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Public Hearing Transcripts - Thematic - Economic Marginalization - RTJRC13.02 (NHIF Auditorium) (Economic Marginalization and Minorities)

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON MONDAY, 13TH
FEBRUARY, 2012, AT THE NHIF AUDITORIUM**
(Thematic Hearing)

PRESENT

Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
BerhanuDinka	-	Commissioner, Ethiopia
Tom Ojienda	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya
Gertrude Chawatama	-	Commissioner, Zambia

(The Commission commenced at 10.10 a.m.)

(Opening Prayers)

The Acting Chair (Commissioner Namachanja): Good morning, ladies and gentlemen. Welcome to today's thematic hearings on economic marginalisation and minorities. To conduct the hearings, we have a panel of three Commissioners. Others will join us later.

Ladies and gentlemen, as you may know, it is almost a year now since the Commission started going around the country, listening to individual Kenyans who have experienced the violations that this Commission is investigating. Members of the Commission have come face-to-face with issues of economic marginalisation. We have been to some areas in this country where the people feel that they are not part of Kenya. So, we have parts of this country where people consider themselves as coming from Kenya Four, Kenya Three and Kenya Two, and we wonder what is Kenya One. We have experienced it. They feel so because when you look at issues of infrastructure, it is pathetic.

We have come across children taking their lessons under a tree yet they are expected to compete favourably with the rest of students from other parts of this country who are endowed with all the facilities. We have toured places where you cannot get even a single tarmacked road in almost the entire county. We have met Kenyans who are not IDPs yet they are landless. We have come across areas where they come from a region which is very productive but even for the crops they produce, there are no factories. The factories are elsewhere.

For those of you who live around Nairobi, I once lived in Madaraka and I used to watch fellow Kenyans, especially from Kibera hit the road very early in the morning, very energetic, walking to Industrial Area. It will not be until eight in the evening that you will see them walking back, very tired. So, they work as hard as their fellow Kenyans. However, when you go to Kibera and Mathare, you wonder what conditions give birth to people living under such a situation.

We have been in counties where with the creation of counties, there are fears from minority groups for continued marginalisation, especially when it comes to sharing leadership positions. So, we have heard from individuals but we are privileged today to have invited a few of our leaders from this country – people who have either written so much on the issue of economic marginalisation and minorities to come and share with us more on this topic.

So, without wasting any further time, I would like to invite our session leader to share with us what we have today.

Welcome, Belinda.

Ms. Belinda Akelo: Thank you, Acting Chair. Our first speaker today is No.8 on your list.

Kindly, tell us your names and proceed with your presentation.

Mr. Sheikh Ahmed Ramadhan: My names are Sheikh Ahmed Ramadhan. I am from an organisation called Super Ethnic Minority Forum. I live in Nairobi.

I would like to request to be allowed to speak in Swahili. I know that the report will come out to the citizens, especially the minorities, who do not know English. I would like them to understand what I am going to present to this Commission on their behalf – their complaints to our Commission.

I will start with the Boni community. The Bonicomunity live in Lamu area and in some part of Malindi. They are very few. For many years, they have been marginalised. Most of them are not educated. Their land has been taken away from them. The youth are unemployed. They just watch people from outside coming and taking their land. They do not have title deeds. They have nothing to depend on. Even if you look at their hospitals and other facilities, you will appreciate that the Government has ignored them.

From the Boni, I move to the Wailwana Community. The Wailwana Community comes from Tana River. Previously, they used to be called “Malakote”. They also have similar land problems. They do not have title deeds. Outsiders have come in and taken over their land. Many of them have been displaced from their land. Their identity, in terms of culture, is slowly getting eroded. Although they have a tribe and their own king, this was gotten rid off when the colonialists came. The youth are unemployed. Very few of them – about seven – had the opportunity of going beyond Form Four. All the others are uneducated and live in abject poverty.

I now move to the Bulushi Community. This community lives in Mombasa, in an area called Majengo. They are also not educated. They have no jobs. They have no title deeds to their land. Many of them have been displaced. They are not recognised in this country. They are discriminated against. The Government does not give them their right to the

services that they deserve. That has made many of their youths indulge in drugs and crime.

I now move on to the Munyoyaya Community. These people live in Malindi area. Their identity is not recognised and it has not been preserved. They move from one place to another. They are very few. Just like the other communities I have mentioned before in the coastal area, they have no land. Their ancestral land has been taken away from them by people from outside and the Government. They are discriminated in employment. They have problems and they have no development.

I now move on to the Burji Community. These are people who come from the North Eastern Province – Moyale, Marsabit and Isiolo areas. They have also been discriminated against and oppressed. The majority of them are unemployed. They are not recognised. They have been assimilated by other Boran communities.

I now move to the Sekuye Community, who live mainly in Moyale area and a few of them in Marsabit and Isiolo. They also have no access to education. They have been discriminated against. The facilities that the Government is supposed to have built for them, including hospitals, schools and other facilities, are non-existent. That has caused them to live in abject lives.

The Rendille Community has similar problems to those I have mentioned.

The Wata Community also has similar problems. They are not recognised. They have been assimilated by the Boran Community.

As I move on to the lower areas, you find the Ogiek Community. These people live in abject poverty. They have been moved from their ancestral areas and other areas they had occupied. They have no land. They have no title deeds. Their culture is becoming extinct. They are unemployed. They have been oppressed. They have been assimilated by the bigger communities in the area. These people are not recognised. They are scattered in Kericho, Nakuru District; Narok and Bomet Districts.

There is also the Arsi Community who live in Wajir, Marsabit and Moyale, in the Sololo area. They are very few. They are not recognised because they are thought to be Boran yet they are not Boran. They have suffered from oppression and discrimination. They do not access employment. They are not recognised. There is a problem among the Arsi Community. They are demanding their rights.

I now move to the Teso Community. The Teso are also being oppressed in terms of land. They are not recognised even though previously, they had their own king. Their culture is getting eroded. The youth are unemployed. They have been denied title deeds. People from outside just go there and grab their land.

There is a community known as the Ilchamos. They live in Kabarnet area of Baringo District. They have also been oppressed since the colonial days. The Kenyatta and Moi

regimes oppressed them. Even the current Kibaki Government is oppressing them. They are not recognised. They have no employment. So, their rights should also be looked into.

Let us also look at the Sabaot people who live in Mount Elgon area. A lot has been said about them with regard to land issues. They do not have title deeds. Their land has been alienated. They have no employment. They live in abject poverty.

There is a community that lives in Laikipia called Iyaku. They also live in Marsabit and Nanyuki areas. That community is not even recognised. They are unemployed. They have been oppressed. They have no voice at all.

From that community, I move to the Sengwer Community who live in Cherengany area and in some parts of Pokot and Lugari. These were moved by the colonialists from their ancestral land. They are oppressed. They live in a very small area in the Cherengany Hills. They have no land. They have no title deeds. They are not recognised. They are unemployed. They are oppressed. They have no voice at all.

We also have a community known as the Gabra. They live in Marsabit area and in a small area of Moyale. They also have the same problem. These are communities in respect of which the issue of employment should be looked into.

We have the Bajuni Community who live in Lamu and Mombasa areas. They are not recognised. They are unemployed. They have no access to education. They are also oppressed in terms of land ownership. They do not have title deeds. They are also oppressed and they have no voice to speak for themselves. They have issues at the moment. They are involved in drugs and other illicit substances.

We have the Hara Community who live in Marsabit and Moyale areas. Just like the Sekuye and Burji, they have experienced similar problems of oppression, not being recognized, lack of employment and education. The problems should be looked into.

There is a community that calls itself Suba. They are found in Nyanza. We have seen them complain that they have been assimilated. They have been overwhelmed by the Luo people in terms of access to employment in Government positions, education and other issues.

I now go to the Kuria Community who have also been assimilated as a result of being overwhelmed by the communities that surround them. They have similar problems to those of the Suba people – being oppressed and not accessing employment.

There is a Somali Community which calls itself the Kona tribe. These are people who seem to be Somalis and who may not be Somalis. They are found in the border areas. These are people who have been denied recognition. They have no identity cards. They have no jobs. They do not access education. They do not have any roles to play in the Government.

As I finish, there is a community known as Dasenka. These are found in the eastern part of the country and in the North Eastern Province at a place known as Sibloi. These have been trampled on completely. They live in abject poverty. They have no employment. They have no education. Medical facilities are not available there. They are not even recognised. Their culture is almost extinct.

There is a community called Isahakia. Recently, we saw what was happening to them in Naivasha. Their land has been grabbed. They have been displaced. They have no jobs. They are also not recognised. They have no education. They have no access to Government jobs.

As I conclude, I come to the Nubian Community who migrated to Kenya more than 150 years ago. They are spread all over the country. The Nubian Community has been oppressed. These people are found in Kibera, Nairobi; in Kisumu at places called Nubia and Monyagitingi; in Kisii, Mazeras and Isiolo. They have been forcefully evicted. The Government takes their land forcefully. Even the original inhabitants have no jobs, they have been oppressed and they have no voice. The DOs and the DCs or the Government in those days and even now...

I cannot fear mentioning. The Governments of Kenyatta Moi as well as the current Government have taken land that belongs to the Nubians in Mazeras and sold it to private investors like the EPZ. In Kibera, politicians have taken land belonging to the Nubians. Politicians have put up mud houses in those areas. In Langata area, Ngei Estate, and other areas; in Jamhuri Estate and Nyayo Highrise, the Nubians were collected into groups. As a human rights person, I can say that they have been put in concentration camps as if they have no land. They do not have jobs. What kind of life do they live? They do not even have positions in the Government.

I do not want to say too much. A lot will be said later. The Nubians should be given their rights. The DOs and chiefs, including Senior Chief Kariuki Kamau, who has since retired, who forcefully evicted people at gun point and grabbed their land, should return this land to the people of Kibera, so that they can live like other human beings. We have Asians and Europeans, like Basil Criticos, who are Kenyans. We have Kenyan Arabs as well. They should also be accorded their rights. They should not be oppressed. They should not be discriminated against. I would like them to have access to their rights.

Thank you.

Ms. Belinda Akelo: Thank you very much. I would like to seek one point of clarification before the Commissioners also ask you questions. You have mentioned more than 20 minority groups. You are also aware that the country had a national census that was done. Does your organisation have numbers or statistics for all these minority groups that you have mentioned?

Mr. Sheikh Ahmed Ramadhan: My organisation does not have the statistics. We are trying to arrange to have them. The new Constitution gives us the right to access this

information. The problem is that during the census some of these communities are simply categorised as “Others”.

Ms. Belinda Akelo: Thank you very much. You have also indicated, by and large, among the other socio-economic rights denied to the minorities, one that has been also transcending in all of them is lack of education, which thereafter leads to lack of employment. You are also aware that we have free primary education, and that the country has a policy of bursary funds that are also accorded to all persons who are unable to afford education, as a basic right. Do all these members of the communities you have mentioned access free education? Can they also access bursary for their children?

Mr. Sheikh Ahmed Ramadhan: Till today, that has not been done although it has been mentioned. On the issue of free primary education, if you look at Kibera area, which important school is there with the required education facilities? There is none. Those people who have come there from outside have taken over. The politicians control the bursary fund. You will find that a certain community is given preference. Out of 100 children who sat the examination in Kibera, you may find that only two or three or four children get bursaries. What would you do with the rest of the children? That has gone to the other communities.

So, the Government has not put down a policy for the minorities to be protected so that they can get their rights to education, employment and other rights.

Ms. Belinda Akelo: Thank you very much.

Acting Chair, I also seek your direction. We have the Director for the Centre of Minority Rights Development. Should we proceed with the discussion with this witness or should we have the presentation of this director and then the Commissioners can also engage with the discussion in the dialogue session?

The Acting Chair (Commissioner Namachanja): I think we should proceed and hear them and then we can tie our questions together.

Ms. Belinda Akelo: I am much obliged, Acting Chair.

Mr. Rutin, welcome to today’s session hearing. Kindly, tell us your names and the organisation you represent today.

Mr. Yobo Rutin: Thank you very much. Madam Acting Chair, my name is Yobo Rutin. I work with the Centre for Minority Rights Development. I would like to make just a few submissions here on the question of marginalisation and then provide a little bit about some of the recommendations that we envisage might be useful to the Commission.

I will start by noting that the Constitution of Kenya, 2010, defines marginalised groups. This, in itself, is recognition of the fact that minority groups and indigenous peoples constitute one of the largest groups that bear the brunt of marginalisation. In basic terms,

there is a lot of controversy about who minorities are but there are various parameters that we may have to use. This might include the very question of being numerically inferior to the rest of the population in a state. They are in non-dominant position and they reside in the same state and possess ethnic, religious or linguistic characteristic different from those of the rest of the population.

In this regard, therefore, minorities also include non-African such as Kenyan Asians, although their status as non-dominant group can differentially be argued, depending on the issue under consideration. We have religious minorities as Muslims, Hindus and those who follow traditional African religions. We have ethno-linguistic minorities such as the Nubians and the Elmololo and indigenous people such as pastoralists, hunters and gatherers.

I just want to note that it is significant that indigenous peoples are distinct from minorities both in character and in the rights that they possess under the international system. They may share similarities but have some differences.

In regard to the very question of numerical numbers, there is a major challenge to the extent that often, the Government has not been able to facilitate the process of really accounting for the numbers of some of these groups; which is an important dimension in terms of discrimination in this country despite some of the concerns that are being raised by these communities. For example, you heard that some of them have not been codified in the census process. This has over the past really led to skewed development planning, resource allocation and all that. Several factors are being given to this effect but we think this is one area that the TJRC needs to really consider.

In terms of spatial, where the communities come from, it is important. Geographical and regional marginalisation is really critical to the extent that certain areas have been seen as spaces for poverty, spaces for conflict, *et cetera*. You would find that, in most cases, Muslim communities in Kenya are concentrated at the Coast and the North Eastern Province. For us, as the Centre for Minority Rights, the TJRC really needs to examine state points and action from the perspective of this regional impact as it examines indirect discrimination, for example, against religious minorities.

The Hindu may be found in urban areas, for instance, and at the same time you would find traditional African religious adherents coming from rural areas. When we look at religious rights, for example, you would be able to appreciate those dimensions.

Just to emphasize again that minority and indigenous people's rights are codified in international law, which gives us the very perspective that historically, the genocides that have been happening in Armenia and the Jewish minorities and all that, were critical piece of trying to encourage global stability and morality. For this matter, questions regarding conflict, for example, are becoming extremely important. Questions regarding Kenya's adherence to the whole question of building peace and ensuring that certain communities are not targeted on account of being from a minority perspective are important.

I just want to move on to just a number of rights of minorities and marginalised groups that might help us in terms of moving forward; with various recommendations.

One is the right to existence and this directly takes us back to some of the historical issues we have encountered – extra torture related issues, massacres and murders. The question of land discrimination and substantive inequalities are extremely important to the extent that resource allocations are being pretty much skewed and not sufficiently directed to some of these groups.

The question of group rights really colours the whole context of understanding some of the minority indigenous people. The question of self determination, for example, is a right that we really need to focus when we are looking at minorities, especially the ones who are indigenous people. The right to culture, language and religion is extremely important for us because of the group dimension. Many of the minorities identify as indigenous peoples and call themselves “peoples” and not “people” on account of the fact that the aspects of their rights are related.

The right to development is extremely important as are the rights to participation and consultation. The right to a remedy for violation of their rights, which will take us back to issues of how we should tackle some of these violations, is also important.

One of the critical issues, of course, has been the discrimination that has been meted on minorities and the marginalised groups. On the whole question of their regions being targeted, it is important that the TJRC undertakes, for example, to push the question of discrimination very strongly to the extent that Kenya has to abide by some of the international standards and norms that target minorities and indigenous peoples.

We are talking, for example, about the ICCPR and all the other principles, like affirmative action measures.

The right to culture, language and religion is extremely important – this has been an area of contestation – to an extent that we know that there are communities like the Elmolo, whom we fear might actually fade out. We think that there is an obligation on the part of the Government, and on the part of other stakeholders, to ensure that their sense of being and the language are protected. If possible, we can recommend that radio stations targeting communities of this nature be developed in some of these areas. The level of participation aspects is equally important.

Let me move to the question of self determination, which is highly critical. Discrimination has come about because of lack of appreciation on the integrated nature of the rights of indigenous people. The right of self determination is already an evolving norm, specific in relation to international self determination principles. The UN Charter, the civil and political rights and the economic, social and cultural rights of the African Charter on Human People’s Rights observe that this is a centre point of advocacy for indigenous groups and Kenya ought to be able to move towards that direction.

Self determination encompasses the fact that people have the right to identify priorities in their own areas. In this regard, the TJRC ought to support the whole argument of maintaining the integrity of the devolved government system, which Kenyans really voted for. One of the areas of violation of rights has been the right to development. Many minority groups in various reports indicate the fact that their right to development has been violated for a long time. There are two dimensions to this aspect.

There is the question of under-development and the question of destructive development, in which case, therefore, I would like to say that in case of under-development, resources have not been ploughed down to some of these regions equal to other parts. This is owed to policy, attitudes, stereotypes and economic principles and development models that do not appreciate the fact that everybody has a right to development.

In terms of destructive development, we have had major projects that have been erected in several parts of marginalised communities' areas that often do not take their own view point about what they really expect. We are increasingly raising fears about the Lamu Port Project, where communities only get to hear in the media what has really been planned but a framework for consultation and a programme for addressing those fears about their right to water and their right to other aspects are not there principally.

When we adopt major projects of this nature, which are erected in parts of the country where people are most vulnerable, we are essentially saying that we are not working for the common person, especially the most vulnerable. We would like the Commission to undertake to highlight some of these critical issues. We have two examples of such major projects. The Turkwel George Hydropower Plant, financed by a French company, which was erected at a place and was estimated initially to have been constructed at a value of Kshs4 billion. It was eventually escalated to Kshs20 million. The project is continuing to even cause problems between the Turkana and the Pokots with border questions arising. The people who live around are not benefiting from it.

We are talking about the Olkaria Geothermal Project in the Maasai area, where you would find that the whole project has surrounded the community to the extent that even access to resources like pasture and hospitals has been a problem.

We have various reports that we may be able to share. One of the most critical challenges that we have had is the question of participation and consultation which the Constitution highlights as the key principal of ensuring that the rights of minorities and marginalized groups should be protected and fulfilled. As a principal of international law, we need to request the Commission to consider this as a very important aspect. The key violation of the rights of the minorities and marginalized groups emanate from there. When you are not given space then it means that your views are not incorporated. Therefore, your attitude to the state changes.

The Truth, Justice and Reconciliation Commission (TJRC) could substantively influence the elaboration of this constitutional right by bringing international content and principles

about the right to participation and constant input into discussions. Under international rights to participate, it applies to both the minorities and indigenous people. This is stated in Article 4 and 5 of the declaration of the minorities and indigenous people. The whole concept of free and prior informed consent is extremely important. We are looking at one of the principal legal structures and the International Labour Organization Convention No.169 codifies this right. Kenya has refused to ratify it and we recommend that the TJRC needs to provide ground for this ratification.

The right to remedy is a question that is important to us and inversely therefore tells us about some of the issues that we have been facing. There is a lot of land dispossession issues, discrimination, subjection of people to torture and related ill-treatment which Kenya has not brought into consideration. We would like the TJRC to look at the case of Eldoret as a symbolic example of how the rights to remedy should be taken up.

Madam Commissioner, I would like to say one or two things about minority and indigenous women. This is a special category. We all understand that there are vulnerable groups even within another vulnerable group. They call it multiplied discrimination. It is important for us to uphold some of the principles of the UN Committee on the elimination of all forms of discrimination. There is tension that has always come about when you talk about minorities, indigenous people, women and gender related issues because of harmful traditional practices. Over and above we need to emphasize that the state needs to begin to ask itself whether these kinds of tensions can be mediated to ensure that by practice and understanding, women are brought to the participating process and their voices are heard.

An important consideration for the TJRC is that it has its draft recommendations that make direct impact on minority and indigenous women. That raises the question of empowerment of women and their participation. We might just want to encourage that. One of the issues that might be critical for the TJRC when they look at minorities is to ensure that there is a guarantee for non-repetition of such violations within the report to ensure that there are mechanisms and modalities that might want to enhance this.

