is to try to find out whether Kuria people who now live in Nyanza have any claim on that land.

I emphasized by quoting authors who are not Kurias, but have written a lot as far as our history is concerned. They have done a lot of research on the history of Abakuria, Maasai, Kipsigis, and their movement to this part of Kenya. I have corroborated that with the most recent report done by experts to justify our claim on this land.

For a long time, the Government has assumed there is no problem as far as land is concerned here. I think what has been happening here is that the Government has assumed that there was no problem; that the Kuria making noise did not have any right to that land because, after all, the land is in Rift Valley. So, the assumption here is that the land being in Rift Valley, they are, therefore, supposed to be in Nyanza. They are not supposed to be there. That was the purpose of dwelling on historical grounds just to establish – you can see in my recommendation I said: “Finally when the Government moves in, let it investigate the genuine evictees, the history notwithstanding.” There are those like my grandfather who came through there but we live several kilometers from here. I do not think I have any reason, on the basis that history says we were living there some time--- I can go and claim land there. But here are people who were born even after the colonialists put the boundary and said: “This is Rift Valley and this is Nyanza.” There were Kuria people living there. I did not want to dwell on a lot of it but I can tell you if you want, there are old people here who can take you to some trench that was dug by prisoners who were under the colonial custody. They came to dig that trench for one purpose; to stop elephants crossing this way from Maasailand and to demarcate the Kuria jurisdiction or the Rift Valley jurisdiction and the Nyanza people. However, that trench was overstepped. I believe a Mkuria being what he is, there will be some witnesses here as old as those who were criminals then and who may have been involved in digging that trench. They will tell you that this was to say that this is Rift Valley and this is Nyanza. Am I right?

Commissioner Slye: I do not know if you are right about the trench. That is helpful and so history is important but it does not provide a basis for claim, as you have said, to the land. In your memo, the second last page, second paragraph on the delimitation of county ward boundaries, the paragraph that starts: “There is growing anxiety---” You talk about ten wards from Kuria against 57 or more from other constituencies and said that may be a mockery of the democratic process and representation of the Kuria people. So, my first question is: Are those real numbers or is that just speculation about what the number of wards would be? I have to confess that I have been briefed here on where the ward issue is under the new counties here in Kuria since we arrived yesterday. Are there going to be ten wards for Kuria and then 57 or more from others or you are using that as speculation to highlight the general concerns?

Mr. Matiko Bohoko: I am a trained journalist, if I may have to praise myself, of great repute; I do not make speculations. Here with me, I have Mutaha Kangu’s Taskforce Report. There are six Bills, one of them is on devolution and particularly the counties. That Bill is soon going to become law and what they are saying is that municipal council wards will be combined into three or five in one constituency. The day before yesterday, when Mr. Mudavadi was requesting Members of Parliament to go to Naivasha for a retreat purposely on these Bills, he grouped several constituencies in different groups. He talked of those who have about 12 constituencies at the county; he talked of those who have ten constituencies in one county; there was one group that had nine and another one that had eight. The one that

had eight is where Kuria belongs. That is because within Migori County, if the Bill is going to become law, we will be eight. Therefore, he said, those with eight constituencies like Migori will have 67 county assembly wards. I have a document here that I will produce after I stop answering these questions. So, against this kind of background, perhaps, Kuria will have Kuria East and West. As unlucky as we have always been, our municipal council wards could be condensed in such a way that each of our constituency produces five wards or even eight because if you divide 67 and the number of the constituencies is eight, you get about eight wards. So, assuming that Kuria East gets eight wards, Kuria West gets eight wards, those are 16 county assembly representatives. Then minus 16 from 67, it is about 42 or something and I can imagine myself as a county assembly representative trying to articulate issues in a team of people who have stereotype prejudice against a certain community without knowing that we can articulate issues more than they can. So, at the end of the day, when you try to push motions through this kind of situation, then you will require miracles to have Kuria get its share.

Commissioner Slye: Thank you! That helps me understand this immensely more. Do you happen to know what the population of Migori County is?

Mr. Matiko Bohoko: We are about 900,000; close to a million.

Commissioner Slye: And about 250,000 Kuria people?

Mr. Matiko Bohoko: According to the 2009 statistics.

Commissioner Slye: In your memo you propose that the wards be based upon constituencies of 10,000 to 15,000 people and that would mean that you would have 100 wards and 25 of which would be Kuria.

Mr. Matiko Bohoko: You have to get me right there. We have what we call “affirmative action”. We have a Constitution that says there will be affirmative action in this kind of situation. We are already categorized as minority in the Migori County. Now, if we apply the affirmative action under the Constitution, then we can say, instead of killing these three or combining these three from Kuria to make one ward, we let the minorities like the Kuria people, Mt. Elgon and the Teso, or if it applies in any other place, in a form of affirmative action, we could say: “Let these people remain as they are.” However, that is not to say that in some of the wards we have in Kuria, we have those that have about over 20,000 people. But to be fair, I said with Kuria, let us have around 15 or 20 so that, at the end of the day, we can have all our municipal wards retained. There are 25 and the rest can divide them as they want because that is the majority group. Even after this affirmative action, we will not have halved that group.

Commissioner Slye: If I understand you correctly, what you are saying is that if you divide 10,000 to 15,000 persons per ward, the 250,000 Kurias will give you 25 wards. You are saying that, using the principle of affirmative action, Kuria should have more than 25?

Mr. Matiko Bohoko: Correct!

Commissioner Slye: That would apply to other minorities as well?

Mr. Matiko Bohoko: Correct!

Commissioner Slye: How many other minority groups are there and, therefore, how many extra seats would you say that they would be entitled to as well?

Mr. Matiko Bohoko: I may not be of that profession but, what I mean is that we have minorities within the Migori County. But those are isolated people living amongst ourselves. We have Luhyas who cannot claim any specific area as their region or area of influence. We have Somalis, Kikuyus and Kisiis. We call them *Nyarobiro* – fellows who came. They are just mixing with us and with that kind of affirmative action, it will apply when we bring in the issue of Cohesion and Justice Commission Act that says when you are employing, please take into consideration the people who live like this. But I am talking about affirmative action for the Kuria people against the background that there are some counties whose population is homogenous. There are counties that simply have one tribe and that is not to say that there are no other people like Kikuyus living amidst them. But Mt. Elgon and Kuria are clear cases that those people have to be assisted to live.

Commissioner Slye: That is clear to me and I want to thank you again for your testimony and I have no further questions.

The Acting Chair (Commissioner Namachanja): Thank you, Mr. Matiko for the good work you are doing of promoting peace. I just wanted a few clarifications. Between the District Peace Committee (DPC) and the National Steering Committee, (NSC) is there anybody in between?

Mr. Matiko Bohoko: There is nobody; it is from the national steering committee directly to the district peace committees. However, we work under the DCs as our patrons because their line, Ministry of the Office of the President and the NSC, is under the OP. In fact, the national co-ordinator was a DC at one point, Mr. Samwel Maina. So as a peace monitor here in charge of the DPC, I communicate directly to Mr. Maina and the NSC, apart from issues that I compare notes with the DC because of his muscle within that district.

The Acting Chair (Commissioner Namachanja): So, you report to the Government?

