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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY, 29TH
SEPTEMBER, 2011 AT NAROK COUNTY COUNCIL HALL**

PRESENT

Ahmed Sheikh Farah	-	The Presiding Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Tom Ojienda	-	Commissioner, Kenya
Margaret Wambui Shava	-	Commissioner, Kenya
Gertrude Chawatama	-	Commissioner, Zambia
Belinda Akello	-	Leader of Evidence

(The Commission commenced at 10.15 a.m.)

(Opening Prayers)

The Presiding Chair (Commissioner Farah): Good morning. We are here today in Narok for two days, today and tomorrow. We will hear everybody who is on the schedule. Let me take this opportunity to introduce you to the panel of commissioners who are here today.

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

We will bring in witnesses and when they come into the witness box, we would like you to respect them. We would like you to remain silent as they give their evidence. You should not interrupt. Respect their evidence even though you may not agree with whatever they are going to say. After they have finished their evidence, the Leader of Evidence, who will also guide them, will ask them some questions, if there will be any; on completion, if there will be need for any clarifications, the panel of Commissioners, who are seated here this morning, will pose questions to them.

I want now to set the rules; I would like you all to switch off your mobile phones because they distract the proceedings. Do not put them on silent mode because they will interfere with the equipment as they vibrate or do other functions. So, switch them off. You are all requested to remain silent and respect the proceedings. If you are to take any photographs, please take those of the witnesses before or after they give the evidence. Still photographs are permitted but flash photographs are prohibited. With that now, I hand over to the Leader of Evidence.

(Mr. John Salimalai Maitai took the oath)

Ms. Belinda Akello: Presiding Chair, this is the first witness for today. I welcome you to today's hearings. For the sake of the record, please tell us your three names?

Mr. John Salimalai Maitai: My three names are John Salimalai Maitai.

Ms. Belinda Akello: Mr. Maitai, we will welcome you to today's hearing; perhaps, you can tell us where you stay.

Mr. John Salimalai Maitai: I stay here in Narok at a place called Ololopel.

Ms. Belinda Akello: Thank you very much. What is your job or role in this particular area?

Mr. John Salimalai Maitai: I am here in Narok as the chairman of the Maasai Council of Elders, which is eight years old now.

Ms. Belinda Akello: Thank you very much, Mr. Maitai and since you said that you are the chairman of this council of elders, can you explain to us the issues of the Maasai Council of Elders that you want to articulate before this commission?

Mr. John Salimalai Maitai: I, as the leader of the Maasai Council of Elders, I have a few issues that I would like to raise before this commission. The first thing is that I would like to say that since Kenya gained independence, we the Maasais have lagged behind in development; we have not enjoyed the fruits of independence like other Kenyans. This was because; first of all when we got independence, our area was a closed district. People were not allowed to visit because we had not sub-divided our properties. At some point, the founding President of this country summoned us to Nakuru on 2nd February, and told us that after six months, Maasailand would be opened. The passbooks that people had in order to visit Maasailand would be abolished. We requested him to send a demarcation committee so that Maasailand could be demarcated and within a short time the committee came but a problem occurred after they started their work. As we speak now, from Kenyatta's time, there have been very many areas that have not been demarcated, and people do not have title deeds. That shows that our land was deliberately left to lag behind, so that the Maasais could not use their land, or would have a problem selling it.

Another issue is that the demarcation brought about clashes. Conflicts started and so many people have killed each another just because of that. Those who were demarcating the land did not follow what the locals told them and the committee was made to undertake matters that did not satisfy the Maasais. The Maasais gave out parcels of land for development, which have ended up not giving them what they wanted. For instance, the National Cereals and Produce Board (NCPB) which is being constructed on some of these parcels of land is only benefitting other people and not the Maasais, yet the Maasai are farmers. Previously the Maasai were not given loans to develop their land; other people got loans to develop land in Maasailand, and we did not like that because we thought it was some form of oppression.

Another issue is that we gave out an area for a national park. When this was given out, the animals used to be taken care of by the Maasai before independence and even before the white man came here. However, when we gave out our land for parks, the Maasais did not benefit in any way. The Maasais got huge losses because the animals started

leaving the park and invading the farms and attacking livestock belonging to the Maasais. The Maasais were not allowed to touch any of the animals, but the animals would kill Maasais; if a Maasai died, it would take ten years to get a paltry compensation of Kshs30,000, which is enough to just buy a goat. But if a Maasai person killed an animal, he would be jailed for six years. So, we have lived with these problems. We have independence but we cannot see any benefit from it as the Maasai. In our district, we have officers all over; when I go to other places I find that it is the local residents who are the officers in their own offices, but when you come to our offices, maybe, a Maasai there is a very junior person. All the sensitive positions are taken up by people from other communities. We think that this is deliberately done, so that we have nobody to listen to our issues when we try to present them.

Something else that I would like to mention is with regard to hospitals. During Moi's days, there were mobile clinics for treating people but there was no medicine. As we speak now, there is still no medicine in hospitals. You only get a prescription to go and buy medicine from a chemist, even if it is for an injection. You have to bring it back to the hospital. We are surprised how a citizen who establishes a chemist can get enough medicine to stock, yet the Government does not have its own medicine. We would like our Government to look into this. We no longer have the mobile clinics and the Maasai who live in places with no means of transportation fall sick, and when they are transported to the nearby hospitals on donkeys, they die on the way. That is because a donkey is not the best way of transporting a sick person and the mobile clinics are no longer there. The dispensaries are not there. If Narok District Hospital has no drugs, do you think the small dispensaries in the rural areas will have drugs?

So, since independence we had land and we were happy before it was demarcated. It is okay for the land to be demarcated and title deeds issued to people, but we have many problems and we would like to tell the Government that the Maasai should be treated like other people in the rest of the country. We are seeing elephants and other animals being relocated to the national parks, yet for all these many years we have been complaining that they have been killing people, destroying our crops, killing our livestock and children and no one has bothered to try and help the Maasai. We wonder what they are doing. They seem to be taking care of the forests, but even then, they have not been able to protect them as they are supposed to do. There are no trees which have been planted and because of this, the Maasai have been the victims of oppression all the time because they have no one to complain to.

The Kenya Wildlife Service (KWS) wardens actually go to people's farms and if an old man cuts down a tree he is arraigned in court and prosecuted on allegation that he cut a tree in the forest. The old man will complain and the case will drag for one or two years. This is meant to punish him, yet it was in his farm and he was entitled to cut it. So, the Maasai here have a lot of things to tell you. Thank you.

Ms. Belinda Akello: Thank you very much, Mr. Maitai. We have seen that you have expressed the issues of the Maasai in a very good way. This is the memorandum that you have given the Commission, and it covers issues of employment, health, natural

resources, trees and the Maasai community. We pray that the same be admitted as part of the record.

The Presiding Chair (Commissioner Farah): It is so admitted. Leader of Evidence, before you proceed, I would like to say two things. First, I would like to recognise the presence of Commissioner Halake of the National Cohesion and Integration Commission, a sister Commission, which is permanent and that will follow up our recommendations and implementation. I also want to recognize the presence of the Chairman of Narok County Council. The third thing I would like to say is that as we proceed, please refrain from shouting and clapping. Your witness has made his point and we have heard it and recorded it. If later on we want to recognise you, we will tell you and you will stand up, but in the interest of silence, please do not disrupt the witness. Leader of evidence, proceed.

Ms. Belinda Akello: Presiding Chair, the witness has provided a very detailed memorandum, and based on it I have no further questions or any issue to clarify.

The Presiding Chair (Commissioner Farah): Thank you very much. I will now give the opportunity to my fellow Commissioners to pose any questions that they may have. I will start from my extreme left. Commissioner Dinka, do you have anything?

Commissioner Dinka: Thank you very much, Mr. Maitai for your testimony. You have expressed very well the issues that your people have. I just want to clarify one thing. You mentioned that during former President Moi's era there were mobile clinics but now they are not there anymore. What happened? Did they just stop or more hospitals were built and they stopped the mobile clinics?

Mr. John Salimalai Maitai: I mentioned before this Commission that in the rural areas there are health centres and dispensaries that were put up, and I think they are still there; there were mobile clinics for areas that cannot be accessed due to lack of transport. We had them during those days but now we do not know what happened because they just disappeared before the end of Moi's era; we do not see them. That is why I mentioned that even dispensaries do not have medicine.

Commissioner Dinka: Thank you. Also in your presentation, you have covered quite a number of things like unemployment, resources and so on, but you have not said much about education. How is the education system like for the children of the pastoralists?

Mr. John Salimalai Maitai: Hon. Commissioner, you know when the white men came to Kenya, they feared that the Maasai would be wise; so, they decided to use a system of divide and rule. This affected us most. The other communities lived together in harmony, but the Maasai were divided into eight different groups. These are the Samburus, who are part of our group. The Njemps of Laikipia, the Rendille and the Maasai that live in Loyangalani, Narok, Kajiado and Trans Mara. Then the white man decided not to wake up a sleeping dog and schools were not built quickly in Maasailand; the white man was quite happy to get the Maasai to look after the settlers' cows. But the government of

President Moi started opening up schools in this area. There are now many schools here and most of us have accepted to educate our children, though we are late; we know that this came late because of the colonial and the first independence governments.

Commissioner Dinka: Thank you very much for your testimony. I have no other question.

Commissioner Chawatama: Thank you very much for your testimony. I will, just in addition to the question that Commissioner Dinka asked on education, touch on this issue of boys and girls attending school. Are they the same or are there more boys than girls attending the schools that have now been built?

Mr. John Salimalai Maitai: Previously, the Maasai did not want to send their girls to school, but later by looking at other communities in the country, they noticed that girls are just like boys and they have a right to go to school. Now, both boys and girls go to school equally, but previously girls never used to go to school. The Maasai Council of Elders discourages anyone from taking a child out of school to make them undergo Female Genital Mutilation (FGM) and marry them off to old men. Those things are forgotten and all the children are now going to school. Of course, we have not fully succeeded in this; occasionally we have to report cases to the chief or DC to take steps.

Commissioner Chawatama: You mentioned the main challenges that you have had both in the past and now in demarcating land. When you have made presentations through the Ministry of Lands, what are some of the reasons that they have given for failure to demarcate or sub-divide land in this region?

Mr. John Salimalai Maitai: When the demarcation committee or the Government committee came to sub-divide the land in Maasailand, they were followed behind by land speculators and that was where the problem started. They wanted that as soon as the sub-division ended, the land be sold to them. They had already convinced the Maasai to sell the land to them, and that brought about problems of rushing the sub-division. It was done deliberately to make sure that the Maasai did not get the land and instead the land was sold to other people.

Commissioner Chawatama: Would you know the number of title deeds that are held by the Maasai?

Mr. John Salimalai Maitai: Where exactly is that? Is it in Narok District alone? I think there are very many areas where people have titles; equally, there are also very many areas where people still do not have title deeds.

Commissioner Chawatama: Thank you very much.

Commissioner Ojienda: Thank you very much, *Mzee* ole Maitai for your evidence which I find clear and to the point. I just want to encourage you, as the chair of the Council, to continue to undertake activities that foster peace and unity, as you have

stated. In the memorandum, you also say that you want to undertake development activities. You, however, mentioned that you have had problems with politics. Please, illustrate that.

Mr. John Salimalai Maitai: When it comes to politics, I will very briefly talk about it. Narok politics is dirtier than in any other part of Kenya. When we had the late hon. ole Tipis there was a problem and there was even a fist fight between him and hon. ole Ntimama. After ole Tipis died, there was still an ole Tipis group and an ole Ntimama group and they have not been reunited up to now. We are still divided into two groups. The Maasai in Narok do not hate each other, but when it comes to politics, it puts them in separate groups. The Maasais do not like it. It is still going on. It started about 49 years ago and we have it up to now. Now, we want all the citizens to be united and when we vote, let it be like in other places, where after elections people continue to live together. In Narok, we live like enemies until when the next elections come; we do not live cohesively. That is why we thought that if we bring in the Council of Elders, it will unite the people so that they forget about the politics of this region.

Commissioner Ojienda: Have you made efforts at bringing the Ntimama camp and the other camp together, because I think that is key?

Mr. John Salimalai Maitai: We have tried that twice but it did not succeed. About five years ago, we brought together elders and religious people to bring about unity between Ntimama and ole Ntutu by praying for them, but by the time we left the hall, it was as if we had done nothing, yet we were around 800 people who had gathered there to reconcile them. So, it is very difficult to reconcile the Narok leaders, because they seem to benefit more from this disunity, or being divided.

Commissioner Ojienda: What recommendation did you make or what do you think we can do to help you people in the efforts of reconciling these people?

Mr. John Salimalai Maitai: I would ask you, through the Government, to strengthen us. Even now the council of elders is divided into two different groups, and one group is used politically. I am the national leader of the council of elders, and I try to encourage members to avoid politics; they should not use the council of elders for political benefits; that makes me an enemy to some of the politicians, because they would like to divide the group in order to benefit themselves politically. We do not want that because it benefits a single individual instead of the general population.

Commissioner Shava: Thank you very much, *mzee* ole Maitai. First, I would like to ask you something with regard to this question of education. Since you are the chair of the Maasai Council of Elders you have gone all over to assess the situation. You have said that there are no drugs and mobile clinics do not exist. Is it the same in other places like Laikipia, Samburu and Kajiado?

Mr. John Salimalai Maitai: First of all, I have visited nine districts inhabited by the Maasai and the truth is that you might find some districts where there is only one hospital

at the district headquarters and nothing anywhere else. There are some places where you will find mobile clinics that were brought by Moi, but they have never been seen in any other place. So, it is not just here but Maasai areas all over the country have similar problems of lack of medical facilities and the Government has not done anything.

Commissioner Shava: My next question is: Narok has really grown in the last few decades into a commercial centre, and there are other communities living here. How are your relations with the other communities living in this area?

Mr. John Salimalai Maitai: I want to tell you that in 1992 there was an attempt to try and evict the other communities from Narok; some left but later on, especially during the last post-election violence, they did not leave. They are still here. We like them and we live together, but all the time we fear any form of invasion. We know that when we are tempted with money; we should try to avoid selling all our land as a community; if we do that, we will have nowhere else to go and our population keeps growing. You can find a 50-year old man selling 30 acres of land, and he has ten children. At the end of it all, he will only be left with a house. So, we would like the Maasai to hold onto their land. Previously they would have three or four children and then they would stop getting children, but now they can get even 20 children and the land is diminishing. I would like to tell them to take good care of land. For instance, Kajiado used to be very big but it is no longer that way. People just walk into the rural areas looking for the Maasai to sell them land, and that is a very big problem in this area.

Commissioner Shava: Thank you very much, *Mzee*.

The Presiding Chair (Commissioner Farah): *Mzee*, I think the Commissioners have asked you most of the questions; I only have one question. Is this grouping of the Maasai into ole Ntimama and Ntutu groups based on political ideology or clanism?

Mr. John Salimalai Maitai: To say the truth, it is not because of clanism. It is just because of politics; that is why I said that it is now dragging in clans and age groups; we would like to forget about all these, so that we can live together. Even if we have four people contesting a seat they should not become enemies after the elections.

I also wish to add that the Maasai Council of Elders was to be facilitated to strike a balance between the people and the leadership.

The Presiding Chair (Commissioner Farah): Thank you very much. You have answered my question; I have no further questions. However, I would just like to say a word of caution and advise that you are a very important person as the Chairman of the Maasai Council of Elders. I am happy that you get your membership from across the clans and ages. Yours is a very noble task of keeping the Maasai people united behind certain policies and certain leaders and you are there to ensure they resolve their problems amicably. We thank you for your good memorandum. I also thank you for the eloquent way in which you presented it today.

I know you are the Chairman of the Maasai Council of Elders and you cut across Kajiado, Narok and all the other Maasai dominated areas. Before we step you down, are there people you came with here that you would like the Commission to recognise?

Mr. John Salimalai Maitai: Please, I would like the members of the Maasai Council of Elders to stand up, so that they are recognised by the Commission.

(The members stood up in their places)

The Presiding Chair (Commissioner Farah): Thank you very much. You are recognized by the Commission. You may now sit down.

(Mr. Daniel Kaiseyr Punyua took the oath)

Ms. Belinda Akello: Commissioners, this is Witness No.2 on our list. We welcome you very much for today's hearing. For the sake of the records, state your full three names.

Mr. Daniel Punyua: Thank you very much, Commissioners. My name is Daniel Kaisieyr ole Punyua.