The question of land has been very critical. Principally, the state policies of marginalization are critical and it is important for us to evaluate them. There are civil and political rights violations. For example, refusing that people should not congregate. In North Eastern Province, some people could not gather because of the laws that were there. There are laws that were slapped on some of these regions. We are aware of the Indemnity Act and others which can be considered as marginalized. When people cannot congregate then they cannot organize themselves developmentally and economically as well. Some of these emergency laws have really targeted certain groups of people who come from minority areas. Basically, there are questions on citizen laws and regulations that have been spoken about just as an overview. It is important to note that current practices that are ongoing have tried to address some of these issues but it might be important for us just to refocus on them.

In terms of basic social and economic rights we have to note that the former Constitution did not have explicit language on social and economic entitlement of citizens. That ensured that the state had unfettered power to decide developmental direction in this country. In this regard we are talking about models of development plan like Sessional Paper No.10 of 1965 which sought to downgrade minority areas in terms of no potential. Therefore resources could only be directed to different areas.

Land has been spoken about by very many people because it is a very big area of contention for the minority. Land is not just for its commercial purposes. It has religious, social and cultural purposes.

Let me just go back to a few recommendations that might be useful to the Commission as we move forward. One of the critical issues is related to the Government observation of international and regional standards and instruments. We would like the Commission to request the Kenyan Government to move towards ratifying the Genocide Convention, the First and Second Protocol to IPPR, the Convention of Immigrant Workers, Convention against Discrimination in Education, the Annual Convention 169 and so on. This would really assist in tackling minority issues. We would like the State to develop a programme to provide reparation to pastoralist communities for failure to protect them from inter-community violence and oppressive State security operation. We would like to ensure that the implementation of the National Land Policy, the Establishment of the National Land Commission on the issue of land and environment are in place.

We would like the Commission to impress upon the Government to ensure full implementation of the decision of the African Commission on Human and People's Rights. This would symbolically be able to tackle quite a number of issues. As we speak, the court system in Kenya has been bombarded with about 20 cases making reference to the Eldoret case which means that it crystallizes the issues that we are talking about. We need to establish a national advisory body on affirmative action legislation and programming with the mandate to make recommendations to the Government regarding programmes that will comply with Article 56 of the Constitution of Kenya. We would also want to charge the Kenya Law Reform Commission with examination of all Kenyan legislation to ensure that it does not result in discrimination against minority groups. This is an area where several legislations are being made but we lack capacity as Non-Government Organizations (NGOs) to be able to look at it.

The Government should develop a plan on data collection and disaggregation for minority and indigenous communities. This is an important question to the extent that if you are not counted then basically nobody plans for you. The law on domestic violence that addresses violations against minority and indigenous women should be supported. I have spoken for quite a long time and I wish to end there. Thank you very much.

Ms. Belinda Akello: Thank you. I just want to seek one clarification from you with regard to the right to development and the declaration of the right to develop. What would be your biggest recommendation to the Government realizing that this is both individual and group?

Mr. YobaRutin: The most important way of handling that is to ensure that the affirmative action principle works better and best for minority groups. Affirmative action will provide an understanding of the region that was affected badly through discrimination, for example, Ilchamus of Rift Valley and the Turkana. Focusing seriously on the question of reparations of any sort would be important. The other thing is to ensure that over and above what the state can do directly, the people themselves need to be encouraged through human rights education. They need to be encouraged to participate in some of these processes.

The Acting Chair (Commissioner Namachanja): Thank you, Mr. Yoba and Sheikh Ahmed Ramadhan. We will give this chance to Commissioners to seek clarifications.

Commissioner Chawatama: Thank you for your presentations and I am glad that you are going to make it available to us. Most of what you have told us is like a confirmation of what we have heard as we travelled throughout Kenya. We have covered 37,000 kilometres and listened to many people. I am so glad that we are able to confirm what we heard from you as experts having undertaken a lot of research and study in the areas we have called you to come and discuss. That makes our work a lot easier. For example, we were in Kuria where we had a discussion with them and they were unhappy with the way the Constituencies Development Fund (CDF) was being managed. Sometimes, the Government comes up with things that seem to be good ideas but of very little benefit to the people. We were also in Lamu and the same issues were raised. The biggest issue is the lack of consultations and the fact that a port can be put up and it will be of no benefit to the local people because they felt that other people would be employed and they would be left out. So, your presentation has served to confirm a lot of things that we have heard.

The first speaker talked a lot about the lack of recognition. Please, help me understand what kind of recognition are they looking for? What would settle them and make them happy?

Mr. Sheikh Ahmed Ramadhan: Earlier on I had talked about lack of recognition. A good example is Shirazi Community who are scattered all over the coastal region. The census indicates that they are Shirazi/Swahili - but they say that they do not want to be bundled together with Swahili because Swahili is not a community or tribe. When you are recognized you will get employment opportunities. Since Shirazi is not recognized, out of about 20,000 people, it is only 7,000 who are educated, that is, they reached Form Four and above. Another one is the Sanye Community. They are about 7,000 people. Others include Burji but they have been bundled together with other communities. A community is supposed to be recognized either as Burji or Nubian and given a code number so that they can have access to rights like other people. The problem of not being recognized would lead to culture and history loss. When you lose your history and culture then you will have lost the community.

Commissioner Chawatama: It was also very sad and you have also confirmed this fact that children born in a certain community are so disadvantaged, because there is no

guarantee that they will get a birth certificate, an identity card and so on. This leads to certain consequences including the right to education and employment. We found that it was prevalent in North Eastern Province. Several organizations have spoken about minorities being discriminated or marginalized. Have you had an opportunity to access justice for minority groups or organizations and what was the result?

The Acting Chair (Commissioner Namachanja): You can take notes then when all of us have finished asking questions, you can respond.

Commissioner Dinka: Thank you very much, Sheikh Ramadhan and Mr. Rutin for your very clear explanation to us about the minorities and their challenges. I have a list of minorities that I have written down. I now have about 25 tribes. Unfortunately, Mr. Ramadhan, you said that you do not have figures for each one of them. Do you have a figure for the total minority groups in this country? The issue of recognition is also giving me some serious problems. For example, recognition by whom and to what end? The other issue is about indigenous people. Are all Africans not indigenous to Africa? Are all Kenyans not indigenous to Kenya except now the new comers like immigrants and so on? As far as Africans are concerned, for example, Kikuyus, Luos or Ilchamus, they all came over 400 years ago. If you look at the history of Africa, there has been massive movement of people back and forth. The newcomers always displaced the older ones who moved either to the west, east, south or north. So, indigenous as a concept, I have a problem with it. Maybe you can explain. The other concept that I have a problem with, in the context of Kenya is the issue of discrimination. Mr. Ramadhan when you were giving us a list of minorities in the north east, when you say discrimination, are you talking about the entire North Eastern Province or the small tribe? Are you saying that the majority of the people in eastern discriminate against the smaller groups?

I would really like to talk about recognition and affirmative action. Is it not more useful to speak about a region as marginalized instead of talking about 5,000 people being marginalized out of a totality of two or three million people who have all been marginalized to some degree, unless that 5,000 are particularly marginalized or discriminated against?

Mr. Rutin spoke about preservation of culture. Culture is a dynamic concept and it changes from time to time. Even in our own lifetime things change including language. So, how far do you have to go to preserve culture? For example, there are certain clans or tribes in Africa that say that it is a matter of life and death for their women to undergo Female Genital Mutilation (FGM). They say that it is their culture and it is sacred. So, how far do we go? Do we support it or not? There are certain African communities either on religious basis or tribal culture that say women should not be seen in public and have no independent opinion and so on. So, they are actually marginalized in society. Do we accept that? How far do we go in this preservation of culture? These are the kind of things that I want you to tell us. When we talk about affirmative action, are we talking about affirmative action of the whole community or of a particular community like the Gabbra? For me when I saw it for the first time, it was completely different from the rest of Kenya. Then we went to Western Province where it was a little better but again it is a marginalized area compared to the rest. Therefore, marginalization is relative. I want you

to go to the idea of recognition, preservation of culture and the concept of being indigenous. In Europe, which is very democratic, they are still talking about integration rather than preservation of particular cultures. The only group that has remained in Europe un-integrated is the Gypsies. This is because many things happened to them including genocide during the time of Hitler. What are we saying really particularly in a developing country like Kenya? When we talk about those things are we being realistic? Are there certain areas that we can prioritize considering everybody who is involved so that every Kenyan will have the right to education and so on?

The Acting Chair (Commissioner Namachanja): I just have one question for both of you. I would like you to share with us if you have any proposals with regard to sharing of political seats at county level in relation to minority groups.

Mr. Yobo Rutin: Thank you Commissioner, for your very difficult questions. As I said before the critical issue is the controversy around some of these concepts and terms. Let me begin by the first question asked about access to justice and minorities. My organization has been trying to look at the issues of citizenship rights. One of the things that we had to do in the last five years is to create feasibility on some of these issues. We are practically into the phase where we are beginning to see tangible responses from the international human rights systems. For instance, we have had to use a bit of public interest litigation to really bring some of these issues to the fore.

One of the critical things that happened is that through these campaigns the Government has shown some willingness and tried to understand some of these issues. I can tell you that the term “minority” in 2000 was different. The term “marginalized” would throw you in debates and trouble. This is an indication that people are beginning to want to engage in dialogue and find options for redressing some of the issues that targeted minorities. We are practically happy that working with this organization has enabled us to raise the issue of citizenship rights through the Nubian case to the extent that there has been a ruling in Addis Ababa in the children’s court in African Union. At the same time there are legislations and Bills that have been endorsed which reflect the interest of minority groups.

In terms of access to justice, there are so many dimensions in terms of literacy levels, capacity and the character of the Kenyan legal system itself which has been extremely difficult.

Let me go to the question of indigenous people. It is a really controversial issue in Africa. We do understand that Africans originated here but the term is not used from an Aboriginal point of principle. It is being used for its instrumental value to attract attention to some of the issues of communities who have certain characteristics that the international human rights system, the United Nations system and the African system has been isolated. The criterion that people use is that they occupy and use a specific territory almost exclusively to themselves. The Maasai have attachment to land and territory which is part of their own world to the extent that it has something to do with their religion, identity and so on. Therefore, there is the interest to have voluntary perpetuation

of cultural distinctiveness for the fact that there are laws that govern their lives in spite of the modern aspects coming in.

The International Labour Convention on tribe and population recognizes self identification. If you are a Kikuyu and you are not interested in being called indigenous and you do not want to use the available opportunities and platforms to campaign for socio-economic rights then nobody has a problem. It is a choice. At the same time, you are also required by other groups to recognize them as distinct cultural units. I might be living in Lang'ata and the resident's association can tackle all my problems but if I live in Ilchamus I probably need a chief or an elder to organize certain aspects of my life and the rule of engagements are totally different. The same applies to the Aborigines in Britain, Colombia and Canada. One of the challenges has been that to call oneself indigenous, is mutually exclusive for modernizing. There is a lot that has been written about this. This is an area where the Truth, Justice and Reconciliation Commission (TJRC) need to look into and see if there is a way of mediating some of those development choices that we are talking about.

The African Commission has further specified that indigenous groups in Africa include hunters, gatherers, pastoralists and other groups. The challenge with the debate is that even if we disallow people to call themselves indigenous, there has been a co-relation between marginalization and cultural distinctiveness. We cannot wait for modern life to come to Marsabit 40 years after independence. Any mechanism can be used for its instrumental value. There are places where the person that is highly educated is probably in fourth form or there has never even been a sub-chief. That is what makes minority groups use that term "indigenous" for its instrumental value to achieve certain aspects. It does not mean that other people are being denied their right or ancestry to these areas. It is only an affirmation of facts that they ought to be seen from a certain perspective. Kenya is a signatory to a lot of conventions like UNESCO.

Mr. Sheikh Ahmed Ramadhan: Thank you very much. I will be very brief. I do not have a list of minorities in full but what I have has about 37. If there are any that we have not reached, we will reach them and include them on the list.

The issue of recognition is important because it will be known that a certain community occupies a certain geographical area. We will also be able to inform history the way that community lives including their economic activities. That will enable us understand them. That can also be used in planning for national development. I have come to realize that the colonial government came and found communities with their own leadership systems. They had their own economic activities but they disrupted all that to weaken the people. When the colonialists left, they left behind structures which continued to be used by other leaders who took over. So, the same structures were used to continue oppressing people. They continued looting property and ensured that their lives did not progress. Therefore, it is important to know that a certain community occupies a certain area so that they can also enjoy the resources in this country. At the moment they cannot access resources due to lack of recognition. If there are any resources, they are just controlled by the central Government. It is the responsibility of the central Government to use these

resources to develop communities. I am not saying this to encourage practices like FGM because we also look at the rights of girls and women. I am talking about economic right of these communities. Culture should be encouraged to give the community dignity, identity, respect and the ability to work together.

Also, on the issue of culture, it should also be developed and encouraged because it gives us the dignity, identity, respect and ability to work together.

Regarding Commissioner Namachanja's question on what recommendations we have on how certain communities can be involved, we have not been consulted on the issue of political parties. That is because in Kenya, politics goes with resources. The community with the majority gets the largest vote and that is how they get positions. When they get those posts, they also get resources. That is why the issues of Constituencies Development Fund (CDF), LASDAP and others have been connected to politics. If a certain community is in leadership and they are the majority, they are the ones who benefit from those resources. The smaller or minority communities who do not have a majority vote, sway or influence, are oppressed. Those of us who are fighting for the rights of the minority communities would like to make it clear that their rights have been heard. Recently, there was the Devolved Governments Bill. There is an issue that was removed from it that provided for council village forums. The provision for community fora has also been removed from the draft. This means that at the grassroots level, where we have the minorities, they will have no say at all. They will simply be served on a plate by the central Government and influential people. They will be thinking about what to serve them and what not to give to them. So, the grassroots community should be involved and not a certain group of people who meet and discuss on their behalf. That does not mean that the community will be discriminating against the others.

The other thing that I would like to recommend is that we would like the small area in the Constitution that talks about the minority to clearly indicate that any place that is occupied by the minority communities, without passing through the political parties, should get representation in Parliament and also certain positions that are close to them, so that they may use this to protect their resources and develop their own lives.
Thank you very much.

The Acting Chair (Commissioner Namachanja): Thank you so much, Sheikh and Mr. Rutin. I think those are the only questions we had for you.
Mr. Rutin, I do not know if you have your paper that you have presented.

Mr. Yobo Rutin: I have a good draft, but I would want to add one or two things, in view of the comments that have come from your table.

The Acting Chair (Commissioner Namachanja): Thank you so much. Please, do not delay with it because time is not on our side. We need to produce this Report by 3rd May.

Leader of Evidence, please, call in other witnesses.

My apologies to the presenters who have just presented, that the audience was not able to journey with you through the big screen. It was not discrimination, but just a technical problem that the technical team was dealing with.

Ms. Belinda Akello: Thank you very much for having come to today's session this morning. Kindly tell us your name and group that you represent.

Presiding Chair, this witness is going to speak to us on economic marginalization. He is not in the list that you have, but he shall tell us his name and the organization that he comes from.

Mr. Ali Harsi: Thank you very much, Madam Chair and honourable Commissioners. My name is Ali Harsi, the regional director for Society for International Development. It is quite an honour for us to be invited by your Commission to share some of our experiences in this area. We are also gratified that in the invitation letter that I received, the Commission has recognized the work that the Society for International Development has done to economic marginalization, in particular, the seminar on publications on inequality in Kenya that we produced over the last few years. These are publications that are available, I presume, with the Commission.

If I pick up from where the previous two speakers left just like they mentioned "marginalization" and "indigenous" were terms that a few years ago in Kenya were considered very sensitive to talk about. "Inequality" also has been treated in a similar way. "Inequality" has evoked a strong passion and easily stirred controversy. Maybe, this is why for a long time we did not want to address it directly. However, considering that it is an issue that is very critical to our social relations, political stability and economic development, we feel that it is time that all of us paid attention to it and made every effort to address it.

Although there is inconclusive evidence that recognizes that the way income is distributed it has a bearing on the rate and pattern of economic growth, experience from many countries shows that this actually is the case. Countries that are currently considered developed have historically created policies and institutions to promote equity, whether this equity is in health, education, risk management or even access to law. Even countries that are more recently being admired for their very speedy growth, the so-called Tigers, have been found to be countries that have shown not only first growth, but also had high distribution economies. The World Bank itself has indicated, for example, that gender inequality has negatively impacted on Kenya's GDP. A few years ago, this was estimated at about one per cent, but with deepening inequality, this is likely to even go higher.

Inequality also means competition over resources. There is the element of greed and grievance. These are theoretical underpinnings of the concept of inequality that has been studied at great length by various scholars. Inequality also creates political conflicts between groups, especially for public resources, which in turn, just like my previous colleague here who talked about the marginalized group, may lead to negative re-

distributional agendas that harm everybody else in the long-run. While the communities that think that they are large in number are more powerful and can take advantage of such situations, in the long-run, we all suffer. Similarly, questions of inequality are important to tackle because as has been seen in other places, there is a co-relation and there is evidence to that effect; that high inequality can also lead to crime. I think South Africa is a case in point. Here closer to home, similar research has been carried out, especially in the Central parts of the country and shown that with very high inequalities in a very small areas, you have very high rates of crime.

With that introductory overlook, what will inequalities look like in Kenya and how do they manifest themselves?

We have two main manifestations of inequality in the country. One is the group-based inequalities. In this case, the group can be either racial, ethnic, class or even gender. I think the two previous speakers have given us ample evidence in relation to how the group-based inequalities have manifested themselves in this country.

The other one that I think was also the key subject matter of this meeting today is the geography based inequality whereby we have the various regions in the country very inequitably developing. So, if that is the picture of inequality in our country, then what are its origins?

First and foremost, there was the structure of the colonial state itself and the mechanisms that it put in place to prefer certain groups over others. However, with the end of the colonial period, issues of inequality did not just go with colonialism. Unfortunately, the first Government that came into power continued some of those policy choices in the post-independence era that not only enhanced it but, in many instances, even deepened the inequality. This is the case where we find that the economically and socially disadvantaged groups find themselves excluded from the political power, which drives the agenda of the country's development. In such cases, they cannot organize and neither do they have the capacity to make claims, even in circumstances when the legal provisions theoretically grant them that such opportunity.

If I can just briefly also trace the phases through which we have seen inequality manifest itself in Kenya, immediately after the end of the colonial period, the first phase was what in our publications we have referred to as the ideological contest phase. This more or less corresponded to the period 1964 to 1966.

After that, we have the second phase which we refer to as the Assessment Phase, which basically took a period of about ten years, that is, 1968 to 1978. The third phase in our analysis is what we have referred to as the intervention phase, which more or less corresponded to the period 1983 to 1998.

Lastly, there is the fourth phase which we have referred to as the political or constitutional contest phase. It took the period 1998 to around 2005.

If I may briefly just touch on what these different phases were about, the ideological phase that I talked about, which kind of was the first phase was a period when we saw the struggle of whether Kenya should adopt a socialist or mixed economy paradigm. That is when there was tension on what direction Kenya should take. We should also remember that this was also the period of the Cold War, when there was influence from other bigger powers in the world.

This debate was eventually settled to some extent through the Sessional Paper that has been widely referred to as Sessional Paper No.10 of 1965 on African Socialism and its application to planning in Kenya, where mixed economy with a strong capitalist bend won. However, this policy paper did not deconstruct the colonial logic that led to basis for inequality by advocating a discriminatory policy investment of Government resources. If I may quote from that paper, paragraph 133 says:-

“To make the economy as a whole grow as fast as possible, development money should be invested where it will yield the largest increase in net output. This approach will clearly favour the development of areas having abundant natural resources, good land and rainfall, transport and power facilities and people receptive and active in development.”

So, from the outset, we can see that there was a deliberate effort by the Government to channel its resources to areas with the highest potential. Of course, high potential was being defined also in a very narrow sense. In some instances and discussions, we have seen that a very rough description of this has been that any area that cannot grow certain crops is considered as being wasteland more or less. So, this is what lay the initial ground where we see that Government resources went in a very specific direction. However, over time, it was recognized that there were gaps in this. What was intended was that even in these areas that were being targeted, the resources did not necessarily go towards ensuring equitable development in that area itself. There were groups that benefited a lot more than others.

This led us to the second phase where an assessment was conducted and a publication that has often been made reference to produced by the National Council of Churches of Kenya. It was titled “Who owns Industry in Kenya.” In a nutshell, that publication exposed the racial, foreign and political elite dominance of the Kenyan economy despite the much touted Africanization of the economy policy. Yes, there was a policy in place that was channeling certain resources, but in a few years it was realized that this was, again, being captured by a certain group. It was not equitably benefiting.

