

10-21-2011

## Public Hearing Transcripts - Rift Valley - Kitale - RTJRC21.10 (Museum Hall Kitale)

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### Recommended Citation

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION HELD ON FRIDAY, 21<sup>ST</sup>  
OCTOBER, 2011, AT MUSEUM HALL, KITALE**

**PRESENT**

Margaret Wambui Shava	-	The Presiding Chair, Kenya
Tecla Namachanja Wanjala	-	The Acting Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Tom Ojienda	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya

**IN ATTENDANCE**

Chavangi T. Aziz	-	Leader of Evidence
Simon Njenga	-	Hearing Clerk

*(The Commission commenced at 10.05 a.m.)*

*(The Presiding Chair introduced herself  
and the other Commissioners)*

*(Opening)*

**The Presiding Chair** (Commissioner Shava): Ladies and gentlemen, welcome to these proceedings. This is the first day of our public hearings here in Kitale. The Commission is very happy to be here to interact with you.

The Commission has been proceeding with its work. We have covered the North Eastern region and Western, Nyanza and Mount Elgon regions. We are now proceeding through the Rift Valley. Today we will be holding our public hearings here in Kitale. Tomorrow we will also have a public hearing but that will be a special kind of hearing for women.

Before we proceed, I would just like to familiarise you with our ground rules. First of all, I request that we all switch off our mobile phones, so that we do not disturb the proceedings. So, I will just give you a minute to ensure that all our phones are off.

We ask that when a witness is testifying, you accord that witness respect, attention and silence. You may hear things with which you agree. You may also hear things which are contrary to your experience and with which you do not agree. In those circumstances, we ask that you maintain silence and allow the witness to testify.

While we allow photographs during the proceedings, we ask that when a witness is speaking, you refrain from using flash photography or moving around in the room in front of the witness trying to take a picture. We ask that you take photographs from where you are.

With that, we are ready to proceed. So, I will ask the Leader of Evidence if there are any counsel here.

**Mr. Tom Chavangi:** Thank you, Presiding Chair, and your fellow Commissioners. We have a counsel by the name Muthomi from the law firm of Mohammed Muigai, who is representing Mr. Lazarus Sumbeiywo.

We have another counsel by the name of Emmanuel Too, in respect of whose presence in the hall I have received a note.

Thank you.

**The Presiding Chair** (Commissioner Shava): Thank you, Mr. Chavangi. So, we have Mr. Muthomi from Mohammed and Muigai Company Advocates, representing Gen. (Rtd) Sumbeiywo. We also have Nathaniel Too who---

**Mr. Tom Chavangi:** Nathaniel Too was invited to also attend sessions today.

**The Presiding Chair** (Commissioner Shava): Who is he representing?

**Mr. Tom Chavangi:** He is representing himself. He is here in person.

**The Presiding Chair** (Commissioner Shava): Thank you. At this juncture, I will then ask you, Leader of Evidence, to avail your presentations from counsel.

**Mr. Tom Chavangi:** Yes, I have had deliberations with the counsel for Gen. (Rtd.) Sumbeiywo and he had some preliminary remarks that he wants to present to this Commission.

**The Presiding Chair** (Commissioner Shava): Counsel, please, go ahead.

**Mr. Thiango Muthomi:** Thank you very much, Presiding Chair. I have a small application to, first of all, make, that we were notified that these proceedings would commence today at 9.00 a.m.; the Leader of Evidence has mentioned to me that there may be logistical challenges as to our being heard today. Regrettably, I had confirmed a class that I facilitate at the University of Nairobi. I made all the travel arrangements with a flight. Therefore, with your kind permission, I am praying that, perhaps, we be slotted in your programme at an earlier time. I have not seen your cause list yet, but if possible, I would kindly plead to be accorded an earlier hearing time.

The Leader of Evidence mentioned to me the possibility of us, perhaps, being heard in Nairobi, and I mentioned to him that whereas that may have the benefit of convenience, it might deny the people who matter most – the locals of Kitale, where the lobbying is – the benefit of hearing what the witness has to say. In those circumstances, we pray that we be heard and we be allocated the earliest possible time.

**The Presiding Chair** (Commissioner Shava): Thank you, counsel. Leader of Evidence, what is your advice?

**Mr. Tom Chavangi:** Thank you, Presiding Chair, and counsel. It is true that I have had deliberations with counsel about his client's presentations today. However, it has been our tradition to hear people invited on the second day of our sessions. Counsel and his client were actually invited to attend the hearings today, so that they could hear from the witnesses who come from Sitatunga. The first day is for them to hear the testimony from the Sitatunga people, and the second day is for counsel and his witness to respond to what the witnesses will have said. So, it is on those grounds that I told counsel that we might not be in a position to hear them.

He also mentioned to me, in the same way he has stated to the Commission, that he has a flight at about 6.00 p.m., and that he needs to be in Eldoret at around 5.00 p.m. So, there was that debate as to whether to hear them here or in Nairobi, but I told him that it would be in good taste that we hear counsel and his client in Nairobi, because the Commission can also use its powers to transport the witnesses who are here in Kitale to Nairobi, if that is the case, in relation to them hearing what the counsel's witness will have to say in Nairobi.

That is my application, Presiding Chair.

**The Presiding Chair** (Commissioner Shava): Thank you, Leader of Evidence. How many witnesses have we slated to hear today? What is on our cause list?

**Mr. Chavangi:** Our cause list has 11 witnesses – six in public and the rest in-camera.

**The Presiding Chair** (Commissioner Shava): Thank you, Leader of Evidence. I will just confer with my colleagues.

*(The Presiding Chair conferred  
with the other Commissioners)*

Leader of Evidence, after conferring with my colleagues, the decision of the Commission is that it does not look as if it is possible for us to hear this witness today, given our procedure and the number of witnesses already on the cause list of today. So, we will hear the witness at a later stage, unless there are any other preliminary issues that counsel wishes to raise. So, please, notify counsel in good time of where and when we will be able to hear them.

**Mr. Tom Chavangi:** I am most obliged, Presiding Chair.

**The Presiding Chair** (Commissioner Shava): Are there other counsel here present?

**Mr. Tom Chavangi:** Presiding Chair, I have just received a note from Dr. Nathaniel Too, who has just given documents in relation to purchase of land at Liavo Thirteen. Our rules state that we need to receive these documents seven days prior to the hearings. So, I want to believe, Presiding Chair and your fellow Commissioners, that we shall not be in a position to listen to Dr. Nathaniel Too at this juncture because I have just received his documents. We need to study them and make a presentation to him at a later date.

**The Presiding Chair** (Commissioner Shava): Thank you, Leader of Evidence. The Commissioners are agreed that our procedures should be observed. As such, we will take the seven days to study the documents, after which we will then notify counsel of when they will be able to be received.

**Mr. Tom Chavangi:** Thank you, Presiding Chair. With the consent of Counsel, Mr. Thiangol Muthomi, I spoke to our former Chair, Mr. Kiplagat, who is in Nairobi. I have told him that there will be no need for him to attend the hearings today because we are finalising our public hearings today, and he has categorically requested that we give him enough notice in regard to the next hearings, where he can come and present his case before the Commission. I and Counsel are agreed on that request.

**The Presiding Chair** (Commissioner Shava): Counsel, are you agreed?

**Mr. Thiango Muthomi:** That is the position, Presiding Chair.

**The Presiding Chair** (Commissioner Shava): Thank you, Leader of Evidence. We will go as per that suggestion.

We can now proceed with our first witness.

**Mr. Tom Chavangi:** Most obliged, Presiding Chair.

**Mr. Thiangol Muthomi:** Presiding Chair, with your kind permission, I have just received instructions that our client would be happy if he got the hearing notice in advance, because he is a man who travels quite a lot, and who would not want to miss the session.

**The Presiding Chair** (Commissioner Shava): Leader of Evidence, I hope you have taken note of that request and we hope that Gen. (Rtd.) Sumbeiywo and his lawyer will be supplied with the notice in good time.

**Mr. Chavangi:** I am most obliged, Presiding Chair.

*(Mr. Francis Chemwor arap Psumuken took the oath)*

**Ms. Kimani:** Mr. Chemwor, how are you today?

**Mr. Francis Chemwor arap Psumuken:** I am fine.

**Ms. Kimani:** You are before us today for the purpose of making a memorandum presentation on the issues facing the Sabaot people in Kitale. Is that the position?

**Mr. Francis Chemwor arap Psumuken:** Yes, it is.

**Ms. Kimani:** Before we proceed, please, tell us your full names once again for the record.

**Mr. Francis Chemwor Psumuken:** My names are Francis Chemwor *arap* Psumuken.

**Ms. Kimani:** What do you do for a living?

**Mr. Francis Chemwor arap Psumuken:** I am a peasant farmer.

**Ms. Kimani:** Please, proceed and make your presentation.

**Mr. Francis Chemwor arap Psumuken:** My presentation pertains to the historical injustices that the Elgon people, who are now known as the Sabaot, suffered from 1893 to 1907.

**The Presiding Chair (Commissioner Shava):** *Mzee*, please, repeat those dates, so that we can be sure.

**Mr. Francis Chemwor arap Psumuken:** I am saying that the Sabaot were evicted from Trans Nzoia, which was initially called “Katelin”, by our colonial masters, from 1883 to 2007. The first eviction was in 1883 and evicting has continued up to 2007.

It is 79 years, ten months and eleven days since our grandparent, who was the chief of the great Trans-Nzoia, *Mzee* Kesis *arap* Kemei and seven elders, gave evidence here to the colonial masters pertaining to the legality of ownership of this great Trans-Nzoia Region. The elders who accompanied him were: *arap* Tekwenyi, *arap* Legunon, Chebolion, *arap* Chemwor and *arap* Songura, Kapkugoi, Chesari Goroi.

We are the Elgon Maasai community and our community has six dialects. We have the Bong’omek, Somek, Mosopishok, Dorobo, Ogiek and Kony dialects. That was initially called Elgony or Elgon Maasai, and the Sapinyi Dialect.

The first colonial masters to reach this area came in 1883 and the first European to come here was Joseph Thomson. Later, after him, came Bishop Harmington and John Khaki and once they arrived at this place, they were welcomed by our great grandparents and were taken to the mountain region.

In 1885, our problems began. Then, there was one meeting that was called the Berlin Conference and all the evidence is here. That is when the colonial masters were partitioning and scrambling for Africa. When they were partitioning and scrambling for Africa, it was not said that Africa did not have its natives. That is how Kenya was with all its communities - with the Trans-Nzoia being one of them and this is where we were - the Elgon Maasai or the Sabaot.

In 1895, the borderline for Trans-Nzoia was in Naivasha. We have the evidence which I can present here.

In 1902, Mt. Elgon was governed by Nyanza under the British East African Protectorate and I have the evidence which I can submit here.

In 1903, the Europeans came and formed one thing which came to be called a colony. So, Kenya became a colony of the white men and in 1910, the white settlers came and started surveying all pieces of land in Trans-Nzoia. I have evidence to present to the Commission on this matter.

When the white men came to Trans-Nzoia, they changed whatever they managed to be theirs except rivers, and this map shows what they changed. All the rivers that belonged to Trans-Nzoia remained and whatever they were able to transfer and change, they did. They managed to transfer our homes and they also evicted us. But they were not able to change everything because the trees, the rivers remained the way they were.

When I say I am Elgon Maasai, that is it and we are a community comprising six clans. Our elders moved away and we still know the road that we followed and we know where we came from. From Egypt we came to Habesian and we crossed over and came to Lake Rudolf. From there we came to a dispersal centre. All the houses belonging to the Kalenjins were in one place known as Kurtabala Hill. It was given the name Kurtabala Hill because it was a long time ago, and there was one type of bird called crow in English which used to be at that hill.