Ms. Belinda Akello: Mr. Daniel, where do you live?

Mr. Daniel Punyua: I live in a place called Nairegia Enkare in the Mau Division of Narok District.

Ms. Belinda Akello: What is your current occupation?

Mr. Daniel Punyua: At the moment, I am a farmer. I retired as a civil servant.

Ms. Belinda Akello: What is your role or responsibility in this particular area of Kikonyokie or Narok North?

Mr. Daniel Punyua: I am here as one of the elders or community representatives. I represent the Kikonyokie Community.

Ms. Belinda Akello: Thank you very much. In addition to his testimony, we first have one memorandum on historical injustices. Is this the memorandum on historical injustices that you handed to the Commission? These are the minutes of the meeting held by elders appointed by His Excellency the President to solve the boundary disputes between Kikonyokie and Purko clans in Narok. It is dated 16th October, 1996.

The witness has also given another supplementary memorandum on extra-judicial killings. We pray that these three documents be admitted as part of his documents.

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

Ms. Belinda Akello: Thank you very much, Mr. Daniel ole Punyua. We have received your statements and the Commission will read them. Maybe, you could just briefly give us a summary of the memorandum you have given to the Commission and your recommendations.

Mr. Daniel Punyua: Thank you very much. I would like to briefly talk about it.

Mr. Presiding Chair, Sir, on historical injustices among the Maasai, I would like to talk about one group among the 24 groups of the Maasai. It is the one that has been affected by the historical injustices. My brother who has just left has mentioned this in great detail. I do not know whether I should go through this or I should leave it and then you can get it through other means. The Maasai Agreement of 1904 and 1911 was the beginning of the historical injustices among our people. Prior to that agreement, they used to occupy the southern shores of Lake Turkana and whether you accept it or not, they went all the way down to the northern shores of Lake Malawi. If it was not for that historical injustice of 1904/1911, I can guarantee you that the Maasai would have been an independent nation of its own. However, we were divided until we lost our unity. We could not live together cohesively. We now live in separate areas.

Mr. Presiding Chair, I thought my brother who has just left would have talked in general about historical injustices of the Maasai and I would utilize my slot to talk about the injustices suffered by the Kikonyokie. As I said, Kikonyokie is one of the 24 communities that live in the area. Before the coming of the colonialist we were living in Naivasha area, Kinangop, Narok North and Kajiado North. When we were divided, some went to Kajiado and others left for Narok. Those who were left in other areas were fewer. As you know, Naivasha and Kinangop are no longer Maasailand. All the resources that are there cannot benefit any Maasai. Whether you agree with me or not, Naivasha would have been one of the headquarters of Maasai district. All the tourist lodges in Lake Naivasha and flower farms would have been under some of the Maasai county councils now. Longonot National Park, Hells Gate National Park and Kinangop forest would have benefited Maasai, especially Kikonyokie children even though the 1904/1911 agreement stated that the Maasai should live south of the railway line. However, at the end of it, we were thrown out and evicted. Now we live in the jungle. We are losing our livestock because we do not have sufficient land to graze and Maasai do not know how to farm. We should have been able to take care of our livestock.

Mr. Presiding Chair, the truth is that after independence, we were expecting that the Maasai would be taken back to where they were living before the 1904/1911 treaty. Some of our leaders went to find out about this, but the reply they got from the white colonialists was not very good. Now, that land is not ours. Recently there was a case in which one of our groups went to court and won. That is to show that we have rights. I would like to ask this Commission to follow up to make sure that justice prevails. Professor, I am sure we can get our land back if there is justice.

As Kikonyokie although we were thrown out of Naivasha and Kinangop, some Maasais from Uasin Gishu were thrown out of an entire province. Some of them are left with ten

or 20 acres instead of 100 or 200 acres. When we attained independence, Kikonyokie clan in Narok North District were put in one location. It was called Kikonyokie Location. That location now has been divided into five locations. Each location with less than 200,000 acres and has a population of about 100,000 people. If we were to give each family land, they would get two acres. How would you encourage somebody who has not gone to school to do zero grazing or modern farming methods on those two acres of land and yet he cannot grow maize or potatoes?

Mr. Presiding Chair, my plea with regard to the first form of injustice is that let the Government return whatever they can to our people. That is the only way we can get justice. We should be involved in the economic investments of the Government. We are the people. Some of those lodges such as the ones in Naivasha, there is no reason why a certain percentage cannot be taken to educate the Kikonyokie children.

Mr. Presiding Chair, when we came the Government thought that the Maasai should be assisted. Instead of moving from place to place, they should be given land that can be commercially viable or used for securing loans. The Maasais were told that because they were pastoralists, they were to be placed in group ranches. We were divided into two group ranches. The Suswa Kilet Group ranch was given its area. The other one was called Ntulele group Ranch.

Mr. Presiding Chair, Suswa Kilet Group Ranch got its title deed. I have evidence of that. It was issued in 1970. As I speak now, we have not been able to subdivide that piece of land to the members because of political interference. If your brother is strangling you, would you just sit there and say it is okay? It is good to shout and say that your brother is strangling you. So, our brothers attacked us. They came and started living on that parcel of land. We tried asking them to leave, but they refused. We called the Government to help us to evict them, but with little success. For about 17 or 18 years, we have not been able to evict them. It forced us later to go to higher authorities in the Government because the Government at the grassroots level was not being of any help. By grassroots, I am talking about the district level. So, we were compelled to go to the higher authorities. In 1996, after the conflicts that saw three of our people die, we went to appeal to the Government and President Moi himself came in.

Ms. Belinda Akello: We thank you very much, ole Punyua for what you have explained and the statement that you have handed to the Commission.

What are your recommendations? Tell us at least three strong recommendations that you would like the Commission to carry with it?

Mr. Daniel Punyua: I had been told that I had an hour to make my presentation, but now I am told I do not have that hour. We should be helped so that these people can leave. Those who killed our children should be prosecuted. We know that they are around. Our people were forcefully evicted and women were raped. People in the Government wanted to subdivide that land and issue it to the people who invaded us. Where is justice? Land is

being shared among those who invaded and evicted us. Where are we expected to go and yet we have not invaded or attacked anyone else? Where is justice?

Mr. Presiding Chair, finally, we are majority in this district. In English we are told the minorities have their say, but the majority can have their way. Let us be given our say. We should also be able to say that let justice be done. There is not a single time since independence that somebody from Kikonyokie has been elected an MP or to represent the district in any other way; not even chairman of the council.

We constitute 25 per cent of the constituency, but there is no time we have been given even 10 per cent of the CDF funding. I am being asked to hurry up, so I will stop. As Kikonyokie community, we are discriminated. We want that to end. We need justice. We were thrown from the forest and other people from far away were brought in. Does it mean that we do not want land? Does it mean that we have no ability to have children? I will stop there. So, maybe if you ask questions, I might talk a little more.

Ms. Belinda Akello: Thank you very much, Mr. ole Punyua. It is not that we are taking you through very fast. But you have given us the memorandum that is very detailed. Indeed, we are very grateful. You have also explained to us the issues.

You have given us three statements. There is a memorandum of historical injustices, extra-judicial killings and the minutes of the meetings that was in October, 1989. Do you have any other document that you would like to submit before the Commission, so that it can also be admitted?

Mr. Daniel Punyua: Thank you very much, Chairman. I have been asked to bring a copy of the certificate of title for the farm. I have also been requested to bring the consent to sub-divide this piece of land to the members. Here, it is.

Mr. Presiding Chair, here is a letter to show that we never rested. We used all means through the Government. We complained and went to court. We prosecuted them. Let me ask you, if one person hits another and injures him and takes away his property, and you take him to court, and he is awarded a suspended sentence or taken home or gets released, how would you feel? We took those who raped to court, but they were set free. We have tried to follow up. But as usual in Kenya the files disappeared. Mr. Presiding Chair, where is justice?

Mr. Presiding Chair, I was told to show how many members the group ranch has. I have brought a letter from the Government to show how many people are in the register.

Ms. Belinda Akello: And the land certificate for the land in question which is dated 6th December, 1971. The witness has also brought the letter of consent which is dated 21st May, 2002. The witness has brought a list of the police file numbers in reference to what he has said. He has also brought us the criminal case numbers and the result which has a rubber stamp from the subordinate Court Narok, dated 26th September, 2011.

The witness has also brought a certificate of the registered numbers from the District Land Adjudication Settlement Officer in Narok, dated 29th September, 2011.

Mr. Presiding Chair, we pray that the same documents be admitted as part of his record.

The Presiding Chair (Commissioner Farah): Let them be admitted to the records of the Commission.

Ms. Belinda Akello: Mr. Presiding Chair, also maybe, for the record the witness has brought very detailed memorandum and all the necessary documentation to confirm all the issues that he talked about. Based on that, leader of evidence has no questions to clarify as his documents are in the record.

The Presiding Chair (Commissioner Farah): Memorandum is also admitted in the record. Thank you very much. I will now give the opportunity to Commissioners to ask any questions. This time I will start from my far right, Commissioner Prof. Tom Ojienda.

Commissioner Ojienda: Thank you very much, Mr. Daniel Punyua, for the testimony that you have given us. I am just trying to understand in terms of population, I know that your clan or community is smaller; the Purko and Eldamat. I just want to understand whether you lost your land from activities of specific individuals who secured the land in their name before or after independence. You have talked about the earlier agreements of 1904/1911 which are common place. But you then mentioned that you have been pushed to an area of 200,000 acres only. Therefore, you have been deprived of your land. I just want to understand, is it also out of the act of specific individuals that you have actually subsequently lost your land?

Mr. Daniel Punyua: Thank you very much. The farms that we lost before independence were taken away by the Government. We also lost land when we were attacked by our brothers from Endakalal or Suswa due to impunity.

Mr. Presiding Chair, there was a committee that was put in place by the President. They were asked to find out what was the problem. They made recommendations, but those recommendations have never been implemented. These people still live here. They are the ones who killed our people and no step has been taken. At the moment, we cannot subdivide the land among ourselves even if it is two or three acres because as you know it should be shared among the members. The consent was given long before we even thought of giving part of it to some other people. So, there is no way of giving it to any one else.

Commissioner Ojienda: This ranch which is registered under the Land (Group Representative) Act, the title that I can see here which has many people, is it your position that there has been no subdivision for individual members? Is it that other people occupied land to which you bear land certificate, the title deed?

Mr. Daniel Punyua: We have the certificate and the right to the land. The members who are registered in that group ranch should have been the beneficiaries. When the committee came in about 15 years ago, they have tried to subdivide it to the members, but we have had trespassers. So, we would have wished to have them removed, so that members can now share the land so that everybody gets what he deserves. They have no titles because the land is under one title which we have. The title has not been disowned. It is this one. The day that the committee will finish subdividing the piece of land to the 1,300 people, then the smaller titles can be given to those individuals.

Commissioner Ojienda: How many outsiders as you say, are living on this land?

Mr. Daniel Punyua: Mr. Presiding Chair, the number keeps increasing every morning. At some point, there were 17 of them, at some point there was 20. At the moment as I speak, there are more than 200 people.

Commissioner Ojienda: Why have you not sought court interventions?

Mr. Daniel Punyua: Mr. Presiding Chair, we have done all that. We have gone to court. We have been given eviction orders and served. But who will enforce it. If we go there, it will create tension and eventually conflict. Is it not the Government that should be helping us to enforce the eviction orders? The Government is telling us to go back and negotiate with the people who invaded us. How do we negotiate? We got tired and that is why we went to appeal to the President of Kenya. Nobody followed his instructions. No recommendation has been implemented. I think there are more powerful forces in Narok than the President of the country.

Commissioner Ojienda: All the 1,397 members also live on the same parcels.

Mr. Daniel Punyua: Yes.

Commissioner Ojienda: I just want to mention that the Constitution of Kenya, 2010, has created something called a National Land Commission. The law has been passed. I think in a while we shall have the commission in place. One of the functions of this commission will be to specifically deal with matters of historical injustices and also matters of title deeds. I think your rights are intact because of the court orders you have talked about. But certain people have refused to go out of your land. Those people are definitely in contempt of court. Court Orders must be respected.

In terms of enforcements, I think there should be a specific order directing the police to evict the specific people who are not supposed to be on that land. I think maybe your lawyer should be thinking about taking that direction and identifying the specific people so that they would be named in the order and be asked to leave.

Mr. Daniel Punyua: Mr. Presiding Chair, we have done exactly that. We have gone with the eviction notices. We have even pinned it on their *manyatta* houses. We are not just generalizing. We have actually gone to individuals and told them to leave. So, we took a

copy to the District Commissioner who was meant to give us a vehicle to go and evict them, but we could not get it.

Commissioner Ojienda: But, perhaps, this group should also complete the process of subdividing this land to its members so that every person would have a portion which then has titles. I think that would further the specific interest of the individual members.

Mr. Daniel Punyua: Mr. Presiding Chair, that is what we tried to do and that is when we ended up fighting and losing three members. We never got any help from the Government until now. When the survey was done, they put everything on the map. It was just a question of showing each individual which section had been allocated to him. But they cannot go, because they know that if they go there, they will be killed.

Commissioner Ojienda: They need a lot of assistance and the recommendations of this Commission on issues of implementation. That is because you are within your rights to do what you are doing. It appears that certain forces are stopping you from implementing or doing what you need to do. I thank you for coming and sharing with us because we now know what recommendation to make. We will make recommendations so that certain measures can be taken for implementation. This Commission was created against the backdrop of the violence that occurred in this country and, of course, in full realization of the conflicts that communities have had touching on many issues including land that stem from various antecedents that were there before independence and thereafter. So this is one of the issues that we have to deal with it; the question of land. We have heard you and we shall make specific recommendations for implementation under Section 49 of the TJRC Act.

Commissioner Shava: Thank you very much Ole Punyua for coming. You have a very clear grasp of the memorandum that you are presenting before us and which in turn is also very detailed. I am only seeing now some of the other documentation that you have presented. We want to assure you that we will study this documentation thoroughly and make the appropriate recommendation.

Commissioner Chawatama: I join the other Commissioners in thanking you for the documents that you have submitted including the memorandum. Your documents speak for themselves. As a Commission, we are truly sorry for the death of some of your tribe's people and the issue of death, whether it is over land or livestock, is truly disturbing. I pray that in this area, peace will prevail and that you can all live in harmony. For many of us who come from outside Kenya, we only knew of the great Maasai. We knew of no other tribe. So, of course, when we were coming here, we all identified ourselves as Maasai because we only knew of the Maasai. I come from Zambia and the greatness of the Maasai people is often spoken about. It is my prayers that by the time this Commission ends, I can go back to my people and confirm that truly the Maasai are great people, they live together in peace and we have a lot to learn from them. I am happy to be amongst my brothers and sisters and I know that I will enjoy the next two days just mingling with you.

The Presiding Chair (Commissioner Farah): Thank you! The Commissioners have already spoken and there is no need to speak further. Thank you for being eloquent and giving the detailed documents. We will study them and make appropriate recommendations.

Ms. Belinda Akello: We will now have the next witnesses.

*(Messrs. Elijah Sikona and Francis
Leshila Kamet took the oath)*

The witness is the third and we beg your direction because we pray that we have both witnesses give their testimonies concurrently and then the Commission can ask questions and clarifications after both witnesses have already spoken. Both of them speak about injustices in relation to ranches and trustlands and we pray that you allow both of them to speak one after the other. Afterwards, the Commission can then ask for further clarifications.

The Presiding Chair (Commissioner Farah): Leader of Evidence, why is it necessary for the two witnesses to speak at the same time or concurrently? Would one not do the job?

Ms. Belinda Akello: There was one representative who was to do the job but the other group felt that they had specific needs that they felt they individually needed to present. We have advised the two of them that since we already have the memoranda, they need to highlight the issue and just inform us what could have been left out. The first speaker is going to speak on behalf of three ranches and present the relevant documents in pursuit of that. The other gentleman will also speak on two other groups that he feels have different issues.

The Presiding Chair (Commissioner Farah): So, the documents they will present are two different ones?

Ms. Belinda Akello: Yes!

The Presiding Chair (Commissioner Farah): In the interest of time management, go ahead and control it. Since we will have the documents, all we want are the highlights and recommendations.

Ms. Belinda Akello: For the record, kindly state your name.

Mr. Elijah Sikona: My name is Elijah Sikona.

Ms. Belinda Akello: Where do you live?

Mr. Elijah Sikona: I am a resident of Trans Mara in Narok County, Kilgoris.