Mr. Matiko Bohoko: There is one addendum that I forgot to mention here. We work as peace monitors under the sponsorship of the UN who have cushioned the Government in having us co-ordinate peace issues on the ground. However, our immediate supervisors are people of the NSC and I think they are Government people.

The Acting Chair (Commissioner Namachanja): And so, all these recommendations that you have asked us to pass over to the Government, why have you as a DPC structure found it hard to pass them directly to the Government?

Mr. Matiko Bohoko: I do not know why you are saying that I have found it difficult. In fact, before I mail this thing to my office in Nairobi, there are so many other reports like this. I will tell you that, two weeks ago, we had a meeting at Bwitende

sponsored by the Government and after that – Bwitembe is an area between Kipsigis and Kuria East where the Maharagwe theme was – there were recommendations from that meeting which are more or less the same as these. I sent to them and they said there is an urgent need to address this problem because when we go to those meetings, you can see somebody speaking and you can think the world is coming to an end because of that.

The Acting Chair (Commissioner Namachanja): These recommendations that you have put to us, have you shared them with the Government through the NSC?

Mr. Matiko Bohoko: I will repeat: Before I came to present here, I mailed this thing to my bosses in Nairobi because as per protocol I would not come to sit here and present this kind of report here when they have not looked at it.

The Acting Chair (Commissioner Namachanja): Some conflict analysts have identified the counties that are going to be major sources of conflict. As an early warning and early response mechanism, have you as the DPCs done this analysis to find out the tension lines that could be sources of conflicts in the counties because of the manner in which they were set up?

Mr. Matiko Bohoko: I have an advantage of being the secretary to the Kuria Select Committee that is dialoging with the people of Migori on issues of sharing positions in the county. Therefore, I have a clear vision and as a peace monitor, I will tell you that I had just been employed before the Referendum when hate speeches were made. Unfortunately, the person who made those speeches, one of them was my Member of Parliament. There was a lot of tension around here and there has been consistent reporting about the issue of counties, particularly Migori as potential conflict areas. As a peace monitor and the DPCs, we have already consulted the DCs - our own DCs in Migori - with an aim of expanding the peace monitoring and peace committees to incorporate Migori so that we resolve this issue before it explodes.

The other day, Ms. Mary Onyango, the Vice-Chair of the Cohesion Commission was here to address a workshop that brought together people from Trans Mara, Kuria and Migori. During the planning meeting of that workshop, our people in Nairobi had only thought of a conflict between the Maasai and the Kuria people but because of these kinds of reports, I insisted that we must have people from Migori also to attend that workshop, purposely to bring them together so that we can resolve this issue before it explodes.

Let me say one thing that is very pertinent in one of the reports that are made and I have already reported: that the Kuria people have three options about this county. If positions are not shared well in that county, they are likely to boycott. One politician made it clear - and he was referring to 1990--- He was trying to send a warning that is common sense here that people may decline to go to Migori County and paralyze the operations of that county. There is a clause in the Constitution that says operationalizing counties will depend on the way the people are organized; how prepared that county will be. So, in a situation like this, if Kuria does not go to Migori, even after the elections, they may go to court. So that is one option.

One area that is being explored now is this win-win situation; a *quid pro quo* situation; a give and take kind of situation. That is what is being followed now. That if you decide to be a governor from Migori the other side, let a Kuria become a senator because there are qualified people in Kuria as well. If you say the speaker should come from Migori the other side, then the Muthaura- chief secretary - of Migori should come from Kuria. We are finding it very difficult because the positions of senator and governor are elective. There have been suggestions that we have even made that if common law could be applied, *ya kufikiria tu* not necessarily that it should be written, if it can be used such that people understand that if this governor is from Luo this one has to come from here, it would be good; not necessarily going for election because that *mama* from Rongo may not even know that there is somebody existing called Mkuria. So, those are two positions I have given you and because I am well networked in Kuria, I talk to councillors, civil servants around here, elders, *mamas*, there are even those who came up with the last option that if those guys take all positions of the county because of their numbers, then the lowest degree of diplomacy could be applied. That is the last resort they have. I am saying this with confidence that this Commission will find a way of helping this kind of situation as an early warning report.

Commissioner Ojienda: Thank you, Mr. Bohoko for the presentation of your memorandum that was structured clearly in form, sound and substance. It was grounded and easy to understand. We now understand all the issues. Probably I have an advantage because I understand the issues more and when there are issues to follow up, our office is open as we have said we can always consult. Just one point on the land question because there are many issues that have been raised, under Chapter 5 of the Constitution of Kenya 2010, the number of laws that are currently under consideration or being drafted, one is specifically on historical injustices. As you are aware, community land is recognized. The community will be able to protect its land and will even be able to go to court. Indeed, any title which was not properly given is now protected by the Constitution and can be revoked. I like the formula that you proposed. Maybe, you want to make a contribution to the process because the draft will be out for debate. The Land Bill and the Land Registration Bill have been prepared and all those will be available to the public. All those issues that you raise are pertinent and, as a people, you will be able to follow up all those issues.

On the question of the boundary, we are aware that IEBC is now being created. But I believe that you will make those powerful presentations to the Commission that will finally delimit boundaries for the wards so that you make a case for Kuria based on the fundamentals in the Constitution itself and on representation. I agree with you that leadership and representation in Migori County as currently constituted cannot be complete without inclusivity and inclusion of the Kuria people. You are part and parcel of that county, you are a minority. You must be represented in both elective and nominations. So I agree with you on all the issues that you have raised.

Commissioner Chawatama: I wish to be identified and I adopt the word of Prof. Ojienda as my own in thanking you for your presentation except on the issue of land and boundaries on which issues my knowledge is very limited. But I thank you all the same.

The Presiding Chair (Commissioner Shava): I would like to thank you and associate myself with the comments made by my fellow Commissioners. I think your presentation was very lucid and I particularly enjoyed the way in which you extrapolated just off head. I found it very useful. Clearly you speak from a position of intimate knowledge of the situation with regard to conflict, the sources of conflict and you had some very interesting propositions about how we can go about resolving the conflicts. The question I had has been asked by Prof. Ojienda with regard to the win-win situation. So, I was also paying a lot of attention to your answer on that. I am glad that you have received affirmation and advice from our land expert, Prof. Ojienda, on how it is that you can go about these issues given the new constitutional arrangements which, as the previous speaker had said, may not be very clear to the vast majority of Kenyans. But we will do what we can with regard to the issue that you have raised of civic education. It is a very serious question because now that we have the Constitution which is supposed to be our handbook of how we live together as Kenyans, if we do not know what it says or what it is supposed to do or how we are supposed to do it, then, we cannot progress. So, thank you very much for your presentation. But do you find that in your work with the DPCs that the Government takes your recommendations seriously and are they effective in helping in realizing those recommendations?

