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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY, 20TH
SEPTEMBER, 2011 AT KERICHO TEACHERS' TRAINING
COLLEGE, KERICHO**

PRESENT

Ahmed Sheikh Farah	-	The Presiding Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Tom Ojienda	-	Commissioner, Kenya
Margaret Wambui Shava	-	Commissioner, Kenya

SECRETARIAT

Belinda Akello	-	Leader of Evidence
Tom Chavangi	-	Leader of Evidence

IN ATTENDANCE

Rev. Lawrence Bomet	-	Commissioner, NCIC
Dr. Samuel Tororei	-	Commissioner, KNCHR

[The Commission commenced at 9.25 a.m.]

*(The Presiding Chair (Commissioner Farah) introduced himself
and the other TJRC Commissioners)*

(Opening Prayers)

The Presiding Chair (Commissioner Farah): Please be seated. Good morning, ladies and gentlemen. Today is our second day of hearings in Kericho. We welcome you to our public hearings. We thank you all for coming in large numbers to hear about human rights violations in the Rift Valley, particularly in Kericho County.

I would like to lay down our ground rules. Please, switch off your mobile phones and do not put them on the silent mode because they will interfere with our process. Please, remain silent as the witnesses give their evidence. In this way, the witnesses will focus on their evidence. Let there be no interruptions. If anybody wants to take pictures, please, take still photographs; no flash photography is allowed.

Is there any lawyer present in this hall this morning? If they are not there, we can start our proceedings. Leader of Evidence, what have you got for us today?

Ms. Belinda Akello: Presiding Chair, our first witness is from the Kipsigis Council of Elders.

The Presiding Chair (Commissioner Farah): Go ahead and swear the witness.

(Mr. Edwin Kiprotich Kimetto took the oath)

Ms. Belinda Akello: Good morning. Kindly tell the Commission your names.

Mr. Edwin Kiprotich Kimetto: I am Edwin Kiprotich Kimetto, a retired high school teacher. I come from Bureti District in Kericho County.

The Presiding Chair (Commissioner Farah): Leader of Evidence, which number is this witness?

Ms. Belinda Akello: Presiding Chair, this is the one from the Council of Kipsigis Elders titled “Memoranda”.

The Presiding Chair (Commissioner Farah): Thank you. I have got it. Please, proceed.

Ms. Belinda Akello: Thank you very much, Mr. Kimetto. Would you kindly tell this Commission what you do currently after retiring as a high school teacher?

Mr. Edwin Kiprotich Kimetto: I am running my own private school as the managing director.

Ms. Belinda Akello: Mr. Kimetto, are you aware of an outfit called Council of Kipsigis Elders in Bureti District.

Mr. Edwin Kiprotich Kimetto: Yes, I am aware. I am the secretary of the council.

Ms. Belinda Akello: Thank you very much. Presiding Chair, note in the memoranda that we have five topics and the witness is going to elaborate on the first one and we seek your indulgence to admit the other four as part of the recorded admitted with the memoranda; we will not elaborate on them this morning. The four cover land injustices, post-election violence, the national coalition Government and national commissions. If you wish, I will start with economic injustices.

The Presiding Chair (Commissioner Farah): Proceed, please. We have got all of them; let the witness go through them.

Ms. Belinda Akello: Thank you very much. Mr. Kimetto, as the secretary of the council, could you kindly take us through the issues you would like to present before the Commission?

Mr. Edwin Kiprotich Kimetto: Thank you, dear commissioners. In my contribution, I will support my memorandum with a number of documents, including a list of Kenya Co-operative Creameries (KCC) shareholders in the Sotik processing plant, a sample of KCC shares certificates, KCC by-laws, KCC financial statements for the years 1993/1994. Also included is a letter addressed to retired President Moi which I personally wrote on 19th April, 1995. I will also provide a list of processing plants and milk cooling plants of KCC. I will also present a newspaper cutting on privatization of New KCC dated 16th September, 201 of the *Daily Nation*. I will also present just one share certificate of KPCU. Also supporting my case is a memorandum on economic injustice to Ole Seroi Farmers Group.

Ms. Belinda Akello: Mr. Kimetto, would you like to present these to the Commission?

Mr. Edwin Kiprotich Kimetto: Yes.

Ms. Belinda Akello: Presiding Chair, kindly admit the documents as part of the record of the Commission.

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

Ms. Belinda Akello: Mr. Kimetto, please proceed with your testimony. Kindly, take us through the issues that you would like to highlight for the Commission.

Mr. Edwin Kiprotich Kimetto: Thank you very much, Leader of Evidence. As I start my contribution, I have given an introduction and I have cited Article 43 of the Constitution of Kenya, which provides for economic and social rights that an individual or person is entitled to. However, despite these rights being in the Constitution of Kenya, the same are not attained by every individual in Kenya, especially those living in our county. Some of these economic injustices include those contributed by multinational companies in our county and those that have from time to time been facing our community. They are neglected by the Government.

I now go to three important areas starting with the Kenya Co-operative Creameries.

Dear Commissioners, this organization was registered as a farmer's organization in 1923. The membership of KCC includes individual milk suppliers and co-operative societies. I wish to say that a co-operative society incorporates thousands of farmers as its members. Since inception, the KCC has been managed by a board of directors. However, the tradition of electing directors changed in 2003 when the Government started appointing them. It is very sad to note that since 2003, the board of directors has not changed, as I will mention later on.

I will talk about financial problems. Early in 1990s, KCC experienced financial problems and in 2000, it was suggested by a few members of KCC and the Head of State at that time that the members should increase their shares because earlier on the board of directors had borrowed up to Ksh800 million but could not repay the money fully. So,

the organization was placed under receivership on the advice of Kenya Commercial Bank and that was done. The receiver managed the organization reducing the debts to Ksh400 million. The new shares paid by farmers raised Ksh547 million out of which Ksh300 million came from the retired President. The same funds were used to offset the debts of KCC and the organization was renamed “KCC 2000”.

This arrangement went on up to 2003, when the NARC Government took over. KCC 2000 was bought by the Government by refunding Ksh547 million and the organization was again renamed “New KCC”. Let me make one observation here. When KCC was turned into KCC 2000, a majority of the members were not informed of this change through an annual general meeting (AGM). Also, when KCC 2000 was turned into New KCC, the members were not informed beforehand of this second change in name. I want to say and the Commission can look for records from the Presidential Press Unit (PPU) of April 2003 which quote the President, Hon. Mwai Kibaki, promising to return the organization to the dairy farmers upon its revival. The Government appointed, as I said earlier, new directors to manage New KCC under the chairmanship of Hon. Matu Wamae, who has been in office from 2003 to date. We are aware that the board of directors should be elected after three years. The dairy farmers are wondering why this Board has not changed.

Furthermore, to the disappointment of farmers, in the year 2006, the Government converted New KCC into a parastatal again without consulting the farmers and before fulfilling the promise of returning the organization to dairy farmers. It is on record that there was no Cabinet approval. There was no Act of Parliament to make New KCC a parastatal. New KCC is a farmer’s organization. If you convert it into a parastatal, it means it becomes a property of the Government; and even those who were not members will benefit from it to the disadvantage of dairy farmers.

I want now to go to the assets. The current value of New KCC assets is well over Ksh8 billion. The assets include processing plants, cooling plants and parcels of land. There are 11 new processing plants distributed in the whole country. There are 11 cooling plants also distributed in the whole country. It defeats logic for the Government to pay Ksh547 million and take it for granted that they own these properties.

I now go to the proposed sale of New KCC. As you can see from the newspaper cutting which I have provided, there is an article suggesting that New KCC should be privatized. I will make recommendations about these proposals. I want to make one observation here. It would appear that the Government does not care about dairy farmers, yet it is on record that coffee farmers benefitted through the write-off of bad debts amounting to Ksh5.5 billion. I want to ask this Commission to prevail upon the Government to withdraw the advertisement calling for the sale of New KCC. Further, I want to say there are farmers who delivered milk in 2000 for six months but have not been paid to date. There are also many transporters who delivered milk to KCC plants during the same period but have not been paid. Some of them, particularly the transporters, had borrowed loans to acquire assets like tractors and lorries. All that has gone to waste as the assets have been seized by the banks for failure to service those loans.

Presiding Chair, investing in the dairy industry is very expensive. If, for example, one of the commissioners would like to acquire a dairy cow, on average he will have to pay Ksh100,000. Farm inputs are very expensive. When you consider the price of milk, a farmer is paid Ksh20 per litre and then the processor sells a litre of milk at Ksh80. This is pure exploitation.

I now want to turn to the Kenya Farmers Association (KFA), which was registered at around the same time in 1925 and has infrastructure throughout the country. It has also been run by a board of directors. This organization also experienced financial problems. In 1987, Government officials and directors of that time decided that KFA should be turned into the Kenya Grain Growers Co-operative Union (KGGCU) to encourage members and other Kenyans to buy shares and give them membership certificates. I have given you one example. The KGGCU went on with its operations. Later on, it was poorly managed and its assets vandalized yet those who mismanaged KGGCU have not been prosecuted. What happened later on is what I can call “chameleon positioning”. The KGGCU was reconverted into KFA and so the members of KGGCU were placed into a dustbin. Many of them, including my late father, had invested a lot of money in it. To date, nobody in Government circles talks about KGGCU members.