The second study that is worth making reference to in this case was one that was conducted by the International Labour Organization (ILO) in 1972. It was a report that was on employment, income and inequality. If I may just make a small reference to this Report, it says that since independence, economic growth has largely continued on the line set by the earlier colonial structure. Kenyanization has radically changed the racial composition of the group of people in the centre of power and many of its policies, but has had only limited effect on the mechanisms which maintain its dominance. So, this

ILO report recognizes that, yes, the structures that were left behind were exploited by the group that played a key role in the development of this country.

But to help address this, the group made certain important recommendations. One, it recommended that public expenditure be restructured in favour of the poor sections of the population in urban and rural areas, including the least developed regions in the country. Sometimes, I think that in the discourses in this country, we think that this is a new thing. But this is something that was already recommended in 1972 by this Report.

There were also recommendations about establishment of quotas for expenditure in different parts of the country, on vital services such as education, health and roads.

Finally, it also noted that regional imbalances are a major problem. This is particularly serious because these regional imbalances are intertwined with tribalism as well as in some cases, rural/urban migration. We know that we sometimes make references to regions, but of course, in many instances these regions correspond to certain ethnic communities.

To help address some of these things, Government initiated the first Urban Household Budget Survey, which showed that inequalities were rising. In some instances, this trajectory that the inequalities were taking was comparable to those that had been observed in Latin America.

The period between, 1975 to 1978 is what in Literature has been referred to the Kenya Debate. These are debates that raged at the University of Nairobi, in which people discussed about the process of capital accumulation in Kenya and the relationship between the political elite and foreign multinationals in this process. Needless to say, this was also the period in which the late J.M Kariuki was assassinated when he articulated some of the challenges about inequality in the country. I think most of us remember his famous reference of not wanting to create a country of ten millionaires and ten million beggars.

Having gone through the initial ideological phase and the assessment phase, we then moved to the intervention phase, where the Government tried a number of initiatives to try and address these inequalities. The first one was the District Focus for Rural Development Strategy, which was largely a re-distributional strategy which, as it is clear now, was inspired by the ILO Report that I made reference to that was published in 1972. Together with that, we also have the Local Authorities Trust Fund and more recently the Constituencies Development Fund (CDF).

The last phase, like I mentioned, was the political constitutional phase where there was agitation for a new constitution. As we all recognize this country has gone through a very long process of trying to have a new Constitution which culminated to the one that was promulgated recently. One of the key issues of debate during that process that was intended to try and address some of these inequality issues in the country was the whole question of devolution. It was recognized that if things continue in the same structures

that we have had since the colonial period, then the challenges of inequality will remain with us, and the nexus of distribution as well as power needs to be shifted. This also marked the first time that inequality was seen as a constitutional issue. It was no longer a question of trying to deal with inequality just through the narrow economic lens. It is fortunate that we are having this sitting today at a time when the Constitution has been passed and we are actually implementing it. It provides us with the most important vehicle to address these questions of inequality. But this does not mean that it is going to be easy. Even in the best of circumstances, implementing devolution is a very difficult process. It is going to be even more so difficult in a charged atmosphere that we have in this country. I think this is why it calls for very strong and focused leadership to ensure that this happens.

I will just summarize in response to the request that was also put to us to share what would be some of the key recommendations about how to deal with this.

The recommendations are not new as such. They were actually debated at the national inequality conference that the Society for International Development together with other partners, both Government and Civil Society, organized in May 2006. From that, there were five main recommendations.

One is to have a correct historical and conceptual analysis of what inequality is, recognizing the fact that we have had it for a very long time. There was also a request that we tend to politicize almost everything in this country. For once, I think this, calls for very sober minds to really look at this issue. This is because it is not a question about a large community versus a small community or this region versus a big region or small region. I think we need to clearly understand issues about inequality because the implications of not dealing with it will hamper the entire country, irrespective of whether you come from a very productive part of the country; although that in itself is also debatable.

Secondly, there is need to deal with inequalities holistically and not in bits. Thirdly, now that we have a new Constitution in place and the institutional framework to address some of these things, the challenge is upon all of us, from leadership as well as the common citizens, to really work hard on its implementation. This is because if this does not get done, then a lot of the promises that have been made in this will not be fulfilled and have any positive impact on inequality.

There are institutions like the Commission for Revenue Allocation, for example, that have been envisaged in the new Constitution. This and other similar other institutions have to be really supported and strengthened. We also recognize in this country that for a long time, the budgeting process, for example, has been limited to a very small group, as it is often said, to one floor of the Ministry. Especially, at a time when the Constitution calls for much greater participation, we need to really take this one very strongly.

Fourth is actually the wide participation. Just like what my previous colleagues mentioned, in many of those communities, the main issue is not getting opportunities to participate. It is often portrayed as just demands. That is a secondary issue. Every

community needs to feel that their voices are being heard. At the end of the day, it is not going to be a winner-take-all situation. We have to negotiate many things. We have to negotiate spaces, resources and a lot of things. There will be no particular group that is going to get everything that it needs. But the bottom-line is that there must be that wide participation.

The fifth and last recommendation is the question of leadership. We are going through a very sensitive period and looking forward for this Commission, I think the recommendation that should be put forward is that there is need to call upon leadership. Leadership in this sense is not just looking at the political leadership. I know that we often try to simplify things and just put the entire burden on them. But it is leadership at every level and institution that has to play its part in this.

With those few remarks, I would like to thank you very much again for the opportunity to share with you a few thoughts.

Ms. Belinda Akello: Thank you very much, Mr. Hersi, for that presentation. As we open up the dialogue and discussion, maybe just one point that I would like to ask for your clarification. Based on the research, studies and also in light of the National Inequality Conference that you had and being alive to the recommendations that you have made, would you recommend or propose one blanket strategy or policy to help boost the economic status of this country in order to curb economic marginalization and inequalities or would you have a more ratified kind of strategy or policy in that certain regions need to have a faster process or strategy and certain regions of the country need to be taken on a slower pace?

Mr. Ali Hersi: Well, I am not an economist by profession. But I think what is important here is to recognize the varied potential that different parts of this country have. The challenge we had and are learning now from history without the famous 1965 Sessional Paper was that development was defined through a very narrow sense. It was almost like if you cannot grow maize, then that is a waste of land. But I think there is need for recognition to look at the country holistically and understand the various potentials of the various parts of this country. Secondly, and I think you made reference to that, is to recognize that the various regions are at different levels of development, in most instances, not because of a fault of their own, but the policy choices that we have made for the last 40 years. There is going to be a need to address some of those inequities. That is why in the new Constitution we have the reference to the equalization funds. It is going to help address some of these things. So, the fact that we have now devolved and have counties does not mean that we have 47 different Kenyans. We still have one Kenya. So, yes, there is need to have a plan that looks at the country holistically, but this plan must also factor in the various potentials and needs of the various regions. If I just take one example, if we recognize that a large part of northern Kenyan has a high potential in livestock production, then the industry that should support that potential should not be placed in Nairobi like we have now. We place those where the off-take is, so that as that industry grows, the multiplier effects get felt by that region.

Secondly, it actually helps in reducing the prices for the terminal markets. Right now, we have a truck that may carry 18 cows from Moyale. By the time it reaches Nairobi, the cows may have lost maybe 10 to 20 per cent of their weight. Maybe, even one has died on the way. When they arrive here, it is a take it or leave it basis. The seller is at the mercy of the buyer. If you look at the rest of the world, off-takes are usually placed where the resource is. The same thing applies to fish. Why would we have fish industries here when the fish industry is somewhere else? So, it is looking at those different bits.

I hope that answers your question.

Ms. Belinda Akello: Yes. Thank you very much, Mr. Hersi. That is all, Chair.

The Acting Chair (Commissioner Namachanja): Thank you very much, Mr. Hersi, for your presentation. It helps us a lot and also confirms a lot of what we have been experienced during our hearings. For example, we were in Lodwar and found that there is no processing firm for fish. So, it has to be transported all the way to Thika.

We shall have a few questions for you to clarify. Yes, Justice Chawatama!

Commissioner Chawatama: I am so sorry that I was not here when you introduced yourself. So, I hope that we will get an opportunity to meet again, where you can tell me where you are from and what you are doing.

One of things that have really been very sad as we have travelled throughout Kenya is to see, maybe, the perceived wealth here in Nairobi. I was naïve enough to think that, that is what will be obtaining in the rest of the country. Our first stop was North Eastern and what we found was really sad. Often, Governments come up with things like Sessional Paper No.10 that you have talked about. You can even have a beautiful Constitution and a lot of policies that should improve the lives of the people, but as you have said, it is the implementation. We have talked to many Kenyans and many of them are very happy with the reforms that are taking place and the Constitution. But at the same time, they are so broken that you wonder to what extent they will push and push for the implementation. One woman told us that they work in a salt mining company and get Kshs150 per day. Talking to many women who are involved in that kind of work, motivation is so low, because they are unable to put food on the table and educate their children. What should the Government do, in your opinion, to try and bring people to that place where they will willingly participate, whether it is in the implementation of the Constitution or just to ensure that devolution works and there is participation? This is because sometimes when a person is so broken, especially the men that we also talked to, who are unemployed and unable to provide for their families, they take to drinking a lot. The youth have resorted to taking drugs. So, when you are dealing with people who are supposed to benefit from everything that the Government is putting in place, what should be done to motivate such people? We are hoping that we will also try and motivate them somehow by writing a good report, but we want them to own that report. We want them to make sure that our recommendations are implemented.

Commissioner Dinka: Thank you very much, Mr. Hersi. We have heard a lot of statements on marginalization, inequality and so on. But yours has kind of summarized and put it in a very orderly and systematized presentation and for that I thank you. I have just one question.

When you talk about the four phases of post independence period, during the third phase, there was Government intervention. I think before that you mentioned that there was assessment by the church and ILO. Was that intervention based on those reports? How successful was the implementation during the intervention phase?

The Acting Chair (Commissioner Namachanja): Mr. Hersi, I think the District Focus for Rural Development was a very good strategy. If it was implemented, maybe we could not be having you here discussing this topic. Just for us to learn from the past, what do you think went wrong for us to be where we are?

Mr. Ali Hersi: Thank you very much for your question. May be very quickly for the judge, my name is Ali Hersi and I work for the Society for International Development.

The feeling you get in the country is shared by all of us; that on the one hand, we are all very excited by the fact that we have been able, despite very many odds and so many challenges to pass the Constitution that is being held up as a model, not just for this part of the world but for many parts of this world, especially in a situation where we did not have to go to war to do it. We have our own fights here and there, but we did not take the country apart to do it. So, yes, I think it is quite a major achievement and I think Kenyans have the right to feel proud about it.

But then the other side of the picture is also about its implementation. Like I said earlier, that is not – even in the best of circumstances – going to be easy if we had everything going for us. At the time when we are having such a charged atmosphere and there are still very many issues to address, it is going to be equally hard. But maybe a couple of things; one, my personal opinion is that we really do not have another choice. I think that if we, as Kenyans, recognize that there is no place to go back to, we will clarify in our minds that we have to push on with this thing. We should ask ourselves, where will we be going back if we do not implement this Constitution? We have had very many problems that have fractured our society and led to high levels of poverty. But, then, there is need for understanding right across, from the leadership right to the common *mwananchi* about that.

What should the Government do? In fact, I would treat it the other way round. I personally do not expect the Government to do much. But what I really expect is for the civil society organizations, groups and the various institutions whether religious or otherwise to put the Government on its toes to ensure that this gets implemented. Because we cannot hide the fact that the Government also has its own agenda and it may be more than one, considering the kind of Government we have now. It is not often that we are assured that they are singing from the same hymn book.

So, the Government has a big responsibility, but it is upon all of us to keep it on its toes to ensure that it actually implements that. I hope we can have some quick gains, but I think naturally in any processes, you try with the easy bit so that, at least, those earlier quick gains give you encouragement to deal with the harder things. So, it is a question of identifying what this might be and trying to achieve them in the shortest time possible so that there is some hope. Already, I think there are signs of this. For me, what has been going on with the Judiciary has provided hope. I mean, there was a time when people would be quite hesitant to present their cases to the courts. It will still take time, but at least, there is hope that it will not be like it used to be before. So, I think we need a few of those quick successes to give us the motivation and the energy to continue into the next bit.

Amb.Dinka asked whether the interventions were based on the reports and whether they were successful. Looking back, we can see that those interventions drew a lot from those reports. But again, it is not often that it is admitted that what we are doing is borrowed from somewhere else or is based on something else. I think it is not only the Government; I think we would all like to take credit for what we do. I think there was a lot of thought that went in by various levels of Government, but those reports certainly contributed to that. It is like the reports we do as an institution, the Society for International Development. We do not like to take all the credit, but if it can be useful; if what we have done can help other institutions to think through some of these things, we are quite happy for that. It is not a matter of having our stamp on everything. I think the ILO and the other reports influenced it, but there were also many other reports that helped.

Was it successful? I think that also brings me to my question, Madam Acting Chair. Where did we go wrong? That is a very difficult question and I think it will have many answers. I do not picture myself as an expert of that particular period. At most, I think I can share just a couple of theories where I think, in some of these cases, we went wrong. I think, one, we did not probably have the right institutional framework. We are trying to push a model like this based at a time when we had a Constitution that still held a lot of those powers in the centre. So, when we want regions to develop, I mean they must have a big say in what trajectory they want to take. It cannot be prescribed to them. I think that might have been one of those areas. It revolved around participation that was not as good as it should have been.

I think the second bit was also the question of accountability. Who in this case was holding who accountable? That is why, maybe, we saw in many instances Government getting away with all sorts of things because there was no mechanism to hold them accountable. Because our systems were still the way they were, it was difficult to really push for that.

Maybe I can just leave it at that, otherwise I can continue rambling. I think what is going to be different here is the question of participation and the question of holding it accountable; accountable to institutions that we have faith in. Previously, I do not think we had a lot of faith in many of these institutions. But I am sure the list of reasons why we went wrong is much longer than this.

Thank you.

The Acting Chair (Commissioner Namachanja): Thank you very much, Sir. I hope we have your paper.

Mr. Ali Hersi: Yes, I have handed it to you.

The Acting Chair (Commissioner Namachanja): Thank you.

Ms. Belinda Akello: Madam Chair, our next witness is fifth on your list and will also continue with economic marginalization with particular interest to the pastoralists.

Good afternoon and thank you for having the time to come to share with us on this thematic hearing on economic marginalization of pastoralist communities. Kindly tell us your names and the organization or group that you represent as you start your presentation.

Mr. Michael Tiampati: Thank you very much. First let me start by appreciating the invitation and thanking the Commissioners for the arduous task they have undertaken.

My name is Michael Tiampati. I work for an organization called “Pastoralist Development Network of Kenya”. This is an organization that seeks to push for the integration of pastoralist issues in the national development agenda. Well, I am from Narok, but our organization is a conglomerate of organizations from all the pastoralist regions that seek to consolidate their voice at the national level to address the issues that we have been addressing this morning that have to do with development and marginalization.

I am going to restrain myself because a lot of the issues that I was going to address have actually been articulated thoroughly by the previous speakers. But I will focus on the pastoralist economic marginalization from a historical perspective and contemporary perspective. We know that the Kenyan Arid and Semi-Arid Lands (ASALS) constitute about 80 per cent of the country’s land mass and it is home to about 10 million people. This is using very conservative figures based on the 1999 census because some pastoralist areas could not get results of the recent census. We have been working with a national population figure of 35 million and an estimate of 29 per cent being pastoralist. The pastoralist areas are also home to 75 per cent of Kenya’s national livestock herd and about 80 per cent of inland ecotourism interests.

With that, I will go directly to what issues we have at hand. I know – I am sure because I have been following the presentations in all the pastoralist areas – that many issues to do with why pastoralists are in a precarious position economically has to do with the policies and the disenfranchisement that has been brought about by perceptions and often – I do not want to use the word “discrimination” because a *caveat* has already been imposed, but I want to use “perception” and “institutionalized marginalization.” Perhaps that would be reinforced by the argument that in the National Archives, there are reports that prior to

or during the start of colonization, most pastoralist areas were considered the riches in Kenya or East Africa based on their herds, their territories and the like. Today, all figures by Government and other agencies indicate that pastoralist areas record the highest poverty indices in the region with northern Kenya recording more than 60 per cent. So, the question is: What happened in between? And I think that is the task that we have at hand, to try and establish what exactly happened from the time the pastoralists were considered the wealthiest to now, when they are considered the poorest and dependants of charity, Government interventions and food distribution agencies.

In terms of what role pastoralists would play or what they have to offer to the national economy, pastoralist areas, in as much as they were considered bad lands by the colonial systems due, of course, to ignorance and even post colonial Governments, these areas today are proving to be probably the future economic bases for development, based on the resources therein. For instance, we know that the livestock market in Kenya cannot be really satisfied by the livestock that we have, but unfortunately, we do not have systems that would encourage the provisions of these livestock products to satisfy the market. Our previous presenter has highlighted the hardship that pastoralists have to encounter because of lack of access to these markets at the production level, and that is one of the issues that has to do with marginalization or being considered “other Kenyans”. Because, often, we have heard even Government Ministers denying the existence of pastoralists! A case in point is in 2004 when Maasai were agitating for redress of the 1904 Anglo-Maasai Treatise on land. The then Assistant Minister for Lands said that there were no genuine Maasai resident in Kenya, while his counterpart, his boss the then Minister for Lands said that as far as they were concerned, Maasai were symbols of tourism. Essentially, that is the perception that informed policies, and pastoralists are endangered. I am saying this because I was part of the team that was working on that and we followed it very carefully.

Again, in Kenya if you want to talk about backwardness, just call somebody “Maasai” or “Woria!” and that essentially is taken to mean that they are backward and they are less developed and are not really up to modernity. Essentially, this might sound simplistic, but it is the reality that pastoralists have to live with everyday.

Based on that perception of denial of existence of pastoralists, our organization works or has, as part of its membership, pastoralists from Turkana, Rendille, Borana, Maasai, Samburu, Illchamus, Somali, Gabra, Pokot, Marakwet and the Keiyo among others. For starters, pastoralists are nomads first and foremost and, most importantly, not because of an atavistic longing for open spaces, but because the specific conditions of their environment and livestock economy impose mobility on them if they are to produce and utilize the scarce ASALS resources efficiently. That is what most actors in governance and development have missed because these areas, the ASALS, are considered bad lands and so, under-productive lands without taking into account the many resources some of which fuel the *nyama choma* culture in Kenya. So, if we were to ask where the meat roasting delicacy joints source their meat from, essentially, these are pastoralist products.

In general, the pastoralist economic situation has been made worse by continued undermining by both development actors, designers and even leadership, and this has undermined the customary tenure and management systems. Essentially what has also been missed by development actors and governance systems are the facts that there are three pillars of pastoralism that have to do with land, natural resources and socio-cultural institutions. Without those three, there is no pastoralism. This is reinforced by wise sayings. Where I come from among the Maasai, they say that there are only two things that you cannot part with or give to a friend; land and a son. So, this reinforces the importance of land to these communities. Then there subsists a certain economic confusion about pastoralists, which is closely allied to conceptual misunderstandings. Pastoral production has been consistently undervalued in part because of difficulties in costing subsistence production. This also is reinforced by the fact that IGAD - the Inter-Governmental Authority on Development – last year commissioned a study to establish the contribution of livestock to the Kenyan GDP. This sought to address the fact that the perception that pastoralism does not contribute much to the GDP and, hence probably, the justification for lack of allocation of enough resources to spur economic development in the ASALS. The study, whose draft is out, has indicated that there has been an undervaluation of pastoralist production of about 100 per cent or more. So, there is that lack of information and, therefore, lack of strategies to support this sector.

Many of the issues that I was going to highlight have actually been highlighted. But the biggest problem that has been undermining pastoralists is the restriction in terms of mobility. Mobility is an essential strategy for pastoralist production. It is not only a way of avoiding certain risks, but it is also an ecological management strategy, because the ASALS are fragile and, therefore, mobility is a necessity in order to ensure sustainable ecology that can also promote production.

There is also the aspect of land tenure. In these areas, essentially most pastoralists do not own land individually; they own them on communal basis. Management is through traditional institutions, but individualization of land ownership has come to undermine these principles and has also brought about problems. This is what my colleague alluded to in terms of development initiatives for pastoralist areas being decided in Nairobi. I do not know whether you went to Laikipia to a place called “Mugogodo” where there is a very big cereal store and yet those people do not grow any cereals because they are pastoralists.