Mr. Matiko Bohoko: I may not have worked with the Government until now because, all my life, I have been working as a journalist. The only stint I had with the Government is when I worked with *The Kenya Times* as the Bureau Chief in the Coast Province. However, *The Kenya Times* was never a Government institution; it was just like any private company despite the fact that it was owned by KANU. What I am saying in this sense is that we have strict guidelines that we follow as peace monitors. We make situation reports. We do weekly situation reports, monthly reports, quarterly reports and any other incidentals, those things that happen at that time we also report. What has dominated my reports for the last one year is to remind the Government through the NSC that we have a land conflict around Trans Mara area. I also make reports to the effect that there is a problem that is going to arise because of this county business. It is not only Migori but in counties that are not homogeneous in nature. There is that kind of problem. So, how much the Government takes that seriously, I do not know. I do not know how long it takes for them to react to a situation like this. All I know as a journalist is to be consistent. You have to be consistent in reminding the Government that this problem is there and, at one time, we even tell them how long it is going to erupt. One month ago, when there was a problem here, for me to get facilitation from Nairobi - and not because I wanted facilitation - but, indeed, there was going to be war because two Kipsigis people had been killed; another had been killed in Tanzania but still in Kuria. There were so many alarms being raised there and we were all the time on our toes. Had we waited for even one week, there was going to be war there. So, what I am saying in a nutshell is that how the Government operates, I may not dictate that. But we sincerely give reports and we are very consistent in our reports; very constructive and impartial.

The Presiding Chair (Commissioner Shava): Thank you very much. It is clear that those pilot projects of DPCs are doing important work, and that there is a problem in terms of the channels of communication. It seems we are only going one way and we do not know what happens after or what is going to come down. I think that is

something that is going to be very important in terms of our coming elections and other flashpoints of conflicts in our country.

With that, we would like to thank you very much for coming and giving us that very informed testimony. It has been of great help to us. We will break now and convene at 3.45 p.m.

[The Commission adjourned for lunch at 2.25 p.m.]

[The Commission resumed at 3.45 p.m.]

The Presiding Chair (Commissioner Shava): I welcome you all to this afternoon's session. Clerk for the session, please, swear in the next witness.

(Mr. Benson Nyahiri took the oath)

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

Mr. Benson Nyahiri: I am Benson Nyahiri Kohera. I reside in Magucha village, Nyamagenga Sub-Location, Nyabasi North Location, Kuria East.

The Commission Secretary (Ms. Nyaundi): There is a gentleman who is seated to your right. I ask that you introduce him.

Mr. Joel Mwita: My name is Joel Mwita. I was born in Masangura Sub-location.

The Commission Secretary (Ms. Nyaundi): I have with me a memorandum dated 17th November, 2010 in which you are focusing on the forceful eviction of the Kuria people from Trans Mara District in 1989. The Commission has received the larger memorandum and I am asking that you summarize the presentation. I invite you to make the presentation and then if there is anything that you can add, your neighbour will add.

Mr. Benson Nyahiri: Thank you very much. I am the Secretary of *Mnyonge Hana Haki* which is a group of people who were affected in 1989. Here is a memorandum of the Kuria people who were in Trans Mara.

We the Kuria people who were residents of Machango Location in Lolgorian Division, Trans Mara District humbly beg the Truth, Justice and Reconciliation Commission to give us a hearing on the untold suffering that we underwent. We, the Kuria people of Trans Mara, occupied the land in question since 1723 following our migration from Egypt, as the story goes. Our ancestors lived at Misinei (Nyatigirei) but because of persistent drought, the Kuria people were forced by circumstances to Lolgorian in search of water. When the Kuria people lived in Nyatigirei Hill, they built a stone enclosure (obogwe) for security on top of the hill. The stone enclosure still stands to date. Between 1843 and 1914, the Kuria people of Trans Mara moved to Rabone near Nyasoko hill prompted by the effects of the First World War. Sometimes in 1948, the Kuria people in Trans Mara moved from Ngabone to Magena area where they settled permanently. From 1914 to 1989, the Kuria people lived in

harmony with their Maasai neighbours. The Kuria people even had their own assistant chief by the name Chacha Marwa. The Kuria enjoyed all the privileges as enshrined in our Kenyan constitution.

Come 1989, all hell broke loose against the Kuria people living in Trans Mara. On 2nd February, 1989, the people woke up and found themselves fully surrounded by Government forces comprising the Regular Police, Administration Police and the Paramilitary amongst others. Without any notice or negotiations, the armed men descended on the harmless and innocent Kuria people in Trans Mara District and evicted the people by force.

The following are the immediate results of the forceful eviction: Houses were set ablaze, many women and children were beaten, mothers and daughters were raped and some were infected with sexually transmitted diseases. Crops were destroyed and the granaries were burnt. Livestock in their thousands were rounded up, some were killed and others slaughtered for the armed men and others sold at a throw-away price. Houses were looted of all valuables, learning institutions, health facilities and church buildings were demolished. Generally, the mayhem inflicted by the Government forces on its citizens on this dark day has remained permanent scars on the lives of the evicted persons. A total of 1, 240 families (13, 000 people) were affected. This number has since increased through reproduction. These people are now living in slums and are accommodated by well wishers. We, the evicted Kuria people from Trans Mara, are fully aware that we are citizens of this beloved country Kenya. Our rights are fully guaranteed by our Constitution. Preferential treatment on our neighbours the Maasai, and inflicting damage to the Kuria people in Trans Mara by our Government is the reason we are requesting your esteemed Commission to address.

We, the Kuria people of Trans Mara, humbly request that we be resettled back to our original land in Trans Mara. We are also humbly requesting for compensation by the Government following the heavy loses we incurred during the forceful eviction. It is our sincere hope and prayer that justice will be done and this violation of human rights corrected. I am the secretary of *Mnyonge Hana Haki* and may God bless you.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mr. Benson. I just have a few questions for you and then the Commissioners will also ask you questions. They will also ask Mr. Joel questions if they have any for him.

I have here with me a report entitled “Land Issues in Kuria and Trans Mara Districts” that was commissioned by Action Aid. In this bundle of documents, there is also a bundle of documents prepared by the administrators while Kenya was still a colony and finally, there is a list of people who were affected by the evictions; correspondence between Mr. Thomas Chacha Matiko and the PS, Office of the President in charge of Internal Security. I want to ask you whether the Commission can admit these documents together with copies of identity cards for persons who were affected by the evictions on to its records.

Mr. Benson Nyahiri: Yes.

The Commission Secretary (Ms. Nyaundi): Chair, I pray that you admit these documents.

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

The Commission Secretary (Ms. Nyaundi): For those of us who are not very conversant with Kiswahili, the name of your group *Mnyonge Hana Haki*, what does that mean?

Mr. Benson Nyahiri: It means even if we do not have that power of accessing our rights, we have that right.

The Commission Secretary (Ms. Nyaundi): You have mentioned that a number of people from the Kuria community were evicted from Trans Mara. At the time of eviction, did they have titles to that land?

Mr. Benson Nyahiri: No. There was an agreement which was done by the Kenya colony. We were holding that land. We have a paper which was agreed upon in 1925. Our chief called Mkono Chogo had signed an agreement with the colony. From that, we have another one signed in 1945 and it showed that the land belonged to us. Before those things, we had no other paper other than the one signed by the colonial government in 1955 which states that the land was to be ours from May 1955 up to the end of the nation. We believe that the land belongs to us because if you look at the paper of 1955, the colonialists asked our ancestors to pay 777 head of cattle so that the land can be ours. Since that time, nothing was done other than the eviction that we had seen.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Just so that we can admit these documents on to the records of the Commission, there is an agreement titled, “Tribal War” dated 30th January 1925, there is another agreement titled “Tribal War” dated 2nd May, 1945, there is an agreement between colony and tenders dated 9th May, 1955 and finally, there is an agreement dated 3rd June, 1955 titled “Task Force Operation and Payment”. I pray, Chair, that you admit these on to the records of the Commission.