People from our community went to look after animals and others went to play. There were people from the community of Sengwer who came and talked to them and said: "Please, there is a mountain that is about to split and you are requested to move away from this place." The warriors who were playing there just ignored that warning and that is when the mountain split and fell down. Those who were able to run away were able to escape and they came into Embobuti; those who remained died and their blood was shed there.

If you go to Mt. Eketabeti where our people came from, you will hear sounds of people speaking inside the mountain and those people who remained there; the Sengwer. The Sengwer are people called Cherengwen. The Nandi, Kipsigis and the Tugen were able to migrate to where they are right now. The Terik and the Tachoni went where they are right now.

We came from Egypt following Kerio Valley and because commissions come just once in people's lifetime, we must remember people's identity which is now distinct. There were people who used to ask: "Who are you?" They showed us the way and they were known as the Edol community but they became extinct between the Keiyo and the Marakwet.

When the white men came to Trans-Nzoia, they found one District Commissioner who was the first District Commissioner in Trans-Nzoia ; Colonel John F. Walkings. The white settlers sent him here to become the District Commissioner after the Governor stopped coming from Eldoret because initially, they were coming from Mumias.

When John F. Walkings came to this place as the District Commissioner, he came and sent us, the Kalenjins, away from here. When the District Commissioner, Col. J.F. Walkings came, the population had increased and they could not really get the exact number of the people. Our elder Kesis *arap* Kemei, who was the chief in Kitale then, surrendered Kitale to Walkings in 1912.

We say that this is our native land or we are attached here. We do so because when the white people came, they witnessed that we had ten streams that surround Kitale. These ten streams are where our elders used to perform traditional functions pertaining to our customs. These streams are found at: next to the airstrip, next to late Wasilwa, at the showground, at St. Josephs, next to Kitale club, inside the Prisons, Kenyatta Stadium and another one inside this place. So, they were ten streams.

They wrote and identified the streams to belong to the Elgon Maasai and they justified the same. There is one white man who came and said, "*Katali*" and as you know, according to our Elgon Maasai customs, we sing a song as Maasai community. We greet people as the Maasai people and we construct our houses in our own way; even the house you are seeing there is ours. We construct the huts as the Maasai. The white man came and instead of knowing who is who, he thought everybody was Maasai and he could not distinguish people and the name "*Katali*" to be used in Kitale.

When the white men came, they cut down all those trees till they became extinct, therefore destroying our ecosystem and environment. We will accuse them for that because we used to stay with some Maasai who were evicted from Kipkaren. Our neighbours around this place were the Uasin Gishu Maasai, who were the Elkabotie, Sirian, and Moitan before the Purko came back and the Nandi evicted them.

When the white man discovered that that had happened, he said: "*Ekwelee*" which in Maasai dialect means a plain valley that does not have trees. So, Ekwelee, Chepkoilel, Kachelel were termed to be Katalili Chepkoilel and it became a great region and Katalili turned to be Kitale District Centre that was governed by Kesis *arap* Kemei.

The white man could not change caves; so all the caves belonged to us and they could also not change the rivers. Where River Nzoia begins is called Chepkitale and it was next to Kerio farm. River Nzoia comes down towards Sitatunga Kaptelich and that is where it

meets rivers Moiben and Mosin and they all go downstream. As the water falls down they produce a heavy sound and when they produce that sound, it comes out as: “Enjoi” and they turned the sound as “Nzoia” which later became the river’s name. That river belongs to us and what they changed was the name from “Enjoi” to “Nzoia”.

Endebes are trees that sprout out and have some fruits which fall down and are fed on. The name Endebes was got from the trees. The names of the white people who came and grabbed land have been listed and they were over 700 names. We have given the names of those who stayed up to the recent times to the Commission and they are in our memorandum which I am going to present here.

There is one mountain and it has a cave that gives our history here. It is called Kasela which is within Endebes and that is our historical place. It has a history which has been given in the memorandum. The mountain fell down and killed people. If you go to that place, you will hear people speaking inside the caves.

In 1914, after finishing the survey work, without caring, they used the Kiswahili word “Elgony kwenda”, meaning the Elgony to go away. That was the genesis of our eviction from Trans-Nzoia in 1914. The evidence of Elgon Maasai’s eviction from Trans-Nzoia and the names of the elders who were evicted are in this memorandum. The elders went to Uganda and others went to Burubujo; some went to Arusha and others to West Pokot and some were forced to go to the mountainous regions and to date, they are in that place. They are called Ogiek and they are still staying in the caves without settlement.

In 1920, Kipkemoi began losing control so the African leadership wavered and the white men started governing us.

On the 8<sup>th</sup> of October, the same year, the white man conducted some census and the number of the Elgony had diminished as the number was reducing. So, we remained a few people; we were only 7,708 people - the natives who were of the Elgony origin. It is in history that the Elgony were fearful people and this why they were evicted by the white people. By then they were 182, so history says that we were very weak.

From River Mosin to River Nzoia the place is called Kubogor and the other side there is River Sengwer. Sengwer River used to extend up to Embobuti and Kobonet Forest. It also extended and bordered the Soy and the Uasin Gishu Maasai, up to the Kerio Valley. That is the piece of land that belonged to Sengwer.

**Ms. Emily Kimani:** We appreciate the history that the witness is giving us; he has also presented to me very many annexure and a very well detailed memorandum on the issues that he has raised.

Mr. Chemwor, kindly, let the issues rest; give us the recommendations because you have already provided us with a well detailed memorandum.

**The Presiding Chair** (Commissioner Shava): Thank you Leader of Evidence. I would also ask the witness to move to the recommendations in view of time and the fact that he has provided us with very good and detailed documentation which we shall study.

**Mr. Francis Chemwor Psomuken:** Thank you, Madam Presiding Chair. I would wish to continue and talk about my neighbourhood before I go to my recommendations.

There were some people who used to kill us and steal our cattle; these were the Karamajong people. They just came next to Kasolet and that is why we have the names Kasolet and Keringet and Murkijit. Those are the names of the Karamajong who used to come and take away our cattle.

The Pokot really enjoyed when we were being beaten; we could send our elders to go and call the Pokot who were outside the lake. On the other side we were bordering the Maasai and on the southeast we bordered the Tachoni. We also bordered the Uganda people. That is when the white people came and joined us at the North Kavirondo where we had a few Luhyas in North Kavirondo; the Bukusu. We called them Kutony; those who belonged to the North and at the other Lwakhaka borderline we had the Ferguson; those are the people who bordered us.

The moment the white man came, I witnessed, we verified and I agreed that the areas I have mentioned were the way they are.

Secondly, I have evidence here with me to show that we, the Elgon Maasai, when we were being evicted by the white people from here, we had not given them everything. What had been given was just a little bit.

This letter shows how, in 1934, the Elgony were removed by the Provincial Commissioner (PC) then, and he gave a recommendation on how we were to be compensated and nobody has done it.

We have evidence about the recommendation by the white people for eviction of people from other places and it was gazetted as native trust land where people could live in; especially the Dorobo. Their piece of land was gazetted and made for natives after they lost Trans-Nzoia.

**The Presiding Chair** (Commissioner Shava): You have a lot of documentation as I can see. Perhaps, I will just give you a minute or two to organise your documents so that you can get to the recommendations because what the Commission really wants to know from you - and we do not want to go away from here without hearing from you - what exactly are the current problems that you would like the Commission to address, and in what way would you like us to address them?

So, as you organise your documents, I would just recognise the presence, firstly, of the District Commissioner for Kitale, Mr. Wilfred Kinyua, and also the Commissioner, Dr. Tororei, from the Kenya National Human Rights Commission.

Thank you very much.

*Mzee arap* Psomuken, you are doing a very good job of giving us the history of the Elgon Maasai. That history is going to be very valuable for our records. This Commission is mandated to look into violations that occurred between 1963 and 2007. We recognise that you cannot just start from 1963; we need to know the history before then. We very much appreciate the good work you are doing but, be that as it may, we will really like you, to please, just let us know. We would like to hear from you what the issues affecting your community right now are and how this Commission can help because we are here to work for all communities of Kenya.

Please, let us know now what are the issues and your recommendations.

**Mr. Francis Chemwor Psomuken:** Thank you, Madam Commissioner. I have finished because it was just an introduction pertaining to the Elgon Maasai and our chief. Madam Presiding Chair, since we attained our Independence, we struggled with the intention of getting out the white man so that Africans could get self rule and govern themselves. But since then, the Elgon Maasai Community has not benefitted; we are still on the roads! After the white man left Kenya, he recommended that the Government should form a Ministry of Lands and Resettlement; instead of that, the leaders then could not resettle us because they were having some intention on our pieces of land and those of marginalised people and the minorities. This is because they were to put some resettlements there; they ought to have resettled the indigenous people. That was the misdeed they did to us in 1963.

In 1963, they were sympathetic and after leaving they compensated the loss they made so that it could be given to the people. Therefore, they gave out Kshs6 million as compensation but that money did not reach us; that information is included in the memorandum I will present. We tried as a community by writing to the colonial government for compensation because they affected us in a way and they responded by saying that they gave the Government of Kenya \$100 million. So, you should help us by asking the Government for that compensation money.

We remember that when Kenyatta became the Prime Minister of Kenya, he promised Kenyan communities that, all the communities that were affected during colonial governance would be given back what they lost in terms of pieces of land. But for us, since that time, we have not been given pieces of land nor resources that were distributed; we have not got anything up to now.

I have a document here which I can hand over to the Commission as proof of that. What we want is restitution. I mean, things should be given out equally on resettlement. We need the Government of Kenya to give us compensation through the promise of the colonial Government.

The survey that was made here should be redone so that we can get equal share of the resources around this place. I remember when President Moi took over the reins of power from Kenyatta, he maintained what used to be there. He brought in the well connected people and gave them our pieces of land and we have not benefitted in any way.

We demand that we get land at the Teldet Farm; I even have documents to that effect. Later, the Dorobo people were chased away and they went back to the forest.

We are requesting the Commission that the Dorobo who are at Kaptega should be brought back to their pieces of land; and other minority communities who were staying there should come back to Teldet and Sigeto which initially used to be called Kamurundu.

The pieces of land which we want again should be on the 99 year lease. We demand our rights to be given back to us, and the people who were settling on those pieces of land should be given their land so that they can struggle with life because, maybe they do not have other places to go to.

We also demand reparation. We want to the Government to construct schools so that we can also get provincial and national schools. They should construct hospitals for us. Finally, we need to be compensated; the white colonial masters and the Government of Kenya should pay us.

Our brothers who have big chunks of land are not living there rightly; they should live there rightfully and peacefully. But other pieces of land should be given to the Elgon Maasai and other pieces of land that will remain should be given to other poor people. We should not discriminate against them but, they should be considered.

**Ms. Emily Kimani:** Thank you very much for that, Mr. Chemwor; for that rich history of the Elgon Maasai. Now, you have used several attachments and also two memoranda which I would request the Chair to admit as part of the evidence the witness has given voluntarily.

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

**Ms. Emily Kimani:** Thank you. I have no questions for you.

**The Presiding Chair** (Commissioner Shava): Leader of Evidence, what about the other documents submitted?

**Ms. Emily Kimani:** It is the memorandum and the annexes thereto.

**The Presiding Chair** (Commissioner Shava): The memorandum and the annexes are all admitted.

**Ms. Emily Kimani:** Thank you very much, Chair.

**The Presiding Chair** (Commissioner Shava): We now ask Commissioners whether they have any questions to ask the witness, starting with Commissioner Ojienda.

**Commissioner Ojienda:** Thank you, Presiding Chair. I have just a few questions to ask Francis Chemwor. Francis, from the results of the last census, do you recall how many the Sabaot were? You seem to have courage in numbers and history.