I now move straightaway to tea farming and this will be the final topic. Tea is one of the leading cash crops in Kenya. We are proud to say that ours and Bomet County lead in tea production. However, many tea farms or plantations are under multinational companies. Besides occupying the Kipsigis land, they reap a lot of profits which end up on the tables of the owners in London. These companies do not practise corporate social responsibility. The little they offer, for example, construction of schools, is quite discriminatory. They have one special school for the managers. Children of the workers are just in public schools.

Presiding Chair, if the tea from this region is sold after value addition, the farmers will be very rich and their children will go to universities. I am sure this morning you took a cup of tea in Tea Hotel and you saw that tea satchet of five grammes costs Ksh140. If you go to the biggest hotel in Nairobi, it cost Kshs240, yet our tea is sent to Mombasa in bags and the payment to the farmer monthly is hardly Ksh13 per kilo. Of course, they have what we call bonus but it is not enough.

I will now go to the recommendations by the Council of Kipsigis Elders:-

1. On the recommendation of KCC, one, we want to request this Commission to move with speed to contact the Minister for Co-operative Development so that the advertisement on privatization of New KCC is cancelled immediately on behalf of the dairy farmers. These farmers are not just in the counties of Bomet or Kericho. They are all over the country.
2. New KCC should refund Ksh547 million to the Government.
3. The price of tea should be revised, taking into account the high cost of investment in the dairy industry.

4. New KCC should pay all outstanding milk bills to the following: individual suppliers, co-operative societies, milk transporters.
5. During the changeover, many KCC employees were sacked and they have not been paid. They should also be paid.
6. To revert the New KCC to the original KCC.
7. To dissolve the existing board of directors. We are aware as Kenyans that the present Chairman of the new KCC is a tired politician. He has been recycled. We cannot keep people who are already tired to continue milking farmers' organization.
8. The Ministry of Co-operative Development should conduct elections of Board of directors for the proper KCC.
9. To revalue the assets of KCC.

On the recommendation on KFA, the Government should act as follows:-

- (a) To investigate the assets and activities of the dissolved KPCU.
- (b) The present KFA should refund shareholders of KPCU. We urge the Ministry of Co-operative Development to conduct elections of KFA directors.
- (c) Multinational companies, which include Unilever, James Finlay, Jangoi and Sotik Tea, should jointly undertake the following:

1. To construct a university that will offer agricultural technical subjects to the children of Kipsigis Community.
2. To offer employment opportunities to educated youth from the Kipsigis Community.

Commissioners, you would be surprised that for these children I am talking about, if you consider the top managerial positions, you would get only 10 per cent.

3. The multinational should provide amenities to the immediate surroundings of their estates, including water and electricity.
4. The schools should float shares of tea plantations to the Kipsigis Community to 49 per cent holding.
5. To offer scholarships to bright and needy students in the local and overseas universities. Let me mention before I talk of the other one. Recently, the multinationals have encouraged what we call outgrowers to supply tea to their factories. They even used their trucks and yet the roads leading to those farmers are bad.
6. Multinationals should not be allowed to take tea directly from the farmers because this would submerge KTDA factories some of which were constructed on loans.
7. The multinationals should be encouraged to give back the gains to the community.
8. Finally, KTDA should embrace tea value addition for higher gains to the farmers.

Ms. Belinda Akello: Thank you very much, Mr. Kimetto, for your very good presentation. You have articulated two issues. I just have three clarifications, for which, if you do not mind, you just give a yes or no answer.

You have indicated that among the documents you have given us was a letter to the former President, His Excellency Daniel arap Moi. You have also indicated that we can confirm from PPU records that the current President Kibaki promised to give back New KCC to its original members.

Mr. Edwin Kiprono Kimetto: Yes.

Ms. Belinda Akello: As the Secretary to the to the Kipsigis Council of Elders, who hold a wide stake with the people, have you ever written or made any follow up to this gesture that was given by the President?

Mr. Edwin Kiprono Kimetto: As the Council of elders, we have always appealed to the local Members of Parliament to take up the issue, particularly the sale of KCC to a private organization. Unfortunately, we have not been blessed.

Ms. Belinda Akello: Thank you very much. You have also indicated in your presentation that the current multinational companies have also inhabited land that was originally for the Kipsigis people?

Mr. Edwin Kiprono Kimetto: That is true.

Ms. Belinda Akello: Could this be confirmed by maybe a title deed or any document from the land registry?

Mr. Edwin Kiprono Kimetto: Yesterday, there was presentation on land injustices. It was elaborated that the current land which is occupied by the multinational companies was previously occupied by the members of the Kipsigis Community who were removed forcefully.

Ms. Belinda Akello: The last one maybe you have indicated that the multinational companies have also constructed schools. However, they have segregated schools for their children and those for workers.

Mr. Edwin Kiprono Kimetto: Yes.

Ms. Belinda Akello: Are the children of workers not admitted to those schools? Where do they take their children?

Mr. Ediwn Kiprono Kimetto: It would appear these public schools are built next to the estates where the workers live. They are just simple schools. They do not have improved facilities like the ones built here in Kericho. So, if they were concerned about the plight of these children, they should have provided better facilities just like the ones we have in academies.

Ms. Belinda Akello: Thank you very much, Mr. Kimetto. Commissioners, that is all from me.

The Presiding Chair (Commissioner Farah): Thank you very much, Mr. Kimetto. I would now give the opportunity for the Commissioners to ask any question. I would start on my right, Amb. Dinka.

Commissioner Dinka: Thank you, Mr. Kimetto, for your testimony. My question is about the corporate social responsibility of the multinational companies regarding schools. The Leader of Evidence asked you if there is a policy of actually keeping away the children of workers from those schools. My question will be whether or not the children of the senior employees of the company go to school in Kericho. Is that on payment basis or does the corporation actually award scholarships to these students?

Mr. Edwin Kiprono Kimetto: There is one school here with very good facilities. Parents are asked to chip in extra fees for the motivation of staff. Why should those other schools be left to be public schools?

Commissioner Dinka: Excuse me, I will come to that. It is one thing to say public schools should be upgraded by the state or the community and a different story to say that some kind of private schools should extend to everybody; what it does to its staff.

When you say “chip in,” do you have some exact figure of how much a parent would contribute? Would they chip in in terms of providing a child?

Mr. Edwin Kiprono Kimetto: They would pay Ksh30, 000 and above.

Commissioner Dinka: Per month or per year.

Mr. Edwin Kiprono Kimetto: Per term.

Commissioner Dinka: About Ksh30, 000 per child per term. Would that be something that the ordinary worker in the tea plantations can afford for their children?

Mr. Edwin Kiprono Kimetto: It may not be possible but because these workers are working for the company, we would appeal for subsidized fees for them and sometimes have the same facilities.

Commissioner Dinka: Have your people approached in an organized manner these corporations to that effect? Have they talked to them and what was their response in terms of subsidy? Parents chip in what they could but basically subsidizing the fees?

Mr. Edwin Kiprono Kimetto: There is no forum to make such a follow-up. At the same time, in the estates, people who would agitate for such would be trade unionists.

Commissioner Dinka: Again, as I said, my interest is in the children’s schooling. The schools that have been built which you said are as good or as bad as public schools, were they built by the companies?

Mr. Edwin Kiprono Kimetto: Yes, by the companies.

Commissioner Dinka: Again, why can the workers through their own organization not approach the company to upgrade those schools?

Mr. Edwin Kiprono Kimetto: As I said, if they had trade unions, they would fight for such rights. We as a community do not have any forum to talk with the multinationals to address such issues.

Commissioner Dinka: Mr. Kimetto, probably, I need to tell you because I am non-Kenyan and I may not be familiar with the situation. Are tea workers not allowed to have trade unions?

Mr. Edwin Kiprono Kimetto: They may be having trade unions affiliated to COTU. However, their interest is only to protect salaries. I have not heard them talk about quality of education for their children.

Commissioner Dinka: Okay, that may be because they really do not understand that the quality of education for their children is even greater than the need for salary improvement.

Mr. Edwin Kiprono Kimetto: That is true.

Commissioner Dinka: So, why is your group or organization together with the COTU not doing some kind of outreach civic education programmes among the workers to bring these things to the fore? Why can they not agitate for better schools or upgrading of the existing schools so that they can improve education system of their children? Why can you not do that?

Mr. Edwin Kiprono Kimetto: Dear Commissioners, as we are about to take over the county responsibility, already we have developed a blue print for education. We are going to include all stakeholders who can help in the development of quality education. This is the time we will invite them around the table and I do hope they will respond. We want quality education in our county.

Commissioner Dinka: Thank you very much, Mr. Edwin. I think this is something very important for the Commission as well. I assure you the Commission will do a lot of thinking on, and investigation of, this matter. I would suggest to you strongly that you take the matter into your own hands and try to work with the tea workers. Let them understand consciously that what we are discussing here this morning is extremely important to the life of the workers, their children and their future. I think if need be, you should even approach the Kenya Trade Unions Organization and work along this line. I think the most important point that you raised this morning was about the Kenya Farmers Association. But more important is that we are concerned about the future of these children. Thank you very much, I have no further questions.