If we understand you correctly, you say that your entitlement to this land can be traced back prior to the independence of this country and you had received a commitment from the colonialists then that the Kuria were entitled to that land.

Mr. Benson Nyahiri: Yes.

The Commission Secretary (Ms. Nyaundi): Based on the documents that I have seen in the folder, it appears that there was some adjudication that was done by the independent Government of Kenya. Did you as a community participate in that adjudication?

Mr. Benson Nyahiri: No, we were not informed and for your information, we objected to the adjudication but our objections were not heard.

The Commission Secretary (Ms. Nyaundi): After you received the results of the adjudication, three representatives, that is Mr. John Chacha, Mr. Mabanga Maswei and Mr. Julius Chacha addressed a letter to the Minister of Lands protesting against the objection. That was on the 14th of May, 1985 and you would wish to have that admitted on to the record of the Commission.

Mr. Benson Nyahiri: Yes.

The Commission Secretary (Ms. Nyaundi): Chair, I pray that you admit the letter dated 14th May, 1985 on to the record of the Commission.

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

The Commission Secretary (Ms. Nyaundi): After you had lodged that objection, you were not aware that an appeal was heard in Narok where your community was not represented?

Mr. Benson Nyahiri: We were not aware and there was no peace at that time. No Kuria could go there.

The Commission Secretary (Ms. Nyaundi): What you are saying is that when the appeal was being heard, it was not possible for you to go to Narok because there was tension then?

Mr. Benson Nyahiri: Yes, there was very serious tension.

The Commission Secretary (Ms. Nyaundi): But you are aware that right now, the people who stay in Trans Mara were issued with titles to the land in that region.

Mr. Benson Nyahiri: They were issued with title deeds but we objected and we later went to court. We went up to the Office of the President and we requested for the titles to be nullified. It was announced that the titles had been nullified and so, any title deed appearing there is a fake title deed.

The Commission Secretary (Ms. Nyaundi): Before the power went off, you were saying that you had lodged an objection through elders. There was an appeal but you were not represented and I had asked you whether you were aware that the people in Trans Mara were then issued with titles and you had told me that you had challenged this decision in court and with the Office of the President. What you knew is that the titles had been nullified. I will therefore ask you, at a later date, to please avail to the Commission the copy of the court proceedings or any decision that nullified the titles.

Mr. Benson Nyahiri: I have the copy but it is not with me now. I will present it to the Commission later because the case is still pending in Nakuru High Court and it is with Juma Kiplenge and Company Advocates.

The Commission Secretary (Ms. Nyaundi): You have said that when being evicted from Trans Mara, it was Government forces, which is Regular Police, Administration Police and Paramilitary who were conducting the exercise. Were you present there yourself?

Mr. Benson Nyahiri: Yes, I was there.

The Commission Secretary (Ms. Nyaundi): How were you able to identify that they were Regular Police, APs and Paramilitary?

Mr. Benson Nyahiri: The area was so large and it took them time before they could finish their work.

The Commission Secretary (Ms. Nyaundi): Did you identify them by their uniforms or the vehicles that they had?

Mr. Benson Nyahiri: By the vehicles and the uniform.

The Commission Secretary (Ms. Nyaundi): Were you able to determine who was supervising the operation?

Mr. Benson Nyahiri: I was not able but before the operation, our PC who was the Rift Valley PC, Mohammed Yusuf Haji came and gave us a notice that we should vacate from the land.

The Commission Secretary (Ms. Nyaundi): You said that you were evicted on 2nd February, 1989. When did the PC come to give you the notice?

Mr. Benson Nyahiri: He came on 25th January 1989. He was accompanied by the Narok DC.

The Commission Secretary (Ms. Nyaundi): On this day in January when they came, did they tell you what would happen in the event that you did not leave?

Mr. Benson Nyahiri: He threatened us telling us that we should vacate the land otherwise, we were going to face the consequences. He addressed us at the open market in Lolgorian market center.

The Commission Secretary (Ms. Nyaundi): Is it your understanding that what happened on 2nd February, 1989 was connected to the PC's visit on 25th of January?

Mr. Benson Nyahiri: Yes, I do understand that.

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

The Presiding Chair (Commissioner Shava): Thank you, Mr. Benson. I will start on my right with Commissioner Tecla.

The Acting Chair (Commissioner Namachanja): What has not come out is the reason for eviction. Were you given any notice before the eviction and if so, what did the notice say?

Mr. Benson Nyahiri: We were not given any written notice. We were verbally told in the market.

The Acting Chair (Commissioner Namachanja): Were there any political campaigns going on?

Mr. Benson Nyahiri: It was after the campaigns.

The Acting Chair (Commissioner Namachanja): Were the campaigns in relation to the introduction of multi-party campaigns or what was the nature of the campaigns?

Mr. Benson Nyahiri: It was before the multi-party campaigns because it was in 1988, going to 1989.

The Acting Chair (Commissioner Namachanja): What were the campaigns about?

Mr. Benson Nyahiri: On the final day when Mr. Ntimama came to the market center at Lolgorian, he addressed people saying that if all Maasais gave him their votes, then all non-Maasai should vacate from Trans Mara District. That was his statement.

The Acting Chair (Commissioner Namachanja): Thank you. I have no further questions.

Commissioner Ojienda: Benson, thank you for your memorandum and for the clear research undertaken by Action Aid. Clearly, I would only say that it is not proper that a people that has lived in a place for years beyond 12 can be evicted in the manner that the Kuria were evicted from Trans Mara. Clearly, you have presented a memorandum that strikes a blow for the people of Kuria. We will study it, and we will ensure that as we write our report, that we will make firm recommendations so that those who were evicted can finally get to realize their rights. One of the functions of this Commission is to look at issues surrounding forceful evictions and displacement of populations and so, you are in the right place and I thank you very much.

Commissioner Chawatama: I only have one question as it relates to the matter that is pending before court. Can you recall the date in which you filed the application to nullify?

Mr. Benson Nyahiri: It was in the year 2000.

Commissioner Chawatama: So, it has been more than ten years?

Mr. Benson Nyahiri: Yes.

Commissioner Chawatama: Thank you.

Commissioner Dinka: Thank you, Mr. Benson for your testimony. Just to be clear in my mind, when you say your ancestors moved to Trans Mara when they came in 1723, what part of Trans Mara are you talking about because Trans Mara is a vast area?

Mr. Benson Nyahiri: We are talking about Mashango Location in Trans Mara.

Commissioner Dinka: In 1723, you moved to Misemi hills and your people moved to Lolgorian and then in 1846 to 1914 in Gaboni and in 1948, from Gaboni to Magena area. This is a series of movements. When your people move from one place to another, does that mean they have abandoned the previous area?

Mr. Benson Nyahiri: There were reasons like drought.

Commissioner Dinka: I have seen the memorandum. What I am asking is: when you move from area A to area B for some reason - drought, plague or whatever, does that mean you have abandoned area A when you move to area B?

Mr. Benson Nyahiri: The area is still the same but the villages are different. During eviction time, there were people living near Gaboni who were affected but who were in Misinei up to Magena--- It is a very large area.

