

3-9-2012

## Public Hearing Transcripts - Thematic - Extrajudicial Killings - RTJRC09.03 (NHIF Auditorium) (Extrajudicial Killings)

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### Recommended Citation

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION ON FRIDAY, 9TH MARCH,  
2012, AT THE NHIF AUDITORIUM, NAIROBI**  
**(Thematic Hearing on Security Agencies, Extra-Judicial  
Killings and Massacres)**

**PRESENT**

<b>Gertrude Chawatana</b>	-	<b>The Presiding Chair, Zambia</b>
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Emily Kimani	-	Leader of Evidence

*(The Commission commenced at 10.00 a.m.)*

*(Prayer and National Anthem)*

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

**The Presiding Chair** (Commissioner Chawatama): Good morning ladies and gentlemen. On behalf of the TJRC we wish to welcome you to today's thematic hearings on massacres. I would, first, like to introduce the panel of Commissioners. On my far left is Commission Tecla Namachanja Wanjala who is the Acting Chair of this Commission. On my immediate left is Maj-Gen. (Rtd). Ahmed Farah, on my right is Ambassador Berhanu Dinka who is a Commissioner from Ethiopia. My name is Getrude Chawatama and I come from Zambia. I am one of the international commissioners.

Today, our thematic hearings are on massacres. As we have travelled throughout Kenya hearing testimonies, we have heard about a number of incidences where massacres have taken place. We have heard from men, women and we have also documented the experiences of children. We have heard about different violations that ordinary Kenyans have suffered. We have heard that during the times when they have been confined, whether at an airport, that there has been lack of water, food and lack of bathroom facilities. We have heard that there have been beatings and various types of torture. We are here this morning to listen to different speakers who are going to speak to us because that is their area. Some of the Speakers who will speak to us are from the police and some are from the army because in many instances where the citizenry have talked about massacres, they have suffered and they have told us that it has been at the hands of the police and the army. So, we will hear from many Kenyans who are experts in this field and we will also hear from those that the citizens have mentioned violated their rights. We thank you very much for your attendance and during these hearings, we urge you to remain silent. You may not agree with what they say but it is important for us, as a Commission to hear from them. For those of us who have cell phones, I would like to

urge you to switch them off because they interfere with our recordings and even the flow of giving testimony. We thank you for your attendance.

Leader of evidence, are we ready with the first witness?

**Ms. Emily Kimani:** Thank you, Presiding Chair. I genuinely welcome our speakers today. Our first speaker this morning is listed first in the programme and she is Dr. Linda Musumba, Dean at the Kenyatta University School of Law. *Daktari*, I welcome you to today's session in which you will be making a presentation by giving us an overview of massacres in Kenya and the way forward. Feel most welcome when doing so and before you start giving us your presentation, kindly, tell us your full names for record purposes and then proceed to give us your testimony. Feel most welcome.

**Dr. Linda Musumba:** Thank you very much. My name is Linda Musumba, Dean, Kenyatta University School of Law. I am thankful for the opportunity to share my comments with you. Without further ado, I was supposed to look at massacres in Kenya and propose a way forward. There have been a lot of massacres recorded, but I looked at considerations across all of them and hope that I will communicate. To start with, that there have been massacres is not in contention. The problem that arises is how the state has treated them.

My first point is that when you look at our Penal Code, you will realise that there is no crime that contemplates the killing of people en mass. But the Penal Code looks at a situation where we have murder, manslaughter and there is even death by dangerous driving. However, the individual in question is considered to have committed these crimes severally whereby each individual who has been killed your charge sheet is drawn against everyone who has been killed. However, when it comes to massacres, we are looking at a situation where a group of people are killed in one instance. The word "massacre" comes from a Latin word meaning mass sacrifice and the earliest recorded massacre that we had is an event in cold galore, St. Bartholomew Day Massacre and that was in 1572. Since then, there have been many that have been recorded to this day. When you look at the definition of massacre, you will notice that there is quite an overlap with the definition of genocide. So, one of the things I spent time doing is trying to deal with the definition.

So, massacres in many dictionaries are defined as the unnecessary indiscriminate killing of a large number of human beings or animals in situations such as war, persecution or revenge; whereas genocide is the deliberate and systematic extermination of a national ratio, political or cultural growth. So, what is the difference between murder and genocide?

A massacre is a general term where we are talking about people or animals that have been killed whereas genocide targets the killing or destruction of a particular race and, therefore, that is a more specific definition. Genocide also means, other than killing, where you create a situation that you harm or impose measures intended to prevent births. Therefore, genocide is a legal term but you will find that some genocide has some

element of massacres and that is the case as it is. So, when I came to look at the characteristics of massacres, I would say that they have been recorded in various countries and continents. Therefore, this is not a phenomenon that happens only in Kenya, Africa or developing nations. Massacres have been recorded in Europe, Australia, America and everywhere.