Commissioner Ojienda: Thank you for your testimony. You have highlighted fundamental economic issues in this region. I just want you to clarify a few issues. The first one touches on the initial debt owed by KCC to farmers. You said many farmers supplied milk for six months before KCC 2000 reverted back to the original KCC?

Mr. Edwin Kiprono Kimetto: Yes.

Commissioner Ojienda: Have all those debts been paid?

Mr. Edwin Kiprono Kimetto: No.

Commissioner Ojienda: Do you have a tally or a schedule of debts owed to farmers in this region?

Mr. Edwin Kiprono Kimetto: According to the memorandum by Oleseroi Farmers Group, the members of this group have not been paid.

Commissioner Ojienda: We need to have the total sum actually owed because it is important to make specific recommendations when we are finally doing a report on specifics.

Mr. Edwin Kiprono Kimetto: Unfortunately, Presiding Chair, you see as much I was referring to KCC members within the Counties of Bomet and Kericho--, there are other KCC members in other counties such as Nakuru, Nyandarua, Nyeri and Uasin Gishu. . Even at the Coast region, we have Miritini. So, I would request the Commission to conduct investigations and get the details from the KCC headquarters in Nairobi because those unpaid bills are well documented.

Commissioner Ojienda: I believe that when the original KCC converted into KCC 2000, there was no consultation. What steps have you taken with the Government on the question of privatization? You were asking us to make recommendations, have your farmers done anything?

Mr. Edwin Kiprono Kimetto: We have appealed to the Minister for Co-operative Development and Marketing and Hon. Joseph Nyagah seems to hold a different view. He is not of the opinion of selling it. But there seems to be some powers who want to privatize New KCC. If they could make it a parastatal without the approval of the Cabinet and Parliament, why can they not sell it now? You can see in the newspaper cutting, they have said it is in the final stage.

Commissioner Ojienda: So, what do you see as the interest driving the initial takeover of KCC 2000? What was the interest in the takeover of KCC 2000 to New KCC?

Mr. Edwin Kiprono Kimetto: What we felt that time is that the leaders of that time, including retired President Moi, wanted to protect the image of KCC. That is why they were able to contribute Ksh547 million.

Commissioner Ojienda: Was there any individual interest in that sale?

Mr. Edwin Kiprono Kimetto: I cannot say there was any individual interest. However, I think it was just the collective responsibility of a few members. They did not involve all the members. It is unfortunate that even with that change and the new change of the New KCC, dairy farmers have been placed in the periphery of only supplying milk to this plant. They are not being paid dividends. So, your fear can be confirmed.

Commissioner Ojienda: I have no fear. I am---

Mr. Edwin Kiprono Kimetto: You also asked me whether there is any individual interest.

Commissioner Ojienda: Was the new KCC not brought to protect the interest of the farmers? So, was the New KCC not the better outfit to protect their interest?

Mr. Edwin Kiprono Kimetto: That is what was said by the President when they took over from KCC 2000. He said they wanted to streamline its management. He said that once it was revived, the farmers would run it and that they would also elect its directors. However, we all know what happened. It was converted into a parastatal which was very unfair to farmers.

Commissioner Ojienda: You talked of various tea farms, for example, James Finleys and Changudai, among others. Are they all owned by foreigners or some are owned by locals?

Mr. Edwin Kiprono Kimetto: Some are owned by people of Asian origin who bought them from foreign companies.

Commissioner Ojienda: You think they should enhance or assume more corporate social responsibility?

Mr. Edwin Kiprono Kimetto: Yes.

Commissioner Ojienda: They are making profits but are not ploughing it back?

Mr. Edwin Kiprono Kimetto: They are not ploughing it back.

Commissioner Ojienda: Do they involve the community in their core functions? Do you think the community benefits sufficiently from employment positions and other decisions?

Mr. Edwin Kiprono Kimetto: As I have mentioned earlier, if you check the higher managerial positions, only 10 per cent may be from the community.

Commissioner Ojienda: Okay, anyway, County Government would come in and you can deal with that at that level. Thank you very much.

The Presiding Chair (Commissioner Farah): Thank you very much, Mr. Kimetto. Before I ask you any question, I would like to take this opportunity to recognise the presence of Commissioner Rev. Lawrence Bomet, of the National Cohesion and Integration Commission. I would like also to recognise Commissioner Tororei of Kenya National Commission of Human Rights. They are not here to monitor us. They are co-operating with us. These two important Commissions are permanent but ours is temporary. Our responsibility will be to hand over our report and put forward our recommendations and implementation mechanisms but it is the Commissions they represent that will continue monitoring that those recommendations are implemented on our behalf. We would have gone at that time. So, it is good that they are present. They are in harmony with what is going on.

Now, Mr. Kimetto, my questions are two. One is on KCC. I am not an accountant but I just want to get an impression. The asset base of KCC is Ksh8 billion. Is that correct?

Mr. Edwin Kiprono Kimetto: Yes.

The Presiding Chair (Commissioner Farah): With regard to Ksh8 billion assets and countrywide operations, something must have gone wrong. Therefore, it was transformed from KCC initially to KCC 2000. Now what was KCC 2000? What was KCC original? Was it a parastatal?

Mr. Edwin Kiprono Kimetto: No, it was a farmers' organization.

The Presiding Chair (Commissioner Farah): A farmers' organization runs efficiently by a board of directors, who are elected by the farmers. What was KCC 2000 then?

Mr. Edwin Kiprono Kimetto: As I mentioned in 1997, Board of directors borrowed Kshs800 million from Kenya Commercial Bank (KCB). However, because of mismanagement, the organization was unable to repay the loan.

The Presiding Chair (Commissioner Farah): The whole Ksh800 million?

Mr. Edwin Kiprono Kimetto: No.

The Presiding Chair (Commissioner Farah): A sum of Ksh547 million was left.

Mr. Edwin Kiprono Kimetto: No, Ksh600 million was left. So, KCB placed a receiver. A receiver usually is to come and manage the affairs of the organization and recover their money. During that time under receivership, an idea was formed by a few people, including the former Head of State, to add shares. They added shares to the tune of

Ksh547 million. That money was enough to clear the loan which was outstanding. The organization was now supposed to be running but under a new name, KCC 2000. I believe because you said you are an accountant---

The Presiding Chair (Commissioner Farah): I said I was not an accountant.

Mr. Edwin Kiprono Kimetto: I believe they were trying to avoid liabilities which could have been outstanding for the old KCC. This happened with KFA. The KFA had liabilities and they converted it into KGGCU.

The Presiding Chair (Commissioner Farah): But normally when an organization changes its name, surely, they take the liabilities or pay off the debts. What happened in this case of KCC?

Mr. Edwin Kiprono Kimetto: KCC 2000 paid off the debts which were still outstanding at that time to the tune of Ksh400 million and it was renamed. But while they were going on with the management they incurred more debts. When the NARC Government came in, it had to refund Ksh547 million. I mentioned the President because he came in to tell the farmers that it was a temporary solution. It was because out of that Ksh547 million, Ksh300 million belonged to the retired President. So, the President just wanted to give confidence to the farmers.

The President Chair (Commissioner Farah): Then what happened? There is something which you are not saying clearly. Was the former President paid his money by the new President?

Mr. Edwin Kiprono Kimetto: Those shareholders who had added the shares to the tune of Ksh547 million got their money refunded.

The Presiding Chair (Commissioner Farah): What is happening now?

Mr. Edwin Kiprono Kimetto: Right now, they want to sell the New KCC to a private developer without involving members.

The Presiding Chair (Commissioner Farah): They want to do so without consulting their members. Is that possible?

Mr. Edwin Kiprono Kimetto: It is possible. That is why it is on the paper.

The Presiding Chair (Commissioner Farah): But there are courts? Currently, we have a new judiciary. We have a new Chief Justice. Why can the farmers not now immediately go and put an injunction?

Mr. Edwin Kiprono Kimetto: That is a good advice. But with this Commission---

The Presiding Chair (Commissioner Farah): We are going to take another six months hearing people and writing our reports. However, if it is very urgent, farmers may decide to see the new Chief Justice. That is the only way they can fix a quick solution. We, as a Commission, will back you up. We have to do something before the new Constitution is fully implemented. That is where the farmers' fear is. Now I understand you very well. What would the Government do then? They want to sell this to the new developer so that they can recover their fully-injected money. How much did the Government inject?

Mr. Edwin Kiprono Kimetto: Ksh547 million.

The Presiding Chair (Commissioner Farah): So, the Government wants to recover its Ksh547 million from the new person who wants to buy it. The Government can recover the money in other ways. My advice to you is a quick court injunction.

Mr. Edwin Kiprono Kimetto: Thank you very much, we shall do that.

The Presiding Chair (Commissioner Farah): But as a Commission, we would work for the KCC and even KGGCU that people unscrupulously want to take advantage of the new Government after elections. Elections are around the corner so that they can benefit and put poor farmers in a problem. So, thank you very much, I have understood you. I do not have any other question for you.

