3-1-2012

Public Hearing Transcripts - Thematic - Access to Justice - RTJRC01.03 (NHIF Auditorium) (Access to Justice)

Truth, Justice, and Reconciliation Commission

ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION ON THURSDAY 1ST MARCH, 2012, AT NHIF AUDITORIM, NAIROBI

(Thematic Hearing on Access to Justice)

PRESENT

Ronald Slye	**-**	**The Presiding Chair, USA**
Berhanu Dinka	-	Commissioner, Ethiopia
Gertrude Chawatama	-	Commissioner, Zambia
Ahmed Farah	-	Commissioner, Kenya
Belinda Akello	-	Leader of Evidence

(The Commission commenced at 10.00 a.m.)

(The National Anthem was sung and prayers said)

The Presiding Chair (Commissioner Slye): Good morning, everyone. I would like to welcome you to the first of the hearings that we will be holding on access to justice. I would like to start by apologizing for our late start. We have been waiting for Judge Chawatama who will be presiding at these hearings, but she is caught in a traffic jam. Those of us who are not from Kenya have learnt that not only is it difficult to access justice, but it is sometimes difficult to access places because of the traffic here in Nairobi. I would like to introduce the panel.

(The Presiding Chair (Prof. Syle) introduced other members of the Commission)

I would like to ask our leader of evidence to start with our first witness.

(Ms. Anne Ireri took the oath)

Ms. Belinda Akello: Welcome to today's hearing. We thank you for having made time to come. Kindly, for the record, tell us your names again.

Ms. Anne Ireri: Thank you for this opportunity. My names are Anne Ireri. I work with the Federation of Women Lawyers (FIDA) as a Programme Manager for the Access to Justice Programme.

Ms. Belinda Akello: Thank you very much. With regard to this thematic hearing on Access to Justice and also knowing that you are a key stakeholder in that regard, we had made an invitation to your organization to come and inform the public through this Commission on your role in promoting access to justice in Kenya, challenges that you have faced in offering legal aid, an evaluation of the current National Legal Aid Programme, any numbers of cases or catalogue of human rights violation that your

organization has dealt with and finally, recommendations on measures that are necessary to advance access to justice.
You are welcome to make your presentation.

Ms. Anne Ireri: Thank you very much. By way of presentation, I shall proceed to give, first and foremost, an overview of what FIDA does, our background and how our access to justice programme is informed. The Federation of Women Lawyers was formed in 1985 as a Non-Governmental Organization and an independent institution with the mission of improving the legal status and access to justice and to enhance the public awareness of women in Kenya. It is a membership organization with membership primarily drawn from women lawyers in Kenya in private practice or public office, as well as female law students at the faculties of law. Our current membership stands at over 700 who are directly involved in laying out the policies and practice that will guide and inform our programmatic work. We do have in place a governance board that is elected every two years and provide strategic leadership for the organization.

I will now deal specifically with the aspect of access to justice. This is one of the key programmes at FIDA and is often referred to as the flagship programme of the organization. We implement this programme through three offices, that is, Nairobi, Kisumu and Mombasa. To achieve this particular programme and enhance our programmatic outcome and goal which is to enhance indigent women's access to justice through formal and informal legal system, we run seven key programmes, and I shall briefly outline each.

The first programme is what we call the Self Representation Scheme. Under this programme, what we seek to do is to empower women through legal training to enable them engage the legal justice system by their self representing of claims before the court. This targets primarily the simpler court cases such as the family cases involving children, and which do not have technicalities that might require counsel. We enhance and ensure that women are prepared to deal with the courts by giving them individual training as well as psycho-social support, to prepare them to deal with courts.

The second programme that we run is the Legal Representation, where we, as legal counsels, being duly admitted as advocates of the High Court of Kenya, represent our clients in court and especially so in the technical cases such as civil matters.

The third programme is the *Pro bono* Lawyers' Scheme, where programmatically, we have engaged with Law Society of Kenya (LSK) with a bid of engaging members who, as part of the legal duties and requirements, are trained and expected to volunteer certain hours of their work voluntarily towards *pro bono* services. We have further trained our lawyers on gender and human rights, so that they are able to adequately engage with the nature of our work.

The fourth tire is what we refer to as Public Interest Litigation or strategic litigation, which seeks to engage especially the constitutional court with a bid of challenging

existing constitutional or policy gaps that contribute to discrimination against women in the legal system.

The fifth programme is what we refer to as Informal Justice System, which is one of our newest programmes which was developed out of recognition of the vital role that traditional leaders play in our society. They certainly remain key in dispute resolution and we have engaged them strategically with a bid of enhancing access and quick justice, especially for cases that do not necessarily have to go to a court of law because the nature of the disputes can allow, for example, mediation to take place. Secondly, most of those traditional justice leaders are accessible and this saves on cost, which is an issue that I shall discuss further in my presentation; that is very key towards access to justice.

The other programme that we run is Alternative Dispute Resolution, which is an emerging field that now has cognizance legally as a means of reducing backlog and also embracing less adversarial means of resolving disputes, given that the traditional litigation systems in place are mostly hostile towards parties and hardly encourage reconciliation.

The cross-cutting programme is the Psycho-social Support where, first and foremost, we, as staff, are adequately trained to be able to engage with our clients and this is very important given the nature of our cases. That is because they largely entail emotive issues. I am glad that, today, I am joined by colleague, Irene Ochola, who runs the Counseling Department at FIDA.

I will now proceed to give just a brief snapshot at the kind of statistics we have at FIDA. The dynamics seldom do change within given periods. This is aimed at giving us just a picture of the kind of cases that FIDA handles. So, between the periods of July and December, 2011, we had a total of 1,115 cases that were filed with us with regard to child maintenance. Custody cases were 259; division of matrimonial property, 173 cases, rape cases 20; defilement cases, 18; land and civil cases, 133. For us, these figures largely are evidence that there is need and there remains huge number of cases which require quick and efficient justice.

In our dispensation of justice, as key stakeholders in legal aid, for the last two decades, we have certainly experienced certain challenges. I believe that those challenges are replicated with other likeminded stakeholders. I shall proceed to outline some key challenges that we have faced.

I shall first speak to the programmes that we run with regard to self and legal representation that then have us engaging directly with the formal legal systems which are the courts.

One challenge we have definitely seen over the period is that we have long unnecessary delays in court and this has been due to several factors. Well, the ones I will mention are not exhaustive but predominant. First, we do experience a lot of long delays because of

few judicial officers and a case in point is family cases. For those of us who have engaged in litigation, especially at the High Court in Kenya, you shall find that unless you have specialized courts that will deal with family issues at that level, you are competing with, for example, commercial interests which, at times, are perceived to be more urgent than family issues. So, we shall have courts that are there really backlogged with all these cases and you, unfortunately, have some succession cases dragging over a very long time. The situation of having few judicial officers is also cross-cutting, especially in rural Kenya, where we have officers who have been able to deal with these courts. You find that you have few officers and few courts that are really overwhelmed by the number of cases.

The other challenge we have seen is lack of available and affordable legal representation. Legal services are definitely by nature quite costly. You will find, again, going back to the dynamics of poverty that we have in our country, couples with low literacy levels, their reliance on legal counsel is quite heavy. Given a choice between putting food on the table and paying for lawyer's fees, women are more likely to choose the former. This definitely impedes access to justice and they then choose to live with the violations out of circumstances.

The other challenge we have seen is that we have weak enforcement of laws, especially execution of certain decrees. I think, really, if you have to gauge the success of one going through the courts and having a successful judgment that redresses the grievance that you have had before the court, we can fairly claim success where you are able to reap and enjoy the benefits of your judgments. But it is just a piece of paper that has no value. This is something that we have faced, especially with--- I will give an example of where you have a woman who has gone to court seeking custody and maintenance and she is granted, for instance, Kshs5,000 per month as maintenance. Her partner or spouse is served with this order and non-enforceable means of executing this court decree. We heard cases of spouses and partners fleeing jurisdiction or where you, perhaps, require the police to arrest this particular person, delays occur and this is entirely frustrating. I think we really need to look at this. For any consumer of justice to claim that they are benefitting from a system, post-ruling measures must be as effective as those that were before judgment.

The other challenge we have is, definitely, limited organizational capacity. Most of the organization that dispense or have legal aid clinics are Non-Governmental Organizations (NGOs). We wish to reiterate that access to justice is now a fundamental right under the Constitution and the State needs to adequately pick this up.

The other challenge we have with regard to litigation is that, our current legal system remains, far and large, quite technical and this makes it quite difficult for lay persons. With that, I mean non-advocates of the court to confidently engage in this. This, definitely, makes it very costly as the public needs legal assistance and counsel.

I will last speak briefly on challenges with regard to barriers in law and legal systems and, as well, highlight just pertinent challenges that we have faced. One of the challenges

we have seen is where you have the law being a barrier. You have legislation that gives you one right and takes the same right away from you. A case in point is the Sexual Offences Act, which has extremely punitive measures under section 38, which we have raised in the past and we continue to rise. This unrealistic section definitely deters women from reporting cases.

We also have in place emerging retrogressive precedents which are deterring women from filing cases. With regard to matrimonial property, we have got a retrogressive law that we are currently using. At the same time, we also have legal decisions that are imposing extremely unrealistic measures for women as a prerequisite to claiming any stake in matrimonial property. How then do we expect women to report cases and access justice if *ab initio* there is already such laws and rulings in place? This needs to be relooked at and repealed.

We also need to look at existing challenges with harmonizing laws that are in place and specifically where we have plural legal systems. With this, I will speak, for example, with regard to Muslim women. We both have the Kadhi's Courts and Sharia Law as well as the secular law both addressing personal law issues. This position needs to be clarified and progressive precedent established.

In terms of the administrative challenges, the challenges that we have seen, especially with violations of criminal nature – and in this regard I am speaking about sexual and gender-based violence – we are yet to establish streamlined measures of addressing these violations. By this, I am speaking about protective measures of ensuring women report cases such as gender desks and receive psycho-social support.

We also need to look at the lengthy and expensive process. If today one is to file a case at the Children's Court, they are still required to fulfill requirements of the civil procedure under the Children's Act which are necessarily lengthy in some instances, as what you require is urgent and, further, you require quick justice.

Having looked at these challenges – which list is by no means exhaustive – in the interest of time, I will proceed to give a brief evaluation of what is currently in place with regard to legal aid before I proceed to my recommendations. The current legal aid programme has been in place for over three years, and FIDA as an institution, alongside others, remain key stakeholder in the same. In the spirit and vision of the Constitution, an effective and operational legal aid system in Kenya is long overdue. It is our belief that the current efforts in place, if well thought out and mitigated, and if they ensure participation of all stakeholders, we will be able to achieve this. With the policy in place and, hopefully, the Bill being enacted soon, there are certain salient issues we need to consider which, in our opinion, are three tier. First, the role of the legal aid programme in Kenya ought to be clarified both in policy and law. Once you have these policies and law effectively clarified, it is then much easier, and it facilitates better formulation of regulations to be able to efficiently implement the same. In as much as the process is long overdue and needs to be hastened, caution has to be exercised as well.

Secondly, we need to interrogate the capacity for implementation and given that from the next general election; we shall move even into devolved government, implementation has to be tackled both at national and at devolved government level as well as enacting structures that will effectively implement access to justice.

Thirdly and most importantly, we need to ensure independence and political-goodwill which eventually ensures sustainability as legal aid programmes in any country require solid funding.

I shall conclude my presentation now with the recommendations which, again, are by no means exhaustive but are pertinent and remain key to our work as FIDA and any like-minded institution. I shall begin with the supreme law of the land, which is the Constitution. Article 25 has now clearly outlined the place of international law and standards in our country. Access to justice has certain international standards and these have been well thought out to enhance the efficiency and efficacy of any legal aid programme in our country. These principles include independence of the Judiciary, the role of lawyers, who are key stakeholders to legal aid; the role of the prosecution department and certain regulations and measures, have been applied. We appeal that, as a country, we domesticate and effectively implement these international standards with regard to access to justice.

Secondly, we do recommend that in line with developments in International Human Rights Law and what is now being embraced as best practice, whatever interventions and strategies we formulate are in line with the human rights approach which, in the two tier system, effectively deal with the claim holder who, in this case, are the consumers of justice. At the same time, it should adequately capacitate and account for the duty bearers tasked to this particular duty.

Thirdly, we recommend effective legal protection of women and children in accessing justice. This is, again, premised on the vulnerable nature. We cannot be blind to this, be it through formal or traditional law, international law or administrative rules. International practice has been to ensure that at whatever level of engagement, vulnerable groups engage with the legal systems and adequate protecting measures are in place to maximize their participation in the process.

We also need to enhance and implement legal awareness as well as capacity development of both the claim holders and duty bearers. By way of immediate measures, we need to embrace fully alternative dispute resolution, traditional justice systems as well as the small courts or what in other jurisdictions are called “primary courts”. Research has shown that in most of these strategies, justice is often expedited and definitely affordable. This will be of mutual benefits to both the consumers of justice as well as the state.