**Mr. Francis Chemwor Psomuken:** Madam Presiding Chair, the population as indicated on 18<sup>th</sup> October, 1920, the Elgon Sabaot were 7,708. The last one of 1931, the census that was done, up to 1934, we had a population of 35,200.

**Commissioner Ojienda:** I will ask this question because of your recommendation on the redistribution of land. This is a very serious recommendation because it will include the implementation of some of the provisions in the current Constitution on land and the injustices that have been done to communities. I want you to just tell us, in what way have these communities suffered land injustices, apart from the evictions? You came from the first eviction? Please, just point out specific issues.

**Mr. Francis Chemwor Psomuken:** Thank you, Madam Presiding Chair. What has really faced us is lack of health care and we have lost people.

**Commissioner Ojienda:** I am talking about land injustices; it is about land!

**Mr. Francis Chemwor Psomuken:** It is lack of land that contributed to poverty.

**Commissioner Ojienda:** Do you consider the Sabaot community as having suffered land injustices? Has your land been taken away and by whom, because you want redistribution for those who do not have land?

**Mr. Francis Chemwor Psomuken:** I have understood you, Commissioner Ojienda. As I had stated earlier, the person who took our land was the white man and the second was the Government of Kenya. Even most recently, the Government itself brought our communities from Nakuru District to come and settle in Endebes and they did not consider the people who are here. There were violations of land and since Independence this community was not given land. The Government brought people from different places.

**Commissioner Ojienda:** Just listen to my question. Are there any specific farms which were taken away from you and which you consider as originally settled by the Sabaot and which you want to recommend in your redistribution recommendations to the people of this area; mention any particular farms?

**Mr. Francis Chemwor Psomuken:** The ones that we want are the Sikhendu farms like Kamurundu, Teldet, Kuboroa, Suam and Agricultural Development Corporation (ADC), and those are farms with expired leases.

**Commissioner Ojienda:** Thank you very much. I just want to ask the last question. Is there any of these farms to which you have referred that is not occupied or that is available and vacant?

**Mr. Francis Chemwor Psomuken:** Madam Presiding Chair, the ones that I have mentioned, it is very true that there is nobody inside them.

**Commissioner Ojienda:** In the letter that you wrote to the British Government, you said that at Independence, the then Prime Minister, the late Jomo Kenyatta, was given money for purchase of farms and paid out the white settlers who were leaving. Out of the sum that you say was paid, do you know of any particular amount of money, or is there an indication of how much of that money was intended for the purchase of land in this region?

**Mr. Francis Chemwor Psomuken:** I remember very well that when this money was paid to the Government of Kenya, it was taken to a bank, the Agricultural Finance Corporation (AFC). So, when it was taken to AFC, the people who did not belong to our community were given loans and they used the loans to buy the chunks of land; our own land! That money was taken to the AFC and a few people benefitted; nobody from amongst us benefitted.

**Commissioner Ojienda:** Thank you very much. Just as I wind up, a word of advice. Under Chapter 5 of the Constitution of Kenya, a National Land Commission will be created. This Commission will afford you, and your community, an opportunity to address the issues of historical injustices and you will, therefore, have another opportunity to deal with those particular issues of historical injustices. I just want to encourage you to put your documentation together; I commend you because of your clarity in the recommendations that you have made, which are to the point and which will help your community.

I thank you very much.

**The Acting Chair** (Commissioner Namachanja): Thank you very much, Francis, for articulating the issues concerning the problem of land among your community members. I just have one question for clarification. Are there members of your community who are totally landless or who are squatters?

**Mr. Francis Chemwor Psomuken:** Thank you, Acting Chair. We belong to the six clans of the community and I personally, and the Elgon Maasai, have really undergone--- The history is that the Sabaot were identified in 1964 after realising that there were some communities that came from outside and grabbed our pieces of land; these six clans that form the Sabaot Community do not have pieces of land.

**The Presiding Chair** (Commissioner Shava): Thank you very much, Mr. Chemwor. I have no questions for you. I think you have been very clear. We would like to thank you

for presenting us with that very rich history, because one of the purposes of this Commission is to enable Kenyans to write their own history. As you have pointed out, it has been written for us by other people who did not really understand what it was they were writing or talking about, because they did not really know us. So, expert testimony such as yours is very much appreciated and will enrich our records. As Commissioner Ojienda has said, there will be forthcoming a National Land Commission in this country, but we want to assure you that on our part, the information which you have given us, as my colleague has said--- The recommendations that you have presented will form part of the historical record of this country which will be in form of our report. I hope that will also empower you to go forward with what it is that you are requesting. We will be making the necessary recommendations.

So, we thank you very much, for coming here today.

Leader of Evidence, we have no further questions. Please, stand down the witness and call the next witness?

*(The Presiding Chair introduced the Deputy Mayor,  
Kitale Municipality, Cllr. Mzee Pius arap Kauka)*

**Ms. Emily Kimani:** Madam Presiding Chair, our next witness is Witness No. 4 in the cause list.

*(Mr. Andrew Kaino Chemweno took the oath)*

Mr. Chemweno, how are you this morning?

**Mr. Andrew Kaino Chemweno:** I am fine, Madam.

**Ms. Emily Kimani:** Kindly, for the purposes of the record, tell us your full names?

**Mr. Andrew Kaino Chemweno:** Madam Presiding Chair and Commissioners, my names are Andrew Kaino Chemweno.

**Ms. Emily Kimani:** Mr. Chemweno, what do you do for a living?

**Mr. Andrew Kaino Chemweno:** Now I am a farmer.

**Ms. Emily Kimani:** You are seated before us today for the purposes of presenting a memorandum on the historical injustices faced by the Marakwet Community.

**Mr. Andrew Kaino Chemweno:** Yes, Madam.

**Ms. Emily Kimani:** If you can kindly tell us the issues facing the Marakwet Community and also the recommendations you have to present.

**Mr. Andrew Kaino Chemweno:** Madam Presiding Chair, first, before I tell you the issues, let me define who a Marakwet is.

The Community of Marakwet consists of about six groups by name Palmo, Pendo, Sambirir, Sengwer or Cherangany and then Dorobo or Ogiek.

Now, Madam Presiding Chair and Commissioners, the issues concerning the Marakwet, first of all, concern land alienation. In the memorandum, we started by giving a historical background of how the Europeans arrived in this region. In 1902, under Charles Elliot, who was a Commissioner in charge of settlement schemes, Marakwet land was alienated in Trans Nzoia and Uasin Gishu. Later, there was the creation of Marakwet Reserve, and all Marakwet population was crowded on the hills and in the escarpment. After Independence, this land that was taken away by the *Wazungu* was never reverted back to the Marakwet but, instead, it was allocated to other communities from 1964 to date. This, Madam Presiding Chair, is detailed in the memorandum.

The second issue, Madam Presiding Chair, concerns the boundary. Before the coming of the Europeans, Marakwet territory extended as per the map attached - Map 2 on page 6 - and then it was given out to other communities as explained in the same map.

The third issue, Madam Presiding Chair, concerns forestry. The displaced Marakwet Community by the colonial government into the forests was later evicted as explained on pages 13 to page 22. This caused a lot of suffering to the Marakwet. Up to now, you hear about people being evicted from Embobut Forest; this was the cause of the whole problem. The evictions, by now, have been done 22 times and some of the Marakwet have letters allowing them to live inside the forest.

Madam Presiding Chair, the fourth issue is extra-judicial killings. These were political injustices and raids by Pokots - explained in the memorandum - and these were quite a number. They took place for many years under the eyes of the former Government. One of the farms Marakwet would have been given is the Duke of Manchester Farm, sometimes called Milimani Farm. The report on this is on page 33.

The sixth issue, Madam Presiding Chair, concerns Chepsiro Farm. This was bought by Marakwet Group and they have had that problem since then. The explanation is on page 33 and we would like this Commission to look at it and see how they can assist this group, so that they can own this farm. There is a memorandum there also which has been written concerning this issue.

The other issue, Madam Presiding Chair, concerns Chebara Dam. There are people there who have not been compensated enough. Most of them were compensated, but there are a few who were not compensated. There are some institutions there which were displaced and allocated new sites in the forest land. To date, forest de-gazettement has not been done, nor forest excision to sanction the legality of the possession of the title deeds. In view of the Forest Act, 2005 you realise that it is quite difficult to give out forest land. So, we foresee that these institutions are going to have problems if action is not taken

now. Our appeal to this Commission is to recommend a course of action for these institutions to acquire title deeds.

Madam Presiding Chair, near the dam we had a problem because some people drowned in it. For example, Timothy Kimutai Kiplagat, who was a student at Chebara Primary School in 1996, from Chebyen Division, drowned there; Edwin Kipkore Kipchumba, a student at Chebara Primary School also drowned there on 4<sup>th</sup> March, 1996. He was also from Chebyen Division. The problem was that this dam was not fenced off and the people around that area were not given water; that caused the problem.

The other issue, Madam Presiding Chair, is displaced people from Kapsowar. This is explained on page 29. These people were displaced to create land for the development of the district headquarters. These people were displaced from Kapsowar in 1994 to pave way for the construction of Marakwet District Headquarters. They were moved to Chebara Forest land, which had not yet been de-gazetted or excised for them to have legal title deeds. We request this Commission to seriously take note and recommend appropriate action to protect these people from anguish and suffering in the hands of uncommitted Government agencies. Their names, plot numbers and acreage are indicated there. This case has taken a long time; since 1984 up to date, these people have had a lot of problems.

Madam Presiding Chair, there are other issues in the memorandum, for example, concerning--- They are mentioned as far as positions in this Government are concerned. For a long time, we have not had ministerial posts, Permanent Secretaries or whatever other posts. So, we have been sidelined for a long time; the Marakwet people feel that they have not really got their rightful share of the national cake.

Also, Madam Presiding Chair, the Marakwet Community is complaining of heavy use of ammunition against the community in Cheptegot Farm and Kimumu in Eldoret, which resulted in multiple miscarriages by women. There was also loss of property and life. The Marakwet Community lost their properties during the post-election violence. There were breakages of shops, kiosks and also lives were destroyed during the period. For example, how do you exist among other communities, for example the Kisii Community, when they caused a lot of harm to the Marakwet? This was in north Kisii, near Kapcherop. Before the post-election violence, the Marakwet Community was never allocated Government resources such as bursaries. After post-election violence, the Marakwet Community was allocated the resources from the Government in the form of Constituencies Development Fund (CDF).

Now, the Kisii Community used abusive language against the Marakwet Community, and other communities were issued with arms, irrespective of their ethnic groups. Concerning the issuance of arms to some communities, the Government has allegedly issued small arms to post-violence prone areas, which are occupied by non-Kalenjin communities. Examples of such areas are Mitombili, Kiptoi, Keta, Karara, Kapsara, Bonde and Munyaka; but has excluded the Kalenjin Community from getting arms.

Issuing of identity cards is done in a biased manner against the Kalenjin Community, especially in Trans Nzoia. It takes about six months to one year to get an identity card here in Trans Nzoia, while in other areas it takes one to two weeks to get an identity card. We appeal to the Commission to find a lasting solution to this problem.