Leader of Evidence, have you prompted me to receive the documents presented by Mr. Kimetto? Has it gone into the records of the Commission or do you want to make a new claim? You can stand down the witness and bring the next.

(Mr. Daudi Salim Sawe took the oath)

Mr. Tom Chavangi: Dear Commissioners, this is the memo from the Supreme Council of Kericho County Branch and it will be presented by Mr Salim Sawe. Mr. Sawe, for the record, kindly tell the Commissioners your name again.

Mr. Salim Sawe: My name is Salim Daudi Sawe.

Mr. Tom Chavangi: Where do you live?

Mr. Salim Sawe: I live in Kericho town.

Mr. Tom Chavangi: You have presented a memo to the Commission about the Muslim community in Kericho. Kindly, in a brief presentation, state to the Commissioners what the memo is all about.

Mr. Salim Sawe: The memo is strictly about the problems that the Kericho Muslims face in this county.

The history of the Muslims in Kericho as part of Kenya is replete with exclusion, neglect, deprivation and marginalization. Being the minority group, there is no assurance and safeguards that their interests are protected or taken care of. In the Kipsigis council, out of the total number of nominated leaders, there is less than 1 percent Muslims. Lack of employment opportunities for the Muslims in Kericho has left a big margin of the Muslim population to live in slum dwellings due to low income that they generate from small scale businesses. That is exasperated by further lack of land documents in those Muslim dwellings as many do not have title deeds that they can use as collateral for bank loans. The matter is further compounded by the fact that eligible youth do not have Identity cards (IDs) that can help them secure employment.

On the political side, the political life of the Kericho Muslim has been a heart-rendering tale, especially for the Muslim youth who have never got the opportunity to vote in either one or two consecutive General elections due to lack of IDs. The community lacks representation due to its lack of numbers, which play a vital component in politics since they cannot vote one of their own to any political office. They lack representation at any government level or committees ever since the formation of such committees despite the fact that we integrate well with the other communities. We do not have representatives in CDF, District Education Board, District Development Committee, District Management Units, District Agricultural Board and many other committees. When it comes to political appointments, members of the Muslim community do not feature anywhere despite participating actively in elections and vying for political seats. There are no longer council nominations for the Muslims and, therefore, this creates a vacuum in the council's leadership among a community which should otherwise enjoy representation as a marginalized group.

The issue of terrorism has always been linked with the Muslims despite such activities happening very far away in the Middle East or elsewhere. When any terrorist act occurs, the Muslims become victims of circumstances and are stigmatized locally with nicknames such as Osama, Fazul, and Arafat. Those names are used to identify local Muslims. Yet terrorism is not a religious issue but a personal behavior, especially related to the people in the Middle East.

On the social front, Muslims in Kericho have been marginalized through discriminatory practices, for instance, in the acquisition of IDs. Muslims have been subjected to vetting by committees to determine their citizenship even in cases where both parents are citizens. That vetting has no policy directive and, therefore, even those committees should not exist in the first place. When the forms are sent to Nairobi, they are rejected by officers in the Ministry of Immigration and Registration of Persons without valid reasons. They ignore that they had been vetted by the local committees in the first place. Areas inhabited by Muslims lack social infrastructure development. Muslims live without sewerage and that is a concern to all the communities in the area.

The delay and lack of registration of Muslims has hitherto denied them an opportunity to participate in the economic opportunities that could generate wealth locally and elsewhere. For instance, the Nubian community, who are all Muslims, came to Kericho in

1927 during the colonial times to provide administrative assistance to the colonial government. But notwithstanding the fact that they have lived in Kericho for more than 84 years, they have not been integrated adequately in the local employment opportunities such as recruitment in the security apparatus of the State, including the military, internal security and even in the provincial administration. It is also a known fact that when it comes to issues of recruitment, the residents who are Kipsigis are given priority as was the case during the last police recruitment.

Land in Kericho remains a recipe for chaos. Muslims have hitherto been living under temporary occupation licenses and letters of allotment. That disenfranchises them; they cannot take bank loans and use title deeds as collateral since they do not have any. In addition, Muslims were not included in the various settlement schemes such as Chepsir, Kaptenet, Fort Tenan, Elegelel, Marmanet and Endonai. That has denied them the opportunity to reside in decent areas, leaving them in slums.

What we expect from the Commission and Commissioners--- I am very happy because have a new Constitution--- I am sure you will help us. We want you to also assist us. We want the following to be addressed by the Commission so that Muslims can be better placed to adequately participate in building this nation. The Muslims should be given a chance in governance and get opportunities in relevant committees in this county. The Muslims should be allocated a nomination slot in the county's representation, which I think is being catered for by the Constitution.

Social amenities and infrastructure should be accorded to slum areas so that the residents can acquire decent living standards. Vetting should be mandatory to all Kenyans if necessary but discriminating against the Muslim community through this process should be abolished. Muslims who reside in Kericho should be treated and accorded resident status like the locals so as to get equal opportunities once it comes to national recruitment exercises for the armed forces, police and teachers. The Nubians do not have a district of their own and so they cannot be asked to go to their district and be recruited into the armed forces; they should be integrated wherever they live. The Muslims affected by the post election violence should be compensated just like any other Kenyan. The Muslims should also be issued with title deeds to substitute the temporary occupation licenses and letters of allotment they currently possess so that they can use them as collateral in the banks.

Mr. Tom Chavangi: Thank you, Mr. Sawe for your precise presentation. Would you wish to submit this document as an exhibit?

Mr. Salim Sawe: Yes.

Mr. Tom Chavangi: Commissioners, I pray that this document be admitted as an exhibit.

Mr. Salim Sawe: I just want to add that we are not accusing anybody. All we are saying is that the system has been against us in all aspects. The system has been playing against

us and it has been discriminating against us. We want to be included in the process of implementing the new Constitution and be integrated in the society so that we can live as other Kenyans.

Mr. Tom Chavangi: The new Constitution is very clear on the Bill of Rights and some of the issues that you have mentioned will actually be tackled as the Constitution is being implemented. However, the issues you have mentioned are clear and so I will ask you a few questions.

What are the levels of stigmatization as a result of, for instance, terrorism? How do you face that stigmatization?

Mr. Salim Sawe: Sometimes, it hurts very much when something has happened elsewhere and as you are walking on the streets, you see people murmuring and talking. So, you feel excluded. You cannot be comfortable when people backbite you.

Mr. Tom Chavangi: So, you want to say that the level of stigmatization is very high.

Mr. Salim Sawe: The level of stigmatization is high, particularly in towns.

Mr. Tom Chavangi: What is the process in appointing people into the boards? For instance, CDF, is there a particular procedure through which certain marginalized groups should be represented in those boards or it is just random nominations?

Mr. Salim Sawe: It has been random but the Nubians and the Muslims who live in Kericho have been here for a long time and if they are going to talk about representation, these people should have a representative in the boards because they have the numbers. In Kericho, we have a population of about 3,000 Muslims, who do not have a representative to air their interests. Furthermore, our customs and rituals are different from those of Christians. For example, when people get aid, most of them are Christians. So, they bypass the Muslim community. We are not integrated and we are not part of them. So, we are left out. Aid is for everybody. If we are represented in these committees, then we will be able to decide what is good for the community.

Mr. Tom Chavangi: In terms of council nominations, how is it conducted?

Mr. Salim Sawe: I think it is done by the parties. But there are those who are nominated by the government. We feel that because our numbers are goodn we should have a representative in the council. We are not able to get an elected representative because of the numbers and so we feel that somebody should be there to air our views when it comes to issues affecting the Muslim community.

Mr. Tom Chavangi: In terms of youth and their Identity cards, you said that there is a vetting committee. Is the vetting committee for Muslims who apply alone or for other religions also?

Mr. Salim Sawe: It is only for Muslims who apply alone. For example, I might be a Muslim and my brother is not a Muslim. If we go to get an ID, they would want to vet me and my brother would get an ID. I do not see the difference. I am a Kipsigis and he is also a Kipsigis. So, why should I be vetted as a Kipsigis? If I take my children, the chief would tell me to take them for vetting yet he knows my father and my grandfather. He would want my children to be vetted. What is the significance of that vetting?

Mr. Tom Chavangi: It is true Mr. Sawe that those are high levels of discrimination. I hand you over to the Commissioners to ask further questions.

The Presiding Chair (Commissioner Farah): Thank you very much. Ambassador do you have anything?

Commissioner Dinka: Thank you Mr. Salim for your testimony. You have presented the challenges faced by your community very well and precisely. I empathize with some of your suffering. I am hopeful, however, that with the new Constitution and the county structure of government, your problems will be solved very soon. I think the issue of title deeds is not only applicable to the Muslim community but also to most of the people who talked to us. Yesterday, for example, we were told that your own community, the Kipsigis, do not have title deeds yet they have been making requests throughout the decades and nothing has happened. I am hopeful that with the county government system coming into office, that will be facilitated quickly. The sad thing about the issuance of IDs, we have heard similar complaints in a number of places, particularly in North Eastern Province, where they have the same problems. Some of them are Muslims and others Somalis. Yet others are Borana, who live on both sides of the border- and when they live on the border, of course, there are some problems that the government has to take care of. It is understandable but it should not take a whole generation. If your father had an ID or Kenyan citizenship, there is no need to vet you or your children just because you are a Muslim. Particularly, if your brother is a Christian and you are a Muslim and you go to get a passport or employment, he gets his ID immediately and you are vetted by all kinds of people. That is sad. I think it should be stopped and the Commission is ready to assist with the problem. We will deal with it in our investigations and in our reports. One thing I would like to say is the need not to emphasize the fault lines in society. It is good to speak of what unites you as your society or community rather than what divides you.