Ms. Belinda Akello: What do you do in Trans Mara?

Mr. Elijah Sikona: I am the regional chairman of Human Rights Trust and Society of Human Rights Alliance in the South Rift Region.

Ms. Belinda Akello: Your organization covers which areas?

Mr. Elijah Sikona: It covers the South Rift region.

Ms. Belinda Akello: Which other regions?

Mr. Elijah Sikona: Part of North Rift and part of the eastern region.

Ms. Belinda Akello: This goes on record that the issues you raise cover the entire region; North and South rift?

Mr. Elijah Sikona: The matters that I want to state are matters of Narok County and not outside the jurisdiction.

Ms. Belinda Akello: Kindly proceed!

Mr. Elijah Sikona: To start with, I would like to present the DVD that was prepared by the Human Rights Trust and Society of Human Rights Alliance that brings the picture of the county on matters of land and especially matters of group ranches in the region. It is confirmed that Narok County has so many group ranches. There is rampant corruption---

Ms. Belinda Akello: We pray that the DVD presented by the witness dated August 2011 be admitted as part of his records.

The Presiding Chair (Commissioner Farah): The DVD will be so admitted but I would like to correct the translation for group ranches in Swahili.

Mr. Elijah Sikona: I wanted to bring to the attention of this Commission that there is rampant corruption involved in the group ranches and trustlands in Narok County. The DVD that I have presented deals with 17 group ranches that expressed their sentiments before the Lands, Public Complaints Resolution Committee on 19th and 20th August, 2011.

I would like to speak about Shartuka Group Ranch. The first violation occurred at Shartuka Group Ranch in 1975. It was subdivided in 1991 and 1992 and members felt that the Chairman, who was elected, Mr. Tasur, was not working together with the members. This led to so many court cases. It is important for the Commission to know that the first case went to 15 courts in Kenya. The Provincial Administration is also blamed for the violation in the said group ranch.

The second violation is extra-judicial killings. The community is very poor as we speak and they cannot access the resources in the group ranch.

There is Ololchani Group Ranch which has 37 members. This is a memorandum for Shartuka Group Ranch.

Ms. Belinda Akello: The witness has provided a memorandum for Shartuka Group Ranch and we pray that the same be admitted as part of the record.

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

Mr. Elijah Sikona: I will also address the issue of Ololchani which has 37 committee members. Since there is not much time, I will not be able to identify the members who divided Ololchani ---

The Presiding Chair (Commissioner Farah): Please slow down and allow for the translation to take place.

Mr. Elijah Sikona: I am just doing this because I do not have much time. I was saying that this is the committee that subdivided Ololchani in 1977 up to 1983. Subdivision was done in a proper way but later on in 1983, violation started. The Provincial Administration joined hands with the Ministry of Lands and formed a second committee that violated the rights of the first committee. I want to bring to your attention the fact that after subdivision there were complaints. After subdivision, they gave every member a plot in Kilgoris. They also created 37 parcels for themselves.

The Provincial Administration was involved in selling and transferring the 37 plots that were originally for the 37 committee members. The rights of the 37 people have been violated. Here are the copies and I pray that the Commission goes through them.

(Mr. Elijah Sikona laid the documents before the Commission)

Ms. Belinda Akello: The witness has provided a memorandum on Ololchani 37 members. We pray that the same be admitted as part of the record.

The Presiding Chair (Commissioner Farah): It is so admitted but also for translation, violation of rights is “*ukeukaji wa haki za binadamu*” it is not “*dhulumu*”.

Mr. Elijah Sikona: Coming to that document of Endonyo Kiti Kuto Group Ranch in Narok, it is in Narok South District. As a human rights official, I felt that a lot of violation took place from 1993 to date. In this document, the history reversed the land to a group ranch but it should work under Cap.287, where the land is under control though the members through their representatives; the committee. The first violation in this issue is the land matter. Members of Endonyo Kuto Group Ranch were allocated land measuring 5,400 acres or thereabout but later on, it was sub-divided through a private affair. It was the Ministry of Lands officials with the support of the Provincial Administration who violated the rights of the innocent members of the group ranch.

(Mr. Elijah Sikona laid the documents before the Commissioners)

Ms. Belinda Akello: Presiding Chair, the memorandum on behalf of Endonyo Kiti Kuto Group Ranch has been presented and we pray that the same be admitted as part of the record.

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

Mr. Elijah Sikona: There are also IDPs in this group ranch. Members of the Endoyo Kiti Kuto Ranch were sold part of the land, but during the 2007 post-election violence they were evicted. The Government gave some money to the IDPs. I want to bring to your attention that the money that was allocated to the IDPs from the group ranch was not given to them.

My time is over and I will only brief you about the 24 schools that have been grabbed in Trans Mara. Those are public utilities that the Maasai of Trans Mara depend on. The schools have been grabbed through encroachment. There are cases before courts through the support of the Ministry of Lands.

(Mr. Elijah Sikona laid the documents before the Commission)

Ms. Belinda Akello: Presiding Chair, there is a list of 24 schools that has been presented and also a memorandum to the KNCHR on schools facing eviction in Trans Mara. We pray that the same be admitted as part of the record.

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

Ms. Belinda Akello: In addition to that, the witness has provided 20 pieces of correspondence from the Ministry of Lands and Settlement, Office of the President, Commission of Inquiry into the Landless People of Kenya and the Kenya Anti-Corruption Commission (KACC). We also pray that the same be admitted as part of the record.

The Presiding Chair (Commissioner Farah): All the records will be so admitted.

(Mr. Elijah Sikona was stood down)

(Mr. Francis Leshila Kamet took the oath)

Ms. Belinda Akello: We welcome you for today's hearing and, for the sake of record, state your three names.

Mr. Francis Leshila: My name is Francis Leshila Kamet. I live in Trans Mara at Oldonyi Group Ranch.

Ms. Belinda Akello: What is your occupation?

Mr. Francis Leshila: I am the Chairman of the Olkare Keshe Group Trust.

Ms. Belinda Akello: Kindly take the Commission through a highlight of issues that you are going to present. How many groups are you representing today?

Mr. Francis Leshila: We have 300 members; there is Oloirien Group Ranch which has more than 400 members. There is also Kata Kishe that participated in the killings during the land violations and later on people were forcefully evicted from that place.

Ms. Belinda Akello: Take us through what you want to present before this Commission regarding the three communities.

Mr. Francis Leshila: First, I will talk about Olkare Kishe which began in 1994, but the members had stayed there since 1942. They were the original inhabitants. The Government then decided to evict them from that place - the Mara Triangle - in 1960, but people resisted the eviction. In 1974 /75, people went to Mzee Kenyatta at Nakuru State House and they were given back their piece of land. I have a document that can be adduced as exhibit.

(Mr. Francis Leshila laid the document before the Commission)

That piece of land was given back to them. From 1975 up to 1993, a company known as Ololoo grabbed the land. They went to the Ministry of Lands, came with a title deed and evicted people from there. We have one title deed known as Kichwa Tembo which was owned by the Maasai. They used to get revenue from there to assist themselves. But then that land was grabbed--- I have a letter here that could be used as an exhibit. I also have another letter to show that the people were given back that piece of land because they had to get access to the Mara River. That is a very big river that used to serve the populace in that area. One was Talek and the other is Ololoo.

(Mr. Francis Leshila laid the documents before the Commission)

When that piece of land was grabbed, the people did not consult. I can show you because the map is here. It has been sub-divided into two and then it was known as no man's land. I also have a map to show the Kichwa Tembo Hotel that used to be there. On the lower side, it was vacant but we made a lot of noise and demanded that the piece of land be given back to us. From there, we did not sit down and watch things move from bad to worse. We went to the Lands Office in Nairobi and complained. That piece of land was given back to us verbally. There was nothing that was written down. We have not been given back the land physically. We have gone to the Municipal Council of Narok. We went back to Parliament. The Parliamentarians helped us and it was ordered that the piece of land be given back to us, but it is still in the hands of the grabbers. We pray to the Commission to help us. I think God has heard our cries. We pray that God will help us get back our piece of land. People have taken our piece of land. There are two parcels of land; one is more than 2,000 acres and the other one is over 800 acres. Only two people

have grabbed those parcels of land. So, I will not talk much. We just plead with this Commission to ensure that our piece of land, hotel and everything else that has been snatched from us is returned. I present this document to the Commission.

(Mr. Francis Leshila laid the document before the Commission)

Ms. Belinda Akello: The witness has submitted the document dated 22nd June, 1993 and we pray that the same be admitted as part of the record.

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

Mr. Francis Leshila: I am going to talk about Oloirien Group Ranch which has 400 members. This group was formed on 14th February, 1975. As we speak, the group does not have any collective title deed but the land has been adjudicated and subdivided. There are individuals who own land and there is a public utility that has been set aside from this land. When you look at this map that I have here, this is the adjudication section and, at the forefront, we have a piece called Olkurruk Mara Lodge which used to sit on the piece of land. The same people who grabbed the other two parcels of land formed another company called Olosura which, in conjunction with the Ministry of Lands officials, again grabbed the other parcel of land. It is 800 acres and it belongs to the two people. Because we do not want people to be mentioned here, their names are there. I plead that this should be further investigated. This was on 20th January, 1999 and the other was taken on 22nd June, 1993. So, they are the same people who grabbed the other piece of land because they thought that the Maasai were ignorant. But because you have come to us, you will help many. I wish to present this document before the Commission because money is being used to harass us, but because they do not know you and they fear you, I forward this. Otherwise, they would have corrupted their way to you.

(Mr. Francis Leshila laid the document before the Commission)

Ms. Belinda Akello: There is a memorandum from Oloirien Group Ranch dated 22nd January, 1999 and we pray that the same be admitted as part of record.

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

Mr. Francis Leshila: Finally, is about the area called Kargeshe Group Trust; where we have had the Ololoo mass killings. The eviction that took place caused the death of many people. The case was in Kilgoris and there was an application made. But before the mention of the case in the court, the inter-parties used a lot of money and killed many people. It was either on 21st or 23rd when police officers came. They were around 700 to 1,000 at around 1.00 p.m. They started ambushing people who were staying in the *manyattas*. We at the border point of Tanzania thought that we had been ambushed by our enemies, only to realize they were police officers. Mr. Johnson Lekitio was shot dead as he was trying to run. They collected his body at around 4.00 p.m. and took him to the mortuary. This third letter shows the Ololoo Massacre that took place at the ten kilometers square. With regard to the law, there was no order that was given out by any

judge or magistrate pertaining to what we have here. Depending on that application, many people were evicted. That is the photocopy. There were 500 families that were evicted and spent the night in the cold. I am pleading that it is only right that you see the people. There is only one child who was beaten up and the child is here with us today. I do not know whether he will be allowed to talk. I also pray that you allow the people to stand up; the ones who were called IDPs. The Government does not know that we have IDPs who are suffering.

The Presiding Chair (Commissioner Farah): We will allow the people to stand up, so that you can see them, but we will not listen to the child because evidence by children requires special recognition. You can bring him forward, so that we can see him.

Mr. Francis Leshila: That child was on that particular place. So, when things started happening, he was about five to six years old and his father was murdered. Right now, that family does not have anything. They are very poor and the Government has not given them any assistance. So, the boy is there and you can see him. The police officers that I mentioned were around 700 to 1,000. Everything is here in the file and you can read and then make a decision. The Commission can have a right to investigate further and question some people. There is a letter here that was written by the police and you can read it and determine the truth. The order is here and you can read and determine the truth.

I am also pleading with the commissioners to ensure that the family of the late is assisted because they do not have food. There is nothing and the children cannot go to school. Without the assistance of the manyatta that we constructed, these people cannot eat or do anything. These are a few of the people that we brought because of the expenses, but there are so many people there. I am just pleading with the commissioners to look at the letter which is signed by the OCPD, Mr. Francis K. Wahome, who gave out the order. I now hand over this document to the Commission so that you can read and know where the truth is.

Ms. Belinda Akello: The document is titled Olooloi Massacre and it is dated 2003. We pray that the same be admitted as part of the record for the witness testimony.

The Presiding Chair (Commissioner Farah): May be so admitted.

Commissioner Shava: Mothers, we have seen you and we have seen your tears. We are saying sorry for what happened. Sorry to everyone.

(Mr. Francis Leshila wept)

The Presiding Chair (Commissioner Maj. Gen. Farah): Take your time and cool down.

Mr. Francis Leshila: I am requesting this Commission to take steps and punish all those people. They should appear before the Commission and tell you why they did that. It is not right that I construct my home and they bring different title deeds to come and kill

our people. I stand here to plead with the commissioners to peruse the documents and make sure that our land is given back to us. The Government saw that it was our right and so, it brought back our piece of land. It is more than 50 square kilometers depending on the documents that I have here by one Minister Ogutu in 1975. That is what we have been following.

Even today as I was coming, I was given a letter threatening me to keep quiet, but I cannot keep quiet because my people are suffering. That letter is here and I want to present it before the Commission. I have been threatened. On 11th, they came to my home but I was not at home. They wanted to kill me but I do not care. I want justice to be done to our people. The document is here. I was given this letter on 7th September this year because I had written a letter asking the Ministry of Lands to take steps as regards the killings and the grabbing of land. They have godfathers. So, there is a letter addressed to me here, so that I keep quiet. They asked me to write to them saying that I will keep mum and will not talk when the piece of land belonging to our community is being taken. I said I will not keep quiet and will keep on talking until we get our piece of land. I will give you these letters as exhibits and I will not keep quiet. I will keep on responding to them. We will keep on seeking justice. I will give these letters to the Commission so that you can peruse them further.

Ms. Belinda Akello: May the letter also be admitted as part of the record for the witness.

The Presiding Chair (Commissioner Farah): So admitted.

Mr. Francis Leshila: Thank you very much. I am so grateful to the commissioners. May you help the masses who are in the cold.

Ms. Belinda Akello: Presiding Chair, the first witness has requested for an additional time. So, if you permit him to take one minute to just state what he needs to add.

The Presiding Chair (Commissioner Farah): One minute is allowed.

Mr. Elijah Sikona: Eviction and extra judicial killings took place in Olooloi through a mere application dated 23rd July, 2003. I also want to assure the Commission that for good eight years, the IDPs did not have any support from the Government---

Commissioner Shava: Excuse me, through the Chair. Are you speaking on your own issue or are you responding to the witness who has just spoken? Are you supporting what the previous witness has said?

Mr. Elijah Sikona: I am supporting the document.

Commissioner Shava: Are you supporting your own or the previous document? Are you supporting what he has said?

Mr. Elijah Sikona: I am supporting what he has said. As human rights activists, we felt that a lot of rights were violated. If I may plead to the Commission to visit the camp so that it may have the real picture. Young girls in the community are forced into early marriages because there is nothing at home to depend on. They have no access to grazing land and water.

Ms. Belinda Akello: Presiding Chair and commissioners, the documents that have been provided suffice and there is a lot of documentation and memoranda given. There is no clarification or question from the Leader of Evidence.

The Presiding Chair (Commissioner Farah): Thank you. I will now hand over to the commissioners if they have any comments or questions to ask. I will start from my left, Commissioner Dinka.

Commissioner Dinka: I have one question for each of them, namely, Elijah and Francis. Elijah, in your statement, you talked about the 24 schools, but you say the land belonging to these boarding schools was grabbed by unknown people from the community. First of all, which community are you talking about?

Mr. Elijah Sikona: I am talking in general about the communities that are living in Trans Mara. They are, Siria Clan, Uasin Gishu and Moitanik and others. The 24 schools--
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Commissioner Dinka: You said communities in Trans Mara and you mentioned Uasin Gishu and others. So, you are talking about the Maasai Community? Is that right?

Mr. Elijah Sikona: Yes.

Commissioner Dinka: So, how can a community grab land? It must be individuals from the community. Who are they? Do they not have names?

Mr. Elijah Sikona: The community did not participate in the issue of grabbing public utilities, but those who contributed are the powerful and influential.

Commissioner Dinka: Do you know them?

Mr. Elijah Sikona: One is Daniel Taleng'o Kitungen(?).

Commissioner Dinka: Can you give that list of names to the Leader of Evidence before you leave?

Mr. Elijah Sikona: Yes, I can.

Commissioner Dinka: Thank you. For Francis, I have the same question. You are talking about powerful people coming and grabbing land, but you have not given us their

names. So, can you give those names to the Leader of Evidence in writing, so that we can conduct our own investigations?

Mr. Francis Leshila: I will do that.

