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Public Hearing Transcripts - Rift Valley - Kericho - RTJRC19.09 (Kericho Teachers' Training College)

Truth, Justice, and Reconciliation Commission

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON MONDAY 19TH
SEPTEMBER, 2011, AT KERICHO TEACHERS' TRAINING
COLLEGE HALL**

PRESENT

Tom Ojienda	-	The Presiding Chair, Kenya
Tecla Namachanja Wanjala	-	The Acting Chair, Kenya
Gertrude Chawatama	-	Commissioner, Zambia
Berhanu Dinka	-	Commissioner, Ethiopia
Ahmed S. Farah	-	Commissioner, Kenya

SECRETARIAT

Mr. Tom Chavangi Aziz	-	Leader of Evidence
Mr. Simon Njenga	-	Hearing Clerk

IN ATTENDANCE

Mr. Tororei	-	Commissioner, KNCHR
Mr. Lawrence Bomet	-	Commissioner, NCIC
Mr. Bernard Barmalai	-	Regional Commissioner, West Pokot
Rev. John Koskei	-	Witness
Mr. Joseph Cheruiyot	-	Witness

(Opening Prayer)

(The Commission commenced at 10.05 a.m.)

*(The Presiding Chair (Commissioner Ojienda) introduced himself
and other members of the Panel)*

The Presiding Chair (Commissioner Ojienda): Good morning, everyone. I want to welcome you to the hearings in Kericho. We will be here today, tomorrow and Wednesday. We hope that at the end of our work in Kericho, we would have heard all the issues that will be presented to us.

I want to start by laying a few rules to the public. I know there are a lot of you who are itching to speak and there are serious issues in this region some of which are historical that you would want to share with the Commission. We appreciate and we will give you all the time to tell us all the issues that are burning inside you.

I just want to request all those who are standing to settle down first. We want to start in an orderly manner.

Thank you very much. We can now proceed. I want to start by explaining to you the order in which we can proceed. We will call witnesses and each witness will be led in his or her evidence by the Leader of Evidence and after that the Commissioners will ask the witness questions just to clarify certain issues that the witness will have raised in the course of the hearing. At the end of that process, the next witness will be called.

I just want to request every person to respect every witness. If you do not agree with whatever the witness says, please remain silent. Do not interfere with the witness. Let us show respect to every person. For those taking photographs, please, do not take photographs of the witnesses unless you are taking still photographs in the course of the hearing. You may take photographs of witnesses before or after the hearings; this is to ensure that we do not interrupt the proceedings. Let us respect this process as every person will have an opportunity to speak.

I just want to state that this is an on-going process. If you are in this session and you want to record a statement, you will be assisted by the Commission staff outside there because there are a few selected cases that will be heard in the course of today, tomorrow and Wednesday. A lot of those cases are representative and you may be sitting at the back there and your issue may be raised by another person. I am saying this because I know as we came in the morning, a number of people were having placards and they raised very fundamental issues. I am sure those issues will be addressed this morning. So, be patient, listen and you will hear that what is itching you will be raised in the course of the testimonies here.

Before I introduce the panel, I want to ask Commissioner Chawatama to make a few remarks then I will introduce the panel and then we will start our proceedings.

Commissioner Chawatama: Thank you very much, Presiding Chair. I am so excited to be in this beautiful place called Kericho. As we entered, I asked the Lord why was I born in Zambia and not in Kericho. In the course of the day, if any of you likes me enough, I am ready for adoption. I would just want to go to Zambia, sell my shambas and come back to live with you in this beautiful place.

I would like just to share one or two things with you as we get to know each other. I am excited to be part of a group of men and women who are dedicated to this process - men and women from different backgrounds; with different experiences, who have great contributions to make to this process. What I am requesting you is that, please, have the confidence, even as you testify; you are testifying to a group of people who are not only competent - even though some of us are not Kenyans - but we have grown to love this country and we have grown to love the people of Kenya.

As we have travelled in your beautiful country, we have heard from a lot of people. We have received thousands of statements and the values of the people that we have heard, we have heard about the love for the family, the respect for the elders, we have heard of their desire for peace, for unity and equitable sharing of wealth. We have heard that the people of Kenya are seeking good governance, justice, integrity and the truth. Though our

beginning may have been slow, we should not be judged by it because with the help of Kenyans, our end will be great.

We want as much as possible to meet the expectations of the people of Kenya. There have been many truth commissions that have been set up and some of them have been criticized but the people of those nations have found that in a lot of incidences the work of the truth commissions has had a positive impact on the lives of the people.

I end here by informing you that I am up for adoption as a child of Kericho on a first-come first-served basis. We are going to enjoy the next three days together. We will have an opportunity even to talk to some of you, one on one. Please, tell us what is in your heart and what you desire for this great nation; how we can tackle issues of the past and how we can look forward to a bright future.

Thank you very much, Presiding Chair, for the time and the opportunity you have accorded me.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Commissioner Chawatama. Does any of our Commissioners have something to say before I give this chance to the First Witness?

Those who are here have probably not read the Truth, Justice and Reconciliation Commission Act. The TJRC exists to give an opportunity to speak out on those gross human rights and other economic violations that have occurred to any person from Independence, that is, from 12th December, 1963 to the 28th of February, 2008. It covers a span of 44 years.

Therefore, you can speak to us about any violations that occurred to you during that time, including land injustices, individual and group violations. I think what you will see as the final outcome of this process will be a report of this Commission. In that report as set out under the Act, there will be specific recommendations and the TJRC Act provides that those recommendations would have to be implemented by the Government. There is a single opportunity for you to speak to this Commission to be part of this historical process that will deliver this country from itself.

Remember, the main objective of this Commission is the eventual reconciliation of the people of this country. That is why we invite you to speak to us truthfully so that justice can be done for you.

Thank you.

Before the First Witness is called, I want to acknowledge a number of people, in fact, a number of my friends.

(The Presiding Chair (Commissioner Ojienda) acknowledged the presence of other persons; the Talai, Ogiek and Ndorobo Elders in attendance)

Leader of Evidence, please, call the First Witness.

Mr. Tom Chavangi: Thank you, Presiding Chair.

The Presiding Chair (Commissioner Ojienda): Are there counsels present?

Mr. Tom Chavangi: There are no counsels present.

The Presiding Chair (Commissioner Ojienda): Thank you very much. Then let us proceed with the First Witness.

Mr. Tom Chavangi: Commissioners, I have two witnesses. Reverend John Koskei will be our First Witness today to speak about the Post Election Violence (PEV) of 2008, meted out by the security agencies and other violations meted out since Independence in Kericho. To add on that, he will be supported by Mr. Joseph K. Cheruyoit, a member of the Kipsigis Council of Elders, who has the authority to speak on behalf of the Kipsigis Council of Elders on issues of exploitation of land; the tea farm issues in Kericho and the relationship between the Kikuyus, Luos, Kipsigis and the Maasai's within the larger Kericho.

The Presiding Chair (Commissioner Ojienda): Kindly, swear in Reverend Koskei.

(Rev. John Koskei took the Oath)

Mr. Tom Chavangi: Thank you, Rev. Koskei. For the record of the Commission, Rev. Koskei, kindly tell the Commission your full names.

Rev. John Koskei: I am Reverend John Koskei. I am a Methodist Minister and also the vice-chair of the National Council of Churches of Kenya (NCCK), South Rift. I was born in Kericho District in 1978. I attended my primary and secondary schools at Chemobob and I have also gone for my further studies at the Kenya Methodist University. Later on, I did my post-graduate diploma in Education at Moi University. I am a born-again Christian. I think that is all I can say about myself.

Mr. Tom Chavangi: Thank you, Rev. Koskei. Where do you live and in which county of the larger Kericho?

Rev. John Koskei: I live at a place called Chemobob Village around ten kilometres from this place and I am from Kericho County.

Mr. Tom Chavangi: Thank you very much, Rev. Koskei. You presented a memo before this Commission on multiple and systematic violations of human rights during the PEV and in the larger Kericho County from Independence. In a brief format, can you present that memo, Rev. Koskei?

Rev. John Koskei: This is the memo that we presented to the TJRC on 7th July, 2011, at Kericho.

Mr. Tom Chavangi: Would you like to present that memo to the Commission as an Exhibit?

Rev. John Koskei: Yes.

Mr. Tom Chavangi: Commissioners, can the memo be admitted as an Exhibit?

The Presiding Chair (Commissioner Ojienda): Proceed.

Mr. Tom Chavangi: Most obliged, Presiding Chair. Rev. Koskei, tell the Commissioners about your presentation on PEV and violation of human rights resulting from security agencies.

Rev. John Koskei: Thank you, Presiding Chair. Maybe before I present, allow me to give a brief background of our work.

We did this work under the NCKK, South Rift Region. The purpose for us facilitating the community to document their historical injustices is that we have been dealing with this forum for a long time as NCKK.

When the TJRC was formed we were very happy as NCKK. We facilitated the community members to document their issues because at the end people will co-exist and that is part of the work of the church. So, we held our first meeting on 25th February, 2011 at Tea View County Hotel Brooke. Those who attended the meeting were the representatives of the Ogiek Council of Elders and religious leaders. In a nutshell, I would say that everyone was represented; the meeting was inclusive. In that meeting we formed a committee; just a secretariat to document the issues. They went round and we were able to have one memorandum having information from different groups of people. We have a memorandum that touches on the Talai community, land issues, tea farms, Ogiek community and the one for PEV. That is the one I would like to speak about briefly because the rest will be done by other witnesses.

Presiding Chair, I would like to bring to the attention of the Commissioners that when we were carrying out this activity, these are some of the issues that emerged. There were violations ranging from those committed against individuals to those committed against the community. The land issues also emerged as one of the major issues affecting the Kipsigis and the boundary issue.

Let me now turn to what I was asked to speak about today. After the disputed elections of 2007, there are so many things that happened, especially here at Kericho and the larger South Rift Region. There was excessive use of force by the security personnel. We were able to visit Ainamoi and Kapsoit and what we witnessed was that there was excessive use of force by the General Service Unit (GSU) and the regular police. In the course of

these proceedings, someone else will speak about police brutality because it is in the programme today.

Let me speak about the Ainamoi area. Having lost their Member of Parliament on 31st January, 2008, the residents of Ainamoi constituency staged demonstrations in various parts of the constituency. It happened that there were some guns which got lost and the Government sent the GSU to the area. When the GSU came to restore order, the community took the initiative and returned the guns. Instead of the GSU restoring order, they actually inflicted serious injuries on some individuals.

There were several victims, ranging from children to old people. At this particular juncture, there were also malicious prosecutions. Some people were detained for as long as 13 months. I would like the Presiding Chair to request the commission so that I have two witnesses who were tortured; one of them is Mr. Thomas Kiprono Maritim. The GSU damaged his private parts. There is also another one with a bullet lodged in his knee.

So, I could request the Commission to allow the two witnesses to stand, starting with Thomas Maritim, so that he may briefly narrate to the Commission what happened.

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, are the Witnesses in the room?

Mr. Tom Chavangi: Yes, they are here, Presiding Chair.

The Presiding Chair (Commissioner Ojienda): Could they come forward as requested?

(The two victims of alleged GSU molestation were presented before the Commission)

Leader of Evidence, do you want to swear them in, given the nature of testimony they may give?

Do you want to swear them in, given the nature of the injuries in question? I do not know whether, at this point, the witness wants them to speak or whether he wants them to speak later?

Rev. John Koskei: I would like them to speak now.

The Presiding Chair (Commissioner Ojienda): They can briefly tell us what the injuries are, as you have requested. That is okay. They can move to the seats and speak. Yes, Leader of Evidence?

Mr. Tom Chavangi: Thank you, Mr. Presiding Chair. With your permission, can they use mobile microphones so that their statements can go to the Hansard?

The Presiding Chair (Commissioner Ojienda): Yeah; we need to have that as part of the Hansard. You will need to move there.

Mr. Tom Chavangi: Mr. Presiding Chair, sir, they will briefly describe their injuries; he is the principal witness. So, they will briefly tell us what their injuries are and then we move on.

(Mr. John Kitur took the oath)

Mr. Kitur, kindly tell the Commission your name?

Mr. John Kitur: Mr. Presiding Chair, Sir, I am John Kitur. I live at Kapsoit in Kericho District. It was on the 1st of January, 2008 when I was at Kapsoit; it was at around 11.00 p.m. I was a butcher. I heard that some police officers had come to Kapsoit and so I closed my shop, tried to search for my way home. When I looked in front of me, I saw almost ten police officers. I just went back to my shop and closed the door behind me. There was no other way that I could follow. The police officers came and started breaking my door; saying: "There are some people inside here". We were three people. When the police officers managed to break the door, they came in and we tried to hide under the tables. They came in through the back door again and they said "They are here". They dragged us from under the table and started beating us. As they were beating us, some of them took our phones while others broke into the safe, where I used to keep money. Some of them took us outside and asked us to lie face down. As we were facing down, they said that we were the people who had blocked the road. We said that we were not the ones. They insisted that we were the ones.

The police officers came out carrying the money from the safe. I had worked for three days without banking the money. They took away Ksh54, 000; they took a phone from the table worth Ksh10, 000, and three other phones worth Ksh3, 000 each. They then went out and said: "Let us go". When we reached some point, they ordered us to lie down. We lay down and another one produced an axe and said: "Let me now kill them." I told them: "Please, do not kill us." He was trying to raise the axe up and he wanted to chop off my head. So, I tried blocking the axe using my arm and they cut my fingers. The second one said: "Now, let us cut him," and they wanted to chop my head off. I again defended myself using my arm and they cut me here.

The Presiding Chair (Commissioner Ojienda): Let him approach the Commissioners.

(Mr. John Kitur approached the Commissioners)

He is showing the Commission the injuries sustained. We have seen a cut on the upper left arm and a cut on two left fingers.
Proceed!

Mr. John Kitur: Mr. Presiding Chair, sir, after they had cut us, they said that we were to go to the road. When we got to the main Kericho-Kisumu Highway, they instructed us to

unblock the road. We tried to unblock the road but the stones were too big. We tried to push them off the road, and all the time they were whipping us with canes; they kept insisting that we remove the big rocks. Eventually, we removed the rocks and they instructed us to move on. They instructed us to remove more rocks from the road and we removed them. We went near a bank in Kapsoit and they ordered us to lie down. We lay down and at that time, my body was covered in blood. I had lost a lot of blood and was in a lot of pain. They told us: "Now, run and do not look behind. If you look behind, you will be shot". So, we tried to run. When we got to the petrol station, I tried to remove my shirt and coat; my body had cuts all over. I tried to look for help to go to hospital but there were no vehicles on the road; I was wondering which hospital to go to. I went to a neighbor who was a doctor and pleaded with him to help me. When he looked at me, he said that I had a lot of injuries. He gave me medicine and stitched my cuts. He told me that, unfortunately, he had no pain killers. So, I just told him to go ahead and stitch the wounds. He helped me a lot. When he finished, he asked me to go home and I told him that I would go home. But on the way home, I fell down and I lost consciousness because of losing a lot of blood. He picked me up and took me back to his house, where I stayed from 2.00 p.m. up to 4.00 p.m. when some people from my home came and took me home.

Thank you. That is all.

Mr. Tom Chavangi: Mr. Presiding Chair, sir, I have no questions.

The Presiding Chair (Commissioner Ojienda): Commissioners, do you want to seek any clarification?

The Acting Chair (Commissioner Namachanja): Sorry, Mr. Kitur for what you went through. I just wanted to seek some clarification. The armed people, whom you say invaded your butchery, do you know whether they were from the army or from the regular police force?

Mr. John Kitur: It was a mixed group.

The Acting Chair (Commissioner Namachanja): *Mchanganyiko*; how many were from the regular police and how many were from the army?

Mr. John Kitur: When I looked, one was in blue police trousers and the others were in greenish fatigues.

The Acting Chair (Commissioner Namachanja): So, the one in blue trousers was only one, and those in green fatigues were how many?

Mr. John Kitur: The ones in green fatigues were about four.

The Acting Chair (Commissioner Namachanja): How many were you in that butchery?

Mr. John Kitur: There were three of us.

The Acting Chair (Commissioner Namachanja): Can we get their names?

Mr. John Kitur: One of them was called Wesley; the other one was Reuben.

The Acting Chair (Commissioner Namachanja): Thank you very much.

Commissioner Chawatama: I am so sorry to hear about the ordeal that you went through, especially at the hands of people who should maintain law and order and ensure that you are secure. I would like to find out whether or not you reported this incident to anybody or to any authorities.

Mr. John Kitur: Please, repeat the question.

Commissioner Chawatama: Did you report what happened to you to any authorities?

Mr. John Kitur: I never reported it anywhere.

Commissioner Chawatama: If you had an opportunity to report this incident, who would you have felt--- Which office would you have felt comfortable to report this incident to?

Mr. John Kitur: Can I speak in Kalenjin?

