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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION HELD ON THURSDAY
8TH DECEMBER, 2011 AT THE MAASAI TECHNICAL INSTITUTE**

PRESENT

Getrude Chawatama	-	The Presiding Chair, Zambia
Margaret Shava	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya
Tom Ojienda	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Patrick Njue	-	Leader of Evidence

(The Commission commenced at 10.20. a.m.)

(Opening Prayers)

The Presiding Chair (Commissioner Chawatama): Please, be seated. On behalf of the TJRC, we welcome you to this sitting.

First and foremost, I would like to thank you for bearing with us. We had to change the dates of these sittings at a very short notice because of other commitments we had. We thank you for bearing with us. We also thank you for your attendance today. I also thank members of the public for taking part in this very important process. This is your process. We are here to listen to the different experiences that you have gone through. We are also here to listen to the recommendations that you wish to make.

Our desire is that after these hearings, your lives will change for the better. We believe that at the end your ways of living will change and that you will be able to look back to this day with a lot of nostalgia. You will remember this day as a day when the TJRC commissioners came and listened to you. You will remember us listening to the experiences that you have gone through and that appropriate recommendations were made.

I would like to start off by introducing the panel this morning.

(The Presiding Chair introduced herself and members of the Commission)

We have a few rules that we normally obey when we are having these sittings. If anyone of us has a cell phone, it is best at this time to switch it off. This is because cell phones do interfere with the recording and hearings. We would want to ensure that the hearing runs as smoothly as possible with as little interference as possible. If you have an urgent matter to attend to, then, it is best to quietly leave the hall and attend to it and then come back.

As witnesses give their testimony, you might hear things that you do not agree with, but we expect that you would afford the witnesses the respect that is due to them. We are obliged to ensure that this is done. You might be able to identify with parts of the testimony that is being given; we, as a Commission, have tried hard to select cases that are representative. It is our desire that we will capture all the violations that have taken place in order to make meaningful recommendations.

What will take place today is that the witnesses will be sworn in. They will then be led by the Leader of Evidence in giving their testimonies. After the testimony is given, the Leader of Evidence will ask questions, or clarifications. Thereafter, commissioners will have an opportunity to also ask questions or clarifications.

We thank you very much for your attendance. Please, try as much as possible to engage in what is happening here. Mr. Njue, please, takeover and lead the witness.

Mr. Patrick Njue: Thank you, Presiding Chair and commissioners. We are ready with our first witness. It is a memorandum on behalf of the entire Maasai Community and particularly the community in Kajiado where we are. This is Witness No.1 on our course list.

(Mr. John Maitai took the oath)

Good morning, Mzee Maitai.

Mr. John Maitai: Good morning, Sir.

Mr. Patrick Njue: For completeness of the record, once, again, please, tell us your names where you come from and what you do for a living?

Mr. John Maitai: My name is John Maitai. I am the Chairman of the Maasai Council of Elders. I live in this county. I also have homes in Narok and Nakuru.

Mr. Patrick Njue: Welcome, Mzee Maitai. Is one Joseph Olengusur known to you?

Mr. John Maitai: I am not the one. He is the Chairman in the Kajiado County Council but he had a court case in Machakos today.

Mr. Patrick Njue: Mzee Maitai, maybe for confirmation, we had you attend our sessions in Narok, representing the Maasai Community in Narok. Could you confirm that as the true position?

Mr. John Maitai: That is very true.

Mr. Patrick Njue: Then you must be very well versed with the issues that affect the Maasai Community in Kajiado as well. Again, you confirm that to be true.

Mr. John Maitai: That is very true.

Mr. Patrick Njue: You are here to make a presentation on behalf of the Maasai Community in Kajiado?

Mr. John Maitai: Yes, I would like to make a presentation on behalf of the Kajiado community.

Mr. Patrick Njue: I welcome you to begin your presentation, give us a summary of the issues and recommendations on behalf of the Kajiado Maasai community.

Mr. John Maitai: Thank you very much. My first issue, I have already stated my name as John Maitai the Chairman of Maasai Council of Elders.

The first issue, I would like the Presiding Chair of the Commission to know is that I have elders who have accompanied me from this particular area. They are here in this meeting. If it is possible, I would like to request that they stand up so that they are acknowledged by the Commission but they should not say anything.

Let the Maasai Council Elders who have accompanied me, please, stand up.

(Some elders stood up in their places)

The Presiding Chair (Commissioner Chawatama): Thank you. We thank you for your attendance.

Mr. John Maitai: Thank you very much.

My first issue is to ask thank the Presiding Chair. The Maasai people live peacefully with the other communities that are their neighbors. There is no conflict among the Maasai districts, especially Kajiado. You will find that all the 42 tribes are within this area. This has not brought tribalism or conflict. So, I thank them for that because that is the way we are supposed to live for development of Kenya at the moment.

I have a memorandum here that has been prepared by us. I would like to inform the Presiding Chair and the Commission that we have eight clans in Kajiado County. These are Legogonotia, Purko, Lodwak, Lelkangere, Lilkaputie, Nilmatapato, Eldamat and Nilkisono.

I would like to inform the Chair that all the problems that the Maasai have here are that all the eight clans share those problems. The complaints from the Maasai are as follows: - The biggest problem is they sell land without agreement. What I mean by agreement is that man; woman and the child will not want to see a land being sold before all parties agree because it causes problems within the family.

Secondly, we would like the Government to intervene in this matter. There is a special board of three people who sit and you find land has been sold at night. So, we would like to ask the special Board to be removed instead there should be elders who should investigate why men would want to sell the land and the problems the family may have, instead of just having a deal between one Government officer and the buyer. This ends up hurting the family of the man.

In Kajiado County, there are resources such “gold” and “diamond”. These minerals benefit other people. These natural resources will be depleted and leave us with nothing. We will continue complaining after everything has been mined. The gold I am talking about is the sand that is harvested from this area. It comes from a person’s land, or sometimes, it comes from the river that is fronting the land. One full lorry of sand is sold at Kshs1, 000. The same sand is sold 30 times or Kshs30, 000 just eight kilometers from the source. What can the owner of the land where this sand is harvested do with Kshs1, 000? Is it enough to buy him a goat or sheep? It is not even enough for him to buy flour for his family to last them for two days. So, this is a great “gold” for our people. It is being harvested for free. We would like this Commission to urge the Government to make sure that our people benefit from this God given resource.

The other issue concerns our goats and sheep. This issue will be addressed by the Chairman. I have been told that he will talk about it. He is on the course list of today’s hearing. He understands more about the farm than I do. But the biggest complaint about that land is because there has been a conflict for very long. The boundaries have been extended.

There are a lot of resources of the Maasai in Ole Kajiado area. For instance, in Ngong and Magadi, we have wild animals. There is a lot of conflict between animals and us. Most of parks in Kajiado were given by our people to the Government. After contributing this land, they were promised to benefit from those parks. However, there is no benefit that the Maasais have had. They have never been given positions in any of the businesses that are run in those areas.

With regard to wild animals, as I said above, they gave out big portions of land as game parks. But it is a pity that these animals leave the parks and come to destroy our crops and livestock. They mix with our cattle, sheep and even us, human beings. When they destroy our crops and kill our livestock, the compensation is very little. There is no compensation at all. However, when we injure or kill an animal, the fines are severe. We find ourselves in a lot of problems. It is sad that animals are valued more than human beings.

We are told that money collected from these parks helps in the development of Kajiado County. Some of it is also used to fight HIV/AIDS scourge and other diseases. However, we do not have access to health and education facilities. Many of us die because of HIV/AIDS pandemic. Nobody is helping the orphaned children and to see to it that they get education. That is a big problem we need addressed. The Commission should visit far-flung areas of this county and see for themselves how terrible things are.

Maasais in far flung areas have a lot of problems. They do not have access to medical services. Women give birth at home. Some of them end up giving birth along the road as they struggle to get to hospital. Why is it that our honorable Government does not give vehicles to visit these people and address their issues at home?

Our children have problems. For example, those who have been orphaned do not have access to good nutrition. They do not have proper shelter and they are forced to work to fend for themselves. It is a pity to see some people using these orphaned children as herders while their children go to school. This is a terrible sin even before God.

There are many things that were forcefully taken away from the Maasais by the colonial Government and successive independent Governments. We thank God now that we have a new Constitution. It tends to address all these historical injustices. We believe that anything that was taken away from us will one day revert to us. The Constitution states that anything that was taken in an illegal way or by force, must revert to the original owner. We would like to urge this Commission to make sure that happens because we have been marginalized for a long time. For example, we have Magadi Soda Ash firm that employs people from outside. There is no single Maasai manager in that firm. Even where investments have been put in place, Maasai's do not get good compensation.

We have the Kenya Meat Commission (KMC) here in Athi River. I know it sits on a land that was donated by the Maasais. However, not single Maasai is employed in that factory. I would also urge the chairman as he addresses issues of land to address KMC land which was given to them by Maasais. In fact, we donated over 3,700 acres for holding grounds.

Magadi Soda was taken in a similar way where the Maasais were promised to benefit from the investment. Now, nothing can be seen as a benefit to the Maasais. What we know is that there is a lot of oppression, because the area has been added beyond what was originally donated by the community. It does not now benefit them because the animals cannot be grazed there because it apparently belongs to somebody else. At the moment, we are told it belongs to Indians. However, the Indians do not care because they know that they got this from the Government.

Presiding Chair, we would like to urge you together with your Commission to hear the cries of the Maasai because for a long time, we have complained. We have said a lot. But we do not see anything happening until we started wondering whether we are the ones who are not going in the right direction, or what the problem is because the Government does not listen to us. We do not see anything happening. Why is this? I would go back to talk about the wild animals. The wild animals are killing us. They are causing a lot of damage to our farms, but no step is being taken. The KWS warders only try to make sure that if animals are killed they followed footprints and go and get somebody to punish them. But when the animals come in to Maasai land nothing is done. The Government should intervene very seriously and use the powers that they have.

There is another issue of youth unemployment. If 30 people are being employed from Kajiado District, you find that only two are taken instead of the 30 who are on the list. Where do the 28 people come from? Do they come from outside the district? No. They come from neighboring areas and they get employed. We look at this as a denial of the rights of the Maasais because these vacancies are meant for the people of Kajiado and every district in Kenya gets its share. Why should somebody be brought from outside in a way that is not explained. Why do they try to give excuses, for instance, you are too short, or because of something you are wearing on your hand, or something that you have on your hand. They use such flimsy excuses not to employ the Maasai youth.

It is possible that there is corruption that makes sure that other people get these jobs while the Maasais are marginalized.

With regard to Mututho Law, Maasais are not given approval when they seek to start brews in their local areas. Some people from outside are licensed to start bars here. This hurts the Maasai so much because they are losing their eyesight after consuming the illicit brew. Our people are not able to concentrate on development activities because of the problems associated with these brews. Some of the parents are unable to pay schools for their children, so they drop out of school. This has made parents to sell their parcels of land without consulting the rest of the family members. It has also led to the families not being able to take care of themselves. Children are not well fed because all the money that could be used to buy them nutritious food is directed towards drinking. There is also no family co-operation. There is no harmony in the family simply because these people do not have any feeling. Fathers have become dictators in their families.

There are also problems with insecurity. Fighting between neighbors has become a common phenomenon in this area.

I would go back to the issue of Ngong. Ngong has so many problems. The Maasai are not very happy with the farm there. There is a piece of land that had been given to the Veterinary Department. However, there are private developers who have invaded that land and are now subdividing it into smaller plots and selling them to outsiders. Nobody is thinking about the local residents who were the original owners of that land. This is very painful. We would like to urge the Government to take the necessary steps because such issues are likely to lead to clashes, especially if you see a piece of land going away and you know very well that this belongs to your ancestors. When you ask, you are insulted, that brings about grudges that will lead to fighting between other people and the Maasai. We would like this to be prevented because it is not very good. We would like somebody to intervene in the Ngong issue, so that Maasai can be accorded their rights in the land that is in that area.