Commissioner Dinka: Thank you. That is all.

Commissioner Chawatama: Elijah, in your statement, you have mentioned Olichani Land Committee having been appointed. They subdivided 37 plots. Where did this committee derive its authority from? Who appointed them and where did they derive their authority from?

Mr. Francis Leshila: With the documents that I have presented to the Commission, there is a letter of appointment. Under Cap.284, the Land Adjudication Officer appoints the committee that he will use plus the members of the Land Adjudication Board to subdivide the adjudication area.

Commissioner Chawatama: When you say that this land was then taken back, sold and transferred, who bought the land?

Mr. Francis Leshila: I want to bring to your attention that during the recording process of adjudication of Olotony, due to illiteracy of the community, the officers and the Provincial Administration, with the help of the area chiefs and some individuals with the second committee did this without involving the Committee.

Secondly, they took it in their records and looked for the other communities like the Kikuyus and the Kisiis to buy those pieces of land. Those communities are not members of the Olotony. They are not members and they do not belong at all to that community. So, it is a cry of this community that implementation be done. I also wish to bring to your attention the fact that KACC has also investigated the matter.

I also bring to your attention that several cases were heard by the Objection and Arbitration Board. In all these cases by the Objection and Arbitration Board, the 27 Olotony committee members won the cases. In 1997, according to the letter that I have presented to the Commission, the Director of Land Adjudication Board addressed the letter to the District Lands Adjudication Officer directing him to return the 37 plots to the original owners. We pray to this Commission to assist and help in all ways possible to implement that decision and seek for redress or compensation for the 37 plots.

Commissioner Chawatama: Thank you very much. You have answered my question. I would like to thank both witnesses. The fact that you have submitted so many documents will assist us greatly.

Thank you very much.

Commissioner Ojienda: Thank you, Presiding Chair. I want to thank the two witnesses for their testimonies. The issues you have presented to this Commission are very weighty. I have looked at the memoranda and it appears that several suits have been filed, several judgements entered and there are a number of claims that still continue to pile. A lot of the answers to the questions and issues that you presented before us lie with the National Land Commission because it appears they are judgements from the court. If they are judgements from the court, then there has to be a framework to deal with them and the injustices. But clearly, grabbing has occurred. We will look at these memoranda and make our recommendations as well, but your answers lie in the structure that will be created by the National Land Commission.

I am sure this problem will be finally resolved. The problems of group ranch within Narok, Kajiado and elsewhere, inform the work of the Ndungu Commission, the Njonjo Commission and now this Commission. The answer now lies with the National Land Commission. I have seen the letters from Haphel and Solonka from the lawyers and I just want to thank you. We will make firm recommendations. At least, you understand the issues.

Commissioner Shava: My fellow commissioners have said what is important for us to say today. I will just add my thanks to both of you for coming here to represent the community. There are opportunities which are presented by this new constitutional dispensation, but as we were told, the Constitution is just a piece of paper unless we make it alive by using its provisions. That is what you are doing today. You have decided to come here today and speak out. You have decided to make your story known to the whole county and those who are following the work of the Commission even outside this country. We recognize your bravery and courage in standing up for your people. We see that your people are here with you today, which shows that they accept your leadership and they are happy to be led by you. We would just like to salute your courage in representing your people. Please, continue. This Commission is here to listen to you. We would like to assure you that we have heard you and we will be making the appropriate recommendations. Thank you.

The Presiding Chair (Commissioner Farah): Thank you very much, commissioners, for your contribution. I would like to tell the two witnesses that I have nothing more to add to that, except to say that the reason why this Commission was constituted was to deal with human rights violations and injustices like the ones you have brought today. There are those that could not be adequately addressed by the courts. Now that we have a new Constitution, as Professor Ojienda and Commissioner Margaret Shava have said, we will take it up from there and we will make our recommendations appropriately and at the end of the day, you will get justice.

Thank you very much.

(Mr. Samuel Cheruiyot Busienei took the oath)

Ms. Belinda Akello: We welcome you to this sitting. Please, tell us your names.

Mr. Samuel Cheruiyot Busienei: My names are Samuel Cheruiyot Busienei.

Ms. Belinda Akello: Where do you live?

Mr. Samuel Cheruiyot Busienei: Narok.

Ms. Belinda Akello: You have given us your statement to show how the Dorobos have been oppressed. The word “Dorobo”, is it right to be used? What is the meaning? We do not know whether it is right or whether you should be called Dorobo or in what perspective do you take account of that name.

Mr. Samuel Cheruiyot Busienei: Dorobos are forest dwellers. They are hunters and gatherers.

Ms. Belinda Akello: Explain to us what problems these people have encountered and what recommendations you would like to present to the Commission.

Mr. Samuel Cheruiyot Busienei: I wish to start by talking about our farm; the Dorobo Group Ranch in Trans Mara and what has happened to it. In 1977, there was an idea of people registering. Our elders registered people from the neighbouring community from Kericho. These people from Kericho used to come to ask for pasture because they had a lot of cattle. Dorobos never used to keep cattle. We just used to live in the forest and our food was game meat and honey. We were living there even before the colonialists left and we continued living there. About 100 people registered together with our elders. For over 30 years, we stayed on. We were young then. Our parents were the ones who used to sit down with our neighbours. We lived with them for a while and then our parents - because some of them were very old - started dying and a few were left.

When these people realized that some of the elders were not there, they started electing each other. They formed a committee and appointed a chairman, a treasurer and a secretary on their own. They excluded the Dorobos. They continued that way. Eventually, we realized what they had done and we tried to follow up and find out whether it was true or not. We realized it was true. After a while, they brought a surveyor to sub-divide the farm. We had lived on that farm as a group and had not sub-divided it. A person could just use a portion of the land that he wanted. The surveyor started distributing to them the portions that they had been ploughing. They discovered that they had broken the group ranch, but as far as we knew, the group ranch had not been broken. If a group ranch has to be broken, then there has to be demarcation and sub-division.

A neighbour called Baria ole Sale brought the map and - a copy of which I have here - said that the Dorobos were on his farm. So, we asked him what proved that we were on his land and he showed us the map. I have the map here with me. I have three maps here.

Ms. Belinda Akello: Please, explain the difference between the three maps?

Mr. Samuel Cheruiyot Busienei: The difference between these maps is the way they are made. If you look at this one, you can see that that is our land. So, the neighbour came and said that we were on his land. It looked like it was true. So, we went to the Lands Registrar in Narok and presented our concerns to him.

We were all summoned and we talked. They knew that the map they had used was wrong. We were then sent to the tribunal to investigate the issue of the boundary.

Ms. Belinda Akello: Did you ever get the correct map?

Mr. Samuel Busienei: We have never been given the corrected map. We were given this as a copy for the case and later there would be fresh demarcation.

Ms. Belinda Akello: Would you like to provide this as evidence?

Mr. Samuel Busienei: Yes.

Ms. Belinda Akello: Presiding Chair, I pray that this be admitted as part of the record.

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

Mr. Samuel Busienei: The elders attended the tribunal and when they looked at the map, they realized it was not the same as what was on the ground. The tribunal decided that from the T22, it goes to about 1050 meters. They disagreed with the tribunal and insisted that they had done the subdivision and that was their map. If you look at the map, you realize that subdivision has been done. It shows about 180 pieces. The registered members were 100.

Ms. Belinda Akello: Thank you very much, Mr. Busienei. We have put that carefully in our records.

We ask the lady to tell us her names as well.

Ms. Rebecca Cherono: I am Rebecca, Sigira's wife.

Ms. Belinda Akello: What are the issues about land and various violations you have seen as a woman? Do not repeat what has already been said.

Ms. Rebecca Cherono: I have come before you because of issues of land.

Ms. Belinda Akello: We have already been told a lot of issues about land by your husband. Are there any other violations you have undergone as a woman?

Ms. Rebecca Cherono: We have only been harassed about land issues.

Ms. Belinda Akello: We have already talked about land issues. We have also seen that women have been affected by these issues. It has also affected the whole community. We are very grateful as we have already seen the maps. The maps usually explain in detail. We want you to add something.

Presiding Chair, we hand over the witness to the commissioners.

The Presiding Chair (Commissioner Farah): Thank you very much. I will now ask my fellow commissioners to pose any questions to the two witnesses starting with Commissioner Dinka.

Commissioner Dinka: Mr. Samuel, can you give the Commission what you think would be fair and just and should be done? I have the same question for the lady as well.

Mr. Samuel Busienei: Presiding Chair, I would like to ask that the former boundary of our farm be restored because we have registered now and we have 232 children in the register. We would like to request that the Government makes sure that the boundaries are restored to where they were.

Ms. Rebecca Cherono: We are talking about land; we want to be given our land. I do not have a husband because he died. My children are there and want to till the land but they are not allowed by the other people. This is their father's land but they are not allowed to till it. I am requesting that they be allowed to have their father's property. The children want their land. When the father died, the land had not been transferred to them. We are requesting the Government to assist us and God to lead us.

Other people have taken our land yet it is ours. We are the original Dorobos. We are requesting the Commission to help us. My children do not have where to stay. I am asking the Government to help me. I am grateful because I have come up to here so that I am able to rest with my children. No one should push us away. I have nobody who can help me get this land.

Commissioner Shava: I thank both of you. I would just like to discuss more with Rebecca. You have told us that you lost your husband and you are asking for his land. Is that where you were living with your husband?

Ms. Rebecca Cherono: Yes.

Commissioner Shava: What activities were you doing on that land? How was that land helping you to live?

Ms. Rebecca Cherono: Cultivating.

Commissioner Shava: What were you growing?

Ms. Rebecca Cherono: I used to plant maize.

Commissioner Shava: How much did you harvest in one season?

Ms. Rebecca Cheronono: The land has been subdivided and it was not done well.

Commissioner Shava: What kind of harvest did you get?

Ms. Rebecca Cheronono: I used to get 20 bags of maize.

Commissioner Shava: How many children do you have?

Ms. Rebecca Cheronono: I have 11 children.

Commissioner Shava: Was this maize helping you and your husband educate your children?

Ms. Rebecca Cheronono: It used to help me a lot. I used to get a lot of food.

Commissioner Shava: When did your husband die?

Ms. Rebecca Cheronono: About three years ago.

Commissioner Shava: Do you have daughters?

Ms. Rebecca Cheronono: I have five daughters.

Commissioner Shava: What are their ages? What is the difference in the life they are living now and there before?

Ms. Rebecca Cheronono: They never went to school.

Commissioner Shava: Do you have a better life than before?

Ms. Rebecca Cheronono: They are not doing well. Only two are doing well but the others are suffering.

Commissioner Shava: Maybe you can tell us why and how they are suffering.

Ms. Rebecca Cheronono: They are suffering although they are in their homes.

Commissioner Shava: Are they suffering economically or is it to do with their health?

Ms. Rebecca Cheronono: They are beaten.

Commissioner Shava: Those who are suffering went to school up to what class?

Ms. Rebecca Cheron: One went up to Standard Four and the other one up to Class Five.

Commissioner Shava: Thank you very much, Rebecca.

The Presiding Chair (Commissioner Farah): Thank you very much, Mr. Busienei and Mama Rebecca.

My question for Mr. Busienei is; in your earlier evidence, you said that historically, you, the Dorobos, were hunters and gatherers and you lived on honey. Therefore, you never cultivated nor did you look after animals. We have heard about the Ogiek in Kericho and the Mosop in Mt. Elgon. Did you invite the Kipsigis to come to your land and cultivate for you while you were gathering. Now that there is a new Constitution, you want the land or what is happening?

Mr. Samuel Busienei: At the moment, even the security, the ones from Kedowa look at us as if we are not human beings. Even if we go to the DO, he sends us to the chief. The chief does not like us, so we do not know where to go. If we go to the OCS, it is the same thing; we are sent back.

The Presiding Chair (Commissioner Farah): If the Government now decides to leave the land for you and remove the Kipsigis from there, will you cultivate that land or will you sell it to the Kipsigis again?

Mr. Samuel Busienei: No, we will come up with rules and ask the Government to ensure that nobody sells the land. We have seen even those before us never sold the land.

The Presiding Chair (Commissioner Farah): Thank you very much. I think you have given your story very nicely. You have also given a lot of documents. The Commission will study those and take it up. When the right time comes, we will make the correct recommendation.

Thank you very much for giving us your evidence. Do you have members of the Dorobo here so that we can recognize them?

Mr. Samuel Busienei: Yes, we have.

The Presiding Chair (Commissioner Farah): Can you tell them to stand up, please!

(Members of the Dorobo stood up)

Ms. Belinda Akello: Presiding Chair, the next witness is No.7 on your list.

(Mr. Paul ole Sopia took the oath)

Ms. Belinda Akello: Good afternoon and welcome to today's hearing. For the sake of the record, state your three names.

Mr. Paul Taraiya ole Sophia: My name is Paul Taraiya ole Sophia.

Ms. Belinda Akello: Where do you live?

Mr. Paul Taraiya ole Sophia: I live in Central Division in a place called Mashin.

Ms. Belinda Akello: What is your current occupation?

Mr. Paul Taraiya ole Sophia: I am a chairman within the Narok County for people living with disabilities. I also work as a community worker to tell them about their rights and see if the rights of the people with disabilities are implemented.

Ms. Belinda Akello: Thank you very much. Can you explain to us as the chairman of people living with disabilities in Narok, what the issues you want to raise before the Commission are?

Mr. Paul Taraiya ole Sophia: There are very many issues especially on those called disabled. Their rights are not given. Whenever someone is seen to be disabled, they are not treated like human beings. They do not get their basic rights. They are only alive by the mercy of God. Most of them do not go to school and do not mix freely with the society. Very few of them are employed. They are not even assisted to get what would help them move. They even have problems getting transport. For example, they cannot even get into buses.

Even economically, they have been marginalized. They do not get loans to develop themselves. Among the pastoralists, they are denied their rights because they do not get land and property. We know some of them are not even able to marry. They cannot get girls who are willing to marry them. When it comes to medical treatment, they may not get the same treatment as other people. We know that there is this kind of marginalization that they go through. They are not recognized as human beings and they cannot even live peacefully with other people. Therefore, I would like to say that they have a problem economically. Even culturally, they have problems. If it is a boy who is ready for circumcision, nobody is there to support them because people think that they are a curse.

In education, they are marginalized. There is nobody to push for them so that they get into the right schools that would make them independent in future. So many things stop them from getting services that they deserve.

Presiding Chair, another issue is that they are not involved in decision making. They have brains and can make decisions but they are not involved in leadership. There is violation of their rights. For example, if a lame girl is found, she may even be raped. She cannot defend herself. Therefore, they have no security and peace. Nobody cares for them.

We realize that they do not have access to information. I would like to emphasize that they also need social protection, education and services that all other people have access to.

The other issue I would like to raise is that they do not participate in the political arena. This is because they are regarded as people who are unable to do anything. They have no way of expressing their opinion to people. Nobody would listen to them. When there is nomination or selection, they are never considered. The money that is brought to the districts whether the CDF or the LATF, no disabled person is in any of those committees. We think that is not fair. In terms of bursaries, they do not give bursaries to the disabled. Instead, they give more to the able-bodied persons.

The councilors receive the money and it does not trickle down to the rest of the population. We also want the financial institutions to recognize people living with disabilities as those who should have access to loans. They should develop and be independent without being harassed by the town council *askaris*. Sometimes you find a person on a wheelchair being thrown into a lorry. At that point, they are helpless.

The other thing is that, there was a problem during the PEV. People living with disabilities were affected more because they could not run. They lost their property. They were evicted from their houses where they were living and they ended up with nothing to sell. They have never gone to where they were living before the violence. We would like you to look into this.

I want to comment on the issue of employment. We should get a chance in every sector so that we can demonstrate that we are able because disability is not inability. We can do things just like other people.

The other thing is that, there are buildings that do not have ramps for access. We cannot access them on wheelchairs. Even in hospitals, you find lame ladies who are pregnant being asked which devil made her pregnant. She has a right to reproduce and get married. She should not be told she was made pregnant by a devil.

The other thing is that people living with disabilities should be given priority when it comes to treatment in hospitals. The Government should listen to the opinion of people with disabilities. They should not just listen to the councilors and some few people.

There is stigma and discrimination against people with disabilities. We would like to be included into all committees. We thank God that today the TJRC has come to look into the truth and justice.

We are demanding for our rights and we have said enough is enough. We participated in the writing of this Constitution and we now want our rights to be highlighted.