Commissioner Chawatama: Could you, please, ask him in mother tongue the question that I had asked? If he had been in a position to make a report or to complain, who would he have made this complaint to? Or, what institution would he have felt comfortable reporting this incident to?

(Mr. Kitur spoke in Kalenjin)

Mr. John Kitur: I reported the situation to Sosiot Police Post.

Commissioner Chawatama: Were you satisfied with the way you were handled at the police post?

Mr. John Kitur: I was not happy with the response by the police.

Commissioner Chawatama: Could you, please, elaborate why you were not happy with the response by the police?

Mr. John Kitur: They were not in a position to help me according to the information I gave them.

Commissioner Chawatama: My last question concerns the two people that you were with; what became of them? Were they also injured?

Mr. John Kitur: They were injured. Some of them were shot.

Commissioner Chawatama: Thank you very much for your testimony.

The Presiding Chair (Commissioner Ojienda): Mr. Kitur, I want to join the other Commissioners in empathizing with you. I think what you are saying to us is representative of what happened to many residents in this area during the post-election violence. I want you to just confirm, after how long did you report this incident to Sosiot Police Post?

Mr. John Kitur: It was on the 10th January, 2008.

The Presiding Chair (Commissioner Ojienda): What was the time at which the police beat you up and then you treated the injuries that you have shown us? Were the roads blocked between the 1st and the 10th, or was it only on the 1st?

Mr. John Kitur: The roads still had a problem; so I had to use some other routes in area in order to get to the police post.

The Presiding Chair (Commissioner Ojienda): So all the roads were blocked in this region?

Mr. John Kitur: It was the main Kericho-Kisumu Highway that was blocked; the other route to Sosiot did not have so much of a problem.

The Presiding Chair (Commissioner Ojienda): When you went to the station, how many police men did you find there?

Mr. John Kitur: I found only one policeman whom I spoke to at the police post.

The Presiding Chair (Commissioner Ojienda): If we were able to ask for the occurrence book for the 10th January, 2008, will we find a report by John Kitur?

Mr. John Kitur: It is possible.

The Presiding Chair (Commissioner Ojienda): I just want to confirm to you that we will have an opportunity to verify the testimony that you have given us and we will make appropriate recommendations.

I want to thank you for coming forward and testifying before this Commission. Leader of Evidence, call the next witness who was just sitting next to Mr. Kitur. They can confine themselves to the injuries.

(Mr. Francis Kipng'eno Mursoi took the oath)

Mr. Tom Chavangi: Kindly tell the Commission your name?

Mr. Francis Kipng'eno Mursoi: I am Francis Kipng'eno Mursoi. I come from Boiwek Location, Boiwek Village. On that particular day when the then MP for Ainamoi was killed, I was working at the Chief's office, doing carpentry work; I am a carpenter – I work on tables and chairs. On that particular day, I was doing my work. At about 1.30 p.m. I heard people screaming and because we were not far from the Chief's office, when we heard the screams, we went out. When we approached the road, we saw people carrying twigs and branches of trees screaming. They were coming with the Chief I had worked for called Richard Bett and a young man I was working with. When we reached the highway, where the people carrying twigs were screaming, we heard gunshots. They came and the Chief asked them why they were shouting and screaming. They told the Chief that the Government had killed their MP. The Chief calmed them down and before he talked, I saw him falling down. I assisted him; I took a shirt and covered his head where he had been injured; I took him to Ainamoi Sub-District Hospital; it was not far from there. The doctors assisted him and I stayed with him for some time.

When I saw that he was not badly off, I tried coming out of the hospital to go home. When I went out for a short distance, I was shot at. I was shot on my hand and my leg and I was brought back to hospital. When we were coming to the hospital, it took a long time because the roads were blocked. I was given first aid at Kipchimchim Hospital and then we were transferred to Siloam Hospital. We stayed at Siloam and on 1st, policemen came. They told us that they would assist us in writing statements. So, we wrote the statements and the policemen told us: "From now henceforth, you have become prisoners." The policemen guarded us for about three days, and then we were taken for remand at the police station. They took us round the police stations for some time asking us questions. Eventually, they took us to court and charges were read to us, that we had stolen guns and killed a policeman. We were then taken back to the cells. I stayed at the cells for some time and while there, we were taken to court severally to go through the case. I went through the proceedings in court for about 13 months. At long last, we were discharged as the court said there was no evidence against us. So, I was discharged and I went home. Up to now, I still have injuries. I have a bullet lodged into my private parts.

Mr. Tom Chavangi: I would like the witness to show the Commissioners the visible injuries, but not those ones on the private parts.

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

(The witness displayed his injuries to the Commissioners)

We have seen the gunshot wound on the right hand, which is about ten centimeters long. We have also seen another scar on the right finger.
Proceed.

Mr. Tom Chavangi: Thank you, Mr. Presiding Chair, sir. I have a few questions. Mr. Mursoi, you said that at some point, the Chief, Richard Bett, did fall down. What made him fall down?

Mr. Francis Kipng'eno Mursoi: I saw him just fall down, but I did not know why.

Mr. Tom Chavangi: Thank you very much, Francis. My last question is about the charge sheet. Do you have a copy of the charge sheet?

The Presiding Chair (Commissioner Ojienda): It is not the charge sheet but the statement of the witness. Probably, you can ask him to produce the charge sheet later on.

Proceed.

Mr. Tom Chavangi: And then we can have this produced as exhibit? Francis, do you wish to produce this as an exhibit to the Commission?

Mr. Francis Kipng'eno Mursoi: Yes.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Leader of Evidence.

Commissioners, do you have any clarifications to seek? Commissioner Farah? Commissioner Chawatama?

Commissioner Chawatama: Mr. Mursoi, thank you very much for your testimony. I just have a few questions to ask you. When you were told that the police would assist you in making statements, what was your understanding of that?

Mr. Francis Kipng'eno Mursoi: I thought they would assist me now that I was injured.

Commissioner Chawatama: Were you informed before you gave the statement that you were going to be charged?

Mr. Francis Kipng'eno Mursoi: They did not tell me that they were going to charge me.

Commissioner Chawatama: What was your reaction once you found out that you were, in fact, going to be charged?

Mr. Francis Kipng'eno Mursoi: There is nothing that I did, but I just followed what they were telling me to do.

Commissioner Chawatama: Was the gun ever recovered?

Mr. Francis Kipng'eno Mursoi: When we were in the cell we were told that all the guns had been recovered back at home.

Commissioner Chawatama: Were you found with a gun when you were in hospital?

Mr. Francis Kipng'eno Mursoi: I was not found with any gun.

Commissioner Chawatama: When you were taken to court and the charge read out to you, were there any witnesses that were produced in court?

Mr. Francis Kipng'eno Mursoi: My witness was the Chief, Mr. Richard arap Bett because he was my employer.

Commissioner Chawatama: Did the police ever produce witnesses to give evidence against you?

Mr. Francis Kipng'eno Mursoi: They did not.

Commissioner Chawatama: After you were discharged by the court, I would like you to share with us what your thoughts were towards the police. Do you think they discharged their duties the way they are supposed to?

Mr. Francis Kipng'eno Mursoi: They did not do as I expected them to do. I thought they were going to assist us get the person who had injured me.

Commissioner Chawatama: Do you have confidence in the police now and the work that they do?

Mr. Francis Kipng'eno Mursoi: Since then, I have never had confidence in the police because I got injured.

Commissioner Chawatama: What would it take for you to gain confidence in the police and the work that they do?

Mr. Francis Kipng'eno Mursoi: I expected to get whoever injured me so that we find the way forward.

Commissioner Chawatama: How do you think the police should work in future?

Mr. Francis Kipng'eno Mursoi: The policemen should take care of us.

Commissioner Chawatama: When you say that you were discharged by the court, was it because there were no witnesses?

Mr. Francis Kipng'eno Mursoi: It is the court that discharged me because there was no evidence.

Commissioner Chawatama: The court waited for 13 months before discharging you. How do you feel about that?

Mr. Francis Kipng'eno Mursoi: There is nothing I would have done about being put in for all those months but I expected some compensation.

Commissioner Chawatama: How would you want to see the courts perform if something similar happened to somebody else?

Mr. Francis Kipng'eno Mursoi: They should do justice to whoever has been affected.

Commissioner Chawatama: Thank you for answering my questions. What you are saying is what we have heard from many Kenyans, including those who have suffered in the hands of the police, who have been taken to court and the court has failed to dispense justice.

Thank you.

Commissioner Dinka: Thank you, Francis for your testimony. I empathize with you for the pain and suffering you have gone through. However, when were you in court?

Mr. Francis Kipng'eno Mursoi: I cannot remember whether it was 30th or 28th. The following day was on 1st.

Commissioner Dinka: Was it in December?

Mr. Francis Kipng'eno Mursoi: It was on 31st December.

Commissioner Dinka: You also mentioned something about the chief. Was he also shot?

Mr. Francis Kipng'eno Mursoi: I do not know whether he was shot but he fell down.

Commissioner Dinka: You said that he was treated when you were taken to hospital. What was he treated for?

Mr. Francis Kipng'eno Mursoi: Later on he said that he had been cut.

Commissioner Dinka: By whom? Is it the doctor?

Mr. Francis Kipng'eno Mursoi: I cannot tell because I did not see.

Commissioner Dinka: That is fine. You said that you were shot in the arm and leg and the bullet is still lodged in your body.

Mr. Francis Kipng'eno Mursoi: I cannot tell because I came out and felt injured.

Commissioner Dinka: I am referring to the presentation of the Reverend. He mentioned two names, that is, you and the other fellow who testified before you. (*Recording Hitch*) Is that correct?

Mr. Francis Kipng'eno Mursoi: I think it was the policemen because there was nobody else with guns except the policemen.

Commissioner Dinka: You said you do not really know that. You were just shot. You do not know who fired at you.

Mr. Francis Kipng'eno Mursoi: When I was in hospital I realized that a bullet was lodged in my body and I think the police were responsible.

Commissioner Dinka: After you recorded your statement with the police, you said, "They told us---" Who are "they"?

Mr. Francis Kipng'eno Mursoi: After writing the statement we were told that we were prisoners.

Commissioner Dinka: Can you identify them?

Mr. Francis Kipng'eno Mursoi: I was with my brother. When he heard that I had been injured he came to hospital to take care of me.

Commissioner Dinka: When you and the chief went out, people were screaming and rushing to the highway carrying twigs and branches. What was the general environment?

Mr. Francis Kipng'eno Mursoi: After I came from the chief's place, I saw people carrying twigs. I did not see people with any guns.

Commissioner Dinka: I did not ask you whether you saw the guns. I asked: How were the people behaving?

Mr. Francis Kipng'eno Mursoi: They were screaming and saying that our MP had been killed.

Commissioner Dinka: The environment was tense because the MP had been killed that day.

Mr. Francis Kipng'eno Mursoi: Yes. I know this because they were just screaming and saying, "Our MP has been killed." The people were screaming loudly and they were many.

Commissioner Dinka: Who killed the MP?

Mr. Francis Kipng'eno Mursoi: People were screaming and saying that the Government had killed him.

Commissioner Dinka: In your assessment, how many policemen or uniformed security agents were in the crowd?

Mr. Francis Kipng'eno Mursoi: When I saw them, the policemen were two and they were shooting in the air.

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

The Acting Chair (Commissioner Namachanja): We are very sorry, Francis. During the demonstrations, did the crowd charge at any particular group, for example, policemen?

Mr. Francis Kipng'eno Mursoi: I did not see, but the following day I was told that the houses belonging to policemen were burnt.

The Acting Chair (Commissioner Namachanja): The bullet that is still lodged in your body, what is the doctor's explanation? Why was it not removed?

Mr. Francis Kipng'eno Mursoi: It was X-rayed. There were two bullets and one was removed. I was told that the other bullet could not be removed then.

The Acting Chair (Commissioner Namachanja): What impact did it have on your body?

Mr. Francis Kipng'eno Mursoi: At times my leg feels numb.

The Acting Chair (Commissioner Namachanja): Which leg is most affected?

Mr. Francis Kipng'eno Mursoi: It is my leg that got injured.

The Acting Chair (Commissioner Namachanja): After this incident, are you deformed in any manner?

Mr. Francis Kipng'eno Mursoi: My body is not as strong as before.

The Acting Chair (Commissioner Namachanja): Do you have a family? How many children do you have?

Mr. Francis Kipng'eno Mursoi: I am married. I have one wife and seven children.

The Acting Chair (Commissioner Namachanja): How old is your last born?

Mr. Francis Kipng'eno Mursoi: One year old.

The Acting Chair (Commissioner Namachanja): After this incident, were you able to get your job back?

Mr. Francis Kipng'eno Mursoi: I do not work because I do not have strength like before.

The Acting Chair (Commissioner Namachanja): How is it like supporting your family of seven children without the employment that you had?

Mr. Francis Kipng'eno Mursoi: I do what I can.

The Acting Chair (Commissioner Namachanja): How do you provide them with food and other needs?

Mr. Francis Kipng'eno Mursoi: I am a carpenter and so I look for someone to assist me. I look for business.

The Acting Chair (Commissioner Namachanja): The school-going children, are they in school?

Mr. Francis Kipng'eno Mursoi: The first one is in Eldoret Polytechnic. The second one is in Form III. The third one is in Standard VIII while the rest are in primary school.

The Acting Chair (Commissioner Namachanja): Tell us about your injuries. What were your greatest worries when you were told that the bullet could not be removed from your body?

Mr. Francis Kipng'eno Mursoi: I felt very bad because I felt that it ought to be removed. I got disturbed and the doctors had to counsel me for a long time.

The Acting Chair (Commissioner Namachanja): So, apart from the counseling you got from the doctor, did you get any other counseling concerning your worries?

Mr. Francis Kipng'eno Mursoi: When I came from hospital nobody talked to me so I just stayed at home.

The Acting Chair (Commissioner Namachanja): Thank you, Francis. Sorry, once more.

The Presiding Chair (Commissioner Ojienda): Thank you, Francis. I just want you to confirm a few facts. The date the late MP for Ainamoi was killed was on 31st January, 2008. Is that right? It was not 2007. Do you remember that?

Mr. Francis Kipng'eno Mursoi: Yes.

The Presiding Chair (Commissioner Ojienda): The crowd that was blaming the Government for killing the MP advanced to the police station. Do you remember that?

Mr. Francis Kipng'eno Mursoi: The people were still on the highway but I did not see them after I was shot.

The Presiding Chair (Commissioner Ojienda): Do you remember the police station?

Mr. Francis Kipng'eno Mursoi: I cannot remember, but they were many.

The Presiding Chair (Commissioner Ojienda): Do you recall that a policeman by the name Omar Hassan was killed by the crowd?

Mr. Francis Kipng'eno Mursoi: I was told that the following day when I regained consciousness.

The Presiding Chair (Commissioner Ojienda): Another police officer by the name Joseph Kiplagat was also shot.

Mr. Francis Kipng'eno Mursoi: I cannot remember. I can only remember the chief.

The Presiding Chair (Commissioner Ojienda): Was that the same vicinity as the chief and the police officers?

Mr. Francis Kipng'eno Mursoi: I was shot at when I was coming from the hospital after taking the chief.

The Presiding Chair (Commissioner Ojienda): Was it the police or the mob that shot you?

Mr. Francis Kipng'eno Mursoi: I believe it was a policeman because there was no common man with a gun.

The Presiding Chair (Commissioner Ojienda): How many guns were stolen from the police station during that raid? Do you know that?

Mr. Francis Kipng'eno Mursoi: I knew that when I was in hospital.

The Presiding Chair (Commissioner Ojienda): It is important to highlight this because of the situation that obtained at that time. This is the TJRC and we empathize with the injuries that you sustained. However, clearly, if the police or any other person shot at innocent Kenyans like yourself, that is of concern to us. Did you have any weapon or form of tool that you carried?

Mr. Francis Kipng'eno Mursoi: I did not have anything because I was at work and I left everything when people screamed.

The Presiding Chair (Commissioner Ojienda): There is a bullet lodged in your body. When was the last time that you sought medical advice concerning that bullet?

Mr. Francis Kipng'eno Mursoi: I met a doctor when I was in the cell.

The Presiding Chair (Commissioner Ojienda): What do you want this Commission to do for you as a result of the injuries sustained in the incident of 31st January, 2008?

Mr. Francis Kipng'eno Mursoi: I am requesting that the bullet be removed from my body if that is possible. I also request that my children be assisted so that they can go to school.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Francis. If you have any other document touching on your medical condition please hand it over to the Leader of Evidence.

The Acting Chair (Commissioner Namachanja): Francis stated that he saw the mob on the road and not charging towards the police station. That is his true testimony that he shared with us.

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, please proceed.

Mr. Tom Chavangi: Reverend Koskei, before you called your two witnesses, you were presenting on the Post Election Violence (PEV) that took place in Ainamoi. Let us summarize that and we proceed to the next memo of the Londiani/Kipsigis Elders Forum so that we give an opportunity to Joseph to present his memo which, as I can see, is very lengthy.