Madam Presiding Chair, our recommendations are as follows:-

- i) The Marakwet boundaries to be reviewed and adjusted according to the original boundary, which should be established and proper compensation paid.
- ii) Land from which Marakwet people were unfairly displaced be reverted back to them.
- iii) The Marakwet people demand that the body of the late Chelang'a, a student at St. Antony, Kitale, whose burial was done without the body, be returned. This is a taboo in Marakwet culture. Likewise Mr. Tungwa Kisang's arm was amputated and it should be returned.
- iv) Victims of arrests and torture like Mr. Tom Chelawa, an old man who is here with me today, Mr. Sylvester Yator, hon. Francis Mutwol and others, should be compensated.
- v) The Marakwet Community requests this Commission and the Government to de-gazette the colonial boundary of 1990 that separated white settlers to pave way for full and autonomous Marakwet County. This will enable the Marakwet Community to delink from Keiyo Marakwet County as per the new Constitution of 2010. This will enable the Marakwet County to reclaim our lost territorial boundaries.
- vi) We have land where Marakwet people were unfairly displaced; this land should be established and reverted back to them. There is a list of the *shambas* there.
- vii) The Marakwet public utility, Chebor Agricultural Training Centre which is clearly in Marakwet, should be transferred back to Marakwet and the dispute be brought to an end. All public utilities which benefit people should not be demolished and the Marakwet people should be exempted from any rental charges.
- viii) The Marakwet County should get a certain percentage of revenue collected from forest harvesting or any other activity done in Marakwet Forest.
- ix) The displaced victims during the creation of the district headquarters at Kapsowar to be properly compensated.
- x) Internally Displaced Persons from all areas in Marakwet be resettled.
- xi) Any dammed water in Marakwet should benefit the locals and the county government. The Marakwet people are not really benefitting from the dam in Chebara, and we hope that after the establishment of the counties, they will be able to benefit.
- xii) The Government to do an environmental impact assessment on Chebara Dam and address negative effects immediately.
- xiii) The Government to set up a national school, a district hospital, a Government college and constituent public university in Marakwet.

Madam Presiding Chair, the Marakwet people have not had these facilities and we are requesting to be assisted.

- xiv) We also have Marakwet professionals whom we feel should be considered for senior Government positions.
- xv) The Marakwet people should be given first priority in distribution of the equalisation fund.
- xvi) We also have a problem with infrastructure like our roads, which should be given priority in terms of tarmacking and upgrading.
- xvii) The Marakwet should benefit from carbon credit as a result of the forests that they have conserved for so long. The size of forest is 38 per cent of the area of Marakwet land. That is the largest percentage found in the country. So, the residents of Marakwet should be able to benefit from this forest.
- xviii) Electricity lines as in other parts of the country should be extended in Marakwet.

Madam Presiding Chair, that in brief is what is contained in this memorandum by the Marakwet Community.

Thank you, Madam Presiding Chair.

**Ms. Emily Kimani:** Thank you very much, Mr. Chemweno, for that very candid presentation of the issues and your recommendations. You have furnished me with a very detailed memorandum and the annexure thereto. Do you wish that the same form part of the Commission's records?

**Mr. Andrew Kaino Chemweno:** Yes, Madam Presiding Chair.

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

**Ms. Emily Kimani:** Now, Mr. Chemweno, I have a few questions from your presentation. You have talked about Chebara Dam. How many people were evicted for the establishment of this dam?

**Mr. Andrew Kaino Chemweno:** I think the list is there, if you allow me to look at it.

*(Mr. Chemweno perused the memorandum)*

They were about 31 people.

**Ms. Emily Kimani:** You said that some were compensated while others were not; about how many were compensated or given alternative land?

**Mr. Andrew Kaino Chemweno:** All except about four.

**Ms. Emily Kimani:** Now, in your presentation before us today, you have talked about conflict between the Marakwet and the Pokots, the Marakwet and the Kisii; being a

member of the Marakwet Council of Elders, have there been any initiatives to reconcile these communities?

**Mr. Andrew Kaino Chemweno:** Yes, we have been meeting, but we have not done much on that issue. Our leaders have also met; we, as elders, have also met and I hope we shall still meet.

**Ms. Emily Kimani:** What are some of the issues that are unique to the Marakwet women?

**Mr. Andrew Kaino Chemweno:** Pardon?

**Ms. Emily Kimani:** Could you kindly tell us some of the issues facing the Marakwet women?

**Mr. Andrew Kaino Chemweno:** Marakwet women are hard working, but they have not got a chance of getting key positions in this Government. We have good leaders among them.

The other issue is circumcision of girls. Now, this issue has been handled by our leaders, especially our hon. Members of Parliament and also the elders, but we still feel that we need to push it harder in order to convince our young men about the bad effects of this practice.

The other issue is the education level of our women; it is still low and it requires a lot of assistance so as to move them up.

**Ms. Emily Kimani:** Thank you very much, Mr. Chemweno, for that very good presentation. I have no further questions for you and now hand you over to the Commissioners.

**The Presiding Chair** (Commissioner Shava): Thank you very much, Leader of Evidence. This time I will begin on my left with Commissioner Farah.

**Commissioner Farah:** Thank you very much, Andrew. You have been very eloquent and we will study your memorandum further.

**The Acting Chair** (Commissioner Namachanja): In your recommendation, you mentioned proper compensation. Is this for the few who were not compensated or what more are you demanding? Is it for those who were evicted from their land?

**Mr. Andrew Kaino Chemweno:** Yes, it is for those few who were evicted from their land; they and the community at large should be compensated.

**The Acting Chair** (Commissioner Namachanja): Now, my question was specific for those who were evicted to create room for the development of the--- did you say the district headquarters?

**Mr. Andrew Kaino Chemweno:** Yes, the district headquarters. It is only for those ones.

**The Acting Chair** (Commissioner Namachanja): Then you mentioned that the community does not benefit from Chebara Dam. Could you talk a little bit more about this dam? What is it meant for and who is benefitting from it instead of the community?

**Mr. Andrew Kaino Chemweno:** This dam is benefitting people of the community except a few community members who have moved to Eldoret. However, majority of community members who live in Marakwet District do not benefit from this dam. We feel that because the water is good economically, some of the money should revert back to benefit the residents of Marakwet. Secondly, the people around the area or Marakwet in general, who can benefit from this water should be given a chance to access the water.

**The Acting Chair** (Commissioner Namachanja): You also talked about heavy ammunition being used in Eldoret and you said it is affecting women. Could you also talk a little bit about this?

**Mr. Andrew Kaino Chemweno:** During the post election violence, security officers used heavy machinery such that it harmed our people. For example, a student, Bethwel Kipchirchir of Lentang Primary School was killed by grenades left behind by the anti-post election security personnel who were guarding the Kisii Community. This was because of bitterness. The Kisii own the Marakwet ancestral land. There has been no mopping up of the remaining grenades which were aimed at destroying the Marakwet Community. So, the grenades were there and they caused harm.

**The Acting Chair** (Commissioner Namachanja): Concerning abortion, did these cases happen immediately during the post election violence or are they continuing?

**Mr. Andrew Kaino Chemweno:** They happened immediately after the post election violence. We have not seen any other incident to date.

**The Acting Chair** (Commissioner Namachanja): In the area where there was confrontation, I know about the lasting impact. Could it be something to do with the post traumatic stress disorder? Were people assisted in terms of counselling?

**Mr. Andrew Kaino Chemweno:** Not at all. There was no assistance of that kind.

**The Acting Chair** (Commissioner Namachanja): Would you like to include our recommendations for counselling to be done in the area that we had this confrontation?

**Mr. Andrew Kaino Chemweno:** Yes.

**Commissioner Ojienda:** Mr. Chemweno, I am concerned about the issue of eviction and the compensation of those who were evicted. Do you have a list of those who were compensated and by whom?

**Mr. Andrew Kaino Chemweno:** Mr. Commissioner, what evictions are you talking about? There were several.

**Commissioner Ojienda:** The ones at the district headquarters. Were they compensated by the Commissioner of Lands?

**Mr. Andrew Kaino Chemweno:** Yes, they were given land inside the forest but they have no legal documents. They have been going there to cultivate but without the legal documents, you cannot live there.

**Commissioner Ojienda:** I am saying that because the procedure should be that once the Government has gazetted a specific parcel of land for acquisition, for the building of headquarters, they should all have been offered financial compensation if they owned the land. Are you aware if any of them was given financial compensation?

**Mr. Andrew Kaino Chemweno:** Mr. Commissioner, I am not aware of that. That part of the forest has not been given out, it is still gazetted and part of the forest.

**Commissioner Ojienda:** So, this is land which has not been degazetted?

**Mr. Andrew Kaino Chemweno:** Yes, it was not degazetted.

**Commissioner Ojienda:** So, if land has not been degazetted, under Section 4 of the Forests Act, then they could not have owned that land. These are squatters!

**Mr. Andrew Kaino Chemweno:** Yes, they are squatters and their land has already been taken up by the Government in Kapsowar. They have constructed the District Commissioner's Office and other departmental offices.

**Commissioner Ojienda:** Now, you are asking us to make recommendations that squatters be compensated for land that they do not own. I want to ask you a second question: You have talked about several regions from Embobut Forest and you have said that there are people who have permits to stay at the foot of the hills of the forest. Is your recommendation that these people should be resettled elsewhere? If so, is there any particular parcel of land that you have identified and that you are recommending that the Commission recommends as land fit for settlement?

**Mr. Andrew Kaino Chemweno:** We have learnt that the Government is doing something about that. However, these people have lost a lot. Imagine being evicted 22 times. The structures inside were burnt and they lost a lot of property. So, we thought that compensation should be done besides giving them alternative land. I think it is only fair

that the issue of the property they lost as a result of being evicted is settled by way of compensation. The list of the people is here together with what they lost.

**Commissioner Ojienda:** Mr. Chemweno, they were evicted 22 times because they went to the forest 22 times. Was it the same people being evicted and going back?

**Mr. Andrew Kaino Chemweno:** That is true, Mr. Commissioner. They were evicted and because they did not have any other land to go to and they were not given alternative land, they had to go back.

**Commissioner Ojienda:** Lastly, the community is asking for the hand of Kisang and the body of Chelang'a. Where is this body and the hand? You did not explain the circumstances under which this hand was lost and how Chelang'a died.

**Mr. Andrew Kaino Chemweno:** Mr. Commissioner, I was given this report and it is stated clearly in the memorandum. I cannot tell you under what circumstances. However, it is in the report.

**Commissioner Ojienda:** What is the significance of the burial of a hand in the Marakwet culture?

**Mr. Andrew Kaino Chemweno:** Mr. Commissioner, when you bury a portion of a body, that brings bad omen according to the Marakwet culture.

**Commissioner Ojienda:** So, what are you supposed to do with it; the hand or the leg?

**Mr. Andrew Kaino Ojienda:** We will do cleansing.

**Commissioner Ojienda:** One more question: I do not understand what problem you have with the Kisiis. Where do you meet them? You are on this side while they are on the other side. Who are these Kisiis?

**Mr. Andrew Kaino Chemweno:** There is a farm that borders Marakwet District. We are told that this was our ancestral land. When the colonialists settled here, they pushed the Marakwets into the forests. The land was taken up by colonialists and after they left, Marakwets wanted to return. However, the Government of that time gave it to the Kisiis. The Kisiis came and occupied it and they even nicknamed it North Kisii. So, the other Kisiis are on their original land but there are a few that came to occupy that land but they are not referred to as Kisiis but people who are giving problems to the Marakwets.

**Commissioner Ojienda:** Thank you. I just want to encourage you, Mr. Chemweno, that all the recommendations you have given us are within the competence of the yet to be established county governments; the benefits of Chebara that you have talked about, the equalisation fund under the Constitution and the other benefit from the dam and other levels of development you have referred to. I only want to encourage you that there is need for communities that live in a county to live together and that you recognise and

integrate the so-called North Kisii and the Keiyo within the Keiyo Marakwet County. I think that is until you have a Marakwet County in the future. I just wanted to encourage reconciliation, integration and peaceful co-existence amongst all communities within this area. I thank you.

**Commissioner Dinka:** My colleague who has just concluded has said what I wanted to say. However, I wanted to ask you one question, just to be very clear in my mind. When you talk about review of your boundaries or adjustment of these boundaries and compensation arising out of it, what do you mean? Before, where was this boundary located? You have talked about 22 evictions of people and during those evictions, the boundaries must have changed. So, what was the original point you were looking at in terms of boundary review?