Essentially, you see the level of disorganization in terms of planning for certain communities. So, we feel that these are some of the aspects that have brought about economic marginalization. There is also lack of knowledge of successful models for mobile pastoralist service delivery. Pastoralism has many other services such as ecological and casual services. Actually, were it not for pastoralism, we would not be talking about inland or mainland ecotourism in Kenya. Most of the interests, especially those that have to do with wildlife are located in pastoralist areas because, traditionally, they have this harmony. I mean, they have learned to live in harmony with nature and they do not destroy that because they understand perfectly well that if you destroy nature, the backlash would be terrible. But, unfortunately, the question that some of us who happen to come from areas that are considered the Seven Wonders of the World ask is:

What benefit do communities get? Why is it, that Maasai Mara and Magadi in Kajiado that are endowed with these great resources record the highest poverty figures? That is the irony. That has also perpetuated this economic disenfranchisement.

The prominence of the prevailing paradigm that says that mobile pastoralism is an archaic remnant of the past and needs to be eliminated and replaced with the western cowboy ranching model is another aspect that has really undermined pastoralists. We know – for those who have followed the history of the rangelands – that there was the introduction of ranching models based on the American models, forgetting that essentially probably those models would not have worked for pastoralists, who had their own traditional models that had sustained them for centuries before colonialism. Then, of course, there is the gradual erosion of many facets of pastoralist traditional knowledge, customary rules and regulations. This is because of the realization of the role that these traditional systems played in the production and also social cohesion that the constitutional Committee of Experts (CoE) ensured were safeguarded in the Constitution because they are still relevant and very important. In my village and, indeed, in many pastoralist areas, we do not believe in the current or modern legal system. Traditional systems are more effective because they feel that the modern legal system is time wasting, complicated and does not appear to solve the problems. So, essentially, they go back to their traditional systems that have been embraced for a long time.

Then, of course, there is the other problem of the historical takeover of territories by both the colonial and post colonial institutions and systems. We know of that famous Anglo-Maasai Treaty of 1904 and 1911 that ensured or facilitated the takeover of about three-quarters of their territories. This essentially meant that the area available for production was reduced by three-quarters and, hence, the production system was reduced by three-quarters. I am only using the Maasai as a classic example that is known globally and very well in Kenya. We also know that when the creation of the protected areas was mooted, mainly it targeted the pastoralist areas, thus depriving them of the space necessary for livestock production and also denying them certain important resources like salt licks that livestock cannot live without. Equally, there was also the denial or prohibition of access to dry season grazing areas, because those are some of the dynamics of pastoralism. So, all these factors have acted to undermine pastoralism production, thus undermining the whole aspect of their economic situation.

There is also another phenomenon that has not really been addressed and I do not know whether it emerged when you went round the country. That is about the pastoralist IDPs. Historically, we know that we claim that pastoralists were the first IDPs based on the colonial takeover of their territories. Unfortunately, when the country has been trying to address the question of IDPS, the post election violence IDPs has taken precedence and we feel that this is unfair because it should have happened across the board and these IDPs should have been considered at the same level as those of the post election violence.

There is also the lack of appropriate or timely interventions in terms of calamities or challenges such as diseases, floods, droughts and famines. We have seen that it almost takes about three months before drought can be declared a national disaster and yet we

know that these areas are faced with such challenges as floods, especially due to the changing climatic conditions. They are also faced by epidemic diseases, drought and famines and it is only by the intervention of the Ministry for the Development of Northern Kenya and other Arid Areas that a Drought Management Authority was mooted just recently – I think this year. This is the case and yet Kenya has been independent for the past 50 years. So, we see the mentalities of lack of appreciation or the production system and economic preoccupation of pastoralism. If you juxtaposed this against such economic practices like coffee growing, pyrethrum and tea, you will find that we even have institutions that have been developed purposely to address the challenges that these sectors face. So, we feel that there has been a deliberate marginalization of pastoralism and the Arid and Semi-Arid Lands (ASALS).

There is also a draft Arid and Semi-Arid Lands Policy that is collecting dust somewhere and as an organization, we have been wondering why it has not been implemented because it sought to address the same issues that we are addressing here today or the same issues that were probably raised when you went round the country in the pastoralist areas.

Then there is the question of utilization of pastoralist cultures to project Kenya as a culturally sound country for purposes of tourism. So, those of us that have had occasion to travel, have seen pictures of pastoralists being flashed in other countries showing how Kenya is culturally rich and conservation conscious. Then the question is; to what extent do pastoralists gain from this, because this is commercialization of their culture? In all fairness, are they not entitled to a percentage of whatever accrues from such ventures?

Then, of course, there is the utilization of cultural artifacts for tourism purposes and the case in point is the so-called “Maasai Market” here in Nairobi. If anybody was to take a casual stroll into those markets, he or she will be shocked to see that the Maasai are either five or ten, but their name is used to market and attract buyers, especially the tourist clientele. So, this is exploitation for monetary purposes and it is not fair.

There is also bio-piracy. We have had cases where prospectors come to pastoralist lands, they get whatever it is that they are looking for and they ship these out of the country and they have them registered and patented, earning themselves a lot of money in the process. But we have not seen any safeguards by the duty bearer – that is the Government – to ensure that pastoralists benefit from these resources that are within their lands as well as benefitting other Kenyans that are entitled to this. So, we have seen a level of unwillingness to move in and intervene.

We also have the piracy of genetic resources, like the patenting of the Maasai Red Sheep and, I think, the Somali Goat in countries that are far off, and we wonder why this has not been taken up by the Government. Of course, the question of harnessing resources like geothermal energy in Naivasha, gold in Trans Mara, the planned green energy harvesting plants in Turkana; have been harnessed. We also hear of green energy in terms of harvesting or harnessing wind in north eastern Kenya. All these are resources which are within these areas, but we have not heard the level or the extent to which the

communities have been involved in mooted these ideas and developing a benefit sharing formula.

Again, in terms of the same marginalization, we have been looking at the manifestos of the various political parties and I think it is only about five that have an element of pastoralism production and promotion for purposes of development. So, politically, there is that feeling that pastoralists do not really count that much.

In summary, therefore, there is need for appreciation of the many resources that the pastoralist areas are endowed with. These have to be harnessed in such a way that they benefit the communities by provision of essential services and also promoting education, because without education employment opportunities become elusive. There is also the need for a total evaluation value of pastoralism to be used as a tool to inform budgetary processes and development planning for pastoralist areas.

Therefore, one of the recommendations that we have come up with is that the report by this Commission recommends that the colonial and post colonial takeovers of pastoralist territories which form the foundation of economic marginalization and sabotage of pastoralist communities should be addressed in an in-depth and transparent manner in order to provide a platform for redress and justice on the basis of Article 27 of the new Constitution and Article 67 (1) (e) of the same Constitution.

Like I said before, that land forms the basis of pastoralist production. Therefore, the National Land Commission should ensure that sufficient representation of pastoralists to ensure that their issues are well articulated in the quest for redress of historical and contemporary injustices regarding land and resources.

That recommendations should be made regarding pastoralist cultural expressions and products, which should be registered and patented and the benefits accruing from the exploitation of the same be used to improve the economic situation of these communities through social development initiatives in the spirit of Article 11 of the new Constitution.

The state to put measures in place to ensure that exploitation of resources within pastoralist areas such as soda in Magadi, diatomite, gold, geothermal, sun and wind energy, wildlife, landscapes, forests and microbes is conducted through a participatory approach and agreeable benefit sharing formula developed as entrenched in the national values and principles of governance in the new Constitution.

The State to ensure that the legal mechanisms for the operationalisation of Article 204, which creates the Equalization Fund, seeks the input of pastoralist communities in order to ensure that the resultant framework is responsive and relevant to the needs and aspirations of these communities. This essentially is addressing the question of top down approaches which have proved to be ineffective.

There is also need for the State to expedite the operationalisation of the 2010 African Union Policy Framework on Pastoralism and the recommendations of the 2011 IGAD

Livestock Policy Initiative Study on the contribution of livestock to the Kenyan Economy in line with the draft Arid and Semi-Arid Lands Policy.

The State should also facilitate the participation of pastoralists in the ongoing policy discourse, especially on peace, land, climate change, wildlife, culture, livestock and other policy initiatives that are relevant to the economic well being.

The State is to implement its commitments to the Universal Periodic Review Process of the United Nations (UN). Of course, there are certain commitments that the Government was asked to implement in the last review of the same and we have seen laxity in terms of addressing issues that are relevant to pastoralists and other minorities.

The State is to expedite the implementation of the 2006 recommendations by the UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous People in Kenya with specific reference to pastoralists. We know that the State did invite the Special Rapporteur of the UN and a report was developed and certain recommendations were made that would improve the situation of pastoralists in Kenya.

The State is to ensure that pastoralists participate fully in budget-making processes both at the national and county levels. My colleague also highlighted the fact that budget-making process in Kenya is an exclusive kind of undertaking by certain individuals or a club, which should be opened up so that all communities can have an opportunity to inform this process.

Finally, the relevant State agencies are to implement fully the recommendations of the Njonjo and Ndung'u Commissions' Reports on Land Grabbing and penalize the perpetrators by making them compensate these communities that they have deprived of livelihood and economic opportunities.

Thank you very much.

Ms. Belinda Akello: Thank you, Mr. Tiampati for that presentation. We thank you for articulating your recommendations and highlighting the issues. You have informed us that immediately after the colonial period, pastoralists were regard as the wealthiest Kenyans.

Mr. Michael Tiampati: Before colonial times.

Ms. Belinda Akello: Yes, before colonial times. After the colonial times they were the poorest. What is the definition of wealth before the colonial times and after the colonial times? In what terms should we measure wealth so that we can know what has exactly changed in the pastoralist communities? You know *nyama choma* is still a delicacy from that time up to now. It has never ceased to be.

Mr. Michael Tiampati: That is a good question. The definition of wealth among pastoralists has to do with access to and ownership of land, resources within the land,

livestock herds and other necessary utilities. If somebody has enough land and livestock then that person has a large family and if he can provide for that family it means that he has enough resources and therefore a rich person.

In the colonial days the same aspects were considered in defining wealth. A case study was done in Rumuruti. The records are available at the National Archives where a DC claimed that the Maasai community within that area was the richest based on their livestock herd. The production and maintenance of this wealth depends on space and resources. After the takeover, the space shrank. Some of the resources were taken over. The livestock numbers dwindled. Some records in the National Archives indicate the hardship pastoralists who were moved from the highlands to Rift Valley encountered in the inhospitable low lands. So many animals died and so their wealth was diminished.

Towards the colonial times there was that push towards the individualization of land. The herd numbers had to be reduced. It should be understood that the large herds acted as security against certain shocks such as floods, drought, famine, and diseases. When there is drought, it wipes out almost half of one's herd. There is literature from IUCN, the World Initiative for Sustainable Pastoralism, IGAD, and the AU Policy Framework on Pastoralism. Therefore, poverty started when land was taken over.

The Acting Chair (Commissioner Namachanja): Thank you, Sir. We have a few questions for you.

Commissioner Chawatama: Thank you for your presentation. We have travelled and talked to a lot of people. One of the things that we have heard is that the most marginalized persons economically are women. Living a nomadic life I think adds a greater burden on women. How can pastoralist women economically empower themselves? If they are not able to, what happens when the head of a household dies?

Commissioner Dinka: Thank you very much, Michael for presenting clearly the challenges facing your community. Do you think the pastoralist community wants to continue indefinitely with the same mode of life or would they be amenable to accepting any kind of policy on part of the Government and other people who can help in the idea of being resettled as ranchers and farmers that is, modernizing the business of cattle keeping? Would they be agreeable to that? I ask this because a number of civil society organizations and NGOs have sprung up and they talk of keeping this situation going. They actually advocate that trying to change the lifestyle of these people will be tantamount to destroying the culture. Is that the thinking of the people who are affected directly?

Secondly, you mentioned of the resources like the Maasai Mara of which the community does not really benefit from. You have not made any suggestion as to how that benefit should accrue to the communities. Should the community share the revenue with Government or is it about employment opportunities?

Thirdly, some agronomists suggest that the number of cattle should be reduced so that the capacity of land to carry the livestock is enhanced and improved. People tend to get obsessed with the number of the cattle they have and give no regard to the quality of the cattle and destruction to the ecosystem. What do you think of that?

Lastly, when we were touring the pastoralist areas like Kajiado, Pokot and Turkana, we gathered that people are talking about getting back the ancestral land. What is your view on the real desire of the pastoralist communities? How do we resolve this issue?

The Acting Chair (Commissioner Namachanja): In relation to Commissioner's Dinka last question have you done any research to find out how many pastoralists are totally landless?

Mr. Michael Tiampati: Thank you very much. These are mind boggling questions, but I will address them. With regard to the first question about economic marginalization, yes, that is a fact. As much as pastoralists are generally marginalized, there are specific components of pastoralists that suffer double or multiple marginalizations. Essentially, our focus has been on using the existing sayings and proverbs which say that a woman is the manager of all the property the man lays claim to. Well, the approach is that if they are good managers, why can you not let them own and manage at the same time?

Some models have been developed where women have been allowed to own a small number of animals and based on how they utilize the animals for the upkeep of the family and development; some of these mentalities are gradually changing. In my home county there was a view that women cannot become leaders. The debate went on and eventually the men were asked: When you go away and you leave women home alone do they fair well? When you come back home do you find things running normally? They said yes. They were then told that is exactly what we want. Those skills they have, they use them to manage affairs of the community at the governance level. So, why deny them an opportunity to govern at other levels? They said that as long as the women do not belittle them it is okay. There are cultural dynamics that relate the relationship. However there needs to be a mentality transformation based on reality.

I should mention here that pastoralists are practical people. You do not sell theories to them. If it is something you tell them that it will work, they will ask you to prove it. If you do so, they will accept it. That is how development models have failed because most of it is based on theories. We need to bring these realistic models to them because it is one way of addressing some of the challenges that confront men. So, there is a lot of work to change mindsets and this has to be done on the ground.

There is the question of children and mobility. Indeed, this is a challenge. Some of us went through this life. The truth is that most of us would miss school in the first term that coincided with the dry spell. Models are emerging based on consultations between the implementers and the target communities. If they demand for mobile schools and it works for them, provide that. If they want mobile libraries, the same should apply. I know such models have been successful in Iran. I think the best approach is a consultative one

because the communities understand their problems and they have solutions to them. We only have to play a facilitative approach as opposed to top-down approaches.

With regard to Commissioner Dinka's question: Do pastoralists want to continue with the same mode of life? Today, pastoralism is not the same as it was many years ago. They say pastoralism is dynamic. It responds to issues as they emerge. Gradually, pastoralism is changing, but the rate of change cannot be dictated by anybody. That remains the preserve of the pastoralists themselves. Where I come from they have embraced agro-pastoralism. They grow wheat and barley because they occupy the highlands and low lands. People are now beginning to see that these practices complement each other. That has been brought about by necessities. Pastoralists will have to respond to situations the best way they know.

With regard to a mixture of ranching and farming, pastoralists know what they want. We can only facilitate. We need not impose these things on them. The ranching idea was tried but it did not work. I referred to this as the Western ranching model. This is because there is lack of ownership. When you show them the risks involved, they put their heads together and they come up with a working model. Another experience back at home is when people started subdividing their land. They realized that by doing so the livestock herd shrunk. They dismantled the fences and started using the communal resources together.

With regard to ecological destruction, I think it is as a result of confinement. Mobility is an ecological management strategy because of the utilization of the resources in the arid and semi arid lands.

Concerning the formula for revenue sharing, I highlighted in the recommendations that there are resources such as tourism, cultural expressions and so on. The revenue sharing formula should be developed by the county and national Government so that they agree on the percentages. We understand that other Kenyans are entitled to the benefit of these resources. As a pastoralist I ask myself; how do I benefit from it? Do I want money? Our economy is not monetary orientated. The pastoralists could ask for services in return, say, provision of veterinary services, infrastructure, markets to grassroots and so on.

At the Bomas Conference on the new Constitution, I heard pastoralists say that: You do not need to carry your skyscrapers in Nairobi and leave our land. They said: You have the skyscrapers because they work for you, but what is there that is benefitting us? So you do not need to carry the skyscrapers from Nairobi and leave land in order to address historical injustices with regard to ancestral land. The question to address is what we want. Is the takeover was by the settlers, yes, a case was raised during the Lancaster House Conference. They said that they wanted to buy back the land from the settlers who had developed on that land. That did not come to be. Those are some of the painful issues that will have to be addressed. They cannot be addressed in a hushed tone. They have to be addressed in an open and transparent manner so that everybody accepts whatever wrong that was done. We need to ask the question the Swahili way: *Kosa limefanyika, tufanyeje?*

These are some of the approaches we are recommending. Pastoralists need a lot of services. We also understand that these are rational communities and they will see the benefits. When they complain it is because of lack of these facilities and services. These need to be introduced, not really to pay them back but as a token of assuaging the hurt they have suffered, then they will accept that.

There is no reliable data to show the totally landless pastoralists. There are clusters based on those that fall out of pastoralism due to drought, famine and cattle rustlings. They live along highways. There are also those who have been driven away by raiding communities. A good case is Baringo, Samburu, and Turkana. There are those that were historically kicked out. They live in areas that they cannot lay claim to. What makes this difficult to come out is the social safety nets. Culturally, you do not let a brother suffer when you have something to assist him with. When they are displaced they go to their clansmen and age-sets for assistance.

I know in my own village of people who were ejected from the Mau Forest. They did not go to IDP camps. They went to their clansmen. They were shown where to construct their houses. Among the pastoralists no one wants to be called poor. It is a disgrace to be called poor. These family networks tend to shield their people so that they do not appear to be miserable because it reflects badly on the clan. So, it is a matter of pride that makes them hide some of these realities, but they do exist.

The Acting Chair (Commissioner Namachanja): Thank you very much Michael. We will benefit a lot from your presentation.

Mr. Michael Tiampati: Thank you for inviting me.

(The Acting Chair consulted with the Leader of Evidence)

The Acting Chair (Commissioner Namachanja): Thank you very much. We have consulted and agreed that we break for lunch and then come back at 2.30 p.m.

(The Commission adjourned for lunch at 1.20 p.m.)

(The Commission resumed at 2.35 p.m.)

The Acting Chair (Commissioner Namachanja): Again, fellow Kenyans, sorry for the delay in starting this session this afternoon. We were waiting for the HANSARD person. He is here now. We can start now. Maybe to start off, Emily just give us the number of presenters who have arrived now.

Ms. Emily Kimani: Thank you Acting Chair. This afternoon we have about six speakers and the one before us is listed on the programme. Kindly advise so that we organize how we will go about this.

The Acting Chair (Commissioner Namachanja): For the record before we start, I would like to let the public know that we have Commissioner Ahmed Farah, who has joined us, and Commissioner Chawatama, who has gone to attend to other issues in the office. So, I just wanted that to be reflected. Welcome Emily.

Ms. Emily Kimani: Thank you, Acting Chair. Our first speaker this afternoon is listed in the programme and he is Mr. Ahmed Haji. How are you this afternoon?

Mr. Ahmed Haji: I am fine, Madam.

Ms. Emily Kimani: I welcome you to our session and invite you to make presentation on issues affecting the minorities in the Coast Province; having sat in during our morning session where we were taken through most of the issues, I kindly ask you to be brief and specific and give us your recommendations.

Mr. Ahmed Haji: Thank you. My names are Ahmed Haji Mohammed. I come from Garsen, Tana Delta District in Tana River County. I am happy to be here to speak about 15 communities known as Tana 15 Minorities Forum, which is made up of small communities who live in Garsen District in Tana Delta in Tana River County. Despite the 15 communities living in Tana River County, they have encountered many difficulties of being discriminated against by the community and the Government. This is the reason for their coming together, so that they are able to agitate for their rights after they were unable to do this on their own. So, the Tana 15 minorities got registered on 20th August 2007 but before that it had been continuing with its activities. I would like to let you know the names of these communities, who many times face several challenges such as discrimination. I will start with the Garjen community. The second is the Malakote or the Munyoyaya. The fourth is Wata. The fifth is Galjen. Six is Madaluk. Seven is Chepkan. Eight is Ngoshi. Nine is Sekuye. Ten is Warkiter. Eleven is Bonyi, Twelve is Bajun. Thirteen is Gisare. Fourteenth is Mathora and Fifteenth, Bimae. These small communities, or as they are known corner tribes, live in Garsen. They have lived there for a long time but they have encountered many challenges. These small communities have had many problems, one of them being citizenship. We suffer due to the aspect of citizenship. We suffer when we try to access identity cards, especially the Galjen community whose many people live without identity cards up to date despite their trying to get them. Others were issued with green cards in 1994. These communities also do not have land to live on. Up to date, where they live right now is claimed by individuals from bigger communities.