Finally, there are serious issues in the area which, for sure, people have to try to do and say, but have not been brought to conclusion. For instance, there is no medicine in our hospitals. We do not have water for our crops and animals. To emphasize on that, Kajiado area has no forest. There are few trees left standing in Ngong and Loitokitok forests. A large chunk of forest cover has been hived off to pave way for settlement.

Private developers are now putting residential houses. It is as if we are creating a desert from Ngong Forest to Loitoktok. The desert is expanding because there is no tree planting going on. Finally, we would like to urge our neighbors that we should live with mutual respect. As I have said, all the 42 tribes are found in Kajiado County. It is very wrong for you to come in and you do not respect the original residents; owners, and you abuse the hospitality given to you. We would like to urge people who moved into our places that we live together in harmony, so that we can live with African love.

Thank you very much.

Mr. Patrick Njue: Mzee Maitai, thank you for your presentation. You have said that it is your wish to present that memorandum formally to this Commission, today. Therefore, I would ask the Presiding Chair, if the said memorandum can formally be admitted to the record of this Commission.

The Presiding Chair (Commissioner Chawatama): Admitted as prayed.

Mr. Patrick Njue: Mzee, Maitai, allow me to observe that I found your presentation rather as one that lays the foundation of the issues that affect the Maasai in Kajiado, a foundation on which I know we would be listening to presentations and testimonies from your fellow community; men and women. The individual cases that, perhaps, will come up in the presentations, like I have said would be built on your presentations.

Once again, I want to thank you for coming forth clearly as a Chairman of the Maasai Council of Elders. It shows how well you are versed with the issues affecting your people. I want to thank you for the noble work that you do as an elder, resting your message of peace, amongst ourselves and the various individuals with your community. I have no questions, but the commissioners may ask you questions or clarifications.

The Presiding Chair (Commissioner Chawatama): Thank you very much, Leader of Evidence, and thank you very much witness, for your testimony. As the Leader of Evidence has said, you have laid a very strong foundation for the other witnesses will follow. The picture is very clear as to some of the violations that have taken place within your community. I would like to ask the commissioners if they have any questions to ask you. I will start with the General.

Commissioner Farah: Thank you very much for your presentation, Mr. John Maitai. I just wanted you to clarify more on the human-wildlife conflict. I thought that the wildlife were in Maasai Mara Game Reserve. So, could you explain more on the real problem?

Mr. John Maitai: The biggest problem is the animals that come from the area that was allocated to them. I have told you that Maasais donated a very big area for these animals. However, these animals have left the park and they have come into our land. They destroy our crops and eat our livestock. We do not see them getting back. For instance, the other day, I saw in Narok, they herded the elephants that had been attacking our

people there but here, I have not seen them doing that. So, it is not right for animals to have more rights than humans on the land.

Commissioner Farah: I appreciate. The stone aggregate for building, could also clarify that because the people who deal in getting the aggregate to take it for building, do they not get it from private land? How do they interfere with you here in Kajiado?

Mr. John Maitai: These aggregate comes from people's land and from the rivers. There could be three neighbors who share a river. They are separated by the river. This is done by brokers who may give the owners of the land about Kshs1, 000. When it goes about ten kilometers away, it is sold about Kshs25, 000 to Kshs30, 000. The effect is that it is my property. I get almost nothing, but the broker gets a lot more than I do.

Why should the owner of the cow not take more milk than the person who buys it?

Commissioner Farah: Thank you. I think that requires civic education for your people, so that they refuse and the price will go up. But anyway, I have noted.

During employment of the youth, you said that Maasai people are not taken. Which department of Government is notorious for this?

Mr. John Maitai: The one that we have noticed most is the disciplined forces, for instance, the police, administration police, army, GSU and all those. Whenever they are recruiting, the Maasai children are deliberately failed and other people are recruited.

Even in casual works in Kajiado and other places, you find that many other people from other places are employed as casual labourers and yet the Maasais have nothing to do. They just walk around and the work is being done by people from outside.

Commissioner Farah: I thought the military was very fair in recruiting Maasais into the army. You have a Member of Parliament for Kajiado Central who was a major general like me. Therefore, perhaps, that will have been the fairest.

Anyway, we have noted that. But let me come to the selling of land, without involvement of the entire family. Is that not your Maasai elder's job to ensure that the families are involved? How could the Government intervene because this is a willing seller- willing buyer?

Mr. John Maitai: We complained to the Government about that issue because a lot of land had been sold. Once sold, you would find most people in the families did not agree with the transaction. The special board takes over the land and a title is issued to the buyer and later on you would receive a complaint from children and women that the farm had been sold and the person that bought the land is trying to evict them and they have nowhere to go. For example, this morning, there is one of the elders who came to talk to me thinking that we were discussing land issues. Therefore, I referred him to our office where there is an officer who would take him to the DC and the Commissioner of Lands.

This man has a title but he has no land on the ground. Just imagine, what is the title supposed to say when there is no farm corresponding on the ground?

I would like that man, if he is here, to stand up so that we can see him.

(A man stood up)

The Presiding Chair (Commissioner Chawatama): Thank you. Commissioners, do you have further questions to the witness?

Commissioner Farah: Thank you, Mr. John Maitai, for your evidence. Yes, there are many things that you have stated to the Commission. You have said that most of these problems like selling of land, drinking, involvement of elders in land selling boards and such things need civic education because the Government is not involved in this. If somebody sold his land and started having problems with the family because his people were not consulted...I think you and your colleagues, with the leadership of the community should undertake very serious civic education amongst your people. My question is about building material that you mentioned. When a truck load is paid for with about Kshs1, 000 and a few kilometers away, it goes for about Kshs50, 000, is it the Government that sets the prices or is it out of negotiations between land buyers and owner of materials?

Mr. John Maitai: There is no department of the Government that is concerned with this apart from builders and the brokers who look for places where they can get sand from rivers. The owner of the land is deceived into accepting Kshs1, 000 while the broker takes Kshs15, 000. I think if it were possible, the owner of the land could get Kshs10, 000 and the broker Kshs5, 000.

Commissioner Dinka: If there is no control of prices, then negotiation is between the buyer and the seller. In fact, if you take an example of coffee producers or tea producers, you will see that your people could form a cooperative society, get rid of the middleman and sell to the final consumer themselves. There is a lot of money out there. There are other things like the animals from the game parks coming and destroying property and killing people. We have taken note of that but I would like to ask you one question. Have you taken this up with the administration and if so, what is their response?

Mr. John Maitai: We have had discussions with them especially in Narok and elsewhere. We were fighting for the animals to be moved if that is possible. We also wanted, with regard to the animals that had strayed from the parks to be owned by the indigenous people. Compensation should be made better than before. If someone has been killed, they are paid Kshs30, 000 which is not even enough to buy a sheep. They are increasing it to Kshs200, 000 which cannot even buy you a cow. We would like the payments to be commensurate to the loss. The animals should not be given higher priority than human beings. The animals should be moved from the farms so that we can live freely. If I have the freedom to own my land, the animals do not have the freedom to come and destroy my crops.

Commissioner Dinka: Thank you very much. In the ongoing talks, you said that land is being subdivided and given to other people to the disadvantage of the Maasai. Who is doing the subdivision? Is it the Government or some Maasai elders?

Mr. John Maitai: The Government has a department concerned with land. Therefore, Mr. Commissioner, I am sure you should not ask me that because you know that there is no one who has that authority except the one who does the work.

Commissioner Dinka: The Government is actually subdividing a forest area and giving it to people? A forest area is a gazette area? Is it first degazetted or is this being done by some corrupt officials? That is what I am asking.

Mr. John Maitai: We cannot follow this up and that is why we are urging this Commission to present this so that we can know who is hiving off this piece of land because we believe that the Commissioner of Lands knows about it. There is a chief in the area and other Government representatives but they are not complaining. It is the citizens who are only complaining.

Commissioner Dinka: When the citizens talk to the chief of the area, what response do they get? That is what I want to know. Have you also discussed this with other Government departments? What has been the response?

Mr. John Maitai: When I tried to present the issue, it was thrown here and there. They would send you to someone else and they would say that they are not responsible. If we had a satisfactory answer, we would have brought it before this Commission. When you see us bringing it before this Commission, it is because of the ping-pong games they are playing.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. As the commissioners have said, what you have said has enabled us to see a picture of the issues affecting the community. I would like to focus on some of those things. With regard to education, you said that there is a problem of unemployment of the youth. I would like to know about the education facilities here. First, is there universal enrolment from primary to secondary schools? Are people sending their children to school?

Mr. John Maitai: The Maasai have now accepted to send their children to school. This has been going on for a while. Quite a number who have finished are at home due to lack of jobs.

The Presiding Chair (Commissioner Chawatama): You have spoken about the ones who have finished. Have they finished secondary school or what level of education?

Mr. John Maitai: Some have gone to university while others are in secondary school. There are many who end up not attaining grades to enable them join secondary school

and therefore, they end up staying at home. The parents are trying to look for schools or middle level colleges which they can join.

The Presiding Chair (Commissioner Chawatama): Are there many Maasai girls who have attained university level education?

Mr. John Maitai: At the moment, they are quite a number. They are not many but they are there.

The Presiding Chair (Commissioner Chawatama): That is encouraging. I do not think I have more questions because the answers you gave to my fellow Commissioners have answered most of that I wanted to know. Thank you, once again.

I have a few questions to ask. As the Commission, we are tasked to bring about healing and national unity. One of the things that you have said is that the other communities that are living with you should show some respect and acknowledge the fact that you are the owners of the land here. Would you like to share with us how you would like this respect to be shown?

Mr. John Maitai: Respect is shown in very many ways, especially in the way neighbors live. This is in the way you treat other people's children, goats or sheep. There is a lot of communication. If someone was sold some piece of land and we do not talk or associate and I think my children are more important than my neighbors, what would the society think of me?

The Presiding Chair (Commissioner Chawatama): As the head of a council of elders, what have you done to try and get different communities to talk and show love to each other? What efforts have you put in place?

Mr. John Maitai: We have really tried, Presiding Chair, to talk to them but there is one thing I would like to tell you. There is one thing that is in Kenya and that is tribalism. If you call people and you are a Maasai, not many people will come and hear what you have to say. That is one of the biggest problems we, as the Maasai have. The Maasai Council of Elders has offices in areas like this and in other areas but they do not attend meetings when we call them and yet we want to live in a neighborly manner. They tell us to tell them, how do you come from another place, get land here and disrespect the people that you found here or the ones who welcomed you to the area?

The Presiding Chair (Commissioner Chawatama): Share briefly with us the nature of the meetings with us. Do you invite other communities? Do you think the notice makes them feel that they are included to participate or they feel that they are being called to be talked to? What kind of meetings do you have and what is the purpose of the meetings?

Mr. John Maitai: At times, Presiding Chair, we had problems with land boundaries. We intervene in this case so that the buyer and the seller can explain to us where the problem has come from. Instead of explaining an issue like this to us, they quickly rush to lawyers

and the issue is brought back to us. Sometimes you will realize that elders do not want to intervene because they wonder, in the first place, why they were by-passed even after they had summoned these people. So, whenever you live with neighbors, even you, as commissioners know how love should be cultivated.

The Presiding Chair (Commissioner Chawatama): I urge you to continue and not to give up having such meetings and not to be discouraged. You need to look at the history of where you are coming from and the suspicions and just forge on. Soon, you will start having those meetings and communities can begin to dialogue. I would like also to know as the Maasai, traditionally, when parents died, what happened to orphans, perhaps long time ago, and what has changed?

Mr. John Maitai: If I have to talk about the issue of orphans, we have been left behind. In Kenya, I know that the Government has a fund that has been set aside to help the people who have been...

The Presiding Chair (Commissioner Chawatama): Sorry to disrupt you. I wanted to know, traditionally, as Africans, usually, when orphans are left, there is a way in which the extended family would take care of them. I wanted to know, among the Maasai, what was the practice? Is that practice still practiced or orphans are left to fend on their own?

Mr. John Maitai: Previously, if anyone was bereaved, they would be left with the person who inherited the estate of the deceased. They would inherit both the estate and the children. They would not dispossess the children or mistreat them. They would love them and even treat them better than their own children. However, things have now changed and even if children are left with a lot of property, the property is disposed off. We do not see anything traditionally that would help the children to be rescued. So, we would like the Government to set aside money even if it is allocated through an NGO to ensure that these children are catered for or are in school and not herders.