Secondly, why do you think your people cannot achieve their full potential within the existing boundaries because this is basically a boundary of convenience of administration and not an international border?

**Mr. Andrew Kaino Chemweno:** Mr. Commissioner, as far as the evictions are concerned, they were from the forest into the reserve and because of the population, people who were evicted from the forests cannot be accommodated into the reserves. The boundary issue started way back before 1926. It shows in the map here and part of it is in West Pokot, another one in Baringo and another in Trans Nzoia. The Marakwet feel that with regard to this boundary, they were deprived of part of their land. This could be the cause of some of the conflicts between the communities, particularly when they do not get farms in Uasin Gishu. Their forefathers showed them the boundaries. So, they feel that they were not treated justly.

**Commissioner Dinka:** Thank you very much. I think the story of your boundary is the same as many other one million stories all over Africa. The ancestors and grandfathers say that, that was their land before the white man came. However, very many things have happened. You are claiming some of it from the Pokot and some from the Kisiis. If somebody decided to take a review and go the way you want it to go, that would raise conflict in neighbouring communities. I would encourage you to ask for schools, clinics, infrastructure and affirmative action in a number of ways which you have done brilliantly. At the same time, as a leader of your own community and an educated man, you must also come down and manage the expectations of your community on the issue of review of boundaries and not getting your land from other people because that would lead to further conflict. That is all I wanted to tell you so that you can put in more consideration.

**The Presiding Chair (Commissioner Shava):** Mr. Chemweno, there is something I want to understand from you. You spoke about torture; if I heard you correctly you named three people: Sylvester Yator, Anthony Chelawa and hon. Francis Mutwol. You said that they are still alive and they should be compensated. Could you tell us who tortured these people and what were the circumstances?

**Mr. Andrew Kaino Chemweno:** Madam Commissioner, these people were tortured with regard to issues concerning land. As they were trying to help their people, they faced this problem. This was political injustice. For example, on page 22, it is stated that on representation, Marakwet was split and became a small part. It was put together with Keiyo to ensure that the Marakwets have only one Member of Parliament. This was the case for many years until recently, in 1998, when the Marakwet got two constituencies namely: Marakwet East and Marakwet West. Since then, no Marakwet had been appointed a Minister up to 2002 when hon. Lina Jebii Kilimo was awarded that position by His Excellency the President and then in 2005, she was robbed of the Kenyan flag due to injustice and political victimisation.

After these problems were experienced, there were other shortcomings seen considering that a Government Minister wielded a lot of power at that time. No Marakwet has been nominated to Parliament. Several leaders and Members of Parliament, among them Hon. Francis Mutwol, were victimised because of questioning the Government about the killings of young children who were going for polio immunisation in Tot. The others were Samuel Chemweno, the late hon. Fred Cheserek, John Kiptoo Marirmoi and Jeremiah Kipkosgey Lomeri who were victimised as a result of post election violence between the Marakwet and Kisii Community.

There was also this old man who is with us here. The years 1961 and 1962 witnessed a struggle for independence. Councillors from Marakwet and Keiyo met to mobilise their people to acquire land in settlement schemes.

**The Presiding Chair** (Commissioner Shava): Mr. Chemweno, my question was quite specific: You named three individuals whom you said had been tortured. Before the torture, your request was compensation. I would like you to describe briefly what the torture was about.

**Mr. Andrew Kaino Chemweno:** They were arrested when they tried to explain. They were arrested and brought here in Kitale and jailed for a long time.

**The Presiding Chair** (Commissioner Shava): Was there any trial?

**Mr. Andrew Kaino Chemweno:** Yes, there was trial but they did not prove anything. However, they suffered because they stayed there for a long time and they were mistreated. There is also another old man here called Chelawa, who was also mistreated during that time.

**The Presiding Chair** (Commissioner Shava): My next question relates to the Chebara Dam. You said that you wanted an environmental impact assessment carried out. What are the particular issues that you would want the environmental impact assessment to address? What issues has the community noticed changing with regard to the environment as a result of having that dam?

**Mr. Andrew Kaino Chemweno:** Owing to that dam, there is a problem of siltation. There is also a problem of diseases associated with the dam.

**The Presiding Chair** (Commissioner Shava): What kind of diseases have come up?

**Mr. Andrew Kaino Chemweno:** Diseases like malaria, bilharzia among others. Our people have suffered from those diseases and that is why we suggest that the assessment be carried out.

**The Presiding Chair** (Commissioner Shava): That is very clear. I do not have further questions. I would like to commend you for your presentation. We have taken note of the remarks you have made with regard to Marakwet women and girls. As members of the Marakwet Council of Elders, we are happy that you are making efforts to uplift the status of those women amongst you, who form half of the population. As my colleagues have alluded to, we would urge you, despite the fact that you have said that reconciliation efforts have been taking place, to redouble the efforts and make sure that your area becomes an example to the rest of the country and make sure that we move together. I do not have further questions for you. I would like to thank you. I think we have got a very good picture of what you were presenting.

Leader of Evidence, please, step down the witness.

**Ms. Emily Kimani:** Commissioners, our next witness is Ms. Rose Abugo Obonyo.

*(Ms. Rose Abugo Obonyo was sworn in)*

**Ms. Emily Kimani:** Rose, how are you today?

**Ms. Rose Obonyo:** I am fine.

**Ms. Emily Kimani:** For the sake of record, could you give us your full names?

**Ms. Rose Obonyo:** My name is Rose Abugo Obonyo. I work with the Diocese of Kitale, Childrens' Office. Before that, I was working with the Department of Women. However, since last year August, the diocese established an office for children and I am the one in charge.

**Ms. Emily Kimani:** Ms. Rose, you have come before the Commission today to make a presentation on the issues facing women and children in Kitale and the larger Trans Nzoia. Is that the position?

**Ms. Rose Obonyo:** Yes.

**Ms. Emily Kimani:** I now invite you to make the presentation.

**Ms. Rose Obonyo:** Madam Presiding Chair, I identified issues affecting women and children. They include:-

- (a) Issues of sexual abuse. Under this abuse, we have defilement, indecent conduct and molestation.
- (b) Domestic violence: Under this, we have violations of in-laws after the death of a husband, battering of women, verbal abuse, psychological abuse and cultural abuse.
- (c) Poverty: Lack of financial and social support and other contributing factors like lack of security due to poverty, lack of privacy among families, e.g, families resting in one room, lack of empowerment among women and the girl-child, inconsistent income among men, poor heads of the households, increase of population squatters in the county, most families becoming landless after the post election violence, exploitation of women by men due to poverty, pornographic viewing of television, video and internet which is open to abuse by adults and children, lack of parental guidance and responsibilities to the families especially children, peer pressure in institutions, single parenthood, psycho-social problems leading to poor performance in schools, security of children in homes when parents are away, family problems related to economic, social and culture and drug abuse.

We give support to vulnerable children in collaboration with the Children's Department. We take them to rescue homes. School going children are taken to schools through sponsorship from well wishers. Through mediation and counselling, we are able to bring families together, support court cases by making follow-ups and bring justice to victims of violence.

We also carry out gender activities in the church, for example, through self help groups of Saint Monica, Saint Dorcas and other prayer groups.

We provide legal aid awareness to prisoners and communities; take victims of abuse for medical attention, hold seminars in the community on children's rights, parental responsibilities, and rights of arrested persons; and making referrals to Kitale District Hospital and Kiminini Cottage Hospital. We have statistics from prisons where we found that defilement cases are high compared to rape and any other case.

In Trans Nzoia West, we found that those convicted were 28. The ones in remand were 18. In Trans Nzoia East, there were ten convicts and 11 remandees. In Kwana District, there are seven convicts and six remandees. So, since our diocese works up to West Pokot, we have some statistics from there. Since our referral hospital is also the district hospital, we found out that defilement cases are higher than any other case.

Under the age of five years, we had 80 defilement cases. Under the age of 18 years, defilement cases were 704. Over the age of 18 years, we had 376 defilement cases. The

total defilement cases in Kitale District Hospital, specifically in the Gender Recovery Centre, we had a total of 784 defilement cases. For rape, there were 376 cases, while the assault cases as a result of domestic violence were 187. This is the year 2010/2011.

Our recommendations are as follow:-

1. Look into cases of rape, defilement that occurred during the post-election violence and the victims to get justice.
2. Commission to look thoroughly into the historical land injustices that created squatters, most of whom live under the poverty line, making them vulnerable to gender-based violence.
3. Issues of defilement, rape and prostitution can be handled through empowering the girl-child through education.
4. Economic empowerment of squatters through resettlement into *shambas* put aside by the Government. Those who left their *shambas* to be allowed to go back to their land.
5. Provide counselling sessions in schools and open discussions amongst students on rights of children and how to get help. During the post-election violence many men were traumatised. The Government to continue with counselling sessions.
6. Support from the ecumenical church.

That is all I have today. This is compiled by Rose Obonyo, Children Protection Officer, Catholic Diocese of Kitale, October, 2011

Thank you.

**Ms. Emily Kimani:** Thank you, Rose, for that good presentation. I wish to ask you if you would wish to adduce the memorandum that you have prepared, so that it can be part of the Commission's record?

**Ms. Rose Obonyo:** Yes.

**Ms. Emily Kimani:** Presiding Chair, I request that the same be admitted.

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

**Ms. Emily Kimani:** Ms. Rose Obonyo, could you expound on some of the cultural practices that women in Kitale and the larger Trans Nzoia have been grappling with?

**Ms. Rose Obonyo:** Women inheritance, circumcision of the girl-child, women do not own property; for example, they do not have title deeds and so cannot access funds in the banks. Those are the challenges.

**Ms. Emily Kimani:** Do you feel that the Government has put in place measures to facilitate some of the issues that children in Kitale and Trans Nzoia face?

**Ms. Rose Obonyo:** I feel the Government has not done enough because the court process takes too long and sometimes, the perpetrators win the case. It could be because the

survivor delays. Because of poverty, the victims do not have money for transport to attend court sessions. Sometimes it is far and by the time they reach there it is late. So, the court should look into defilement cases.

**Ms. Emily Kimani:** What measures do you feel the Government should put in place as we approach the next elections to avert a similar scenario as was witnessed in 2007/2008?

**Ms. Rose Obonyo:** The Government should make sure that women have enough security. Men run and leave women behind with children. The perpetrators easily get the women and children and they start misusing them. The Government should give women enough security.

**Commissioner Ojienda:** Ms. Rose Obonyo, I want to commend the efforts that yourself and the church are making by improving and looking out for the welfare of women and the girl-child. The statistics you have given us are telling about your involvement and the research you have undertaken.

The recommendations you have made about the court cases just go far to show how important it is that justice for victims be expedited; justice delayed is not justice. Some of the issues you have raised, we will take up with the Chief Justice. One of the issues is that of backlog. We have taken the numbers that you have given us. I have no questions.

Thank you.

**Commissioner Dinka:** I would like to thank you and the Catholic Church for taking this initiative to protect the vulnerable, particularly the children and the women. The Commission will take this matter seriously and will make informed recommendations.

In your research, is there a way that a distance could be created between perpetrators of defilement and the child victims? Secondly, what can the Government do to reduce these cases in the family, school and so on? I am not talking about prosecution now.

**Ms. Rose Obonyo:** I feel that the Government should come up with an awareness programme for all men about the new Constitution and defilement cases and what will happen to them when found guilty. This is because I feel that many of them are not aware about what the law says. It is now like if you have defiled a person, that is a capital offence. They realise it when it has happened. An awareness programme will be a good measure to protect these ones who are still outside.