Finally, we need to explore efficient, creative and to a large extent, perhaps, what are viewed as non-traditional means of ensuring enforcement of decisions. This will reduce perceived perceptions of impunity and non-access to justice as well as justice belonging

to the few and in this case the rich, powerful and in other quarters, the male. Strategic interventions in legal aid in international standards have embraced the best practice in modeling an effective legal aid system that displays the following attributes. That is individual change for the justice consumers which should be positive as a result of engaging the legal aid system. Institutional change as well should be evidenced as legal aid service providers are keen in ensuring efficacy that legal aid is a reality.

Thirdly, we should have legislative change at policy and legal level that enable, facilitates and holds into account stakeholders within legal aid systems. Finally, there is societal change as a consequence of effectively embracing the first three changes wherein the public, first and foremost, embraces legal aid views the same as being impartial, is effective and most importantly, is accessible.

Presiding Chair and commissioners, I thank you very much for your time and I beg to stop there.

Thank you.

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

Leader of Evidence, before we proceed, I would personally like to apologise for having come late due to circumstances beyond my control. We were stuck in traffic so that we could make way for the President, and I did not have sufficient arguments to put before anybody to allow me to get here on time. So, I beg your forgiveness.

Thank you very much for your presentation. I am sure the other commissioners were introduced. So, I would like to introduce Commissioner Margaret Shava, who is one of the Kenyan Commissioners and is a lawyer by profession. It is a privilege to have her in the Commission. My name is Gertrude Chawatama. I am from Zambia where I am a High Court Judge. Today is an exciting day for me.

(The Presiding Chair (Commissioner Chawatama introduced herself and other members)

Thank you very much for your contributions.

Leader of Evidence, you may proceed!

Ms. Belinda Akello: Thank you, Presiding Chair. I thank you once again, Anne, for the presentation that you have made during this thematic hearing on access to justice. There are just, may be, a few issues for you to clarify and then we will pass it over to the commissioners because they have other questions to ask you.

The first one is that bridging the gap between the Government and the citizenry of Kenya, especially those who are disadvantaged is one of the silent but salient features of this Commission's work. Your Commission has been operational for roughly 27 years, if I am

not wrong. Bridging this gap for the citizenry ideally embraces issues like awareness – which you have talked about – understanding of the law and also knowledge of those laws so that they can be able to access that kind of justice. The people who encounter it are some large women, who are your principal clients. For the 27 years that you have been in operation, how would you rate the level of understanding of the advancement, if any, of access to justice by particularly women as they get to know their rights and also, embracing the Government and the form of assistance of justice that we have at hand?

Ms. Anne Ireri: Thank you very much for that question. I do agree with you and reiterate your sentiments, that any effective legal aid or awareness programme should bridge the gap between the Government and policy-makers and the populace. Having been in operation for the last 27 years, huge strides are evident. We have been very keen, especially with regard to legal reforms. Earlier on as FIDA and other like-minded organizations were being established, the common enemy and the common issue were the retrogressive laws and policies. Whereas we were adequately ensuring education of women and awareness on gender equality, those tasked with enhancing and making equality a reality were not on the same page with us. However, through advocacy strategies, through lobbying and really fighting for equality especially pushing and calling for the domestication of international standards, huge strides have been made with regard to awareness. However, legal measures and policies that are already in place need to reflect what is in the Constitution now. Huge gains have been made in the Constitution and we should not backtrack on this. What we are appealing for is a repeal of existing laws and policies to reflect what is in the Constitution. Thank you

Ms. Belinda Akello: Thank you very much, Anne, for that. In your presentation, you have also informed us that part of the strategies you use in your work is self-representation. We appreciate that this equips the client, not only for that time, but also for a later date and also for teaching others in the same regard. You have also informed us that there is a very big disconnect when you have a lady who has money but has to choose between putting food on the table and getting the services of a lawyer. So, my question would be; do you also work with other organizations that support women in more ways than the legal knowledge that you give them? I am looking at issues that give them economic empowerment so that they do not only have to look for food to put on the table, but they can also afford a lawyer to be able to access the justice that you have made them aware of.

Ms. Anne Ireri: Thanks again for that. One of the key things that we considered when introducing self-representation scheme is the ultimate goal of empowering a woman, and this is not limited to them engaging with the justice system but how, then, this empowerment comes to play in their daily lives. Through our research, we have seen through the programmes we run that a woman who is able to take a case to court and she is well prepared to do with regardless of her education, becomes a more empowered and more confident woman. She is able to claim her rights and she is also key in society because then she empowers other women and men as well that these courts are not beyond reach, we can access them and they are not a preserve of the few.

Alongside the self-representation programme at FIDA, we have introduced mentorship groups. These mentorship groups are quite exciting to us because they are now evolving into economic empowerment groups. For instance – and my colleague runs the same – we have what we call in Kenya the *chamas* and for most of us who are women, I included, we have a lot of groups that help us, and you will find one of the things out of our nature as women, we will meet and talk, we will empower each other, we will share our experiences, we will empower each other and we become very good people. I actually think that men should embrace the same; perhaps it will make our society better. But back to our FIDA clients, they have actually been able to pull resources and we have, as a result, linked them up with micro-finance institutions, who are better equipped and have the technical expertise to deal and advice them with regard to savings.

With regard to access to justice and poverty, in addition to legally empowering women, we must economically empower them. Economic empowerment does not only deal with giving them funds, but also educating them on how best to invest this money, how to run business enterprises, and how to benefit from their savings. This is a function we have taken up as FIDA alongside our like-minded institutions and we are appealing to other stakeholders to pick up the same to effectively empower them.

Ms. Belinda Akello: Thank you. Also, in your presentation, you have highlighted one of the big barriers to access to justice as cost, and in that regard, you have sought for alternative dispute resolution mechanisms. The one you highlighted is the traditional justice system. We are also aware that in these informal systems like the traditional justice systems, most of the African traditional systems have been inherently biased to women and some of them have also been repugnant to the law and morality. So, where do you, as an organization, draw the line and what is the scope and jurisdiction of these traditional justice mechanisms that you embrace which would then be in line with law and, actually, access to justice?

Ms. Anne Ireri: Thanks for that. Before engaging these traditional justice systems which was about five years ago, a thorough baseline and situation analysis was carried out and I agree with you. Patriarchy is predominant from the membership of these traditional justice systems to even the methodology that it uses in terms of dispute resolution. However, one of the things we took cognizance of is the vital role that this system continues to play within society. In line with the international practice of gender equality, where involvement of the men and masculinity is being embraced, we took that on board and we began by adequately carrying out the needs that these systems have to be able to effectively engage with women. A lot of investment was done with regard to training and capacity building – which is evaluated and monitored on a regular basis – as well as dispute resolution training, because most of them are *ad hoc*. For example, in most African jurisdictions and in most cultures, women are not supposed to speak when perhaps men are speaking. A woman is also not supposed to speak too much. However, when we sensitized these traditional justice systems on the role and why it is important to involve women when resolving disputes because they ultimately involve them either as wives, mothers or daughters, we were able to shift attitudes and actually appreciate where we are coming from. This has been very key.

It is still a working progress and where we definitely toe the line it is with regard to cases that need to be heard by these systems. Most of the cases are civil, definitely, not criminal in nature because even within the legal system, they are not supposed to listen to such cases.

We have seen it at FIDA that most women will come and they would report that they have a dispute with their husbands, but they would not want their homes to be broken. They ask for interventions that will resolve their issues, but still keep them together. These systems are very handy because in addition to resolving disputes, they offer a counseling role. We have always maintained and empowered women that should they feel a decision is violating or discriminating against them, they should refer to us.

Ms. Belinda Akello: What recommendation would you make if this is right? Do you feel the weight given by the Judiciary on family law issues is not the same as the weight given in commercial issues or constitutional matters?

Ms. Ann Ireri: I agree with you that to an extent, it is a perception. Those who are encouraging these perceptions are not aware. The genesis of most of these stereotypes goes back to our socialization process where women and children issues are perceived to be less important than money. We see this with lawyers. If you have a children's case or a widow's case and the lawyer has a multi-billion case which he has every right to embrace and represent, they tend to think that the money case is important. For me, it is about sensitizing both the Judiciary and the lawyers. We, however, have in place excellent judicial officers who recognize how important this is.

As a way forward, we recommend training of judicial officers and encouraging judicial activism amongst them with regard to human rights issues. Secondly, we encourage attitude change across the board from the bench to the lawyers and to the society in general.

Thirdly, to run this independent institution is also costly. We appeal to the Government to increase funding to run the family division. It is only recently that a family division was established in Mombasa High Court. So, we need to have specialized courts for women issues and human rights issues so that they can be given adequate attention expeditiously as required.

Ms. Belinda Akello: Thank you, Presiding Chair. I have no further questions.

The Presiding Chair (Commissioner Chawatama): I will now ask the commissioners if they have any contribution or any words of advice they wish to give.

Commissioner Slye: Thank you, Ann, for your thorough presentation. This panel started with three men and no women. We are now two women and two men and we have a woman leading us. So, I hope this small transformation that occurred demonstrates broader changes that will continue to happen here in Kenya.

I wanted to ask you about non-litigation services that you may provide to your clients, but you have already answered that. I am very impressed by what you describe as efforts to assist your clients not only in litigation or transactional matters, but in economic development. This is more than a legal problem. It is a problem of poverty and empowerment. I think lawyers tend to view our roles – I am a lawyer and a law professor and so I am, perhaps, responsible for this with respect to my own students. We tend to focus on courts and litigation. While those things are very important, they are a very small part of the proper role of a lawyer and frankly a human being in addressing the ills that face our society.

I hope that FIDA's example of both being open to and being able to provide that holistic support to their clients is something that is done more widely in Kenya. Frankly, it is something that is happening a little bit and not as much as it is happening in my country. One of the things I will take back to the USA when I leave here is the example of Kenya, and particularly FIDA.

I have a few specific questions. You gave us statistics on the cases from July, 201l to December, 2011. I do not want to repeat that. In your view, does the percentage distribution of those cases accurately reflect the need out there? You have by far the largest number of cases that you dealt with during that period with child maintenance, which is over 1,000. You had 20 cases on rape, 133 on land and civil issues. Is it your sense that by far, the largest need for women in terms of legal services is the area of child maintenance? Is that distorted by unavailability of legal resources?

Ms. Ann Ireri: Thank you, Prof. Slye. We appreciate your compliments. With regard to the specific questions, when reporting on statistics for cases, the dynamics of reporting come into play. Over the years, we have seen that the largest number of cases are that of child custody and maintenance.

For us to effectively gauge whether this is the true reflection, we need to look at the dynamics. It is much easier to claim that my partner is not taking care of my child. It is also slightly easier for me to claim that my daughter was defiled than present a case to the police that I have been raped. This is one thing we are looking into to enable women to come up and report cases. One overriding issue we have noted is with regard to land where we have slightly fewer cases. Is this reflective that women have no cases? This goes down to the level of awareness of their rights, their level of control and access to this resource. Cross-cutting and wide dissemination on all these rights has to be carried out as well as putting in place protective measures for women to equally report all kinds of cases. That way, we will have a true reflection of what is actually happening and where the largest need for women is.

By and large, children and custody cases are the easiest to report and so we have more of them.

Commissioner Slye: It is interesting that the preliminary analysis we have made of our statements suggest that the largest violation of Kenyans who have engaged with us is the issue of land. I think that in North Eastern Province, the number one issue is land. For men, it was not. I think it was violence.

My second question is: FIDA has been around since 1985. Do you have any sense of the trend of issues that FIDA has dealt with as well as to the extent that one can extrapolate from that that have been important to women from 1985 to today?

Ms. Ann Ireri: I may not have the specific data. In terms of the general discourse that has been within the institution, if we look at that basis when FIDA was established in the large external environment as a country, we were moving towards embracing a lot of space and democracy and freedom of association. Following the establishment of FIDA, there was a lot of push for enabling laws and policies to enhance women rights. As we moved to the 1990s and even currently, I think that even in the larger women movements, the general direction of clamoring for rights and participation has not been individual-based. That is why we are pushing for affirmative action because there is appreciation that we need to be participating at the largest level, at the stakeholder policy level and the low level so that the laws and policies that trickle down do not have retrogressive effect. That is the direction we are taking. There is more push for mutual benefit for all women and not individual-based benefit. This is likely to be realistically achieved through affirmative action within the Executive, Judiciary and Parliament.

Commissioner Slye: FIDA could present to us the statistics or a narrative along the lines of what you have just said as we craft our final report. To what extent was FIDA's work affected or continues to be affected by the post-election violence?