The Presiding Chair (Commissioner Chawatama): One of the complaints that you mentioned in your testimony is that there was no transparency in the way the money meant for development was used. It was known that money had been received but it was not clear how it was used. What are some of your thoughts on what you would like to see done?

Mr. John Maitai: I would like to urge the Commission to present before the Government that any money that comes to a district, for instance, if it is meant for the development of livestock, it is used in addressing those issues instead of getting lost somewhere. If it is meant to address issues related to HIV/AIDS, it should go into treatment and mitigating effects instead of getting lost somewhere. There are two ways in which this money disappears. One is when we use shortcuts and the other is when it is used wrongly.

The Presiding Chair (Commissioner Chawatama): I will ask you my last question which I would like to hear your answer as a man. You have talked about men and how they sell

land without consulting their wives and children. Is it usual in the Maasai community for a man to discuss the issue of land with their wives?

Mr. John Maitai: Presiding Chair, we will go back to where we came from. We do not have such agreements. If you look at where we came from, the Maasai community, traditionally, used to colonize their women. At the moment, that is not there. There must be an agreement now because the land also belongs to the women and the children as well.

The Presiding Chair (Commissioner Chawatama): I am very glad to hear that. One of the ways that people can achieve this is by getting title deeds for their land and the title deeds should be in the names of both the husband and the wife, meaning that if a husband sells the land, the woman would have a leg to stand on and say that she was not consulted so that the transaction can be declared null and void. The other commissioners have said that there is a lot of civic education that is needed in the issues that you have brought up. One of these things is the fact that we should point out that title deeds be issued both in the names of husbands and wives so that this can act as a deterrent and they would not be free to sell land without the consent of their wives. I would like to thank you very much for your testimony. Your testimony brought a lot of issues on how to deal with wildlife and the concern of the Maasais who are in far-flung areas who are unable to access health facilities. We will look at what can be done. You have also talked about the issue of corruption, education and the disintegration of family life; the institute of family. So, we would like to thank you very much for coming to testify before us. Leader of Evidence, stand down the witness and swear in the next witness.

Mr. John Maitai: Thank you very much.

Mr. Patrick Njue: Presiding Chair, we will now take Witness No.3 on our course list.

(Mr. James Turere took the oath)

Good morning Sir?

Mr. James Turere: Good morning to you.

Mr. Patrick Njue: Once again, kindly, state your names and where you come from.

Mr. James Turere: My name is James ole Turere. I am a livestock farmer and the Chairman of the Kitengela Land Association. I come from Kitengela.

Mr. Patrick Njue: According to this Commission, you are here to make a presentation on land grabbing. Can you confirm that to be your complaint?

Mr. James Turere: Yes, that is my complaint. I would like to take this opportunity to thank the Commission and especially the Chair for listening to us. I will do my presentation in brief because the history is very long. I will then hand over the documents

to you once I am done with whatever I have to say. The first thing I would like to say is that I will talk about the farm known as sheep and goat land which borders Kitengela Town and borders Nairobi. The piece of land has a long history because the farm had been granted to the colonial Government in 1937 when the war between Britain and Germany began. When I found out that the farm had been leased out by the Maasai - documents which I will present to this Commission – the white man by the name “Lemstrong” approached the Maasai and asked them to join the war and see if they could defeat Germany.

The Maasai were very few. When they were told to do that, they said that the only assistance they would give them was cattle and it was accepted. All areas of Maasai land donated a few heads of cattle which were brought to the KMC where they would be slaughtered and canned. This brought a problem later on because the cattle would come from very many areas which were being inhabited by the Maasai because they spread a lot of diseases like one called “Loops”. When the disease was discovered, the Maasai approached the white man and told him that they would not continue because the outbreak of diseases. So, they agreed that they would set up an area where they would quarantine the affected animals and this was agreed upon. The white man was shown where they could keep their animals. Two areas were shown to them. The white man decided to go and take a place where they could graze. They then moved this area from Kajiado District to Machakos County. This is because the white men used to call Kajiado District a “closed district” which meant that people were not allowed to move freely. The problem came in because the map was changed. Some areas were moved from one district to another and that was the beginning of the problem.

In 1962, the Kenya Meat Commission was collapsing and losing because the cattle that were being grazed had been moved. However, because of what had happened and the new map which had been drawn, this did not change the agreement. The land belonged to the Government and it caused another problem because the land was just lying idle. The Maasai occupied it until 1990s when these people came back. They found the Maasai living there and they started burning their houses. They evicted them and another problem arose. Their houses were burnt down. This is because our brothers knew that the white man we had given land to was no longer in the project but the KMC came back and claimed that the land belonged to them. The conflict went on and after houses had been burnt, we sat down. We were with a Member of Parliament, the late Ole Tip Tip. He presented our issues and we talked. We wrote letters to the President and the Ministry of Lands and I have copies of all those documents here. After that, we arranged for a meeting where we were given 6,000 acres. We left and the rest of the acres are down here. We were told that there would be a project run by ILRI and that is what is called Sheep and Goat for Research. The promise was that if it succeeded, we would benefit because we are pastoralists. So, we went there until the project collapsed and the land was left with no activity going on.

They formed a group and invaded the land. They took 250 acres and other small pieces. One person was given 20 acres and another one was given three acres. Others were given two acres. They were giving this land according to somebody’s position. When we saw

that, we were not happy because when we left it, we knew it was donated to a project but what we saw later was that this was not what we thought.

On 15th July, 2001, we held a meeting because we had seen surveyors coming to subdivide the land. So, we approached the DO and asked him if he understood what was going on. He said that he did not understand. We arranged to meet on 21st July, 2001 inside the farm so that we could establish what was going on. When we arrived there on the day of the meeting, everything had changed. The police were brought in and anyone who stepped on that piece of land would be arrested and taken to the police station. It became a completely unexpected issue. We were tired of this issue of grabbing land and we sat down and decided that we were going to let ourselves to die because of that land. We armed ourselves with clubs and stones and were ready to tackle the police who had guns and batons. We went in to fight the police out of bitterness. I can confirm this because I have a CD and photos of what was discussed on that day. I have evidence that I can use to prove what I am saying.

After the scuffle, one of us was shot. After the shooting, the police officers started arguing and one of them was trying to ask them why they were beating innocent people. We found the elders who were trying to quell the scuffle and this ended at about 6 p.m. On 23rd, we sat down at a meeting with the Provincial Commissioner from the area and we held talks on what had transpired. It was realized that the problem had been brought about by the District Officer who had summoned the meeting and was the same one who had brought in the police. So, the PC instructed us to go to his office and said that we should meet the whole group that was laying claim on that land and present documents and anybody who was claiming that land should come with the documents. So, we went to Embu at the PC's Office and presented our documents and the communication that had been exchanged including the time that the sheep and goats project took over the land and the letters through which we had complained about the things that we did not like. It was realized that we could stay inside that parcel of land and even as at now, we are still occupying that parcel of land.

This is a long-term problem that could even have been seen by a blind person that is oppression. It has been there for a long time. As we sit here, people go to the lands office and get title deeds and come to the piece of land showing us the title deed, but when you look at it, there are no beacons and no demarcation on the ground. We are the ones who are occupying the piece of land but because of rampant corruption, these people have documents, which we have declared to fake. We have been telling them that they have certificates, they can build in the air but we will keep the land and we are not leaving. We would like this Commission to help us to ensure that we have the right of the land. If those who are trying to grab it have the right, then it can be decided, but I believe the parcel of land is ours. I would like to hand over the documents to the Commission to prove. The documents that I have with me, I am very sure will verify what I have been saying. I would like to urge the Commission to give two or three minutes to one of the elders, David Nkediye, who understands everything, to mention one or two issues. He has important information. My information is with regard to the sheep and goat land. It has been a long time and we have persevered oppression and I hope that you will be our

savior. If we do not get this help, already we have passed through a lot of bitterness and one of us have died. I had to face somebody hitting me with a G3 and it is not easy for people to persevere. It is not easy to face somebody with a gun with clubs and stones and daring them to attack and kill you. We have gone through a lot of problems.

The Presiding Chair (Commissioner Chawatama): There is a request for us to allow another witness to make a presentation and three minutes have been asked for. We are granting that witness three minutes. Thank you.

(Mr. David Nkediemye took the oath)

Mr. Patrick Njue: Good morning, Sir. For the record, once again state your names and tell us where you come from and what you do for a living.

Mr. David Nkediemye: My names are Dr. David Nkediemye. I work with the Centre for Sustainable Dry Lands at the University of Nairobi. I am also a resident of Kitengela.

Mr. Patrick Njue: Welcome, Mr. David. You have been present when Mr. Turere was making his presentation?

Mr. David Nkediemye: Yes.

Mr. Patrick Njue: And you very well heard the matters that he raised?

Mr. David Nkediemye: Yes.

Mr. Patrick Njue: Further he went ahead to ask the indulgence of the Commissioners to grant you three minutes to elaborate on an issue that he felt you are well versed with. More so, it has to do with recommendations from this presentation. I will ask that you make your presentation albeit within the confines of the time allocated.

Mr. David Nkediemye: Thank you, the Chairperson of the Commission and other Commissioners. In relation to what Mr. James Nturere said, I would like to highlight within the given time the fact that we have two issues pertaining to the Sheep and Goat Multiplication Centre. One issue is that there was an irregular change of boundary from the Rift Valley Province to Eastern Province. Two, after the land was set aside for the project, at the end of that project, the land did not revert back to the owners yet they had been moved to create room for that project. The whole area is about 10,000 acres as we know it. The boundary between Eastern Province and Rift Valley had always been the railway. We do not know of any time that the boundary between Eastern Province and the Rift Valley changed and the community is not aware of that. So, our plea to this Commission is that the land reverts back to the Rift Valley and two, that all that land formerly known as the Sheep and Goat Multiplication Centre and related land up to the railway be given back to the Maasai community. We would want to know who the grabbers are because they are well connected people and we ask this Commission to make it bare and for all those people to be forgiven, but all that land cannot be grabbed

from the Maasai. The Maasai are on the ground and their plea is that all that land reverts back to them. Thank you.

Mr. Patrick Njue: Thank you Daktari. Indeed, you have been within the time.

The Presiding Chair (Commissioner Chawatama): I would like to speak to James. We see your pain and as we have travelled throughout Kenya and have heard from different people sharing with us their experiences, the pain has been clear. We have also known that in this process, we would re-open wounds. So, we acknowledge the pain and suffering that you and your community have gone through and we thank you that you still came and that you have spoken to us. Leader of Evidence, do you have any questions or clarifications?

Mr. Patrick Njue: Just two and either David or James can answer me. When you talk of the original piece of land, what was the acreage?

Mr. David Nkediye: The original piece of land measured 10,000 acres.

Mr. Patrick Njue: And 6,000 has since been in the use by the Maasai?

Mr. David Nkediye: Yes, 6,000 to the Maasai.

Mr. Patrick Njue: That leaves 4,000 that was then allocated to the International Livestock Research Institute?

Mr. David Nkediye: About 2,912 acres went to the Sheep and Goat Multiplication Centre and 1,088 was occupied by the settlements around Athi River.

Mr. Patrick Njue: The 250 acres that were grabbed by certain powerful individuals is land from the 1,088 or from the 2,912 acres?

Mr. David Nkediye: It was from the 2,912 acres.

Mr. Patrick Njue: And that is the land that you want reverted back to the community?

Mr. David Nkediye: Yes, that is part of the land that should revert back.

Mr. Patrick Njue: Mr. Nturere referred to some documents that he had to accompany his testimony today. He further said that he has them today. I will ask James if he could share these documents with us for purposes of admitting them to the record of the Commission.

Mr. James Nturere: Yes, I can. I have them here.

Mr. Patrick Njue: One by one, tell us what they are. If they are originals, we will run copies and return the originals to you.

Mr. James Nturere: Thank you very much. Some are photocopies and others are originals and we would like to have them back after you photocopy them.