**Commissioner Dinka:** On the issue of FGM in some countries, what they have found to be effective more than Government laws is what could be done at the community level. Can such a thing be done on the issue of defilement at the community level? We could use community elders, churches and women organisations, so that there can be grassroots consciousness on this horrendous crime. Could naming and shaming also be used as a deterrent measure? This is because the perpetrators would know that it is not just about going to prison, but also that there is social control at the family level.

**Ms. Rose Obonyo:** It is true. Such a measure can work, but we know that our problem is about resources. Those who will go out there to carry out the awareness will need allowances. So, it is up to the Government to set up a fund that will cater for those activities. Community elders are willing to do that. I proved that by the fact that in church we do awareness through *barazas* held by the chiefs. If you call members of the community to attend, they will tell you that their children will go hungry and so they must go for *kibarua* in order to feed their children.

**Commissioner Dinka:** I have no further question. I would like to encourage and appeal to you to continue with your good work.

**Commissioner Farah:** Ms. Rose, I commend you for the good work you have done and the good memorandum you have produced. We will study it and make appropriate recommendations..

**The Acting Chair** (Commissioner Namachanja): Actually I am still shocked by the statistics. I am familiar with the structure of the Catholic Church. We have a women's programme. What Rose has shared with us could be a special one for Kitale Diocese. Have you shared your results with other dioceses in Kenya?

**Ms. Rose Obonyo:** The Children's Office was established last year. It is still young and we are now coming up. That is our future plan.

**The Acting Chair** (Commissioner Namachanja): This will be important because maybe other communities elsewhere are experiencing the same. It is only that no research or initiative has been done to bring out these issues. I would like to encourage you to share this information with others as we look forward to the Government intervening. It might be faster through the church institution. Thank you so much, Rose. I feel ashamed.

**The Presiding Chair** (Commissioner Shava): Ms. Rose Obonyo, I would like to associate myself with the comments made by my fellow Commissioners in commending you for your innovative approach. You took a new programme and you moulded it in a different way.

You talked about the difficulty in sustaining prosecutions because of the difficulty of the witnesses in travelling and attending the proceedings. Despite that, what would you say is the level of success in bringing prosecutions?

**Ms. Rose Obonyo:** Maybe if we have more judges, things will be different. We only have one in Trans Nzoia County. The work will be easier with many judges.

**The Presiding Chair** (Commissioner Shava): Are there cases where perpetrators are successfully prosecuted in cases of sexual offences?

**Ms. Rose Obonyo:** Yes, there are. In the last successful case, the perpetrator was convicted for 20 years. Since I took up office, many are still ongoing.

**The Presiding Chair** (Commissioner Shava): I would also like to encourage you to familiarise yourself with the provisions of the Sexual Offences Act which I am sure is a tool you use regularly. As a friend of the court, when you are attending those proceedings, I would advise you to be armed with that Act.

How do you find the process of reporting these cases at the police station? I believe that there should be a Children's Desk and a Gender Desk at the police stations. Are these in existence and are they working well?

**Ms. Rose Obonyo:** If we want to get good results and assist our children in Trans Nzoia County we need networking and collaboration. We collaborate with the police, especially the Gender Unit. We are working well.

**The Presiding Chair** (Commissioner Shava): In your statement, you say that three-quarters of the population of Trans Nzoia are squatters. That is a very alarming statistic. I would expect that the larger proportion of those people would be women. In your view, has this been a situation that has existed for a long time? Has it been exacerbated by the post-election violence?

**Ms. Rose Obonyo:** It is a situation which has been in existence. Three-quarters of those who will be presenting their issues here will be talking about historical injustices in this county. The majority are women who do not own any land. We need to come up with ways of assisting these women. We need, for instance, to look into their microfinance activities. Let us change the policies, so that it is easier for these women to access funds. We have the Women Finance Trust. They tell women to look for a title deed as security and yet, these women do not own land. Where will they get the title deeds? Let us look at those policies so that we can assist these vulnerable women.

**The Presiding Chair** (Commissioner Shava): In your view, has the number of squatters increased since the 2007 elections?

**Ms. Rose Obonyo:** The number of squatters has increased because there are those who were staying in the big farms doing the work of weeding and harvesting maize, but because of fear, they have come to rent houses in town.

**The Presiding Chair** (Commissioner Shava): Thank you, Ms. Rose Obonyo, for your competent presentation. We can see you have the depth of understanding of your topic. You have a good grasp of your area. You have really helped this Commission. Thank you.

Leader of Evidence, please, stand the witness down.

**Ms. Emily Kimani:** Commissioners, our next witness is Witness Code 5.

*(Ms. Carolyn Mutoro Nalianya took the oath)*

Good afternoon, Caroline. Kindly, for the purpose of the record, tell us your names in full again.

**Ms. Caroline Mutoro Nalianya:** My name is Caroline Mutoro Nalianya. I work for an international organization known as Handicap International.

**Ms. Emily Kimani:** You are here for the purpose of making a presentation on some of the historical injustices facing people living with disabilities and also on those living with HIV/AIDS. Is that the position?

**Ms. Caroline Mutoro Nalianya:** Yes, exactly.

**Ms. Emily Kimani:** I now invite you to make your presentation.

**Ms. Caroline Mutoro Nalianya:** I will start by introducing Handicap International. Its mandate is within disabling situations all over the world and more specifically in Kenya, it represents persons with disabilities. We are found here in Trans Nzoia too. That is why I am here.

We got established in Kenya in 1993. The reason behind this is that we had tribal clashes that took place in 1993. They were as a result of violence and war in which traditional arrows were used. That overwhelmed the Ministry of Health on how to manage this problem because the arrows had poison and when surgery was performed, it exposed the person to vulnerability towards disability. We are also concerned with HIV/AIDS which is a disabling situation.

There were interventions, but they are not up to date to enable the human rights for persons with disabilities. We support the Government of Kenya to bring this to par and we have to keep in mind the people who are physically challenged, mentally impaired, deaf and the visually impaired.

It is safe to mention that persons with disabilities form a big population of Kenyans and so, this county of Trans Nzoia.

We strongly feel that the gap that exists is the sensitiveness of the service providers and the benchmark to service provision in Kenya is through our Government Ministries. Starting off, when a child with disability is born, it looks to the future through education, good social environment for growth and also a nice environment for socio-economic wellbeing in terms of acquiring jobs. So, fundamentally, the Ministry of Education has a very big role to play in the child's development; so as to guarantee its future.

Trans Nzoia County is one place that does not have a clear strategy in mainstreaming persons with disability in the education system. We have one centre which has to do the

assessment, but technically speaking, it is not well resourced in terms of human resource who can manage to ensure quality education is offered to a child with disability, which can inform the child's future.

Secondly, we are talking about the Ministry of Health. It is really vocal in terms of campaigns on polio, which apparently causes the physical disability. But this has not been well taken by the community in terms of really ensuring that they give the message that we are doing this to prevent disability, apart from making it like it is normal for a child to have immunisation. Women will always just choose not to give this polio immunisation, because they are not well informed. We are really looking at it as if we are denying them their human rights. We have not put the service provision to emphasize on the need for preventing disability or rather ensuring also that this is well done.

Now, just to mention some kinds of examples: Trans Nzoia County has the best eye clinic, thanks to Canadian aid. But our own Government has not recognised that, that is their contribution towards managing disability. I am saying that because it is all about how service providers appraise themselves to ensure that they do their best when it comes to mainstreaming disability. That is because they are mandated to do that. I am connecting this to the issue about tax exemptions. The Kenyan law has come up clearly about it, but the beneficiaries, who are the persons with disability, do not know about it. So, to fill up the gap, my strong recommendation is that let mechanisms be put in place to ensure that the community understands this and can advise persons with disability to really also benefit from what the Government is putting across for them. There was an argument saying: "Why should they be exempted and yet some of them are not poor?" Most of the time, they say that people who put on spectacles have partial disability when it comes to vision but the community looks at them as rich people who should not be exempted. But the fact is that they have to put in extra effort which affects their costs to be in the society. Somebody with visual impairment will opt for a taxi to go home because he cannot use public means. So, he is putting in more money and that is why he has to be exempted. What I am placing before the Commission is to bridge the gap on the benefit which is well tabled by the Government. The person receiving this has to be well informed so that he can do it knowing that it is right.

Another example is our transport system. We had a very particular case that just happened two months ago. We had our fellow Kenyans from Trans Nzoia County who represented us in sports. A person with disability had to use common transport system but on reaching there, he was denied entry because they did not have means of carrying his wheelchair. He had to board a bus without his wheelchair and he was going to Nairobi. How will he leave the bus station and go to Kasarani Sports Centre to perform whatever he was to perform? He went but you can imagine the kind of difficulties he had to undergo because he had left his "legs" in Kitale. What I am bringing up is to ensure that when we are talking about our transport system, is it inclusive of persons with disability? I will just get into my recommendations.

1. There is need for a continuous development of policies that support the inclusion of persons with disability towards development.

2. When we are drawing up strategies for development, we should also focus on encouraging persons with disability, through organisations dealing with disabilities at the grassroots level, to participate and also factor in inclusion policies.
3. We also need to really support the resources within the Ministry of Education, Ministry of Health and Ministry of Public Works, so that there are guidelines and manuals that are well informed in terms of disability mainstreaming.

Thank you.

**Ms. Emily Kimani:** Thank you very much, Carolyne, for that informed presentation. I can see that it is a write-up and it contains some of the issues that you have touched on. Would you wish the same to be admitted as part of the records of the Commission?

**Ms. Carolyne Nalyanya:** That is okay.

**Ms. Emily Kimani:** I request that the same be admitted as part of the records of the Commission.

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

**Ms. Emily Kimani:** Carolyne, I have a few questions to ask you from your testimony. You have touched on a wide array of issues that the people living with physical disabilities have to grapple with. Your organisation also deals with cases of HIV/AIDS. What is the prevalence of HIV/AIDS in Kitale?

**Ms. Carolyne Nalyanya:** According to the Kenya Demographic Survey 2008/2009, the prevalence rate of HIV in North Rift region or rather the Rift Valley Province stands at 6.4 per cent. I just want to mention that we are still recorded as one of the highest provinces within Kenya when it comes to the prevalence rate.

**Ms. Emily Kimani:** Which age group, from your assessment, is worst hit by the HIV/AIDS epidemic?

**Ms. Carolyne Nalyanya:** HIV/AIDS is higher in the age group between 20 years and 50 years. That is the category of youths and young adults.

**Ms. Emily Kimani:** Do you feel that the Government has done enough to curtail the spread of HIV/AIDS?

**Ms. Carolyne Nalyanya:** Yes, the Government has tried to put up strategies and mechanisms in place. For sure, when you compare the statistics from 1999 when the then President Moi declared it as a national disaster, HIV prevalence was at 14 per cent holistically in Kenya. At this moment, we are talking of a prevalence rate of 6 per cent. It

means that the Government stood up and had to draw very specific strategies. We are measuring some kind of milestones because every Government Ministry was involved in ensuring the prevention of HIV. Also, Kenya as a country has really picked up in terms of looking at condom utilisation as one of the main directions. The Kenyan Government has really put in resources to ensure that those prevention measures are put in place.

Also, looking at the rollout of Voluntary Counseling and Testing (VCT) services, it is all over up to the grassroots level through mobile VCT. That is part of the Government policies and guidelines to curb the spread of HIV/AIDS in the country.

**Ms. Emily Kimani:** My last question is about accessibility of ARV drugs for those living with HIV/AIDS. Through your office, have you, maybe, faced people who are having difficulties in accessing ARV drugs?

**Ms. Carolyne Nalyanya:** Yes. The National AIDS and STIs Control Programme (NASCO) has come up with a system where at a district hospital level, ARVs can be administered by the Medical Officers (MOs). For sure, there is supply through NASCO at the district level. In the North Rift region, we all know about the Academic Model for the Prevention and Treatment of HIV (AMPATH) which is doing quite a big part. It is a research firm but also availing ARVs. Just to mention that the biggest gap that is still being felt while we are still coming up with strategies is pediatric response to ARVs or rather the pediatric start up to ARVs. So, pediatric ARVs are a big challenge.