Ms. Ann Ireri: I think my point of departure would be that what happened during the post-election violence was very unfortunate. In response to this particular situation, we reviewed our work to remain relevant specifically to the needs of women that emerged out of the post-election violence. The Agenda IV proceedings brought out key reforms that required to be put in place. Under the Access to Justice Programme and the Transformative Justice Programme at FIDA, we have embraced all aspects of Agenda IV. We have remained key on the discussions about land and we are part of the working group. We have remained key with regard to the policy procedures and reforms that are taking place. We have also remained key to the ICC process which for us is key towards ensuring that women who were violated are able to obtain reprieve. We remain key to the situation of IDPs. We have statistics and they show that women are definitely disproportionately affected in conflict. They are the ones left to run the homes and they lose their husbands in the battle. Because of this, there is an overwhelming need to ensure that even with regard to the ICC situation in resolving it and getting it redressed the unique dynamics of, for instance, female headed households and ensuring that they get back what the lost needs to be enhanced. We have remained key in this particular instance.

With regard to the violations towards women, we have remained key as women rights groups and litigators. We are keen to see that as much as the ICC process is ongoing, we are much aware of its limitations. It really can only take care of those who are perceived to have the highest level of participation. By and large, majority of the violations that women suffered were carried out by middle and lower level perpetrators. We remain key to ensure that at the individual level, these perpetrators are held to book. We remain keen to look at whatever mechanisms which should be in place to ensure that, first and foremost, justice is achieved and operations that are practical and efficient come out of it.

With regard to avoiding recurrence of such a situation, we remain key in the reforms that are taking place to improve the institutional capacities that were seen to contribute to this violence.

With regard to governance, impunity and clear cut reforms on especially land policy we remain key in seeking justice for the victims and also avoiding recurrence. We are looking towards long-term reforms that will reduce the recurrence of these things.

Commissioner Slye: In your recommendations, you had mentioned the need for an efficient trend of non-traditional means of enforcing judgments. Maybe it is because I am not familiar with some of the legal vernacular in Kenya. Could you elaborate what you meant by that?

Ms. Ann Ireri: One of the huge challenges I alluded to earlier on is where we are having constant scenarios--- In our case, women have judgments that clearly outline what needs to be done, however, the same are not executed. To illustrate this, I will give an example of a child custody case. Where you have a judgment which clearly pronounces from the courts that, perhaps, a partner is to contribute a certain amount of money, in terms of execution of this particular decree, options are not many. One would go for his payslip if he has a job. If he does not a job, you try to trace his assets which become problematic especially where we know that in most situations women are not aware of the possessions of their partners. When they do not have this information, it is very likely that they will not be able to enforce this. In the case where you are unable to get the assets and employment information *vis-à-vis* the salary, you have the option of civil jail.

However, we know that at the end of the day, what took us to court was to get food for these children. So, if you have legal provisions and legal systems to compel a partner or a defaulter to pay including spending more money or putting him behind bars, the children still remain without food. So, that is why we are noticing more of this. It also regards other cases that have similar sanctions to be able to enforce a decree. We need, as stakeholders, to look at what we should do in the meantime. Should we, for instance, introduce the issue of initial deposits or securities in court? This way, you will be quite sure that by the time you are obtaining a judgment, you are able to enforce the same. Practically, we know that if today I am taken to court, there is a likelihood that if I am to lose my property, I will start looking for ways of dispensing the same. We need to interrogate the benefits of judgments that we have especially with regard to child cases.

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

The Presiding Chair (Commissioner Chawatama): Thank you, Prof. Slye. Commissioner Shava, please, proceed.

Commissioner Shava: Thank you, Presiding Chair. I would like to thank Ann for her presentation. I would start by associating myself with FIDA and say that I am proud to be one of the 700 members of fairly long standing. My first question regards FIDA as an institution. You described the atmosphere in the country that has informed the work of FIDA in terms of trying to move towards the broadening of democratic space in this country. I noticed a rather alarming trend because towards achieving this, the most important thing is the human resource. When we look at our reform-minded leaders in this country, many of them have been FIDA members. We are talking about Martha Karua, Justice Martha Koome and many others.

What I have noticed is that when I am in fora where women human rights defenders are meeting, the younger women who are studying law are absent. I had an occasion to meet one at a lounge where we were talking about how many have contributed towards achieving the Constitution that we are enjoying now. When I asked where the rest of her colleagues were, her response was that they do not seem to think it is something that they can do. These are people who do not even have voters' cards and when people were voting during the Referendum, they saw it as an opportunity to go and enjoy the scenery in Naivasha. We need people who understand law in a different way as Prof. Slye was saying and not as just an arena that involves courts, commercial transactions and making money for lawyers. In a more philosophical way, we need to use the law to improve societies. If you have noticed this problem I am talking about, what is FIDA doing about it? Do you speak to law students both female and male at the many universities now teaching law and also the Kenya School of Law?

Ms. Ann Ireri: Thank you for that key observation which in responding I will actually draw into my personal experience. I want to place myself in what we call the second generation of human rights defenders with regard to women rights in this country. One of the things I have seen even with my colleagues who I attend law school with is that in 1985 most of us had not grasped where the clamor for democratic space had come from. The current students in law schools are now operating in a democratic space that is really big. Most of them have unfortunately taken this for granted. When you try to give an example that there are things that one can say now that seven years ago could not be said, they wonder. However, one of the things that we are not tapping into even for posterity is to mentor these young members. We are coming up with programmes within our membership that are targeted towards these younger lawyers. We appreciate where they come from that the environment is slightly better, but we are not yet there.

FIDA has formulated programmes that will reach these students. We make use of social media responsibly and harnessing their needs within that particular space. One engagement we have is with the Council for Legal Education. When I was in law school, I was among the first group that was taken through programmes like international

humanitarian law. We have now seen development in curriculum such as tailor-made and specific women rights courses. We need to introduce these courses in all universities. We need feminist jurisprudence so that we understand where we are coming from. We also need to have professional human rights defenders. So, we are definitely working and we remain key stakeholders with the Council for Legal Education as well as enhancing most of what has been done.

At FIDA, we run moot courts with the law faculties that are in place. We engage them so that they see what FIDA is about. Again, for most women lawyers, it would be radical to be a human rights activist. It is safer to be in corporate set or any other non-radical environment. We are saying that it is not about being radical. It is not about always making noise, but it is about enhancing equality. We know for a fact that even within the legal profession, there are certain discriminative practices. We are aware of what happens in certain places even with regard to female lawyers.

Commissioner Shava: That is an encouraging answer. During the course of our hearings, we have been conducting women fora. We drew out from women the way they experience certain violations. I hope FIDA is going to take advantage of all the insights that were made available to us in those fora. How is FIDA planning to use the Report of the TJRC?

Ms. Ann Ireri: Why we have remained keen on this particular course as FIDA is because this has been the first platform of Kenya where the correct baseline is reflective of what has been reported. It is the first time we have had women get an opportunity to effectively state the issues they face. We look forward for the Report. For us, this will definitely inform our work. As you have stated, certain barriers have been in place and we have been unable to capture some things. This will be an opportunity to go back to the drawing board and inform our work with the prevailing reality so as to bridge the gap between women and justice.

Secondly, we are keen on the interventions that we can undertake as FIDA on policy, legislative and service levels. We need to come up with interventions that are going to meet the demand. People have looked at this Commission as a last resort for their issues to be listened to. We shall push for women friendly policies. We will be keen in appealing for the repeal of retrogressive laws in place. At the advocacy level, we shall enhance the awareness of women in Kenya and avoid the repeat of what happened.

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

Commissioner Dinka: Your testimony has been very clear. It was crisp and informative. I have two questions. During our tour across the country, we listened to women particularly on issues of property. They have been denied the right to own property especially the husbands' property which reverts to the parents. The women and children, therefore, remain without the property. Women and children seem not to have money to go to court. Those who went to court have told us horrific stories about what the lawyers

have done to them. What can FIDA do to impart the correct information to these people and also to assist them with legal aid?

You mentioned about the traditional elders providing informal justice space. We all know how women are treated by traditional elders in Kenya. How would you ensure that the traditional leaders will abide by the fundamental law, the Constitution, instead of the traditional laws which isolate the women?

Ms. Ann Ireri: I agree with you. The stories are very horrific especially with regard to women and poverty.

Thank you very much, Ambassador for that question. I agree with you that the stories are horrific, especially with regard to women and property and premising primarily on the fact that women themselves are considered to be property in most of the societies. Indeed, even at FIDA, we have received numerous cases of this nature and it is very heartbreaking. Whereas we remain very excited about the new provisions of the Constitution, we are honest to the fact that the civic education perhaps was not carried out effectively and was carried out in a biased manner in most quarters depending on who was conducing it; though we, as FIDA and other women organizations, did our level best then to conduct awareness among women, we also bear in mind that the Constitution is by and large a very technical document which needs to be simplified and disseminated to the local level and give it localized interventions. We remain very alive to the fact that there is now equality and protection for women property ownership within the Constitution and most interventions then tend to be reactive. When the case has already taken place then you go to the legal systems to enforce this particular right. However, we are looking at more advocacy strategies of pre-emptying the occurrence of this particular incident which includes first and foremost sensitizing for instance the public on the importance of wills, because in that example, in most cases where a husband has left a will, being educated on the same, we will rarely have such incidents. There is rarely controversy because it is clear and it is a legal document which is recognized.

Secondly, having particularly the local systems in place such as the chiefs and the elders being sensitized on this--- In most cases unfortunately they have perpetrated this because they also have limited awareness and that is why for instance in our Kisumu office widow inheritance is definitely a predominant feature in that particular office. Specific tailor-made programmes with the traditional justice systems have dealt with this issue.

First and foremost, educating the elders who facilitate these sessions and also enlightening them that now there are sanctions, you breach the constitutional provisions, you can also be taken to task to account why you did this. So, our role is ongoing at all levels; at the legal level of policy, having laws that are going to enhance women property ownership at the intermediary level with the stakeholders who are tasked to facilitate this, meet the courts or the traditional systems and equip them as well as putting them to task because once we train them we actually have review meetings with them very regularly to appraise them; we have data on the cases they have handled to be able to see how well they are handling the same as well as at the local level enhancing awareness of women on

their rights and on the Constitution and practical measures which then factor in the reality that most of them are not well educated. Most of them even if are educated, are not aware of the ownership of certain property but being able then if unfortunately this occurs which is imminent, then what measures can you have even at your level to ensure that nobody attempts ignore you? Even if they do, you are aware of the same and you have referral point from where you can get assistance. I hope that adequately covers it.

Commissioner Dinka: Thank you very much. In fact, I am very optimistic that the future is better for women in the rural areas. My last and second question is: How do you see the devolution that is coming? Would the opportunity for access to justice by rural people promote or deter access to justice and in either case, how is FIDA preparing to take advantage of this new system that is coming into being?

Ms. Anne Ireri: For most Kenyans and I believe this is the correct scenario, decentralization of services is what contributed to very many grievances that women faced and the introduction of devolution though unnecessarily politicized, had the professional and objective goal of having grassroots citizens receive services as opposed to reliance on a heavily burdened central Government. In terms of rolling out programmes and projects for the devolution, stakeholder involvement has been enhanced through what has been clearly laid out in the Constitution as membership to this. That is a standing point. What we need then to focus on is ensuring the debate and the discussion on access to justice remains a priority for the devolved governments. We need to be sure that they are going to enhance their polices, regulations and whatever programmes they will roll out. With regard to women, FIDA is engaging them at representative level because that is a first step in ensuring that if we have women or men who have women's cause at heart, once they are sitting in this representative positions, they will be able to constantly ensure and engage this priority need at that level and because of the dynamics of devolution, you will find that all the 47 counties will have different priorities. Access to justice, however, remains a human rights issue. We then need to have means of appraising these devolved governments as to how they are enhancing access to justice and by that it does not necessarily mean the courts only. As Commissioner Slye pointed out, there are other means and factors in accessing justice. If I need for instance a birth certificate which is a requisite in a case of child's custody, must I then travel from Wajir to Nairobi for instance which is very costly? So, we need to see at county governments whatever services that are key to enhancing justice as a citizen are at that level and then I save on costs and then it becomes a reality. So, we remain very key. Even in post election 2012 to ensure that devolution is carried out professionally. We reiterate that politicization of the same should not occur. Let us look at the benefits that this will bring to the citizens. Thank you.

Commissioner Dinka: Thank you. I am grateful to you and thank you very much. Chair, I have no further questions.

The Presiding Chair (Commissioner Chawatama): Thank you and I have maybe one or two questions because most of the questions have already been asked by other Commissioners. I was thinking through the programme that you have that trains women

to represent themselves and I was trying to imagine some of the women that I met and where they would draw the courage and confidence to be able to walk into a court room and represent themselves. Does part of the training involve taking them to a court room so that they could understand what the set up is? Do you encourage other women to accompany them so that they have the necessary support? This is because you can be equipped but court rooms are often overwhelming, even for those of us who work there. We have seen many strong men lawyers shake. Are those aspects taken care of in the training?