The infrastructure and system that is not working in your village is the same in other villages as well. But you are only responsible for your case. For instance, there is no reason why a Nubian whose great grandfather or grandfather came 84 years ago should still be called a Nubian. He is a Kenyan and speaks the language and he probably does not speak Nubian. There are things that make you very angry but I think it is good to be very calm and look at the issue calmly and see the difficulties that other people around you also face, not just the Muslim community. Since you are less than 1 per cent in Kericho as Muslims, I would suggest that it would be better if you stream your problems into the problems of the larger community so that you find solutions like infrastructure, community development, education and so forth.

Thank you very much. I really have no question except the nomination part. In the nomination part, you have to look at the country or the district level but representation cannot be seen at the lowest unit. It has to be looked at in the county, district and national levels. So, it is important to look at that. We had, for example, the women seats in Parliament and in all institutions and it has generated a lot of controversy and court cases. So, a nominated position will make the position very difficult because then you are violating the democratic principles of coming to office. You as a community leader must share what you have heard from us with your community so that they will look at it and review what they think are their challenges.

Commissioner Ojienda: Thank you, Mr. Sawe, for your presentation. I just want to take up what Commissioner Dinka has said on representation under Chapter 11 of the Constitution of Kenya, 2010. We have a new framework in a devolved system that brings Government to the people and of course minorities stand to benefit in the new dispensation. However, inclusivity is impossible if a community or a people does not participate or demonstrate interest in the political system. If, for instance, you do not belong to a political party, it is unlikely that any party leader or person will come to your house to look for you to nominate you. The Muslim women, who are minorities, must also take political entrance and show interest and participate in the process. Otherwise, no one will look for them and nominate them because there are many forms and types of minorities. I think the ball is also in your court and you must play your part. However, I agree with ambassador that you cannot discriminate against a community through vetting of persons. I think that is a challenge you could have taken up even to the doorsteps of the courts. That is a straight forward matter and discriminatory and there is a clear provision for that. If your rights are violated and you sit and watch, then you will keep them violated. You must stand up and resist the violation of your rights. The Constitution provides those rights because you are a Kenyan like any other.

I realize that you are 1 percent but you have given us a list of people in your memorandum. I do not know whether there are only thirty Muslims in this county or if there are more.

Mr. Salim Sawe: There are more.

Commissioner Ojienda: The Nubians have kept their identity and want to be referred to as Nubians. Amb. Dinka said that there is some need for some level of integration to get to the level where you can get representation. That is because if you are a minority and you decide to keep away from the other people, it becomes difficult to be part of the process. I think they will also need to do that. The Leader of Evidence is a Muslim, the Chair is a Muslim and I can say no more.

The Presiding Chair (Commissioner Farah): Thank you very much, Salim Daudi Sawe. I just wanted to add to what the other Commissioners have said. This Commission is handling the issue of the Nubians. We will hear them in Nairobi and we are aware that during the colonial time, they were brought from Sudan to for the colonial powers. It is

not only the Nubians; many other Muslims were brought into Majengo because the colonial government did not want any African, whether Christian or Moslem, who was enlightened. By being enlightened, you were challenging their rule against cheap labour and exploitation. I think you should belong to an interdenominational faith where we have seen it work very well in Nairobi and other counties where we have held hearings. However, we have got presentations by the Kisumu Muslims and we are going to hear the Muslims in the Majengo area of Nairobi that was neglected. The Nubians have also given us various statements and Kericho was one of the ones they initiated. Therefore, the Commission will look at how the Nubians suffered for the 47 years we have been Independent through exclusion, through taking of their land in Kibra known as Kibera. The land has been encroached on. Even though the Prime Minister is the MP for the area, they still feel marginalized and I think he is aware. The Commission is aware of that but as the other Commissioners have said, if you are a Kipsigis Muslim and you are living in Kericho, I do not see why you should be discriminated against by the other Kipsigis. Your problems are two; one is legal and the other, political. The legal one is addressed by the Bill of Rights, the political one; you have to participate as Commissioner Ojienda has said.

Thank you very much for your presentation. Your memo has been noted and we will take it up from there.

Mr. Tom Chavangi: Commissioners, Mr. Sawe wanted to introduce the Chair.

Mr. Salim Sawe: I would like to introduce Alhaji Abdullahi Kiptanui who is the Deputy Chairman of the Supreme Council of Kenya Muslims and also our member here in Kericho.

The Presiding Chair (Commissioner Farah): That is an influential man who can bring in a lot of change through the new Constitution. Leader of evidence, unless you have got documents to give, you may stand the witnesses down.

(Mr. Stanley Cheruiyot took the oath)

Mr. Tom Chavangi: Mr. Cheruiyot, for the record, kindly tell the Commission your name.

Mr. Stanley Cheruiyot: My name is Stanley Michael arap Cheruiyot.

Mr. Tom Chavangi: What do you do?

Mr. Stanley Cheruiyot: I am a business man. I was one of the residents in that area and we were moved. So, we live in a different place. I represent the victims in that area. The lady to my right is one of the victims, who up to now still have problems. So, I decided that she would accompany me so that we can give her evidence before this Commission. Her name is Margaret Kilel.

As I sit here, I am one of those who were evicted from Shauri Yako Kedowa. That is where I was born and my parents had lived since the 1940s. I believe that they came to that place after being evicted from their ancestral land, which my father used to tell me was in the Mau Forest. It was called Soita Boiboi. As the elders of the Boiboi clan would prove, they were evicted from Mau Forest and then moved to Kedowa. They settled here and were employed by the white settlers. My father was a driver for Major Backson, one of the white settlers. He settled here and we were born here and this is the place we called home. It is the only place we knew. There was a cattle dip where we used to take our cattle. We lived here all this time and went to a school that had been constructed by a white man called Major Backson. It is known as Kedowa Full Primary School. It was constructed either in 1952 or 62, I am not sure. We lived without any fear and any time the white men sold their land as they were leaving, very many other people migrated to the area. That is why it was called Shauri Yako because anybody who came from the white farms and could not buy themselves a piece of land came to live here.

In June 1988, we got a one-week verbal notice that we had to move from the area. This information was brought by the area Assistant Chief whose name was Jackson Cheruiyot Chepkwony. He went round every household at night. I do not know what time he started but by the time he got to my place, it was about 6 a.m. I am not sure what day of the week it was. We were all ordered to go to the field for a meeting. At the meeting, he said that there had been an order that we have to leave that place without being given any alternative settlement. We were all shocked because we had no alternative settlement. When one week passed, demolition of our homes started in the second week. The demolition was supervised by a District Officer called Hassan and the administration police. I remember there was a house that was demolished while an elderly woman was still inside and she was injured. She was later taken to the hospital by the same people.

The people who were evicted from that place have lived with a lot of problems. They now live with neighbours and with people they are not related to and many families have been torn apart. Their children's education has been affected and they now live in poverty. They do not have any educated family members because of this problem. Yesterday, when I came here, I had to pay my own fare plus for other people in order to attend this sitting. The two women seated here live where their daughters are married because they do not have any other place to live. These two ladies are called Esther Sinei and Cecilia Tebsabei Mayua. I would like to urge them to stand whenever they are. They have had to live where their daughters are married and in those homes, they live in abject poverty because the daughters are married to poor families. There is another lady called Teresia and I would like to urge her to stand up. I asked her to accompany me as well. She is a Luo by tribe but she was married into our tribe but her husband died. She also lives in abject poverty and she has had to rent a house from the time we were evicted until now.

It is very bitter for me to speak about all this because we are living a life of abject poverty and we do not know why the Government decided to evict its own citizens born in that same area without giving them alternative settlement. After that, the Londiani Council decided to sub-divide the area into plots. The most agonizing thing is that after the area

was sub-divided into plots, it was allocated in a way that we do not understand because the original inhabitants of the area, I being one of them, did not benefit from the plots that were eventually given out.

For those that were allocated the plots, I believe there was no balloting and when it came to announcing, we were told to go and apply for the plots. We paid Ksh2, 440 each to apply for the plots. We just saw people developing the plots and the unfortunate thing is that it was in the same area where we had lived and buried our dead. Whenever the developers wanted to build, they could sometimes find buried bodies. I would like to ask the Commission to visit the area because there is one plot that will serve as an example where one person wanted to build but as they were sinking the foundation, they got the remains of a human body and decided to look for the owners of the body and found them. When they found them, they asked them if they could buy the plot but because the family could not buy, the plot has remained there. The developer built on one side of the plot and decided to abandon or ignore the other area where the dead body had been found.