On the side of education, there are very many problems here because schools where our children are educated are very far from our homes. The efforts by the communities to build schools have encountered many challenges. The school that was built in Matomba Village by donors has not been given teachers up to date. The other one that was built in Ngumo Village has a problem in that it is claimed that the land on which it was built belongs to an individual developer. Also, efforts by donors and benefactors to build a mosque in Ngumo Village have encountered opposition; some individuals from bigger tribes have claimed that the land which the Galjen community has lived on and even

buried its members in belongs to them. As for the Government, it seems as if these communities do not exist.

On employment, none of the young people from these communities has any hope of getting employment in the Government. It is saddening to see that there is not even one chief from these communities. Touching on the Constituencies Development Fund (CDF), we do not have any rights at all. We just hear about it. The thing that we get from the Government is beatings and harassment by police officers in our homes; it happened in Danisa Village in January 1999 where, we the Galjel community, were thrown out of our homes and we went to Ngumo where we had many difficulties. We are appreciative of the organisations that came up to assist us at that time. Among them we have Hori, Kenya Human Rights Commission, SEMREK and other organisations. We appreciate them. Looking at the Government as of now, especially on food, it has remained a dream to us especially the communities that are poorest – the Wata community who depend on hunting.

On the challenges that they encounter, if you see their situation you will break down in tears. We hope to have better lives and we depend on the new Constitution if it will be implemented as it is. To speak the truth, we have suffered. We have had difficulties that are not preventable and are unending. So, we ask for services like what the other Kenyans are receiving from the Government. We ask the Government to bear in mind that there are communities that live in those areas and they have a right to be there. We ask non-Governmental organisations (NGOs) to continue with their activities of helping us and we ask the Government to recognize that we exist and live in the country, and honestly we ask the bigger communities that live in the area to also consider us and to look at us as their fellow Kenyans. We are sad to note that this time when the county governments are coming in place, if we are not included in the government, we will continue to suffer to the end of our lives. With those few remarks, I thank the TJRC.

Ms. Emily Kimani: Thank you, Mr. Ahmed Haji for your brief and concise presentation on some of the issues that the minorities in the Coast Province have been facing. Now, in your recommendations you said that the Government should assist those communities. Could you be more specific as to what you want the Government to exactly do for these minority communities?

Mr. Ahmed Haji: Thank you very much. I will ask the Government to help us in many ways like involving us in Government activities; these communities are not aware of the activities that the Government is engaged in. So, we ask the Government to involve us in leadership issues and so I think that way they will understand what is going on.

Ms. Emily Kimani: I have no further questions for you. Back, to the Chair.

The Acting Chair (Commissioner Namachanja): Yes Commissioner Farah.

Commissioner Farah: Ahmed Haji, you were speaking a bit too fast when you gave the names of the 15 groups. Is it possible for you to write them down and hand them over to

the Leader of Evidence to give them to us so that we can write them down? Two, in the list, I can see that there are some groups who only belong to that place but I can also see Tana River Delta as a programme where people from all over Kenya were given farms and settled. Therefore, they have originated from somewhere. Now, when you were talking of the 15 groups, did you consider that? This is because for example you talked of Gare. The Gares live in North Eastern Province. They are a very large community. I think almost the whole of Mandera is theirs. So, if some of them were given farms in Tana River, surely those should be absorbed into the communities that live in Tana River. I can understand groups like Galjen. What was the other group you named?

Mr. Ahmed Haji: Garjen.

Commissioner Farah: This morning I was in the Immigration Department and I saw an officer who is a Galjen and when I asked him where he is from he told me that he was from Isiolo. He was recruited from Isiolo. Are you getting my point or what I am trying to say?

Mr. Ahmed Haji: Yes. You are talking of Galjen.

Commissioner Farah: He is a good officer and well educated and employed in the Immigration Department. The fact is that he is there vetting people. I thought he was from Garissa but he was from Isiolo. He told me he is a Galjen and he was recruited from Isiolo. So, really, people are free to live anywhere in Kenya. I am saying that when there is a group who do not live anywhere else but live in a particular place and then they are marginalised as a minority, then I think their case becomes clear; but if a Bukusu leaves Bungoma and goes and he is given a *shamba* in Tana River and he settles there, then he produces a lot of children by marrying four wives and so on, in the end they will be a clan. So, would that qualify as a minority group? This is my question to you. First give me the names on the list and secondly, could you answer that question? The other point is that you talked of Munyoyayas. When we visited Garissa we saw that they live across the bridge, which I am told is at the border with Coast Province. I think they live in the whole of the Tana Delta. So, when you talk of Tana River District, I think you mean Hola and Garsen districts, but the Tana Delta up to Garissa and Mbalambala is where the Munyoyayas live. In Tana River again when you say these are marginalised group, I think it is a small section of these people who left there and settled elsewhere. So, of the 15 groups, give us the genuine original and marginalised people unless you insist that all the 15 are highly marginalized.

The Acting Chair (Commissioner Namachanja): Mr. Mohammed, maybe we can all ask the questions. Jot them down and then you can answer them later. Yes Commissioner Dinka.

Commissioner Dinka: Thank you very much Ahmed for your presentation. I have some questions which are related to each other. What is the population of the 15 groups? How many citizens are involved in these 15 groups? Two, compared to the rest of the population of Tana River, what percentage do they constitute? Three, do they live mixed

with other communities or do they have a specific territory which they inhabit? Four, could you explain what you meant by saying that “the Government should involve us”?

The Acting Chair (Commissioner Namachanja): Ahmed, I wanted you to use the village where you come from, so that you can help us understand, for example, the distance between where you live and where the nearest Government hospital is and also the nearest high school. Do we have any national school there? What is the source of water and what is the furthest place one can go to in search of water?

Mr. Ahmed Haji: Thank you once again. To begin with the first question, I will list down the 15 communities and that is the first thing that I will do when I am through. I can assure you of that. On the communities that live in several areas and also live in Garissa, I would like to assure you that the ones I mentioned, none of them has their land. The area that they live in as of now is land that is claimed by other individuals. So, there is no need to say that they come from a certain area and they came to Garsen to take land. They have also come from other areas of Kenya; they have come there because a Kenyan is free to live anywhere in the country. So, those of them who have joined other groups as minority groups, to be honest they suffer along with us and they have problems that are similar to ours, especially where I come from, the Galjen community. I am sure that those of us who have joined us are people who have similar problems. I am speaking of the vetting. I will try to look into that because I am not insisting that all the 15 communities are minorities; we have come together. I will vet them and eliminate some when I go back to our forum, but as at now, I assure you that the ones who live there and probably also can be found in other areas in the country as in Tana Delta, we recognize them as minorities just like us and, to be honest, they suffer along with us.

Going back to the question that was asked by Commissioner Dinka about the numbers, as of now we do not have official figures but I expect these people to be 10,000. As for a percentage, I also do not have official figures but it could be just a small percentage as I understand it. Speaking on whether I have interacted with other people, or whether they live among other people, many times these minority communities live amongst other communities but the Galjel and the Munyoyaya many times live separate from other communities; the same is the case with the Wata community. The Boni also live separately from others. The rest are integrated into other communities.

Those I have mentioned are the ones who live separate from others. When I speak of being involved in the Government, it is like when you look at Ngumo Village where the Galjel community lives, it is a big village but if there was justice in Tana River, they would have been allocated a sub-location or even a location, so that there would be a chief or a sub-chief to involve these communities in Government activities. When we say that, we will go for elections to elect councilors. As it were, it would be a dream for this community to get one because it is small. We ask the Government to engage these people by allocating them locations or sub locations, so that they are able to understand and feel that they are also part of the Government.

I think I can now go to the third question; I am speaking fast but bear with me. On the distance of Government services to the community, you will find that schools where the

youth from Ngumo community attend, is about seven kilometers from the village. That is the first school and it is called Marembo Primary School; it is about seven kilometers away. The second school is Lazima Primary and it is about four kilometers away. So, schools are quite far from the villages. Touching on hospitals, you will find that if a person is taken ill in Ngumo, he or she has to walk for nine kilometers to Wema Dispensary; he or she has to hire a motorcycle or a car to get there. If the person does not have money, then they can die. On water, we appreciate that NGOs have helped us. In many areas they have dug wells. They dug several wells in Ngumo after many people suffered crocodile attacks in Tana River, but as of now there are several boreholes. So, we are thankful that we have adequate water. That is all I have as at now.

The Acting Chair (Commissioner Namachanja): Is it a Government hospital, missionary or a private hospital?

Mr. Ahmed Haji: It is a Catholic mission hospital.

The Acting Chair (Commissioner Namachanja): Any Government dispensary in the area?

Mr. Ahmed Haji: There is one in Garsen Village which is 14 kilometers from Ngumo Village. It is nine kilometers from Malakoteni area; it is approximately 14 kilometers away from Bilisa where the Boni community lives.

The Acting Chair (Commissioner Namachanja): You have mentioned primary schools; what about secondary schools?

Mr. Ahmed Haji: There is one in Garsen Village that is known as Garsen High School. That is the only one in Tana River County.

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

Commissioner Dinka: Just to be very clear, you said in your answer that the 15 groups are less than 10,000 people. Am I correct?

Mr. Ahmed Haji: Yes.

Commissioner Dinka: You are the secretary of these people and you look after their welfare and happiness; do you not think it is much better instead of talking about communities of 10,000, which when broken up less than 300 people per community, to push for your rights as citizens of Kenya together with the big tribes? Is it not better for you to merge your interests with those of everybody else and just insist on receiving your rights as citizens instead of asking for special rights as communities? You talk of 10,000 people from 15 communities, and Kenya has over 40 communities. I am just being realistic and I think that is the way to look at it.

The Acting Chair (Commissioner Namachanja): Ahmed, so that you know Commissioner Dinka, who is an international commissioner and is not a Kenyan, maybe as you reflect on that question you also need to reflect on how much each community takes care of the interests of the smaller communities. I think that is where we have the biggest challenge. The experience we have, Commissioner Dinka, in Kenya is that for you to get something you need one of your own there and if we can answer that question then we can really start uniting our people; so long as our leaders, whom we have put in positions, only focus on the interests of their own ethnic groups, minority groups will always feel marginalized. For example, our leaders can also reflect on your question and if they do that, they can really help our people. Thank you so much Ahmed for coming to share with us. Do you come from Tana River yourself?

Mr. Ahmed Haji: Yes.

The Acting Chair (Commissioner Namachanja): *Karibu Sana.*

Mr. Ahmed Haji: *Asante.*

Ms. Emily Kimani: Commissioners, our next witness is listed 13th on the list. How are you this afternoon?

Mr. Daniel Kobei: Fine and thank you.

Ms. Emily Kimani: Thank you for coming for our session this afternoon and you are listed as the Executive Director of Ogiek People's Development Programme, and you are representing the Ogiek community. During our hearings in the Rift Valley Province, especially in Narok, we had a representative from the Ogiek community. So, I kindly urge you to be brief and then proceed to give us your recommendations on some of the issues facing the Ogiek community. Please, tell us your full names for record purposes and also what you do. Welcome.

Mr. Daniel Kobei: Thank you very much the Truth, Justice and Reconciliation Commission. My names are Daniel Mpoiko Kobei. I am the Executive Director of Ogiek People's Development Programme. We are based in Nakuru. Our offices are in Nakuru but we work for the Ogiek across the country. So, as you have just mentioned you managed to know more about the Ogiek across the country in Narok and Nakuru; some maybe came to Kericho and Mount Elgon; I will talk in summary.

Ladies and gentlemen, on behalf of the Ogiek minority community, I wish to thank the TJRC for allowing us to look for a memorable solution. Indeed, today I speak on behalf of the Ogiek, who inhabit the Mau and Mount Elgon forests; I talk on behalf of my ancestors who struggled and never saw the liberation of the Ogiek people, and lived in fear for lack of recognition; today we are in a dispensation of a new Kenyan Constitution, but we are still wallowing in desperation and displacement from our ancestral lands. Chairperson, I think this maybe one of the key issues which you might have been told by the Ogiek people. It is about land which I know many of the minorities might have

mentioned in many of the areas. The recent implementation of the new Constitution and formation of commissions is a true indication that the Ogiek might not get a chance in devolved governments unless the train is diverted through affirmative action, which must take place. We have been deprived of land and culture because of the series of evictions and counter evictions by the Kenyan Government, leading to loss of property hence our abject poverty. You might have been told in some of the submissions which you might have gotten about the eviction in 1977 in Kinet in Nakuru County. Houses were burnt and cattle were sold at about Kshs5 to Kshs7 per head. Of course there was the closure of the school in Nesuit in 1988, after which many people were not able to go to school for a period of four to five years. The school was reopened towards the end of 1992. A number of children missed school, hence high illiteracy levels among the Ogieks have been witnessed in many areas. A few of us managed to go to school because we were deep inside the forest in Maasai Mau in a place called Sogu. That is when I started my schooling in 1977.

A series of evictions has also been witnessed in Chepyuk in Mount Elgon. You are aware that currently most of the members of the Ogiek are in Chepkitale and they have gone to court because of land; they have been deprived of their identity and recognition and their land has also been said to be a game reserve; up to today, the Ogiek of Chepkitale are still fighting with the Government for recognition. We have gone to court on various issues affecting the Ogiek; many of us have not have not received justice in our courts. Maybe the current Constitution might give justice. We and our fellow Endorios have decided to take our case to the African Union Commission, and our cases are still waiting for its admissibility.

I just want to mention the few areas where the Ogiek are settled because many at times I am asked a question like: How can we know the Ogiek? It might not be easy. They Ogiek are just like any other Kenyans that you see around. The Ogiek, as a minority community, are approximately over 20,000 people. This is from records we have had for some time, but as we are talking we are over 30,000. I am also the secretary of the Ogiek Council of Leaders. We have been working with the Mau Task Force, trying to see how we can resettle the Ogiek in Mau Forest Complex, though it has taken more than the time it was scheduled to take place.

The Ogiek people in Mau are over 15,000 adults and live in areas like Marishioni, Nesuit, Sururu locations, Sogo in Maasai Mau, Ngaroni, Kiptongo, Tertit, Tinet, Sainao, Sasimuani, Alapirit, Ngareta, part of Kipkurere in North Tinderet, Nungulu, Seregoni, Soget, Endeno and Maji Mazuri in part of Koibatek. The remainders of the Ogiek live in Chepkitale area of Mount Elgon. The first time the Ogiek were registered or recorded in literature books was in 1896 by somebody called Chandler who said that the Ogiek had unique physical features from other tribes they were living with.

He was reminded of the Mongolian tribe and he reached a conclusion in 1974 that there is nothing in the traditional Ogiek life like hunting and gathering which would indicate a pre-adaptation and plain environment other than pastoralism or agriculture.

The Ogiek have had their rights violated and lack Constitutional recognition. Right now, we are said to be minorities but the trend we are seeing is that no Ogiek has a got a chance in any of the commissions to implement the Constitution. Some of the laws have criminalized Ogiek cultural activities like hunting which has been demonized to be poaching and so the Ogiek have no chance but to try and find ways of living with the new environment of trying to learn pastoralism or agriculture. You must be aware of the issues of land but on representation, the Ogiek have never been represented in Parliament. The highest representation has been a ward of councilor which as we speak, there is a case in Kuresoi where one of the wards where the Ogiek used to be councilors has been made broad to deny them a chance because we have no numbers. We also suffer frequent excision of land and logging is one of the issues and there is also the issue of the Mau Complex Forest but we have been told that those who came have a chance to go where they came from. The Ogiek have also been arrested because some people have come with title deeds to their land.

So my recommendation is that the land be discussed as per the Ndungu Land Report and to respect the Ogiek traditional land boundary because that is one thing which has been violated in a big way. The intended evictions should be stopped and the Ogiek should be allowed to stay in their own land. The Government should develop policies that recognize the existence of the Ogiek or indigenous minority communities and ratify international instruments which recognize indigenous and minorities. There should also be an amendment of the Forest Act and respect for the Access and Benefit-Sharing (ABS) Protocol which was recently adopted in Nagoya, Japan. There has been loss of property by the Ogiek and we should be compensated including for what happened in 1977. We will try and make one comprehensive document so that we can have a more organized document.

We also recommend that the issue of Mt. Elgon be looked at because there is still a lot of fear and the Ogiek being minority, the other communities do not want them to be said to be Ogiek. Some of them try to say they are Dorobo. Finally, I may not talk about all the issues of the Ogiek but I will give you a chance to ask questions and I will answer where possible.

Ms. Emily Kimani: Thank you for your presentation. In the beginning of your presentation you said that the Ogiek community has been deprived of their culture. Please shed more light on that.

Mr. Daniel Kobei: They have been deprived of their culture because when many other communities come, their language is at risk. There is also the issue of hunting as the Government does not give a chance for the Ogiek to hunt anymore because of the KWS wildlife laws. They are also not given a chance to practice their culture because the forest has been destroyed.

Ms. Emily Kimani: Thank you! Please comment generally on illiteracy and the issue of the girl child.

Mr. Daniel Kobei: The girl child is wanting and so far I think we have three Ogiek girls who have gone up to the university level but none of them has a job. Many of them because of early marriages do not get a chance. When there was logging going on in Mau Forest, many of them were married off and returned after the job was over and so there is a lot of illiteracy of the girl child. I cannot say the percentage but it must be over 90 per cent.

Ms. Emily Kimani: In light of the issue of education, what has your organization done to empower the Ogiek people?

Mr. Daniel Kobei: We have created awareness but we cannot get donor funding for education because it is said that Kenya is offering free education.

Ms. Emily Kimani: Our Constitution has tried to define marginalized groups but not minority groups. What would be your definition of minority group?

Mr. Daniel Kobei: That is a tough question but according to us, a minority group is in terms of numbers and culture; how culture has played a role. You must also be indigenous minority because I heard one of the Commissioners say that if you are in Isiolo but from Bungoma and you are the only one, you cannot be a minority in Isiolo. But the best definition is that a minority should be indigenous meaning you are where you were born but not where you migrated to.

Ms. Emily Kimani: Thank you!

The Acting Chair (Commissioner Namachanja): Thank you, we will ask you a few questions for clarification.

Commissioner Farah: Daniel, we have been all over the Rift Valley and quite a number of places we have been to, we have come across the Ogiek and they have presented. For example, the Mosop of Mt. Elgon call themselves the Ogiek or Elgon Maasai and they were given land and later on the Sabaot took the land from them because they went back to the forest. Do you recognize your culture as being people of the forest? If you do, then whenever there is climatic change either you, the Ogiek, could destroy the forest or there are others who are related to you who migrate to where you are, invade the forest, destroy it and when the Government wants to restore it, you suffer as the Ogiek. Do these groups all belong to the Ogiek or the Ogiek are only found in specific places? If you are of the school who say the Ogiek are everywhere; they are in Mt. Elgon, Trans Nzoia, Trans Mara, Nakuru, Mau Narok and many places, which Ogiek are you talking for? If you are talking for the whole Ogiek group, what is their population in different areas or if you do not think Mosops are part of your group, then narrow down and tell us who your real Ogiek are, where they are found and how many they are.

The Acting Chair (Commissioner Namachanja): In relation to Farah's question on the forest, you mentioned that the Ogiek people are not able to practice their culture because the forest is being destroyed. Elaborate a little bit more on the importance of the forest to

the Ogiek culture. You also mentioned that there is a group of the Ogiek who live in Chepkitale. I thought there was a resettlement programme for this particular group and the reason that programme was put in place was to protect one of the water catchment areas but the problem is that the Ogiek community from this particular place keep on going back to Chepkitale where there are no services in terms of school and hospitals and partly the reason they were to be settled in Chebyuk so that the Government can provide such services.

Mr. Daniel Kobei: Thank you! First, I wish to say that I am speaking for all the Ogiek in Kenya. Secondly, those who are giving different names are not sure they are Ogiek or not but I am very sure of who I am. Those who speak the truth about the existence of the Ogiek, most of them are masquerading as Ogiek because of land which we all know about. The migrants are the ones who have come and they are not sure of how to identify themselves. So we know that they have even come to your offices severally to make presentation but I think you have mechanisms of identifying the true Ogiek.

On culture, the Ogiek are still in Mau and they are interested in retaining the forest the way it is for the sake of practicing their culture in terms of beekeeping, gathering of wild fruits, herbs and such like. This is an environment they are used to. They are not used to where there is no water. They are used to a lot rain, lots of water and a cool environment. If you take them to Isiolo or the other side, you are sure they will all die. So, the number of these people including the Mosop mentioned in my paper, in all the areas where they can be found... The population is around 20,000 but those who are in the Mau Forest Complex are 15,000 adults according to our recent Ogiek census because of resettlement with the Mau Forest Task Force. The other over 5,000, we assume to be in Chepkitale.