Disabled persons should be involved in everything as long as they have the brains and capacity. They could even be retrained on the job. They should be made to feel that they

are in a country where they are loved and appreciated. One can be disabled at birth or through an accident. So, generally, we should not discriminate them.

The other thing I would like to say is that there are NGOs mushrooming in Narok. Many come here and tell us that they have programmes for the disabled but it is just their pockets they are looking after when they solicit funds from donors. We do not want that kind of injustice. We have to be consulted and our views taken seriously.

I would like to thank the Chair of this Commission. I can see God has helped us have a Commission that will listen to us.

The National Council for People with Disability has its seat in Nairobi. After the census, it was registered. It is done in Westlands in Nairobi. We cannot make it to Nairobi because we are vulnerable to accidents. We have to get letters from doctors and other documents. This is also denying us our rights. The registration should be brought down to the division or locational level. It should be done here and the letters taken to Nairobi after that. Thank you.

If there are any questions, you are free to ask me.

Ms. Belinda Akello: Thank you very much Mr. Paul ole Sophia. In your group, how many members do you have in Narok?

Mr. Paul Taraiya ole Sophia: At the moment, we have many disabled persons organizations (DPOs) which consist of about 300 members.

Ms. Belinda Akello: So that we can understand better, what kind of disabilities do you have in your group?

Mr. Paul Taraiya ole Sophia: We have physical disability and also the visually impaired, mental disability and those who cannot do anything. We also have very few who came to Maasailand called albinos.

Ms. Belinda Akello: Do you have a special school in Narok?

Mr. Paul Taraiya ole Sophia: It is shocking because we do not have a school here. We only have an assessment centre that is at Sangale. We appeal that we are given a special school that can educate these people with special professional teachers. There should also be workshops for them for welding, knitting, leather work and carpentry. These are people who could have done wonders to improve the economy of this country.

Ms. Belinda Akello: Can you explain to us briefly, what people register on these groups and how do you help them? What do you do to make their lives better?

Mr. Paul Taraiya ole Sophia: That is an issue that is not good. We try our level best to counsel them on their rights. If there is a school, we take them to school. We speak to the

human rights activists and chiefs in this area to help us as a community but we have not reached a standard that can cater for their needs fully.

Ms. Belinda Akello: Thank you very much.

Presiding Chair, I do not have any further questions for the witness.

The Presiding Chair (Commissioner Farah): I will now ask the commissioners to put to you questions or clarifications. I will start with Commissioner Tom Ojienda.

The Presiding Chair (Commissioner Farah): Thank you very much. I will now ask commissioners to ask some questions or seek clarifications. I will start with Commissioner Ojienda.

Commissioner Ojienda: Thank you very much for your testimony. I have listened to the issues that you have raised, beginning with the integration on persons with disability in the society. You also have made suggestions on specific projects that can be used towards integrating that special group into the community. Under the relevant law, the council has tried to implement that. Persons with disabilities should not even pay taxes. There is an implementation on that law. The chapter on representation in the Constitution has for the first time recognized persons with disabilities in terms of representation, both at the county and national level. I want to encourage you to ensure that your members are part of the decision-making process both at the top and in the counties. You need to take advantage of the provisions in the Constitution. Thank you because you have been very clear and to the point.

Commissioner Shava: Mr. Paul ole Sophia, I would like to thank you very much for your very eloquent and passionate presentation. Your presentation was very impressive. I think you are an excellent representative of the constituency that you represent. You have spoken for women, men and children. You have told us what life is like for someone living with disability. As you have pointed out, the Constitution now guarantees life for every Kenya. People who are living with disability are also Kenyans and their rights are specifically protected. You should continue demanding them. When you go to other countries, there is a public transport system that takes into account people with disabilities. Even access to buildings is also considered. If one of us sitting here had suffered the misfortune of breaking a leg, then we would understand what you are talking about. This is a public building and there should be access for all Kenyans. I would like to assure you that we know what you are talking about. Just to encourage you, I saw an article in the newspaper the other day with a picture of an American woman who is visiting Kenya and she has no arms. But she is a qualified pilot and she flies her own aeroplane. So, disability is not inability and you can do anything. I also want to assure you that as a Commission, we are alive to these issues although you may not see anybody here with disability. There are staff members of the Commission who are living with disability.

Regarding the Kenya National Commission for Human Rights, there are two commissioners who have sight impairment; one is a brilliant lawyer and the other one is

an educationist. You may have seen that one of the new judges who were sworn in was a person living with albinism. She is also a brilliant lawyer, Judge Mumbi Ngugi.

(Translation hitch)

Shall I repeat for translation purposes?

I said that one of the new judges who was sworn in is a person living with disabilities. She is a brilliant lawyer and a writer. Her name is Judge Mumbi Ngugi. So, I agree with you, Mr. Ole Sophia, that what is needed is a change in attitude. There are certain cultural attitudes, prejudices and biases. So, people like you need to educate us about those issues. That way, we can be aware of them and see people as people. I think you are doing a great job and I urge you to continue to educate the rest of us, Kenyans, and fight for the rights of persons living with disabilities. So, I salute you and congratulate you on your presentation.

Commissioner Dinka: I have no question for the witness but I would like to thank him for his clear presentation. He has given a very passionate representation on the people living with disabilities. I think you have a very serious and challenging task that you have to carry out, particularly within the community for those people to be accepted as people. The Government must do its part and the Commission will look at the matter seriously and make appropriate recommendations. Hopefully, with the coming into effect of the new Constitution, the problems that you and your members face will be much less difficult to handle. Thank you very much for your testimony.

Commissioner Chawatama: Much apologies because I missed much of your testimony. However, I thank you for the statement and I adopt the words of my sister, Commissioner Shava, as though they were my own. You have a cause and a passion. My prayer is that you will get provision for the vision that you have for people living with disabilities.

The Presiding Chair (Commissioner Farah): The same with me, I have no questions for you but to echo the same thing that my fellow commissioners have said. I thank you for having come forward. We have heard you and we will take up your case. Please, as the branch chairman, ensure that you connect to the national web of people living with disabilities.

Leader of Evidence, you can stand down the special witness and bring in the last witness before we go for lunch.

Ms. Belinda Akello: Much obliged, Presiding Chair.

(Mr. John K. Sena took oath)

(Mr. Julius Ng'etich took oath)

Ms. Belinda Akello: Thank you for coming here today. Could you state your names again for the record?

Mr. John Sena: My name is Mr. John K. Sena.

Ms. Belinda Akello: Where do you live?

Mr. John Sena: I live in Nkasoreni Village.

Ms. Belinda Akello: What do you do for a living?

Mr. John Sena: I am the Chairman of the former Group Ranch 118.

Ms. Belinda Akello: Mr. Sena, could you take the Commission through what you want to present on behalf of Group Ranch 118.

Mr. John Sena: I would like to tell the Truth, Justice and Reconciliation Commission (TJRC) that members of that group ranch were violated and evicted.

Ms. Belinda Akello: Who evicted you and what is so special about this particular group? Did you come from one particular place or are you from one tribe?

Mr. John Sena: I am talking on behalf of the Ogiek community.

Ms. Belinda Akello: Who evicted you?

Mr. John Sena: The Ogiek Community is small and it is not recognized in Kenya. We had been allocated the group ranch several years ago. We do not have any other alternative place. That is where our parents were born and we were also born there. At the time they were allocating group ranches, that is what we were allocated as our particular area. That was in 1973. In 1975, there was a declaration. I have led this group for a long time. I was an assistant chief and eventually, a chief from 1980 to 1999. The Government decided to disband the group in 1996 and each individual was allocated a different portion of the land. The Government then issued title deeds and each person has a title deed. Surveyors were brought in and they drew maps. When we were doing the sub-divisions, we did not receive any complaints about encroaching on the forest land. What we knew was that we were neighbouring trust land. We asked the county council to come and verify the boundaries between the trust land and our land. The county council approved that we go on with the sub-division because we had not encroached on any land. We have the documents from the county council, and I will give you a copy as an exhibit.

On 10th June, 2005, evictions started. The people from the county council, police officers and Administration Police descended on us, evicted us on the simple reason that we were occupying forest land. We did not agree with them. They burnt down our houses and destroyed property. We had nowhere to go because we did not have alternative homes. We complained about it and even went to the High Court in Nakuru. The case is still pending in court. We also went to the Office of the Prime Minister and to the Office of `

the President. The Prime Minister's Office told us to stay on the land until the Government decides what to do with us. That is the same information we got from the Office of the President. So, we are still occupying that land.

I would like to say that, as the Ogiek, we have been lagging behind because the Government has forgotten our rights in many areas. We are never remembered in so many things. We have documents here including title deeds. We got those title deeds from the Government. They are not fake. Therefore, I urge this Commission to look into the problem of the Ogiek Community. We are a minority community who are lagging behind. We did not make ourselves but it is God who made us. So, we would like justice to be done.

Mr. John Sena: I do not have much to add.

Ms. Belinda Akello: Thank you. Mr. Nge'tich, could you hand over the documents to the Commission?

Mr. Julius Ng'etich: This is an application for consent and we have a receipt here showing the amount of money we paid to the Government. We have all the documents here. I have attached the maps that were used during the evictions. There is sheet one to sheet four. It is sheet two that was affected. I can display it so that the people can see. This is sheet four but it was also taken away. This is the top sheet map where these people are claiming that it is Maasai-Mau Forest. But, initially, it was a Ndorobo forest. It was under the name of the Ogiek. Community rights were violated because they came and changed everything. They changed the name that I have underlined in the map. It was initially Ndorobo Forest but they changed it to Maasai Mara. We have some exhibits here which are samples of the title deeds. This is the register containing the names of the members who were affected by the eviction. This register was confirmed by the registry in Narok. This sheet shows the area occupied by everyone.

We were evicted because they said that we were encroaching into the forest. According to us, that is not true. That can be confirmed by this letter which was written in 1988 by the Narok County Council Clerk whose name is CJ, stating that Ngoroni Group Ranch from Ogiek Community had not encroached in the forest. Another clerk by the name Isaac Bartoi also confirmed that we had not encroached the forest in 2000. This is a complaint letter that we wrote to the Prime Minister when we were evicted. We complained to him but he did not respond. We wrote another one on 17th May, 2010 to which he responded. This is the copy of that letter. The Government has not come to us for consultations. They just told us that if we have documents, we should take them to the Prime Minister's Office so that if it is confirmed that we have a right to be in that place, then we will live there.

This letter says, and I quote:-

“Should you be having documentary evidence to the contrary, you are invited to present them for verification.”

We took them to the Prime Minister's Office. He confirmed that we are right but we have not been told to continue staying in that place. As we are speaking right now, our title deeds have been cancelled. You cannot take a loan from any financial institution for development. That restriction has not been lifted so that we can operate like other Kenyans. There is a time that a task force was constituted by the Prime Minister and came up with a report. It indicates clearly that the Ogieks will not be evicted from the forest. We would like to urge the Commission to revisit this report and establish the boundaries. There is a work-plan by the surveyor. The county council used a private surveyor who might not even be qualified. That means that there is something that they might be hiding. We went to court over the same in Nakuru, Civil Suit No.1/2005, but the case has not been determined. We would like to urge that the hearing should continue so that our boundaries can be restored. The Commission should assist us to settle and develop our land.

As the Ogiek Community, we hope that we shall be assisted because we have been denied our right and justice. When you make your recommendations, our issues should be in the forefront. Even in the Narok County Council, when they are employing officers, the Ogiek Community never gets any chance and yet our children have gone to school like everybody else. I would like to summarize that women were hurt during the eviction. Even schools were burnt down. We have examples of Cheptiret, Kakame and Kutavai primary schools and about six churches. As we are talking now, we have no houses. We have not left the venue because we are fighting for our rights. Children are not going to school and young girls are getting into prostitution. Young boys are now getting into petty crimes. So, we would like the Commission to assist us and restore our lives.

Ms. Belinda Akello: We have all the documents that they wish to present and we pray that all these documents be admitted as part of the Commission's record.

The Presiding Chair (Commissioner Farah): So admitted.

Ms. Belinda Akello: I have no further question to the witness and I hand him over to you.

The Presiding Chair (Commissioner Farah): I invite queries from my fellow commissioners.

Commissioner Dinka: I have one question to the witness: In your statement, you mentioned that during the evictions, two schools were burnt down. Now that you have gone back to the place, have they been rebuilt or where are the children going to school?

Mr. Julius Ng'etich: Thank you very much for that question. They burned down four schools. Right now, the children are not going to school especially the young ones. Those who are a bit older go very far to get their education. As we are speaking right now, there are no schools there. Nothing has been constructed.

Commissioner Dinka: Have you talked to the investigating task force which concluded that the area you occupied was not part of the Mau Forest?

Mr. Julius Ng’etich: We have not sat down with them and discussed. When it was being formed, it was agreed that they should come down to the community and harmonize the boundary issues. They just went and concluded their report. We only saw surveyors coming to put beacons on the land.

Commissioner Dinka: So, they did not conclude that the land which you were evicted from did not form part of the forest?

Mr. Julius Ng’etich: I think they concluded because they have their report and a surveyor came on the ground. According to them, they finished their job but according to us, it was not done the way it was to be done because they did not consult us. When you go through the report, they relied on Mr. Ntutu’s Commission Report. During the Moi Regime, a committee was formed to look at the issue of the boundary of the forest. That is what Ntutu’s Commission was supposed to do. If you read the report, it says that there is no evidence that Ntutu’s Commission did its job. So, our question is: How did they come to know that the Ntutu’s Commission drew a boundary and yet, they say that there are no records? So, it is as if they just guessed where the border line is. According to us, the biggest problem in this forest is that the Ogiek Community is a minority. So, they are harassed. The second one is about politics. The Ogiek Community usually supports a different person during elections. So, the issue of evictions comes in.

The third issue is the Forest Act, 2005. The Act says that any community bordering the forest should take care of that forest. So, other big tribes who live far away come and demand to conserve the forest. So, we request that this Commission should look at that Act and assist us.

Commissioner Chawatama: Thank you very much for your testimony. I hope that since we are here and we have listened to you, that brings some satisfaction that you have been remembered and that you are recognized as important people in Kenya. I just have a few questions to ask you: When you said that the county verified and approved the boundary, is it the same county council that came with the Administration Police officers to evict you?

Mr. Julius Ng’etich: Yes, it is the same. I do not know what happened in 2005 because they complained that we had encroached in the forest. They did not consult us or give us any notice. They just came and evicted us. When different officers come to the council, they come with different policies. It is the same Narok County Council that we had an agreement with and it is the same one that evicted us.

Commissioner Chawatama: I was going to ask you whether you received any notice but you have told us that there was none. Were there any offers of compensation for loss of property or alternative land being offered at all?

Mr. Julius Ng’etich: No, there is nothing like that. We were not promised anything neither did any official come to visit us.

Commissioner Chawatama: You mentioned that you have a matter in court and it has not yet been determined. Have you been called as witnesses?

Mr. Julius Ng’etich: We presented our case to court and we have been attending court sessions since then. Last year, we went to revive the case and what surprised us is that we were told that our case has been taken to Nairobi to the Chief Justice for further direction. We thought the case will go on and be determined, but I think something is being hidden from us.

Commissioner Chawatama: Nothing hidden stays hidden for too long. You have given us enough information for us to seriously look into the issues that you have raised. What I have seen from all the witnesses that have appeared before us is that you really look after your documents well. At the end, you will see that those documents will help you.

Thank you very much for making time to appear before us. We consider you very important people. It is an honour and privilege to be on the Commission to serve the Ogiek.

The Presiding Chair (Commissioner Farah): Thank you very much. As the Presiding Chair, I am bound by what my fellow commissioners have said. I have nothing further to add.

Leader of Evidence, you can stand down the two witnesses.

Ms. Belinda Akello: Presiding Chair, there are a few members of the Ogiek Community in the room.

The Presiding Chair (Commissioner Farah): If they stand up, we will recognise them.

(Members of the Ogiek Community stood up)

Thank you very much. We have recognised you and we have taken your case.

I propose that we go for lunch and come back at 3.30 p.m., to finish the remaining cases.

*(The Commission adjourned at 2.20 p.m.
and resumed at 3.50 p.m.)*

The Presiding Chair (Commissioner Farah): Leader of Evidence, are we ready to proceed?

Ms. Belinda Akello: Yes, Presiding Chair. Our first witness is Witness No.5 on your list.