Ms. Anne Ireri: Thank you very much, your Ladyship. I think it is out of time constraints that we are not able to go into detail about each programme but the self presentation curriculum at FIDA is very thorough. It has several steps that we usually undertake to ensure that by the time a woman goes to represent herself, she is properly equipped and ready. These steps mainly include first and foremost as she comes assessing her psychosocial situation; she undergoes individual counseling as well as a group therapy session where we have a lot of peer encouragement that she is not alone in this particular situation. We are then able to deal with whatever needs might be there that need to be met before she goes to court. The next step from that, once her pleadings are ready which we have to speed up, is we have a group pre-trial session; what we call a monthly session and the primary goal of this is again peer support, so that a woman is not overwhelmed imagining that she is the only one who is undergoing this particular process. The group monthly training is quite detailed because we run moot court sessions, audio visual tools that show what happens in court and we also have a chance to learn peer learning from others who have been through the system. In addition to that, we receive individual legal pre-trial sessions where we take them detail by detail through whichever case on whatever questions they might have. In addition to all these, we have time where they engage in the court system; they familiarise themselves with it and it starts with the basics of instituting a court case. When they go to pick up dates or to file pleadings, they start engaging with the system. They are aware this is what the court is, these are the officials and we encourage them and we ensure that if lady "X" is going to pick a date which is a quite straightforward procedure within courts and we have established rapport with the courts as to how to facilitate this process, she also sits in to see what happens in the courts. One appreciation we do have however is that for most of the cases which primarily go through the sub-representation process at FIDA are child custody and maintenance cases, which proceedings are held in camera. So, this already is a very good fall back for our clients because then we prepare them so that it will not be this scenario where the entire public is there and the court has been very instrumental in this. It is a case where you will sit with the partner and the court only in camera. So, this has facilitated the process.

I agree with you that the courts are overwhelming. There are cases we would not even in our own ambition put through self representation where it is very technical. You have very skilled defence attorneys who are likely to tear into a witness. So, we put that consideration and that is why to complement the self representation, we as legal counsel also partake of most of these technical cases. Thank you very much.

The Presiding Chair (Commissioner Chawatama): I have another question and it relates to *pro bono* work. Is there an incentive for lawyers to participate in *pro bono*? I am thinking of a situation where the vulnerable have to compete with paying clients. So, what is it that will make a lawyer take up such a case? Are you happy as FIDA that the lawyers are providing the service and giving it the due attention that it requires?

Ms. Anne Ireri: Thank you again for that very salient observation. In implementing, we have borrowed heavily from international principles on *pro bono* work – the concepts of volunteerism as well as having a mutual kind of relationship with the lawyers. Practically what we have done is that in engaging the lawyers through our rapport with the Law Society of Kenya (LSK) first and foremost as members of this and as stakeholders, what we pragmatically do then is to put out interest to lawyers because again we appreciate that I might be in private practice but the kind of *pro bono* work I want to do is perhaps civil in nature and maybe property related and not family related. So, once we have those who have indicated expressly that they are keen on family related cases; we then invite them voluntarily to our scheme. We undertake several trainings with them to enhance that rapport with them. By way of incentives, in appreciating the vital role we play, we have coined out both monetary and non-monetary incentives. Through the monetary incentives by no means are these sufficient? By no means is the amount we give equivalent to the amount of efforts that lawyers give? It is a motivation to almost encourage them and to cover basic filing costs. So, in actual sense, this money does not go to the lawyer but it goes to the proceeding and facilitates the process that will ensure our client is able to go to the justice system, but in addition to that, we have non-monetary incentives such as training on relevant fields that affect our work. A case in point, we have taken through a lot of mediation training with the Chartered Institute of Arbitrators, which is a professional body. We have undertaken training in dispute resolution and peace building as well as trial advocacy, where we have partnered with our stakeholders, namely the National Institute for Trial Advocacy back in the United States, who have judges who come in periodically to give them that kind of motivation and training to engage with our cases which in the larger picture, the lawyers feel that this is not only a benefit with regard to FIDA work but in my practice as a litigator, public defender and as a prosecutor, it comes in handy and then we are able to elicit a lot of participation.
It is definitely costly because it involves funding. However, our appeal has been to like minded organizations to factor that as well, and we have seen across the Board similar replications and practices to enhance and encourage participation of *pro bono* lawyers. With regard to professionalism, we remain very keen with the LSK, the Advocates Complaints Commission, but unfortunately should we have an incident of misconduct, then the clients are aware of the channels and that they have measures to withdraw. We have been able to have those instances.

The Presiding Chair (Commissioner Chawatama): Thank you very much. I know that you have a lot of work. Even as a Commission, when we went around Kenya, very few women spoke to us in public. We celebrated those who did because we thought that it was very important that when they speak in public, men are also aware first hand of some of the struggles that women are going through. So, you have quite a task in motivating women to speak. Even when we were in women meetings, sometimes the contributions

came at the very end when we were just about to wind up meaning that somewhere along the line either because of the way they have been treated, whether it is in appearances before the chiefs or the police or even courts of law, their confidence has really been shattered and their hopes have been shattered. So, you have a lot of work but I think for me, one of the things I am very happy about is having met you and listened to you and having the confidence that there is a generation of young advocates who will not keep quiet and who will speak. I pray that you continue with the work that you are doing. We appreciate having you this morning and thank you so much about your contribution and we remain excited about seeing our report and just make sure that the implementation is on course. Thank you very much and have a good day. I also would like to thank your friend who came. I saw the notes as a good lawyer would, that passed between the two of you. So, there was participation on your part as well and we also appreciate you being here; we hope that you will be able to stay, so that you can listen to other speakers and maybe pick one or two things.

Leader of Evidence!

(Ms. Jackline Katee took the oath)

Ms. Belinda Akello: Presiding Chair, before we start with the next witness, with your permission we kindly pray to admit some documents from the Legal Resource Foundation. They were not on our cause list but the organisation also has an active access to justice programmes and they are very kind to agree to provide some documentation and research books on what they have done on access to justice. They have brought a report called *Balancing the Scales*, which is a report on seeking access to justice in Kenya. They have also brought *Human RightsSituation in Nyanza Province* and a policy brief on the same. We pray that the same are admitted as part of the record even though the same people will not present the same documents. In our session yesterday on thematic hearing on prisons and detention centers, the panel had also requested more copies of policy briefs on who is responsible for payment centers within Kenya. The organisation has also provided copies of this and we pray that the same be admitted as part of the record.

Commissioner Slye: They are admitted. Thank you.

Ms. Belinda Akello: Thank you very much for coming in today. For purposes of our record, kindly state your names?

Ms. Jackline Katee: My names are Jackline Katee and I am a research officer with the Judges and Magistrates Vetting Board. I am presenting this paper on behalf of Mrs. Roselyn Odede, who is the Vice-Chair of the Board. I apologize on her behalf. She was not able to attend because the Board is currently vetting one of the judges.

Ms. Belinda Akello: Thank you very much Jackline for having come and also for the position of representation that you have taken today. We had invited Mrs. Roselyn Odede whom you represent to come for this thematic hearing on access to justice and make a

presentation on a few issues, among them maintaining integrity of the Judiciary, milestones in the process of vetting magistrates and judges, a comparative analysis of the current voting process and previous efforts made in vetting judges, and finally recommendations that border on the capacity of the Judiciary and delivery of justice. As indicated in your letter, your presentation is limited to those issues. Kindly proceed.

Ms. Jackline Katee: Thank you. I will begin by demystifying the concept of judicial integrity. I will then proceed to look into the various initiatives undertaken by the Government to reform the Judiciary. Shortly after that, I will talk about the constitutional provisions that guarantee professional authority. After that I will talk about the vetting process and procedures as well as the milestones in the process of vetting of judges and magistrates in Kenya. I will then propose some recommendations that will strengthen the capacity of the Judiciary in the delivery of justice.

Judicial integrity is a fundamental pillar for an independent, efficient and accountable judicial system. It refers to the courage of a judge and a magistrate to make fair decisions in their understanding of law without fear or favour. As such, judicial officers and staff are expected to be persons of high moral and ethical standards, above reproach, impartial and fair. The Judiciary in Kenya has been accused of lack of independence, poor operational autonomy, lack of efficiency and effectiveness in its governance and management. Judicial officers have also been accused of being corrupt, temperamental and poor performers. As a result, various judicial reform initiatives have been undertaken by the Government of Kenya in a bid to reform the Judiciary. One of the bodies that were set up is the Committee on the Administration of Justice which is known as the Kwach Committee and it made proposals for amending the Constitution to allow for the removal of incompetent judges, increase judicial personnel and to improve employment terms and conditions for the judges and magistrates. The Integrity and Anti-corruption Committee of the Judiciary which was formed in 2003 noted that the judicial corruption was rampant. It cited credible evidence of corruption on the part of five out of nine Court of Appeal judges, 18 out of 86 High Court judges, and 82 out of 254 magistrates. Other committees have also been set up like the Committee on Ethics and Governance of the Judiciary which was set up in 2008. Shortly after the post-election violence, we have also had other judicial reform initiatives. For instance, Item 4 of the National Dialogue and Reconciliation brought out four issues. The medium term plan which was for 2008 to 2012, also identifies judicial reforms as an important aspect of the economic social report.

On maintaining the integrity of the Judiciary in Kenya, the new Constitution of the Republic of Kenya makes salient provisions which I would want to highlight. Article 160(1) of the Constitution declares that courts are independent and subject only to the Constitution which they must apply impartially and without fear, favour or prejudice. Article 160(2) provides for judges security of tenure by ensuring that the office of the judge is not abolished while they are still in office. There is also a prohibition on any reduction of the salaries and benefits for them. Article 160(5) stops judicial officers from civil suits for any action or inaction in their lawful performance of their judicial functions. Similarly, Article 168 stipulates the circumstances and the manner in which a

judge can be removed from office. Notably, the Judicial Service Commission (JSC) has a great role to play in maintaining the integrity of the Judiciary. The duty of the JSC is to promote and facilitate the independence and accountability of the Judiciary and to ensure efficient, effective and transparent administration of justice. It is also responsible for the selection of suitable candidates for appointment by the President of judges and magistrates.

I will now begin to talk about vetting as a mechanism in restoring integrity in the Judiciary. I will start by noting that as a process it has been tried elsewhere. For instance, in El Salvador, vetting was successfully used to overcome egalitarianism and pave way for civilian authority. In Poland, the law on vetting was used to penalize public officers for life. In Bosnia and Herzegovina, vetting was even used to bring reforms in the courts. The current vetting process in Kenya derives its legitimacy from Section 23 of the Sixth Schedule to the Constitution.

The said sections allow the Parliament of Kenya to enact an Act of Parliament to provide for vetting of judges and magistrates. Pursuant to that provision, the Vetting of Judges and Magistrates Act 2011 was enacted. The Act establishes the Judges and Magistrates Vetting Board and its Section 6 says it is the body responsible for the vetting of judges and magistrates. The vetting process is to be guided by the principles and standards of judicial independence and international based practices. The rules of natural justice are also to be applied in the Board. We note that the current vetting process is fair and impartial compared to the previous attempts such as the radical surgery. If we recollect in the radical surgery, the judges and magistrates were not given prior notice of charges against them before their names were put in a list of shame, naming them as corrupt and published in the media. The Board has inherent powers to regulate its own procedure to enable it carry out its functions. In view of that power, the Board has enacted the vetting of judges and magistrates procedure. The procedure is that the Board calls for complaints and other relevant information by requiring the complainants to fill Form JMVB1. Then the judge or magistrate is required to complete a questionnaire on suitability to serve in the Judiciary. At this stage, the Board serves the judge or magistrate with the complaints. On receipt of the complaints, the judge or magistrate should respond in a summary form including the material facts and a brief on the case at hand.

I will now proceed to talk about the milestones in the process of vetting of judges and magistrates in Kenya. I will begin by observing that the vetting process has somehow been delayed by the petition of Dennis Mogambi Mong'are. Although both the petition and the subsequent appeal were dismissed, the petition delayed the vetting process and the Board could not proceed with the hearings before the matter was finally heard and determined. Notwithstanding the delay occasioned by the petition, the Board has been able to undertake a number of functions, including receiving, compiling and analyzing complaints from the public, enacting regulations of procedure, employing the secretariat and conducting public sensitization meetings. The Board commenced its hearings on 29th February, 2012. So far, the Board has heard three judges.