On the issue of the catchment area, the Ogiek went to Chepkitale because of the fear of conflict in Chebyuk. They are well wishers of the environment and they wish to protect it but all of us who are aware of the conflict in Mt. Elgon, it was targeting the Ogiek. Some of them said that they had to wipe off the Ogiek to get the land. So, they were smart enough and went back. You cannot isolate the forest from the Ogiek; they will still follow the forest but they do not destroy it. They used to be forest guards in Mau before the issue of resettlement came into place.

Commissioner Farah: So what you are saying is that the Ogiek are 20,000 adults; 15,000 of whom live in Mau Forest and 5,000 of whom live in Chepkitale.

Mr. Daniel Kobei: The figures may differ!

Commissioner Farah: Therefore, the Ndorobo are not Ogiek?

Mr. Daniel Kobei: Those of us who did history those years must have heard the word Dorobo; it was a derogative name which was used to talk about poor people, those who did not have cattle. It is a word from the Maasai which means poor people without cattle but it has been misused because every person who is poor even in Mandera was said to be like Dorobo. However, the true Ogiek are not Dorobo, we call ourselves Ogiek but if you

nickname me Dorobo that is not my name. I am from the Ogiek community and there is a big difference.

Commissioner Farah: But derogative names aside, are the real Dorobo people Ogiek?

Mr. Daniel Kobei: I think you are pushing me to the corner. People used to nickname us Dorobo but we call ourselves Ogiek. There is a big difference!

Commissioner Farah: Come now to the living in the forest. I know that beekeeping and gathering of wild fruits and herbs is your way of life and culture. But coming to modernity and climatic change; conservation of water catchment, how will that impact resettlement from the forest of the Ogiek?

Mr. Daniel Kobei: All I know is that if we have been given land within our own territory, we know how to live. That does not mean that we are going to destroy the forest because we have been there. We only live and that does not mean that we are denying the chances of people going to school or civilization. We are still within the environment where we feel comfortable. Our greatest threat is agriculturalists. If an Ogiek can farm one acre, that is a lot of land but if people come and cut down all the trees and have a wheat plantation or tea. That is our greatest threat!

Commissioner Farah: That was before but now everybody including the Ogiek, the Government wants to resettle them away from the Mau water catchment. But is true, therefore, that by removing you from the forest and giving you a piece of land not far away from the forest and resettling you, will that be comparable to removing a lion from the savannah plains and bringing it to a zoo?

Mr. Daniel Kobei: I think I mentioned that it is like removing a fish from water. That is the best I can say. The one of the zoo is different. That will be the worse part of it because that is why we have been working with the Mau Taskforce trying to come up with an acceptable resettlement procedure.

Ms. Emily Kimani: Thank you! I hope you have left us with your paper so that we can read it later in detail. Thank you for coming.

Our next witness is Mr. Wilson Kipkazi.

How are you Mr. Kipkazi! You are the representative of the Endorois Community; so please feel welcome.

Mr. Wilson Kipkazi: I am the programmes co-ordinator, Endorois Welfare Council. We have our offices in Nakuru and I am an Endorois. I used to work at a bank until I was 36 years old when I quit and became a human rights activist. The Endorois are a minority and marginalized community living in Baringo County. They are also found in Nakuru and some in Laikipia counties. They are estimated to be about 60,000 according to our own analytical statistics that we have tried to compile. However, the Government of

Kenya in the previous Census gave us No.602 on a Friday yet the Census was starting on Sunday. So we did not reach our people to tell them about the code we were given to declare who we are. Therefore, about 10,300 were able to use the code.

They are a pastoralist community whose lives revolve around Lake Bogoria but were also in Rumuruti, Laikipia and up to Nyahururu. We used to border the Maasai in the south, the Samburu in north east, the Pokot on the other side and the Ilchamus in the west side and the Tugen to the south. The Endorois are peace loving people. Before Independence, the colonialist drove them out of Laikipia completely and pushed them towards the hills. They formed ranches and kept cattle and there used to be frequent fights between the colonialists and the Endorois over the land but they were overpowered. Immediately after Independence, the same land which was supposed to come back to the Endorois was sold. Therefore, we had absentee landlords from Nairobi and elsewhere who did not even know what sort of land they were buying.

In 1973, the Endorois were further evicted from their reserves around Mochongoi Forest. In 1974, they were pushed down by the Government and the land was gazetted as forest. Around the same time, Lake Bogoria National Reserve was formed and a number of people lost land. Unfortunately, during the Moi era, the same land was converted into a settlement scheme which was claimed to be a forest. Instead of settling the Endorois, the Moi Government settled other people.

One of the factors that contributed to the ignorance is that most of the Endorois people being pastoralists did not consider education as anything because livestock was the key to life. Our parents struggled until 1963 when they were evicted fully from the game reserve and were compensated with Kshs3, 050.

In the process, we started a struggle as activism during the Moi era. We were arrested and jailed but we did not give up. In 1998 we went to court to challenge the Government and it took us six years up to the High Court and we lost in 2001/2002. We then proceeded to the African Commission on Human Rights Tribunal where the Attorney-General and Solicitor-General were attending on behalf of the Government. It took us from 2003 to 2010 when it was concluded and recommendation given in favour of the community. So there have been struggles even like mining. We have ruby in our area where the Government brought an investor and unfortunately when we were struggling in 2001/2002, we had known our rights and so we wrote a memorandum. The investor later reneged on the memorandum and so the community decided to tell them off. One of the reasons was that they were polluting the water, spoiling the environment and we petitioned the Government and they removed them. To date, we still have the rubies underground because our people are pastoralists and do not mine.

We have also had frequent attacks from the Pokots through cattle rustling. The Pokots are armed to the teeth with guns but we do not have any. The most recent incident was the issue of the Ilchamus where two people died. This is aggravated by the issue of the boundary because when the IEBC came, they demarcated land putting the two communities against each other and marginalizing the other more. The Ilchamus and the

Endorois speak different languages and we wanted each community to be given wards on their own.

Another issue is after the ruling we felt that the Government did not want to be party to the protocols that they had signed on the African charter because the Government of Kenya is a party. But after the ruling, we had the Minister for Lands, Mr. Orengo, coming to receive the document with us but to date nothing has happened. Last week we met Government officials and they said the whole thing relied on the direction given by the Attorney-General which to date we do not have. Therefore, some of the issues that we have are documented and we thank you for coming to see the Endorois on the ground. We have given you a lot of literature on this and so my recommendation is that the implementation of the African Court ruling will really help us. This is an expensive ruling that took us six years arguing and there are issues in the ruling like the recommendation recognizing the rights of ownership of Endorois and restitute them to their ancestral land. This is what we want from the Government; that the Endorois are also recognized as a community. We thank the Government because they have already recognized us by giving us a code as a tribe.

On the issue of payment of compensation, we want the Government to compensate us. This is one of the recommendations that were made. There is need for us to be paid royalties. We know we have one big hotel in our area around the park and it makes good money. However, it does not have the corporate social responsibility. So, we want them to give back to the community. The Government had also been told to register us and they have done so. It is part of the implementation.

The other issues that I have as part of recommendation is that in parts of the land that we lost in Laikipia, of course, we have people still living in Laikipia as pastoralists, moving from one area to another one. They have no land, school or roads. There are about 3,000 people living around Rumuruti. We want them to be recognized as such and given land. That is what we want. If anything, the Government should also compensate us for not giving us our land. The other one is that we also want the land held by Kuki Gallmann. This lady has really frustrated us. She is still keeping wild animals on our land. How she got the land, we do not know. So, we want this land to revert back to the community. It should not be free for all. At the end of the day, this Mzungu will go back to where she came from.

We also want to involve the Government to recognize that there is an indigenous community. I know they say that everybody is an indigenous person. But there is a definition that has been given by the UN and the African Commission that it is about resources and issues that relate to the people. This Laikipia conservancy should come back to the people of Endorois.

We need the Government to put in place infrastructure. Since the time we started the struggle during the Moi time he said: "You will see me. You will know who I am." Actually from that time we never had any Government support regarding our land issue.

Immediately, he left power that is when we started seeing the Government working in our area. So, to us, change was as good as a rest as they say.

On the issue of land delineation, I must convey here that it is a challenge. Now we have a fight with our neighbouring community who are also a minority, the Ilchamus. They are also suffering like us. But when it comes to political instigation and with the only resource that they know they have, when they are told their land is likely to go when you are mixed with another community, they fight to the last man. So, there is a need to make proper demarcation of the two communities so that there are proper boundaries. Of course, grazing is not a problem provided somebody does not live on the other person's land. But grazing can be done across the two communities. They have never had a problem with that.

Until the other day, this problem was not there. It has been precipitated by political games that confused people. We also have people who lost their jobs during our struggle. These were the chiefs. There were those who were soldiers. We want the Government to make sure that those people are compensated. What happened is that during our struggle, the Government directed the chiefs to arrest us, but they could not us. So, they lost their jobs but it was not their fault.

Lastly, I am calling upon the Government, through this Commission to ratify ILO 169, so that they can address these issues. I know it has been an issue. It is a political process, but the Government should make sure that this ILO 169 which talks about rights of minorities is ratified. It has been ratified by other countries. Thank you.

Ms. Emily Kimani: Thank you, Mr. Kipkazi for your indepth presentation on the issues facing the Endorois Community. I have a few questions for clarification purposes. My first question is a confirmation of the statistics on the number of the Endorois people.

Mr. Wilson Kipkazi: On that one, the statistics that we have are based on the census and they were counting our population by locations and sub-locations. So, we went to the chiefs to give us the figures that they gave out to the statistics. That is how we compiled our statistics.

Ms. Emily Kimani: If you could, once again, confirm the number for me.

Mr. Wilson Kipkazi: By that time, it was about 63,000.

Ms. Emily Kimani: My second question is about the court ruling that you have talked about. What efforts has the community made in making sure that these findings of the court have been carried out?

Mr. Wilson Kipkazi: We have done so many things. One, we have sensitized the community to be able to address the issues in terms of if the land is reverted back. So, we decided to form committees that comprised of the people themselves; the elite of the Endorois Community. We have a boundary committee. We have a compensation

committee. We also have the management committee, so that by the time the Government hands over, of course, it will become a community thing. We will be ready to manage it and to do what it is bound to.

Currently, we are about to do mapping of our land. We are talking with the Government to make sure that we delineate our land and make sure that it is known where the Endorois live.

Ms. Emily Kimani: My other question is about the Laikipia Conservancy that you have given as part of your recommendation that it should be given back to the people. Since its establishment, has the community benefitted in any way from the conservancy?

Mr. Wilson Kipkazi: No, we have not benefitted.

Ms. Emily Kimani: Thank you very much. I have no further questions for you.

Commissioner Farah: Could you, again, go over the delimitation of the territory for the Endorois Community? You talked about living in south Baringo.

Mr. Wilson Kipkazi: Endorois is comprised of 16 locations. These locations are actually a block. They extend to Laikipia and Nakuru. The Endorois locations we have in Baringo are Begebon.

Commissioner Farah: In Nakuru?

Mr. Wilson Kipkazi: In Nakuru, we have Waseges. In Laikipia, there is a location in Rumuruti called Mundumeru. It is a Kikuyu name. I do not know what it means. That is where the Endorois live. They are just squatting on the land. The land has been bought by other people. But these people have never come there since they bought it in the late 1970s through GEMA. It is unfortunate that even the elders also tried to ask them how could buy it. The former Minister G.G. Kariuki told them, this is not meant for people from the other side. So, it was meant for his people. He said you are not members of GEMA. So, they could not access land themselves.

Commissioner Farah: But your people live in there?

Mr. Wilson Kipkazi: Yes, they live in Rumuruti area.

Commissioner Farah: The land is owned by others?

Mr. Wilson Kipkazi: Yes, the land is owned by others, but the people have been there since.

Commissioner Farah: How will they remove you from there?

Mr. Wilson Kipkazi: We will struggle. You saw what happened in Ol Moran. They tried to remove the Pokot, and it was war. They were neighbouring each other.

Commissioner Farah: That Rumuruti Location is called what? Is it Waseges?

Mr. Wilson Kipkazi: No, Waseges is in Nakuru. Regarding the one in Waseges, the same GEMA bought it. The other day, they took IDPs there and it has been war.

Commissioner Farah: So, you do not know the name of that one in Rumuruti?

Mr. Wilson Kipkazi: It is called Rumuruti. I am talking about Rumuruti area.

Commissioner Farah: Next?

Mr. Wilson Kipkazi: We have Muchongoi in Marigat District and Marmanet Forest in Laikipia.

Commissioner Farah: Marmanet is also in Laikipia?

Mr. Wilson Kipkazi: Yes, we were also there. We are also in Muchongoi in Marigat District. We are also in Kimoriot in Baringo.

Commissioner Farah: When you talk of the conservancy, you are talking of the Rumuruti one?

Mr. Wilson Kipkazi: No. it is stretching around Kinamba area. Rumuruti is further east, but Kinamba is on the eastern part, but on the north, Laikipia West.

Commissioner Farah: So, are these lands also your grazing area?

Mr. Wilson Kipkazi: The conservancy?

Commissioner Farah: No, all these places, Waseges, Rumuruti, Marmanet?

Mr. Wilson Kipkazi: Yes. Leave alone grazing, we also live there.

Commissioner Farah: Are you related to the Maasai and the Samburu?

Mr. Wilson Kipkazi: Somehow.

Commissioner Farah: When you are grazing, do you shift your households like the Maasai's do, or are your households permanent and only the animals move?

Mr. Wilson Kipkazi: We used to move earlier, but currently, since land is changing every now and then, people no longer move but they move with their animals.

Commissioner Farah: My question now, you are an educated man. I am very happy about that. You are also a good advocate of your people. With the new Constitution, where we are heading for counties, which counties will you belong to?

Mr. Wilson Kipkazi: We are in Nakuru, Laikipia and Baringo counties.

Commissioner Farah: Do you have a ward? Forget about the administrative areas, I am talking about elective areas, do you have a ward in Nakuru?

Mr. Wilson Kipkazi: Our neighbours are Subukia and the majority of them are Kikuyus.

Commissioner Farah: Waseges now will belong to which ward?

Mr. Wilson Kipkazi: Waseges will belong to East Subukia.

Commissioner Farah: And Rumuruti?

Mr. Wilson Kipkazi: Rumuruti Ward.

Commissioner Farah: So, you will at least elect your own person?

Mr. Wilson Kipkazi: But we cannot elect because we are the minority. We are few in number.

Commissioner Farah: What about Muchongoi?

Mr. Wilson Kipkazi: In Muchongoi, we are not sure because the settlers also are many. But currently, they have been merged. So, the only one we can get now is the one called Muchongoi. But the previous one, we had has been merged with Ilchamus. We cannot make it.

Commissioner Farah: Muchongoi is in Baringo?

Mr. Wilson Kipkazi: Yes.

Commissioner Farah: So, there you can get at least one parliamentarian?

Mr. Wilson Kipkazi: Yes. They are also in Koibatek District which is still in Baringo. However, there we cannot make it.

Commissioner Farah: You have been fighting for your people for a long time in the old dispensation. With the new dispensation, there will be governors and senators and the central Government will be influenced by the county governments. How do you intend to fight for the rights of your people in future?

Mr. Wilson Kipkazi: One, we expected to be combined as a community and not separated further. There is one location which has been pushed to Ilchamus Ward. Those will remain marginalized forever. So, we would want them to come back and stay with the others.

Commissioner Farah: You remove the Endorois from the Ilchamus Ward?

Mr. Wilson Kipkazi: Yes. Even if it means keeping us in one ward, we will appreciate that.

Commissioner Farah: Keeping the Ilchamus and the Endorois together?

Mr. Wilson Kipkazi: No. Give each one a ward independently. Mixing us amounts to putting us on a collision course. First of all, they have their own personal differences. You know how pastoralists live; stealing, fighting, quarreling here and there. At the end of the day, it leads to fights. If you put them together with us, it is like bringing me to your house, we stay together and you expect me to live peaceful with you. It will be even much worse. Let the Ilchamus stay alone and the Endorois stay alone.

Commissioner Farah: Where will you put the boundary?

Mr. Wilson Kipkazi: There are existing boundaries which have been there since time immemorial and they know them.

Commissioner Farah: Forget about the elective wards of the county, how about the councilors?

Mr. Wilson Kipkazi: The councilor is the leader of the ward.

Commissioner Farah: I am talking of the old councilors.

Mr. Wilson Kipkazi: We used to have councilors and they used to represent the Endorois. The Ilchamus had their own councilors. We used to have our own. But now when they have lumped us together, it is a challenge.

Commissioner Farah: You can sit down and compromise.

Mr. Wilson Kipkazi: We do not speak the same language.

Commissioner Farah: How about a treaty; the elderly people coming together?

Mr. Wilson Kipkazi: In any political issue, there is no agreement. It is like telling us now, Uhuru and the rest agreed and said we will elect you. Come elections day, people will vote differently. So, there is no treaty about elective posts. It is very challenging.

Commissioner Farah: Thank you.

Commissioner Dinka: I think you listened when I was talking to one of our brothers who testified before you did. My problem is how smaller a ward can you have? If everybody wants a ward at clan level or less than clan level, we will have so many wards.

Mr. Wilson Kipkazi: No, I do not think that is what I have said. What I said is that we can make the numbers that we need to get a ward.

Commissioner Dinka: What do you mean about numbers?

Mr. Wilson Kipkazi: In the area I am talking about if you merge us together, we can make it. However, when you divide us and put us in other areas, it is like you are trying to scamper us further.

Commissioner Dinka: How different are the Endorois from the Ilchamus?

Mr. Wilson Kipkazi: One, they do not speak the same language.

Commissioner Dinka: Yes, but nobody speaks the same language in many African countries, but they have at least one common language, like Kiswahili, English or French. But that does not mean you are completely unintelligible to each other. You can still talk to each other.

Mr. Wilson Kipkazi: Of course, we can talk. I agree with you we can talk. But you see from time immemorial, leadership has never been merged. That is a new dispensation to us also. Everything new is always a challenge to everybody. Change is not welcome. I agree with you that people can talk but where there is an opportunity for people to be given their own cake, even if it means one, why not?

Commissioner Dinka: The other thing that I cannot seem to understand and nobody has really made me understand so far is what is the lowest figure that makes anybody qualify as a minority group?

Mr. Wilson Kipkazi: There is no given number, but it depends on issues of development, resources and representation. That is how it has been described in the African Charter or the UN; that any community that has been marginalized and seems to be lagging behind from the others, becomes a minority on its own. So, if you do not have representation, are poor, you have not gone to school and you are...

Commissioner Dinka: Could we not talk in terms of affirmative action then? The affirmative action in education, health, infrastructure and everything; It does not necessarily mean to be given a level of government whether it is county or constituency. Why can we not say that group which was cut off from your group and went to Ilchamus? I do not know whether the Ilchamus are better off. I have seen the Ilchamus also.

Mr. Wilson Kipkazi: They are not better off.

Commissioner Dinka: So, why can we not fight for everybody to have some kind of affirmative action in all things?

Mr. Wilson Kipkazi: In terms of trying to get the said wards, if they think the population of Endorois around that area can make one ward, why not give them? We are not violating the rules that have been put in place given the geographical conditions of the area and the population scarcity. We are saying if it is possible, put the Endorois together. What killed us in the past is that we used to vote in Mogotio Constituency, Baringo Central Constituency, Laikipia and it became a challenge to elect our own representative. If we are put together, we can actually elect an MP. We qualify to have an MP because even the others have 23,000 people. If we are put together, we could have about 40,000 people.

Commissioner Dinka: Are you in the three areas, Baringo, Laikipia and Nakuru?

Mr. Wilson Kipkazi: Yes.

Commissioner Dinka: You are not contiguous territorially. You are separated.

Mr. Wilson Kipkazi: In the map we are together. But this one has come in to marginalize...

Commissioner Dinka: So, you are in different places?

Mr. Wilson Kipkazi: Yes, but we are still in the same area. It is not that there is another community that has separated us. No.

Commissioner Dinka: There is a term for this in developed countries that have this kind of thing. It is called gerrymandering.

Mr. Wilson Kipkazi: Yes, whereby you bring a small population to this...

Commissioner Dinka: It is a political decision. It is not a rational decision.