Rev. John Koskei: Thank you, Presiding Chair, for cross-examining the victims. I have a memorandum from the Londiani/Kipsigis Elders Forum, Kipkelion District. In this memorandum, I will just highlight a few issues.

We are aware that in the area of Londiani and Kipkelion there has been intercommunity conflict. They were affected by PEV. On page 4, the OCS, Mr. Kimutu is mentioned. I will read out part of this memorandum.

“We actually witnessed with shock the way this trigger-happy officer killed our people. He and other police officers who were serving in his command shot and killed seven people within Londiani-Sorget area under his jurisdiction. They injured more than ten people, including a five-year old child who was on the back of her mother.”

I recommend to the Commission that this matter be investigated further.

On page 5, with regard to the 1992 case, I will read part of it. It says: “In the Londiani and Sorget divisions, the following people from Kalenjin and Kipsigis---”

Mr. Tom Chavangi: Commissioners, I wish to stop the witness from this so that he can be precise. For instance, he can tell the commissioners which paragraph and which

sentence he is reading. I am trying to catch up with him, but I do not seem to know where he started and where he has ended.

The Presiding Chair (Commissioner Ojienda): Please, clarify where you are.

Rev. John Koskei: Thank you very much. I was dealing with the issues of PEV as indicated on page 4 and the issue of police officers using excessive force. I was quoting the line where the OCS has been mentioned and the names of the people who were shot dead and those who were injured. We recommend to this Commission that it does more investigations on these matters.

The Presiding Chair (Commissioner Ojienda): Proceed.

Rev. John Koskei: Thank you, Presiding Chair. On page five there is a part titled “Post-election violence 1992 and 1997”. That is on the third line. I wanted to read that sentence starting from Londiani and Sorget divisions. It reads:-

“The following people from the Kalenjin, Kipsigis community were reported dead. We witnessed and recorded the same in our books for reference. In the year 1992, during election time we lost the following people.”

Presiding Chair, I do not know whether I should read out the names. I need your guidance.

The Presiding Chair (Commissioner Ojienda): Proceed.

Rev. John Koskei: The late Joseph Koech was killed by a group of Kikuyu and his body burnt beyond recognition; the late Bernard Mutai, who was a teacher, was killed by a group of Kikuyu on the road between the late Karanja’s Sawmill and Londiani Town and the late Joseph Lang’at was killed at Mt. Langat Forest by a group of Kikuyu who were trailing cows which were reported to have been stolen from Mau Summit. His neck was cut off and the body was left inside the forest. It was later found. In the same year, Mr. Josiah Misik was shot by a police officer. His knee was seriously injured by a bullet in Londiani Town on his way home in Jakorom Farm.

That is the part that I wanted to put emphasis on to the Commissioners.

I will also read the sentence that starts with “2007/2008”; line three on page 7. We have a group of people who were also killed by the police officers. The late Mr. Rono, who was a teacher at Kapcheplanga Secondary School, was killed in Molo Town by a group of Kikuyu. We came to learn that the victim was betrayed by a Kikuyu man from Londiani Town. The name mentioned there is Resma Gladys. They were dealing in timber business as partners and operated from Londiani, Elburgon and Molo areas. The late Samwel Kirui was killed by a police officer at Tegnong Area; the late Paul K. Rotich was killed by police officers in his home area at Tegnong; the late Patrick K. Mutai the son of A. Mibei, was killed by police officers outside his house which he rented at United Saw Plots. He was shot dead by the OCS, Londiani Police Station by the name Richard Kimutu. The late Wilson Koskei, nicknamed Nyarundu, was killed by Army officers in his residence at

Letsotet Farm. The officers were passing near the residence of the late Koskei through Letsotet Village. The late Mobei arap Chepkwony was killed by police officers at Kwitu Farm, Sorget area.

Those people were killed by police officers. We also have a group of those who were injured. I will not read the list but they are six.

We are recommending to the Commission, especially regarding those who were killed by police officers, to compel the Commissioner of Police not only to apologize to the community but also reveal the details and particulars of security forces sent to Ainamoi on the military operation, and even those who were in Londiani and Kipkelion. We want to see justice being done for the victims and an end to the impunity that has characterized the security forces ever since.

In my closing remarks, on page 8 of the memorandum of Londiani, we have a group of people whose properties were destroyed. We also recommend to the Commission to investigate further.

I do not have much to say. I want to thank the Commission for giving us a chance to highlight those issues in our memorandum.

Thank you very much.

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

Yes, the Leader of Evidence.

Mr. Tom Chavangi: Thank you, Presiding Chair. Thank you, Rev. Koskei, for your concise presentation.

Commissioners, I want to confirm on page 4, on the Londiani, Kipsigis Elders Forum Memorandum, where Rev. Koskei has mentioned a police officer by the name Mr. Kimutu. He has said that that police officer is a witness before this Commission. He will be appearing before this Commission on the third day.

I have a few questions for the witness.

On page 5 on Post Election Violence, Minute 8/2010, he stated that the deceased were killed by members of the Kikuyu community. Was he present during that time?

Rev. John Koskei: If the Commission will give us a chance we shall call the witnesses. As you have seen, this memorandum has even been signed at the back by the council of elders; the three of them.

Mr. Tom Chavangi: Commissioners, I want to assume that the witness confirms that there were people present when this incident took place and there are documents to show that these people are deceased.

Rev. John Koskei: Yes.

Mr. Tom Chavangi: Commissioners, I want to take you to page 7 of the same memorandum, where the witness said that the following were shot dead by police officers. But I can see No.1, Rasma Gladys was actually killed by a group of Kikuyu and not shot by the police. Can the witness confirm that?

Rev. John Koskei: Yes, it might be a typographical error.

Mr. Tom Chavangi: Thank you very much, Rev. Koskei. My last concern for clarification is on page 8, the second box, on the last row. It shows UNS. Could the witness clarify what UNS means for the sake of the Commission?

Rev. John Koskei: Could I give the secretary to---

The Presiding Chair (Commissioner Ojienda): It means “unsurveyed.” Proceed.

Mr. Tom Chavangi: Commissioners, I have no further questions.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Leader of Evidence. I will ask the Commissioners if they have questions to clarify. I just want to assure the witness that if he has any information that he wants to share with the Commission in camera, he will have an opportunity to do so. If you think that you want to speak on a number of issues, you will have the opportunity.

Rev. John Koskei: Thank you.

Commissioner Chawatama: Thank you very much, Reverend for your testimony. We would also like to thank you and the church for the efforts you have made to try to foster reconciliation because, as a church, you are called to the ministry of reconciliation. I would like to know whether the effort of the church has borne any fruit. Can you tell us of the evidence of these fruits?

Rev. John Koskei: Maybe you can reframe your question so that I can answer it in a better way.

Commissioner Chawatama: You have told us that there have been efforts at reconciliation. Is that correct?

Rev. John Koskei: Yes, that is correct.

Commissioner Chawatama: Could you maybe share with us some of the fruits or things that you can point to highlight the effort; maybe at a meeting where certain things were said and members from different communities apologized to each other?

Rev. John Koskei: I can just highlight one among many. At the beginning of 2008 we called opinion leaders from different communities in Rift Valley. Rift Valley actually has all the communities. So, we called people from the Maasai, Kikuyu and Kalenjin communities. They dialogued and were asking each other: “Why are we fighting?”

That is one of the efforts that the church is making; to make people dialogue and share issues. We have been able at times to bring politicians from different communities on board. We try to engage them because these are the opinion leaders and what they say sometimes affects the common *mwananchi* in one way or another. We have also been able to do what we call conflict analysis. We have the trend line showing the years that we have been having conflicts. That is what we have been able to do.

Commissioner Chawatama: So, in the years conflicts have occurred, what triggers them?

Rev. John Koskei: The major trigger is the issue of land. There is also inequitable sharing of resources and, of course, politics.

Commissioner Chawatama: One of the things that maybe as a non-Kenyan I have often heard – it was either in Mt. Elgon or Bungoma – is that people in a specific area would say: “We are gatherers and not farmers or we are herders and not this.” But when another tribe came in, they went to work on the land. It reminds me of something that I have read. I cannot say to the ear that I will have nothing to do with you nor can the arm say to the leg. What are you doing as a church to speak to that; that we may be different tribes with different cultures and ways of doing things, but we are all Kenyans and, second, we cannot do without each other because of our different callings and gifting? How is that message received?

Rev. John Koskei: Thank you very much, Presiding Chair. I would like to answer it in a different way. People are there to co-exist, but maybe I did not mention something else. As a church, we facilitated the three communities in documenting their issues. They were under our jurisdiction in the South Rift. They were the Maasai, Kikuyu and Kipsigis. We just wanted them to document their issues and bring them out. Because we have now seen the issues, we are in the process of calling different communities so that they can dialogue together, but after the truth has really come out.

Commissioner Chawatama: Thank you very much for that. I wish you all the best. I have often asked this question as a non-Kenyan. There are certain events or issues that bring together a nation. For us in Zambia one of them is football. When we lost our team, we all came together as a people and it did not matter what part of Zambia you came from. When we are playing, again, we are one people. There are other issues like our Christianity and love for peace. What brings the people of Kenya generally, specifically those from the Rift together? Are you still searching for that or do you have an idea?

Rev. John Koskei: Maybe I can just say one of them. When the land question will be addressed, we foresee that there will be co-existence in the Rift Valley. Of course, Christianity and the other religions have brought people together.

Commissioner Chawatama: I will ask you one more question since you have mentioned land. When you talk about land, are you saying that some people would have to move away from their land, for example, where they have lived for 20, 30 or even 60 years?

Rev. John Koskei: The community is not saying that people should move out. There will be a witness touching on the issue of land and inter-community conflict. So, maybe we can be patient until that time, so that we can get the answer.

Commissioner Chawatama: Well, thank you very much. I think what is important from what you are saying is that, at least, there are some efforts towards coexistence. We commend you and the people of Rift Valley for that.

Thank you.

Commissioner Dinka: Reverend, thank you very much for your testimony. You mentioned the peaceful demonstration by the residents of Ainamoi and the use of excessive force by the police. From what we are getting now, particularly the testimony of Francis, the person you mentioned that came and testified, there was a big demonstration on that day upon the death of the popular Member of Parliament. The demonstrators were accusing the Government of responsibility for this. When we asked him how many policemen were around at that time, he said that they were two. He could not tell the number of those who were marching. He said that they were a multitude and were quite large. Given that context, how do you define excessive force?

Rev. John Koskei: There are two incidents here. One of the incidents was when there was a demonstration. In our memorandum, after the demonstrations three people were killed. They were actually shot by a police officer. So, I believe that from that time people were angered and turned to the police station. After that there were some guns which got lost and the Government sent the General Service Unit officers to search for them. But before they even arrived, the community returned the guns but they went ahead and did some acts that were not good to the people they met.

Commissioner Dinka: My second question is about that police officer. It was mentioned that one police officer actually shot a chief at the station. Was that killing in the context of firing in the air and the bullet going astray and killing somebody or it was actually direct shooting?

Rev. John Koskei: The testimony we have is that it was direct shooting.

Commissioner Dinka: I have not read your memorandum and I will, definitely, read it carefully. Given your experience that you have tried as a church and other councils of elders to reconcile people, which are the most difficult issues? What would you advise

the Commission which has three members who are foreigners and very unfamiliar with Kenyan culture on how to achieve its very important mandate, which is reconciliation? Given your experience, can you point out to us what the difficult situations are and where we should be looking more to achieve reconciliation amongst the people?

Rev. John Koskei: Presiding Chair, the major work for the TJRC, specifically in the Rift Valley, is still the question of land. If we could find a solution on that, maybe we can manage other things. We have tried as the NCKK some-time. At times we have brought even the youth to play football together. At times we call even the opinion leaders together, but still the issue that we see is land. This is because people may co-exist for some time, but there is that inner issue of land.

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

The Acting Chair (Commissioner Namachanja): Reverend, I would really like to thank the NCKK for your efforts of promoting peace and reconciliation, especially in Rift Valley. I remember the role that the late Rose Barmasai played through her good neighbourliness meetings and workshops. I am happy I can see the members of the District Peace Committee here. I can also see my brother from the National Cohesion and Integration Commission. A lot of work and money have been put into promoting reconciliation in this region and Kenya. But each time we go into election period, we start killing each other. So, ours is just to facilitate this dialogue, but the recommendations on how we can achieve lasting peace and peaceful co-existence will come from the institutions like yours that are working at the community level. Even when it comes to implementing the recommendations, I know that the National Cohesion and Integration Commission cannot do it alone. We shall need the pillars which are on the ground. So, I am happy that you are participating in this process. As you had said, it is true that we have been dealing with relationships, but we have not achieved a lot. It might be because we have not touched the root cause of conflict in this region. That is why this Commission was set up. I pray that with your support and sharing your recommendations, we shall come up with concrete findings and recommendations that will put into place real reconciliation among the people of Kenya. Thank you very much for participating.

Rev. John Koskei: You are welcome.

The Presiding Chair (Commissioner Ojienda): Thank you, Reverend. I want to join my fellow Commissioners in thanking you for your testimony. You have said that at the centre of the conflict underneath this region is the question of land and politics. You have also said that the land issue will be dealt with by the second speaker.

I want you to just make a statement on the question of politics. How and who do you believe in the realm of politics has led or contributed to the conflict in this region? I want you to make recommendations. How can we deal with politics and ensure that we have the kind of politics that do not lead to conflict in this region?

Rev. John Koskei: It is a difficult question but I will try to answer it. We all know politics is life. Because of this, we cannot separate politics from the sharing of resources. Maybe the issue of counties in the new Constitution might solve a bit of that. The manner in which the national resources will be shared will determine that. I believe it will change the dimension of the politics.

The Presiding Chair (Commissioner Ojienda): From the research that you have carried out as a church, do you think culture has any place in the conflict?

Rev. John Koskei: To be specific, among the Kipsigis community, no. In our culture, the council of elders is mandated to maintain or restore peace at all levels. Their decision is respected.

The Presiding Chair (Commissioner Ojienda): So, do you think there is sufficient facilitation for the council of elders in this region? Is it able to perform its work to the level that it can deliver and deal with issues of peace in this region?

Rev. John Koskei: The council of elders is trying although this is voluntary work. If they can be facilitated more I believe they can achieve more than they have already achieved.

The Presiding Chair (Commissioner Ojienda): Rev. Koskei, you have spoken for many. You have covered great ground. I am sure the subsequent speakers have learnt from what you have said. You are an inspiration for peace. I hope that people in this region can embrace peace. Many speakers today have avoided this subject of land. We want to hear how this subject of land has contributed to conflict in this region. We would want in the end to hear other recommendations on what should be done to restore peace in this region.

I just want to reassure you that under the new dispensation, the Constitution of Kenya, 2010, Chapter 5 recognizes community rights to land. It creates a framework within the National Land Commission which will be established to deal with issues of historical injustices to land. So, the framework for dealing with all the issues that touch on land is there. I think that should be undertaken in an atmosphere of peace, cohesion and peaceful co-existence amongst communities. Thank you very much.

Leader of evidence, call the next witness.

Mr. Tom Chavangi: Commissioners, I need your guidance. It is 1.00 p.m. I have my next witness Joseph Cheruiyot. Then I have TJRC Kericho II. TJRC Kericho III wishes to testify in camera. And then TJRC Kericho IV. Those are the witnesses remaining. So, I need your guidance since it is 1.00 p.m. now.

The Presiding Chair (Commissioner Ojienda): Proceed. Call the next witness.

Mr. Tom Chavangi: I call Joseph Cheruiyot.

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, as the witness is gone, could we have a break of ten minutes?

[The Commission adjourned for lunch at 12.55 p.m.]

[The Commission resumed at 1.20 p.m.]

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, call the next witness.

(Mr. Joseph Kiprono Cheruiyot took the oath)

Mr. Tom Chavangi: For the record, kindly tell the Commission your names.

Mr. Joseph Kiprono Cheruiyot: My name is Joseph Kiprono Cheruiyot.

Mr. Tom Chavangi: Where do you come from?

Mr. Joseph Kiprono Cheruiyot: I come from Kipsolu in Kericho County.

Mr. Tom Chavangi: You are here to talk about the land issue that was expurgated when the White settlers took the White Highlands.

Mr. Joseph Kiprono Cheruiyot: Correct.

Mr. Tom Chavangi: Kindly confine yourself to those issues. Please proceed.

Mr. Joseph Kiprono Cheruiyot: I will start with a bit of history of this country. About the end of the 18th Century, the British colonized this country. They entered the Rift Valley around 1901. As they entered they received a lot of resistance both from the Nandi and the Kipsigis. That culminated into the historical agreement of Lumbwa Kipkelion. After they defeated our warriors, they started moving inwards and acquiring land by evicting the then natives.

I want to mention that before then, the Kipsigis Community lived in these parts of Rift Valley now known as the larger Kericho. Although it is not quite clear, they lived as far as Nakuru. The evidence that we have is from the names that you find from those areas. In Gilgil, you find Koitalel and then you find a place called Kikopey which, of course, should have been called Chekopey. "Chekopey" means the milky waters. It was actually because of the Kariandusi, the chalky water.