Commissioner Dinka: So, the whole tribe does not move together but it is different villages that move at different times?

Mr. Benson Nyahiri: Yes, it was different villages and not the whole community.

Commissioner Dinka: The other thing is that I am not clear about the adjudication that has taken place. The result was against your community and then you appealed. Has the appeal made any decision in eleven years?

Mr. Benson Nyahiri: No decision up to now.

Commissioner Dinka: So, there is no nullification then?

Mr. Benson Nyahiri: It was nullified by the Government through the media. It was announced that all title deeds are nullified.

Commissioner Dinka: Who said that?

Mr. Benson Nyahiri: The Ministry of Lands said the nullification of that particular place had been done.

Commissioner Dinka: So, why are you going to the appeal court?

Mr. Benson Nyahiri: It was after we had gone for the appeal.

Commissioner Dinka: Since the Government has said it had been nullified, have you decided to terminate your appeal?

Mr. Benson Nyahiri: We intended to go on with the appeal but we are unable due to lack of finances.

Commissioner Dinka: I do not see why you are appealing.

The Commission Secretary (Nyaundi): Thank you, Chair. There is a lot of noise in the hall and also, there is a phone that is ringing.

The Presiding Chair (Commissioner Shava): I have noted that and I think that somebody has assisted us to deal with the issue of the phone. May I remind participants that we had requested you to please switch off your mobile phones? I will allow some time now for everybody to check their phones now and make sure they are off because it is disturbing our proceedings. We do not want people walking back and forth or becoming distracted and talking. I hope everybody has now had the opportunity to switch off their phones. Please proceed.

Commissioner Dinka: I have to come back to this question. The adjudication took place, you appealed against it, and after your appeal was launched, the Government came out and declared the results of the adjudication.

The Presiding Chair (Commissioner Shava): I am sorry, Commissioner Dinka. We had requested that when a witness is testifying, you accord them respect, whether you agree or do not agree with what they are saying, by maintaining silence. If there are any conversations that people need to have, we request that you do not have them within this hall. You are free to have them outside the hall. Please, pay attention to what the witness is saying and let us maintain silence.

Commissioner Dinka: Let me again formulate my question. You appealed against the results of the adjudication. You went to court, the court was still considering the issue when the Government came out and declared the nullification of that adjudication. If that has been done, why are you continuing with the appeal?

Mr. Benson Nyahiri: Because we are not allowed to access the land.

Commissioner Dinka: Although it was nullified, you are still prevented from accessing the land? I now understand the issue. Forgive me because I am not a Kenyan and that is why I am not clear on these issues.

Commissioner Slye: Thank you, Mr. Benson. I note that you have submitted a number of documents to the Commission, including a very lengthy memorandum that I have not had a chance to look at yet. I do not think my fellow Commissioners have had much chance to look at. I would like to reserve any question I might have had to later, when we can get in touch with you if, after reviewing the documents, I or anyone else has additional questions.

The Presiding Chair (Commissioner Shava): Mr. Benson, thank you very much for your testimony today. You have brought something very important to the attention of the Kenyan public. Many people, most of us included, were not aware of the issue of eviction of such great proportions that happened. We heard that the entire population of Kuria is about 260,000 people. So, when you say 13,000 people plus their families which continue to grow have been displaced and are living in slums and have been dispossessed of their land, then this is really a very serious thing. We just want to thank you for taking the time and the trouble to come here today and preparing for us a detailed memorandum and submitting all the documents that you have given us to study. We assure you that we are taking the issue with the seriousness it deserves.

At this point, I would just like to ask you if there is anybody else who has accompanied you, you may ask them at this time to stand so that we can see who the members of your group are.

Mr. Benson Nyahiri: Everybody who is inside the hall is a member.

The Presiding Chair (Commissioner Shava): Thank you very much. That is really quite impressive. Thank you, Mr. Benson, for coming here and for mobilizing your group. Please, stand down the witness Session Clerk and lead in the next witness.

(Ms. Rael Gati took the oath)

The Commission Secretary (Ms. Nyaundi): Good afternoon and welcome to the Commission. Please, tell us your name, where you stay and your current occupation.

Ms. Rael Gati: I am Rael Gati and I am going to narrate how we were evicted from Yuyi, where we were living. We were chased from there like dogs.

The Commission Secretary (Ms. Nyaundi): I am going to ask you questions and then, you will tell your story, so that the Commission gets it correctly. In 1988, where were you living?

Ms. Rael Gati: I was living in Masango.

The Commission Secretary (Ms. Nyaundi): Apart from the Kuria, what other communities were living there?

Ms. Rael Gati: The Maasai were also living there.

The Commission Secretary (Ms. Nyaundi): Was there another tribe that was living there, apart from the Maasai and the Kuria?

Ms. Rael Gati: The Kipsigis were also living there.

The Commission Secretary (Ms. Nyaundi): In your statement, you said that at around 1988, there was a fight at Masango. What were people fighting over?

Ms. Rael Gati: They were fighting over land.

The Commission Secretary (Ms. Nyaundi): For how long did that fight go on?

Ms. Rael Gati: It continued up to 1989.

(Loud consultations)

The Presiding Chair (Commissioner Shava): Sorry, Leader of Evidence, is there a problem in the room? There is a lot of noise and we are unable to hear the witness. Regional Coordinator, can we have some assistance, please? Can I ask at this point that everybody finds a seat, and if you are unable to find one, please, place yourself in

a position where you are not blocking anybody else? We are hearing some very serious testimony that is difficult for this witness to speak about. I ask that you accord her the respect that she deserves and listen in silence.

Thank you.

The Commission Secretary (Ms. Nyaundi): You said that the war went on from 1988 to 1989 and the Maasai warriors were attacking the homes of the Kuria?

Ms. Rael Gati: Yes, they were fighting the Kuria and they burnt down homes.

The Commission Secretary (Ms. Nyaundi): Did people lose lives?

Ms. Rael Gati: Yes, people died.

The Commission Secretary (Ms. Nyaundi): When you saw that war going on, what action did you take as an individual?

Ms. Rael Gati: I was unable to do anything. I just ran away.

The Commission Secretary (Ms. Nyaundi): Where did you run away to?

Ms. Rael Gati: I ran to the river.

The Commission Secretary (Ms. Nyaundi): Were you alone when you ran away towards the river?

Ms. Rael Gati: We were in a group of women.

The Commission Secretary (Ms. Nyaundi): How many women?

Ms. Rael Gati: I cannot give you an exact figure.

The Commission Secretary (Ms. Nyaundi): Were they about ten or more than ten?

Ms. Rael Gati: We were more than that number.

The Commission Secretary (Ms. Nyaundi): Were you more than a hundred women?

Ms. Rael Gati: Just around that number.

The Commission Secretary (Ms. Nyaundi): Was it almost all the women of your village?

Ms. Rael Gati: No, it was not all the women, just some of them.

The Commission Secretary (Ms. Nyaundi): Did you go with your children?

Ms. Rael Gati: Yes, I did.

The Commission Secretary (Ms. Nyaundi): Did other women also go with their children?

Ms. Rael Gati: Yes, they all ran away with their children.

The Commission Secretary (Ms. Nyaundi): Did you stay by the river or you went to the forest?