Two cases were partly heard and one awaits the outcome of the court. The Board has also been able to distribute complaint forms to enable the members of the public to file their complaints. The Board was to make advertisements on the local channels to educate the public on its roles and mandate. There are various factors that came up to favour the current process in Kenya and one is that the Board seems to enjoy political goodwill, the vetting process has become public and there is faith in the process, there is a lot of public support and the Board is composed of competent and high profile persons. With such combination of persons, theBoard is expected to perform. I will now proceed to give various recommendations for strengthening the Judiciary and they are based on the Ouko Commission. Although some of the recommendations of the Ouko Commission have been implemented, most of them have not been implemented and yet, they are very crucial for strengthening capacity of the Judiciary. First of all, the feedback mechanisms should be established so that the complainants and the public are informed of disciplinary action taken against judicial officers. Judicial officers facing serious criminal charges should be suspended from duty. The number of judges and other judicial officers should be regularly reviewed to ensure that the ratio or population to judges and other judicial officers is maintained. Case monitoring and tracking techniques should be introduced and the output of individuals and judicial officers monitored, reviewed and published as appropriate. Clear job descriptions and responsibilities and protocol should be developed for all judicial officers and staff to facilitate for monitoring and evaluation.

The Judiciary should also develop mechanisms for checking on integrity and monitoring of the exercise of discretion by judicial officers. The JSC should establish a Judiciary administered performance based reward scheme. There should also be a psycho-social support provided for judicial officers and staff. The working environment for judicial officers should be improved by providing better court rooms, chambers, materials and facilities. I will conclude by saying that the vetting process for judges and judicial officers is important to restore the integrity of the Judiciary.

Ms. Belinda Akello: Thank you for that presentation on maintaining the integrity of the Judiciary. Access to justice is more than improving an individual's access to court or guaranteeing legal representation because it goes much further to, *inter alia*, ensure that the legal and judicial outcome are both just and equitable. So, in light of the previous speakers in the morning and with regard to integrity of the Judiciary, Article 48 of the current Constitution provides that the State shall oblige to ensure access to justice. A part of this is that cultural appropriate and conducive environment is provided for within the Judicial dispense. Does the vetting process also look into the skills of the judges and magistrates to be able to give culturally appropriate conditions that will ensure that the person who seeks access to justice has outcomes that they can enjoy, not only in a timely manner?

Ms. Jackline Katee: In conducting the vetting process, there are a number of factors that the Board is going to consider, including whether or not the judge meets the constitutional criterion for appointment to the relevant position, the past record including prior judicial pronouncements, competence and diligence and all pending complaints or other relevant information received from any person or body. One of the other factors

that we would consider would also include the legal life experience as well as commitment to the public and community service. In view of that, those judges or magistrates who have not been committed to public service will have to be vetted out of the system.

Ms. Belinda Akello: You also mentioned about the radical surgery years back. What lessons has this current Board learnt from that process backed by the Government?

Ms. Jackline Katee: The Board has been able to apply principles and standards of judicial tenure and international best practices. That is why in the composition of the Board, we have international academic luminaries including the Chief Justice of Ghana, Georgina Wood; Professor Albie Sachs from S. Africa and Justice Fred Chomba from Zambia. Those members of the Board are meant to inform the Board with their international best practices from their jurisdictions. The Board also applies the rules of natural justice which include the right to be heard and the right to be heard by a fair and impartial forum. The Board also gives notice to the concerned judge or magistrate to allow them enough time to prepare for the proceedings. The Board also allows them to be represented by a legal representative although their presence is inevitable.

Ms. Belinda Akello: Finally, will this Board also be mandated to have successive vetting processes?

Ms. Jackline Katee: The mandate of the Board is to vet the judges or magistrates who have been in office on or before 27th August, 2010 when the Constitution was promulgated. As such, the mandate of the Boardis limited to that function only. However, after the Board completes its work, it will submit a report, a copy of which will be submitted to the JSC which is mandated to ensure that the integrity of the judicial officers is maintained.

Ms. Belinda Akello: Thank you.

Commissioner Sly: Thank you for your presentation. Without asking you to reveal anything with respect to a specific judge or magistrate and this might be a premature question, but I wonder given the sense of complaints that the Board has received, what is the different types of complaints individuals have against judges? Are they mostly focused on corruption, fairness or qualifications?

Ms. Jackline Katee: The Board has received a lot of complaints from the public and other institutions touching on various aspects, including corruption, conflict of interest, competence, diligence and fairness to mention but a few. But it is for the Board to analyze and decide on which complaints are valid and which they would wish to prefer against the judge or magistrate.

Commissioner Sly: Even though there is a complaint of a particular nature against a judge or magistrate, which does not obviously mean that the complaint itself is valid

unless it is proven, but I think it is helpful for us to get a sense of what the general population feels are the issues. Thank you for contributing.

Commissioner Shava: Thank you for your presentation. I am sure the information you have presented to us is not what most of us had prior knowledge of. With regard to the legal challenge that the Board faced, you have expressed a lot of confidence and prospects of the Board because of the support that they are enjoying from the public and political establishment. Given that, in your own mind, what do you think informed the legal challenge of Mr. Mong'are? Is there anything behind that challenge about the suitability of the Board?

Ms. Jackline Katee: I do not think there was anything particular about the petition but I think it was a case of misunderstanding of the law and the whole vetting process. My own opinion is that the petitioner had not informed himself of other vetting practices elsewhere, before they brought the petition.

The Presiding Chair (Commissioner Chawatama): As a judge and, maybe, not as one being vetted, but a judge who looks at the process and wonder whether or not it will reach our border and if it does, how do we best prepare ourselves and what do we learn from the Kenyan process. On the impact, you gave us figures of the first radical surgery and you said that five out of nine Court of Appeal judges, 19 out of 96 High Court judges and 82 out of 552 magistrates were the ones whose names found themselves on a list of shame. What impact did that have on the Judiciary and its ability to function?

Ms. Jackline Katee: The Board has looked at the impact on the public and that is why it is abiding by the law by ensuring that the hearings are done in private, unless the concerned judge or magistrate requests for a public hearing. Again, the Board after making a decision within 30 days of hearing the judge or magistrate will notify them and if they are affected by the decision, they will have a right for review. Therefore, as compared to the radical surgery, the vetting appears to be a fair process which applies the rules of law and justice and international best practices.

The Presiding Chair (Commissioner Chawatama): In a worst scenario and one imagines that failing the Court of Appeal the Board decides that six or seven out of nine Court of Appeal judges should leave; in the High Court if the numbers are still 96, if they say 50 of the High Court Judges must go and in the magistracy, assuming they are still 552, that 200 of them are found wanting, I am trying to imagine whether or not there has been a conversation with the Judiciary because to get rid of a number of adjudicators like that would definitely have a negative impact on that institution. It might cripple the institution, or the institution might survive and carry on. Have there been such discussions with the Judiciary because, sometimes, maybe, I am talking as a judge and you convict and sentence somebody and then you pass the buck; the person goes to prison and you feel that you have nothing to do with it. But there is the Judiciary as an institution and also the people of Kenya who benefit from these services - whether good or bad – but, at least, there is a service. Has this discussion taken place?

Ms. Jackline Katee: Yes and if you recollect what I said earlier, the vetting process will only apply to judges or magistrates who were in office on or before 27th August, 2010.

The Presiding Chair (Commissioner Chawatama): As you respond to my question, bear in mind that those who then came after 2010 are failing too and the judge is not born, it takes a number of years for a judge or a senior adjudicator, a magistrate to be strengthened and they need to be mentored. They can only be mentored by people who have walked that path before. So, maybe, in your response, can you balance the two?

Commissioner Shava: How many judicial officers are you talking about when you say those in place before the promulgation of the Constitution? Others have been appointed thereafter.

Ms. Jackline Katee: The numbers are not very high like, for instance, in the Court of Appeal we are only vetting two judges although in the High Court the number is quite high. I am not allowed to disclose the specific details but what I know is that the vetting process will only apply to those who were in office on the promulgation date. There is also a criterion that is going to be followed before the Board decides to vet a judge or magistrate. Therefore, the Board will not do so in a manner that is not likely to compromise the current Judiciary. This is an issue I will brainstorm with the Board members and let them have a view of the same.

The Presiding Chair (Commissioner Chawatama): I do not know whether or not there has been such a process taking place in Africa. The examples you have given, I can see there were specific events maybe that had taken place when you look at the Barbados, they were coming from a military rule to civilian and maybe that necessitated that process. It would be very different from the process taking place in Kenya. In Poland, it was also very specific from your presentation and it was to penalize public officers for lying. In the other example, it was used to transform the Judiciary and so they probably all had challenges that were unique to them at the time. What is the uniqueness of the Kenyan process?

Ms. Jackline Katee: The current vetting process in Kenya is unique in that it intends to transform the current Judiciary into the new constitutional dispensation. So, the role of the Board is to ensure that the Judiciary that will be in place will be in line with the provisions of the current Constitution of Kenya.

The Presiding Chair (Commissioner Chawatama): I am glad that you have said the Judiciary because the Judiciary is not necessarily judges and magistrates alone. There is also the support staff and having worked in the Judiciary, both in administration and on the Bench, most of the complaints lie against support staff. So you may vet the judges but the support will still be there. Are you having discussions with the Judiciary in a moreholistic approach because it is like cleaning a house and you clean the sitting room and you say that is it and the rest of the rooms are filthy; sooner or later that filth will come into the sitting room as well. What sort of discussions have you had with the Judiciary in as far as their support staff is concerned?

Ms. Jackline Katee: The Board in the discharge of its functions is not required to do things that are likely to compromise its independence and integrity. Therefore, the Board strictly adheres to the provisions of the law by only discharging its mandate under the law, which is to vet the judges and magistrates. The duty to ensure that the other support staff of the Judiciary, are persons of integrity lies with the JSC and the JSC is in the process of ensuring that the Judiciary has competent support staff.

The Presiding Chair (Commissioner Chawatama): I think as you go back to the Board, you can share with them the experience that you have with the Commission. Should we feel that there are some questions that we will ask, we will continue to engage with them and even share with them some of the things that we have heard from all over the country. You have done your duty well.

Ms. Jackline Katee: Thank you.

The Presiding Chair (Commissioner Chawatama): Let us have the next witness.

(Mr. Apollo Mboya took the oath)

Mr. Apollo, consider this as the vetting of the Law Society of Kenya (LSK).

Ms. Belinda Akello: Thank you for coming but for the purpose of our record, kindly, state your name.

Mr. Apollo Mboya: I have two names; Apollo Mboya.

Ms. Belinda Akello: Who are you?

Mr. Apollo Mboya: I am the Secretary and Chief Executive of LSK.

Ms. Belinda Akello: Thank you for coming to this session to take part in the hearings on access to justice. As the Secretary of the body of LSK, we had asked you to come and inform this session of five issues; the first one being the role of lawyers towards access to justice, continuing legal education and its impact on access to justice and discipline of LSK members.

Discipline of LSK members on the question the Presiding Chair just asked which is, should lawyers be vetted, *pro bono* legal services, alternative dispute resolution, we may recall the recommendations for the revision of the university curriculum *vis-a-vis* School of Law curriculum and their respective contribution towards justice. We welcome you to make your contribution.

Mr. Apollo Mboya: I want to thank the Commission first for inviting the Law Society of Kenya. As I have sworn by the oath, I will give the information as required.

The mandate of the LSK is found in Chapter 18 of the Laws of Kenya. The objectives of the society are broadly mentioned as five. The first one is to maintain and improve standards of conduct and running of the legal profession in Kenya. We are required also to facilitate the acquisition of legal knowledge. We are also required to assist the Government and the courts in matters affecting legislation and administration of justice. We are also to protect, represent and assist members of the legal profession in respect of the conditions of practice. We are also required to protect and assist the public in Kenya in all matters touching on issues to do with the law.

Membership, the society comprises of all advocates who have acquired practise certificates in Kenya. It also comprises of persons who are qualified and are residents in Kenya who apply to become members. We also have categories of honorary members and these are not people who are qualified in law. From this category, we have currently, as we speak today, 9,253 members. Those are the members who have signed the role of advocates. It is compulsory that any person who wishes to practise as an advocate must be a member of the LSK.

The society has got five branches. One is in North Rift Valley and the headquarters are in Eldoret. We have another branch in Nakuru. Mt. Kenya Branch whose headquarters is in Meru. At the Coast, we have Mombasa. Lastly, we have West Kenya Branch in Kisumu.

The governing body is the general meeting. We have the council comprising of the chairperson, the vice-chairperson and ten other members. The council oversees the policy direction of the society. We also have a secretariat which implements the programmes as directed by the council. Currently, I head this secretariat. The powers of the council are to give policy direction and they stop at that. We have four main programmes.

With regard to continued legal education, compliance and ethics, we have a parliamentary programme. We also have advocacy and public interest unit.

In the performance of its duties, the council delegates most of its work through committees. We have several committees of the LSK, including the disciplinary committee, constitutional reform, human rights, public interest and legal aid, continued legal education, information and communication technology; a committee that addresses the issues of in-house lawyers; another committee for young lawyers, gender, litigation, legislation and law reform, environmental, conveyance and land reform, among others.