They also lived beyond Sotik just short of Keroka. They also occupied what was then known as Sot neighbouring the Maasai. On the eastern side, they had no limits past the Mau Forest. On the southern side, they were neighbouring the Kavirondo now known as Luo Nyanza. Their boundary then was at Chemelil.

After the arrival of the British, they started evicting natives all the way along the road Lumbwa, Sotik. By 1904, they were already around Kericho and thereafter expanded. It is good to mention that the majority of these Whites who occupied our areas were drawn from the armed forces. So, you will find many of them were called Capt. So and so. They then occupied the area of the current tea estates which I will give details later. They also occupied all the farm lands around, which included the Sotik Highlands and Sotik East.

Along the Kisii boundary, which was Keroka, although the Kipsigis community lived peacefully with the Kisii, there were constant disagreements of cattle rustling. That is the history.

Now I want to talk about the period after 1963. I want to draw the attention of the Commissioners to the fact that there is the Kenya Subsidiaries Legislation Gazette Notice of 1963 which showed the boundaries of Kericho. The boundary of Kericho then was at Kelegele, those sides of Manga, all the way to Cheptuiyet River, Sondu up to Chemelil and up to Tinderet Forest near Timboroa. It continued up to around Makutano to the Londiani Forest onto Mau Summit. From Mau Summit, through Molo, up to near Turi and from Turi it then turned southwards to the West Mau joining Amala River, back to Kelegele. I have detailed beacons which are available for scrutiny. That was the position as at 1963.

Going back to the eviction of the locals after Kipkelion they covered all that area. Then they took the land around Kapkoech which is Unilever currently. All the land along the forest is currently owned by Finlays up to the last end of Rundet.

Unilever took all the land along the Sotik Road up to what was then called Buretiti and on to Ng'oina. These pieces of land were granted to officers of the armed forces. They were mostly from Britain, New Zealand, Australia, South Africa and Canada. Although we also had army officers then none were given any grants.

The sort of evictions that were carried out was very painful. They knocked down huts and burnt them. Some people suffered injuries and lost property. These people were taking few sections one at a time. Every time they caught up with them the destruction was repeated. They were operating under Her Majesty's Land Acquisition Act of 1894 and the 1901 Ordinance regarding the Crown Lands. Under those powers, the Governor, the agents and the District Commissioners and the puppet chiefs enjoyed a lot of freedom to do whatever they felt like.

The land that they were taking over had to be cleared and prepared. The labor that they were using was our local people. Because of those rules they were known as *bwana*. What *bwana* had said nobody could go against it. So, our people did not even give any resistance to whatever they were being told to do. As I speak, most of the land which I have mentioned about in the tea areas is still running under the multinationals. Majority of the ownership are still foreigners. The workers are drawn from both locally and some are foreign.

I now want to mention what happened to those people who were evicted. In a place like Kaploret the people were transported to Merigi. Many others went from one area to another, some ending up in Tanzania and Uganda. Locally, some went up to Narok, Trans Mara, Tinet, Shimba Hills, Solai, Ndarua, Laikipia and the Elais ended up in Gwasssi.

In the settled farming areas, they also used the local labor, who were our people who had already been evicted. Some were given small pieces of land to till. Others were given a little grazing land and continued clearing it. As soon as the land was cleared they were moved to the exterior.

If you look at our people, many are still squatters. Many are very poor. Some are camped in crowded settlements or villages. A good example is the Chepchebas. They lost land that they identified as homes. They suffered humiliation, torture and sometimes injury during eviction. They lost communal shrines or graveyards. They lost ego and confidence as a people. They were deprived of their social activities; communal ceremonies such as marriage and initiation to adulthood. In all these, they could not organize themselves to get good education because their children were disturbed and they were unable to progress. Many to date are landless.

There are a number of people who I would say are witnesses or amongst those who suffered and I am sure in this hall the number would be very large. So, as I mentioned, in 1963 the boundary was at Keroka. Currently, after the settlers moved out after 1963 and the farms were bought by SFT the people who were settled there were not of the same community as before. The several estates around those areas which our people would have claimed as theirs have been moved to another county. The list includes, Sotiti, Kerito, Kitaru, Sotik Highlands, Mbugura, Kiptebe and Kiptenden.

You will get from the names that I am mentioning some indicate that they are Kalenjin or Kipsigis names. On the southern side which I had mentioned the boundary was at Chemelil, when the settlement took over after 1963 our neighbors from Luo Nyanza took the land.

On the eastern side, I mentioned Mau was within this area. Most of it was within this area. As I speak, very little of it is still within the area. I think most of it has been moved to Nakuru. When I did mention that we have factories and tea estates where all communities benefit, also foreigners benefit. Our people got a very small share.

Our community accommodates quite a number of people within this area. Although they ought to have benefited up to Naivasha, I think another colleague of mine will later on give details that show that they did not benefit as much during the settlement after 1963. In fact, it is on record that the British Government, through the Colonial Development Fund gave the Kenya Government 0.75 million for purchase of farms or for settlement of our people. The intention was to settle 6,000 Kenyans. From our investigations very few of our people benefited. Hence, that is why our community talks of land as being emotive because they feel that they were boxed in throughout the period.

I will not go very much beyond there but I will request on behalf of the community that the families originally displaced, where they can be identified, be considered for compensation. Because of that long suffering where we have so many landless and poor people and since the country is benefitting a lot from what was originally our land - tea estates are still producing tea - a special fund should be established, large enough, to help those descendants in education, to develop economically, for health purposes and benefit as a group. The corporate companies operating through corporate social responsibility should channel a higher proportion of their profit to the community. As I had mentioned something about the forests, just like our brothers and sisters, the Maasai benefit from the game reserves, some amount of money should be channeled from the proceeds from the forest to the community. The forest being the source of water and environmental stabilization, the people who originally lived in the tower should get some benefit rather than all of it going to the basin.

The other recommendation which I would make to the Commission is that the original boundaries of 1963 should be respected, so that any of the persons living within should pay rates, taxes and cess to the current county. There should be respect of the indigenous people. That is my recommendation. There is another speaker who will give more details on the land issues.

I had mentioned that because our people are very accommodating, we do not have any problem with the people of Nyanza Province who live in Nyando. We live peacefully. Any of these other issues which I recommended if considered will go a long way in stabilizing the relationships of people living within the area.

Mr. Tom Chavangi: Thank you, Mr. Cheruiyot for your short presentation despite the fact that you had so many documents. Commissioners, I would wish that the documents which Joseph Cheruiyot has just referred to be presented as exhibits. They are two documents. I only have one question for the witness.

Mr. Tom Chavangi: Mr. Cheruiyot, is there any benefit you are getting from these multinationals in Kericho?

Mr. Joseph Kiprono Cheruiyot: Of course, there are benefits. One of them is employment but everybody is getting it. The other assistance which they give the local community and that is why I asked for more---

Mr. Tom Chavangi: Thank you very much, Presiding Chair. I have no further questions for this witness.

The Presiding Chair (Commissioner Ojienda): Thank you, Mr. Cheruiyot. I want to start by asking you a number of questions to clarify your presentation. The first issue that I want to raise is: Please, share with us your source of information on the history of the initial boundaries that appear on page 1 of your presentation titled “Kipsigis Land under Multinational Tea Farms in the Larger Kericho.’ Page 1 refers to the challenges the

people face in Ndororo, the boundaries, how the farms were taken away and how Chemukondai was occupied by Kapchombabet.

Mr. Joseph Kiprono Cheruiyot: Well, in the information, I have listed the people who suffered from these evictions. There was a clan by the name Kapchemukunde and I can see people from the same clan in this hall.

The Presiding Chair (Commissioner Ojienda): Let me just request this: Is this the first time that this is being documented, or is there any source of information like a book or written texts that you refer to?

Mr. Joseph Kiprono Cheruiyot: There are so many texts. On the back of the page that is on the blue binder there is a list of books from which the information is drawn, including the local information.

The Presiding Chair (Commissioner Ojienda): I want to request you to share with the Commission the sources of information to help us with our final report.

Mr. Joseph Kiprono Cheruiyot: I have covered them in the back of the---

The Presiding Chair (Commissioner Ojienda): Thank you. One of the functions of this Commission is to document the true history of this country, specifically the violations that you have spoken about. My second question would be on the list of the persons who you say have suffered. You have asked the Commission to investigate if there is any member of the clans evicted from their personal land that is occupied by the companies. Is there any member of those families that has come forward?

Mr. Joseph Kiprono Cheruiyot: During the visit of TJRC personnel, a number of them were interviewed and the list of some of those who were interviewed is at the back of this book. If I may read the names--- If they are here some of them can stand. Francis Mosonik, Elisha Soi, Samuel Kosgei, Christopher Ng'eno, William Mosonik, Wilson Chepkwony, David Maritim, Chepkwony arap Rogony, Philemon Koech, Newton Terer, Jonathan Rotich, Samuel Towett, Samuel Rugut and Joseph Cheruiyot, not the one speaking. Some of the people whom we interviewed are very old.

The Presiding Chair (Commissioner Ojienda): Thank you. I think they can sit. Proceed.

Mr. Joseph Kiprono Cheruiyot: Some of the people that may not have attended were extremely old.

The Presiding Chair (Commissioner Ojienda): Finally, when exactly did these evictions start? In what year?

Mr. Joseph Kiprono Cheruiyot: The first round started around 1904 and the last was around 1954, which was very recent.

The Presiding Chair (Commissioner Ojienda): I just want you to give information. You refer to the Indian Land Acquisition Act of 1894 and then you refer to the Crown Ordinance of 1901; of course the initial evictions were undertaken under the Crown Ordinance of 1902. Under that ordinance, all land in Kenya was declared to belong to the Crown; in fact, the native Africans under that ordinance were not recognized to have any title to the land. In fact, even in 1954 there was the Swynnerton Plan and the Crown Land Ordinances were still in place; that was why there were displacements. I hear your testimony on the unfairness and injustices to the natives of this country by the Crown Land Ordinances, the Land Title Ordinances and the Registration of Titles Ordinances of 1908 and 1922. Communities are crying for this country to look back and compensate victims of historical injustices. I also just want to end that on the tea factories. The county governments under the new Constitution will have certain frameworks that will define certain benefits that the residents of this region will enjoy, and I also want to mention that under the new framework, the National Land Commission will address these historical injustices. On our part, we will make appropriate recommendations. I just want to assure you. These are fundamental and serious issues that need to be resolved, so that the question of land is finally dealt with. I thank you for your good work. I also want to thank the Apromuiyot Council of Elders for making particular effort to help us with our work. Are the elders of the Apromuiyot Council of Elders in this room? We just want to recognize them. Let them stand.

(The elders stood up)

(Applause)

Thank you very much. You may resume your seats.

Commissioner Dinka: Mr. Cheruiyot, thank you very much for your testimony. The history of your people's struggle against foreign invasion--- I am sure that remains celebrated by the people of Kenya. It is one of the most interesting parts of your history, but, of course, they paid for it by suffering evictions and all kinds of misfortunes. You talk of compensation to those who suffered; are you talking of compensation in terms of money, perhaps, alternative land or affirmative action in terms of education? What exactly do you mean by compensation?

Mr. Joseph Kiprono Cheruiyot: What I meant is affirmative action. I would have asked for land for them, but I know that may not be realized; what we recommend is for the future of their descendants. They can continue being poor because in terms of education-- They cannot get medical treatment. So, it was affirmative action which was sought.

Commissioner Dinka: My last question is: You said also in your recommendations that the boundaries of 1963 should be respected. Do you mean the boundaries between districts which were left by colonial powers in 1963 when Kenya became independent? This is because if that is the case, we are talking of two eras. One was before 1963 when the colonial powers were here and they were not only talking of Kenya but British East Africa. The concept of boundaries meant a completely different thing to the colonial

powers. When Kenya became independent on 12th December, 1963, then you started a new era of building a Kenya nation. So, this concerned not what the British did during their time but what Kenya wanted as part of the nation building efforts, and what constituted the administrative borders. The boundaries of Kenya at that time would become invaluable; Kenya had boundaries with Ethiopia, Somalia, Tanzania and so forth. But the internal divisions, because of the new need to begin a new nation and what it meant to the people of Kenya, was some kind of temporary rearrangement. Then they could be adjusted when need arose. I think that is how the boundaries and administrative divisions currently in Independent Kenya would look like. So, what I want to find out from you is when you talk of boundaries of 1963, what exactly did that mean? Does it also allow for free movement of Kenyans from one place to the other while working and living peacefully?

Mr. Joseph Kiprono Cheruiyot: You see those boundaries which were affected were fixed with an intention of acquiring certain resources from the area. If I talk about the forest which is just across, there are a lot of resources there; if you hear of Mau and the names on that side, they relate to this community, but because other people have moved in, they have moved the boundary to be able to get the resources on their side. So, this area, which is a very wet area and which has got forests, will end up with no forest. However, I think the community sees three things; that should this continue, it will bring disagreement. That is why if other communities were brought in through the boundaries, they did not need to carry their land with them. They should have lived there in harmony with the existing community. That is why we say this community welcomes all communities; you find them around here rather than in the other areas.

Commissioner Farah: Mr. Cheruiyot, thank you very much for your eloquent presentation of evidence. I think the reason why I have been quiet and have not asked you any question is that I am very familiar with this part of Kenya; that is why the international commissioners were the ones who were posing most of the questions.

Coming to the boundary issue, which my fellow Commissioner has asked about and which you replied to, I just wanted to bring to your notice that we have now gone back to counties. When the colonialists left and we got Independence, we had 47 districts and now we have now gone back to 47 counties, which are the original 47 districts. The larger Kericho County, I am aware that it has got all the former--- Well, later on we went from 47 districts to hundreds of districts created by subsequent regimes. Can you be specific because as far as I am concerned Londiani District, which was, perhaps, just Londiani--- Was it also a constituency or just piece of land that is still in Kericho? It is still in Kericho. So, nothing has been taken away from you. Therefore, I am happy that the counties in the future will always be specific. If you had lost Londiani to somewhere else, I would have been concerned but you have not. So, I think the boundaries of the larger Kericho are now back to you. What have you got to say about that?

Mr. Joseph Kiprono Cheruiyot: I would say that since we have moved from those boundaries and are now in the counties, we pray that the counties will be respected. Any

resources due to those counties should be left to them. Any resource in forests on our land should be county resource.

Commissioner Farah: Yes, I think that is automatic because what will happen is that the larger Kericho County is going to put a cess collection barrier somewhere when you are going to another county. So, that will be automatic and your fears should be allayed. Thank you.

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, next witness.

Mr. Tom Chavangi: Thank you, Presiding Chair. Our next witnesses are Kipkoech arap Chumo and William Koskei.

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, what number is that?

Mr. Tom Chavangi: Number Two.

The Presiding Chair (Commissioner Ojienda): Swear the witness.

(Mr. William Kiptanui arap Koskei took the oath)

Mr. Tom Chavangi: Thank you, Kiptanui arap Koskei. You presented a memo of the Koita Chelimo Dorobo squatters within Kericho municipality on multiple and systematic violations of their rights to land. However, before you speak on that memo, for the record, kindly tell the Commissioners your name and where you come from.

Mr. William Kiptanui arap Koskei: My names are William Kiptanui arap Koskei. I live in Kuresoi near Molo in Nakuru District.

Mr. Tom Chavangi: Thank you very much. So, in brief, just read the highlights of the memo.

Mr. William Kiptanui arap Koskei: I come from a Dorobo area. The Dorobo are also known as Ogiek. A long time back, the whites used to call the Ogiek the Dorobo. The Dorobo used to occupy Molo up to Olenguruone. On that side, where we come from is south west Mau and we border Mau East – the east side of Mau Forest near Elburgon. We also border Kericho. When the colonialists came in, they found us there; we were already living there. Right from 1000 AD, our parents were living there. When the whites came in, they thought that the parts that the Dorobo were occupying were very good for their settlement; so, they displaced our forefathers in 1914 and we were taken to the other side. I have evidence here to show how they were displaced. One of them is this and the other one is here. Here is the third one.

Mr. Tom Chavangi: Commissioners, this one is entitled “The Native Lands Trust Ordinance of 1938”; it ordered the Dorobo people to be removed from their native land to some other settlements. I request that it be admitted as an exhibit.

The Presiding Chair (Commissioner Ojienda): Coded.

Mr. William Kiptanui arap Koskei: When they moved us to the other side our parents did not like to live in the places where we had been moved to. So, they went back to the original land. In 1963 when Kenyatta took over leadership he found our parents there. They had gone back to their original land. He found us living there. In 1964, there was a paper to show that we inhabited the forestland; it was the forestry staff who took the census of the Dorobo in Silo, Koine and Ngarau, which were the areas inhabited by the Dorobo. In 1966, our parents registered. We were 976 in number up to about 1969.