Mr. Patrick Njue: In the testimony of the witness, he referred to them, but I can see that it is a memorandum and the supporting documents, if this can be formally admitted to the record of the Commission.

The Presiding Chair (Commissioner Chawatama): The bundle of document is admitted and I suggest that a list of the same be made.

Mr. Patrick Njue: We will do so. That is all I had for the witnesses. Thank you.

The Presiding Chair (Commissioner Chawatama): Thank you very much. Commissioner Shava, do you have any questions for this witness?

Commissioner Shava: I would like to echo the words of the Presiding Chair and say that although you see us here listening to you and we are not from your area and have not experienced at firsthand what you have gone through, we understand what it means to live through the kind of experiences that you have narrated. I just want to make sure that I heard it right because my question has been asked by the Leader of Evidence. My question is to Mr. David. The original land was 10,000 acres. Is that correct?

Mr. David Nkediye: Yes.

Commissioner Shava: Then what you are calling the Sheep and Goat Multiplication Centre was being run by the International Livestock Research Institute. Is that the same?

Mr. David Nkediye: It was a Government project.

Commissioner Shava: In collaboration with ILRI?

Mr. David Nkediye: Yes.

Commissioner Shava: And they were using how much land?

Mr. David Nkediye: They were using 2,912 acres.

Commissioner Shava: And then an amount went to settlements around Athi River. Is that what you said?

Mr. David Nkediye: Yes, the rest of the amount went to settlements around Athi River.

Commissioner Shava: Is that 1,080?

Mr. David Nkediye: Yes. I think it is about 1,088.

Commissioner Shava: When you say settlements, what do you mean? Was this land properly alienated; was it properly given or were there irregularities?

Mr. David Nkediye: What happened is that the Maasai were settled on that land and they were asked to move to create room for the project. Then they were settled on the 6,000 acres. This land was set aside for the Multiplication Centre. After that, when the project collapsed, other people from outside, some of whom were very well connected started grabbing that land.

Commissioner Shava: The 1,088 acres?

Mr. David Nkediye: The 2,912 acres.

Commissioner Shava: I understand that, but what I want to understand is that when you say settlements around Athi River, settlements for whom? This land is in several parts; there is the 6,000 acres, where the Maasai people were, there was the 2,912 acres for Sheep and Goat Multiplication centre and then there was 1,088 acres for settlements around Athi River.

Mr. David Nkediye: Most of that land is where the EPZ is situated now.

Commissioner Shava: So, these settlements include the EPZ? So, it is not the Maasai people who are settled there?

Mr. David Nkediye: No, it is not the Maasai who are there.

Commissioner Shava: I have understood that. That is clear now. Then you said that the particular 250 acres that were sold by this company to highly connected individuals came out of the Sheep and Goat Multiplication Centre?

Mr. David Nkediye: Yes.

Commissioner Shava: That is also clear. This question is to Mr. James. You have said that you would like the title to be issued to the community. I would like to know from you how that title deed would read. Which community?

Mr. James Nturere: It could read different names. For instance, groups of people had come to buy land. These are names like Maasai, Bet, and Afya SACCO. Those are the names that I saw there.

Commissioner Shava: If you got your wish and the title deed was written now, to whom would it be written?

Mr. James Nturere: It should be written Embakasi Community Land.

Commissioner Shava: My final question goes to Mr. David. Looking at the statement which I believe you have seen and I see that this company of high powered individuals started selling the land through a broker called Mavoko Brokers, this is the same time when a lot of land was being sold around Syokimau which is a very topical issue right now. Is this the same broker?

Mr. James Nturere: It may not be.

Commissioner Shava: Thank you both of you. I have no further questions.

Commissioner Farah: In addition to what my fellow Commissioners asked, Daktari, I want you to tell me; this 6,000 acres you say were allocated to the local Maasais for settlement, were they subdivided and title deeds issued?

Mr. David Nkediye: Yes. The land was subdivided and they were issued with titles.

Commissioner Farah: So, the 6,000 acres, you have no problem with that?

Mr. David Nkediye: No.

Commissioner Farah: Even if the Maasais sold it later, that is not your business?

Mr. David Nkediye: That is another matter and is not what we are presenting to this Commission.

Commissioner Farah: So, your problem is with the 2,912 acres?

Mr. David Nkediye: My problem is with the 2,912 acres plus the boundary of Eastern and the Rift Valley provinces.

Commissioner Farah: Those are the only two problems that are bothering you right now. If the boundary is re-assessed and set properly and that land becomes part of Eastern, what happens?

Mr. David Nkediye: I did not hear that.

Commissioner Farah: Suppose it is re-assessed and a lot of Athi River is in Machakos?

Mr. David Nkediye: Our contention is that it is fraudulently so.

Commissioner Farah: So, it is not the 2,912 acres alone but a lot of other land was put in Eastern?

Mr. David Nkediye: Yes.

Commissioner Farah: So, we are looking for where the boundary is. Boundaries are made by subsequent governments. Supposing all the legal avenues were used and the boundary was drawn properly, would you claim for the other land or would you only claim for those 2,912 acres?

Mr. David Nkediye: The boundary issue would be one issue and the people on the ground would still be the Maasai and the land we are talking about that was previously used for the project would still revert to the Maasai. All along, they have been the residents of that area and at no one time did people from Eastern Province become residents of that area.

Commissioner Farah: So, proper boundaries to be drawn so that the Maasais get that land and the Sheep and Goat Multiplication Centre of 2,912 acres be returned to the Maasais. That is your contention?

Mr. David Nkediye: Yes.

Commissioner Farah: Yes.

The Presiding Chair (Commissioner Chawatama): David, I have only one question for you. Could you share with us briefly the impact the loss of this land has had on your community?

Mr. David Nkediye: The whole process has been very traumatizing because in the 1980s as my colleague, James Nturere mentioned, when the Maasais were being moved out of that land so that they could create space for the project, houses were torched. James Nturere has copies of newspaper cuttings that show that houses were burnt as people were being thrown out of that area. The other thing is that later on in 2001 there was a conflict between those who were masquerading as the owners of the land and the community. There was a clash between the local people and the policemen who had been sent to come and enforce that status quo. One person was shot dead.

So, the memories that the community has about this land and the issues surrounding the land have made the community very bitter. The community has looked at this whole issue as some people who are well connected in the Government moved this boundary from one province to another. Also, the same well connected people trying to take advantage of the ignorance of the Maasais to grab that land for their own use. So, it is a very emotive issue and right now, the Maasais are living on that land and are watching to make sure that nobody comes physically on the ground because some people have claimed that they already have title deeds, they have papers that they call titles, but we strongly believe that those are just papers and they are illegal.

The Presiding Chair (Commissioner Chawatama): James and David, on behalf of the Commission, I would like to thank you most sincerely for making yourself available to testify before us. The Commission undertakes a lot of research and the statements that you have given us and what you have said today will help us.

Commissioner Shava: I have one more question. Dr. David, you have said that people are on the land and Mr. James you also said this. People are on the land basically being vigilant to ensure that nobody tries to occupy that land. You have also said that the people who have come onto this land have been facilitated in doing so by powerful individuals and I have seen from the statements that many of them are politicians. With an election coming up next year, do you see this piece of land as being a flash point for violence? What we have seen as we have gone round the country is that politicians often promise land to their supporters and this can result in violence. Do you see any potential for violence on this piece of land linked to the coming election?

Mr. David Nkediye: Right now, there are people who call themselves squatters and who are eyeing the land. They are not on the land. Politicians, especially from the Athi River side, have been promising them that they will be settled on that land. One of the greatest sources of tension is that should any of those people be settled on that land, there is going to be a huge amount of conflict and the Maasais who are watching over that land will not allow any intruders to settle on that land. So, it is a hot spot. It is likely to be a flash point for conflict if any of those people are moved onto that land.

Commissioner Shava: Thank you, Mr. David.

Commissioner Farah: I have one clarification. Some Permanent Secretaries have been writing here saying that, that land belongs to Mavoko. I have also a letter from the Ministry of Agriculture which came from you which was telling you that the land does not belong to the Kenya Meat Commission but it now belongs to the Sheep and Goat Multiplication Centre. So, there has been quite a debate going on, the other side claiming and this side claiming. What is this Kitengela Group Ranch, which is now again writing that the Sheep and Goat Project was not 2,912 but 8,912 acres?

Mr. David Nkediye: Starting with the 8,912, if you subtract 6,000 from 8,912, you get 2,912. So, the whole area was 8,912, then 2,912 was set aside. The Maasai were settled on the 6,000. If you look at the correspondence, we believe that many of those letters that you see there have been written by Government officials and we do not have trust in that content because it is on record that at some point, a Permanent Secretary in a related Ministry had settled on that land and claimed possession of part of that land. So, all those correspondences that you see are things that we have been looking at and we do not believe that they are authentic because some of those people have been interested parties and that is why you see the back and forth.

In 2001, for example, the KMC came back to say that the land was theirs. Initially, they had said that they had relinquished the land to the Ministry of Lands. So, you can see again, back and forth. That is why we do not believe that and we would want this Commission to get us the truth.

Commissioner Farah: Are there Maasais living on the 2,912 with huts, buildings and everything?

Mr. David Nkediye: Correct and their livestock there.

Commissioner Farah: And you are saying that there are others who are holding papers saying that they have the title deeds and they own the land?

Mr. David Nkediye: Yes. During the conflict, they had come to put beacons and said that they had plots there and they were chased away.

Commissioner Farah: And you chased them away?

Mr. David Nkediye: Yes.

Commissioner Farah: What did the police do after the conflict?

Mr. David Nkediye: The police quietly went away and left.

Commissioner Farah: And left you on the land?

Mr. David Nkediye: Yes.

Commissioner Farah: So, these fellows, they only have the papers and have no hope of coming to settle on that land?

Mr. David Nkediye: They have no hope. It is a situation that generates tension to think that somebody else has a title and you are just there physically on the ground. That brings you disconnect and generates tension because we do not know what will happen in subsequent regimes. They could come and push people out and use those titles. Most of those titles are actually fraudulent and we would want this Commission to dig out the truth.

Commissioner Farah: The individuals living on the land have no paper work at all but only the claim for ancestral land that they have been living on?

Mr. David Nkediye: They do not have titles.

The Presiding Chair (Commissioner Chawatama): Thank you very much for the testimony. Leader of Evidence, step the witnesses down and swear in the next witness.

(Mr. Hamilton ole Parseina took the oath)

(Mr. Innocent Katoo took the oath)

Mr. Patrick Njue: Allow me Presiding Chair, Commissioners to observe that the second witness who has just taken oath is seated with us for purposes of presenting a separate memorandum which he will shortly be handing over to you, specifically with a view of

making recommendations. Our first witness will be setting climate in terms of land issues within the Kajiado County and the second witness has a memorandum that details particular incidents which will be based on the presentation of the first witness.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence, there are certain issues that we should have been able to deal with before we even began; certain things should be brought to our notice so that we can also participate in making certain decisions because of the issue of managing time. When we look at the cause list, I think it is clear that we have one witness or is it two?

Mr. Patrick Njue: It is one witness.

The Presiding Chair (Commissioner Chawatama): It is one, so I am saying that the Commission needs to participate in making decisions that bring in the second witness and we should not just hear it from you as the witness comes. This is information that we should have known before and made a decision on. You need to manage time.

Thank you.

Mr. Patrick Njue: Thank you Presiding Chair. We are indulged for this first witness. Before I begin, Sir, good morning.

Mr. Hamilton ole Parseina: Good morning.

Mr. Patrick Njue: For the records once again, please tell us your name, where you come from and what you do for a living.

Mr. Hamilton ole Parseina: My name is Hamilton ole Parseina. I represent the Kajiado Pastoralist Forum. I am also the Chief Executive Officer for the National Cohesion Organization. In short, I am a human rights activist. I come from Ngong’.

Mr. Patrick Njue: Mr. Ole Parseina, according to the brief that we have, you are here to make a presentation on the various land issues that traverse the Kajiado County. I believe you have prepared a summary of your memorandum.