(Messrs. Antony ole Risa and James Konchela took the oath)

Ms. Belinda Akello: Presiding Chair, we seek your permission to have the two witnesses give their evidence concurrently, after which we can then ask them questions for clarification.

The Presiding Chair (Commissioner Farah): Agreed, but for our records, the first one is Michael ole Risa. Who is the second one? Is it Simeon ole Meteke? Can you repeat the name of the second witness?

Ms. Belinda Akello: Presiding Chair, the second one is Davis Konchela.

The Presiding Chair (Commissioner Farah): Is it Davis or James?

Ms. Belinda Akello: It is James Konchela.

The Presiding Chair (Commissioner Farah): Please, proceed.

Ms. Belinda Akello: For the record, please, state your names.

Mr. Antony ole Risa: My names are Antony ole Risa.

Ms. Belinda Akello: Where do you live, ole Risa?

Mr. Antony ole Risa: I live at Olalui Group Ranch in Kilgoris, Trans Mara/Narok County.

Ms. Belinda Akello: What position do you hold in the community?

Mr. Antony ole Risa: I am a teacher and a resident of Olalui. I am a son of a member of the group ranch. I am representing Michael ole Risa, who is Member No.13 in the Group Ranch Register.

Ms. Belinda Akello: Antony, kindly, tell us what you wish to present before the Commission.

Mr. Antony ole Risa: What I wish to present before the Commission are violations in the group ranch. We have many violations but I would like to present the issue of violation of land. Olalui Group Ranch was formed in 1971, comprising of 198 registered members drawn from both Uasin Gishu and Moitanik sub-clans. All are Uasin Gishu clans. The group ranch was declared on 15th September, 1971. On the composition of the membership, there was disagreement. Members of the Uasin Gishu clan never wanted members of the Moitanik sub-clan to be members. So, there was that disagreement. The case was heard. There was a Board which listened to the case and the dispute was resolved. The 76 members were allowed to be legally registered as members. So, there

was no dispute but there are some people who are saying that to date they do not want members of the other clan to be there, yet when the case was heard, there were Government representatives. There was also the first MP.

Ms. Belinda Akello: Please, state the names of the two clans again.

Mr. Antony ole Risa: They are Moitanik and Uasin Gishu clans. There was the first disagreement, which was fully settled. There was also another issue concerning Intona Holding Ground. This is a group ranch which was set aside to benefit all the members. It was declared on 10th May, 1975. The people who were influential at that time included the MP, Narok West, the former Vice-President of the Republic of Kenya, former second chairman of Olalui Group Ranch, and the former Narok District Ranch Management. They were the elites in the group ranch. So, they used the powers they had to grab the group ranch. The first one took 582 hectares. That was hon. John Konchela, who was then the area MP. The second one was the late hon. Joseph Murumbi, former Vice-President of the Republic of Kenya. He took 836 hectares. The third one was Stanley Lomoiywo Ngoimo, former Chairman of Ololoi Group Ranch who took 357 hectares.

Commissioner Shava: Presiding Chair, the witness is talking about hectares but the interpreter is talking about acres. So, Leader of Evidence, can the witness start with the first 582-hectare portion?

Mr. Antony ole Risa: The first one took 582 hectares. The second one took 836 hectares. The third one, who was the former Chairman of Olalui(?) Group Ranch, took 357 hectares. The fourth one was Steven Lemenchor Twala, who took 370 hectares. So, the current Olalui Group Ranch is left with 7,241 hectares. They took the ranch land without the consent of the members, yet there were grazing rules. To date, the land they took away belongs to them. That was the injustice which was done to the members of the group ranch.

The second issue is on public utilities. There were eight public utilities which were created in 1979 and issued with titles in 1980. This was mismanagement of Olalui Group Ranch by Narok County Council. The members were not aware. We have a letter from the Director of Lands addressing members' complaints. In this letter, the Director of Lands says that it was not in order for the county council to set aside public utilities without the resolution of a general meeting, but no correction was made.

Fourthly, there was invasion of the group ranch land by non-members, mainly by the Uasin Gishu Clan, between 1984 and 1987. During this period, about 200 families migrated from the neighbouring group ranches. They came to Olalui in support of certain politicians. There was a leaders' meeting held on 30th August, 1990. There were deliberations on the status of the ranch, clashes and group representatives' complaints of interference of the group ranch by non members. The purpose was to hold a general meeting on that day. From that meeting, the inciters were named by the area MP himself and the security team, but they were not brought to book. They were named as four inciters who took the group ranch land without certificates. The people who benefited

were mentioned in that meeting. That was the issue, and it has not been corrected to date. We appealed to the Minister to come to the group ranch but he did not come.

Another issue is irregular issuance of title deeds. Members of the committee that was there used their power to give people title deeds. There were five proposed people, but they only gave Col. Gideon Steloo Konchela a title deed for 6,607 hectares, which were curved out of the group ranch land. So, he claimed that he was given that land through a presidential decree. We have the green card. If you look at that green card, you will see that he made the application on some day and was issued with the title deed on the same day. He used his Service Number 17497, because he is a former Army officer, and the title deed was issued on 2nd July, 1986. The land is Parcel No.11.

The committee which was there claimed that they had held a general meeting. So, that irregular sub-division took place. In 1986, again, we witnessed a plan to sub-divide the group ranch. In 1988, they were given consent but it was revoked because there were many irregularities. They did not satisfy the requirements. There was no Annual General Meeting (AGM) which was held. The Land Adjudication Office gave directions on how to carry out a successful sub-division. We were given time to go and hold an AGM, but this time round, the MP of the area then was in disagreement with the Ministry of Lands representative and the security team. We were denied our rights, because we were not given time to hold an AGM.

So, we stayed and there was change of committee on 4th November, 1996. The committee which was there was replaced with another committee. The new committee was very successful because its membership was drawn from the two clans to ensure fairness in the sub-division. The new members of the committee joined the--- Before then, the membership of the committee was solely drawn from the Uasin Gishu Clan. The new committee comprised of six members from the Uasin Gishu Clan and four members from the Moitanik Clan. So, the new committee was very successful.

In 2001, a very successful General Meeting was held. Deliberations went on amongst the members of the ranch, and we passed a resolution to sub-divide the land into equal shares per member. The other group, which had been removed from office objected, and they were supported by the then MP. They took the committee to court. So, the hands of the committee were tied. Despite the fact that they were given consent by the Director of Lands and the District Lands Control Board, they were not given an opportunity to sub-divide the land. In the process, the former committee even surrendered the documents. They then joined hands with the area MP, proceeded to process 614 irregular title deeds, which were issued on 14th February, 2006. The majority of the beneficiaries of that irregular activity were non-members of the group, who had come to displace our members.

So, they were issued with titles deeds and members were not given equal shares, despite the agreement which they had resolved to abide to. So, committee members complained and went to court against the greater policy which had been issued earlier and others issued later. There was no justice which was given.

In conclusion, our recommendation is that all along the years, Olalui Group Ranch has never been officially dissolved for proper sub-division.

Secondly, all the purported sub-divisions and the issuance of title deeds, previously done are irregular and contrary to the laws governing the group ranches.

Thirdly, the current committee which was legally constituted in 1997 has tried to adhere to the laws governing the group ranches. Hence it has held successful AGMs where members resolve issues affecting the group ranch and the way forward. Therefore, members of the Olalui Group Ranch are appealing to this Commission to tell the Ministry of Lands to resettle them and support their effort to seek justice and fairness so as to speed up the sub-division of their group ranch, following the laid down procedures.

Lastly, we are appealing to the Ministry to openly declare all the irregular activities such as sub-division and issuance of title deeds as null and void. Therefore, I wish to present my Exhibit here. We have the original map of Olalui showing the group holding ground.

Finally, we have the Ntona green cards for those people who were given title deeds and an original map is here and with me here I have the public utilities and a letter to that effect. I also have a register of the members' grazing rules of the group ranch and the minutes of both members drawn from both the clans. Then I also have irregular title deeds issued in April, 1986, of 107 hectares. I also have the leaders' minutes of 30th August, showing the non- members' invasion and disturbance on the members of the group ranch.

I also have letters of support for the corrupt land officials from the department of Land Adjudication, Kilgoris, dated March, 1983, to the Land Adjudication Department, Nairobi, being Land Control Board minutes transferring 120 hectares to Mr. Benjamin Tina and 80 hectares to Mr. John O. ole Tukanjo.

Another document here is the consent to sub-division of 5th September, 1988 and the suspension letter of the group ranch AGM to be held before the sub-division. I also have the former committee's documents, they later came and sub-divided the land and they were told to surrender the documents by the district land adjudication. They defied the order and continued to sub-divide the land. I also have the minutes of AGM 2001 which was successfully held and the proceedings of the committee which won the case.

Also we have the position of the group ranch now. The letters of the group ranch from the lawyer and from the district security leader, which were written in August this year.

We also have samples of irregularly issued title deeds. There are some blank title deeds, which were not signed but people have them. They were not signed by the registrar and some were not even showing acreage. There are disparities where non-members were given large shares.

Then here we have nine map sheets on the same. They were prepared by the Survey of Kenya and if you go there - we are told that it is under lock and key. But we have come across some sketch maps which were signed by district surveyors, yet they are saying it is

under lock and key. But if you go there with money they can issue you with those documents; stamped and signed.

This document was issued on 1st December, 2008 to one of the members who is here. It is indicating Trans-Mara-Olalui Group Ranch/300 Scale 1:5000 Map Sheet five.

Lastly, I have a booklet; a memorandum which is compiled here with all the documents from the relevant Government offices.

Thank you very much.

Ms. Belinda Akello: Presiding Chair, we pray that all these documents are admitted as part of the record of the Commission.

The Presiding Chair (Commissioner Farah): So admitted.

Ms. Belinda Akello: Mr. Konchella, for the record, kindly state your three names.

Mr. Antony James Konchella: My name is Antony James K. Konchella.

Ms. Belinda Akello: Please repeat it again.

Mr. Antony James Konchella: I am Antony James K. Konchella.

Ms. Belinda Akello: Mr. Konchella, where do you live?

Mr. Antony James Konchella: I live at Kalali.

Ms. Belinda Akello: Mr. Konchella, maybe before we leave, there is something you have indicated which is going to be pertinent as we listen to the other witnesses. You mentioned two clans, which clan do you come from?

Mr. Antony James Konchella: I come from Uasin Gishu clan.

Ms. Belinda Akello: From the Uasin Gishu clan?

The Presiding Chair (Commissioner Farah): Leader of evidence, before you proceed, can he make it clear to you the size of the ranch because he has talked about 7, 241 hectares, plus, he gave a list of people who grabbed so many hectares. So, we want to know what the total size was, how many hectares were grabbed and how much is remaining.

Mr. Antony James Konchella: The size which was grabbed is 2,142 hectares, leaving 7,241 hectares. So, it means the ranch was more than 9,000 hectares.

Ms. Belinda Akello: Thank you.

The Presiding Chair (Commissioner Farah): What was the 15,000 hectares for? If we have 9,383 as the total hectares for the two clans; 7,241 for one clan plus, 2,142 for the other, and there are 15,000. Can you clarify?

Mr. Antony James Konchella: Yes, I was reading the scale on the map. It is 1:5000. The scale is 1:5000

Ms. Belinda Akello: Presiding Chair, shall we proceed?

The Presiding Chair (Commissioner Farah): Before you proceed, let us just take recognition of the presence of Commission Tororei from the Kenya National Human Rights Commission. Proceed, please.

Ms. Belinda Akello: Sorry, Mr. Konchella, we shall start again. Just tell us your three names and where you live.

Mr. Antony James Konchella: I am Antony James K. Konchella; I live at Olalui Group Ranch.

Ms. Belinda Akello: How long have you lived at the Olalui Group Ranch?

Mr. Antony James Konchella: Since my childhood.

Ms. Belinda Akello: Mr. Konchella, maybe you would also want to explain to the Commission the issues that you have.

Mr. Antony James Konchella: Yes. Can I proceed?

Ms. Belinda Akello: Yes, you can proceed.

Mr. Antony James Konchella: I want to put it very clear that the founders of the group were 122 and not 198 as my friend has said. The 76 other members who came in, came in through the back door. I have with me some documents that prove that the 76 came in through the back door.

Ms. Belinda Akello: Excuse me Mr. Konchella, maybe for now we will just listen to your statement without clarification of what the other presenters said and then the Commissioners, having heard all the evidence, they will then sit down and balance. So, kindly, just make your presentation.

Mr. Antony James Konchella: I just want to mention a few problems which has certainly affected the group ranch. One of the problems is that the group ranch was formed 40 years ago and it has never been up-dated. They are a group up in terms of members, and there were also non-members who have never been in that register and they were there even during the creation of that group ranch.

Another problem, those days our people were moving here and there, they were pastoralists. The other problem which really affected the group ranch is clanism because they never came together. The other big problem is change of committees every time. One committee is given a task to do, and on their way to complete it, another committee is given the same.

I just want to give an example of the present chairman who has been in the five committees and nothing was done without him. So, I understand the third committee is the one which demarcated Olalui Group Ranch when the chairman was also a member. After the suspension of the committee, that is the time he ran to seek support to have another committee. But actually he was in that committee that demarcated Olalui up to the end. After the committee was suspended he ran to join those who were opposing whatever was done in that committee.

Another problem which I would like to mention is the problem of leadership, the chairmanship of the committee; they are fighting for the committee leadership. That is actually a big problem.

Another big problem which has really affected the group ranch is the colonial borders. In 1956, five people from Uasin Gishu, five from Mwitani and five people from the Siria Community; under the colonial Government formed an agreement of where the borders of Uasin Gishu land and that of Mwitani should reach. That is a big problem because up to this moment, the Uasin Gishu people believe that Olalui belongs to them because the border of Mwitani and Uasin Gishu is known very clearly.

So, those are the problems that have affected the group ranch. Actually, if you look at these documents, the surveyors were there at Olalui. It is actually the Government which dissolved the group ranch and gave permission to demarcate Olalui. There are so many documents that can prove what I am saying.

Even before the demarcation was done, there were many members who sold their shares because of poverty. I understand that Olalui was for the Maasai people who were living with wildlife and nothing was done like growing of any crops. So, other people who were really poor and below the line of poverty sold their shares and other people bought them, even after the demarcation. So, many people sold their parcels. According to the understanding, the problem of Olalui is just part of it but not the whole of it. Also there is the issue of the holding ground. There is a part which has never been in the group ranch. Ntona one, two, three and four. It was a holding ground under the Narok County Council, later on the Narok Council surrendered the land to the Uasin Gishu and the Uasin Gishu sub-divided the land into four parcels that is Ntona one Mulundis and Ntona Two Mulundis, Ntona One Konchella, Ntona Three Ngoimu and Ntona four Stephen Twala. So, that ground has never been in the group ranch, it was under Narok County Council as a holding ground. So, we cannot mix the group and the holding ground. That is all I can say.

Ms. Belinda Akello: Thank you very much. Would you wish to present your memorandum?

Mr. Antony James Konchella: Yes, there is a memorandum here and all the documents pertaining to the group ranch.

Ms. Belinda Akello: Presiding Chair, the witness has produced a memorandum to the Commission. We pray that the same be admitted as the record of the Commission.

The Presiding Chair (Commissioner Farah): So admitted.

Ms. Belinda Akello: Mr. James Konchella, I need to seek just two clarifications. There has been a mention of two clans. Just for clarity, which clan do you come from?

Mr. Antony James Konchella: I came from Uasin Gishu.

Ms. Belinda Akello: Thank you very much. You also mentioned that there are two clans that do not seem to see eye to eye. What, in your view, would be the best way for having these two clans reconcile to see eye to eye?

Mr. Antony James Konchella: I am not against - when this group ranch was created, the purpose was to protect the Maasai land not to be taken by others. But it has come now, where the Maasai and the Uasin Gishu want to know where the boundary was fixed by the Government so that they know their land. But in my own view whoever is a Maasai living wherever he is living has a right. So, I cannot discriminate against any clan, they have a right.

Ms. Belinda Akello: Thank you. But, as much as they have a right, you will also be happy if they would live peacefully together or rather reconcile. So, may be, would you give us a recommendation of what might make these people who live on this land to co-exist peacefully?

Mr. Antony James Konchella: I understand that we have created many commissions. I was a member of the commission and the issue was to have peace in between the two clans. But I know that the politicians are just coming in and interfering with the reconciliation process and that is why it has been very hard. Actually, the politicians are the people who are interfering with the reconciliation process. But we have tried as I have been in such commissions to reconcile the people.