When we were still living there, the Government came and told us that we had to move. We refused. Then in 1971 we were given a notice to vacate the forest we were living in. We were told to move out and move into the villages. We, Dorobo, were not used to living in villages and so we refused. So, they took some steps when our fathers refused to move out of the forest. They came in and arrested them. They were taken to court in Molo. They were tried and some of them were fined. This was 1974. Our parents then wrote a letter to the Chief after they realized that the problem was getting unbearable, with old people getting arrested and being arraigned in court. Now, in 1974, our parents wrote to the Chief in Molo. His name was Ijangur; they wrote to him to complain that they had been punished and the Government should look into ways of solving their problems, but the Government did not listen to them.

In 1975, they came and burnt down our houses. They took away our livestock and arrested our parents. They tried them. They were put into prison vehicles which were brought there. Some were jailed in Kericho and others in Nakuru. Their livestock was sold at Ksh25 per head of cattle and the sheep were sold at Ksh10 each. After our parents were moved out, they did not go very far. They just stayed in the forest. They continued living in the forest but hiding from Government officials. Some of our elders, who are here and who were known then, went back to the Government to ask for an alternative settlement land during the days of President Moi. That was in 1979; former President Kenyatta had passed away and Moi had taken over as president.

Their request was allowed and I would like to ask the Commission--- There is one person who was part of the delegation that went to the president, I request that he be allowed to come and speak. So, after they sent a delegation to President Moi, he said that the Dorobo should live like other people. So, they came back and we were given land and these cards as forms of allotment. After we were given these cards, we led better lives. There were changes and the Dorobo lived well for about eight years. When President Kibaki took over, he said that the Dorobo should get title deeds.

He declared that the Dorobo cannot get title deeds because they will end up in the wrong hands. So, they went to court because they feared these title deeds might end up in wrong

hands. However, when they went to court, President Kibaki did not stop issuing the title deeds. He went to Olenguruone to issue title deeds. After he had issued the title deeds, the rest of us did not get them. He gave out the title deeds to a few people and it was decided that every district would have to issue titles. We had to go to the respective district headquarters. Those of us who were in Sino were meant to go to Kuresoi. Those from Tinet were meant to go to Keringet district headquarters. Those of us from Sino and Ndoinet were supposed to collect our title deeds from Kuresoi district headquarters, from the DO's office. When we went there, our names were missing on the list of those who were to receive title deeds. When we asked, we were told that they did not know about the issue.

We could see people from other districts, some from Kericho, others from Nakuru, yet others from Nandi, were collecting their title deeds. We, Dorobo were denied the title deeds and yet we were the ones occupying that land.

When we saw that the title deeds had gone to the wrong hands and decided to complain. We went to the DC and the Provincial Commissioner's office. We also went to the Criminal Investigations Department. I have all those papers here with me. We thought these people would not listen to us. So, we went to the Kenya Anti-corruption Commission (KACC) and the papers are here with me. After we went to the KACC, we were given a letter which we gave to the PC. The PC instructed the CID to investigate the cases of our land that had been alienated. By that time, our houses had been burnt down. They had burnt down our houses when title deeds were issued. They brought in police officers who arrested one of us because he had complained bitterly against the Government. However, the DO was in Kuresoi but the OCS was present. The Chief and the Assistant Chiefs were there as well. They were issuing the title deeds. Some of them were actually being sold at that time. One of them was actually negotiating with someone. He received money, but no action was taken despite our complaints at the chief's office. This is the letter from KACC. This letter shows that the chief was actually selling the land. He was selling to people and issuing them with title deeds immediately. The chief would meet somebody and give him the card. This card entitles you to five acres of land. The chief was selling each at Ksh500, 000. I have the evidence here.

When he realized that we were very keen on following up this matter although we were not being listened to, they came back and started arresting people. We had started rebuilding temporary houses using plastic papers. That is where we actually live up to now. We refused to leave our pieces of land. We did not have money to file a case in court. There is an advocate called Nyagili, who we tried to give some money to represent us but refused. You will excuse me for repeating myself. With these pieces of papers, we went to see Hon. Karua in her office to complain so that she could intervene on our behalf. She wrote this letter directing us to go to the lands office. The Commissioner for Lands locked us out. All this started with the chief, the DO up to Nairobi. They all seem to have been in cahoots to sell our land. So, we were locked out by the Commissioner for Lands. Even as of today-- They turned the case of those of us who were arrested around and said we were arsonists. They claimed we were the ones who were burning our peoples' houses, yet they were the ones who were burning houses so as to evict and sell

our land. The case is still pending in court. They still occasionally send people to harass us and claim our land. Most of these people who claim our land come from the PC's office. Some are from the Ministry of Lands and others are our own fellow Kalenjin; others are buying the land through the surveyors. I know some of them are likely to be among us today and they buy the land through the surveyors. We have these cards yet somebody comes in to claim the piece of land that belongs to us. We were given this land. You see this card; one house was getting burnt and we managed to salvage it. These are the cards we were given. There are some chiefs who are no longer working and others from Kuresoi area that are still in charge of us. They still write to us asking us to leave our pieces of land, or summoning us so that we can have land cases sorted out once and for all. There are some people here who have been receiving threats of eviction. We urge the Commission to give us any document to go and tell those people to stop bothering us from now. This is because even our children cannot go to school like other children. Our children who had started going to school, some of who had even received admission letters to college, had no money to join those institutions. They are now just at home. For those of us who are Ogiek or Dorobo, there is not even one of us employed by the Government, not even as a teacher or a forest warder. We have been dominated from 1941. All these 75 years we have been dispossessed of cattle, sheep and all the money they get after selling our pieces of land. There are some old men who noticed that there were vehicles belonging to Standard Bank around. There was Tandao and Kangethe, who were in Kericho. They are here and know what I am saying very well. I know I am mixing up my statements and I do not know whether I am messing up everything. We are very bitter because our parents went through similar tribulations. Now we have the same problems and our children have the same problems. We wonder when this will come to an end. As a community, we are dominated by others. Even the Kalenjin from Kericho have continued to marginalize us. Why do they come and buy land from surveyors? It is so that we are left on the road.

The surveyors have been using tricks. They write the names of Dorobo yet when you go to the main book it is a completely different story. I have evidence here. We have people from the Kisii community who have managed to get land here. I am a descendent of this place. I have a 1926 national identity card that shows I am a Dorobo. Recently, we started being called Ogiek. The "Dorobo" was a derogatory term for Ogiek. We are Ogiek. Some people even used to say that the Dorobo have tails. If they saw a Dorobo, they would run away, but now they want our land. They want to force us out. The list that we have here shows those people who were issued with title deeds. I urge the Commission to support my statements. This is the document that was used to issue title deeds, but other names are missing. It is about 500 names. If I may give examples, the names of Rebecca and Cherono are replaced with those of Kikuyu. We have investigated this matter. The name on the list is Rebecca Wanjiku. When I see this, it makes me very angry. Sometimes, I do not know whether to burn it or what to do with it. They say that it is President Kibaki who gave them the title deeds. Does it mean that a President has the power to give away my land for nothing? This is finishing us off completely. If we live in a house made of plastic papers and our cattle is sold, why do we not have the money given back to us, because now we cannot even farm because the land belongs to somebody else? Even as I leave now, I am not going to my house; I am going to someone else's property.

Mr. Tom Chavangi: The witness seems to be adducing new issues, but I will control him. The witness wants to conclude his presentation.

The Presiding Chair (Commissioner Ojienda): Let him conclude.

Mr. William Kiptanui arap Koskei: All the time we have people coming to claim that the land belongs to them. The DO in Kuresoi sends policemen to us. I would like to urge the Commission, even if it means by tonight, if there is a way they can institute an injunction so that we may sleep in peace like other people, we will appreciate. We cannot even go to Kuresoi centre because if we pass by, we are followed. In fact, we had to hide to come here. If we are seen heading anywhere, including Nakuru, we are followed. We were not supposed to come here. We should have gone to Nakuru because that is where our county is. There was a clerk who was told not to register us. So, we pleaded with Kericho people to allow us to meet the Commission.

We were told not to give evidence because they did not want these secrets to be revealed. We believe anyone telling lies is inciting. But what we are saying is the truth because we have suffered. I want to say last that the OCS, DEO and the chief should leave us alone. There are old men here. I would just like to urge that they stand wherever they are. All the evidence I have provided should be checked properly. I did not have time to arrange it properly. The community present, please stand up. Thank you very much, you have been recognized and you have been represented very well.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mr. Koskei for the testimony that you have given. Leader of Evidence, do you have any questions or clarifications to the witness?

Mr. Tom Chavangi: Presiding Chair, just presentation of these documents. He has presented several documents, including documents that took them to court, documents showing ownership of land, how their houses were burnt and how the land is being allocated to strangers. I pray that they be admitted as exhibits. He has also shown original documents of identity cards and a black note book detailing the history of this land being expropriated. I would wish that we get the copies later on. He has also presented documents detailing allocation of land for 18 individuals. They are originals; we would also pray that we have copies later on.

The Presiding Chair (Commissioner Ojienda): They are so admitted. Do we have sight of those documents, just to clarify a few issues? You will make copies and return to him the original copies.

Mr. Tom Chavangi: I have a few questions, Commissioners. Mr. Chumo, how many Ogiek sub-clans do we have?

Presiding Chair, we must deal with this first witness, and it seems there is a problem with interpretation because he cannot respond to my question. Are you representing all these 13 clans?

Mr. William Kiptanui arap Koskei: He is representing some clans. Some elders are around here.

Mr. Tom Chavangi: Commissioners, why I am asking the witness about the various clans within the Ogiek community is because, while the Commission was on break for ten minutes, I also received another memorandum from another group of the Ogiek. When I told them that the Ogiek are being represented, they said they are Ogiek from Bomet. These other Ogiek are from another area. However, having gone through the memorandum very fast, I have realized the same issues that Chumo has actually highlighted here are the same issues the Ogiek from Bomet want to talk about. Probably, Presiding Chair, if you allow, these members of the Ogiek community from Bomet can be allowed to stand up and their Chairman, Mr. Reuben K. Talam, and their Secretary William K. Koros can just, probably, waive to the crowd.

The Presiding Chair (Commissioner Ojienda): Talam and Koros, we recognize that you have presented a memorandum on issues touching on land, expropriation of land and other matters. The Leader of Evidence indicates that he has gone through the memorandum. We have received a memorandum. We shall deal with the issues as we deal with the issues presented by the speaker, the witness that we have.

Mr. Tom Chavangi: Presiding Chair, Mr. William Koros seems to be having documents which, probably, we can present to the Commission so that we can investigate the issues further.

The Presiding Chair (Commissioner Ojienda): It is so directed. Mr. Koros, please, come forward and present the documents to the Commission.

Mr. Tom Chavangi: Presiding Chair, I have Mr. Koros and the Chairman. They have presented a huge file detailing the historical and several land injustices. The file is tied in twig. The history of the Bible clearly shows when a twig is put around you it is a sign of triumph. So, I hope today they will get community triumph, having presented their memorandum before this Commission. I wish that this file be admitted as an exhibit.

The Presiding Chair (Commissioner Ojienda): The file is admitted as an exhibit. I just want to reassure, Mr. Talam and his colleague that---

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mr. Kipkoech. I want to ask you a few clarifications. The land you currently occupy is within the Mau?

Mr. William Kiptanui arap Koskei: Yes.

The Presiding Chair (Commissioner Ojienda): So you live in the Mau Forest?

Mr. William Kiptanui arap Koskei: I live within the Mau.

The Presiding Chair (Commissioner Ojienda): It is from the Mau that you have constantly been evicted as a community?

Mr. William Kiptanui arap Koskei: The recent one; the previous one of 1975 where our houses were burnt and we were evicted. When we were given land, we thought we would now be settled and that has been taken away from us.

The Presiding Chair (Commissioner Ojienda): The latest eviction, does it include the part of the area where you live?

Mr. William Kiptanui arap Koskei: In 2006, our houses were burnt down again.

The Presiding Chair (Commissioner Ojienda): You live in makeshift structures?

Mr. William Kiptanui arap Koskei: Yes, in paper houses. We were issued with title deeds by President Kibaki. There are a few Dorobo and those of us who were thrown out.

The Presiding Chair (Commissioner Ojienda): You were issued with allotment letters by the DC?

Mr. William Kiptanui arap Koskei: Yes, the DC who first gave us the allotment letters was called John Abduba and the list is here. It was Kinuthia Mbugua.

The Presiding Chair (Commissioner Ojienda): Of the allotments of land by Abduba and Kinuthia Mbugua, part of the group that was evicted from the Mau in the latest eviction--
--

Mr. William Kiptanui arap Koskei: This did not concern them.

The Presiding Chair (Commissioner Ojienda): But you are living in forest land that has not been degazetted.

Mr. William Kiptanui arap Koskei: I live in a place that has been surveyed and the map is here with me.

The Presiding Chair (Commissioner Ojienda): You are saying the land is not part of the forest and that you should be issued with title deeds? Is that what you are asking?

Mr. William Kiptanui arap Koskei: Yes.

The Presiding Chair (Commissioner Ojienda): Are you asking this Commission to recommend that those of you who do not have title deeds be issued with them so that you are not evicted again?

Mr. William Kiptanui arap Koskei: Yes! That is what we need because those people are saying that if we do not have title deeds--- Nobody is saying anything.

The Presiding Chair (Commissioner Ojienda): Can you recognize the chief who has been selling the parcels of land at Ksh500, 000 for five acres? What is the name of that chief?

Mr. William Kiptanui arap Koskei: It is in this piece of paper. He has even rubber stamped it.

The Presiding Chair (Commissioner Ojienda): What does he issue after you have paid the Ksh500, 000?

Mr. William Kiptanui arap Koskei: Previously, he used to know people in the Ministry of Lands. So, after taking that money, he would go and get the cards and come and give people. But in terms of title deeds, he could distribute to people like that. They could just continue with their own things.

The Presiding Chair (Commissioner Ojienda): Are they still in office?

Mr. William Kiptanui arap Koskei: They have been interdicted but then they still have some voice.

The Presiding Chair (Commissioner Ojienda): I just want to recognize the difficulties that the Ogiek community has gone through. I also want to recognize the pains and tribulations of members of your community who have been the victims of senseless evictions over the years. But I also want to affirm the fact that living in land that is not degazetted as a forest is a recipe for future evictions. So, there is need to ensure that the land on which you live is denudated and that you are able to secure title deeds in the future. But the Government has an obligation to settle those persons who were evicted from the forest because, as you have said, traditionally over the years, you only knew the forest as your places of traditional abode. Once more, thank you for a very useful testimony.

Mr. William Kiptanui arap Koskei: That is where our blood is. When you say that we should be given an alternative place, I do not feel good because that is where we are used to. I am used to that place; I do not need any other place.

The Presiding Chair (Commissioner Ojienda): Those who have been evicted and are living in camps, there is need for the Government to identify alternative befitting land for resettlement. For those who are living on land that has been degazetted, it is prudent that they get title deeds. Those who have title deeds; it depends on whether the area in question has been degazetted. That is a question for detail; the Commission will investigate and make appropriate recommendation in line with Sections 48 and 49 of the

TJRC Act because it is our report that will give you strength at the time of implementation.

Thank you! We will adjourn until 4.00 p.m. to continue with the next witness.

[The Commission adjourned temporarily at 3.15 p.m.]

[The Commission resumed at 4.35 p.m.]

The Presiding Chair (Commissioner Ojienda): Welcome back for this session. We have one short witness from the Dorobo community from Bomet.

(Mr. Kipkoech arap Chumo took the oath)

Mr. Tom Chavangi: Mr. Kipkoech arap Chumo, you presented a memo about the Koitab Chelimo. Kindly tell the Commissioners about your memo.

Mr. Kipkoech arap Chumo: When I was born, I found the place called Koitab Chelimo. Our grandmothers called it that name. I was born at Koitab Chelimo.

Mr. Tom Chavangi: Mzee, you are here to tell us the problem that you face as people of Koitab Chelimo. Please bring out the issues that you face as people of Koitab Chelimo. What has happened to you?

Mr. Kipkoech arap Chumo: The problem is that we were removed from the land where we were.

Mr. Tom Chavangi: Where were you taken to?

Mr. Kipkoech arap Chumo: We were chased away and we went back to the same place and we are still there.

Mr. Tom Chavangi: You need to be very clear. You cannot be chased away and go back to the same place.

Mr. Kipkoech arap Chumo: We have been there because we were rightfully there from the beginning when our parents were there. We went back to the same place. We were chased away on 4th June, 1986. We were charged and discharged in July. We went back and requested the DC at that time to allow us to go back to the same place. The DC told us to go to Nairobi and request to go back. We went to the Lands Office in Nairobi but we were chased away and told that there was nowhere we could go. We were many; we were 278. We went back and we kept on going to the Government office to request to go back. When we came back, we went to Kabarak; we were given a letter by William Mosoni at Kabarak. Then we took the letter to Yusuf Haji, the PC, Rift Valley. Mr. Yusuf Haji sent us to Kericho. When we came to Kericho, there was a DC by the name Sirma, who promised to look into our problem. He told us that we were chased away for no

reason and we had to be compensated. Mr. Sirma said that the land belonged to the Government and he would look for a *shamba* for us. After some time, he said that land had been found. So, ever since we have been waiting for that land.