Mr. Hamilton ole Parseina: Yes, I have prepared my summary. Before I go straight to my memorandum, let me shortly just make a preliminary remark that the reason you see this hall almost empty is because people in this county have been messed up by impunity. They no longer believe in these processes. They think anything to do with the Government is an exercise in futility. I would wish to beseech you that in the course of these proceedings you make an assurance to them that what we are doing and what they are going to produce before you is going to be acted on.

My presentation is based on the willing buyer-willing seller land policy. You find that specific issues have been brought up like the Sheep and Goat Scheme in Lodariak area. But the biggest avenue that the Maasais have been losing their land through is the policy

of willing buyer-willing seller. It is true and it has been recorded that the Maasai community had lost a million acres of land to the British settlers under colonialism. You will find that upon independence, most communities got back their land but the Maasai watched in disbelief as the land which was taken away from them was quickly apportioned to others by the new administration. Even in that pain, the Maasais continued to find themselves in the doldrums and the area faced the stark reality of disappearing into oblivion all together as whatever remained of their land is continuously and ruthlessly swindled away by forces of land grabbing.

Here in Kajiado County, there is wanton loss of land through dubious means; the community moved away from the high potential zones of Ngong', Kiserian, Ongata Rongai, Kitengela and the slopes of Oloitoktok which served as the last refuge of their livestock during drought.

The land grabbing has for the last 48 years of independence been predicated on the policy of willing buyer-willing seller and found repose in the ineptitude provincial administrators such as the DC, DO and chief who almost always abuse the fidelity of their offices so as to make a personal gain. No wonder some of these officers have refused to take promotion and transfer to other parts of the country. This policy has quite intentionally been elevated to a law in Kajiado to muzzle any voice to the contrary. This begs the question; if the Government can go out of its way to intervene on quotas and prices of goods such as coffee so as to protect its farmers, why is it completely silent on a more weighty issue of land when an entire community is being robbed of their land in broad daylight? In land sale, like in all transaction ventures, the two concerned parties must be in a position to understand the full implications and consequences of their transaction. This is a standard practice the world over. How then, therefore, can an illiterate pastoralist who has only handled the barest fraction sums of money in all his entire life and hardly understands the existing and projected economic dynamics be said to enter into a transaction to buy his piece of land worth millions of shillings with a world trotting *Nairobian* with the skills in business negotiation and has all the instruments of power at his beck and call? Where is fairness for the seller when the buyer is the DC or DO who sits and controls the Land Control Board or as is the practice here in Kajiado sometimes solely determines land transactions?

We also continue to see increasing cases of pastoralists compelled to settle with their kith and kin after disposing off their land because unscrupulous people have sold and fenced off shared water points or the investor has polluted the river with chemicals thereby posing a threat to livestock. Would you again describe such a case, and they are many, as one of a willing seller?

Presiding Chair, I am sure on your way when you were coming from Nairobi through Kitengela and Isinya, you have seen a number of flower farms coming up. I can confirm to you that a number of people have sold off their land so that their animals do not die of the chemicals that find their way into the rivers. That is what we continue to say that it is a willing seller-willing buyer.

Something that I may have failed to mention when I was talking about the ignorance that is being exploited; I wish to give you an example. You will find a man selling his land that is worth Kshs3 million but the buyer pays him in a manner that he is not going to benefit from the money. It is common but you find someone being paid Kshs10, 000 and even that amount you are given a post-dated cheque. We have seen incidents of men coming to those offices in Nairobi. They get to that office from 10.00 a.m. to 8.00 p.m. and then he is given a cheque of Kshs10, 000 yet the person owes him over Kshs3 million. He is now supposed to get a taxi from Nairobi to Oloitokitok because public transport is not available at that time. In the process he ends up spending Kshs6, 000. He is given that kind of money until the last penny. That money will not help that family. He will sell that piece of land and another one but there will be no benefit.

Institutions dealing with land here such as the Special Land Control Boards, the Land Registrar, the Physical Planner, the Provincial Administration, Land Tribunal *et cetera*, are either moribund, perpetually corrupt, lack capacity or are cowed by the powers that be. Today you can count with fingers the number of pastoralists who still own land on the main road between Nairobi and Namanga. The same sad story is replicated in the remote interior areas. It needs to be appreciated that a pastoralist Maasai does not understand the concept of land title deed. A majority perceive land transactions based on title deed ownership as nothing beyond the paper work. This has resulted in indiscriminate selling of land and more and more young people are dropping out of school under the allure of Kshs3 million.

Presiding Chair, there is a saying among the Maasais that under the sun there are only two things that cannot be taken away; the sun and land. So, even as they sell this land at the back of their minds they say that the land is not going anywhere. That cultural aspect of it is the one that has made them sell their land because they think eventually in one way or the other the land is going to be with them. The easiest business you can do in Kajiado now is being a land broker. Being a broker, you make millions. This selling of land has presented us with another big problem. Young people no longer see the importance of education. They are dropping out of school either to come and sell their parcels of land given by the parents or to be land brokers. The fathers, because they want to sell the land against the will of their families, use their sons by telling them that, "I am going to sell this piece of land so that I get some money to subdivide the rest to you". In that way you find that these young boys barely 20 years old are now in possession of billions of shillings. All that they do is use the money in luxury. There are cases of the young going to places like Malaysia *wanasema*, "*kuponda raha*". That is the issue that is facing us.

Linked to this harmful policy in the...

The Presiding Chair (Commissioner Chawatama): Sorry, we are lost because of the translation. Something was said in Kiswahili and the interpreter also said it in Kiswahili therefore Commissioner Dinka and I have not understood what was said.

Mr. Hamilton ole Parseina: I was saying that when these young boys sell their land they even go to the extent of flying out to other countries to find luxuries. That is their competition now. You can imagine the seriousness of this thing.

The other one is the inclusion of Kajiado County all the way to the Tanzanian border in the Nairobi Metropolitan. We do not understand and as a community we have voiced our concern to the relevant Government Ministries. We do not understand how you can place places like Mosiro, Magadi all the way to Namanga under the Nairobi Metropolitan yet the other two counties that border Nairobi are covered by just a few kilometers. We do not understand how they can place an entire huge county like this under Nairobi Metropolitan and force it on people.

For us, we see this move is a calculated move by some people in the Government to hasten the process of accessing the so called idle lands. When you talk and go against this, we are being told that we are refusing development. What is development without those who are supposed to benefit? It has resulted in people being displaced in their thousands. It is instructive to note that through this policy an increasing number of the locals are finding themselves landless or as squatters. This phenomenon if not quickly addressed will result in serious upheavals in the county. Such an eventuality should be avoided by addressing the problem.

Presiding Chair, one of the biggest problems that we have in this country is tribalism. Whenever you see a face you relate it to the tribe the person is coming from. I am happy say that I am a patriot. Indeed, our organization was founded in 2004 to fight negative ethnicity in this country. As I sit here, the benefits that I have accrued as a person as I grew up, up to now were favors done to me by non-Maasais. I have seen my school fees paid by Kalenjins, I have benefited from individuals who are Kikuyus, actually the person who motivated me to go to the university is a Muslim and I am a Christian. Therefore, for me I put the nation first. I know the best person is the best human being. However, we are saying that if this problem of selling of land is not addressed in Maasai land, it is going to create problems. We now hear of some youths who have grown up and found that their parents sold off their lands. They have gone to investors or immigrants who bought their land and asked them to be paid a fee at the end of every month. I do not think that is sustainable. It just tells you that this is a time bomb waiting to explode.

I have about seven recommendations to make.

- (i) The TJRC should quickly move fast and use the powers it derives from its mandate to halt all land transactions in Kajiado County until all land law regimes in the new Constitution are passed and operationalized.
- (ii) That it recommends the establishment of a commission to wade through the mangle and tangle of land grabbing and land injustices in Kajiado.
- (iii) That the current Land Control Boards are disbanded and reconstituted as per the enacted National Land Policy.
- (iv) That a proper land use system with the full participation of the locals be put in place so that if an area is set aside for livestock, it is used for livestock. If it is for agriculture, let it be for agriculture. Whoever comes and settles or invests in that

area knows what it is to be used for. What we now have in the county is total disorder. Today you can even find a person coming all the way to Nairobi to buy a piece of land to put up a house for his family, a year or two years later someone who has also bought a piece of land there uses it for quarry purposes. You then find your house cracking and you are forced to move.

- (v) Immediate and full implementation of the Kitengela/Isinya/Kipeto land use master plan. The same land use master plan should be reproduced in other areas of the county.
- (vi) The Provincial Administration should be excluded in all land dealings or transactions. There is no land grabbing taking place in Kajiado without the hand of the Provincial Administration. They have messed us up so if they can be done away with, it is better for us.
- (vii) That because of the land that was lost during colonialism, the land may not be recoverable. However, the community should be compensated for the loss.
- (viii) That a massive awareness campaign be rolled out by the Government to sensitize the locals on the dangers of indiscriminate sale of land.

In closing, let me say that the problems the Maasais are encountering are not caused by non-Maasais. They are just a secondary factor. The biggest cause of land problems in Maasai land generally are the Maasai leaders. It is the leadership. You have just heard of the border between Rift Valley and Eastern. Those were done decades ago by the Maasai leadership. They now use the land to secure political favors from the powers that be. Look at any grabbing taking place in Maasai and at the centre of it is one or two Maasai leaders. With the competitive politics that we now have because of multi-partism since 1992, we have now seen Maasai leaders disposing of public land to get money for campaigns. If it were possible we would really appreciate because we are entering into 2012 which is an election year. If you talk of from Oloitoktok to Magadi to Ewaso to Ngong' already there is that grabbing taking place. If we could be given a grace period where no transaction takes place in this county until after the elections, it will be good for us.

Thank you so much.

Mr. Patrick Njue: Thank you Hamilton for that presentation which I rather find quite coherent, to the issue and to the point. You have gone ahead to give your recommendations. It is quite clear in my mind how land issues are viewed within Kajiado County. You have been reading from a memorandum. I would ask if you would formally wish to present it to this Commission. Presiding Chair, if the said memorandum can be formally admitted to the record of the Commission.

The Presiding Chair (Commissioner Shava): The same is admitted. The memo that we have has three pages. I got the sense that there may have been a page missing because as the witness was reading out his recommendations, on the particular memo that we have, we only have two recommendations. Is there a page missing?

Mr. Patrick Njue: There would be no page missing but from his memorandum we now have it complete.

The Presiding Chair (Commissioner Shava): So we would like to have a copy of that particular memo so that we can put it in our file.

Mr. Patrick Njue: Indeed, we have copies here. He is kind enough to supply us with some. The Hearing Clerk will be sharing with us.

From my other brother, Innocent, allow me to say that we have also received a memorandum and I will just pose a question. Is it your wish that this memorandum titled *Memorandum to the TJRC relating to Land Issues in Loitoktok District* be formally admitted to the records of this Commission?

Mr. Innocent Katoo: I would just like to say my names again. My names are Innocent Katoo. I come from Loitoktok District. The land issues pertaining to Loitoktok District...

Mr. Patrick Njue: Innocent, I began by asking if it is your wish that this memorandum be formally admitted to the record of this Commission.

Mr. Innocent Katoo: Yes.

Mr. Patrick Njue: I may not have had the benefit of reading it earlier since you just indicated your willingness to present today, I am sure we will keenly study it as a Commission. I may not be able to pose questions to you at this particular time. Over to the Presiding Chair, because I have no questions for the witnesses.

The Presiding Chair (Commissioner Shava): Well, the memo that Innocent has given to us is admitted as prayed. I will just confirm with the other Commissioners on how we should proceed.

It is the decision of the Commission that we will allow Innocent to just present his recommendations. What we normally want is to have the memo before so that we can study it. In this case we have not had that opportunity but we appreciate the effort that you have made in preparing the memo and in coming before this Commission. For this reason we will allow you to quickly go through the recommendations. We will give you about ten minutes.

Mr. Innocent Katoo: As I said earlier the district has been divided into group ranches. The district consists of around six group ranches. I will just in brief talk about around three group ranches because there are just common issues.