In the discipline of members, we have the compliance and ethics department that handles complaints against the members. The department protects members of the public who are accessing legal services. Where there is a *prima facie* case we refer them to the advocate disciplinary committee for action. Out of the total number of advocates of 9,253, as we speak today, we have 53 who have been struck off the roll and 26 are suspended. Of course, we have several numbers of people who have been admonished; people who have been fined for various professional misconduct, but that list is so large so I could not extract it for this purpose.

A question has been asked as one of the areas that I was supposed to address; whether lawyers should be vetted. Lawyers are vetted continuously. Even our members who are serving in this Commission before they got the positions that they hold, relevant authorities submitted their names to the LSK and they were requested to provide any information that could disqualify them from being considered for the positions they hold. In all the appointments that are going on currently under the new Constitution where our members are applying for the jobs, including the Judiciary, their names are submitted to the secretariat for the purposes of getting any information. In fact, I have to tell the Commission here that sometimes when my fellow professionals look at me, they perceive me as an enemy. However, it is a job that has to be done and I have to do it. So, I keep on reassuring them that it is nothing personal. What is in the file will speak for itself. If there is a complaint, it is my duty to provide that information.

All the people who have got disciplinary issues can be accessed through our website. We run a very vibrant website which is updated on real time. If you visit that website, you will realize that even some of our Members of Parliament have been struck off and their names are there.

So, in terms of the professional body and the professionals who have actually agreed to be vetted, I think lawyers are number one, to this extent. So are our members who are in the Judiciary because they are also members of the LSK. They are going through vetting right now. We do not see that with any other profession. So, yes, lawyers are subjecting themselves to vetting.

On the kinds of complaints that we normally get, they are in two categories basically failure to render adequate professional services and general professional misconduct. In terms of classes, we get complaints with regard to failure to account or withholding funds. We also get complaints of failure to keep clients informed. We also get complaints of issuance of dishonoured cheques. We also get complaints with regard to delay to take active steps to prosecute or finalize court cases. We also get complaints on failure to reply to correspondences. We also get complaints on failure to comply with the instructions of the clients. We also get complaints with failure to release a file of a client where instructions have been withdrawn. We also get complaints with regard to failure to attend court and also conflict of interest. We also get complaints with regard to issues of legal fees whether it is overcharging or demanding legal fees from somebody who is not responsible.

We have the disciplinary committee. I am also the secretary of this disciplinary committee. This disciplinary committee acts as the court that issues the sentences. Currently, it is composed of the Attorney-General as the chair and we also have six other advocates who are elected by the members. From 2002, there was a provision for three lay persons to be in the committee. In terms of penalties and depending on the gravity of the misconduct, an advocate can be admonished; he can be suspended for a period not exceeding five years. In serious cases, they are struck off the roll of advocates and we ask them to engage in other professions and not this particular one. You have seen from the

statistics I have given that we have 53. There are several cases where fines are imposed and also compensation or reimbursement is ordered to be paid.

As I indicated, as legal professionals we have to keep abreast all the time with the emerging legal issues. Under the continued legal education programme, we keep on updating our members through seminars on the issues of access to justice, strategic litigation and various other thematic areas dealing with vulnerable groups. Other subjects such as access to justice are normally incorporated in most of the programmes that are delivered. As part of our own recommendation, we are recommending that this thematic area of access to justice should be incorporated in the university curriculum and, especially for the law student and also be encouraged to volunteer for *pro bono* work because that is a major issue and also to work with the paralegals at the grassroots level.

In terms of the role of lawyers in access to justice we are looking at the issue of legal representation for the indigent. In these instances we are encouraging *pro bono* schemes. We also realized that the LSK alone cannot do it. We are also partnering with other like-minded organizations. Lawyers also in their own individual capacity also undertake *pro bono* work. Another area under access to justice which the lawyers are very active is on the issues of law reform. What we do best is on lobbying. This lobbying entails issues of policy and legislation.

This lobbying entails issues of policy and legislation. During the constitutional review process, we were very instrumental in ensuring that there were provisions within the Constitution that promote legal aid or access to justice issues.

We are also participating in the drafting of various rules that promote access to justice. Right now, we have participated in the rules under Article 22 of the Constitution. We also participated in coming up with the rules of procedure for this Commission. We are also dealing with issues of family Bills. We dealt with the Judicial Service Commission and the Vetting of Judges and Magistrates Acts. This exercise was spearheaded by the LSK. We are also now processing the Small Claims Court Bill. We are lobbying also other institutions to ensure there is an enhanced access to justice. We are promoting alternative dispute resolution. The LSK has been a great supporter of transitional justice mechanism just like the one that right now the Commission is involved in.

We also have advocates and awareness initiatives. We normally hold focus group discussions. We have legal aid awareness weeks where the members give legal aid for free. As said earlier, the society is represented in the rules committee which is coming up with various procedures for approaching the courts. I have itemized some of the rules that are now going to be gazetted very soon.

Just before I complete, I was also requested to show the numerical spread of the lawyers in Kenya. I could not accommodate it in the slides, but I have circulated it. You will realize from the geographical spread of lawyers on the first page; here you will see that there is a concentration in the urban areas. We have 264 lawyers in Eldoret. We have 66

lawyers in Kericho. The next page shows we have 200 lawyers in Kisumu. Kisii and Kitale have 83 and 59 lawyers, respectively. Nairobi has got 5,826 lawyers. So, the trend generally is that there is concentration in the urban areas.

If you go to the last page I have given the raw summary for today because these numbers change on a daily basis. When I go back to the office, probably, I will find some people who have just taken out a practice certificate. This year, 3,218 lawyers have already renewed their practicing certificates. Last year, out of a total of 9,253, we had around 5,500 taking out practice certificates. I have also given a summary of advocates by gender. You can see the gender gap is not much. We have around 851 who have not declared their gender, so I will not assign the gender to them because we request them to mention their gender in the form. When you are dealing with African names, you might assume that somebody is one of either gender and you are wrong.

I want to stop there. I hope that I have provided the information that will be useful for the Commission.

Ms. Belinda Akello: I have two questions that I would like the secretary to advise us on. There have been rampant complaints about lawyers. We also are aware that not everyone approaches the Advocates Complaints Commission or the disciplinary committees that we do have. Also when we did our rounds in the country, most of the people we have come across had court cases had no idea what the outcome was. Most of them said that they had one advocate then the advocate either engaged in misconduct or stopped communication. At that point, they could not afford it any more so they left the case. So, what do you do as a society? Do you also have civic education for lawyers? I think we need to have a unit that talks about integrity of lawyers, for them to know how to conduct themselves whenever they start a case maybe over and above the professional ethics course that we all do when we are in the university just to curb some of these issues?

Mr. Apollo Mboya: As lawyers, we are expected to be judged with a higher threshold than other professionals. We understand that view because, again, we are different. We are different because we like precision in terms of language. When we finish one argument we are ready for the next one. We pride ourselves as learned. So, we have to be looked at with a higher threshold than any other professional. Where advocates have misconducted themselves and the issue is brought to the attention of either the LSK or the Advocates Complaints Commission, we normally swing into action immediately.

However, we know that there are certain complaints that do not reach us because the complainant does not know where to go. Periodically, during the legal awareness week, we try to sensitize the public on what to do when they fall into those kinds of difficulties with a member.

In terms of the CLE, there are professional ethics courses every year which we take to the branches because we have to remind our members of what is required in the calling that they have. So, we do that and our members are required to attend this continuous legal education for them to be eligible to take out practice certificates. I have to add that even

my members in this commission must take continual legal education and they must attend five units every year for them to be eligible to take out a practice certificate. Out of those continuing legal education, one of them is on professional ethics.

Ms. Belinda Akello: Thank you. The next issue is with regard to the LSK. A case would be in the media and the public domain; you have had a few public interest cases. Some of them involve prominent personalities. Decisions are made by judicial officers and these personalities ignore or decide to flout them. In some instances, even an agent like the police do not act on them. There are all legal cases. At times, we do not hear the LSK saying anything and it seems like it is a dead end where lawyers have no one to speak for them at the end of the day after taking a case to court, orders are meted out, but they are not enforced, particularly for those that are of public interest. Does the society have a committee that deals with response to public interest cases, informing the public on what is happening or maybe just pushing the Government or the relevant agencies to do what is required when these orders are meted out?

Mr. Apollo Mboya: In administration of justice, there are several lawyers. The lawyer goes to court to represent a client. The judicial officer gives the ruling or judgment. Then we have the other arm of Government, it might be the police who is supposed to ensure the orders are implemented as issued by the judge. Of course, we have had those cases where trying to enforce the judicial decision has been met by resistance or there is lethargy on the relevant arm of Government that is supposed to ensure enforcement. Where the cases are brought to our attention, the LSK takes them up. We engage in two different ways. You can hear the LSK speak loudly and the issue is captured in the Press. But there is also a lot more instances where we engage without coming out in the Press, but we engage very robustly. In those kinds of instances we determine the best strategy of how to engage. Some of the engagements that we have are not necessarily public. So, there might be a view that we are not doing anything about it. When you are engaging with the Government you use several avenues. There is a time that you have to confront them in court. When they do something very well you compliment them. However, when they are sleeping on the job, you admonish and condemn them. So, that is the situation where the LSK finds itself in.

In the LSK Act, I used to pick that Act and I read one objective which is mentioned in the Act like to protect and assist the public in Kenya. I asked myself: To protect and assist the public. How? Who are we supposed to protect the public from? In my search for an answer, one of my seniors told me that it is to protect the public against those people who deny the existence of the law. So, we try to do our best. We know that there are several cases where we are overwhelmed sometimes because of the sheer number of complaints, injustices going on which require us to intervene. That is why we work with the other organizations in a referral system. For example, if we get a gender violence issue and we know there is another organization that has got expertise to handle it like FIDA we refer the matter there. If it is something to do with children, we will take up the matter with other organizations like the CRADLE that has got a very strong foundation on the issues of children.

Ms. Belinda Akello: Thank you. I have no further questions.

Commissioner Slye: Thank you, Mr. Mboya, for your presentation and the information you have given to this Commission. It is quite useful. I had one observation and a few questions. On the distribution of lawyers, you note correctly that there is a concentration in urban areas. My limited understanding of Kenyan geography also suggests that there are broad areas of the country where there seems to be no lawyers, particularly in the North Eastern region; Wajir, Mandera, Moyale, Marsabit and Garissa. Maybe we can do this in-house, but if you have this it will be helpful to us to take a map and superimpose these numbers to get a sense of the geographical distribution.

Then we also need to get a representation based upon population because geographical representation does not necessarily and adequately reflect how well represented a particular area is, in terms of lawyers. So, I do not know whether that is the analysis you have done, or could do, but I will really be hopeful and as long as you man that line, if there is historical information like this---- I think it will be very interesting to see what, for every five years or even ten years, these numbers look like and how they have increased or decreased in a particular area. I do not know whether you have got this information.

Then, just checking at this particular table, my first question is on the distribution which you have, including active and inactive lawyers. I do not know whether it is easy for you to provide us with the distribution that is limited to active lawyers because, again, even if we have 5, 800 lawyers in Nairobi, but there are 4,700 inactive lawyers in Nairobi. That creates a very different picture in terms of concentration of lawyers in Nairobi. So, I do not know whether that is something you have or whether you know whether inactivity is evenly distributed across the city or it is concentrated.

Mr. Apollo Mboya: Thank you very much Commissioner Slye. Yes, it is true that there are certain areas where there are no lawyers at all. One reason is that there was no court infrastructure at all; we have the data with us. So, you would find that lawyers are supposed to practice in court and that is one area where they practice. Of course, there are other areas of practice; but you would find that this trend of distribution follows very well with the infrastructure of the Judiciary.

In fact, there is data available; there is a map that has been done by another organization situating the infrastructure of the Judiciary in terms of the court system; where these figures can be superimposed on. Northern Kenya has been lagging behind in terms of court infrastructure and it is true it shows that the lawyers who were born there are practicing here in Nairobi, some of them are very prominent, and probably you have seen them. We have the chairperson of the Parliamentary Select Committee on the Implementation of the Constitution who is from there. We have a very prominent member in the Judicial Service Commission, here in Nairobi. So, in terms of devolution and what it portends, we want to see if this devolution is also going to influence the real orientation and distribution of lawyers because we expect that with devolution now, there is going to be re-configuration on the redistribution. But it is something we are going to

watch, once the devolution is actively in place. One area which we are really lobbying for is that, for every county, there must be, at least, a high court. Once we have a high court in a county, we will also expect that there is going to be realignment of this distribution. But even without that, just looking at the number of lawyers in Kenya, we are still few, if you look at it with the ratio of the population. Taking into account that out of these 9,000 who have actually signed the Roll of Advocates, not all of them are active as rightly observed.