Every time a new DC takes office he or she tells us to wait. We tried going back to Kabarak to tell Mr. Moi about our problems but people would tell him that Kericho was okay; everything was all right. We stayed there until recently in 1999 when some of us came back. By then about 120 people had left. We went back after Mr. Moi said that we could go back to our land. So, we are still there with our problems and our poverty. We have not received any assistance from the Government. My father, who was a herdsman, was born and died there.

Mr. Tom Chavangi: The issue here is land; you have said that you were chased away from that land and you went back to the same land. Is that the position?

Mr. Kipkoech arap Chumo: We are still there.

Mr. Tom Chavangi: What is the real problem? You are in the same land. What is the problem?

Mr. Kipkoech arap Chumo: The problem is that there are people who come with allotment letters every now and then. There are people who come and survey the land. When we go to the DC, he keeps asking us why we are being bothered and yet, there are people who keep coming.

Mr. Tom Chavangi: So the main issue is that you probably want title deeds to your land?

Mr. Kipkoech arap Chumo: Yes. I am still on that land but I am not allowed to cultivate it. I only dig about half an acre and there are people who come from far to cultivate it. They keep giving us notices that we should move out of the land. In 2005, we were given a notice. We plant crops that grow in three months.

Mr. Tom Chavangi: Who are the people who give you notice?

Mr. Kipkoech arap Chumo: The Municipal Council of Kericho.

Mr. Tom Chavangi: Do you have any copy of the notice?

Mr. Kipkoech arap Chumo: They are here!

Mr. Tom Chavangi: Let us have a copy if you have any.

Mr. Kipkoech arap Chumo: My things are here; I just want land like anybody else. I have all my papers here; I have no land and what I want is land.

Mr. Tom Chavangi: Thank you very much. Commissioners, I think the issue here is land and the fact that they do not have a title deed to that land is what is causing all the emotions. Now that we have captured that and I have been leading by way of questioning, I think you can ask him more questions so that we can clarify a few issues.

The Presiding Chair (Commissioner Ojienda): Thank you, Leader of Evidence. I think the witness has been very clear in his testimony and there are no further questions that need clarification. I think the memorandum has clear issues on which the Commission will give direction.

The Acting Chair (Commissioner Namachanja): Thank you very much. The reason people are being evicted from the forest is because they do not know how to conserve the forest. They do not know how to conserve the trees. Could you explain to the Commission, especially those people who come from the Ogiek community, when they live in the forest, how are their livelihoods and how can they take care of the forest?

Mr. Kipkoeh arap Chumo: We used to be in the forest before people were brought. People from town were brought there in 1976. The forest was cleared until it was clean. Charcoal was burnt and we from Koitab Chelimo are being blamed. They are saying we did it but we did not do it. We build houses using corrugated iron sheets and we are not allowed to do so. We were told to put polythene papers.

The other day, rich men came and we were removed from that place. They said that we were put there to take care of their farms. That is all that I heard and I have all the letters here. During the colonial times, when they were teaching people to plant tea, they forced them to plant tea without any salary. In 1938, people were paid some little money on a daily basis and others would be given *unga*. We stayed until 1945 when we were asked why we were keeping dogs and they told us that they did not want dogs and donkeys. Even the liquor that people used to drink was banned.

Mr. Tom Chavangi: Let me cut you short, Mr. arap Chumo. The history of the Ogiek is well documented and it will never change. I think the question that the commissioner was asking was about your living standards and status at the moment which you have answered. Maybe the commissioner you can ask another question.

The Acting Chair (Commissioner Namachanja): *Mzee*, I have understood your answer. It is not the Ogiek people who were cutting the trees and destroying the forest. They are the other people. I think we need to visit one of the areas inhabited by the Ogiek Community so that we can understand under what circumstances they live. I say so because I have visited one of their areas during my peace building processes. Maybe we can visit one site next week when we are in Nakuru. That is my strong proposal.

The Presiding Chair (Commissioner Ojienda): Thank you, Acting Chair. I think it would be helpful to visit one of the areas the Ogiek ordinarily live in so that we can appreciate the testimony further. Thank you very much for your testimony. Leader of evidence, call the next witness.

Mr. Tom Chavangi: Thank you very much, Presiding Chair and Commissioners. We have another gentleman from the Ogiek Community. He represents the Bomet County and he has requested for five minutes to present his document.

The Presiding Chair (Commissioner Ojienda): Leader of evidence, we received those documents in the morning.

Mr. Tom Chavangi: These are Ogiek from the Bomet County. The first one was supposed to have been heard in Nakuru but because the statement taker was hostile and is a relative to the chief who has been harassing them he has been heard here. The second old man is from Kericho County. This gentleman is presenting the documents from Bomet County.

The Presiding Chair (Commissioner Ojienda): We have no problem with your request as long as you do not introduce another one from another district.

(Mr. William Kiprono took the oath)

Mr. Tom Chavangi: Please tell the Commission your name.

Mr. William Kiprono: My name is William Kiprono Kiprop Koros.

Mr. Tom Chavangi: Where do you come from?

Mr. William Kiprono: I come from the Ogiek Community and geographically, I am from Bomet County.

Mr. Tom Chavangi: You are here to present some documents?

Mr. William Kiprono: We are here to present documents involving three major injustices:-

1. Historical ancestral land injustices.
2. Historical economic marginalization.
3. Historical social injustices.

We are talking from a totally different scenario from the past because while I sympathize with my brother, William Tonui, Ogiek and Dorobo are one and the same. He was talking about a scenario that was effected by a Presidential decree of 28th March, 2004 where the Ogiek in Nakuru County happened to be given title deeds but the Ogiek in Bomet County have never got anything like a title. We have documentary evidence that shows that the historical land injustice was totally extreme.

I am so sad that I am presenting this very briefly and I will pray that we be given more time because we have our chairman and the two of us who have come on foot, and they

had something they wanted to declare today before this Commission. The first document talks about the Ordinance of 1938. This was where the colonial Government actually evicted our native people in 1938 and was effected in 1941 where the Governor named Henry Knight, Commander of the most distinguished order, produced this document. The document says that the Governor himself acting on behalf of Queen Elizabeth across the seas was satisfied that there was sufficient land to accommodate the community. I have four documents of the same detailing the names of our ancestors who finally died of stress, disturbances and psychological torture without consultation or any other reparation to date.

This document shows an aerial map of South-West Mau Forest. Where it is shaded, that was land that was alienated and never recovered to date. I also have another document of the census of 1999 in which we were counted in the same area and nothing has been done to date. There is also the latest document where we were counted in 2009. It was written: "Counting our people for the implementation of Vision 2030."

To date, we are languishing in poverty, labour and labourers in the umbrella of the haves. I also have a document that talks about when we visited Bomet with the Boundary Review Commission. We were advised to face the TJRC with the same document which I have annexed to the file. I also have a document that shows that some of these people were once upon a time promised to be settled. They were given some document indicating that they will be evicted. Allow me to quote the underlying causes of all these things. It is just the outdated Land Trust Ordinance of 1938.

When the colonialists came, they cheated us that they will protect us and the land was given protectorate status only to be declared crown land in 1920. In 1932, there was the work of Maurice Lord Carter Land Commission Inquiry which captured the native communities in existence but did not confirm them to be the rightful owners being the forerunner of our problems to date. Even when we got our Independence in 1963, there were a lot of historical errors and imbalances during the founding President of Kenya, Mzee Jomo Kenyatta.

Mr. Tom Chavangi: Commissioners, this memo being presented by Mr. Koros is a memo that is within our offices. It is a memo that has received a lot of attention from the research team. I even discussed with Mr. Koros and have told him that our recommendations towards the Ogiek will be very specific. Therefore, I see no need in Mr. Koros going through this memo again. I need your guidance, commissioners.

The Presiding Chair (Commissioner Ojienda): Thank you, Leader of Evidence. Mr. Koros, I note that you have begun to delve into the history of your submission and it cannot be gainsaid that the Commission through its Research Department received your memo well over two months ago. That is why we have background material. We have three persons who have testified before you on the issues of the Ogiek. We had asked you to come in and testify to those specific issues or make those specific recommendations that were not made by the predecessors. If there is anything in that regard, please make those recommendations, especially for the Ogiek in the South Mau. Maybe you want to

talk about specific issues because it is important that we also take on board any of those issues.

Mr. William Kiprono: Allow me to quote some very important issues about what the people who came on foot told me to say. The community pleads with the TJRC so that:-

1. The primary property of Ogiek alienated ancestral land is given back to them to give sense to their ancestry and long delayed and denied justice to the community under siege.

2. Reparation through reasonable compensation of victims who died through fatigue and stress.

3. Apology from the Government of Kenya on behalf of the past civil servants with biased and partisan attitudes of administration and misuse and overuse of their official capacity. He named former Rift Valley PC Mr. Isaiah Mathenge and Provincial Police Commissioner Mr. Mungai.

4. Reparation for the community is recommended to repair the losses faced by them in 1975.

5. The TJRC recommends for legal recourse so that the community seeks to sue the British Government for killing our culture and denying us development by alienating our soil and denying our development.

6. Affirmative action regarding education, employment, legislative representation in the County Assembly, the National Assembly and the Senate is the absolute desire of the Ogiek Community under Bomet County.

They have also requested the TJRC that when the new Constitution is implemented, they be considered under Section 204 on the Equalization Fund. The most important resolution was the heavy yoke on our shoulders imposed by the Ordinance of the so called Dominion British Government. It should be recommended by the noble TJRC as a thing of the past and be completely removed as was from the effective date of the promulgation of the new Constitution. They have also requested that former traditional governments and forms of governance led by paramount chiefs like that of Tengecha be given back to the Ogiek Community and be made to conform to the Constitution. They should be answerable to the governor based at Bomet County, assisted by 72 members of the council of elders. To date, they are strong conflict resolution mechanisms.

Let me present this document which was in the *Nation* newspaper of 29th March, 2004 during the Presidential Decree of 2004 for titles to be given to the Ogiek community. He did say that he will be fair to all but the reason why we are all in problems today is that the issuance of the titles did not come to Bomet County but was curtailed in Nakuru County which was marred with corruption that my brother has talked about. The difference between those who are in Nakuru County and those who are in Bomet County is that those who are in Bomet have never been considered.

Today, the Ogiek who have come with me had wanted to declare before this Commission that they should never be referred to as Dorobo but as Ogiek. This is because the name Dorobo demeans them but 'Ogiek' is respected. I will actually request you, regardless of the time, to let them stand up so that you can see that they are here led by the chairman.

The Presiding Chair (Commissioner Ojienda): Let them stand up. How many are they?

Mr. William Kiprono: They are 42.

The Presiding Chair (Commissioner Ojienda): Did they all come on foot?

Mr. William Kiprono: They came on foot because they considered this day to be their day and they wanted to declare that they should never be called Dorobo but Ogiek.

(A group of Ogiek stood up and sang)

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

Mr. William Kiprono: In the song, they have declared that we shall never be called Dorobo but Ogiek, which is a respected name. They have chosen 2 Peter 1:19 and it reads:-

“We have the words of the prophets made more certain and you will do well to pay attention to it as to a light shining in the dark place until the day dawns and the morning star rises in your hearts.”

They have declared that today the morning star which is the TJRC has shone on them and they are now Ogiek and not Dorobo any longer. We pray that we want to live in peace with Kenya after being given all our key cultural aspects, our alienated ancestral land and affirmative action as concerns employment, education and infrastructure, so that we start development projects.

Thank you very much. May God bless you, Kenya and the Ogiek Community?

The Presiding Chair (Commissioner Ojienda): Thank you, Mr. Kiprono. Just hold on a bit. I can feel your sigh of relief. I just want to say that we honor you. Maybe you did not know but one of the functions of this Commission is to recognize and to deal with issues touching on marginalized communities and to give witnesses such as yourself and members of your community who have spoken about deliberate marginalization by other communities and their reference and use of the tag ‘Dorobo’ that undermines and basically belittles the ideals and culture of your community. By restoring the community, one of the actions you have said is that the community wants to be referred to as the Ogiek and not the Dorobo. We recognize that and it is key that the community be restored and be respected. We take your memorandum very seriously.

I want to ask fellow commissioners if they have any observations to make. I think every commissioner acknowledges that you are the Ogiek from today. Thank you very much.

Mr. Tom Chavangi: Thank you very much, commissioners. At least, we have a twig that we shall be taking to Nairobi.

The Presiding Chair (Commissioner Ojienda): I just want to assure you that you will not go back home walking. I think we will find a way to ensure that you can travel by other means since you are now the Ogiek.

Mr. Tom Chavangi: Commissioners, these two gentlemen and a lady under TJRC/Kericho/4 - Mr. David Tuwei will speak about Talai. He will be invited by Mr. Bill Ruto, who will talk about land issues. Finally, Mrs. Alice Bett will talk about the post-election violence and its impact on women. Thank you.

(Mr. Bill Ruto took the oath)

The Presiding Chair (Commissioner Ojienda): Leader of Evidence, there was a detailed presentation on land in the morning. I hope Mr. Ruto was in so that he does not repeat the same issues that we dealt with in the morning.

Mr. Tom Chavangi: I have had a discussion with him and told him to confine himself to the issues that were not discussed in the morning.

Mr. Bill Ruto, kindly, for the record, tell the Commissioners your name.

Mr. Bill Ruto: My name is Bill Ruto. I am a resident of Kericho. I am here today on behalf of South Rift Development Forum, which is an umbrella organization that works in the area of social development among the people of South Rift, particularly Kericho and Bomet counties.

Mr. Tom Chavangi: Mr. Ruto, kindly proceed to present your memo.

Mr. Bill Ruto: First of all, I want to thank honorable Commissioners and the support staff for finding the time to come to Kericho to listen to us.

I want to say that the South Rift Development Forum decided to encourage the community to participate in these proceedings. In the process, we convened 15 community forums. These forums gave the communities the opportunity to participate in the proceedings of this Commission because they could not all come here and participate. Our 15 community forums produced information that I will share with you. Having examined what they contributed, we realized that we had to do background research because it related to historical issues on land.

Therefore, our research took us to various documents, including published books and records in the archives and Government documents. First of all, I will give the Commission an overview of the issues relating to land, which is a very emotive issue not only here in the South Rift but also all over Kenya. I will begin by quoting from a document known as the Ndung'u Report.

It says:-

“Land retains a focal point in Kenya’s history. It was the basis upon which the struggle for independence was waged”.

As we all know, the issue of land in this country started with the colonization of Kenya which took place from 1895 to 1963. During that period, the British colonial authorities alienated land to create what they called the white highlands. This was to be achieved by removing certain communities from their land. It was done through legislation that started from 1902 and 1915. The districts that were affected by this dispossession of land include Trans Nzoia, Uasin Gishu, Eldama Ravine, which is part of Baringo; Nakuru, Laikipia North, Nyeri, Nairobi, Kericho, Bomet, Kiambu, Murang’a, which was called Fort Hall that time; Machakos and Nandi, among others. These are the areas that were most affected by the dispossession.

When these people were dispossessed of their land, they were moved into what they call native reserves. The Kipsigis reserve was created in 1907 and you can find that information from the Kenya Land Commission Report of 1933. Throughout that time, the people of Kenya whose land had been taken away---

The Presiding Chair (Commissioner Ojienda): Mr. Ruto, just to bring you to speed, we have a lot of historical evidence and we have your memorandum. I can assure you that some of us live our day and night on the same questions. Is it possible that you could confine yourself to the historical issues in this region?

Mr. Bill Ruto: Thank you very much, indeed. I want to confine myself to this region. I will do that by, first of all, giving you the general resettlement programme. The point is, once the Commission understands how the resettlement was done, they will see the relevance of what I will be saying shortly.

The resettlement programme started from 1962. I will confine myself to that period up to 1975. Throughout this time, various programmes were established. These programmes settled people to up to 800 hectares of land. It settled almost 67,000 families. Now the relevance I want to bring to the Commission is to show that within the Kipsigis area, there is an area known as Londiani/Kipkelion/Muhoroni. There is also an area occupied by the tea estates behind us here. There is also what used to be called the Sotik Farms. In Sotik Farms, 130 acres of land was taken away from the Kipsigis. In the Londiani/Kipkelion area, 90,000 acres were taken away. In the tea estates, 25,000 acres were taken away.

Now within the framework of the resettlement, the evidence we have through the resettlement programmes I have just mentioned, you will see that the Kipsigis families who were removed from the Londiani area in 1911 were never considered for resettlement during that period. In the Sotik area, a piece of land amounting to 5,000 acres was never returned to the community. In the tea estates where we have 25,000 acres of land, it is still occupied today by the multi-nationals.