Ms. Rael Gati: We stayed by the river.

The Commission Secretary (Ms. Nyaundi): For how many days did you stay there?

Ms. Rael Gati: For eleven days.

The Commission Secretary (Ms. Nyaundi): When you were staying there by the river, did other people join you, maybe, the men?

Ms. Rael Gati: Men never came.

The Commission Secretary (Ms. Nyaundi): Did anything happen to you or the other women while you were there by the river?

Ms. Rael Gati: We starved and all we could get was water. Water was the only thing that we gave to our children.

The Commission Secretary (Ms. Nyaundi): For how long did you stay near the river before you came back to your homes?

Ms. Rael Gati: For eleven days and then we all dispersed and went our own ways.

The Commission Secretary (Ms. Nyaundi): When you remember that time, do you think that anything should be done for women and the children who went to the forest?

Ms. Rael Gati: When I remember, I feel that I was tortured and I would not wish anybody to go through that kind of experience.

The Commission Secretary (Ms. Nyaundi): What do you think the Government should do for women like you, who went through that torture?

Ms. Rael Gati: The Government should compensate us.

The Commission Secretary (Ms. Nyaundi): You said that there were close to a hundred women?

Ms. Rael Gati: I cannot really tell because we were in trouble but we were many women.

The Commission Secretary (Ms. Nyaundi): I have here with me, your statement and you have also given us identity cards for some of the women that you remember were

there at the river. Would you like this statement together with the identity cards of those women to be admitted on to the record of the Commission?

Ms. Rael Gati: Yes, I would.

The Commission Secretary (Ms. Nyaundi): I pray that you admit the statement of the witness together with the copies of identity cards onto the record of the Commission.

The Presiding Chair (Commissioner Shava): The statement and the other documents are so admitted.

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

The Presiding Chair (Commissioner Shava): Thank you very much, *Mama* Rael. We will now ask you a few questions and I will start on my left with Commissioner Dinka.

Commissioner Dinka: *Mama* Rael, I have no question for you, except for one issue. I only want to tell you that I empathize with your suffering and your pain and also to commend you for being courageous to come and tell us what happened on that bad day and to go through that life again, in order to enlighten the Commission.

Thank you very much.

The Acting Chair (Commissioner Namachanja): I would like to join my fellow Commissioner, Ambassador Dinka to say pole to *Mama* Rael and the women you were with that suffered similar atrocities and for being courageous to come and testify before this Commission on behalf of many women.

Thank you so much.

Commissioner Ojienda: *Mama* Rael, I empathize with you and with your lot for the painful experience.

The Commission Secretary (Ms. Nyaundi): I am sorry, Commissioner Ojienda. When you said your lot, it was translated as your god.

Commissioner Ojienda: Thank you, Leader of Evidence. *Mama* Rael, I empathize with you and the other women. When I say women, I mean mothers, daughters and girls. It is unfortunate that in any situation of conflict, it is women who bear the brunt of the atrocious things that are committed against the weak. I think it is unfortunate that society does not take special care of women and children in the time of conflict. It is, however, important that you have found time after 20 years of pain to come and speak to us. You have spoken to us and I believe that in that speaking and in speaking for your other colleagues, the women who suffered, you have relieved some burden from your paining soul. We as a Commission, are tasked to specifically look at instances of violence against women and children; so, you are in the right place and I encourage you. I hope that this society of the Kuria community will look at women

differently, will respect women as the makers of homes, as the makers of society and as those who take care of us and as those who bring us to this world. I thank and encourage you.

Commissioner Chawatama: I will call you Mwita because although I come from a country far away, the name Mwita is a common name amongst the Bemba tribe; so, I consider you my sister. I would like to thank you for making time to come and testify before us. We have heard you loud and clear and through the Chair, I would like us to further our acquaintance by inviting you and other women to our meeting tomorrow, when we shall be meeting women. I hope that this is an invitation that you and other women will accept. May God bless you and I know that you are a mother of many.

I thank you.

The Presiding Chair (Commissioner Shava): *Mama* Rael, I would like to associate myself with the comments of my fellow Commissioners. I think that you are a very brave and courageous woman because it is difficult for women to come and speak about difficult things in front of many people. You had the courage not only to talk about your own experience but even to talk on behalf of those women who did not have the courage to come up and speak; those who are on the list and even those who are not on the list because you have told us you are very many women who were subjected to hardship together with your children. We salute your courage, we thank and encourage you.

Thank you very much.

(Mr. Samuel Mariba Chacha took the oath)

The Commission Secretary (Ms. Nyaundi): Thank you and welcome to this Commission. Please, tell us your name, where you live and what you do for a living.

Mr. Samuel Mariba Chacha: My name is Samuel Mariba Chacha. I live in Kuria District, Bitembe Sub-location.

The Commission Secretary (Ms. Nyaundi): I have a statement that you wrote on 25th July, and you are talking about police torture that you underwent on 20th March, 1981 at Giteura Village. I am now inviting you to share your statement with us.

Mr. Samuel Mariba Chacha: I am grateful to this particular Commission for listening to the weak people and we know that you are going to listen to our problems. On that mentioned day of 20th March, 1981, at around 2.00 p.m., when we were attacked by the Anti-Stock Theft police while we were at the grazing field--- At the time, we were also cultivating at that particular place and also taking care of the livestock. We thought that they were just taking their usual patrols but they came and surrounded us. The police were full in a vehicle. They were between 30 to 40 policemen. They took cows and started beating people. They told us to chase the cattle and take them to the police station.

We started driving the cows to the police station and when we arrived at around 5.00 p.m., we were put in the cell. We stayed in the cell for about an hour and at around

6.00 p.m., we were put into a tank that was distributing water to the police station. In the tank, there was cement and we were stripped naked. As the water was flowing from the tank, we were told that we should accept what they wanted to do because they said that we had stolen livestock. We told them that we had not stolen because we were in the grazing fields grazing our cattle. We were grazing the cows and we were not stealing. They continued beating us for an hour and we were put back inside the water while carrying our clothes. Those clothes were put in the water and then we were told to wear the wet clothes. We were taken back to the cell.

After being taken back to the cell, we stayed there as the water was flowing. In the morning, we were again beaten and at around 9 a.m., our wives and other elders were taken to an unknown place. Everybody was forced to accept that those cattle were stolen and those who were tracing the cattle feared to come and see us because of the torture they had seen going on in the cell. At around 12.00 p.m., we were told that everybody should select his cattle and put them aside. When we went there, we found many Kipsigis. They were very many and this crowd cannot even be equivalent to the Kipsigis who were there. They had come to see their cattle that had been stolen. After we had all selected our own cattle, we were shocked to see people taking cattle from our herds. They took the healthy ones that were almost calving and very good bulls. They left the old animals and that was what we took back to the homestead. The healthy ones were given to the Kipsigis.

We were still being interrogated to accept that we stole but we denied that we did not and that we were just grazing our livestock. They kept beating and torturing us for a period of one week. The first torture was being put into cold water in a tank, the second was to be beaten and the in the third one, we were forced to sit on ants and we were bitten by the ants for one hour so that we could accept that we stole but we refused. The person who could not persevere with the torture would give the animals to the Kipsigis, get the money, bribe and then he was freed with his cattle to go back home. The rest of us who refused were taken to court and for one week, we were tortured. Some were even beaten in their private parts.