The number of active lawyers changes per a minute, I can tell you. By the time I go back to the office, this number will not be the same because some are taking out their annual practice certificate. Most renewals are done between January and April. So, by April, you will find that the active ones are around 5, 000. But I will endeavour to provide information in terms of the active lawyers and how they are distributed. Some of them here, as you can see, are actually outside the jurisdiction. They are in other countries, some might be in Southern Africa where Commissioner Chawatama comes, and some are in the USA where Commissioner Slye comes from.

So, there are those who are in the diaspora. But I will endeavour to provide information on the active ones.

Commissioner Slye: Thank you Mr. Mboya. You would also be able to provide historical data as well.

Mr. Apollo Mboya: In terms of distribution?

Commissioner Slye: Yes.

Mr. Apollo Mboya: That is very clear because historically, in Kenya there were practice stations only in Nairobi and Mombasa. Yes, even in terms of the changing face of advocates, that one is very prevalent and we know it; and how historically the Africanization - if I may call it so - of the legal profession came into being. We will also provide that information to the Commission.

Commissioner Slye: Thank you. Just based on lack of persons or lawyers in some other parts of the country, I take what you say about infrastructure as a factor and also the hope of devolution leading to increased infrastructure and, therefore, one hopes, increased representation, although that is tied to court practice and, of course, many other things lawyers can do, when needed, for their communities. I do not know whether the society has considered pursuing or proposing something that I know medical professionals do in other countries. I am not sure whether their lawyers have ever done this; that is requiring that the new law graduates, after they have graduated from university, for a period of say one, two or three years, are placed into institutions that are understaffed so that afterwards they can go wherever they want to go.

I know in some countries, the medical profession does that. In fact, in the USA, we do that. But I believe, tied in with our case is getting government funding for your medical

education and in return you are required to provide services in an understaffed area for a period of time. And I do not know whether the period is spread. I do not know whether it is something you have considered or what has been considered here in Kenya.

Mr. Apollo Mboya: Thank you. First of all, it is mandatory that for a new graduate, for the first two years, one is supposed to be employed by a senior advocate. However, we have not gone the way of the scenario you have given us. But we have put in place mechanisms we want to test. That is requiring lawyers who have been in practice for a particular period, for example, five years to undertake *pro bono* work for them to qualify to get their practice certificate. Every year they must do three or two works.
We are still in the discussion stage. Of course, as you know, lawyers are very litigious, so we are trying to consult with them to see how we can give service back to the society.

Another way of giving incentives is to continue giving legal education points for those members who are actively participating in community service. We are also in discussion with the bar. Then lastly, we are proposing that we have awards like the *pro bono* lawyer of the year award. We believe that incrementally we will find lawyers taking upon themselves to go and work with the communities at the grassroots without being compelled.

However, right now we are promoting the activities of para-legals. We have seen that where there are no lawyers, para-legal personnel play a very important role in the communities together with the legal resource foundation. We are trying to organize para-legal personnel so they can also have a body that regulates them and they should have their own code of conduct because it is very important. Even in certain instances, we have had cases where para-legal personnel are masquerading as advocates. So, we need to organize that. But we have embraced para-legal as part of an important institution that can complement the work of the members of the LSK. So, those are the initiatives we are pursuing right now. In fact, in one of the projects that we have done with the National Legal Aid and Awareness Programme, there is a para-legal component in Kisumu which is doing a very good work with the widows and people suffering from HIV/AIDS or those who have been orphaned.

Thank you very much.

Commissioner Slye: Thank you Mr. Mboya. I take your consolation about carrots and sticks when it comes particularly to lawyers who would like to wield large sticks, sometimes in their firms. I completely agree with you that it is better to try to combine a variety of different strategies so that at the end of the day, what you are trying to do is to instill a sense of social obligation and that is something that one cannot compel, but something that one has to nurture and develop.

My last question is actually focused on information, and you have just mentioned para-legal personnel. I do not know whether there is any data about how many para-legal personnel there are and where they are located; because that would be very interesting to

know. There are a lot of things that para-legal personnel can do, and many of these communities may need an attorney.

Secondly, on the complaints issue, you had said that there were so many fines at management level that you were unable to withdraw. But I wonder; I would find it useful if there were numbers and percentages of different types of complaints. You have listed them in many of your slides; failure to account for or withholding funds and failure to keep record of funds etcetera. I do not know whether you have a breakdown of the number or percentages of complaints, which of those categories and then how many of those actually went to the disciplinary committee and how many resulted into action. Then whether all of that historical information is available because I think it would be interesting for us to see what the trends there are in terms of the type of complaints that have been made against lawyers and whether that has shifted all the time, and if so, why the shifts all the time. So, again, it is just a request for your information, if it is easily available.

Mr. Apollo Mboya: Thank you. On the issue of para-legal, I can tell you that even the definition of para-legal was so emotive in some forums. Who is a para-legal? A para-legal is any person so long as he has some basic training and can give advice on fundamental rights. So, it is a question of common sense.

Commissioner Slye: If I understand you correctly, it is completely unregulated. That I can call one a para-legal and that there is no barrier that will regulate me calling one a para-legal or presenting myself as a para-legal.

Mr. Apollo Mboya: The Para-legal professionals have an organization but they have not fully regulated themselves. So, we are talking about regulations and the curriculum for their training and also their code of conduct. How do you discipline them when they misconduct themselves?
The Law Society of Kenya (LSK) has come forward to help them set up a system like the one that the lawyers have. There is no professional body in Kenya that self-regulates like that of lawyers; lawyers admonishing their own lawyers and striking off their colleagues from the Advocates Roll. That is unheard of in other professions. So, in terms of para-legal, we have some documents on how we are more or less agreeable to the definition.

Basically, we are also recognizing that they should have their own organization which takes care of their welfare. That is what we want to put in place because they are very important and they complement the legal profession. Even in the law firms of our members, there are para-legal personnel there. The clerks are para-legal personnel who know the law that they can use to advise people without necessarily requiring a lawyer to give advice on that. So, we are at that stage and that is the current scenario.
In fact, there are organizations like the Legal Resource Foundation (LRF), that have tried to take a census on who are the para-legal and they have data on that. Some of the data that they have shared with us is what we are able to provide to the Commission.

On the percentages of complaints, I will also provide that data in terms of percentages but, by and large, most complaints are failure to inform clients and also failure to communicate. It is a big professional misconduct if you do not communicate with the client or with your professional colleague on a particular matter.

We are seeing the trend with regard to failure to account for funds. There has been a marked reduction. We are still seeing problems of failure to inform a client. Some of the complaints could not have reached the LSK, if the client was informed. You know that the judge was not before court and the matter was adjourned because either the judge was unwell because he is a human being. But if you do not inform the client of what happened in court, the client will say that you have refused to prosecute the matter. But the matter actually came for hearing on this particular date and my lawyer did not do anything. When you get such a complaint and you ask the lawyer to respond to such complaint and he answers and you realize that, actually if only he could have communicated, that paper work should not have been on your desk. So, basically those are the kind of challenges that are there. But I have to admit that we still have instances of lawyers failing to account for proceeds of funds of clients.

Commissioner Slye: Thank you Mr. Mboya, I have no further questions for the witness.

The Presiding Chair (Commissioner Chawatama): Commissioner Shava, first ask your fifteen questions.

Commissioner Shava: Thank you, Presiding Chair. They are actually sixteen questions. Mr. Apollo Mboya, you are my colleagues and my friend, my first observation is that: I am happy to be amongst those members in good standing with the LSK who are not practicing. I am also happy to note that I passed the vetting of the LSK and we will communicate to you the result of this current vetting process of the LSK. I have also noted the likely veiled threat with regard to Credits and Practicing Certificate (CPC), and I should make sure that I do the necessary.

The first thing I want to ask is with regard to co-ordination and communication between the LSK and the Judiciary to ensure that advocates who are not entitled to practice are not, in fact, practicing. This is because there are cases where if one is suspended because of an activity that took place in Mombasa, for example, then one simply re-locates to Kisumu and continues practicing. Are you able to effectively regulate this kind of trend?

Mr. Apollo Mboya: Thank you very much. First of all, members who go to court, they either go to court on civil or criminal matters. But with respect to the question that the Commission has asked, this problem is majorly in criminal matters because here, the other side it is the police who prosecute.

In civil matters, on the other side it is a fellow lawyer. I always tell the members, it is either your brother, or your sister's keeper. The lawyer who is suspended or who does not have a practicing certificate, who appears in a civil matter, and the lawyer on the other

side realizes that, will definitely inform the LSK. In fact, it is a very big risk. They do not risk there.

However, we know the trend is in criminal matters because you do not have your other colleagues on the other side. But in terms of co-ordination with the Judiciary, our information of the people who have practicing certificates on real-time basis is available electronically. So, we have been urging the Judiciary to ensure that they also upgrade their Information Communication Technology (ICT) systems. You can see it, even from my phone; I can tell you that this person does not have a practicing certificate right now. So, that is the main problem. How do the judicial officers get the data that somebody comes before a judicial officer and says: "My name is so and so? How does that judicial officer instantly log in that check? This is because previously we used to print and give them a print out. But as I told you numbers change by a minute. Right now somebody is walking in to renew the license and I had taken the other printout yesterday. The best thing is linkages electronically because that is real-time with our office.

Another issue that we found is somebody impersonating another one. You might be seated here with your practicing certificate doing your work and in Kakamega somebody is introducing herself as Margaret Shava and, of course, if you login you would find Margaret Shava has got a practicing certificate. How does that judicial officer sitting there ascertain that you are not the one whom you claim to be?

We have caught some of them through the report given by members. Sometimes the people masquerading are not lawyers; they are not your professional colleagues, they are lay people who have heard some basic training or knowledge of law. Mainly, we have such cases in criminal matters. So, we need to improve our processes, especially electronic process and there is no shortcut. That is how we communicate and that is how people log in. We know that for the public, there is limitation because not everybody has got access to the website.

But if the Judiciary wants to be a world class Judiciary, there is no shortcut, they must train their judicial officers to use ICT to get this information. Why did we do this as LSK? We felt we have a responsibility to the members of the public. But as you take up a lawyer, we are giving you the first tool to check whether this person is allowed to practice or not. So, you can get it right now on real-time.

Commissioner Shava: Thank you very much for that answer. I am about to ask another question. I had wanted to know how successful the judicial programme on the real-time communication of judgments is through the use of ICT, which was launched in a rather spectacular fashion with the judgment being read from Mombasa and then there has been a silence. So, I wonder whether there are any obstacles or challenges that are being faced because this was supposed to promote speedy conclusion of cases despite distance.

The second part of that question is, how do you rate the ICT uptake by members of the LSK because lawyers are also very famous for doing things in a very old style where you must draft a letter by hand and then your secretary types it out and then the day has gone.

So, one letter takes sort of two days to leave your office. Are you finding lawyers becoming ICT savvy; and what is happening with regard to this initiative in the Judiciary to transmit information in real-time from remote locations?

Mr. Apollo Mboya: Thank you. With regard to law reports, I think we have to commend the Judiciary. The Kenya Law Report, which is a semi-autonomous agency within the Judiciary, has done a lot to improve with regard to uploading judicial decisions. There, we give them kudos for that.

With regard to virtual courts, there is infrastructure which is required for you to have successful virtual courts and this is still not there in the Judiciary. We have one virtual court between Nairobi and Mombasa. Only one! Because you need to use fibre optic cables; you have to ensure you have stable electricity supply because virtual courts require that you have power. If power goes off you do not see the person on the other side.

The virtual court was launched and I have had a feel of it. It is a very interesting way of ensuring that access to justice is speedy and the judges do not have to travel because you can see the parties on the other side. But it is only between Nairobi and Mombasa. The expenses for that are still very high. It has not been extended to the other court stations. We still see the Court of Appeal travelling. So, they would say that the Court of Appeal is sitting in Kisumu; or the Court of Appeal will be sitting next month in Nakuru.

The expense that goes with the transporting judicial officers and accommodating them and the transport--- Judicial officers are dignified people who must be taken care of very well. They have not made good progress with regard to use of virtual courts. Virtual courts could have opened up even Northern Kenya where the infrastructure is still wanting. So, there is still a lot more to be done.

On the issue of the uptake of ICT by members of the LSK, it is a very interesting story. I have to tell you this. Prior to 2009, when I came to LSK, for you to apply for a practicing certificate, you had to come to the LSK and get a form. The LSK would also send demand notes and the forms to each member by Post Office. For you to know where your colleagues was; the address of the colleague, lawyers would write to the LSK post the letter or send a messenger with it to come and ask the secretary where so and so is; where is this person practicing? So, as a way of moving them slowly to the ICT age, we did very simple things first. I said there are no forms in the LSK. For you to apply for the practicing certificate, get the form from the website. So, you can print it from there and fill it in.