Ms. Belinda Akello: Thank you very much. Mr. Antony, may be you can tell us one thing which, in your view, would be able to promote peace and bring co-existence among all these two groups.

Mr. Antony James Konchella: What actually would bring peace is for the committee to take charge and do the needful. To give members the mandate to decided on the fate of the group ranch. Also the provincial administration should not interfere because, presently, the chiefs are interfering and they are the ones going round collecting money to

give to the surveyors to sub-divide the land instead of the group ranch officials. So, actually we need the members who are registered to go to an Annual General Meetings and make resolutions leading to the sub-division of land for the group members so that both the Moitanics and the Uasin Gishu to be treated equally.

Ms. Belinda Akello: Thank you very much. Presiding Chair, that is all from the witness.

The Presiding Chair (Commissioner Farah): Thank you very much. I will now give this opportunity to commissioners to ask questions for clarification. I will start with my far left; Commissioner Dinka.

Commissioner Dinka: Really, what I am asking is to make things clear to myself. This is a very complicated kind of thing. First of all, what was in the statement says: Olalui Group Ranch was registered in 1971 and had 198 members. Then on the original land it says: An area comprising of 15,000 hectares was registered under the society's name. So, in fact you said over 15,000 hectares. Is it 1:500 or it is not the scale? We are talking about area. Do you want us to correct that something or there is else?

Mr. Antony James Konchella: I want the Commission to correct that because we know the approximate acreage. This is because Ntona, the group ranch was set---

Commissioner Dinka: What is Ntona?

Mr. Antony James Konchella: The group ranch was set aside for the grazing so that the animals could be taken to Kenya Meat Commission and it was to benefit all the 198 members. There is another part which is a bit larger and which is now the group ranch where all the members are settling and it is 7,241 hectares.

Commissioner Dinka: To start with, what is the original amount?

Mr. Antony James Konchella: The original amount is that you add 2, 142---

Commissioner Dinka: Tell me then that it was over 9,000.

Mr. Antony James Konchella: The original amount is 9,383 hectares; formally.

Commissioner Dinka: Then how many of these have been given away to different people? 2, 000 and over?

Mr. Antony James Konchella: Those that have been given away are, 2,152 and the other three leaving 5,600 hectares. There are three people who were later given.

Commissioner Dinka: So, the ranch group now has 5,600 hectares?

Mr. Antony James Konchella: Yes.

Commissioner Dinka: And the membership has not increased. It is not increased, it is still 198?

Mr. Antony James Konchella: Yes, it is still 198 because the register has never been updated.

Commissioner Dinka: Okay. So, if you divide 5,600 hectares by 198 members, how many hectares would that be?

Mr. Antony James Konchella: Around 70 acres, not hectares.

Commissioner Dinka: No, 5,600 hectares, against 2000. It is about 25 hectares per person.

Mr. Antony James Konchella: Yes, 25 hectares per person.

Commissioner Dinka: Which is about 61 acres?

Mr. Antony James Konchella: That is 61.52 acres.

Commissioner Dinka: Now tell me, would that not be sufficient per a member for cattle and even for agriculture, if you are farming? Sixty one acres is a huge area!

Mr. Antony James Konchella: Yes. We are saying that the other members who have taken the larger shares are still the beneficiaries of the remaining group ranch; they have not been removed from the register.

Commissioner Dinka: They are still members of the 198?

Mr. Antony James Konchella: Yes.

Commissioner Dinka: Explain to me how the court case has been so far.

Mr. Antony James Konchella: There were two cases pending before court. The one for the committee was determined. We now have the committee in place. The one which is pending is that of the three title deeds given to three people and others which were issued on 14th of February, 2006, without following the normal procedure.

Commissioner Dinka: Yes. No verdict so far?

Mr. Antony James Konchella: It has taken about 11 years since.

Commissioner Dinka: Alright. So, from your expectations in the written statement, you said, the first thing that you expected is for this Commission to facilitate the speedy conclusion of the pending court cases.

Mr. Antony James Konchella: Yes. Not to take a long time because Members are dying and they are losing.

Commissioner Dinka: What else are you asking this Commission to do? What recommendations are you suggesting as this is the only commission so far?

Mr. Antony James Konchella: I am requesting the Commission that the irregularly issued title deeds be declared null and void and the Government should facilitate the smooth and proper sub-division of the group ranch among the group members.

Commissioner Dinka: The ratification of the title deeds is the job for the court. You are already in court. So, what can the Commission do in the meantime, except facilitating the speed up of the process?

Mr. Antony James Konchella: We want to live together harmoniously. Normally, when it is nearing elections or nearing any AGM, they try to incite people.

Commissioner Dinka: Thank you. I have now got some clarity from you.

Now let us hear from Mr. Antony.

Mr. Antony ole Risa, in your case, I do want to bring any other topic. What I asked him and the recommendations that he has made, are they agreeable to you?

Mr. Antony ole Risa: No. This is because actually---

Commissioner Dinka: You do not want the Commission to facilitate or speed up the process of the court?

Mr. Antony ole Risa: Certainly, I support that.

Commissioner Dinka: Okay. How about the second one?

Mr. Antony ole Risa: I want to say that, I stated very clearly that, this group ranch has never been updated.

Commissioner Dinka: What do you mean by that?

Mr. Antony ole Risa: There were people who had never been registered in that group ranch, even before the creation of that group ranch, they were just living there. So, my brother is saying that the group should be sub-divided into 198 members and leave out many people who have been there, just because there had not been an AGM for forty years to register the rest of the people who were there. To make the matter worse, in 1985, the group ranch was dissolved and the sub-division was done.

Commissioner Dinka: By whom?

Mr. Antony ole Risa: By the Committee! Actually, they considered the people who were never in the register and those who were in the register, none was taken care of! In 2005, the title deeds were issued. I stated very clearly - even the present chairman who is fighting to recognize us as a group was also a committee member. He was among the people who sub-divided the land. So, to me, I do not understand why we are being grouped at the moment, because it had been sub-divided a long time ago and title deeds were issued. Many people sold their land and others bought and many people came in, through willing-buyer willing-seller basis.

Commissioner Dinka: So, are you saying now that the Olalui Group Ranch has actually been dissolved?

Mr. Antony ole Risa: Yes!

Commissioner Dinka: Thank you very much. My learned colleagues, the lawyers will ask you some questions.

The Presiding Chair (Commissioner Farah): Commissioner Chawatama, the floor is yours.

Commissioner Chawatama: So, witnesses belonged to the same group at one time. One witness says that titled deeds have been issued and land has been sub-divided. The other member says that we must help in the facilitating of the sub-division of land and irregular title deeds are declared null and void. There is some confusion and it is a house that is subdivided, the right hand not knowing what the left hand is doing. In order for us to help you, I think you need to help us.

When we heard the first witness, I thought it was just a case of some people outside causing some disorder so that they could benefit from that disorder. But when I hear from you, I see more disorder. So, if things were clear when Commissioner Dinka asked and I do not know; maybe commissioner Shava has understood. Definitely, I do not understand.

The Presiding Chair (Commissioner Farah): Commissioner Shava.

Commissioner Shava: Thank you, Presiding Chair. I think our International Commissioners can think there is confusion. That actually tells us quite a lot about the situation. Although I am a Kenyan, I am also not very clear because the memorandum that we have from Mr. Antony ole Risa and what Mr. Antony James Konchella has presented, do not have enough facts, and is that correct? I also surmise that the reason why those parties are speaking is because there is a difference of opinion in terms of what the issues are. Is that correct, Mr. ole Risa?

Mr. Antony ole Risa: Yes, it is correct, Commissioner Shava.

Commissioner Shava: Mr. Konchella, am I correct?

Mr. James Konchella: Yes. Very correct!

Commissioner Shava: Okay. I think some of the issues might be flowing. Mr. Ole Risa whose father is member number 14 in the original register believes that Olalui Group Ranch is in existence and has 198 members. Is that correct?

Mr. Antony ole Risa: Yes.

Commissioner Shava: Whereas Mr. Konchella believes that, this group ranch was dissolved with the satisfactory allocation of land to persons who deserved to be on that land. Is that correct, Mr. ole Risa?

Mr. Antony ole Risa: Yes.

Commissioner Shava: The issues are really rather thick and like Commissioner Chawatama said, there is fundamental disagreement. The other area of disagreement that I picked up is the issue of Ntona.

Mr.ole Risa speaks as though Ntona was another group ranch. But we are adding that land to the original land of 9,393 hectares plus the Ntona land. Is that how you are getting the 15,000 hectares that you said in the memorandum?

Mr. Antony ole Risa: I made two corrections; I said that it is 72 plus 2,152. But I have made a correction. That was somehow an oversight.

Commissioner Shava: But you seem to have said earlier that - so you do not consider that land as part of the group ranch?

Mr. Antony ole Risa: It is part of the group ranch. It was set aside for grazing.

Commissioner Shava: Mr. Konchella, you seem to believe that that land was set aside for grazing, but was disposed off separately and properly to those four individuals. Is that your understanding?

Mr. Antony James Konchella: It was under the Narok County Council as a holding ground, then the Narok County Council surrendered it to the Uasin Gishu Community. So they are really the right owners of the land. The Uasin Gishu Community sub-divided it into four.

Commissioner Shava: And it is the Uasin Gishu Community who sold it to those four individuals, Ntona one up to Ntona four?

Mr. Antony James Konchella: Yes.

Commissioner Shava: So, in your view, that land is properly held by these four individuals?

Mr. Antony James Konchella: Yes. Up to now, it has never been in the group.

Commissioner Shava: Yes. Mr. Ole Risa, is that not your position?

Mr. Antony ole Risa: It is not.

Commissioner Shava: I think we have understood now. The matter which is before court is to decide what?

Mr. Antony ole Risa: Issuance of title deeds. That is the title deeds which were issued irregularly.

Commissioner Shava: So, the people who hold the view that Mr.ole Risa holds went to court to challenge the people who hold the view that Mr. Konchella holds. Is that the correct position?

Mr. Antony ole Risa: Yes.

Commissioner Shava: Then I think, in my view, what this Commission can do is to put on the facts of this disagreement. The matter is in court the Commission cannot interfere with the matter while it is in court. The Commission will take an interest after the outcome of the case. But what is important for us is the fact that you have come here so that you can air the issues to us so that we can all see because some of these issues are the same issues which are found in other parts of Narok and the country at large, in terms of disagreements, confusion with where one can expect some sort of improper conduct on the part of public officials. I think that is important for us to pick it up, but we will look with interest to see the outcome of the court case.

In the meantime, I am very happy to see that although you disagree, both of you think that it is important to make peace.

So, you will also uphold that view and we would want to see you continue not to allow yourselves to be incited, one group against another, by politicians whether it is a general election, annual general meeting or whatever other kind of meeting, or the way you are going to select officials.

Try and work this thing out in a peaceful manner. Thank you both of you for honestly presenting your views to us.

The Presiding Chair (Commissioner Farah): Thank you very much. I can see that at the end of your memorandum, you had expectations. Your expectation number one is that the Commission should facilitate speedy conclusion of the pending court cases. That, we will promise you, is part of our job and we will undertake to do so.

The right members should be beneficiaries of the land. I have a question to ask on that one. The Commission directs the relevant Government authority to deal with the issue, which is the same and the agreed persons compensated. That is something that is before the court, and thereafter, your expectation is to get the original title for the ranch, No. 144/1 and the subdivisions thereafter, and the map to be drawn properly to the satisfaction of everybody.

That is a court function. But just to clarify what my fellow Commissioner asked, I ask again the two of you. You will answer me one after the other. Your original land comprised of 15,000 hectares; that is what is said in the memorandum. These 15,000 hectares were registered in the society's name, but in 1977 the above first four people or persons were allocated parcels of land and registered them in their names, leaving 7,241 hectares. Out of the 7,241 hectares, another 2,142 hectares were grabbed – those are the words you used. Then you said that it was taken through the back door by 76 members, because originally you were 122 members. Even though we are going to speed up the court case, can any one of you just clarify for me, because even I got a bit confused?

Mr. Antony ole Risa: We are getting the records from the green cards which are there. We have the green card for the group ranch; we have the green card for the people who have taken land. You can work out, because we have the aerial photograph, which does not give the exact acreage; if you add up what is remaining to what was taken, it will add up to 9,383.

The Presiding Chair (Commissioner Farah): Yes.

Mr. Antony ole Risa: That is the total now.

The Presiding Chair (Commissioner Farah): Okay. I am clear now. So, I have no further question. I think both Judge and Commissioner Shava have clearly said that this is a matter for the court, because you disagreed. What we shall do is that we shall just speed up the court process. Is that okay?

Mr. Antony ole Risa: It is okay.

The Presiding Chair (Commissioner Farah): Thank you very much for your presentation and thank you very much for sharing with the Commission that information. Even though you disagreed, you are going to disagree in front of the court and you will conclude, since we are all law abiding citizens.

Before I close the session, Commissioner Shava has one thing to say.

Commissioner Shava: I have one more question for Mr. Konchellah. Just because throughout this memorandum of Mr. ole Risa, the name Konchellah appears a lot. Is this the late or the former MP, John Konchellah? There is the current MP, Gideon Konchellah; there is the area chief, Samson ole Tina Konchellah; there is Jonathan

Magere Konchellah; we see the name Benjamin Deyoni Konchellah, and these last four people are all brothers.

May I ask you, Mr. Konchellah, are you related to the family?

Mr. Antony James Konchellah: Yeah; our family actually is large in that particular area.

Commissioner Shava: Okay; thank you.

The Presiding Chair (Commissioner Farah): Thank you very much.
Leader of Evidence that is the end. Stand the witnesses down and call in the next witness.

(The witnesses were stood down)
(Mr. Christopher Murray took the oath)

Ms. Belinda Akello: Welcome to this session, Mr. Murray. For the record, kindly state your names.

Mr. Presiding Chair, Sir, the witness is number eight on your list.

The Presiding Chair (Commissioner Farah): Thank you. Proceed, please.

Mr. Christopher Murray: My names are Christopher Murray.

Ms. Belinda Akello: Thank you, Mr. Christopher Murray. Where do you live?

Mr. Christopher Murray: I live in Narok Town.

Ms. Belinda Akello: What do you do in Narok Town?

Mr. Christopher Murray: I am a teacher by profession.

Ms. Belinda Akello: Okay; where do you teach, Mr. Murray?

Mr. Christopher Murray: I teach at Lenana Primary School.

Ms. Belinda Akello: Thank you very much and welcome to this session.

Mr. Christopher Murray: Thank you.

Ms. Belinda Akello: You have come to speak about the plight of the Maasai girl child?

Mr. Christopher Murray: Yes.

Ms. Belinda Akello: Kindly proceed and make your presentation?

Mr. Christopher Murray: Thank you very much.

I want to speak about the plight of the Maasai child, and I would want to begin by giving an introduction about what childhood is in Maasai. Childhood is a time of great freedom for the Maasai children until the age of 7 years. Children have little to do with the family group except play, learn the ways of the adult and build their language skills. When a child is four or five years old, an experienced older woman removes its two lower incisors as part of beauty. This also makes it possible to feed the child through the small opening should the child get sick and be unable to open their mouth. After the second set of teeth grows, they are removed once again. Girls gradually learn the women art, for example, milking the animals, beadwork and various household chores. Self confidence in adulthood is built in these young years. Women have the duties to teach young girls good behavior and help them develop responsible personal abilities and become morally upright. This is important for producing women of integrity in the community.

Respect is taught in early years in life in Maasai land; the child is taught to call elders “father” and all women “mother.” After the first and the second naming ceremonies, in some families, a girl undergoes a rite called “Enkitupupunoto”, which literally means “cleansing in preparation for circumcision.” Between the age of seven and eight, the upper part of the right ear is pierced and when that is healed, the left ear is also pierced at the same spot. In a year or two, a bigger hole is pierced on the lobe of the ear, starting from the right and then to the left. A wooden plug, or a wad of leaves, is inserted in the lobes to increase the ear sizes. The larger the ear lobe the more beautiful a Maasai girl is. These girls are ready for circumcision and all childhood rites are undergone and beauty is fully developed.

I want to talk about circumcision. It involves the removal of the clitoris and labia minora and a specialist, who must be a woman, is brought outside from the family to perform the operation. She uses a specially made, curved, very sharp piece of metal. According to research, that is done within all Maasai speaking communities, about 99.5 per cent of all adult women have undergone Female Genital Mutilation (FGM). The practice is found to violate the rights and the lives of both physical and psychological being of the girl. The practice is still prevalent in both rural and urban Maasai. Girls are circumcised as soon as they reach puberty and then after circumcision, as soon as the girl gets healed, she is immediately married off as a source of income to the family, thus denying them a chance to continue with education.