The second point I want to make is that they vary in scale. It could be a handful of people. For example, the Hola massacre in Kenya, this was in 1959 where 11 people are recorded to have been killed. You can also look at hundreds of thousands of people, for example, the Nankin massacre in China where 200,000 to 300,000 people were killed. Those were mainly civilians and that was in December, 1937. We also have a situation where massacres can last between days, months and sometimes even years.

The third point I would like to make is that the causes of massacres are varied as well. They depend on who the protagonists are. However, you will mainly find that it falls under two strands. One is that you have the state versus her people or you find that it is the people among themselves. One of the examples that have come up in the TJRC hearings where you have the state versus her people is the Wagalla Massacre.

You have a situation where we have people against people like the recent Mathira massacre where the *Mungiki* are reported to have gone on a revenge mission and that is to show you the differences. We have the state versus the people and the people against people. In Kenya, of course, there have been several massacres that have been reported dating back to pre-Independence, immediately post independence and subsequently thereafter. I am sure that this distinguished commission has access to the various massacres that there have been but I would like to say that invariably, a lot of them appear to have taken place in the northern part of this country. We have, for example, the Bula-Kartasi Estate Massacre in Garissa which was in November, 1980. The Wagalla Massacre was in 1984 and we have the Hola Massacre which I spoke about before. I can mention the Lari Massacre in 1953 where we had two well organized Mau Mau raids at Naivasha and Lari. So, these are just examples of some of the ones that have taken place. But I would like to draw your attention to one of the most recent which is the post election violence in 2007 where about 800 people are reported to have been killed. So, I would like to draw the attention of the Commission to the fact that the history of massacres in this country is one that stretches back to pre-independence and if nothing is done to stem the same--- There is a possibility that this is something that may continue.

Therefore, looking at the totality of these massacres, I came up with some conclusions which I would like to share with this Commission. One, I said that the definition of massacres is problematic where you have a group of massacres committed under genocide. Having a legal definition which is genocide and being specifically recognized by the United Nations as a crime. I would also like to say that the area of massacres is one that is not written about especially when you look at massacres that are perpetrated by states versus people for obvious reasons. Therefore, there is not much information that one can gather unless such information is shared to a commission such as this one.

Of course, I think the Kenyan public has been able to learn a lot about some of the massacres that have taken place in the country and the effects they have had on people. As I indicated earlier on, I think one key point is to say that massacres are not provided for in our Penal Code which is a key instrument that outlines or categorizes what crimes are. I would also like to say fourthly, that in our new Constitution, Article 2(6) states: "Any treaty or convention ratified by Kenya shall be part of the law of Kenya under this Constitution." This is to say that in the event that there are laws that we have ratified with respect to international crime, when our Parliament is able to provide the way forward in respect to the domestication of international law, then clearly, some of these laws that exist at the international level become part of our national discourse.

I would also like to say that the work of a Commission such as this one is very important because it provides the opportunity for victims to come and share their stories under a protected environment and we have seen that happening as the Commission has gone round. Also, Commissioners, I would like to point out the gender dimensions of massacres. There are massacres that come with displacements and these displacements mean that populations and communities are taken away from what they ordinarily do and their livelihoods are interrupted. We have situations where females become heads of households and children grow up without either parent with obvious implication on this offspring. You will find that there are populations where the male population is decimated and, therefore, altering the capability of a community to perpetuate itself in a way that is sustainable.

In conclusion, I would like to say as a way forward, in my view; it is essential or important that our laws recognize mass killings in tandem with international law. In doing so, we are looking at a situation where the law to investigations would also be developed. Collection of evidence, the treatment of victims as well as offenders would also be developed. I see this as being a key step forward in being able to deal with massacres and perhaps prevent or manage in the cases that it should happen and in future occurrences of massacres.

With that, distinguished Commissioners, those are my few comments. Thank you.

**Ms. Emily Kimani:** Thank you, Dr. Musumba for your articulate presentation. You have given us a comparative analysis of massacres. I only have two questions for you and the first one is that in your presentation, you have given us a round typology to massacres, you have told us about the state versus the civilians and there are also civilians versus civilians. In your own opinion, what are some of the drivers for the civilian to civilian massacres? My second question is; in light of the seriousness of massacres, what kind of preparations would you recommend for the affected communities especially in light of the state versus civilian massacre?