So, that forced them to be going to the website. Some of them did not even know that website. So, I wrote to them and told them that the website is www.lsk.org.ke, and I told them to get the forms from there. Of course you expect a lot of resistance because they were used to getting a form on their tables. Then we also have a monthly newsletter which had to be printed from LSK and posted to each and every person. We converted

that into an electronic newsletter, so that if you wanted to receive it and you wanted to read it, you must go there and visit it, but we were sending the link to them by e-mail.

Then lastly, all the information with regard to lawyers' physical addresses was interfaced with our system in the office to the website. So, you do not have to ask me where the lawyer is, where his physical address is and also you do not have to ask me whether he has a practicing certificate or not. So, incrementally they have embraced it. It is now three years. So, the uptake of ICT, we are very happy with where the members have reached and there is still a long way to go.

To most of our senior members, you can imagine, it is a challenge to them. In fact, I remember, one of them remarked that:"There is a small boy who has gone to that secretariat who is telling us to do things that are impossible!" This is because they were not used to reading a newsletter on the computer. They want to read it on paper. Lawyers like reading things on paper. So, there is a great improvement but we need still to do more because all our communication now is on e-mail.

Thank you.

Commissioner Shava: Thank you very much for that very illustrative answer. The other question which I wanted to ask which you have partly answered and was with regard to complaints and the nature of complaints made against advocates.

As we travelled around the country, indeed, the kind of complaints we received were related to failures and delays; they were the major complaints. Whereas, I had expected to hear a lot more with regard to theft of clients funds, failing to account for funds and such sort of things.

As you said, this is actually a very serious problem because these delays impact so much on the lives of litigants, on their finances and also it is going a long way to creating these backlogs in the courts. What I wanted to know, what kind of penalties is the LSK imposing currently for this? Are you looking at it as a grave violation and a serious offense?

Mr. Apollo Mboya: In the first instance, if you are a first offender, it is just like any other court charge. If you are a first offender; we might give you the benefit of doubt depending on the explanation. Sometimes failure to communicate is because advocates are human beings; they might have had other challenges, just like any other human beings. They might be unwell; they might have been dealing with certain private issues. Those ones you can say in mitigation.

But when we see that you are a persistent offender or one particular one, I know the disciplinary committee takes it very harshly. If you have done it twice or there are three complaints coming along those issues of that nature, apart from admonishment; the disciplinary committee has to impose very stiff fines, including costs for the complainant for coming to the disciplinary committee and the cost to the LSK for prosecuting the

matter. So, it depends on how your course system behaviour has been. For example, if at one time you were found that you did not fully account for the proceeds of judgment in terms of funds and there was an explanation--- There was a delay but you finally accounted for it - of course, you will account for it in addition to the interest it attracts. You might get away with it, if you account for it and you can be fined. On a second round, because we have the data, if you are found with the same offense, I can guarantee you that the disciplinary committee will suspend you for even three years. If there is another aggravated offense, I am sorry; you will find yourself being struck off. I am not going to mention names, but we have even a Minister in the current administration that has been struck off the Roll of Advocates for failure to account for proceeds of a judgment due for a client. Thank you.

Commissioner Shava: Thank you very much. I think that would be very encouraging to those who are feeling fatigued in the pursuit of justice due to misconduct of - as you said - persons who should be held in very high standards.

Then I just have two observations to make. Firstly, with regard to the statistics you presented to us. I am happy that you have clarified what you meant by gender undeclared. I was beginning to think that the society has been gifted with the large proportion of inter-sex lawyers. I am glad that you have clarified that one.

The other one of the Law Summary, 779 members whose status is unknown, perhaps, you could clarify that one because I do not quite understand it.

Mr. Apollo Mboya: The statuses that are unknown are members who have either left jurisdiction and they are not in touch with us so we do not know where they are. For us to know where you are, it is required that you inform us whenever your status changes. Probably you are in Government then after that, you left Government or a state council and you went abroad. You did not tell us where you have gone, we do not know and we cannot answer when there is an inquiry then we do not know where you are.

With regard to gender un-declared, I also have to say something. One time we had made a mistake, this member was a man but he was called Wa Nyambura. He did not have a Christian name so somebody decided to assign a gender only for him to come and find that this is a man. Where somebody does not indicate the gender and there is no Christian name and there are several lawyers who do not use Christian names, it is unwise to assign a gender because you can be embarrassed later on. Because we are lawyers and we are very litigious, it might amount to defamation so that is why we have left it but whenever they update, this number has consistently reduced. When subsequently they communicate to us and we know their gender, we make amendments immediately in the data base.

Commissioner Shava: I think I approve of the decision that you took. It was wise in the circumstances. Finally, just a remark with regard to the issue of devolution in the counties: When we have gone out around the country, we really have found that lack of a court building is really impeding people's access to justice. I was looking at your statistics and I see no lawyer here from Mount Elgon and I know that that is because

there is no court in Mount Elgon. People who need to access justice from there have to go down the mountain and go to Bungoma. Whereas there was a court for Mount Elgon during the colonial era but which burnt down because it was a make-shift grass-thatched building, and it has never been replaced. These are some of the issues that have been informing the tensions around the reviews of boundaries in this country. This is why you see people feeling so passionate and emotions so inflamed with regard to county boundaries.

So I just hope that in your advice as the Law Society as to where it is and how it is, that the court infrastructure should be enhanced; we hope that you are going to take into account the realities of the people on the ground who are the consumers of the justice system. There are such difficulties as transport, numbers within the population and all the rest. We hope that the Law Society will follow the example of this Commission and inform itself as to the situation on the ground before you make recommendations so that they can be appropriate and helpful for the people that they are intended to help.

With that, I think I will just say thank you very much. We also acknowledge your assistance and the Law Society in developing our procedural rules and standing with this Commission. We are very happy to have heard you and thank you very much for your informative presentation.

The Presiding Chair (Commissioner Chawatama): I do not have a lot of questions and I was just hoping that you will be adequately threatened by my opening remarks but you have not been shaken; not even under cross examination. I would just like to know from you what the reasoning was behind appointing of three lay persons in 2002 as an addition to your disciplinary committee.

Mr. Apollo Mboya: Thank you for that question. When the issue of three lay people was mooted, it was an issue to give comfort to the public that the lawyers are not going to cover for each other whenever they misconduct themselves. It was good to have lay people who are not members of the profession who then can also participate in disciplining them. That was the rationale about that.

The Presiding Chair (Commissioner Chawatama): That definitely promotes transparency and accountability. Since I have been in this country, it is almost three years now I have not heard of the Bar and Bench getting together. In my jurisdiction, we introduced that because we thought it was necessary. Instead of having tugs of war between the Bar and the Bench, we decided that at least once in a year, we will have the Bar and Bench and have speakers from both sides talking about issues that both the Bar and the Bench felt needed to be addressed. To some extent on certain issues even as lawyers, we were able to present a united front and it took away a lot of misunderstandings and gave us an opportunity to socialize. We also like to have our occasional sherry and this is again a place where the Bar and the Bench met and we would discuss issues. Does the Bar and the Bench have a relationship? Do you have an opportunity to sit and to talk about issues?

Mr. Apollo Mboya: We have Bar- Bench….

The Presiding Chair (Commissioner Chawatama): I think what I forgot as well is the fact that as a judge or adjudicator, we do not really talk to the press a lot, not at all really and in fact the people who come mostly to our defence are the lawyers. So you hear more from the Bar defending the Bench because it is difficult for the Bench to defend itself and always be in the papers. I do not think that I have heard the Bar defend the Bench. Maybe there has been no need to defend them but surely, there are things that have cropped up which the Bench maybe could not speak for one selves and the Bar should have stepped in.

Mr. Apollo Mboya: In various court stations, we have Bar-Bench committees and these Bar- Bench committees also incorporate all court users' committees. You will find that there is representation also from the prisons and from the police. That is what we have at the court stations and they discuss issues that affect those courts in those stations. At the national level which you have correctly noted, previously, we did not have that kind of get-together and this is historical because the leadership of the judiciary was not keen on having such kind of relationship. Probably you have heard even during the hearings of the Commission because the Bench saw themselves as so high up, sitting in an ivory tower. In fact, they would even sit on a very high chair looking down on everybody but you have seen right now the changes. Everybody is sitting on the same level and the courts are more receptive and I know there are plans to have more of those kinds of meetings.

I tried to moot such a thing with the earlier Chief Justice and the only mistake I did was that in my letter, I had indicated that I was inviting judges to a workshop and then they said they do not attend workshops, they only attend what they call colloquia. You can see that those are the kind of issues we had but also historically, when there was no good relations between the Bar and the Bench, it was very difficult to have those kinds of meetings yet the reforms that we required were not being undertaken. Everybody suffered in the judiciary, not only the clients but also the lawyers because the clients also withdrew some of the briefs because they thought the lawyers were not doing their best yet the problem was also in the Bench.

Right now, we have good leadership and we have already started with creating a committee of senior counsel and the committee of senior counsel includes representation from the judiciary. Indeed, there are three judges from the judiciary sitting in that committee of senior counsel. This committee is tasked with the duty of identifying who is to be conferred the title of senior counsel. We are seeing progressive "thawing of the ice" between the Bar and the Bench but again, we are not supposed to be cozy. Thank you.

The Presiding Chair (Commissioner Chawatama): Right now, we have had an exercise of old cases that are in court and that have not been active being struck off. I think my fear having gone round the country is that, most of these cases that are being struck off are cases where the parties are poor people and maybe they have not had the benefit to a lawyer or even if they have had a lawyer, the lawyers have stopped handling these

matters without these people knowing. Were you asked to participate at all or give some advice before this exercise?

Mr. Apollo Mboya: Indeed, we have taken up that issue. We were not consulted. I am aware the judiciary came up with something called Rapid Results Initiative (RRI) where they just grouped several cases that have been inactive for some time and purportedly gave a notice and for the parties to show the cause why they should not be removed from the records. We had a problem with that notice because how many people saw that notice and how sure are you that that is the address of those litigants at present? This is an issue that we have taken a stand on; that there should have been more consultation on how to eliminate backlog. This system will definitely remove a lot of cases but it might also result into injustice to litigants who might not have seen that notice or who might have had a lawyer on record and they thought that everything is fine and then all of a sudden, you are being told that your case is not on the records again so we have taken it up.

The Presiding Chair (Commissioner Chawatama): That is the sort or response I probably expected from you as counsel but also as a judge. Case management demands that I manage my list and I manage my cases well. Maybe a case has been lying in the registry for the last five years and then according to my books it is a live matter and then it looks as if I am the one who is not being effective. I think there has to be proper balance even in trying to find out what is really going on and I wish you all the best in this meeting. I do not have any more questions but I wish to thank members of your society who have engaged with us. They have really brought meaning to this process because with every challenge, we were forced to go back to the drawing board at times to think of ways and means of ensuring that this process is also seen to be conducted in a way which was fair and that we adhered to the rules of natural justice. There were some contributions from members of the society. We did have one or two who came and they were unprepared despite sending the notices and despite having the rules, they did not look at them but this was just one or two. The majority has really helped this process and I am sure they will when they read our report be able to see the extent of their contribution. I think you said you spearheaded the vetting of judges and magistrates act so could you please reduce that in writing for us so that we have the benefit of knowing what your role was and also why you found that it was necessary. I think that will make our picture complete.

Mine is to thank you once more for coming today. If we have one or two issues that come up, we will get in touch. We thank you that your door is opened and we wish you all the best. Commissioner Shava, were you going to close for us? Commissioner Shava will read the names for me, reason being I cause a lot of grievous bodily harm in the pronunciation of names.

Mrs. Belinda Akello: Presiding Chair, maybe before we conclude, we are praying that we have directions for this to be the last one for today and adjourn and resume tomorrow at nine in the morning to continue with the same thematic hearing on access to justice.

The Presiding Chair (Commissioner Chawatama): Once Commissioner Shava has had the opportunity to read out the names of the witnesses who appeared before us, and then I will adjourn to tomorrow.

Commissioner Shava: We would like to thank the witnesses who have appeared before us today, Ann Ireri, Jackline Katea and Apollo Mboya. We thank you for the time you have taken to enrich the record of this Commission with your statements, through the way you have answered your questions. I would also like to acknowledge the services of our interpreters who have done a great job including our sign language interpreter because this has been a very technical session and I have been quite fascinated hearing how the translation is taking place but you have done a great job. Over to you Presiding Chair.

The Presiding Chair (Commissioner Chawatama): Mine is just to adjourn these proceedings. I know it has been a long day and I join Commissioner Shava in thanking the staff of this Commission for their dedication and their faithfulness. We break and have lunch and we will meet tomorrow and I would also like to thank the audience. I hope that you have been able to pick up at least one or two things and we look forward to seeing you again tomorrow when we shall have the judiciary in attendance and other people that we have invited; so thank you very much and these proceedings are adjourned to tomorrow.

(The Commission adjourned at 2.40 p.m.)