**Ms. Emily Kimani:** Thank you very much, Carolyne. I want to commend you and your organisation for the much that you are doing for the community in terms of those living with physical disabilities and those living with HIV/AIDS. I have no further questions for you. I now hand you back to the Commissioners.

**Commissioner Farah:** Ms. Carolyne, I thank you very much for your eloquent presentation. I have a few questions starting with your name. Are you Carolyne Mutoro Nalyanya or Naliaka?

**Ms. Carolyne Nalyanya:** I am Nalyanya.

**Commissioner Farah:** Thank you, Carolyne. My first question is: Handicap International is an international Non-Governmental Organization (NGO), but in Kenya, are you only working in Trans Nzoia County or you are working in other areas?

**Ms. Carolyne Nalyanya:** Kenya Handicap International has branch offices where we execute our services, Trans Nzoia County being one of them. West Pokot County also benefits. We are also in North Eastern, Garissa County. We also have projects running in Dadaab and Nairobi.

**Commissioner Farah:** So, do you deal with all handicapped people or you specialise in children who are handicapped?

**Ms. Carolyn Nalyanya:** We are all round. Just to mention, it is not only the people with disability but also the disabling environment. We are core in disabling diseases. That is why we have ventured into HIV/AIDs, which is a disabling disease. We are also running projects on diabetes, which is a disabling disease. Amputations are caused either by accidents or diabetes. We are also running projects for gender-based violence, which is also a disabling situation.

**Commissioner Farah:** Including polio. Thank you very much. I am now thinking in terms of the gap. Can you tell me if you have the statistics; what is the ratio of different handicapped groups and the Government services plus the gap which you are facing now? If you do not have the statistics, it is okay.

**Ms. Carolyn Nalyanya:** As an organisation, we basically use the research that has been done by the Government of Kenya. So, that informs us on the number of persons with different disabilities. I do not have the exact quotes but generally speaking, persons with disability form 6 to 10 per cent of the Kenyan population.

**Commissioner Farah:** What is the distribution in terms of age groups?

**Ms. Carolyn Nalyanya:** I am sorry, I cannot break them down, but I can still avail the correct information about the categories.

**Commissioner Farah:** Those were my only questions. Thank you very much, for your presentation which is very enlightening.

**The Acting Chair** (Commissioner Namachanja): I would like to thank Carolyn and Handicap International for the services you are giving to the Kenyan people.

**Commissioner Ojienda:** Thank you, Ms. Nalyanya, for your testimony. One of the issues that you raised that are of concern to many is the implementation of the provision of the Disability Act that provides for tax exemptions. What efforts have you made to actualise the implementation of that provision as Handicap International?

**Ms. Carolyn Nalyanya:** I would like just to mention that Handicap International is really looking at the local structures to voice and ensure that this is rolled out. So, the role that Handicap International has played is to build the capacity of disabled persons' organisations that are Kenyan-based to see that, that Act is rolled down or disseminated to grassroots level. We are also looking at our organisation setting and identifying what difficulties the Government has, so that they can also support the Government in ensuring that this is rolled out. So, we are using both top and bottom approach.

**Commissioner Ojienda:** The latest Kenya AIDS Indicator Survey has certain indicators on prevalence of HIV/AIDS in the country. I think you are referring to some numbers for this area. In your view, is there need to undertake a fresh survey? What would you say of prevalence between the time that the survey was done and now?

**Ms. Carolyn Nalyanya:** I was quoting the Kenya Demographic Health Survey which is the latest compared to the KAIS Survey way back in 2007. The latest now is the Kenya Demographic Health Survey for 2008/2009. So, looking at it in that manner, it is the latest information that we are using to make recommendations to roll out and observe how we can still really reduce the prevalence rate and also, ensure that those who are already infected are having quality care in an optimum manner. Those two documents are really informing us as service providers and the Government line Ministries to see which slot they can move forward.

On a personal note, even the Kenya Demographic Health Survey is not yet rolled out. The Population Council is doing it now. So, let us see how this can inform changes in the strategies before we again put resources into another survey. This is what I could put across.

**Commissioner Ojienda:** I know that you do proposals and get funding for your projects. How many people have you helped in this area? When I talk of helping, I mean helping with wheelchairs because you have referred to wheelchairs in your testimony. Movement of persons with disabilities is very key.

**Ms. Carolyn Nalyanya:** Looking at our mandate and the way we do our operations, we do not supply wheelchairs as an organisation. What we do is to ensure that we network and let those who have the wheelchairs know where to supply them. We have worked with the Anglican Church of Kenya which has been very instrumental because they have a very strong community-based rehabilitation project. They always supply wheelchairs in Trans Nzoia County. I cannot come up with figures but just quoting 2007, coming to Trans Nzoia County, you could see people with improved wheelchairs which could also be their bag; carries their luggage and all that. So, that was courtesy of the Anglican Church of Kenya.

**Commissioner Ojienda:** Thank you, Nalyanya, for your testimony.

**The Presiding Chair (Commissioner Shava):** Thank you, Carolyn Nalyanya, for coming and speaking with us today. I see that you are a very good advocate for people living with disabilities. I have learnt a new term today; “people living in disabling situations”. I commend you for the work that you are doing. Wherever we go, we always hear very difficult stories of hopelessness. So, it is very encouraging to hear you say that the statistics in terms of HIV/AIDS have more than halved in the right way. I also commend the Government for this work. I read the column by Asumpta Wagura, who is an advocate for people living with HIV/AIDS. She is walking counting blessings. It is very encouraging when we hear stories or things that have gone right. So, we thank you for bringing that perspective to the Commission.

Clearly going forward, collaboration is important. It is a sort of multi-sectoral approach and so, it is encouraging to see that you fully recognise this and talk about the inclusion of the Ministry of Education, Ministry of Health and Ministry of Public Works. I would even add the Ministry of Transport in terms of accessibility to transport. That is because I

have an experience of a friend of mine who had to physically carry his wife up the stairs to get into a plane in order to access medical care. This is because even the aeroplane does not provide access for people with that kind of difficulty. Then your perspective in terms of going forward; if somebody is disabled from the time that they are born, what are their prospects, including prospects for economic stability? So, here you are talking, perhaps, even on issues such as the private sector and their attitude towards the employment of people living with disabilities.

We thank you very much, for taking the time and trouble to come today and compiling for us a memorandum answering our questions and giving us the information that we need to make the robust recommendations that will assist in this situation.

Leader of Evidence, please, stand down the witness and bring the next witness.

*(The witness was stood down)*

**Ms. Emily Kimani:** Commissioners, I am informed that the remaining two public witnesses; Witness Code 1 and Witness Code 6, are held up in a meeting in Bungoma, but they are still expressing their willingness to participate in the hearings today. So, I am seeking your directions on the same.

Secondly, I am informed that the former Nominated Member of Parliament, hon. Moiben, would like to address the Commission for five minutes.

*(The Commissioners consulted)*

**The Presiding Chair** (Commissioner Shava): Leader of Evidence, we have consulted amongst ourselves and decided that we will proceed and when those witnesses who were expected in the morning arrive, we shall consult at that time to see how we will accommodate them. In the meantime, we have acceded to the request by the hon. Member to make an address. We will give you a minute to tell hon. Moiben about the rules under which we operate, after which, we will give him five minutes to make his address.

*(Mr. Samuel Kisoro Moiben took the oath)*

**Ms. Emily Kimani:** Mr. Moiben, how are you this afternoon?

**Hon. Samuel Kisoro Moiben:** I am very well indeed, Presiding Chair.

**Ms. Emily Kimani:** You have requested for a few minutes to address some of the issues.

**Hon. Samuel Kisoro Moiben:** I had actually asked for 15 minutes, but I am surprised that they are five minutes.

**Ms. Emily Kimani:** You could kindly go ahead with your brief presentation on some of the issues that you requested.

**Hon. Samuel Kisoro Moiben:** Commissioner, I am very grateful for this opportunity. The Commission has a very important role to play. In fact, the first words, “truth and justice”, is what I would like to address.

Trans Nzoia County is part of Rift Valley Province. It was one of the counties that were settled by the colonialists. The brutality that was visited on my community can compare favourably with what the children of Israel suffered in Palestine. Our people were sent to the four corners of the world. As I talk to you now, Sabaots can be found in Ethiopia, Sudan, Congo, Uganda, Tanzania, Rwanda and DRC. What I am requesting the TJRC is to view Rift Valley Province as a province that was dismembered. The indigenous people in Rift Valley were the pastoralists. They were the Maasai, Sabaot, Sengwer, Nandi, Kipsigis, Tugen, Keiyo, Marakwet and Terik. So, the Europeans had to get labour force from outside the province. For example, in Nakuru, they got people from Thika and the Kavirondo. In Trans Nzoia County, they got them from Uganda, Lugisu District.

I am happy that we have a new Constitution. What has happened in the past has happened. We should not live in the past. Let us give each other hope; hope in God that life continues. I am pleading with the Commission to recommend to the current Government to create receptive centres to receive the Sabaots in Trans Nzoia, the Maasais in Laikipia and even some in Naivasha so that resettlement can be done afresh on Government lands.

We are not for replacing other communities. For example, during Independence of Kenya, the Kenya Government settled people on one million acres and no Sabaot, Maasai, or Kipsigis benefitted. Nandis got Lessos and Kaptagat. We got nothing. The Sengwer got nothing. The Pokots got nothing. I am requesting, since the recent post election violence has given us modalities of compensating people, that is Kshs37, 000 per head and two- and- a- half acres for the chaos that happened for one year in the case of the Sabaots, Maasais, Sengwers and Pokots, we should be given 37,000 times the 115 years we have been out or two-and-a-half acres times 115 years. This is because the same compensation featured during the Carter Commission in 1932. It did recommend that each Sabaot man be given Kshs2, 000. Then one mischievous DC called Watkins said these Sabaots are nomadic; they move from one place to another and that you can pay one person 10 times and yet, our people had IDs on their necks. They were not paid that money. We hope it is in the bank. God is merciful. Here we are! We want that money plus the accrued interest at bank rates. Thank you very much.

**Ms. Emily Kimani:** Thank you, Mr. Moiben, for that presentation.

**The Presiding Chair** (Commissioner Shava): Thank you, Mr. Moiben.

**Commissioner Ojienda:** Thank you for your testimony. You have focused on the land issue and particularly on the injustices that have occurred to the people living here; the

Sabaot and other groups. I just want to ask you a few questions. What is the population of the Sabaot nation?

**Hon. Samuel Moiben:** I may not know the exact number now, but they are found in Keiyo Marakwet County, West Pokot, Trans Nzoia County, Bungoma County, Sebei District, Bugiri in Uganda and Hoima District in Uganda. But I could assess that if we have a reception centre the Sabaot can be about 1 million people.

**Commissioner Ojienda:** So, is it your recommendation that all these Sabaot living in the diaspora, some are in Ethiopia, in the Democratic Republic of Congo, be brought back to this country?

**Hon. Samuel Moiben:** If they are willing. The Government can make the invitation open. Nobody will come by force. They usually come during funerals. They say, “we want modalities to be opened for us to come home”. Like the children of Israel, they are all over the world but they go to Israel. We say in our community, “Jerusalem is to Jews as Kitale is to Sabaots”.

**Commissioner Ojienda:** Let me just understand you. What is their nationality? Are they Kenyans or is their nationality that of those countries where they live?