In Kuku Group Ranch, in 2009 there was a general meeting that was held there. There were chaos; vehicles were burnt to ashes including the vehicle that belonged to the DC. Later the vehicle was paid for---

The Presiding Chair (Commissioner Shava): I am sorry Innocent. It is never our intention to interrupt a witness. However, we have before us your memo; we have seen that in your memo you have talked about the Kuku Group Ranch, Kimana, Ikiondo Group Ranch, Mbirikani and all that is before us. If there are specific issues that are common to all, do not deal with them individually, deal with them collectively just for a few minute and then go to the recommendations.

Mr. Innocent Katoo: The issue with all these group ranches is that it has been a play ground where Group Ranches Management Committee, the area Member of Parliament and the DC have made them their cash cows. All revenues earned from the eco-tourism activities are just taken by the DC and the management committee. The group ranch members have been silenced by the Provincial Administration through the use of excessive force, arrests and manipulation of the land controls. The Land Adjudication Officer and the Registrar of Group Ranches have become tools of approving these malpractices.

When members bring issues to court, it is difficult to get justice. It has been extremely difficult for members to have their rights and freedom even to elect group ranch officials of their choice. They are at all times forced to accept officials.

Briefly if I go to the recommendations:

Overall human rights based approach should be adopted for all the development strategies with regard to the pastoralists. The Government should take all the necessary steps in consultation to ensure that the troubled people are protected. There should be recognition of the rights of the Maa pastoralist community and the ancestral land territories.

Sessional Paper No.3 of 2009 on the National Land Policy should be adopted and implemented fully. There should be full and effective political participation and representation as provided for under the new Constitution. Affirmative action should be applied to promote equitable employment opportunities, access to water, adequate health care services and education. The Maa pastoralist community should be involved in decisions concerning the management and benefit obtained from protected areas, game reserves and national parks. The Government should support the process pertaining to intellectual property rights and culture in accordance with the Constitution. The rights to environmental services – the Maa community should be consulted prior to the exploration of natural resources – as I recommended in our memorandum... There is an industry that is being initiated in our group ranch and the management committee has entered into an agreement for 99 years. They are only paying about Kshs4, 000 per acre to that group ranch and this is just peanuts. The community should be fully compensated for any diverse environmental impact on the land and traditional livelihood destroyed by the development projects and other economic activities.

In conclusion, appropriate legislation should be amended to ensure the rights of the local Maa community to access the natural resources and protected areas in their traditional

territories. The conservation and the rights of the Maa people should be balanced in accordance with the recommendation.

Thank you, Madam Presiding Chair.

The Presiding Chair (Commissioner Chawatama): Thank you very much. Yes, the Leader of Evidence!

Mr. Patrick Njue: I do not have questions for the witness, Madam Presiding Chair. I hand over to you.

The Presiding Chair (Commissioner Chawatama): Ambassador, do you have any questions for the witness?

Commissioner Dinka: Yes, Madam Presiding Chair, I have a question for the witness. But before that, I would like to thank both of you for taking time to come and talk to the Commission on matters of great importance to your community.

My question is for Hamilton. Maybe I am wrong. I got the impression that you want the principle of willing seller- willing buyer as far as it applies to land in the Maasai community in your area at least to be suspended, if not scrapped. Would you say you will have the support of the majority of your community in that demand?

Mr. Hamilton Ole Parseina: Thank you, Commissioner. What I wanted to be suspended is not the policy; it is the transactions of land until we are in an environment that is equal; in an environment that has order. Because I do not have a big problem with the policy, but the issue is this: It is like in a football game where there are supposed to be rules. However, here in Kajiado, these rules are not being obeyed. So, if you are in a football field and you are supposed to play with your legs and all of a sudden, you find someone using his hands to control the ball, you will be disadvantaged.

Secondly, the policy has been received in the wrong way because every time there is an injustice, you run to an office and you are told there is a policy of willing buyer, willing seller; that this is an issue between two parties and it is up to them to decide their terms. This is the case and yet you know for a fact that one of the parties is hugely disadvantaged. We have seen people sell their land using the barter trade. You are told; “you give me five acres and I will give you 10 cows” and you accept because you put more emphasis on cows than land.

Commissioner Dinka: Thank you very much. The reason I asked this question is because I thought this was fundamental.

Mr. Hamilton Ole Parseina: Yeah.

Commissioner Dinka: Because to suspend a law which promotes the willing buyer - willing seller concept, you need to take into account the wish of the people or of the community; and the Government, through the representation of that community in

Parliament and in other places may be very reluctant – from what you have said earlier about the role of parliamentarians and so forth in this business – to do so. So, my suggestion would be that, for somebody like yourself and your colleague here who are engaged in human rights activism, civil society and so on, it is your duty to go to your people and make them halt the transactions on land for the time being at least until, as you said, certain things become clarified. That is number one.

Secondly, do you think it will be more effective if it is presented to the national Government, or if you wait until the county Government comes into being and then present it to the county Government? This could be more effective because it is a lower echelon government and it is closer to the heart beats of the population and, thus, might be more responsive to them. So, which one do you think is the right timing and the right way to go?

Mr. Hamilton Ole Parseina: Thanks a lot. To begin with the first question, if it pleases you, Commissioners, I have with me several signatures that I am willing to present to you so that you can reproduce the copies and then you return the signatures to me, where the locals have signed. It is actually supposed to be a petition to the Minister for Lands saying that we want the whole thing of land sales to be halted for a while in order to give us breathing space. Here they are.

As for the second question, I said that among the people here, they do not see solutions coming under this kind of arrangement which we have now. I can confirm to you that there is no single senior Member of the Government from the very top who does not hold land here in Kajiado. All of them have land here and, so, we hope that this whole thing should be halted until we have the devolved system of Government. That is where our hope is.

You also did ask that as the civil society and the rest, we should go out and plead with these people to stop the sale of land. The factors are complex because, one, I have told you the cultural aspect to it. That even as they sell this land, they think that in one way or another, the land is going to remain with them.

Secondly, because the leaders have different parcels of land everywhere and they sell part of it, the ordinary citizens think it is okay to sell this land. Thirdly, there is too much hopelessness to the extent that even those who will not sell their land, in one way or another, they will lose it because of the pressure from Nairobi. So, if you are to do it, it is an exercise that requires a lot of resources and that is why in my recommendations, I said that this should be a role to be taken up by the Government. The resources for you to be able to sensitize people in the whole of this county are immense and we do not have them. We are doing our bit, but it is not enough.

Commissioner Dinka: You mentioned something about a group of people who sell land and go to places like Malaysia or Dubai to enjoy some of the luxuries of the other part of the world. Are these people essentially from Nairobi, who live in Nairobi and who are

engaged in either business or bureaucracy? Or, are they people from the rural areas; and for the rural areas it does not fit the image of the people from the rural areas?

Mr. Hamilton Ole Parseina: I said that young people are dropping out of school to come and sell land given to them by their fathers. I would even want to make a comment on something that was commented upon earlier where one of the speakers said that currently, women have a voice on land issues. They do not have! It is their fathers who have a voice on what to do with the land and their sons. When the father wants to sell a piece of land, to get the support of his sons, he promises to sub-divide to them parcels of land, and these young boys drop out of school, sell the land, they do not know what to do with the money, they buy very luxurious cars and go after girls. I said they go to Malaysia because these days, they say that the most beautiful girls are in Malaysia. So, these are young people from the rural areas.

Commissioner Dinka: Definitely, this will be my last question. In this effort, do you think that if you get some resources from some donors or international NGOs, the council of elders will support your move?

Mr. Hamilton Ole Parseina: The Maasai Council of Elders has always been supportive. We are together in it. So, any money or any help coming from elsewhere will be utilized for the same purpose of sensitizing the people.

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

The Presiding Chair (Commissioner Chawatama): Are there any other questions, Maj. Farah?

Commissioner Farah: No, I do not have any question. Thank you very much for your good presentation. I think with the questions asked by Ambassador, things are a bit clearer. Thank you very much.

The Presiding Chair (Commissioner Chawatama): I have a question for Innocent. When you were giving your testimony, you said that members of the group ranches who have gone to court have had difficulties to get justice. Could you, please, tell us how they encountered these difficulties and why?

Mr. Innocent Katoo: What happened, Madam Presiding Chair, is that the members of the group ranches face a lot of difficulties when they go to court due to manipulation from the powerful; that is the area Member of Parliament. He manipulates the community to withdraw the case. Those who go to court do not also have enough funds to continue with the case. That is exactly what happens.

The Presiding Chair (Commissioner Chawatama): This is something that has happened more than once or twice?

Mr. Innocent Katoo: Yeah.

The Presiding Chair (Commissioner Chawatama): You talked about the election of members; these are the members who oversee the group ranches. Do you not have, whether it is a constitution in place or guidelines that are supposed to be followed when electing these leaders so that members end up with leaders of their choice? Why is it that you get leaders who seem to be imposed on you?

Mr. Innocent Katoo: What happens is that the Member of Parliament has his own political favourites who he feels are going to support him in the political issues. So, what happens is that if you are not on the side of the MP, you are not going to be elected at all, even if you are a fair person.

The Presiding Chair (Commissioner Chawatama): I would like to thank both of you for your testimony. Innocent, thank you very much for your recommendations. Those recommendations are going to make our work a lot easier. Due to lack of members of the public attending today's hearings, I think one of the things we are going to do is that we will go back and talk to our department that deals with civic education – that came before we did – to find out what the challenges were when they came here to tell people that we were coming; what concerns were raised and what might have discouraged people. So, we will deal with that internally that way. But if civic education had done a good job – which I have no doubt they did – they informed the people that according to the Act, we are going to make recommendations – and those recommendations are mandatory – meaning that they have to be implemented.

The Departmental Committee on Justice and Legal Affairs is going to report to Parliament every six months on the implementation of our recommendations. So, the people would have missed a great opportunity if they do not seize this moment and say whatever they want to say because we do not know whether or not any other truth commission will ever be established. So, it is a great pity that the people are not here to hear this for themselves, but you can inform them. Tell them that is the position as you have heard. Hopefully, once the report has come out and the recommendations have been made, then they will also be there to make sure that those recommendations are implemented. They need to be active; they need to put pressure on MPs and on other leaders to make sure that our recommendations are implemented. So, in that case, I think we are asking you to be our ambassadors for that cause.

Mr. Innocent Katoo: Sure, we will tell them, Madam Presiding Chair.

Commissioner Dinka: Just another angle to the recommendations of this Commission which, again, you can take back to the community and really tell them is the fact that when the report of this Commission is published, it will be presented to the President on 3rd of May, 2012. The next day or so, it will be published in all the newspapers. It will be the first time that the Kenyan public will get a report so quickly; right after the President or simultaneously. This means that you will have the report of the Commission which will include the findings and the recommendations. That means that the Kenyan public itself also – not only the report of the Minister of Justice to the Parliament, but the

Kenyan public as well can become a new constituency; a new driving force for the implementation of those recommendations. This will now be in your hands; you will know exactly what the Commission has recommended. That is also an extremely important angle to the Commission's founding Act.

The Presiding Chair (Commissioner Chawatama): Thank you very much, Ambassador. Dinka.

Mr. Ole Parseina: Madam Presiding Chair, I just want to say that your team that came to the ground to sensitize people did a good job. The problem is not with your team; the problem is on the ground. People no longer believe that there is a process that you can follow and get justice. In fact, what they say out there is the only way we can get justice is through violence. So, that is where the problem is.

The Presiding Chair (Commissioner Chawatama): Thank you very much. You can also just, may be, encourage them that they should not look at our Commission in isolation; but they should also look at the other reforms that are taking place in our country. They should look at the new Constitution and what is happening in the Judiciary. Nowadays, Judges are courageously making decisions which, may be, last year or the year before, would not be made. So, get your people to focus on some of the things that are happening now to give them the necessary encouragement and not to focus on violence, but to give the reform agenda an opportunity. I think that is very important. Leader of Evidence, we would like to now take stock; we want to know how many witnesses we still have for our public hearing.

Mr. Patrick Njue: We have three, Madam Presiding Chair.

The Presiding Chair (Commissioner Chawatama): Thank you.