After that, we were taken to a place called Manga, the upper side next to Kebirigo. They took us inside the forest and it was during the rainy season. We were put into swamps that were full of mud and water and they continued beating us. They beat us seriously but our God helped us. When we saw that there was no way we could get out, we decided that we would rather die than go through this torture. I stood up and told them that they had beaten us and they were continuing to beat us like balls. We told them that if they wanted to kill us, then they should just take their guns and finish us instead of torturing us because we had done nothing wrong. After I told them that, they took me to the head of the Anti-Stock Theft and he was a Chief Inspector. He asked me if I had ever eaten anything since I was arrested. I could not answer him because I understood that if I answered him, it would seem like I was abusing him. We stayed there for four days and the torture continued but that day they did not beat us; they took us to a place called Keroka. We were tortured inside the forest and nobody knew where we were. After the torture, we would be taken to Keroka in the evening and the following morning at about 5.00 a.m. or 6.00 a.m., we would be taken back to the forest to be tortured. Many people's private parts were damaged and the bones were broken. There were many ants in the water in which we used to be

tortured in. We came out with many diseases and now, very few people are still surviving today. We are just about six or seven but majority of about 27 have died.

My brothers, we have been remembered and even God will remember you. One thing that really amazed us was that the women who were raped gave birth to off-springs with different colours. When we were taken to Keroka, we found two military men who were inside a hotel and they said that whoever had money, he could eat something. When we were taken to the hotel, the soldiers were astonished because we were joined in twos. After that, the soldiers asked who we were and why we were going inside the hotel when we were handcuffed. One of the soldiers was a lady and the other one was a man and that was when war broke out. The policemen who were in front had their guns snatched from them by the two soldiers. We did not know where to go, so we just decided to go on the wall. We did not know how we could be assisted.

When we came out after realizing that they had succeeded, we were taken to a place called Sotik and that was where we spent the night. The following morning at around 4.00 a.m., we were taken to Kericho. That was happening so that nobody could not know where we were, so that they could continue torturing us. That thing made us angry. We were an independent nation and we were being tortured. Getting food was a problem and our property was being taken and our women were being raped as we were being tortured and injured. We were maimed and some of them were paralysed and they could not even walk. It is really sad. I do not know who will pay us back.

(The witness broke down)

The Presiding Chair (Commissioner Shava): *Mzee*, please take your time. We will wait until we feel you are able to continue. If you would like us to take a break, we can take a break. *Pole sana!*

Mr. Samuel Mariba Chacha: That day, we went and registered our case. I cannot remember the date. Some people were following us but they did not know where we were; so, when they saw that their efforts were futile, they asked the policemen if they had any information about us. They found out that we had been taken to Kericho. After that, we got one advocate who came to our rescue and he registered our case. All that had been written was different from what we were registering from the advocate. All that we were accused of was written in our files. When we arrived there, the Chief Inspector who was the head of the Anti-Stock Theft Unit came and told us that the road was clear and if we could not accept, then we could go up to the President. We were perplexed because if they were saying the President does not have the power to solve that problem, then the law should take its course because it can cut both sides. We stayed in the cell for six months and when judgment was passed, some people were given sentences of between 24 to 7 years. The one who was given the least sentence was given 7 years. After appealing, we were taken back home. We were first taken to Nakuru and waited for another six months and that was when our appeal was heard. When we went back home, some of us found their children and parents had passed away because of missing milk.

I had told you earlier on that the private parts of some of our colleagues were destroyed. I also told you earlier that some of the children, old men and women died because of missing milk. Can you help the weak? Can you help us?

The Commission Secretary (Ms. Nyaundi): Thank you very much, *Mzee* Samuel. We are really grateful for your testimony. This will help the Commission in writing its report. I would like to ask you a few questions. You have said that you were 27 people who were arrested on the 25th March; I do not know whether there are others in this hearing today.

Mr. Samuel Mariba Chacha: No, they are not here. Maybe, I did not put things right. We were 37 people who were arrested. When we reached there, some people left because the torture was too much for them. We therefore, remained 27. The 27 were taken to court where some accepted the charges and came out. We remained about 17.

The Commission Secretary (Ms. Nyaundi): Thank you very much. We want to have the names of the 37 people who were arrested on 20th March. I do not know whether you can remember any of them.

Mr. Samuel Mariba Chacha: Most of them are now dead. After coming from that place, many of them died because of the pain they endured there.

The Commission Secretary (Ms. Nyaundi): Could you write the names of those people, so that we can have them in the record of the Commission?

Mr. Samuel Mariba Chacha: I will remember them and do that.

The Commission Secretary (Ms. Nyaundi): You have mentioned that one of the problems that you undergo as a community is because women were raped. Did you know who raped the women?

Mr. Samuel Mariba Chacha: They were the police officers from that area who took the cattle. That camp is very big; it has over 100 police officers. When the ladies were coming to see us, they were being diverted to other areas. The police officers were the ones who were doing that to our women.

The Commission Secretary (Ms. Nyaundi): Were there any incidences like the one of the 20th March, 1981, where people were found in grazing fields and being arrested that they stole livestock?

Mr. Samuel Mariba Chacha: Those cases were few, although they were there. There were two police stations there.

Those who were taken to the police station used to bribe. Whatever they were asked, they used to give and they were released. There was one day they were charged and found guilty. That included the three police officers from the police station. When we knew we had forgotten about this, they used the Anti-Stock Theft Unit to terrorize us. I had forgotten one thing and I would wish to tell you this: the cause of this was that in that area called Ten Grazing, it was for Kuria who were grazing and cutting trees to

construct houses. They were, therefore, trying to find a way to make us move from that place. They used a trick to try to remove us from that place.

The Commission Secretary (Ms. Nyaundi): The first speaker who spoke this afternoon explained to us that there was a conflict about land between the Kuria and the Maasai. That is why I am asking in this place at Gitura, where you were arrested, was it among the areas that were disputed?

Mr. Samuel Mariba Chacha: Yes.

The Commission Secretary (Ms. Nyaundi): You have also said that when you paraded your cattle, you were shocked that people from the Kipsigis community came and identified the cows as theirs. At that particular moment, was it your culture to put an identity on your cattle?

Mr. Samuel Mariba Chacha: Yes.

The Commission Secretary (Ms. Nyaundi): For example, for your cattle, was there any person who alleged that they were theirs?

Mr. Samuel Mariba Chacha: Yes, two of them came.

The Commission Secretary (Ms. Nyaundi): Did the cattle have an identity?

Mr. Samuel Mariba Chacha: Yes.

The Commission Secretary (Ms. Nyaundi): You have also mentioned that you were tortured when you were there. As a person, did the torture affect you in any way, in terms of your health?

Mr. Samuel Mariba Chacha: So much. I do not want to mention it. Maybe, I can mention them to someone at one other place.

The Commission Secretary (Ms. Nyaundi): Did you get any medical attention after the torture which sounded extreme?

Mr. Samuel Mariba Chacha: No, you could not ask to be taken to hospital when you were under those people. We were just enduring and God was curing us.

The Commission Secretary (Ms. Nyaundi): Thank you very much. Those are the only questions I had. The Commissioners will now ask you some questions.