**Dr. Linda Musumba:** Thank you for those questions. Some of the reasons why we have civilian versus civilian massacres, if you look at our country, for instance, you will find that we have unproportional sharing out of the national cake where you have communities that feel disenfranchised and, therefore, feel that they are not part of the

national arena. We have negative ethnicity which of course pits communities against communities and that would account for some of the massacres that have taken place. We also have cases of militia groups, for instance, the Mathira massacre that I have mentioned. These are elements who have just decided to be criminals and, therefore carry out these sorts of activities.

Your second question was what reparations I propose. I draw my answer to the effect that happens to people. I talked about displacements where of course, it is not possible to return populations to their original habitats and it is incumbent upon the state to settle them. If you look at the gender defects, you are looking at programmes that attempt to assist the victims, for example women, to become a complete part of society through economic activities and such.

**Ms. Emily Kimani:** Thank you very much, Dr. Musumba. I can see you have a written presentation. I do not know whether you will be willing to share it with us so that it forms part of the Commission's record.

**Dr. Linda Musumba:** I would be happy to polish it up and then I give it to you.

**Ms. Emily Kimani:** That is okay with us. Thank you for taking time to be before the Commission this morning. I have no further questions for you. Commissioners, through the Chair, it is your time.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much. We will now ask the Commissioners whether they have any clarifications or observations to make.

**Commissioner Dinka:** Thank you, Madam Presiding Chair. Thank you Linda for taking your time to come and talk to us on this very important concept. I would first like to tell you that I am not a lawyer. So, I want to get some clarifications from you. You mentioned the Hola Massacre of 1959 where 11 people were killed. You also referred to the Nanking Massacre where 250,000 people were killed by the Japanese. When does killing go over the line and become massacre? Is it quantitative or is it intention that it looked at? How do you get to the point of massacre or how many people must die for you to refer it as a massacre?

**Dr. Linda Musumba:** Thank you very much. This, as I said, is one of the problems that exist with defining massacre. However, what is clear in the definition of massacre is that it is not quantitative. It is not the number of people who died but the indiscriminate and senseless killing of people. A feature that distinguishes genocide from massacre is the fact that genocide targets a specific race or population whereas massacres can cut across races and people. So, therefore, to answer your question, it is not quantitative.

**Commissioner Dinka:** I ask you as a scholar; would you say that a massacre like genocide is a very heavy and serious concept and can be used sometimes for political purposes, people throwing at each other? When somebody kills ten people, one may say that he killed ten people but others may say that he massacred ten people. That is one.

Another one is that the use of language is extremely important. Sometimes, we hear, for example in DRC Congo, that there are upheavals from time to time from the 1960s. They always talk about people killing one another and genocide taking place and civil war taking place and so on. However, in other places, some upheavals take place and nobody talks about massacres or civil war or anything. They get used to trouble like in Northern Ireland where it went on for 50 years. So, what are African scholars, like you, doing to define, in very clear terms these terms to which Africans most of the times become victims not only by being killed but also by being labeled as trouble makers or people who cannot solve their problems peacefully and go into fighting and so on? How would you assist us in Africa so that people understand what it means to have a massacre or genocide? Currently, there are a number of definitions, for example, the case of Darfur; one or two countries have called it genocide but the UN refused to label it as such and 99 per cent of the world refused to do so. However, big media houses are referring to what is happening in Darfur as genocide. However, I do not see any African scholars responding to this kind of thing. It may not be fair that I am asking you this but I wanted to hear from you, as an African scholar what you are trying to do or what you should do.

**Dr. Linda Musumba:** Thank you for that question, Ambassador. I, certainly, agree with you. However, he who has the power to label wields a very great power. For someone to determine that in this case it is massacre, and in this case it is not, and the other is just upheavals, I think it is great power. The same situation is obtained with genocide and if you allow me to read the definition of genocide from the International Convention on the Prevention and Punishment of the Crime of Genocide, it says “genocide” means any of the following acts committed with intent to destroy in whole or in part a national, ethnic ratio or religious group and, therefore, one killing members of the group causing serious bodily or mental harm to members of this group deliberately inflicting on the group conditions of life, calculated to bring about physical destruction in whole or in part, imposing measures intended to prevent births within the group or forcibly transferring children of the group to another group.

When you look at that definition and compare it with the one for massacre which is sometimes referred to as mass killings, one can see the total lack of specifics with regard to massacre. Thus, my proposal is that in our country, these events or massacres be defined much in the same way that other crimes are defined. For instance, murder has three elements. You have to have had the intention to kill; you must have been the one who killed and the third one---

**The Presiding Chair** (Commissioner Chawatama): And there is a fore thought.

**Dr. Linda Musumba:** Thank you Judge. To define massacre in the same way would take away the power of labeling so that anybody who can read the Penal Code can look at sets of circumstances and say that it is massacre. In terms of defining, we need a very specific definition. But you have pointed out, Ambassador that in the case of genocide, in Darfur, there are questions. Is that not genocide? I believe that because the definition is there, it has created a basis for debate. In the same way, we need to do the same with massacre. One of the things, of course, is that the African Union needs to take the lead to

discuss the element of massacre because invariably the majority of massacres in today's time are taking place in Africa. Therefore, Ambassador, my preposition is that through the Commission, the Commission could propose to the African Union to use its facilities to create a debate to create legislation.