Because of time constraints, I will not go into details of any of the three areas I have just mentioned. They are contained in all these documents which run to almost 40 pages. Nevertheless, I would like to mention that the people we interviewed still remember

through their great grandparents the problems they underwent after the eviction. Today, they are living destitutes. There are also certain areas of Kericho District which I have not mentioned with changes that were done in the original Kericho District. This is the area of Muhoroni. I have a map here which I will share with the commissioners. This map was issued during the colonial days.

In this map, you will see the area that runs from Sondu all the way through Agwassi to Chemelil. Today, that land is not there. The boundary was moved to Fort Ternan and according to our research, the community was never consulted after Independence.

In conclusion, I want to request the Commission, by way of our recommendations, to institute further investigations into the way the resettlement was carried out with a view to finding a lasting solution to the problem that has always created inter-ethnic conflict in this area.

We are not in a position to say precisely what ought to be done but we pray that if investigations were carried out, wise decisions would be made by those other than ourselves who are just simply presenting this evidence before you.

Now, I will turn to the Talai. The Talai people have suffered historical injustices from the year 1934 to date. That is when they were expelled from their land by the British Government. Upon their return in 1962, the independent Government of Kenya has never ever given them the attention they deserve.

Commissioners, I would wish to admit this map as an exhibit.

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

Mr. Bill Ruto: I am very sorry. I forgot to mention something. There is the issue of the Mau evictees. They are Kipsigis people. As I speak today, they are out there in the cold. We have compiled information about them. We have all these documents here. These are 12 reports of the 12 camps in which these people are currently staying in the cold.

Mr. Tom Chavangi: Dear Commissioners, I would wish to admit this Mau Forest Evictees Report as an exhibit.

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

Mr. Tom Chavangi: Commissioners, if you have any questions for this witness.

The Presiding Chair (Commissioner Ojienda): Yes, Bill, I think we have a few questions. I would want to start.

I want you to highlight to us the total number of people currently living as squatters as a result of the latest evictions.

Mr. Bill Ruto: Commissioners, we have 19,400 people.

The Presiding Chair (Commissioner Ojienda): I ask this question because there is a controversy around that number. Were you part of the final audit undertaken by the Ministry through the task force that was set up for the resettlement of these people?

Mr. Bill Ruto: This report and research was carried out by the African Gospel Church. I can forward the information to the Commission whether they were actually part and parcel of the other process.

The Presiding Chair (Commissioner Ojienda): You are aware that there is a bit at resettlement?

Mr. Bill Ruto: Indeed, yes.

The Presiding Chair (Commissioner Ojienda): What role do you think you will play in that process?

Mr. Bill Ruto: We will contribute more because we have done a physical headcount and the signatures of all the members in those camps.

The Presiding Chair (Commissioner Ojienda): Are the 19,400 the physical heads of those living or they represent families?

Mr. Bill Ruto: These are actual people. There is a breakdown here desegregated into adults and children. The households are 4,521.

The Presiding Chair (Commissioner Ojienda): Does the list include every person, including those who had land in the forest with titles and those who were in the forest as squatters?

Mr. Bill Ruto: Yes, it does include everyone.

The Presiding Chair (Commissioner Ojienda): Thank you very much. Commissioners do you have any questions?

Commissioner Chawatama: The persons that you have talked about in the cold, this includes women and children. How long has this situation been obtaining?

Mr. Bill Ruto: From I think 2009.

Commissioner Chawatama: Do you know what impact this has had on family life?

Mr. Bill Ruto: I can imagine it has a very serious impact in terms of social cohesion of the families, their health, education and psychological status.

Commissioner Chawatama: You were asked whether you were aware of the programme to resettle squatters. Is this something that the people themselves are confident about that resettlement will take place?

Mr. Bill Ruto: Your honour, they are not very confident because as I speak now, this same information has even been forwarded to the Prime Minister.

Commissioner Chawatama: What do you do as organizations or forums to boost the morale of such people?

Mr. Bill Ruto: I can assure you it is almost hopeless to try and boost morale when time has been of great essence. Initially, people would have hope but over this long time, it is difficult to really help them to have any confidence.

Commissioner Chawatama: Could you tell me how long the promises for resettlement have been given?

Mr. Bill Ruto: I think it started from the year 2010 and it has been going on for the last one year. We are here today with these documents because they hope that this Commission will bring serious, credible and concrete solutions as opposed to the avenue we have taken through, which is political.

Commissioner Chawatama: Do you record any of loss of life as a result of the exposures to very harsh conditions?

Mr. Bill Ruto: Yes, we have it in another report.

Commissioner Chawatama: Thank you very much for taking time to testify before this Commission.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mr. Ruto. I just want to assure you that the question of resettlement of Mau evictees is a matter that this Commission takes very seriously. We will take it up with the Prime Minister. We will also take it up with the Minister for Lands. It is something of essence and should be concluded. It is unfair that certain people have no homes and are living out there in the kind of weather we see in Kericho. We thank you for your presentation.

Mr. Bill Ruto: I also want to thank the Commission very heartedly and also to give assurance and encouragement to the evictees of Mau. You have heard it for yourself, so we keep our hopes alive.

The Presiding Chair (Commissioner Ojienda): Thank you. Leader of Evidence, call the next witness.

(Mr. David Nasura Tuwei took the oath)

Mr. Tom Chavangi: Mr. Tuwei, for the record kindly tell us your name.

Mr. David Nasura Tuwei: My name is David Nasura Tuwei.

Mr. Tom Chavangi: Where do you live and in which county?

Mr. David Nasura Tuwei: I live in Kipkelion, Kericho County. I am representing the Talai Community.

Mr. Tom Chavangi: You are representing the Talai Community in your capacity as whom?

Mr. David Nasura Tuwei: I am one of the officials of the Talai Community.

Mr. Tom Chavangi: Kindly proceed and in a concise way just bring out the issues of the Talais.

Mr. David Nasura Tuwei: First, I would like to thank you for visiting Kericho County. This is the first time Talai community is presenting their views to a Government commission.

Secondly, I would like to thank the South Rift Development Forum and NCKK who have really assisted us through workshops out of which we have prepared ourselves well.

May I in brief give you the historical injustices the Talai Community has gone through. I have prepared a statement and I will go through it very quickly.

Talai is a clan within the Kipsigis Community. Before the British came to the Kipsigis County, the Talai were rulers of this community. It was headed by Orkoiyot Kipchumba arap Koilegen. I have a photograph of that leader which was taken in Mombasa in 1913 during the celebration of the birthday of the King Edward the VII. Orkoiyot arap Koilegen resisted the coloniliasts and on 7th January 1914, he was arrested with his two brothers, Kiptanui arap Boisio and Kibuigut, under the Native Removal Act of 1909. They were taken to prison in Nyeri and Meru respectively. They died there.

Their sons continued with the resistance in 1934. About 111 families with wives and children totaling 698 and 2,096 animals were banished to Gwassi in South Nyanza.

They chased them to Gwassi in South Nyanza which is a dry place with little rain and is infested with tsetse flies, snakes and other animals. This was under the Laibon Removal Ordinance Act of 1939, Cap.69, of the last Constitution. I have a copy of that Ordinance which was signed by the Governor of Kenya in 1934. In October, 1934, the Talai trekked for 13 days from Sondu, near the Kipsigis boundary to Gwassi. Within that period 14 women who were pregnant miscarried while cows, sheep and goats died. The leader reported the incident to the authorities but he was ignored by the colonial offices in Nairobi and London. The Acting Chief Native Commissioner, Mr. Lafontaine, visited the area to confirm these allegations. Mr. Ohara was replaced by Commander Blunt. He

seemed to be dangerous because he tried to expose the colonial government's plan on the Talai. Commander Blunt fell ill following an attack by the Gwasssi bug, that is, malaria and he was hospitalized. Several Talai women and children died as a result of the Gwasssi bug. That confirms that the colonial government wanted those people to die. I want to refer to a letter on page 111 by the District Commissioner (DC), South Kavirondo, dated 13th October, 1937, to the Acting Provincial Commissioner (PC), Nyanza, from the nominal census of the Gwasssi-Talai. It says:-

“I propose that this time next year, we take another census to check the Talai birth and death rates.”

I have a copy of the letter. From 1934 to 1962, Talai and Gwasssi went through hardships. Animals and people died because schools and dispensaries were not built for them. Those who had reached the marriage age did not marry until they protested. Forty youths were brought to Kericho Town to a Laibon concentration camp, which is now a rehabilitation centre. This was in 1947. One of the reasons was to get the Kipsigis wives. I have an original photograph which was taken there. Those are the 40 Talai youth with the PC, Nyanza, Mr. Hunter, and the then DC Kericho, Mr. Gregory Smith.

In the eve of Independence in 1962, Talai were brought back to Kipsigis only to find that their land had been demarcated and the Kipsigis people had been allocated the Talai ancestral land. Up to now, the Talai have never been formally settled. The Talai Community has sent me to tell the British Government that the Talai have suffered for more than 70 years since they were deprived of their ancestral land in 1934 under the Laibon Removal Ordinance Act of 1939. Since then, they have not had a permanent residence nor have they had peace like other Kenyans. I cannot think of any other ethnic group that has suffered this level of human rights deprivation in Kenya or anywhere else. Our forefathers resisted the colonialists and were either exiled or imprisoned. The most interesting or sad thing is that never in the history of Africa regarding the European intrusion has a whole community consisting of children, women, old men and even animals been exiled. They were not given a chance to defend themselves in the court of law. Normally, leaders would be exiled or jailed just like Mzee Jomo Kenyatta and Nelson Mandela of South Africa. But in this case, it was hundreds of innocent people. This was the worst violation of human rights by the colonial government. The action meted against the Talai was contrary to Article 23 of the League of Nations Charter, which was in force at that time, and Article 9 of the present-day United Nations Declaration of Human Rights. Britain, through actions of colonial officers, is responsible for the crimes against the Kipsigis Talai, hence they must be compensated. The Talai also deserve an apology from the British Government for the suffering that they have undergone since 1934. The British Colonial Government uprooted the Talai from the prestigious positions of leadership to destitute marginalized minority groups that have been relegated from the leadership and reduced to useless beggars. Their position before the colonialists was equivalent to the British Royal Family and Uganda's Kabaka Kingdom. A letter dated 17th October, 1934, by the DC Kericho to PC Nyanza says:-

“The Government of the Laibon is more efficient than ours.” That is what the *Wazungu* wrote. We wrote a letter dated 3rd September, 2009 to Her Majesty the Queen and the replying letter to our office dated 6th October, 2009 said that. I have a copy of that letter. We are requesting the Truth, Justice and Reconciliation Commission (TJRC) to follow up this issue on our behalf if it is possible or advice us accordingly through our consultant, Mr. Bill Ruto.

After 1963, the Talai had hoped that our Government will give us priority in the White Highlands resettlement project as we had lost our land to the Kipsigis community. However, we have gone through the following and I will give the details in a chronological order.

Mr. Tom Chavangi: I would like to stop Mr. David Tuwei. At this juncture, Mr. Tuwei has been chronologically giving us the historical events of the Talai Community and I can also see that he has given the recommendations needed that the Talai community be compensated and they deserve an apology from the British Government. The rest of the events after 1963 are a product of research by Mr. Bill Ruto, Mr. Chelule and also the Parliamentary Select Committee on the Resettlement of Internally Displaced Persons (IDPs). The Research Department having conducted the research recently, these are issues which are at the fingertips of this Commission. I would like to advice Mr. Tuwei to confine himself to the recommendations and not to go into the chronological events because these are issues that are well known and history will never change.

Mr. David Tuwei: Thank you. This is what the Talai community is saying to the Government of Kenya and to Kericho and Bomet counties. This petition seeks to bring to the attention of the Government and the Kipsigis County the plight of the Talai Community with a plea that the community be accorded justice which has not been forthcoming for many years. The primary concern of the community is resettlement on a suitable piece of land within Kipsigis; five acres per family and the compensation for the suffering they have undergone since 1934. Since the Talai is a marginalized minority community, the Government should help them to come to the standards of other Kenyans. We recommend as follows:

1. Some qualified members of the community should be nominated to leadership positions in Kericho and Bomet counties and if possible even as Members of Parliament. This is very important because they were completely forgotten after Independence because none has ever been in leadership position.
2. As a minority community, during recruitment of various national forces, like the Kenya Army, police, the Administration Police, prisons, Kenya Wildlife Service and other Government institutions, qualified youths from the community should be considered.
3. Bursaries and other education assistance should be given to the deserving qualified students from the Talai Community.

4. Registered self-help groups formed by members of the community should get funds from the Constituencies Development Fund (CDF) and other devolved funds to implement some of their proposed projects.

I would like to say that the Talai and Kipsigis community should forget the past, reconcile and forgive each other. I also take this opportunity to thank the NCKK for offering scholarships to Talai youths at Itigo Girls School, Eldoret. For instance, they sponsored Mercy C. Chepkwony - No.SS/08/11.

I am requesting other institutions to assist the Talai community in various development matters. The Talai community has confidence in the Truth, Justice and Reconciliation Commission (TJRC) and we hope that the Commission will pursue our plight with other institutions.

With those remarks, I want to end my presentation on Talai Community.

Mr. Tom Chavangi: Thank you very much, Mr. Tuwei.

Commissioners, there is a document that has been presented to me right now by Mr. Tuwei. I wish to request that it be admitted as an exhibit. I also want to request that all the other documents be admitted as exhibits. I have no questions for this witness.

The Presiding Chair (Commissioner Ojienda): The documents are admitted as records of the Commission. There are different photos of the copy of the ordinance and the memorandum.

Thank you very much, Mr. Tuwei. I just want to ask you a few questions. The Talais are Kipsigis. Are they not?

Mr. David Tuwei: Yes, they are Kipsigis.

The Presiding Chair (Commissioner Ojienda): Are you a clan among the Kipsigis?

Mr. David Tuwei: Yes.

The Presiding Chair (Commissioner Ojienda): What is the population of Talai?

Mr. David Tuwei: In the last registration, we were 6,000 Talais.

The Presiding Chair (Commissioner Ojienda): How many Talais are squatters?

Mr. David Tuwei: I would say that over 2,000 Talais are squatters.

The Presiding Chair (Commissioner Ojienda): Where do they ordinarily live?

Mr. David Tuwei: Most of them are in Kericho and Kipkelion towns. Others work in tea estates and others are in Nairobi, Kibera slum.

The Presiding Chair (Commissioner Ojienda): What is the name of the lady who was given a scholarship?

Mr. David Tuwei: She is called Mercy Chepkwony.

The Presiding Chair (Commissioner Ojienda): Your name is David Tuwei, those are Kipsigis names. How would you tell that this is a Talai or a Kipsigis?

Mr. David Tuwei: We have registered all the Talais with family numbers. Family numbers were registered by the British Government in 1934. For example, in that register, I am number 13. My grandfather was called Ngasura Kipchombere. So, all the Talais have numbers.

The Presiding Chair (Commissioner Ojienda): Where were they living before they were taken to Gwassi?

Mr. David Tuwei: The Talai lived within the Kipsigis land even as far as Baringo. They were spread all over. They were in Kipkelion, Ainamoi, Belgut, Buret and Bomet. The original register of 1934 shows where each Talai was moved to.

The Presiding Chair (Commissioner Ojienda): I want to thank you for your testimony. I want to observe that the Talai is one set of the Kenyan population that was forced to move from where they lived to Nyanza. I think the violations were untold. You have referred to death and suffering but I think we need to get details before we make appropriate recommendations. I am sure other commissioners have questions for you.

Commissioner Farah: Mr. Tuwei, I want to ask you one question. The colonialists were using the well-known divide and rule policy. They also went to a great length to ensure that within community sub-clans the good fighters were removed so that they could not incite the others. That is the reason why the Talai were taken to Gwassi. You were good fighters and they did not want to see you. My question is: After Independence, why could the Kipsigis Community not reverse that divide and rule policy and assimilate you within the Kipsigis Community? Have there been any efforts by the local politicians and other local leaders to bring you back to the fold?

Mr. David Tuwei: That is the failure by our local politicians. We have told them since 1963 and no action has ever been taken.

Commissioner Farah: That was my only question.

Commissioner Chawatama: Mine is to thank you for getting time to come and testify before us. I consider it an honor and privilege to afford you and your people a platform to air your complaints, especially since you said that ours is the first Government

Commission that you have testified before. We hope that we score more firsts in this country and do justice for the people of Kenya. My question is: Where were the boys taken to detention camps?

Mr. David Tuwei: You know the Talai were taken to Gwassi under the ordinance. When they were brought back to Kericho, they were still under that ordinance. So, they were put in the concentration camps. For your information, that is where I was born in 1952.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mr. Tuwei. We will consider the materials that you have given us and make appropriate recommendations.

Mr. David Tuwei: Thank you very much. Maybe, I could ask the Talais who are here to stand up so that you can see them.