I would not like to continue but our only appeal to this Commission is that it should intervene on behalf of all the victims so that they are given alternative resettlement. At least six members of my family were buried there. My grandfather was buried in 1962 and my paternal grandmother was buried in 1964. My uncle was buried in either 1966 or 1967 and my other uncle, in the early '70s between 1972 and 1974. My father's last brother was also buried in the same area in April 1986. My appeal is for the Government to take this as an important issue. It is an abomination to move far away and abandon our dead and we know that it is extremely hard for anyone from our community to go and bury somebody at the public cemeteries.

There was a young man who I thought was here; when his father died, it was very difficult to bury him because it was just after we had been evicted. The young man's family lives in abject poverty and all the people here have been accommodated by well wishers. When his father, the late Chepng'anu died, they had to go and ask a neighbour to allow them to bury him on their land. If the Commission would like to prove this, I am quite willing to take you on a tour to show you the place where the dead man was buried.

I would like to reiterate our appeal that the Government attaches importance to this so that the bodies of our dead are respected. Even if the plots have been allocated, the allottees should be restrained from interfering with the dead bodies. This should be preserved and respected. I would also wish the Government to decide to take some land--even if it is 20 acres-- as a memoriam for those who lived there before. As I remember, in 2005, after Kibaki took over leadership on June 23rd we were visited by a nominated councilor, Charles Njenga, from Molo who had come to look for me but did not find me. He left a letter at my business premises and I called him and he came in and gave me some notice saying that the Government had sent him to verify those who had been evicted from Shauri. I felt very happy and I thought the Government had finally remembered us. When he came, I gathered all the people and he said that arrangements should be made for him to visit every village where the evictees had gone to live among friends and relatives and I did that.

I did not see any fruit of the programme or meeting. I just overheard that internally displaced persons (IDPs) who did not have land had actually been allocated some in Molo, land that had previously belonged to Hon. Njenga Karume. When I heard that, I thought there was hope. So I went to meet the councilor again to find out the progress and to notify him that we were aware that some IDPs had been resettled. He said that he would get back to me. He kept telling me that he would contact me but later I discovered there was discrimination. This is because those who were given accommodation were people from one ethnic group. The rest of us were left, ignored and forgotten. As prove of the report from councilor Njenga, I have a letter that he wrote to me with the procedures he had advised us to follow in order to identify the evictees because they had spread all over the place.

When I heard about the Commission, I went to the media together with Robert Ng'eno and he arranged for a meeting in July and asked them to mobilize the victims. Robert actually did come on 30th July and managed to speak to the people. That is all I would like to say and I believe that we followed the procedure and that was the time we drew the memorandum that is before the Commission. This was the programme that was followed to try and trace and identify the victims. This is a copy of the notice and I would like to present it as part of the evidence. It is a known fact we were victims of eviction and, at some point the government would like to consider us and accept that there was discrimination in resettling the IDPs.

Mr. Tom Chavangi: I will ask you a few questions then I will hand you over to the Commissioners. Why were you evicted? What were the reasons for your eviction from Shauri?

Mr. Stanley Cheruiyot: I cannot explain why we were evicted. We were just woken up very early one morning by the assistant chief, Jackson Chepkwony, who mobilized us for an urgent meeting and we were given a one week verbal notice.

Mr. Tom Chavangi: Where do you live now?

Mr. Stanley Cheruiyot: I still live in Kedowa but it is a business premise that the council has allocated me.

Mr. Tom Chavangi: So just for clarification, where you are living now is where your family graves are or is it at Shauri, where you were evicted from?

Mr. Stanley Cheruiyot: I live at the trading center and Shauri is where the family graves are.

Mr. Tom Chavangi: You said you bought these plots in Londiani then some people came and built on those plots.

Mr. Stanley Cheruiyot: Maybe you did not clearly get me but what I meant was that after people were evicted, the council came and subdivided the land into plots and announced that people should pay Ksh2, 440 to apply for the plots.

Mr. Tom Chavangi: Was this Shauri area demarcated by the council then sold to people?

Mr. Stanley Cheruiyot: Yes, it was distributed as plots.

Mr. Tom Chavangi: Where is this nominated councilor Njenga now? Where does he live?

Mr. Stanley Cheruiyot: He lives in Molo.

Mr. Tom Chavangi: Where exactly in Molo?

Mr. Stanley Cheruiyot: I know his house.

Mr. Tom Chavangi: My final question is about resettlement. You said that you were not resettled because you were from a particular tribe and another tribe was favoured. Which is this tribe that was favoured?

Mr. Stanley Cheruiyot: I can only say that because we did not get the plots that we should be resettled and we heard that people were resettled, we think that those who were resettled were only Kikuyu.

Mr. Tom Chavangi: Thank you very much. The Commissioners are now going to ask you some questions.

The Presiding Chairman (Commissioner Farah): Thank you very much, Stanley. I will now hand you over to the Commissioners.

Commissioner Dinka: Mr. Cheruiyot, thank you very much for your testimony. You said that in Shauri Yako area, which was divided, you bought a piece of land where you are now?

Mr. Stanley Cheruiyot: It is not that we bought. We paid an application fee of Ksh2, 440 and after the plots had been demarcated, it was people from other places who benefited. None of those that had been evicted from the area was given a plot and if you want to verify that, you can go to the council and you will know who were allocated the plots.

Commissioner Dinka: But you were allocated.

Mr. Stanley Cheruiyot: I have nothing in that area.

Commissioner Dinka: I am a bit confused now. The Ksh2, 440 you paid to get an allotment, was it not in that location where you lived before?

Mr. Stanley Cheruiyot: I have said that after people were evicted from there, the council demarcated the plots and announced that people should apply for those plots that had been hived off the land. We paid Ksh2, 440 to apply, not to buy.

Commissioner Dinka: You got a piece of land where you are living now. You are not living in an IDP camp?

Mr. Stanley Cheruiyot: I have said that where I currently do my business is where I live and it is a place where I got temporary accommodation. Those plots were all allocated to other people and it was not transparent at all. I am one of those who applied but I was not allocated and we were not invited to a balloting. People simply went and were allocated the plots.

Commissioner Dinka: The people who were evicted in 1988 by instructions from the DC Timothy Sirma, where are they located now? You said that some of them went into the Mau forest and some stayed with relatives. Is there a particular IDP camp in which they are found or they went to the mountains and created their own homesteads?

Mr. Stanley Cheruiyot: What I said is that that area is surrounded by several farms like Chemasian, Ndarugu and Chebiwor. Most of the evictees went to live with neighbours, friends and relatives.

Commissioner Dinka: When you said others vanished into the nearest Mau Forest and Tinet, have they been found?

Mr. Stanley Cheruiyot: Those who disappeared into Tinet just went there to try their luck because at some point, they were told that land was being allocated there. I think there was still discrimination in Tinet because yesterday I heard that when farms were given out in that area, we realized that those who were said to have been allocated were not the ones who were occupying the pieces of land.

Commissioner Dinka: In 1992, you said that again the impact of the ethnic clashes was very severe on your group. The cattle were killed, houses were burnt and property looted. When you said this, it gives the impression that they were living in one particular area and were victims of the 1992 ethnic clashes.

When you say that the impact on them was very severe, how was it that they were identified and negatively affected if they were living in the same place?

Mr. Stanley Cheruiyot: I believe that in that memorandum, there might be a bit of a mix-up. What I told the statement taker is that the biggest loss we made was when we were being evicted because we had nowhere to keep our property. Secondly, in 1992 as I

have told you, the area is surrounded by big farms like Cherur and one person who lived in Ndarugu lost cattle which were shot by armed policemen conducting an operation.

Commissioner Dinka: Now you are asking to be resettled? When Mr. Njenga took Ksh50 from each one of you for registration, did he give you receipts?

Mr. Stanley Cheruiyot: There were no receipts issued. He simply said that the money would facilitate his movement from one place to another.

Commissioner Dinka: Can you guess how many people actually paid the Ksh50 to Mr. Njenga?

Mr. Stanley Cheruiyot: I do not know but I am sure Njenga himself should tell us. I can only estimate how many people actually paid in the area I come from.

Commissioner Dinka: Has Mr. Njenga come back to you or your group after he took the Ksh50 from each individual?

Mr. Stanley Cheruiyot: He has never come back but I went to look for him, as I said before.

Commissioner Dinka: Would it be correct to say that probably he was just taking advantage of the suffering of these people and was doing nothing to get them resettled? Would that be a correct statement?

Mr. Stanley Cheruiyot: I would not understand if he had any plan to exploit our situation but I believe that the Government may have had a programme for resettlement. The only problem was that the exploitation came in the form of discrimination when the land was actually allocated. The Government did buy land from Hon. Karume in Molo and IDPs were being settled there and that is when I went to look for him (Cllr. Charles Njenga), wondering why we had been left out and all he said was that we should wait and that he would get back to me. To date, he has not.

Commissioner Dinka: Is that from 2003?

Mr. Stanley Cheruiyot: He came in 2005.

Commissioner Dinka: Now you are asking the Commission to help you to get an alternative settlement and compensation for your painful experience. Would you accept any alternative settlement irrespective of where the land is located?

Mr. Stanley Cheruiyot: We are ready to be resettled anywhere. The only plea is that the dead should be respected.