(The Commissioners consulted silently)

Mr. Patrick Njue: Madam Presiding Chair and Commissioners, for the record, the next witnesses that I am bringing to the Witness Stand are No.5, No.6A and No.6B from our cause list. They are all talking on IDP related issues and mostly issues that took place in the post election chaos of 2007/2008. It is for this reason that I prefer to put the three of them together.

The Presiding Chair (Commissioner Chawatama): That is a capital idea.

(Pastor Francis Maina Njuguna took the oath)

(Mr. John Njau took the oath)

(Ms. Mary Wanja took the oath)

Mr. Mr. Patrick Njue: Presiding Chair and Commissioners, this is Witness No. 5 on my immediate right; 6A and 6B in that order. I will start with Witness No. 5. I would first wish to confirm if my two witnesses on my extreme right can get the Kikuyu translation.

Pastor Francis Maina Njuguna: I confirm that they can hear.

Mr. Mr. Patrick Njue: Please, for the record, state your names, where you come from and tell us what you do for a living?

Pastor Francis Maina Njuguna: As I had said earlier, my names are Pastor Francis Maina Njuguna. I come from Kitengela and my occupation is difficult because I was a business man where I came from. But because of the grace of God, we are eating and drinking; God is on our side.

Mr. Mr. Patrick Njue: Welcome, Pastor.

Pastor Francis Maina Njuguna: Thank you.

Mr. Mr. Patrick Njue: We received your memorandum. Basically, it is on behalf of Kitengela Integrated IDPs. May be you can tell us, to begin with, do you hold any position within this group?

Pastor Francis Maina Njuguna: Yes. I am the chairman.

Mr. Mr. Patrick Njue: Talking of the Kitengela Integrated IDPs; how is it that they have come to settle in Kitengela?

Pastor Francis Maina Njuguna: After the voting during the elections on 27th December, I can remember on 30th December, 2007, it was on a Sunday morning when we heard gunshots and we wondered what was happening. It was at around 8.00 a.m. in the morning. That is when we discovered that there were fights because there was looting of property and such kind of issues. We went to the police station where we stayed up to the 5th. That is when we went back and we were told by the District Commissioner (DC) Mogaka. He brought us the security personnel from the army and some two lorries that transported us to Eldoret. In Eldoret, we slept there and we found other vehicles. We were also given security up to Nakuru Show Ground. That is where we met with our family members waiting for us, especially at the Church of Karura that was at Runda heading to Banana. They had sent one person to come and assist the people who had come from Timboroa and Burnt Forest; one of their family from their community. We were among the people of the community. We went to Karura on 7th January, 2008. They gave us hospitality for two months and the pastor of that Church by the name of Ngari Kareithi gave us food, they bought some tents for us and after some time, that is when the sub-chief of an area called Githiogoria visited us, he was called George Muga. The chief from Highridge called Wanjau came.

The Government did not assist us in any way because from that time, we did not see any people from the Government apart from the two chiefs. That is when the Church told us that because they have taken care of us for some time, everyone can look for a place where they can go and, at least, keep on with life. We had to look for places here and there, because when I was looking for a way to go back where I came from, it reminded me of a long story of 1992. I saw that after every general election, there were fights. So, I decided to go to Kitengela with other people. I am even accompanied by one of them and also one lady. After some time, that is when we received a report from the chief, so that we can go and register. The chief was called Kaloya. We registered ourselves. There was a person from special programmes who was sent from the Minister of State for Special Programs. We registered at the chief's place after going to Kitengela.

That is when we discovered that there were very many people who had come from various parts, especially Kisumu, Kakamega, Eldoret, Burnt Forest, Nandi County, Kericho, Molo and Kitale. We saw it was better, according to our way of life, to come together. Even the chief advised us that he will take us to the DO who was called Mr. Wanyonyi. Because it was on 12th December, 2008, he told us to go to a forum that was celebrating Jamhuri Day, where we were joined together with other IDPs. He told us that some assistance would be given to us. He received our names as the chief had signed against them that he had registered to show that we were available. But as we were making a follow up, we could not get any assistance. We continued going to the chief who was saying that our issues have been taken to the DO. The DO also said that he had taken the issue now to the DC here. That is the way we found ourselves at Kitengela area.

Mr. Mr. Patrick Njue: You had said that you came from different parts of the country. Presently at the camp, how many families or individuals do we have?

Pastor Francis Maina Njuguna: Okay, the people who we registered on the list, the list of families that the DO received were 140 families. But, afterwards, we discovered that there were others and we did not want to leave them out. However, they had already said that the registration period had been closed.

Mr. Mr. Patrick Njue: From what communities would you say these families are from?

Pastor Francis Maina Njuguna: A majority of them came from the Kikuyu Community.

Mr. Mr. Patrick Njue: You consequently registered with the authorities with a view of getting some assistance, which begs my question; have you been able to access any funds, now that it is in the public domain that we had resettlement funds for IDPs?

Pastor Francis Maina Njuguna: There is no single fund that we received at Kitengela.

Mr. Patrick Njue: And today, as Kitengela Integrated IDPs, what are some of the issues or challenges that you are grappling with?

Pastor Francis Maina Njuguna: That is a very good question, Commissioners, because the issues that we are going through while there are many. Personally, I had six children. One of them was joining the university while four were in the secondary schools. Those are the challenges that we face. Some of our children are school dropouts. We lack employment and we have nowhere to go. We did not even get the first assistance, how are we to get the other facilities?

Another issue is about accessing medical services. When we go to hospitals, we cannot access treatment because of lack of money.

Most of us just sell porridge and *sukuma wiki*. We cannot even get money to cater for our health. There is a man who is suffering from heart attack. He normally goes to Kenyatta National Hospital for treatment. It is a big challenge because one needs money to access medical services. We know of so many people who have been suffering because they cannot afford to pay for medication.

Mr. Patrick Njue: Are there any other issues?

Pastor Francis Maina Njuguna: Another challenge is rent. We do not have money. We cannot access loans. So, paying rent is difficult for us. We heard of *Operation Rudi Nyumbani* under which people were being taken care of. They were being taken back to their farms. We ask the Government to look at the issues affecting integrated IDPs because they are equally Kenyans.

Mr. Patrick Njue: Pastor Maina, what expectations do you have from this Commission?

Pastor Francis Maina Njuguna: You all know that it is insecurity that made us run away from the other side. We came here to seek refuge. The Government should be able to provide security to everyone. The Constitution states that one has the freedom to live anywhere.

Secondly, on behalf of other IDPs, I would like to appeal on the issue of finances. We need money in order to engage in economic activities. We need to do development projects. Despite our state of affairs life has to continue. We have families and children. We need to be helped to access finances. The Government should know that we are not yet stable.

Another issue is discrimination in employment. We have children who are educated. They have even gone to university. They need to be assisted to get employment.

We should be considered under the *Operation Rudi Nyumbani* because we are Kenyans. Our elderly should be given money which they can use to buy cows and that will sustain them in life.

We also recommend that we be assisted to start small scale businesses. God will help us grow those businesses and we will sustain our lives.

The genuine record of IDPs should be looked into. There are people who are suffering from diseases. We recommend that they be exempt from paying medical bills. Demanding money from a sick person who cannot afford medication is like telling the person to go and die. Now that the doctors are on strike, a lot of patients are dying. Most sick people go back home with prescriptions because they cannot afford to buy drugs. This Commission should assist us by petitioning the Government on our behalf. We cannot even access our Members of Parliament without intervention from local leaders.

Those are our recommendations and we hope you will look into them.

Mr. Patrick Njue: I have a copy of a memorandum. I would like you to confirm whether or not it emanates from your group.

Pastor Francis Maina Njuguna: Yes, it is from our group.

Mr. Patrick Njue: Would you wish that this memorandum and the list be formally admitted to the record of this Commission today?

Pastor Francis Maina Njuguna: Yes, that is my wish. We followed up some of these issues with the relevant Ministry and we met a Mr. Musembi, who is the Assistant Director of the Special Programme. He told us that our names were not on their lists. He sent us to the DC, Mr. Mwangi, in Ngong who told us that he had forwarded our names. So, one says this and another says that. Why are our names not there, yet we registered with our respective chiefs? Why are we being made to suffer? Our names should be included in the list.

Mr. Patrick Njue: Presiding Chair, I ask that the document produced by the witness be admitted formally into the record of the Commission.

The Presiding Chair (Commissioner Chawatama): It is admitted as prayed.

Mr. Patrick Njue: Presiding Chair, I propose to proceed to the next witness after which we will ask all of them questions.

Pastor Maina, thank you for your testimony. Our Commissioners will be coming back to you shortly with questions and requests for clarifications.

I will move to our next witness. Please, for the record, tell us your full names.

Mr. John Njau: My names are John Njau. I live in Githiria. I do not work.

Mr. Patrick Njue: Do you confirm that you are here on behalf of the Kugeria IDP Group?

Mr. John Njau: Yes, that is true. I am the chairman of the group.

Mr. Patrick Njue: I have a copy of your memorandum. I will pose questions to you now. Before coming to Kiserian, where were you?

Mr. John Njau: Before coming to Kiserian I was living in Kajiado North. I am happy to be here before this Commission. I believe the truth will be recognized in our country today. Kajiado North has so many problems. It is not like any other part of Kenya. We lack people who can come to our aid, although we hear that there are people who help others.

With regard to the clashes, they came about because of the elections where PNU and ODM were the main contenders. A man called James Tiriri has given his testimony here. He is from my village. I used to take milk from his place. He is one of those who led a group that was waging war. I am happy because in Kajiado, particularly in the village I come from, no one died.

It is a long story about how I walked the whole night in a bid to rescue myself and my wife. We experienced clashes. We have forwarded the names of those who caused the clashes. We forwarded even James' name, but he has never been prosecuted. A case is ongoing at the court in Kajiado.

On 19th December, 2011 the judge was to go to the field to see the place where people were burnt. No photos had been taken before. After being battered, we ran to a church in a place called Kisiri. We gathered there about 17 families. Six houses were burnt in Kajiado North. In a place called Emagugu, they burnt about 19 houses. On the night of 1st January, 2008 they burnt about 15 houses. We stayed in the church for about two weeks. The person who was hosting us was unable to cater for the large number of people in terms of food. He gave us a letter to show that he had hosted us initially. We left to a place called Kirathimo in Limuru. We were welcomed by those whom we found there. We were given IDP cards. They asked us where we had come from and who our District Officer (D.O) was. He was called Wanyonyi. He got a call from Limuru and he confirmed that he knew us. I talked to him on phone. He did not like our going to Kirathimo. He asked us to go back because he was willing to assist us. We left Kirathimo because our aim was to get help. We went to his place. He gave us ten sacks of maize and promised to look into our plight.

He was later transferred. We would get visitors from the Office of the President and the Task Force on IDPs. They registered our names. The clerk then was called Daniel. We waited for Government's assistance, but in vain. We enquired about our plight a lot. Some of us lived in Kiserian while others lived in Renian here in Kajiado.

In June, I tried to contact Prof. Saitoti, but he told me that I should meet him in the field. Mine is a long story, but I will try to make it short.

After Prof. Saitoti refused to hear us out, we went to the human rights office. We were given a letter to take to the Provincial Commissioner. He sent us back to the DC in Ngong and also to Prof. Saitoti. They still declined to hear us out. We went back to the

human rights office where, we were given a letter to take to the DC. He took the letter and told us to wait. We were later summoned at Prof. Saitoti's CDF office where our names were registered. We were told that we had brought our case late.

We went to Kikuyu and forwarded our case to a certain Muigai. Our names were taken. We met the TJRC group there and our names were taken down.

Mr. Patrick Njue: You have said that the Government did not assist you in any way and neither did the MP, Prof. Saitoti.

Mr. John Njau: That is true.

Mr. Patrick Njue: How many families form the Kugeria Group?

Mr. John Njau: We are 135 families, but those who have registered are 120.

Mr. Patrick Njue: Which tribe forms the larger part of the Kugeria Group?

Mr. John Njau: Most of them are from the Kikuyu community.

Mr. Patrick Njue: What are some of the issues you are grappling with in the camp?

Mr. John Njau: We are not in a camp. We are integrated IDPs and some of us have rented houses.