Mr. Wilson Kipkazi: You know when you are gerrymandered into a place where you are not wanted, nobody will help you forever. If you go to Nakuru, you will get shocked. There is no school. The representative comes from another tribe, the Kikuyu. So, they do not even care about them. They live like monkeys. They are there and vote there.

Commissioner Dinka: I am still confused that I do not know what to do.

Mr. Wilson Kipkazi: In Kenya, we still have a lot of challenges, especially now that we have minorities and small groups coming up to speak and know each other. It is a time bomb unless this Commission addresses the issues honestly and finishes the problem; we

will have a historical fight. I am a young man. When I went to school, I went to another level that my parents and grandparents never went. I believe another generation will come and problems like unemployment, population explosion and poverty will come with that. It will be chaos. So, the issue here is, one, to contain it to make sure that every community has got their own territory. They should apply their cultural traditions of how to contain the attacks.

The Acting Chair (Commissioner Namachanja): Thank you, Wilson. You have given us one option where they can be merged. Your proposal is to put them together to get the majority, so that they can elect their own. Do you have any other proposal apart from merging the two communities? I can use the example of Mt. Elgon where we have the Sabaots, Teso and Bukusu. But the way the geography is there is that you cannot curve them out, unless you transport them from where they are and give them another land. In such a situation, what are your thoughts on how to go about sharing our political seats?

Mr. Wilson Kipkazi: If you consider it under a minority, there is that provision in the Constitution that says that representation for minorities should be there. So, there is a provision in the new Constitution and even I think in the Electoral Bill. Since they are indigenous there, they should be considered for a seat of minorities. There is a seat for minorities and women and youth.

Commissioner Farah: Wilson, you went to the African Court?

Mr. Wilson Kipkazi: The African Commission on Human and People's Rights.

Commissioner Farah: You did not go to African Court?

Mr. Wilson Kipkazi: No.

Commissioner Farah: You cannot go there unless you exhaust the local courts. You went where?

Mr. Wilson Kipkazi: I went to the African Commission on Human and People's Rights.

Commissioner Farah: What was their recommendation?

Mr. Wilson Kipkazi: The recommendation was that the Endorois be given back their land. Actually, these are the recommendations in the document here. It borders on the land, compensation for loss all that time because Lake Bogoria was generating income. It is a tourist destination and the county councils have been getting the money and enjoying themselves, but nothing went to the community. There is the issue of access to the lake for grazing during serious times like now. One of the things was registration which they did. We thank hon. Martha Karua because she came to the court. She was asked by the commissioners, why have you not registered this organization, so that they can legally represent themselves? Martha Karua promised that she would do it because she was not

aware. When she came back, she called us to her office and she registered us. So, that is why we have Endorois...

Commissioner Farah: Could you give the Leader of Evidence all your grievances which you presented and then you mark the ones that have been solved? You give her the ones which have not been solved.

The Acting Chair (Commissioner Namachanja): All the best.

Mr. Wilson Kipkazi: Thank you very much for listening to me. It is an opportunity that rarely comes and we exploit it. Thank you.

Ms. Emily Kimani: Commissioners, our next witness is known as Malasen Hamida. She is not listed on the programme and she will be representing the Nubian Community issues from Nairobi. As I invite you, I wish to point out that in our hearings around the country; we have managed to hear many representatives from the Nubian Community. I remember in Kisumu, we had representation in Kisii. We are glad that finally, we have a female representative from the Nubian Community. We also have upcoming Nairobi hearings where again it will be a platform for the Nubians to raise their issue. So, my plea to you as I invite you is to be brief as to those issues and then proceed to give us the recommendations. You will start by giving us your full name for record purposes and tell us what you do for a living.

Ms. Malasen Hamida Twahir: I am Malasen Hamida Twahir. I am the secretary of Nubian Rights Forum, which is a registered organization. I am a community developer and community health worker as well. Since you said I should be brief, I will not go deep into the background of the Nubian Community. I will narrow down my issues to women challenges and issues that are affecting women in Kibera among the Nubian Community.

All the women in the Nubian Community are Muslims. So, it is going to be a cross-cutting challenge that is facing Muslim women and the Nubian Community. Getting down to the point, we have demographic details of the population that is the population size and how it is stratified. That, usually, depends on the proportion of the dependants who are youth, children and the aged. All of them are mostly dependent on the women. The women are not formally employed. They are usually in less paying jobs. Sometimes, they do inferior jobs whereby they only do casual labour.

Nubian women lack the security of tenure. There is no security of land tenure in Kibera. The land tenure also determines the citizenship at times. You are described as a citizen when you belong somewhere or live somewhere. This is because you must have been living in a particular area for a certain period of time for you to become a citizen.

So, a Nubian child has a challenge whereby we find that the youth have a problem in acquiring identity cards and passports. Last year, there was a ruling in favour of the Nubian child from the African Commission. However, the ruling has not been

domesticated so far. We, as the community, feel that still the Government has an issue with the ratification because we still undergo vetting process.

Generally, we lack services. We have an issue with affordable education. Education is not affordable. We have a problem with health services and general infrastructure. In terms of education, currently, the Government has formulated mitigating strategies to actually help the girl-child and even the youth in terms of the devolved funds. The Nubian Community and all the Nubian women are under-represented and she is not in a public decision-making domain. I will give an example of CDF. There was an issue whereby during the election period most of the Nubians actually voted for the PNU while the other communities which are the majority within Kibera voted for ODM. The patron of the CDF is the Member of Parliament and our MP is from ODM. With less support and the voters of the Nubian Community who did not vote for the party, we have some level of marginalization within the devolved funds whereby the community does not access bursaries. Within the bursary, we have the girl-child allocation which is 2 per cent. Still the Nubian girl does not benefit from it.

In terms of employment opportunities, I said most of the women are employed in casual jobs and they are underpaid. There is also a problem of lack of information within the community. The information that is vital is not that one from the media because almost everyone at this point in time has a radio and a television. The general national information is accessible. The information that is supposed to be on the ward level or village level sometimes is usually scanty. We lack that leadership structure because we lack the representation.

In terms of land ownership, there was an upgrading programme within the community of Kibera. The upgrading programme is not the latest one. There have been several upgrading whereby the Nubian woman was actually deprived of her land in the name of upgrading. Maybe the woman has got 10 children and after the upgrading, only two children got houses. So, eight other children miss the opportunity of owning the house. So, they are actually forced to settle in the slums. That is how the slums have been built up so much. With the upcoming rural-urban migration, we have that kind of problem.

In terms of recommendations or the ways possible to see the problems of the Nubian woman solved, or even reduced to some extent, I feel it goes back to the Government. The Government is the one responsible for giving technical support and financial support to any community; be it majority or even marginalized. But for now, I will say we are a minority and marginalized women. The new dispensation also is a remedy to some of the problems if it will be implemented to the letter. However, if it is going to remain on paper, it will be a challenge. We, in Kibera, need to enjoy the economical and social rights that have been provided in the new dispensation.

In terms of politics representation, still it goes back to the Constitution. For it to be implemented to the letter, it will provide political space for the Nubian woman. You will find in Article 100, the marginalized have been protected and also in Article 91 under the political party, there is space for the marginalized and minority communities.

We need equity in distribution of resources because we lack representation. So, there will be no equality in resource allocation. So, there has to be equity in resource mobilization just to mitigate the kind of problems we have. In terms of access of information, it is a fundamental right of every Kenyan to access information from the Government whereby the Government is represented by the Ministries. Every Ministry or even the administration is still the Government. They need to know that it is the fundamental right for every Kenyan to access information.

In order for the communities at the village level and even old mama at the village level to participate and be involved in the development of the country, access to information is important.

I would like to inform the Commission about the verdict of the African Commission. It ruled that a Nubian child be issued with identification card and passport to be domesticated by the Government. These are some of issues that I have to present.

Ms. Emily Kimani: Thank you very much, Madam Hamida, for your articulate presentation of issues facing the Nubian women. I just have two questions for you. The first one is; what is the highest position that a Nubian lady or gentleman has ever been given, if you are aware?

Ms. Malasen Hamida: The highest position that I am aware of is that of a councillor of a ward, a man. We know this world is dominated by men. Hopefully, the Constitution will give us an upper hand and we are advocating for women to take up positions.

Ms. Emily Kimani: Thank you for that answer. About the issue of CDF allocations, for instance, the bursary fund; what is the ratio of allocation when you compare the Nubians and the other communities?

Ms. Malasen Hamida: The ratio of allocation is two per cent; which is very small.

Ms. Emily Kimani: Have you made any efforts in approaching your Member of Parliament about this issue?

Ms. Malasen Hamida: Okay, a Member of Parliament uses the delegation kind of leadership. So, through his representative, we have raised the issues and we have gone to the CDF office, and we have talked to the CDF manager about the issue. We have been having promises that are not being fulfilled; therefore, we still have that problem.

Ms. Emily Kimani: Thank you very much. I have no further questions for you. Commissioners, please.

The Acting Chair (Commissioner Namachanja): Commissioner Farah, you have the floor.

Commissioner Farah: Ms. Hamida, I think your presentation was straightforward. We have heard you and we have also heard from the communities in Kibera. We even visited there and we are thankful.

The Acting Chair (Commissioner Namachanja): Commissioner Dinka!

Commissioner Dinka: Thank you very much, Madam Hamida. I have just one question to ask you. You referred to the decision made by the African Union Commission on the Nubian identification card. What was the decision of the Commission and when was it?

Ms. Malasen Hamida: Okay, the decision was that the Nubian Child, according to the report that we have from the councillor or elders who were championing the case, we were told that the ruling was in favour of the Nubian child, whereby it has been recognized that the Nubian child has a right to be issued with an identification card, a passport and be recognized as a Kenyan citizen.

Commissioner Dinka: That was the verdict of the African Commission?

Ms. Malasen Hamida: Yes, the African Commission, and it was around July last year when we received the message about the verdict.

Commissioner Dinka: So, what remains is implementation by the Government?

Ms. Malasen Hamida: Yes, implementation by the Government.

Commissioner Dinka: Thank you. That is all.

The Acting Chair (Commissioner Namachanja): Following up on that, what was the situation before the ruling?

Ms. Malasen Hamida: Before the ruling, now and before the domestication, we had vetting which was done from the village level. Sometimes, it was even hard because we have a challenge whereby there are dropouts and sometimes the issuance of identification cards becomes difficult because of the requirement of KCPE certificates. Where the youth did not do KCPE examination, it is a challenge and really a problem because others wait for identification cards for more than three years. So, that person lacks employment because of lack of that important document.

There are a lot of things they lack. For example, they cannot open bank accounts. There are basic services you cannot access without the identification card. Those are the challenges on the ground right now.

The Acting Chair (Commissioner Namachanja): Thank you so much, my sister, for representing the Nubian Community, especially on issues of women. We have Nairobi hearings coming and in each hearing, we usually have a special session for women. Find

out from Emily when this will be so that they can come and share more with us. Thank you so much.

Ms. Emily Kimani: Commissioners, our second last presentation is to be made by Mr. Molu Koropu Tepo. He is not on programme, but he is representing the Sekuya Community.

Mr. Koropu, how are you this afternoon?

Mr. Molu Koropu Tepo: I am fine, thank you.

Ms. Emily Kimani: Thank you for being patient. I know you have sat in here through most of the presentations given earlier on and some of which touched on the Sekuya Community. So, as I invite you to make a presentation, please, be brief because we are pressed by time. So, take us through those issues that the Sekuya has faced and give us your recommendations.

Please, start by telling us your full names for record purposes and what you do for a living.

Mr. Molu Koropu Tepo: Thank you, commissioners. My name is Molu Koropu Tepo. I come from Isiolo. Actually, my home is Garbatulla. I work as a consultant for an audit firm called International.

I would like to say something about the Sekuya Community where I come from. I am glad that a number of people have mentioned the name of my community, which means Kenyans recognize the minority communities and the minorities are also aware of others. We are a population of about 27,000 people according to the 2009 census. We are mostly found in Isiolo, Moyale and Marsabit counties. In Moyale, we are found in an area called Dabele. Traditionally, we were camel herders but we share the same language with the Borans, and we have inter-married with the Borans. We had our own political systems of administration with our elders and chiefs. So, we had our own identity from the time of the colonial period.

I now turn to the economic marginalization. Although it was not originally in the plan, I am glad that the commissioners visited Garbatulla and, especially the gravesides. I was born around that area. So, we have gone through a long way. My own community lives in the Dabele area, being the Shifta war zone which was deserted and our people went to Somalia on foot with their livestock. In the process of moving out, they lost all their livestock and they came back on foot from Somalia. So, the same applies to those in Isiolo.

There was a concentration camp in Garbatulla and, therefore, our people lost their livestock. My own family lost everything. Were it not for the grace of God, Allah, and the benevolence of the Catholic Church, I would not have had the opportunity to go to school. Two of my brothers would have not in the same way had the opportunity to go to

school and many other children from the Sekuya Community. Actually, some who are very prominent in this country now, would not have had the opportunity to go to school.

Economic marginalization started with the Shifta War. We were pastoralist; camel herders and we lost everything. Some of them fled to Somalia on foot. These are Kenyan refugees who are not recognized in this country. There are Kenyans in Somalia and some of them have been born there. When we talk about the impact of marginalization, which is the beginning of our marginalization--- If you want to address the economic marginalization of the Sekuya and others, like our cousins; the Borans, you need to study in depth the Shifta War.

There were, of course, the IDPs. After they lost everything, they came to this side as IDPs. We are scattered. Actually, somebody mentioned that we were in Tana River and in Naivasha as farm workers and watchmen. So, those are the repercussions

I will now go to the recommendations. My recommendation is that this Commission should determine the question of Kenyan refugees. Their records can be found with the UNCR way back to 1968. For example, Koyole in Somalia, there were people from Kenya and the majority of them Sekuya. So, to determine the question of IDPs, you have to ask; who came to this part of Kenya after the Shifta War? The IDPs are not only those who suffered during the PEV. There are others.

Kindly, this Commission should go in depth and try to identify other IDPs. Our people have been struggling to come back and they are called the returnees. There is a village in Garbatulla called Returnees. If you go there, you will get a village called Returnees. These are people who came back from Somalia. When they come back, what happens? They are not Somalis and they are not Kenyans! It takes them 20 years to get national identity cards, after they come.

Last year, some of their children were denied registration for KCPE Examinations because of the new policy whereby children are supposed to bring their birth certificates in order to be registered. These are children who started school in Kenya, but their parents did not have identification cards. When they do not get the birth certificates, they end up registering using other people's identification cards.

Going back to Moyale, especially in Dabele, earlier on, the Sekuya had a councillor but now, they have been marginalized. I think this is the same issue that my colleague; Wilson Kipkazi, was talking about. Now they have been combined with others. So, what happens? They are moving forward and then they are going backwards. So, what will happen to them?

Of recent, there are new mineral deposits which have been found in Dabele area and everybody is going there. Those people should be protected so that they can benefit from the new resources found in the area. Let this resource not be a curse, or isolate these people or bring disharmony among them.

Finally, I think for purposes of safeguarding the interest of other minorities, through this Commission, we request that the registration of the community land should be delayed until the county government comes to effect. Any use of land where minorities have interest should be delayed until the county government comes into force so that then the county government and the people will have a say. What we are seeing now in some of the areas; for example, Isiolo, all of sudden, it has become volatile and we are reading other signals into that. So, I think the issues of land in those areas should be delayed until the Community Land Act comes into effect.

Thank you so much.

Ms. Emily Kimani: Thank you very much, Mr. Tepo, for your presentation. On the issue of the situation facing the Sekuya Community, I only have one question. What is your take on the representation, be it political or otherwise, of the Sekuya community?

Mr. Molu Koropu Tepo: Thank you. In Isiolo, I think we have sort of merged with other communities. We have inter-married with other communities. So, in Isiolo, we can find out a way. But those living in Moyale have created an area for themselves and, therefore, they need protection until such time that they are integrated with other people. So, in Moyale, there is need for this Commission to identify the needs for community so that they can have representation in the county assembly.
Thank you.

Ms. Emily Kimani: Thank you very much. I have no further questions for you. Commissioners can now ask you questions or clarifications through the Chair.

Commissioner Farah: In Moyale, how do you fair in the on-going conflict?

Mr. Molu Koropu Tepo: I think in Moyale, we are talking about the Sekuya people.

Commissioner Farah: How are you affected or fairing in the on-going conflict in Moyale as Sekuya people?

Mr. Molu Koropu Tepo: I think what has happened in Moyale is...The conflict at the moment is between the Garbatulla and the Boran.

Commissioner Farah: You are the cousins of the Boran?

Mr. Molu Koropu Tepo: Yes, on both sides. We are cousins. So, I think other than in the Butie area and in Hola, Hola had been affected...If the house of your neighbour burns whether is of a Garbatulla, yours will also burn. So, you have to leave. In Butie, it is the same. It is the Sekuyas who live there. But in the Dabele area, people have respected them and they have not actually got into the conflict.

Commissioner Farah: Thank you, Presiding Chair.

The Acting Chair (Commissioner Namachanja): Commissioner Dinka!

Commissioner Dinka: I have no question.

The Acting Chair (Commissioner Namachanja): I am wondering and if you may help us; what do you think are the causes of the on-going conflict in Moyale and Isiolo around this time?

Mr. Molu Koropu Tepo: Commissioners, I think that is a difficult question to answer but, of course, politics are in place. The problem is that we think so much about the past and we are now worried about the future.

The new Constitution has brought opportunities, but people are still in the past. If you are not at ease, if you are becoming aggressive, then the same situation will find us. So, I think the situation in Isiolo is partially political. I think what we are seeing is that provision in the Constitution where it says that most counties will not take off at the same time. Our concern as residents is that, people in high places want to exploit that provision because of these conflicts. The process of implementing the county government in Isiolo will be delayed based on the current conflict because of the resources and the airport. It is the powers that be or, some people with some influence somewhere who could be playing their own games with us. That is my opinion, but there is no any empirical evidence.

Thank you.

The Acting Chair (Commissioner Namachanja): You also asked this Commission to look into the issues of refugees and you mentioned that there are a number of Sekuya people who went into Somalia in 1968. Do you think they still consider themselves as Kenyans and they would like to come back, especially if Somalia were peacefully?

Mr. Molu Koropu Tepo: Thank you. I think I mentioned that there is a village in Garbatulla called Returnees.

The Acting Chair (Commissioner Namachanja): We have been there and we were there at the time when actually refugees were coming back.

Mr. Molu Koropu Tepo: Yes, that village! Some of these people are still coming and some of them came as earlier as 1996 and they got their identity cards one month ago. So, these are some of the things that need to be looked at. Actually, with modern communication and all these new communication gadgets, people share information. They are told: "Do not come, the situation is not good even for those of us who are here." But those who come, we support them. They are given identity cards but I do not think those people will want to stay in Somalia.

The Acting Chair (Commissioner Namachanja): Thank you so much for coming before us to represent Sekuya community, one of the minority groups. We have taken your recommendations very seriously and we are stressing the need for identification cards to

be given especially the children of the returnees so that they can even do examinations. I do not think this should be a problem. Is it that we do not have mechanisms at the local administration level to deal with this matter? I do not understand why this is a big problem up to now.

Thank you so much.

Mr. Molu Koropu Tepo: Thank you too.

Ms. Emily Kimani: Commissioners, our next witness is listed No.7 on the course list.

(Commissioners consulted among themselves)

Commissioners, as I had pointed out; our next witness is listed No.7 on the course list. He is Mr. Thomas Letangule who is also a commissioner with the Independent Electoral and Boundaries Commission (IEBC).

Mr. Letangule, I welcome you to this session this afternoon, in which capacity you will be talking about the boundary review process and the minority communities. You will also take us through the Iichamus experience and your recommendations on the same. As I invite you to make your presentation, you start of by telling us your full names and then proceed to give us your presentation.

You are most welcome.

Mr. Thomas Letangule: Thank you very much. Commissioners, my names are Thomas Letangule. I am a constitutional lawyer of about 15 years in private practice. Currently, I am a commissioner with the IEBC. I am about three months old there.

I got this invitation to talk about the boundary review process on minorities, yesterday evening. I said that it is good that I give my own personal input on the same. My understanding on the rights of the minorities and in particular on these issues of boundaries; Commissioners, first of all, I have personally been active on minority issues and I have done constitutional cases affecting them. One of the cases which I am well known for is the constitutional case challenging the introduction of a plant called *Mathenge* in Baringo. It then came to be known as the toothless goat case. We had to bring a goat before the High Court to demonstrate the seriousness of the whole matter. So, to me, that particular case ought not to have been brought to the High Court, if those people had representation in Parliament. My argument was that, it was a matter which probably would have been raised in Parliament, debated and may be some Ministerial directions issued about it. But then because of this problem of representation, there was no other means of voicing those people's concern other than to file a constitutional case in court. Of course, the constitutional court agreed with us on that *Mathenge* case, but to date nothing has been done about it in terms of implementation.