(The Talais stood up)

Those are the Talais. We have our chairman there and our historian, Mr. E. Sigilai.

The Presiding Chair (Commissioner Ojienda): We recognize and honor all of you.

Mr. Tom Chavangi: Thank you very much, commissioners. Our last witness is Alice Bett, who is going to talk about the post-election violence.

(Mrs. Alice Bett took the oath)

Mr. Tom Chavangi: Commissioner, Mrs. Alice Bett is our first female witness and the last witness for the day. Please, kindly state your name for the record.

Mrs. Alice Bett: My name is Alice Bett, a resident of Kericho County.

Mr. Tom Chavangi: What do you do?

Mrs. Alice Bett: I am a lawyer and I practice law in Kericho Town.

Mr. Tom Chavangi: Mrs. Alice Bett, you came to speak about the post-election violence and its impact on women, children and the general populace. Kindly, proceed.

Mrs. Alice Bett: Thank you very much, commissioners. With your kind permission, for the Talai, I would like to explain further on the reason why they have been marginalized. The theme did not come out clearly when Commissioner Farah made an inquiry. I would like the Commission to know that in pursuit of its divide and rule policy, the colonial government created an impression which they managed to sustain that the Talai was a clan of witches. For that matter, up to date, the Talai have been stigmatized. There is fear from the local community that ills would befall anyone who gets involved with them. As a matter of fact, in two forums, two women stood up and narrated how they could not

secure husbands or education once it was discovered by the fellow Kipsigis that they are Talais.

Therefore, for reconciliation to take place, the Kipsigis family has to accept that the Talai are part and parcel of the community.

The Presiding Chair (Commissioner Ojienda): Could you explain to me whether that perception still exists up to now?

Mrs. Alice Bett: Yes, it does. To date, there is a great fear and that is why the Talai have been kept in one area or segregated whenever they go. That does not auger well for them. This means that they have been condemned to poverty and lately, they have been condemned to marrying one another which is a taboo in any African community for one clan member to marry another clan member.

The Presiding Chair (Commissioner Ojienda): You have said that the Kipsigis have marginalized the Talais and that they have perpetuated the impression that was created by the colonial government that the Talais were witches and that they are not married by the Kipsigis. Also, you said that the civil society and other groups have talked to you. I think this is a task that needs to be undertaken at the local level so that the Talai are accepted back into the Kipsigis community and integrated. I know it is a task that will involve elders who understand the customary ways of the people. I now understand the stigmatization and the pain that surround the people of Talai.

Mrs. Alice Bett: That is why we felt that this must come out in this forum so that those societies that are going forward to seek reconciliation go about their duties understanding that it is important that the Talai and Kipsigis are brought together. I may be going against the grain but that is my feeling.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Mrs. Bett. You can now proceed to your main presentation.

Mrs. Alice Bett: My memorandum seeks to bring to the attention of the Commission the atrocities that were committed by the security forces comprising of the police, the Administration Police, the General Service Unit (GSU and the Anti-Stock Theft Unit during the post-election violence of 2007/2008. The reason we want to talk about this is the result of the senseless violence by the security forces. Kericho was considered a hotspot of the post-election violence following the disputed presidential results in the 2007 general election.

It reflected dissatisfaction with the tallying of the election results. Some youths began what was initially a peaceful demonstration from Kapsoit Trading Centre to Kericho Town.

Commissioners, I would like to point out that Kapsoit is a small town along the Kericho-Kisumu Highway, and it is within Ainamoi Constituency. It is about 10 kilometers from

Kericho Town. The eye witness' accounts are that these youths were armed with placards, twigs and branches. There are no accounts of any dangerous weapons.

Along the way, as is common with every demonstration, the youths commandeered anyone who was on their way, which included even young children. The crowd grew and as it approached Kericho Town, near the Stage Mart Supermarket, which is within the same building with Equity Bank, a truck load of police officers, under the command of the then OCS, Kericho Police Station, one Mr. Isaac Ali Bonaya, indiscriminately started shooting at the demonstrators.

From the post-mortem reports and the death certificates that we could collect, and which we have attached to our memorandum, much of the shooting was aimed to kill as the demonstrators were shot on either their heads or chest. What followed was mayhem. Many of the youths were killed while fleeing and others maimed.

One unfortunate case was one of a young girl by the name Jacqueline, who was commandeered by the demonstrators while on her way to a posho mill. Jacqueline, who is now 13 years old, was caught up in the melee and was shot. She sustained a bullet injury to her right elbow. She suffered grievous harm. She had to undergo treatment for over one year and is yet to be fully rehabilitated. This girl suffered trauma and her dreams as a young girl have been shattered. There were cases of many young women from Kapsoit area who lost their young husbands, who were at that time fathers of one or two children and were the sole breadwinners of their families.

The community felt aggrieved because at the time, the police opened fire on the demonstrators who were not armed. Tear gas or rubber bullets would have been adequate to disperse them. Due to this great loss of life, there was a buildup of resentment. When the then Ainamoi Member of Parliament, Hon. David Langat, was murdered in Eldoret on 31st January, 2008, the buildup of resentment had reached its boiling point. As a result, the demonstrations that were then held in protest of the murder led to great loss of property in Kapsoit and Kericho areas.

In Bureti, the police also killed many residents. I would like to draw the attention of the Commission to the Report of the Commission of Inquiry into Post-Election Violence, popularly known as the "Waki Report", which documented these incidences. I would also wish to note that the figures that were given to the Waki Commission and even to us, as SRDF, are not conclusive. The reason is that the community felt that they were sidelined by the administration and security officers during the post-election violence period. They were turned away when they went to report such incidences or the police officers made remarks implying that they were the sole perpetrators of the violence and, therefore, they could not suffer from any losses themselves.

I would urge this Commission to note that as much as it is the general perception that the non-indigenous population in this region suffered the brunt of post-election violence, the case is entirely different in that the Kipsigis residents were equally attacked and their property burnt either by perpetrators known to themselves or by others who were not

known to them and even by the fleeing non-indigenous population. As a result of the hostilities they faced from the security forces, much of these losses were not documented. With the passage of time, it is even becoming more difficult to document the same. There were reports of reportees being arbitrarily arrested and detained while others were also arrested when found in their homes. Worst of all, as earlier indicated by Rev. Koskei, the residents suffered torture under the hands of the security forces. Women and children were raped and sexually harassed. Some were raped in the presence of their family members and they have suffered untold suffering.

Due to the Kipsigis cultural beliefs, it is taboo to discuss or disclose sexual issues. The women who suffered rape and sexual harassment under the hands of the security forces have suffered stigma from their spouses and their family members as well as from the society generally. They have suffered trauma.

The Acting Chair (Commissioner Namachanja): Excuse me. Can we have correct interpretation of the word “trauma” in Kiswahili? The word “trauma” has to do with psychological wounds. So, please, can you find appropriate words to explain “psychological wounds” in Kiswahili? For now, maybe, we can use the phrase “*shida za kimawazo*” but can you find out the right words? For the second time, you have interpreted it wrongly yet it is very important for the victims.

The Presiding Chair (Commissioner Ojienda): Let us proceed, please.

Ms. Alice Bett: Presiding Chair, as I was saying, these women have suffered stigma and trauma and, up to now, they have no hope of reprieve whatsoever but I am hopeful that this Commission will assist them bring a closure principally because this Commission has given them its ear.

I would like to reiterate what Mr. Tuwei had said earlier on – that past Commissions had sat in Nakuru. In fact, despite the fact that Kericho was named as one of the hotspots of post-election violence in 2008, the Waki Commission of Inquiry neither visited Kericho nor held any hearing in Kericho and Bomet counties. Their reliance was on Government officers and, therefore, the community felt that they were condemned unheard. The officials did not consider the local residents who have been aggrieved and only made a note of it in the Report, which Report the community has not accessed. The end result is that most of the witnesses portrayed the Kipsigis as the sole and unprovoked perpetrators of the post-election violence.

Presiding Chair, the community asked us to make the following recommendations:

1. The security forces ought to be brought to account for the acts of violence that they committed and the acts of omission that they also may have committed.
2. The individuals who lost their loved ones and those who suffered injuries seek reasonable compensation to cover for their losses. These losses can be easily

quantified and our beloved Government being the employer of the perpetrators, it should bear the responsibility of compensating the victims.

3. The victims who were injured are also seeking assistance for their rehabilitation. There are several victims who still have bullet wounds and bullets lodged within their bodies and one of them in particular, who recorded a statement, states that he needs about Ksh2 million to have the bullet removed. The majority of the victims of police brutality is poor and cannot afford to pay for treatment. So, we would wish that the Commission makes a recommendation that the Government picks up the bill for their payments.
4. The victims are also seeking assistance with counseling in order for them to come to terms with their losses.
5. On behalf of the women rape victims also, we would pray that the Commission recommends that there is a victims' network to ensure that they receive adequate counseling to enable them recover.
6. The community also seeks an apology from the Government, the reason being that the Government was supposed to protect its citizens yet it allowed its security forces to violently attack them and, therefore, perpetrated gross violation of their rights.

Presiding Chair, that is all. I would like to present to the Commission this memorandum with annexures, including post-mortem reports, death certificates, affidavits and treatment sheets.

At this point, I would also wish the Commission to make a special note of the victims of the police killings in Bureti. For some reasons, the death certificates indicate that the course of death is "sudden death" yet their post-mortem reports clearly show that the deaths are as a result of bullet wounds.

I would also like the Commission to note that in some instances, some families were too poor to afford the post-mortem fees and, therefore, they made affidavits, which they presented to the police, so that the bodies of their loved ones could be released to them yet these are people who had died from bullet wounds.

I would also like to state that in several instances, some of the deceased were not taken to any mortuaries. They were instead buried right away. As of now, we are still collecting evidence and documents. With the permission of the Commission, we would request that we be allowed to put in further documentation later on when we have collected additional data.

Thank you very much.

Mr. Tom Chavangi: Thank you, Ms. Bett. Commissioners, I would like these memos to be presented as exhibits.

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

Mr. Tom Chavangi: I am much obliged, commissioners. Mrs. Bett has answered all my questions in her final presentation. I have no further questions for this witness.

The Presiding Chair (Commission Ojienda): Thank you, Alice, for that concise presentation that you presented in the manner of a court submission with clarity, precision, and which raises fundamental issues. What is clear to me is that there is need for further investigation on how many people died and how they died during the post-election violence. Second, it is clear that this area was not sufficiently covered by the final Report of the Waki Commission because you appear to say that people were not interviewed.

I also note that you have specific recommendations on reparations, rehabilitation and apology from the Government of Kenya for the violence that police meted upon the people during the post-election violence.

I want to thank you once again for speaking for the people of this region and for being their voice.

Commissioners, I now hand over the witness to you.

Commissioner Farah: Alice, I thank you very much. I do not want to repeat the professor of law and our Presiding Chair's commendations of you. Even as a layman, I knew that, as a lawyer, you would give a good presentation. Do you have a list of the women who were raped, the people who were killed and buried straightaway? Do you also have a list of those people with bullets lodged in their bodies and who need further treatment?

Ms. Alice Bett: Presiding Chair, as I had indicated in my conclusion, I had requested for more time to complete the documentation process because of certain challenges that we faced as we collected this data. We had to seek the assistance of the district hospital, and that is the institution which helped us most; but we still found ourselves without information from the private hospitals.

With respect to some of injuries and deaths that occurred, we had limited time because, as SRDF, we begun the mobilization exercise in mid-July. At that point, we discovered that quite a number of these people did not have the documents. So, we need time in order to get the documents from elsewhere. For example, for the man with a bullet lodged in his head, he said that the documents are at Moi Teaching and Referral Hospital because he had lost the original documents.

As you have noted, the post-election violence in this area occurred over a period of time. There was the first spate of violence after the elections results were announced, and the second spate after the death of the Ainamoi Member of Parliament-elect. In between, although there was relative peace, the security officers would still shoot at random. So, many of the victims we are dealing with lost their documents or misplaced them. Out of ignorance, others handed over their original documents when they were trying to seek compensation. So, we still need those documents.

For the women who were raped, we were made to understand that there is a special session for them tomorrow. We trust that the Commission will be able to receive their details then. Thank you.

Commissioner Farah: Thank you very much. Be rest assured that, particularly, tomorrow's session for the women will be held by the female commissioners. So, the victims should be free to speak out.

Commissioner Chawatama: Alice, it is very heartening to hear from you, especially to hear again that we are the first Commission that has come to Kericho. It means that this is a very special place and it needed special people such as us. You were right. Hearings are very important because it is not everybody who gets an opportunity to read a copy of a report but you have seen the number of the people who have attended this hearing. We need to hear not the voice of anybody but the voices of the Kenyans who continue to speak to us and who continue to tell us that this process is absolutely necessary.

I also feel much energized because there are times when there are voices which speak about the Commission as if we are not doing anything. The fact that you have come here, and so many witnesses before you have spoken, this being our first port of call after our rest, really strengthens and encourages us. In a way, it blocks out all the negative voices that we sometimes keep hearing from people who are saying that we are doing nothing and who question our credibility. So, I would like to thank you.

As a Commission, we have always said that when you heal a woman, you heal a family, you heal a community and you heal a nation. So, we will do our very best. We take everything you have said very seriously. Where we fall short, we shall still continue to investigate. So, any information that you will be able to give us, even later, you will be more than welcome. It will assist us greatly. It will help us in meeting the expectations of the people of Kenya. Those are the people we are interested in.

My only question is on what you are hearing from the people here, because there is already talk of the next election. What are you hearing from the people here as this date draws near in view of what happened during the last election?

Ms. Alice Bett: Presiding Chair, from the way people suffered in 2007/2008, the local community is very keen that we maintain peace. Their wish is that we do not get into a situation of conflict ever again principally because of the loss of lives, pain suffered and the economic hardships that followed the post-election violence. Also, because of the

stigma that was attached to the community due to the perception that they were the perpetrators of the violence, we wish that we would have a sustainable peace. The community also wishes that their side of the story is documented. That is why they are very appreciative of the Commission's attendance here. They feel that their voice has been heard.

Presiding Chair, the community is rather apprehensive of The Hague process but their main prayer is that justice will be done to both the victims and the suspects. Thank you.

Commissioner Chawatama: We, being the Truth, Justice and Reconciliation Commission, it is also our desire that justice is done to everybody so that the country can be at peace and can unite. Maybe, as a non-Kenyan, one of the things that really touch me is how easy it is to shed innocent blood. That really bothers me but I hope that, with the coming election, we shall not witness the shedding of innocent blood. Thank you.

The Acting Chair (Commissioner Namachanja): My sister, Alice, thank you so much for your presentation. Through your presentation, you have corrected one thing. Since 1991, we have been experiencing electoral violence. In any armed conflict, all parties in the conflict suffer. But I think the mistake we have been making as Kenyans is coming up with what I call blanket condemnation of some communities and labeling a whole community as perpetrators. It is because of that wholesome condemnation that the victims in such a community have always shied away from even coming forward for relief or to share their stories. It is very painful for the families of the victims, those who also lost their dear ones in the violence, to be labeled "perpetrators".

What we have done then generates a vicious circle of violence because bitterness remains. When an opportunity presents itself, such families will always come out for revenge. I think what we always fail to see is the structural violence or structural injustices such communities labeled as perpetrators also face.

What this Commission is endeavoring to do since it started its work is to apply the principle of impartiality. We give a platform to everybody and ensure that we are fair to everybody. We are hoping that with such fairness, communities that have shied away because of such condemnation will come forward and speak out and get it out so that we stop this vicious circle of violations. I feel encouraged that the victims from the Kipsigis Community and the women have found that voice through you, Alice. We shall continue discussing these issues tomorrow. We have shared since Seven O'clock, and now, it is going to Eight O'clock. We feel honored. We recognize that this hall was full. We had put up one tent out there. The first tent got full, so we had to bring a second one.

The situation was similar in Kuria. As my sister Commissioner Chawatama said, amidst all the challenges that this Commission faced, you are the people who have affirmed our mandate and who have seen its importance. All I can say is that you are assured of our dedication. We shall continue journeying together to the end.

Thank you so much and God bless you all.

The Presiding Chair (Commissioner Ojienda): Thank you, Alice. I need not say anything additional. Communities do not commit crimes but individuals do. Victims are individuals and they are not communities.

Thank you for speaking out for them.

Leader of Evidence, could you step down the witness?

(The Witness was stood down)

We have come to the end of today's session. We will convene at 9.00 a.m. tomorrow morning for a public session and then there will be women's hearings at Kipsigis County Hall. There will be public hearings here and, thereafter, we will be advised.

I want to thank the following persons, who have spoken to the Commission today; Messrs. John Koskei, Peter Thomas Kijuri, Francis Kipng'eno, Joseph Kiprono Cheruyoit, William Kiptanui Kosgey, Kipkoech arap Chumo, William Kiprono Kiprokoros, Bill Ruto, David Rue and Alice Bett.
I thank you all.

We have come to the end of this session.

(The Commission adjourned at 7.40 p.m.)