**Hon. Samuel Moiben:** When the colonialists declared Kenya a colony in 1920, the first DC here was called Mr. Champion. There were chiefs living at Kitale Club. My grandfather was his *askari*. The DC put up his office on one hill and the chief was on the other hill. When the office of the DC was ready, they looked for a ram. It was a ram from an old man called Ngabilia which was slaughtered. In fact, we had been waiting the other day for our PC here to invite us to bring a bull. It is not for his office. We are still waiting. That is the relationship. It is intertwined.

**Commissioner Ojienda:** Is it possible that a list of all those who were displaced can be made available to the Commission? Could we also get a list of all those who left and would like to come back home?

**Hon. Samuel Moiben:** If I was given that opportunity, I would form a committee of 33 people who know where these people are. Within two months we can have a list.

**Commissioner Ojienda:** Your recommendation is based on the current compensation and resettlement. Do you have a list of Sabaot IDPs; those who have no land?

**Hon. Samuel Moiben:** In our culture, we do not run to the camps. We run to relatives. It is immoral for you to leave your relative and wallow in the camp. So, we share the little resources we have. You can get 30 people living on half-an-acre instead of going to neighbouring camps to look for means of survival. The Lord is my witness.

**Commissioner Ojienda:** So, again, I will ask the same question. Is it possible to get a list of those IDPs among the Sabaot? Because when you talk of resettlement, you need to have people because it is people who are resettling, or families for that matter.

**Hon. Samuel Moiben:** We can get the list.

**Commissioner Ojienda:** Your map, though it is based on a philosophy that, probably, you only understand, is that each person would get 250 acres of land. Out of the number that you are talking about, one million, you could settle the entire country.

**Hon. Samuel Moiben:** If the whole of Trans Nzoia is occupied, then we will buy land on a willing buyer willing seller basis. We would not want to settle elsewhere. Our focus is mainly Trans Nzoia and Sabaot land, maybe Bungoma.

**Commissioner Ojienda:** So, you agree that your recommendation, if implemented, would displace everyone in the Rift Valley?

**Hon. Samuel Moiben:** Not necessarily. We still have Europeans here. We will not chase them away. If they are willing to sell, we will negotiate with them. You can translate the land into cash so that it is invisible.

**Commissioner Ojienda:** Food for thought. Thank you very much, for your recommendations. You have given us something to think about.

**Hon. Samuel Moiben:** Thank you.

**Commissioner Dinka:** Hon. Moiben, thank you very much, for your address to us. As you can see, I am not from this country. So, I am a bit confused, but probably, my colleagues have understood what you are talking about. I was very happy when you said: "Let us forget what happened in past." This is something that not many of our witnesses have said, that is, to forget what happened in the past because a lot of things happened to the people which are not nice. But forget about them and start afresh. In that context, you suggested the setting up of reception areas. Once the people are gathered there, the Government will settle them on Government land. That can be discussed. However, then you came back and said you are basically talking about the laws to enable them to come back as it happened in Palestine. You know what kind of problem the law of return has caused and continues to cause in the Middle East. I do not know whether you are suggesting to create that kind of situation in the Rift Valley and, possibly, for Kenya. Is that what you are suggesting now, the law of return for everybody to come and reclaim their "ancestral land", or as when you came in with a breath of fresh air suggested forgetting about the past and starting afresh and create harmonious co-existence? To me, your beginning and your conclusion appear to be contradicting each other.

**Hon. Samuel Moiben:** I did not mean to say we bring people from out. I am saying we try to find Government land and settle those who are here now first. But should there be others who want to come here, they will equally be accommodated at the receptive

centres. They will wait for the Government to allocate them land elsewhere. But to begin with, those who are now here, you will find 30 in one acre or 50 in half-an-acre. We should really look at their case with the historical compensation in mind.

**Commissioner Dinka:** I think now we seem to understand each other. You are talking about the landless here to be resettled first on Government land. My next question for you is, when you start multiplying that by 150 years or so, then it really becomes, probably, equal to Kenya's GDP for the next 20 years. So, are you really serious about that?

**Hon. Samuel Moiben:** I am very serious because during the post-election violence, other communities benefited in kind. I want the same kindness extended to my people. It does not necessarily have to be land. You can turn it into cash. You can be a small person, but with Kshs50 million in the account. Nobody will know. Turn it into cash. Turn that compensation into cash.

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

**Commissioner Farah:** Thank you, hon. Moiben, for your presentation. As a politician and former Member of Parliament, we do recognise the importance of your presentation. I have a few questions. This Commission is about truth telling and we would like you to be very truthful. The truth I am seeking from you is that the Maasais you are talking about are not very cohesive people. I do not think the Marakwet and Pokot are very cohesive. I do not know much about the Elgon Maasais of Trans Nzoia and the Sabaot of Mt. Elgon. Therefore, whatever programme you want collectively for a non-cohesive community, instead of it being a solution, it might further create problems. In fact, it is politicians who create these problems, and you are one of them.

*(Applause)*

So, I want to ask you a very important question. How much land do you own yourself, personally? Please, say the truth.

**Hon. Samuel Moiben:** Commissioners, I will be very honest with you. I have 18.5 acres of land. I have three-and-a-half acres in town here and 15 acres at Kitalale. That is all.

**Commissioner Farah:** Knowing your community, how much is convenient for you to live on?

**Hon. Samuel Moiben:** As a pastoralist, I can do with 100 acres. This is because I like to keep livestock and a few sheep. As a leader, I need to have a minimum of 100 acres. Otherwise, I can go for 500 acres.

**Commissioner Farah:** But you are aware that we also must till the land and produce maize? Therefore, we can do zero grazing with your cattle. How much zero grazing land is convenient to you?

**Hon. Samuel Moiben:** I know of somebody in Eldoret who has half-an-acre and he has 80 cows. The other day, he bought one acre and he bought 100 cows. I can make it with about 15 acres the way I am doing now with irrigation. However, it will take time to teach these people to change their relationship because we have all our beliefs around a cow. A Sabaot man who does not have a cow can easily commit suicide. There was a reason why Christ was born in a manger and not in a kiosk.

**Commissioner Farah:** I recommend that you really go back to your people and discuss these issues very seriously because you are suggesting some zero grazing plan which I think they have not yet embraced. But they have been clapping when I said the problem is with you, politicians. These people have no problems. They can be easily settled. But every time elections come, it is you people who start it all over again. This time, we request you to work for peace. Thank you very much.

**The Presiding Chair (Commissioner Shava):** We would like to thank you very much for taking the time and the trouble to come and present your views on how we can have some solutions to issues in this area. We have heard that the issue of displacement here is very serious. The issue of squatters is very serious. We hope that you and all the constituents here will continue to work with this Commission, so that we do not see the injustices that we have been seeing in our country. We would like to thank you very much, for your testimony. We have no further questions for you.

**Hon. Samuel Moiben:** Thank you.

**The Presiding Chair (Commissioner Shava):** Leader of Evidence, please, stand down the witness.

**Ms. Emily Kimani:** Commissioners, I have been furnished with a memorandum from the Muiyot Council of Elders from Trans Nzoia. It is an umbrella body for the Cherengany Keiyo, Kipsigis, Marakwet, Nandi, Ogiek, Pokot, Sabaot, Terik and Tugen communities. They are here with us and they wish that their memorandum forms part of the Commission's record.

**The Presiding Chair (Commissioner Shava):** The members of the community are, indeed, here present. I would request that they stand up, so that we can recognise them. Just stand up where you are, so that we can see you and the Commission can recognise your presence. We have seen you. Thank you, for coming here today. The memorandum is so admitted.

**Ms. Emily Kimani:** I have no further questions.

**The Presiding Chair (Commissioner Shava):** Thank you, Leader of Evidence. There being no further witnesses, we will conclude the public hearings for today.

We would like to thank the witnesses who have testified before us today. They are Francis Chemwor arap Somken, Andrew Kaino Chemweno, Rose Abuko Obonyo,

Caroline Mutoro Kanyanya and hon. Samuel Kisoro Moiben. Tomorrow we will have women's public hearings and our Master of Ceremonies is our Regional Co-ordinator. He will be telling us more about that.

From the Commission, we would just like to thank you all for your patience and attentive participation in today's proceedings. There are many participants here and also in the adjacent room who are following on closed circuit television. We thank you all.

We would like to thank our friends who have worked with us, including Commissioner Tororei, of the Kenya National Commission on Human Rights. We thank the political leadership of this area. We would like to thank also the members of the Provincial Administration who have been very helpful to us, including providing us with security for this venue and other issues. We thank the police and the Provincial Administration.

I can see hands up. We will wait for the Regional Co-ordinator to advise us on what the issue is, so that we can take a decision on the way forward.

I am advised that the concerns in the room are with regard to the fact that we have about six witnesses whereas very many people have prepared statements and memoranda. First, we would like to thank you very much, for taking the trouble to record those statements and memoranda which have enabled this Commission to be the Commission which has collected the highest number of statements of any truth commission in the world.

As with all truth commissions, not every statement gets to the public hearing unless it is simply because of modalities. For those of you who have been following our progress, you may realise that we were supposed to have finished our work by next month. We have actually heard people in North Eastern Province, upper Eastern Province, Western Province, Nyanza and Mt. Elgon regions. We are now in the Rift Valley which we have not finished. We are supposed to have finished our work in about three weeks.

In recognition of the fact that Kenyans want to be able to tell their stories, Parliament has extended our term for a further six months to give people the opportunity to speak. Even then, we still have to finish Rift Valley, and go to lower Eastern, the whole of Coast Province, the whole of Nairobi, the whole of Central Province. We still have to have thematic hearings around issues such as extra judicial killing by security forces and other issues. So, you can see that the time is short. We are here in Kitale because we feel it was important and critical for us to listen to you. As we have done everywhere, the process is that a few cases are selected which bring out the issues which are affecting the community. So, we have heard about land, squatters, issues of the forest, issues affecting women, issues affecting people living with disabilities, issues affecting children, education and infrastructure. We have heard a whole range of issues and we would like to assure you that your statements are with us. We have received and read your statements. Your statements form part of the records of this Commission. So, the issues raised in your statement will be raised in our report. It is not that we do not want to listen to you, we are here only to listen to you. But unfortunately, within the time and the resources that we have, we are not able to listen to every single person. We will still be here tomorrow

and we will have the women's hearings. Those hearings include issues to do, perhaps, with inheritance, land, access to title deeds and all sorts of issues. So, we would encourage you, perhaps, to use that avenue to explore those issues. If you feel that there is something that you did not put in your statement, we still have statement takers here and you are invited and encouraged to add your issues if you feel that they have not been taken into account. So, with that, we just want to thank you.

I invite our Regional Co-ordinator now to tell us the way forward. If there were any issues which you feel have not been dealt with, please, do address them to our Regional Co-ordinator and we will look at them. Thank you very much.

**Ms. Anne Kiprotich:** I want to thank you very much. You have heard the Presiding Chair answering the questions that you had raised. For those who have raised your hands, perhaps, with the permission of the Presiding Chair, I would like to explain to you that for those who had not recorded your statements, we have our officers who deal with statement taking. We would like to encourage those who have not recorded statements to join hands together, so that we can receive your statements.

Secondly, we apologise for those people who have not spoken. If you have the memorandum here or any statement that you have recorded, it can be admitted into the record of the Commission.

As the Presiding Chair has explained, it will go into the final report. Perhaps, you did not get an opportunity to speak, but it does not mean that you have been forgotten. Your report will also go into the final recommendations. It will come up with a recommendation in the final work of the Commission when they will be having the final report.

With permission from the Commissioners, after the work of this Commission, make up a follow-up of the report, so that you ensure that the recommendations concerning the issues that you want the Commission to look into should be captured and follow-up the implementation of the report.

I will take this opportunity to welcome Father Edward, so that he can lead us in a closing prayer. All the women are welcome for tomorrow's women's forum. It will be at the County Hall.

*(Closing Prayer)*

*(The Commission adjourned at 2.20 p.m.)*