The major problem is lack of food. The first thing the Commission could do for us is to solicit food for us. That way, we will have energy to work.

We have children who are in school, but we doubt if we will be able to pay their school fees, because of the many problems we have. We keep being evicted from houses. We do casual labour, which is not readily available.

We also have medical problems. Personally I cannot sleep on one side. It pains me. We lack finances. Our MP says that there were no clashes in Kajiado. He is trying to protect his name. The truth is that we were beaten and there were clashes here.

I had bought the land I was living on – it was not given to me for free. Our relationship with the people who sold land to us is not good. Somebody said that there is need to respect each other in order to have good co-existence. However, respect is not bought from a shop. Respect is earned! I have suffered a lot with regard to land issues. My land was grabbed in Narok in 1992. We had bought the land. I will not say that the buyer and the seller are good. When they say that the family should be involved in the sale of land, some of them only try to con people. I bought land and I am now involved in a family tussle. I bought land and paid everything. Instead of being given the land, the sellers ran away. After running away, they pretended they did not know about the sale, yet the

family was involved in the sale of land. Please, look into that issue so that there is no grabbing of land. Either side could be stealing.

Mr. Patrick Njue: You agree with the recommendations given by Pastor Maina. You referred to some documents which you have shared with us. Would you wish that we admit these documents into the record of the Commission?

Mr. John Njau: Yes, I agree.

Mr. Patrick Njue: Presiding Chair, could the documents be admitted formally?

The Presiding Chair (Commissioner Chawatama): The documents are admitted as prayed.

Mr. Patrick Njue: I will now move to my third and last witness.
Good afternoon mum?

Ms. Mary Wanja: I am fine. I am Mary Wanja Wambugu. I work in Githiria Market. I sell tea.

Mr. Patrick Njue: You confirm having recorded a statement as an IDP.

Ms. Mary Wanja: Yes. I am an integrated IDP in Kiserian.

Mr. Patrick Njue: When did you come to Kiserian?

Ms. Mary Wanja: I am four years old in Kiserian.

Mr. Patrick Njue: Which year did you come here?

Ms. Mary Wanja: I came here after the post-election violence (PEV) from Kipkabus in Eldoret.

Mr. Patrick Njue: Do you have a family?

Ms. Mary Wanja: Yes. I have six children and a husband. I live with my brothers. I witnessed the war and I would not like to witness such a thing ever again. It has caused many problems. Today, I have no parents. My dad and brother were burnt in a house. I followed my mum. I am the one carrying the burden. I do not have anyone to encourage me. When I came to Kiserian, there was no one to support me. I went to Prof. Saitoti's office and they took my names. I did not even have a place to bury my mum. I threw her into Ngong Forest because I did not have means. I have many problems, but I thank God for keeping me alive up to now. I get assistance from neighbors; they give me food and accommodation.

Prof. Saitoti refused to address us. We have never seen flour or sugar. My children are in school. I plead with the Government to hear our pleas. It should give us food and shelter. I cannot go back there because I witnessed what was happening. My parents are the people I live with, in the Kiserian Group. We love one other even if Prof. Saitoti has rejected us. Prof. Saitoti should be told that every deed is paid for here. There is no revenge in heaven. I do not have much to say. I will end there.

Mr. Patrick Njue: Thank you for your testimony. I empathize with you for your loss and the troubles you have gone through. We hope to come up with recommendations that will wipe out your tears. Our Commissioners may now ask you questions.

The Presiding Chair (Commissioner Chawatama): Thank you pastor Maina, Mary and the second witness for your testimony. Indeed, pastor, His Grace is always sufficient and we thank God that he has sustained all of you so far. We have heard from a number of Internally Displaced Persons (IDPs) and we have also heard the many challenges that they face daily and how their lives have changed; it really makes a very sad hearing. I will ask the commissioners if they have any questions to ask.

Commissioner Dinka: Thank you pastor Francis Maina, John Njau and Mama Mary. Thank you very much for your testimony and for accepting to come to talk to this Commission, and in the process relive the pain that you suffered in 2007 and 2008. I have no question but I would like to say that I share the sentiments expressed by the Presiding Chair; I fully empathize with your suffering and pain. We hope that when the Commission's final report comes out, the recommendations contained therein and their implementation will go some way to alleviate your sorrow, suffering and loss. Nothing can bring back everything that you have lost in terms of those people who were killed, your loved ones, your property and your burnt houses and the kind of tragic experience that you went through. I thank you again for coming and sharing your testimony with us.

Commissioner Shava: Thank you Presiding Chair, Pastor Francis Maina Njuguna, Mr. John Njau and Mama Mary Wanja. I would like to say that I feel a lot of pain when I hear your stories. We have heard IDPs before. We have visited IDP camps as a Commission. I have been to Nyahururu and Nakuru. In my personal capacity, I have also visited Pastor Karigithi's Church. I saw that camp in Runda. So, on one hand you have the Village Market, which is a place where people go to entertain themselves, and two kilometers down the road, near the river, is the camp that you described and I saw it. I also went with my family to Kirathimo in Limuru. So, I know what you are talking about. I hear the pain of Mr. Njau who bought his farm in Enoosupukia and was evicted. He came to try to make his life here and again he was evicted. We work when we are young so that we can build our families and our children can go to school. They are supposed to support us when we are older. So, when Mama Mary Wanja said that her children are not going to school and neither does she have parents, we got a very clear picture of somebody caught between a rock and a hard place; you wonder whether to go forwards or backwards since everywhere looks like darkness.

The thing that really pained me when I listened to you was to hear hardworking people who were independent saying that the main thing you need is food, whereas our Constitution says that that is a basic human right. So, the Government of Kenya (GOK) really failed you when you were told that you were out of time. Your situation is continuing; how can you be out of time? You are there and I think that is the most inspiring thing in your whole situation. Despite all these problems you are there, and where there is life there is hope. So, I would like to assure you that this Commission is going to use the powers that it has to make the correct recommendations with regard to the stories that you have told us. We recognize that it is very painful to have to relive those terrible stories, but we thank you for coming here today to give us this information because it will help us to do our work. We thank you.

Commissioner Farah: Francis Maina Njuguna, John Njau and Mary Wanja, whenever I hear about the story of IDPs, I get traumatized. So, the pain is not only in you but also in us. When we go back today, there will be no sleep for us because of hearing the story of Mary. Imagine we have been going around the country and we have been hearing these things all the time. It makes our stomachs turn. I do not want to use up the time of the judge, the Presiding Chair, who will be closing. We empathize with you. Thank you very much.

The Presiding Chair (Commissioner Chawatama): Thank you very much commissioners. I would like to pose a question which we keep asking over and over because that is the reality of the situation. In your testimonies, you have all referred to the election period, and you have referred to it as the time when war took place, which war caused the loss of the lives of your loved ones, and also your property. It is a time that you will always remember as your time of pain and suffering; Kenya is going for elections this year and that is the reality. What are your thoughts, or what is the message that you would like to send not only to your leaders but also to the Kenyan people? You can answer in turns if you feel that you are able; if you are not, we can understand.

Pastor Francis Maina Njuguna: Thank you very much, Presiding Chair for that question. We are nearing a general election this year. When we near the general election we start getting scared. In the 1992 general election we witnessed a lot of fighting in Nandi. I was there and I had worked for ten years and my property got finished within one hour. I witnessed my cows and goats being taken. My house was also taken away. We pray that the Government ensures, through Kofi Annan, that there cannot be such intimidation and politics. These are what bring hatred. Politics is brought to the people at the grassroots by the people who contest for posts like that of a Member of Parliament. A normal citizen can be given a handout of Kshs50 to go and kill a person. We saw people who we were staying with us turn against us. We want good politics and not bad politics. We did not send applications to be in Kenya. We are all in Kenya and we have lived like that. My children know Kiswahili. They do not know any other language. When we underwent the conflicts, we started asking ourselves if we only belong to the Kikuyu Community. Such incidents and conflict should not recur in Kenya.

I was a pastor and some of the people in my church were for the Orange Democratic Movement (ODM). I could not stand before them and support the Party of National Union (PNU). That was not my work; it was for each person to choose for himself or herself. Even people who voted for ODM and they were Kambas and Kikuyus were evicted. It is my prayer that if MPs want politics of hatred then they should stay at home and we elect the youth who can lead Kenya instead of illiterate people being elected as an MP and who, after five years, become rich. Such MPs do not have the interests of the people at the grassroots.

Mr. John Njau: I would like to say that I speak on behalf of Kenya because Kenya belongs to all tribes and the problem comes from politicians. They are the people who divide us so that they can rule us. Let the young men listen because we are getting old and we shall die and leave them. I would request that each tribe should accept the other tribe, so that we can build our country. They should not be allowed to be used by politicians because if they agree to be used then we are the people who will suffer. God has given us this country and there is no need to view one another negatively because of his or her tribe.

Some of the reasons why we fight is that our leaders tend to cover up crimes. These people are given some powers; there is no time when the Government has come out and tried to stand for its people. So, the citizens should unite and not allow themselves to be used as fools. When we are united the politicians will know that we will disagree with their policies. It is my plea that all Kenyans should live as one people without discrimination. For those of us who were evicted, we pray to God to help us to forget all that we went through; we should not tell our children who did what to us so that we can end enmity. If we do not do that, enmity will reign and God will not bless us.

The Presiding Chair (Commissioner Chawatama): Thank you Mary. You do not have to say anything. Even your sight speaks volumes to us. The way you are sitting and the way you have your head down speaks volumes to us. We thank you for your courage. We thank you that you have relieved your pain. I hope that by talking to us you feel that your burden has been lifted. We appreciate you. I hope that by us coming here you have also been encouraged that there are people who care and who have taken time to listen to you. My dear sister, be comforted and continue to live. You have spoken of God. There is a God in heaven, who watches over you. Thank you very much. Leader of Evidence, step down the witnesses.

Mr. Patrick Njue: Presiding Chair and commissioners, I would like you to note that I have received two memoranda, one on behalf of witness Number 2, whom I am told was feeling unwell this morning. In her absence, we wish her quick recovery. I also have a memorandum on the marginalization of the Maasai from 1963 to 2008 presented by the Tupoto Emaa members. I am told that they could be with us. I request if they are, they should stand up; or, their representatives could stand up and we recognize them.

(A Tupoto elder stood up)

Mr. Patrick Njue: Sir, we have received your memorandum and we will keenly study it alongside other memoranda that have been presented today. Presiding Chair, could the memorandum be formally admitted as part of the records of this commission?

The Presiding Chair (Commissioner Chawatama): The memorandum is admitted; we acknowledge your presence and thank you for taking your time and trouble for preparing the memorandum and by accepting it; it now forms part of the record of this commission. Thank you very much.

Mr. Patrick Njue: We thank you for your time; I thank commissioners and the public as well.

The Presiding Chair (Commissioner Chawatama): On behalf of the TJRC, the Commissioners and our staff, we wish to thank members of the public who have attended our public hearing today. We have heard of the many violations that you have suffered. We have heard your recommendations and expectations. We are committed to coming up with a report to address the issues that you have raised. Our report will be the richer because you have taken the time and the trouble to engage in this process. We would also like to say that it is our prayer that as this nation goes to elections next year, there are lessons that have been learnt and that what happened in 2007 and 2008 will not be repeated; this nation should be the envy of other nations because of the manner in which it conducts its elections. We would like to thank you most sincerely; at this stage, I would like to ask Commissioner Shava to thank the witnesses who have appeared before us today.

Commissioner Shava: Thank your Presiding Chair. We would like to recognize and thank the following witnesses who have spoken before the Commission today: John Maitai, James Turere, Hamilton ole Parsina, Innocent Katoo, Francis Maina Njuguna, John Njau and Mary Wanja. Back to the Presiding Chair.

The Presiding Chair (Commissioner Chawatama): On that note Leader of Evidence, there being no other evidence, we stand adjourned and wait for a brief from you concerning the rest of our day. Thank you very much everybody.

Mr. Patrick Njue: Over to the master of ceremonies to give us directions for the women hearing tomorrow and the closing prayer.

(Closing Prayer)

(The Commission adjourned at 2.42 p.m.)