Commissioner Dinka: Thank you very much. I have no further questions. We have heard several stories from different groups and different communities which are very

similar to yours. I assure you that the Commission will consider them all very seriously, particularly about relieving your suffering by getting you resettled and some compensation and at the same time to protect the burial site of your ancestors. The Commission will take this into account in its investigation and in its report. I seriously truly empathize with the suffering of your group and community and I assure that we will take this thing very seriously.

Thank you.

Commissioner Ojienda: Thank you for your testimony, I will ask you three questions: One, did any of the evictees have title deeds to the land from which you were evicted?

Mr. Stanley Cheruiyot: None.

Commissioner Ojienda: What is your claim to the land in question?

Mr. Stanley Cheruiyot: I am not complaining about this place. I am telling the government to consider us because we are Kenyans and we cannot live in abject poverty yet the State is supposed to take care of its own people.

Commissioner Ojienda: You have not understood my question. You and other families lived in Shauri Yako after your fathers had come from the Mau and you stayed there for a while before you were evicted by Chief Joseph Kosgey and the DO Londiani, Mr. Hassan. My question is, do you have anything that yourself, the lady who is sitting near you or the ones you asked to stand, can use to show that you owned the land in Londiani from which you were evicted? Anything showing that you lived there?

Mr. Stanley Cheruiyot: I think in my submission I mentioned that when we were growing up, I remember that there was an area where we used to take our cattle to the dip and there is a landmark that shows that there were people who lived here before.

Commissioner Ojienda: Mr. Cheruiyot, that is the problem because you will just be treated like any other IDP. You have no specific claim or anything to show that you belong to that particular parcel of land. Under the law, there was need to serve you with an acquisition notice if they were expanding the town council of Londiani to take your plots and you would have been all compensated. Were you compensated?

Mr. Stanley Cheruiyot: There was no compensation at all.

Commissioner Ojienda: That is the point I am making; that you start claiming a right from a basis and the basis is that, "I have an allotment letter, this is my land, I have this that belonged to this place, it is surveyed, this is the plot number in my father's name," then you start from there.

My third question was going to be, if you had answered one and two in the affirmative; are the plots in question developed? After the balloting that was done, people paid Ksh50 each, you did not get a plot yourself, have those who were given land developed it?

Mr. Stanley Cheruiyot: It is a very small place. I do not think there are more than 30 houses out of the 400 plots that were allocated.

Commissioner Ojienda: My suggestion to you would have been under the new framework as a community if you had anything you would have file a case under the new Constitution. Your community land rights were violated and rights were taken away. In the interim, even before we recommend, we would have done that but the lack of anything showing ownership means that you should be considered for resettlement like any other person who was evicted from land. Do you have anything that shows that for a long time, your relatives were buried on that land? Do you have burial permits that were given? Do you have any claim to those bodies that were buried in that area?

Mr. Stanley Cheruiyot: I believe and I remember that I have a letter from the chief regarding the burial of my uncle, who was buried in April 1986, though I did not bring it here.

Commissioner Ojienda: By having those records from different families, you could actually help to show that you had lived in that place for a time. Do you have the letter from the chief who took part in evicting you people?

Mr. Stanley Cheruiyot: I said that we were given one week's notice verbally.

Commissioner Ojienda: Thank you very much, Mr. Cheruiyot. I think we will deal with your case alongside the other cases of persons who were displaced and we will make appropriate recommendations. As you have said, some of the members of this community disappeared and it is not clear where they are.

The Presiding Chair (Commissioner Farah): Thank you very much for your presentation. All my questions have been exhausted by my fellow Commissioners. I have no further question except to promise you that we will take up your case together with that of the IDPs. Leader of Evidence, please stand down this witness and bring in the next witness.

Mr. Tom Chavangi: Thank you very much, Presiding Chair. This is our second last memo and these are the gentlemen and ladies who requested to be heard today from the Chepchabas community.

The Presiding Chair (Commissioner Farah): I have recognized the Chepchabas community from Konoin Constituency.

(Mr. Christopher Ng'eno took the oath)

Mr. Tom Chavangi: Thank you very much, Mr. Ng'eno. You come from the Chepchabas community from Konoin Constituency, what are you within the Chepchabas community?

Mr. Christopher Ng'eno: I am a leader in the community.

Mr. Tom Chavangi: You have talked about historical land injustices. Kindly present the memo before the Commission.

Mr. Christopher Ng'eno: Before I present, my request is to the Commissioners to have this map. The map shows the present position of Chepchabas community and the extent of land occupation by James Finlay, formerly known as the African Highland Produce Company Limited. This is where Chepchabas community lives and the dotted one is the proposed land by James Finlay. You can see that the proposed land is surrounding Chepchabas community.

Mr. Tom Chavangi: Would you wish to present this as an exhibit?

Mr. Christopher Ng'eno: Yes. I am happy for being allowed to present this memo. Let me go through it. The memo is addressed to the TJRC and let me start with the introduction. This memorandum embodies the historical land injustices expressed by our community since the arrival and occupation of our land by James Finlay Kenya Limited.

Up to 1988 our people lived happily tending livestock, growing crops, hunting and gathering wild fruits. After 1920 life has never been the same again. Our land was grabbed systematically, seized parcel by parcel, starting from the north-most part close to Kericho. This was completed in 1950. Our land was leased out to the African Highland Produce Company Limited, now James Finlay Company Limited, for 999 years against the declared provisions of Lord Devonshire of 1923. This was an agent of the British Queen who had made it clear that only idle and unoccupied land could be leased out to white settlers or colonialists. Our inhabitants were eventually made to work as resident laborers. Support document for this is attached.

That was the beginning of Chepchabas community being reduced to undeserved squatter status. After Independence on 12th December 1963, the community had to be squatters for 12 years at James Finlay Kenya Limited. I consider that economic injustice. We were not allowed to create wealth during that period.

In 1975, Finlay Kenya Limited carved out about 500 acres of land at the southern part of the land and moved all the squatters who were then spread out in the tea estate; they were crowded together at a settlement scheme known as Chepchabas (*map attached*). The community paid for seven acres but were given two and a quarter acres. Discriminatory employment policy was also there.

Chepchabas' expectations from TJRC are; James Finlay gives the community the remaining five acres, makes compensation for the loss of their livestock, the Commission

to direct James Finlay to provide clean piped water to Chepchabas community and the orphans who were not given a chance to buy the two acres to be compensated. There is a map showing the extent of the African Island Company Limited, now James Finlay and the present position of Chepchabas village. That has been forwarded.

There is proof of purchase of two and a quarter acres and it is contained in the attachment. There is also proof of arrested labourers. There is also the certificate of title showing the lease period. There is also proof that Chepchabas was spread all over the James Finlay land.

In conclusion, it is our hope that our grievances will be heard. We would like to live like other Kipsigis communities in the very near future. We have given out the names of the contact persons from the Chepchabas community. They are Christopher Ng'eno, William Mosonik and Peter Cheruiyot.

Thank you.

Mr. Chavangi: Thank you very much, Christopher. Would you like to present this memo as an exhibit plus all the attachments?

Mr. Christopher Ng'eno: Yes.

Mr. Chavangi: Kindly admit this memo as exhibit.

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

Mr. Tom Chavangi: Commissioners, I have no questions for this witness.

Commissioner Ojienda: Thank you very much for the presentation. I think the Commission will look at the documents you have presented and make an appropriate recommendation. I have had the benefit of looking at the annexure that you have presented. I have seen a title in the name of Chepchabas Co-operative Society and if your rights obtain as you claim, we will have no problem making a recommendation.

Thank you for standing for your community as their advocate.

Mr. Tom Chavangi: Presiding Chair, we have the last memo for the day. It is one and a half page. It is from the Kaitet Ranching and Farming Community Society from Sotik.

The Presiding Chair (Commissioner Farah): We do not have it.

Mr. Tom Chavangi: It is one of those groups that were protesting yesterday evening, so they have just presented this now. The rest like the Kunyak, I am told, are the witnesses we had in Kisumu. They are the same coming before this Commission. We have tried in vain to get them but unfortunately we could not. The same applies to Kaptagich original squatters. We have called the chairperson, Richard Kiplang'at, on telephone number 0724-858157 but unfortunately we could not trace him too.

Commissioners, I seek your guidance in dispensing these two memos. We, however, admit them for purposes of our records and further investigations.

The Presiding Chair (Commissioner Farah): If we cannot find them then admit the evidence for further investigations and proceed to call the last witness.

Mr. Tom Chavangi: Most obliged.

(Mr. Julius Kimitei arap Boses took the oath)

Mr. Tom Chavangi: Julius, for the record kindly state your name.

Mr. Julius Kimitei arap Boses: My name is Julius Kimitei arap Boses.

Mr. Tom Chavangi: Turn to the memo and kindly present it.