The Acting Chair (Commissioner Namachanja): *Mzee* Samuel, you have given us a very difficult story. It is a very painful story. When you asked a question, “who do we cry to”?, I stopped and said, “let us cry to God”. But God cannot come here now, so that we can cry to Him. However, it was the grace of God, so that through these Commissioners, your cry will reach them. I think they have heard your cry and all of them have sympathized.

I have one question: you are saying that you were very many people. As a person, why did you not go away like the others did?

Mr. Samuel Mariba Chacha: My answer to your question would be: There are those who are short and those who are tall; those who are fat and those who are thin. Therefore, those who were not able, were taken.

The Acting Chair (Commissioner Namachanja): Thank you very much and we are very sorry for what you underwent.

Commissioner Ojienda: Thank you, Samuel, for your evidence. I want to join my fellow Commissioners to say that the pain you underwent when you were being tortured was a lot. I am saying that because it is not normal for an old man like you to shed tears in front of us. During those days, there were human rights violations, especially torture without trial. I just want to encourage you that after we have the new Constitution, the torture you underwent with your friends cannot be repeated. We are in a new level where when a person is arrested, he or she has to be arraigned in court within 24 hours.

We have heard your case. I am sorry. You are the foundation of the others who were tortured. You have opened up your heart and for us to get reconciliation, we must have people like you. This Commission was set up to check on people like you, follow the law and where there were violations, we can make recommendations which should change governance. We thank you for coming forward and talking on behalf of the 37 you were arrested with.

Thank you.

Mr. Samuel Mariba Chacha: I am requesting that the 12 cattle that remained at the police station be returned to us. They paid us Kshs1, 000 per cow and that was not making sense. As a Commission, try your level best to help us, so that we are compensated for our cattle.

If at all the person who arrested us is still alive, he should also come here and explain why he arrested us.

Commissioner Ojienda: You can also give us the name of the lawyer, so that we can follow up the case to verify the issue and have the full information.

Commissioner Chawatama: Thank you very much for sharing your testimony with us. There were so many violations that took place. It is difficult to imagine that a fellow human being could have done what they did to you and so many others. As an African, I ask myself: where is the *utu*? That is what distinguishes between a man and an animal? We are people created in the image of God and who should have compassion for one another. It is easy to see how you were treated by the police. I would like to know whether you felt that the Judiciary treated you fairly or treated your matter fairly.

Mr. Samuel Mariba Chacha: I would request you to ask the question again.

Commissioner Chawatama: I would want to know whether the Judiciary treated you fairly.

Mr. Samuel Mariba Chacha: The Judiciary did not help us. It was oppressing us.

Commissioner Chawatama: Thank you very much for your testimony.

Commissioner Slye: Thank you, Samuel, for your testimony. I think my questions are based upon my relative ignorance of Kenyan history and the history of this region. You said that when you were brought to identify your cattle, there were many Kipsigis (as many as the people in this room), who then claimed the cattle that you identified as your own. I just want to better understand the ethnic aspects of this incident. Were they aligned with the police? The way you told your story, it was like the purpose of what the police did was to effectively steal your cattle and give it to members of the Kipsigis community.

Mr. Samuel Mariba Chacha: That issue has reminded me; that was a calculated move because all the police officers were from the Kipsigis community. If at all there was a different tribe, there could have been one officer or two. It was a calculated move, so that they could loot our property.

Commissioner Slye: The majority of the police were Kipsigis or the police operated with them? That is what I am trying to understand.

Mr. Samuel Mariba Chacha: The police officers at the Anti-Stock Theft Unit were Kipsigis. Very few were from different tribes. All the police officers at the police station were Kipsigis.

Commissioner Slye: In your written statement that we have before us, if I read it correctly, you had said that prior to that incident, the relationship between the different communities had been peaceful. Do you have an idea of why all of a sudden, that violence was committed against you and your fellow Kurias?

Mr. Samuel Mariba Chacha: In 1955, the Kipsigis were the ones who were in that place and we were living together with them. We had normal conflicts but we reconciled again. However, since 1955, the Kipsigis started fighting over land.

Commissioner Slye: So, the tension started in 1955 over land? In 1981, for the first time, it included a dispute over cattle?

Mr. Samuel Mariba Chacha: In 1955, the incidents started with livestock theft. They took so many heads of cattle that have been mentioned here. Some were returned but the conflict did not end. In 1981, they came to loot more property and cattle.

Commissioner Slye: You told the Leader of Evidence that you have had a few but not many similar incidents since then, in terms of the police conniving with individuals to steal cattle. My last question is: could you tell us what the relationship is today, among the different communities- the Kuria, the Kipsigis and the Maasai?

Mr. Samuel Mariba Chacha: To date, people are dying in a secret way. Some people are found on their farms and are surrounded and killed. This also happens to those who go to fetch firewood. The incidences of fights and killings are still there. They are called the cold wars.

Commissioner Slye: Those acts of violence are happening on both sides: Kipsigis attacking Kuria and Kuria attacking Kipsigis?

Mr. Samuel Mariba Chacha: The Kipsigis are the ones who attack others. They do not even want cows to drink water.

Commissioner Slye: Thank you very much, Samuel, for your testimony. As my fellow Commissioners said, you clearly suffered a wide variety of injustices; you and the 37 others who were rounded up and convicted for alleged stock theft. We appreciate you having the courage and taking the time to come here and speak before this Commission and this public.

The Presiding Chair (Commissioner Shava): Mr. Samuel Mariba Chacha, I join my fellow Commissioners to thank you for coming here today and speaking out so candidly, to let us understand some very important violations that the people of this area, yourself included, have suffered. I have no questions for you.

I just want to thank you again.

The Commission Secretary (Ms. Nyaundi): Although we had one more witness, I notice it is going to 6.00 p.m. I ask for your directions, as to whether we should invite that witness or hear him tomorrow.

The Presiding Chair (Commissioner Shava): Leader of Evidence, we will at this point, need to conclude the hearings for today. We will make sure that all the people who were listed to be heard will be heard before we leave Kuria.

The Commission Secretary (Ms. Nyaundi): Presiding Chair, I would then just ask that you admit the statement of the last witness on to the record of the Commission.

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

At this point, we have come to the end of our first day of hearings in Kuria today. I would like to thank members of the public for their attendance in such large numbers and for the patience of sitting all through the day, until nearly 6.00 p.m. this evening. I would like to thank the members of the media here present. I would particularly like to thank our witnesses today. I would like to thank Cllr. Chacha Daniel Muhere, who presented a very comprehensive memorandum helping us to understand the general background in this part of our country. Mr. Matiko Bokhoko (?) also presented a memorandum which is same texture, not only to the general background but also to the inter-ethnic conflict in this part of the country. Mr. Benson Nyahiri represented others and talked to us about the 1989 eviction of the Kurias from Trans Mara. *Mama* Rael Gati Mwita represented herself and 46 other women and gave us a perspective of the evictions from a woman's eyes. Our last witness for today was *Mzee* Samuel

Mariba Chacha, also representing himself and many others. He let us understand conflict over cattle and land and how they have impacted on people in this area.

At the end of our public hearings, we shall also be having institutional hearings, in which we shall examine the role of certain institutions in injustices in our country. We will be examining the role of the police and the Judiciary.

Thank you.

(The Commission adjourned at 5.45 p.m.)