Back to boundaries, commissioners, as you all know, boundaries are created for purposes of representation to ensure that people are represented adequately. Representation comes in with other factors like voicing people's concern about development. So, electoral units really bring development within a particular area. Resources are also channeled by the Government through those electoral units at the constituency level through the CDF. Of course, representation brings about the voicing of the people's concern on the ground; what affects the people and the challenges on the ground. So, it is all about development and it is a very critical exercise.

Currently, the IEBC, which I work for is undergoing this exercise and we have just finished receiving the recommendations from the people. We have done the first review and we have tabled it before Parliament.

Now, what are the challenges of the review facing minority people? I will not go into the definition of minority people because I am sure you had gone through this before. Mine will be specifically to address the challenges that face minorities in the delimitation of boundaries.

Prior to the coming into being of the Constitution of Kenya 2010, the old Constitution provided for the delimitation of boundaries and the criteria thereof; which criteria was actually adapted in the new Constitution, but with a variation. The old Constitution provided that you can consider geographical area, community of interest, means of communication in awards and constituencies. Those same provisions have been awarded in the constitution of Kenya 2010, Article 89. The catch is there now. The main criteria under Article 89(5) and (6) is that the population quota must be considered and that is the bottom line. But it goes on to say: In taking the population quota, of course, which is also defined to mean, that the population of Kenya divided by the number of constituencies in country, that is 290, it gives you 38 million Kenyans by 290, as provided for, then that means each constituency must have around 133,000 people or thereabouts.

But then it says: "You can deviate from this provision of the population quota by the following margin; plus or minus 40 per cent for cities and sparsely populated area or plus or minus 30 per cent for other areas. To consider - and that is the catch now - in order to take into account geographical means, community of interest, means of communication and those other factors which were there in the old Constitution. But the main criterion is the population quota. So that it is not now the blanket consideration, now you can only divert by that variation; plus or minus, 40 per cent or plus or minus 30 per cent in other areas. So, that is where we find ourselves with minorities under the current Constitution. I can assure you, here, the minorities have lost it. There is no other way to put it. The minorities under the new constitutional dispensation have no way out because it is now constitutional that it is the population quota which counts to determine boundaries. So, we find in this country, we have minorities like the El molo, II Chamus, Sanach, Sengwele and Ogiek who were here. The Malakote, the Waata and today again I heard about this other group whose representative has just presented called Sekuya. So, how then under that population quota criterion will they get anything? The answer is almost

zero. This is because under the constitutional quota, the Commission now must consider what the Constitution says on the IEBC. So, it can only deviate from 133,000 people by plus of 40 per cent to take into account community of interest, for example. The plus or minus 40 percent gives you around 79,800 people, roughly 80,000 as minimum per constituency.

So, if you have to create any constituency now, it cannot go below 80,000 people and we are using 2009 population census results. So, if a community, for example, the Ogiek, demands a constituency, you can only give them a constituency if they meet that population criteria, and in most cases, they are unable to do that. They cannot meet the constitutional criterion. I will give you a very good example. North Horr is the size of three provinces in Kenya. I think it combines Nairobi, Western, Nyanza and I do not know which other one. The area of North Horr, as it exists currently covers the square kilometres of those three provinces, yet it is only one constituency. They have been crying for a split; they are saying, consider other factors in splitting North Horr. But if you do that, then it becomes unconstitutional because it is not meeting the population quota. So, what will tell those people of North Horr that they are not meeting the population quota?

Another example is the Ilchamus where I come from. They had moved to court in 2006 and obtained a court order where, commissioners I had to represent them in the High Court before a three Judge Bench. You can actually read that judgment in today's paper; *The East African Standard*, page 12, the court considered the issues of Ilchamus and said, "Look these people deserve to have a constituency of their own. Please, create one for them. They even went further and said when there will be a review of constituencies in future; consider the creation of Ilchamus Constituency." That was then. If this Commission were to do that, how then will it go around with the issue of the population quota, the criterion as set in the Constitution? So, it will be unconstitutional to even act on that order. So, commissioners, in brief, those are the challenges affecting the minorities communities in this country. They are unable to get any specific constituencies created specifically for them. I know in other countries, there are affirmative actions to ensure the representation of minority groups. For example, in Australia, there is the consideration of the Aborigine people is now constitutional. They have to be represented and they are considered. But now in this country, as the law stands, the minorities have lost it. There is no way out and I think your Commission is doing a great job. You need to make specific findings on how these people can be catered for because they are there, they exist and we cannot close eyes on these minority people who are crying all over.

Commissioners, my recommendation is that, in view of what exists right now - of course, I am alive to the provisions of the Constitution, particularly Articles 56 and 100 which is yet to come into operation. There are saying that we consider minority communities. I am also aware that the Political Parties Act in every aspect tries to say; political parties, please, consider minority communities.

So, my recommendation is that, your finding should recommend that minority communities be represented through political parties taking affirmative action.

Remember in issues of say nominating of Parliamentary representatives, Members of Parliament, it will be the political parties who will choose who to nominate. But invariably, and this is in practice, what political parties do is that they choose their loyalist. They ask: "Who helped us last time in elections?" They say, it is so-and-so, so they nominate one of their cronies to Parliament. So, it beats the whole logic. They cannot now say; look, there are people called Dashanaji, and they are minority. Can we look for those people? Can we look for an El molo and affirmative say, let an El molo be a Member of Parliament by virtue of that nomination? They do not do that because they reward their own political supporters and that is where the ethnic minority get lost. So, I think you can make a finding or a recommendation that in future political parties should consider minorities in their nomination so that they can also benefit by being represented. Otherwise, as the Constitution stands, unless there is an amendment specifically to that effect, the minorities will not get any particular special constituencies for themselves.

So, that is my brief presentation to you on the delimitation of boundaries on minority communities. Thank you.

Ms. Emily Kimani: Thank you very much, Commissioner Letangule, on your brief and articulate presentation. I have two questions for you and the first one is; in the absence of the constitutional definition of minorities, how would you define minorities?

My second question is: What is the practice in other jurisdictions to circumvent the population quota system which you touched on in your presentation before us this afternoon?

Mr. Thomas Letangule: All right. On the first one and on the definition of ethnic minorities, although the Constitution does not really define it, but I am aware that one presenter who was sitting here, Mr. Kipkazi, attempted to give you what he thought was a definition of minorities. I also agree with that definition. It is a people who by virtue of their numbers are a minority within a particular society. So, that if, for example, the Ogiek are saying they are the minority, where they come from, the rest of the other population are more than them ethnically, so they then become a minority. It is just simply within that meaning of your understanding of what is minority.

As to other jurisdictions, the example of Australia which I have just given you, where they consider the Aborigines, special seats are created. In other countries like the Philippines, for example, a whole national commission is in place; which is called the Commission of Indigenous People and Minorities. I think those countries recognize that there is special means to ensure that their minorities are heard within their jurisdiction.

This is the practice all over, I think if you take time as Commission to check, and I think I can throw this to yourself. How are other countries treating their minorities? You will be able to see that they do consider minorities and, may be those are some of the recommendations that you will come up with. Thank you.

Ms. Emily Kimani: Thank you very much, Commissioner Letangule. I have no further questions. I now hand you over to the commissioners through the Chair.

The Acting Chair (Commissioner Namachanja): Thank you Commissioner Letangule. We shall now ask you a few questions starting with Commissioner Farah.

Commissioner Farah: Thank you, Mr. Thomas Letangule, for your good presentation. I know I have it somewhere, but just for my own reference now. You said that the population is 133,000 plus and minus what?

Mr. Thomas Letangule: There are two criteria. For cities and sparsely populated areas, the criterion is plus or minus 40 per cent.

Commissioner Farah: Forty per cent for sparsely populated areas and for cities?

Mr. Thomas Letangule: That is for cities and sparsely populated areas.

Commissioner Farah: For cities and sparsely populated areas.

Mr. Thomas Letangule: Yes, plus or minus 40 per cent and for other areas of Kenya; that is plus or minus 40 per cent.

Commissioner Farah: You have already told us, as the member of the IEBC, that there is no hope for changing this because the Constitution says so. And putting ethnic minorities in the hands of political parties through affirmative action is like a dead end because politics is about numbers. You vote for me and I give you a position. You do not have numbers; you do not vote for me, I forget about you! So, there is hope of changing the Constitution in the future to allow for minorities which are then numbered to be given representation and review by commissions later.

Mr. Thomas Letangule: Yes, it is. But, as I mentioned, Article 100 of the Constitution says that there is need for minorities to be represented in future. The Article says that Parliament must legislate to provide an enabling Act of Parliament to operationalize that Article. But it gives Parliament five years to do that. So, as of now, it is not an urgent issue in Kenya. People are doing other things, the issue of representation of minority communities can wait. That is exactly what is happening now. We do not know the contemplated law under that Act, whether then it would say: "Compulsorily, we should have the following minorities to be considered.

Commissioner Farah: If an Act is made under Article 100 of the Constitution, would that law not be contradictory to the rest of the Constitution which is talking about 130,000, 40 per cent plus or minus?

Mr. Thomas Letangule: It will change Article 89(6) which says that in giving constituencies, use the population quota, plus or minus 40 percent. I think the intention was that Article 100 would provide legislation where minorities would be considered in terms of wards. Not the constituencies---

Commissioner Farah: Not constituencies, but some form of wards.

Mr. Thomas Letangule: So, as it is, the minorities have lost.

Commissioner Farah: Thank you very much.

Commissioner Dinka: Thank you very much. I was one of the people who were confused about these things. Now you have made it very clear. It is very difficult for the Commission to do much on this issue. Is there any possibility that the National Parliament could take this matter within the next year or so?

Mr. Thomas Letangule: That is on the representation of minorities through that Article 100. I do not see it happening because, right now, consideration is in other areas. Even as we talk about splitting of constituencies, you will realize that nobody talks for minorities. One of the problems is that as Parliament currently stands constituted, there is no minority member there.

If, for example, there was a minority, say an Elmolo or an Ogiek, in Parliament, maybe all the other minorities would channel their views through that person. But as it is, it is not easy. In fact, if you follow debate, nobody ever talks about ethnic minorities there. So, the question is about numbers. It is about population. That is it. So, in the process, minorities then, of course, get swallowed.

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

The Acting Chair (Commissioner Namachanja): Commissioners, it is true the minorities have really come before this Commission and cried. No wonder you just came with one recommendation; affirmative action. I think we have to push that. We shall try our best before we are defeated. Thank you so much.

Mr. Thomas Letangule: Thank very much. I appreciate your work. I would just leave this small paper here.

Ms. Emily Kimani: Commissioners, I am informed that one of the speakers who is listed fourth on the course list, should be the final witness for the day.

I want to welcome you, Mr. Hussein. I am sorry of the long wait. You sat in most of the time today and heard most of the issues highlighted. So, as I invite you to make your presentation, give us a brief account of the issues that pastoral communities have faced. Earlier on, we had Mr. Tiampati, who also touched on the same. You will start off by telling us your names for purposes of record. Give us the issues in brief and then the recommendations. You are most welcome.

Mr. Adam Hussein Adam: My names are Adam Hussein Adam. I am presently working for the Open Society Initiative for the Eastern Africa as a programme officer in charge of issues regarding statelessness in Africa.

Previously, I was a founder member and programme officer for Minority Right Development. Therefore, I was invited here to speak around generally on the issues of pastoralists and how the marginalization has been carried out for years. After listening to a lot of discussion here, I thought I should give a highlight of a number of issues that the Commission should consider.

My approach to this should be that since we started working on issues of minority rights for the last 10 years, one issue that comes close to everything is the question of recognition, recognition of the person of minority, recognition of their livelihood, recognition of their culture, and above all, the legal recognition that grants them to be citizens of this country.

Generally, this is at the bottom of many issues affecting minorities. For instance, when it comes to the question of recognition of livelihood pastoralism until just the other day, nomadic pastoralism had never been recognized. Therefore, there was no investment in areas and in that particular line. The same applies to hunting and gathering. In fact, most of the time, the laws that were created outlawed those livelihood.

Secondly, it is to do with the recognition of culture. This is one country with 42 ethnic groups yet research has shown that this country has more than 42 ethnic groups. Technically, this forces every other person who is not recognized to be recognised. They do not want their culture to be swallowed or assimilated into other groups. Today, it is, maybe, for the first time, you are hearing of Sakuye and Waata. These people because of lack of recognition have been assimilated. Thirdly, that none recognition, has gone to the extent that even statistics of some of these communities never existed.

If you looked back, 1999, almost the biggest statistics we had of population, was of "other Kenyans". Where these Kenyans were and who they were nobody knew because majority of them expressed who they were in terms of their cultural identity which was then neglected.

Now, legal recognition, you heard of the Endorois saying that their case was thrown out of Kenyan court. Endorois Community is not defined in our Kenyan legal statutes. Therefore, coming forward and saying we are Endorois was technically illegal. Therefore, their case was thrown on that technically. So, in general, recognition has a very heavy weight on many things.

Now, what are the results of this? You heard a number of issues here. One of the things that have come very clearly is land eviction and displacement.

Secondly, which many people were taking about, and I am lucky to be sharing this podium lastly with Mr. Litangule who said that political parties participation through representation was another result of none recognition. We are now struggling very had to even find a way of sneaking in the minority groups, or minority communities to have some form of representation. We seem to be finding it difficult because we are not recognized as people or as a group.

Thirdly, there is lack of participation in development. So many projects have been done in areas where minority groups live; hydro electric powers, irrigation, and everything, but the result has been catastrophic. If you look at Turkwel Hydro-Electric project, for instance, that is now pitting the Turkhanas and Pokot. They are fighting over that resource. It is a result of none participation of those areas and none recognition of their livelihood that has led to conflict among communities. Now, the result has been Lake Turkana is drying and people have no water. They are fighting even over grazing pastures. There is no water flowing because the hydro electric power that was done has become a very big dam that cannot sustain itself. So, that is another area of concern.

Above all, there has been violation of human rights in many areas. I am thankful that some of the issues that have been raised here border on questions of statelessness. Some of these minority communities have ended up being stateless population. For example, my colleague here mentioned earlier that we have returnees of the Sakuye who were evicted from Isiolo. Now they are returning. They cannot find their identification cards. Therefore, going by the definition of citizenship, they are a stateless population.

What Kenya has been doing, for instance, with the regard to the case of the Nubians that we have been hearing of; the Committee of Experts, the African Committee of Experts on the Rights and Welfare of the Child has actually identified that is akin to making Kenyan Nubian children to be stateless. Therefore, having all these issues coming in, already the affirmative action is been considered as the strongest recommendation that can come out of here. As a Commission, you consider very strongly the affirmative action. How it will be managed and how it will manoeuvre, I do not know. I do not know who will raise it in Parliament.

As I speak, a number of our commissions have been given literally some mandate that touches on minority right issues, but nobody is clear about minority. I have heard people talk about definition. Article 260 has some highlights of definition of who are likely candidates of minorities. We have not done the identification of which minority is. Therefore, there is the question that this country should take deliberate means to understand its people. It is useless to have people live in your country, consider themselves citizens and you do not recognize that citizenship, but go ahead to even denounce their existence. You keep on saying we are 42 ethnic groups. The details of 42 ethnic groups, we do not know. Yet, we are more than 42. That should be an issue that the Commission should bring forth for purposes of extracting, who is and who is not.

There is the question of justice. Justice has to shield all of us in this country. Justice should not only be in the hands of the majority. Justice should also be dispensed in the hands of the minorities. You have just mentioned that there are more than four cases from Kenya before the African Commissions, Peoples and Human Rights. Why is that so? They have exhausted all local remedies. They cannot get justice here. Therefore, they have been pushed to go and seek alternative voices elsewhere. So, justice should be and should help all of us.

There are rulings also so far. Out of five cases before the African Commission, two have come out. There is the Endorois ruling that has come forth. There is the ruling on the rights and welfare regarding the case of the Nubian children, which cuts across all, the children, are of this country. Such rulings, the country should embrace them because it helps all of us. I will stop here, Commissioners. If there is a question, I am ready to answer it.

Ms. Emily Kimani: Thank you very much, Mr. Hussein, for your brief and well founded presentation. I have no questions given that the information that you have given is very clear.

Commissioner Farah: Thank you very much, Mr. Hussein, for your good presentation. It has captured all the issues affecting minorities. We are grateful to you for highlighting this. You want the Commission to really ponder on this question of minorities. You also urged us to try to recommend affirmative action. You must remember, however, that you will be one of those people who will be the advocates for the implementation of our recommendations. If you keep quiet after what we recommend comes out, politicians, as you know them, will not do anything. So, I have no question for you, because your presentation was very clear. I thank you for having really made it clear where the hurdles are and what is opportune for the Commission. Thank you.

Commissioner Dinka: Mr. Hussein, I too have no question for you. However, I would like to thank you very much for your very concise identification of where the problems are. I also would like to thank you for your suggestions and recommendations in terms solutions. I assure you the Commission will make appropriate findings and recommendations on this issue, although as Mr. Letangule has just told us, the parameters within which we work are quite limited.

The Acting Chair (Commissioner Namachanja): Thank you, Mr. Hussein. I think you have helped us a lot. It is like you have summarized in terms of recommendations all the hearings that we have had.

Personally, I take the minority issues very seriously because I come from a county that will be struggling with this issue. I come from Bungoma County.

When I mediating on the conflict between the Saboat, Tessos and Bukusus, they felt they were marginalized. They felt marginalised and they are demanding for their own district. They were even ready to shed more blood so long as they get their own district. It is as if we are back to square one. I would hate to go back to where we were. We just have to negotiate as much as possible. This is a democratic process. Democracy cares for minority. Kenyans, we just take this as a reality. Find a way of negotiating so that we are all comfortable when it comes to sharing the national cake of leadership which has been a cause of conflict.

With that, we have come to the end of our hearings. On behalf of the Commission, I would like to thank the following people who have helped us to understand the issue of

economic marginalization and issues of minority: Sheikh Ahmed Ramadan, Diop Routine, Ali Hersi, Michael Tiampati, Ahmed Haji Mohamed, Daniel Kopei, Wilson Kipkazi, Malenzen Hamida Twahir, Molu Korup Tepu, Thomas Letangule (IEBC Commissioner) and Mr. Adam Hussein.

I would also like to thank the audience who have been with us since morning up to now. At least we have been able to affirm some of the issues that have been shared.

I would also like to thank the staff of TJRC and everybody who is involved in facilitating us to have this dialogue with the Kenyan people. I would like to thank our HANSARD reporter and camera people. There is a young man who has only been communicating through signs. Thank you so much for helping the minority to follow this dialogue. Last but not least, I would like to thank our commissioners for their patience and listening to these issues.

Ms. Emily Kimani: Presiding Chair, with your kind permission, I would love to inform all of us that one of the people who was supposed to appear before us, that is 9th on the list, by the name of Jennipher Kontate, had an accident on her way here. We highly empathise with the situation. She had prepared a memorandum, and also today the LOE desk has received memorandum from the Endorois Community through Mr. Thomas Letangule on the challenge of securing the rights of minorities and marginalized groups in the delimitation of electoral units under the new constitutional dispensation.

Commissioner Farah had also requested for a list from the Tana 15 Minorities forum. I want to confirm that all these have been received at the LOE desk. I pray that all these documents be admitted to form part of the Commission record.

The Acting Chair (Commissioner Namachanja): They are so admitted. How is Jenipher? Is she badly hurt? Mr. Letangule, would you like to share with us? I mean we will leave with anxiety if we do not know about her condition.

Mr. Thomas Letangule: She actually informed me that she is not badly off. I had a chance to talk to her over the phone but she is okay. It was not a very serious accident, but the vehicle was damaged. So, she could not proceed but she was able to e-mail her presentation. She was coming from Nanyuki. She is from the Yaku Community; the small community whose language is getting lost. Probably, it is already lost, only five can speak the language of Yaku.

The Acting Chair (Commissioner Namachanja): Five people or five thousand?

Mr. Thomas Letangule: Five elders. Commissioners, I think we need to do something to rescue even the language alone. It is disappearing. So, even for posterity, we need to save that language.

The Acting Chair (Commissioner Namachanja): Please, tell Jenipher that our prayers are with her. Thank you so much.

(The Commission adjourned at 5.45 p.m.)