Mr. Julius Kimitei arap Boses: The first thing I would like to say is that we bought our farm in 1968. I am before you this morning because of the problems caused by the PC. He has taken away the land we had bought. We bought the land on 20th August 1968 through trust fund. We sold milk to Sotik KCC and also sold 200 cows every year to raise this money. In 1973, we sold 200 cows; in 1974 we sold others and paid a total of Ksh70, 000. Later we paid Ksh12, 616. In 1975, we sold another 200 cows to the Kenya Meat Commission (KMC). In 1976, there was drought and we sold more cows to add to the loan we had. Each member contributed three bulls and we paid Ksh120, 000. In 1980, we sold 500 cows to KMC and sold pyrethrum to the Pyrethrum Board of Kenya (PBK). We also sold maize. In 1981, we completed repaying the loan worth Ksh200, 023.

After completing paying the loan on 26th, 27th and 28th January in 1982, the former Kericho DC, Mr. Harry Wamubei came. We stayed for a while and heard that he had sold the farm to a different community of 363 people. He sold our farm and the people paid him some money. He took Kshs3, 162,000 from those people. He banked the money in Acc.No.001784 in Kisumu so that we could not know what was going on. On 14th December 1982, the DC came back and sold some of the 11 heifers that were on that farm at a cost of Ksh55, 553.

On 30th November 1983, he again sold 538 cows at a cost of Ksh343, 950. On November 20th he sold the manager's house and the garage that we had at Kshs30, 000. We stayed for a while until 1993 when he withdrew the money that we had in the account. This was Ksh699,300, which was in Barclays Bank, Acc.No.301/20234. He withdrew another Kshs3, 000,612 at the Co-operative Bank of Kenya, Kisumu Branch.

They came to the farm in 1984 and wanted to refund the money. Every person received Ksh2, 400. He forced members to sign against that amount. We worked out the amount of money he withdrew from the bank and it was Kshs1, 444, 000. Now, it seems that we lost Kshs1, 212, 000. He took free of charge our investment, including our money, yet he was

not among the investors. He forced us to sign for all those things. Later, when we wanted to air our grievances, he turned us away.

We went to Nairobi to complain, but we were sent back to the PC. When we went to the DC, he sent us to the courts, where we were given file No.149 of 1987. This was at the Nakuru High Court. We had an advocate, Mr. Olale Cheche.

In 1999, the DC subdivided the farm again. He got a piece for himself. We had a DO at Bomet whom he appointed as the chairperson. When the farm was subdivided, he took plot No.547 and sold it to Micah Ng'erechi. Also, the Assistant Chief, Mr. Moses Rop took plot No.462. He then sold it to Mr. Edward Rotich. There is also another person I call the Senior Settlement Officer (SSO), Mr. Isaya Nyamache, who was also given a piece of land, plot No.426. He sold it to another lady called Chemutai Lang'at.

The fourth person was the chief called David Kiplang'at Ng'eno. He also had plot No.425. He gave it to his driver who is called Reuben Tanui. He had two plots. The other one was No.348. This was sold to Mr. Joseph Kirui. The person who was employed as the manager of Mr. Joseph Ng'eno also had a piece of land No.443. He gave it to his wife claiming that she was among the members. Out of all those people, we are 234 who are original members. We have a register.

After we saw the case was taking long, we went to Nairobi CID headquarters. We were given a letter to take to the provincial headquarters. When we went to the DC's office, we were referred to the DC's office, Bomet. We were sent by Mr. John Maritim, who was the head of CID Provincial office in Nakuru. The DCIO at Bomet sent us back to Nakuru, claiming that our case had been sent there. At Nakuru, Maritim was not there, but we found a different person by the name Mwangi who was a Kikuyu. We tried to inquire about our case, but he pretended he was not aware of it. After some time, our leader by the name Kosgei Kirui got sick and died. I took his place because we had been together. I request the Commission to assist us get our farm back.

That is all.

Mr. Tom Chavangi: Would you wish to admit this document as an exhibit?

Mr. Julius Kimitei arap Boses: Yes.

Mr. Tom Chavangi: I will ask you a few questions then I will pass you to the Commissioners.

Where do you and your 234 ranch members live now?

Mr. Julius Kimitei arap Boses: We stay together on a farm without unity among members. Other people came to invade the land.

Mr. Tom Chavangi: So what you have told this Commission is that your land was grabbed?

Mr. Julius Kimitei arap Boses: Yes, our land was grabbed and we have nothing. Even with the court order, he gave out the land.

Mr. Tom Chavangi: Do you say that the person who grabbed your land is called Harry Wamubei, the former DC, Kericho?

Mr. Julius Kimitei arap Boses: The person who grabbed our land is the DC and the SSO.

Mr. Tom Chavangi: What is the name of this DC?

Mr. Julius Kimitei arap Boses: The name of the DC is Harry Wamubei. The SSO is Isaya Namache. Even to date, there is a house he built there and wanted to call it *Kaitit* in Kalenjin. He was told not to use the name because he would be killed. The house is still there next to Sotik.

Mr. Tom Chavangi: For clarification, the SSO is called Isaya Nyamache. You also said that several times you went to the PC's offices in Nakuru, what was the name of the PC then?

Mr. Julius Kimitei arap Boses: He was Mr. Yusuf Haji.

Mr. Tom Chavangi: Did you get any assistance from this PC?

Mr. Julius Kimitei arap Boses: He told us to go to court. There was no other help that he gave us.

Mr. Tom Chavangi: Was he aware that it was the DC and the officer in charge of societies who had grabbed that land?

Mr. Julius Kimitei arap Boses: The PC knew that it was the DC who had grabbed the land.

Mr. Tom Chavangi: There were letters from the Provincial Criminal Investigations Officer (PCIO) Mr. Maritim to the District Criminal Investigations Officer (DCIO), Bomet for investigations to be conducted. Did you get any response from the DCIO, Bomet?

Mr. Julius Kimitei arap Boses: I was not successful because I was told that everything had been taken to Nakuru. When I went to Nakuru, I found a Mr. Mwangi. I wanted to make my claim but it seems he was not aware of what was going on.

Mr. Tom Chavangi: What is the name of the DCIO, Bomet?

Mr. Julius Kimitei arap Boses: His name is Mr. Manyala.

Mr. Tom Chavangi: Were you a signatory to these accounts that were opened by the DC and his people?

Mr. Julius Kimitei arap Boses: I was not a signatory and there was nothing to show that the account was still available.

Mr. Tom Chavangi: Thank you very much. I will allow the Commissioner to ask you a few questions.

Commissioner Shava: Mr. Chairman, sir, I would like to thank *Mzee* Boses for coming and making a very clear presentation. I also congratulate him for the way he has kept the records which have made the position very clear to this Commission.

Commissioner Ojienda: Thank you very much, *Mzee*, for the presentation you have made. I note that you have highlighted the gaps that existed in the administration of co-operative societies and the role of the Provincial Administration. I also note that corruption contributes to the systematic deprivation of members of co-operatives of their rights. We now have a new co-operative law. I am looking at the documents you filed in court, the role of the two advocates, Mr. Migiro and Mr. Cheche, the court order that was given, the sub-division that was done despite the court order having been given by Justice Rimita and Justice Nambuye. The members of the society can pursue this matter further and challenge the sub-division and claim their rights in the new dispensation. You can seek further counsel on the matter.

You have also spoken about acts of corruption on the members who were charged with the management of this land. We need to hear more from the DC, Bomet, Mr. Peter Ongwaya and maybe the PC. Thank you.

The Presiding Chair (Commissioner Farah): Thank you. I do not have any question for you. Leader of Evidence, could you step down the witness?

While the process of standing down the witness is continuing, I would like to tell members of the public that we had the following witnesses:- Mr. Edwin Kiprotich Kimeto, who presented his case very well on land and IDPs, Mr. Daudi Swaleh, who presented on behalf of SUPKEM, Mr. Stanley Cheruiyot and Christopher Ng'eno, who talked on land and IDPs and finally Julius, who gave us the sad story of a piece of land they bought in the 1960s but say was robbed from them. Now they are living without land and housing. We want to assure members of the public here in Kericho that the Commission takes these matters very seriously. Where there are investigations, we shall pursue with further investigations. If there are any higher authorities to consult, we will do so, especially the Ministry of Lands, Ministry of Co-operative Development and those in charge of societies.

With that, we come to the end of our public hearings in Kericho. We have no more witnesses for tomorrow.

Mr. Tom Chavangi: Mr. Presiding Chair, that is not the position. I had given you a note that we are having hearings tomorrow.

The Presiding Chairman (Commissioner Farah): Can I have the list, please.

*(The Leader of Evidence handed over
the list to the Presiding Chair)*

That means that we have some more cases. There are about four of them which we shall hear tomorrow after which we shall close our hearings in Kericho. I thank the members of the public for having attended today's sittings. We shall have a small break this afternoon. We shall resume tomorrow at 9.00 a.m. I thank you for attending in large numbers and showing a lot of interest in this Commission. We value your interest because it gives us more energy to pursue justice and ensure that we give justice to those who have not been able to get it through the Judiciary. That is why this Commission was set up. Thank you.

Leader of Evidence and officers of the Commissioners, I thank you for your hard work and working behind the scenes and ensuring that the Commissioners are well informed so that they can take their noble task of reviewing these cases to arrive at a just conclusion. Thank you once again. We have now adjourned.

(The Commission adjourned at 12.55 p.m.)