The challenges facing the Maasai woman start at an early age and continue throughout her life. They face socio-economic discrimination; they suffer silently without any option. Maasai women are not independent to make their own decisions; they are subjected to decisions made by men. They do not have access to resources; neither do they make any choice in terms of their reproductive health rights. That is why there is a big discrepancy in social and economic status among the Maasai community. Those who are the decision makers can even dispose of property, for example land, without requiring the consent of the woman.

Therefore, I have the following as my recommendations.

1. Recognition of the rights of both female and male children particularly those with special needs; they should be highly recognised and protected.
2. Introduction and enforcement of national policies to discourage certain practices and traditions among communities is necessary.
3. Involvement of women in development activities and inclusion of members from the female gender in decision making and the management of projects.
4. Representation of women in key decision-making and policy making positions at both community and national levels is necessary.
5. Protection of vulnerable individuals in the community, with special reference to those girls who get pregnant before they finish school. They should not be subjected to early marriages. Instead, they should be allowed to give birth and then go back to school to finish their education.
6. There is need to ban customs and traditions, culture or practices which hinder sound development of children such as early marriages, FGM and forced labour.
7. Policies should be developed to eliminate gender based discrimination and enhance protection of the family.
8. Finally, advocacy and lobbying for the rights of women to own property and to enable them to achieve self sustenance.

Thank you.

Ms. Belinda Akello: Thank you very much, Mr. Murray, for that presentation, especially for having made it on behalf of women. I must say that is a good thing, particularly now that you teach at a school that formed part of my primary education in Class Four.

I particularly have no question; but I have great admiration for what you do.

Mr. Christopher Murray: Thank you.

Ms. Belinda Akello: Mr. Presiding Chair, Sir, there is no question for the witness from the Leader of Evidence.

I am sorry, Mr. Presiding Chair, Sir. The witness has a memorandum which we pray that it be admitted as part of the record.

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

Leader of Evidence, have you finished?

Ms. Belinda Akello: Yes, Mr. Presiding Chair, Sir.

The Presiding Chair (Commissioner Farah): You have no more questions to ask?

Ms. Belinda Akello: Yes, I have no questions for the witness.

The Presiding Chair (Commissioner Farah): Okay. We will hand you over to the Commissioners and I start from my left; Commissioner Dinka.

Commissioner Dinka: Thank you. Mr. Murray, I think as a teacher, this is the right and proper road for you to take. My question for you is; what is, in your estimation in Maasai land, the percentage of young girls in school?

Mr. Christopher Murray: My estimate is that currently girls constitute 45 per cent of the pupils in schools.

Commissioner Dinka: 45 per cent are in?

Mr. Christopher Murray: 45 per cent of girls' population is in schools.

Commissioner Dinka: Okay.

Now, the other thing is, you have made very good recommendations, but most of them require very, very thorough civic education within society. Are there bodies or organizations right now that do conduct this kind of civic education, particularly among the male members of the society?

Mr. Christopher Murray: Well, I particularly want to talk about Narok County. In my memorandum, I have indicated that I also associate with Tefaro Girls Rescue Centre (TGRC), a centre that facilitates the awareness in the community; for the community to stop early marriages and actually to eradicate FGM. I also know of World Vision (WV) and World Concern (WC) which are also doing the same thing. Other religious bodies are also doing the same thing.

Commissioner Dinka: Is there any effort on the part of the Government and Government institutions like schools, the provincial administrative set up, also to encourage what specific education to impart?

Secondly, what is your assessment of the reception of the male members of the Maasai community?

Mr. Christopher Murray: Let me begin by answering about the Government role. First, the Government has introduced the Children Act that was enacted in 2001; it has outlawed FGM and early marriages. Number two, in the system of education, the syllabus

that we are using in schools has really captured the issue as an emerging issue; we are teaching children in schools their rights, and part of their rights is not to be cut, not to be married off. This is Government intervention. The other thing is that we have also realized that the Government has posted to district headquarters district children officers who are actually standing up for children and are fighting all forms of discrimination and abuse of the children. We have also noted that in police stations, there is an officer who has special knowledge about the rights of the child, and we can actually run to him when we hear that a child has been abused or is about to be subjected to such practices.

When it comes to the community, it is a bit divided here, because decisions among the Maasai community are mostly made by men. But the actual cutting – I want to particularly single out the FGM – is done by women. The role of men here is to fund the ceremony to take place and actually to pay the circumciser, who in this case happens to be a woman. So, we are trying to intervene and educate the males to stop funding such ceremonies. Secondly, we are also bringing men, especially the boys, on board to enlighten them on why we are saying that FGM is not good. We take them through the effects of FGM, and we actually identify key issues and things that have happened in the community as a result of FGM, especially when death has arisen because of FGM, we let them know. When a woman dies as a result of child birth because of prolonged labour, we let males appreciate that it was because of FGM. Although there is a slight resistance, the male in the community seem to be accepting the need for the eradication of FGM.

Commissioner Dinka: My last question, you mentioned about the young boys going to school and I think the key is there. If you could persuade these young boys who are going to grow up into leadership, whether in the local council of elders or Government, teachers or medical people, these are going to be opinion leaders. When you teach them – probably because you are a teacher and they are afraid and they might say “Yes, Sir” - in your assessment, do you really think you are creating an impression on these young boys that they would be following when they grow up? Do you think they would stick to it?

Mr. Christopher Murray: Of course, yes, if you started involving them. We started involving boys two years ago and actually what we have seen is that there is increased participation among the boys in advocacy against FGM and early marriages. Boys in some families are standing and saying “Our sisters should not be cut; they should not be married off; they should be allowed to finish school.”

Commissioner Dinka: Thank you very much. I have no further questions for you but just to say that you are doing a fantastic job. I think we need more people like you in this kind of environments, and I wish you every success.

Thank you.

Commissioner Chawatama: Thank you very much for your testimony. I grew up in a home where my father said that education was important for a woman; that I might marry you off to a rich man and he might die or his money might get finished; so, what would happen to you? So, you have confirmed a lot of things that my father spoke to me about.

I would like to ask, what then happens to a Maasai girl who is married off early and then her husband dies? I ask this because you also touched on inheritance.

Mr. Christopher Murray: Thank you very much. When a Maasai man dies, then the family of the deceased takes up the responsibility of taking care of the widow; the brothers of the deceased will protect the identity of the husband. One thing that would not happen to a Maasai widow is that she will not be inherited. If there was property that was left behind by the husband and it happens that this widow has a son, then the family will protect the property until the son grows up to take up the property of his father. If the mother did not have a son, there are no restrictions that the woman should not go out and, may be, get somebody to give her a son. Should that son be born to that woman, the family will always appreciate that son as the son to the deceased and, therefore, he would come into the family and enjoy the privileges of the property of the deceased.

Commissioner Chawatama: She would still then be looked after?

Mr. Christopher Murray: Yeah. The community will actually look after her.

Commissioner Chawatama: So, in this case, if there were only daughters, they would not inherit the property of their late father?

Mr. Christopher Murray: This is a big challenge, because the Maasai community considers daughters to be for marrying off and; therefore, they do not inherit property.

Commissioner Chawatama: Okay. You also talked of the rescue center. How many girls are admitted at this center today as we speak and for what reason?

Mr. Christopher Murray: As we speak now because the school term is on, girls are in different schools within the Republic of Kenya. But during the school holidays, the centre houses 70 girls, and these girls are at the centre because they are running away from early marriages or after saying no to circumcision.

Commissioner Chawatama: So, you are saying that the girls are disowned by the families if they refuse to go into early marriages?

Mr. Christopher Murray: Yes, they are disowned by their families because when they refuse to go into early marriages, they have defied the decision by the family and, therefore, they have to run away.

Commissioner Chawatama: So, the rescue centre is a permanent home for a lot of the girls; it is not just a place where they pass through?

Mr. Christopher Murray: Initially, we had thought that the rescue centre would be a temporary home, because after the girls have come to the centre, we actually take them through a reconciliation process and thereafter we integrate them back to their families.

But we have realized that some families are adamant; they refuse to reconcile with their daughters until they accept the initial decision of the family. If the girls continue to refuse, then they are rejected by the family and we continue housing them at the centre.

Commissioner Chawatama: Thank you very much. I am sure other Commissioners have questions to ask. But I have seen in the African set-up that women or the girls are the ones who look after their parents more than the men. I do not know if the same can be said within the Maasai community; are you seeing certain changes that are taking place for parents to see that even the girl child should be allowed to go to school?

Mr. Christopher Murray: What we have done as an organization, and as a group creating awareness, is that we have identified among the Maasai women who have successfully gone through school; they have not been circumcised, they are in positions of employment where they are earning salaries and they are supporting their families. We take them out when we are going for sensitization so that we present them as role models for teaching the community.

Commissioner Chawatama: Thank you very much for the work you are doing; it is a good cause and I am sure it is bearing fruit.

Thank you.

The Presiding Chair (Commissioner Farah): Thank you very much.
Commissioner Shava?

Commissioner Shava: Thank you, Mr. Presiding Chair, Sir. I think my fellow Commissioners have brought out most of what it is that we would want to get from you. I am familiar with the work that you do, because I have worked for many years in that area. I congratulate you for the great work that you are doing. I agree with my colleague next to you; you must have been a great teacher, because she is a very strong member of our staff. The work that you do is not easy and it is not work that can be done in one day. We would just like to encourage you; the Constitution now, as you know, guarantees equal rights of inheritance to both men and women. We have in place a new law against FGM in addition to the Children's Act, and in addition to the Sexual Offences Act, which was also passed a few years ago. So, Kenya is really moving forward towards recognizing that a girl or a woman is a complete human being, with inherent human rights that go with being a human being. They are not rights which are given by anybody; they are rights that one has just by virtue of being a human being, and there is no human being that is superior inherently to any other human being. We are all equal.

I was very happy to hear early in the morning what Mzee Maitai said. I do not know if you were here. The Chair of the Maasai Council of Elders, Mzee ole Maitai said that in his view and policy the education of girls should be encouraged. As my colleague, Judge Chawatama, has said, we are seeing all over Kenya an increasing trend where it is actually female children who are increasingly assisting their parents when the parents are older, particularly if they have had access to education. So, I would just like to encourage

you in your fight, so that as Kenya is moving forward, the Maasai are not left behind; they should move forward along with other Kenyans.

We thank you.

The Presiding Chair (Commissioner Farah): Well, I also thank you for your eloquent way of speaking, now that you are a teacher. In the memorandum you presented, the matters you have talked about are not peculiar to the Maasai; they are something that is countrywide. But because you so bravely spoke in front of this crowd here, it has made me know that, perhaps, you are succeeding in protecting the girl child. So, we thank you and we will take your memorandum seriously. We will study it with a view to looking at the whole country.

Thank you very much.

Leader of Evidence, you may stand down the witness and call the next one.

(Ms. Margaret took oath)

Ms. Belinda Akello: Kindly tell the Commission your full names. Commissioners, this is Witness Number 9 on your list.

The Presiding Chair (Commissioner Farah): Leader of Evidence, kindly approach the Commissioners for a moment.

(The Leader of Evidence and Commissioners consulted)

Ms. Belinda Akello: Presiding Chair, we seek your guidance. The second witness is here. We would wish that he makes his presentation and further gives documents.

The Presiding Chair (Commissioner Farah): The first one was the representative of the Maasai Council of Elders who so ably represented his council and the entire Maasai Community. If he was escorted by somebody, since we have all the information, the person can present his memorandum, but not to speak and go over the same issues again.

Ms. Belinda Akello: Much obliged, Presiding Chair. He has four memoranda to present:

1. The Anglo Maasai Treaties and the Fraudulent Dispossession of Maasai Land on behalf of the Maa speaking communities of Kenya resident in Narok, Nakuru, Samburu, Laikipia, Kajiado, Baringo, Transmara, and Isiolo districts;
2. A case of historical and contemporary injustices and the dispossession of Maasai land presented to the Office of the President, Ministry of Justice and Constitutional Affairs, Lands, Settlement and Housing, the British High Commission, and the DCs of Laikipia, Narok, Kajiado, Nakuru, Baringo, and Samburu.

3. The Maa Petition: A Memorandum on Historical Injustices by Davis ole Tamoooh.
4. A letter to the Governor of Kenya on 12th December, 1960.
5. A map of 1890 to 1916 representing the distribution of the Maasai in the East African Protectorate.
6. A cartoon representation in the East African Standard Newspaper of May 17, 1913 titled: The Maasai Move.

Presiding Chair, according to the witness, the Anglo Maasai Treaty was meant to be re-read 100 years later that is in 2004. There is a list of 13 persons, including the witness who went to make good of this duty in accordance with the treaty. The witness indicates that the Kibaki Government arrested the 13 people and held them in detention for one year. This forms the cause of the Mau conflict.

Those are the documents we wish to present and record his arrest and the death of his son.

The Presiding Chair (Commissioner Farah): Thank you, Leader of Evidence. This morning we heard from Mr. Joseph S. Maitai who is the Chairman of the Maasai Council of Elders. He very ably spoke about the Maa people and even included the Rendille, Samburu, and the greater Maasai. He talked about the whole of your land. Do you recognize him as the Chairman of the Maasai Council of Elders?

Mr. Davis ole Tamoooh: Yes, I do although I am not a member of the council of elders. I am the Chairman of Maa Civil Society Forum in the nine Maa speaking districts. It is a different organization.

The Presiding Chair (Commissioner Farah): The two organizations are complementary. They are not in conflict, are they?

Mr. Davis ole Tamoooh: No, they are not.

The Presiding Chair (Commissioner Farah): Therefore, whatever you wanted to present complements the Chairman of the Maasai Council of Elders. You have already had your day. In order to save time we will study your documents and the ones presented by the Chairman of Maasai Council of Elders.

Mr. Davis ole Tamoooh: I only wanted to point out that the case of 1913 is being awaited by the Maa speakers. We dedicated all our resources and efforts and lives of our children to this case. A lot of our sons have died starting from the Njoro Massacre of 1912 where we lost 1,200 warriors in a day. In 1918, we had the Olololung'a Massacre. We have lost most of our territory in the past and even today. The Mau Narok case is currently in court. Despite having got Independence, we still have black colonialist on our land today. We want to demand for our rights. Recently you saw Moses Mboyek being shot. You saw ole Punywa being shot. The land has not reverted to us. The Maasai are demanding

their land back. Everything is in that memorandum we have presented to you. We want a hearing from the Government. It is not that we are demanding for our land unlawfully. The Maasai want to be heard. They want that case to be heard. We know some of our officials are already in the USA as refugees.

Commissioner Chawatama: I am sorry, witness. You are on borrowed time. If I were you, I would use this time very well. What are your burning issues? What are your recommendations? We will read what you are saying in the memo.

The Presiding Chair (Commissioner Farah): We know about all that you are saying. In any case all that information is in the memorandum and we will read that. Please, summarize.

Mr. Davis ole Tamoooh: The recommendations are stated in the memorandum. We are praying that we be heard by our Government. Thank you.

The Presiding Chair (Commissioner Farah): Thank you, very much. We are not a court of law, but a truth seeking commission. Once we have gathered all the truth, we will make adequate recommendations in accordance with your recommendations to the Government and follow up on the implementation in accordance with the law.

Ms. Belinda Akello: Presiding Chair, we pray that the documents presented be admitted and the presumption of truth rides on the documents and his statements.

The Presiding Chair (Commissioner Farah): All the documents he has presented are all admitted in the Commission's records. Thank you.

(The witness was stood down)

Today was our first day of the hearings in Narok. We have done very well. We have heard the following: John J. Maitai, Chairman of the Maasai Council of Elders; Mr. Davis Tamoooh; Daniel Kasiyei ole Punywa; Elijah Kinyamal Sikona; Francis Leshira; Samuel Cheruyiot Businei; Rebecca Cheron; Paul Esopia; John Koyipitat Shela; Julius Ng'etich; Antony ole Risa; James J. Konchella; and Christopher O. Murray.

Thank you all for being patient and having listened keenly to the presentations. We take Narok hearings seriously because they hinge on land issues, marginalization, lack of development and all the other issues that were raised. We will deliberate on all those issues and come up with appropriate recommendations.

The Committee adjourned at 6.00 p.m.