To address an earlier point that you raised, there are of course political considerations that arise because of the gap that there is in definition. I believe that legislation at the level of the AU as well as nationally here in Kenya would go a long way in providing a basis for educating the public about the consequences of senseless killings. I believe the fact that the definition of massacre is not quantitative is recognition that the lives of 11 people are as important as 250,000 people.

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

**The Acting Chair** (Commissioner Namachanja): Thank you, Dr. Musumba for helping us understand this concept of massacre. You have highlighted a number of massacres that took place in Kenya and the last one having taken place during the post election violence. We missed out this during the hearings. Could you just talk a little bit concerning this particular one?

**Dr. Linda Musumba:** Going by the definition that we have established, it is clear even from the reports that have that the post election violence of 2007 would come under that definition. There are reports of different ethnic communities killing, on the basis of ethnicity, members of other ethnic communities. There have also been debates about whether some of these killings were perpetrated by members of the State through its agencies. Therefore, after the 2007 post election violence, there was subsequently the Mathira Massacre in 2009. Therefore, it is important that if perhaps that was omitted during the earlier hearings, that one might want to look at that because 800 or thereabout people and perhaps those are the ones that are reported because we have seen reports in the newspapers of incidences that may not have been reported, that is perhaps something that may invite further comments from organizations that participated greatly in this, for example, the Independent Medical Legal Unit which did a lot of work; they might shed some light on this.

**The Acting Chair** (Commissioner Namachanja): I have no further questions.

**Commissioner Farah:** Dr. Linda, thank you very much for your good presentation, but you have only concentrated on massacres committed by the State. Did you mention massacres that were committed by militias and civilians even to Government forces?

**Dr. Linda Musumba:** Thank you for that question. I mentioned the Mathira Massacre which was an inter community massacre and then I also mentioned the Lari Massacre which is in 1953 which involved the *Mau Mau* that carried out attacks on the Naivasha Police Post.

**Commissioner Farah:** There are others which you have missed like the Turbi Massacre.



**Dr. Linda Musumba:** Yes, I mentioned at the beginning of my presentation that I did not attempt to try and list them all. It is true as you have said there was the Turbi Massacre. I concentrated on looking for overlapping considerations.

**Commissioner Farah:** In your write up which you will give us; you have categorized massacres committed by non State characters.

**Dr. Linda Musumba:** Yes.

**Commissioner Farah:** I have no further questions.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much Dr. Linda Musumba for your presentation. As a lawyer and a judge, immediately you talked about the Penal Code, there are certain thoughts that began to go through my mind and one of the saddest things in dealing with issues of massacre is bringing the perpetrators to book. The perpetrators in the sense of individuals, whether those individuals are in the police service or the Army, and as such the question then to be asked is whether it is them who should bear the greatest responsibility and how we can deter individuals who participate in killings or other human rights violations in order to deter and punish. Maybe you could answer that question.

**Dr. Linda Musumba:** It is true that under the current circumstances and by their very nature, massacres sometimes involve State and non State actors. But for any State to admit that its askaris are involved in acts that go contrary to the law against its citizens would be a very serious admission of failure on the part of the State and, therefore, the grey areas that exist with respect to perpetrators. So, who should bear the greatest responsibility? One of the principal duties of a State is to protect its citizens. Therefore, there can be no going around the point that the State owes each one of us a duty to protect us. The State ought to organize itself such as to be able to provide that protection in the most effective and efficient way possible. When a massacre happens, whether 10, 20 or a million people are dead, in my view, the State cannot escape responsibility whether those acts are between State actors and civilians or civilians among civilians. What was your other question?

**The Presiding Chair** (Commissioner Chawatama): How to deter personal responsibility because it is one thing to talk about the State responsibility, but as their agents, whether it is the police or the soldiers, there must be some personal responsibility that will deter these individuals from acting the way we have heard they have acted and violated a lot of human rights.

**Dr. Linda Musumba:** Firstly, to respond to that question, I remember that during George Bush's tenure, when the American soldiers in Guantanamo Bay, there emerged an incident where they had taken photographs of themselves with the people in most uncivilized circumstances. One of the things that George Bush said is that the State will never be able to eliminate rogue elements within its cadre but the State must be able to

punish. A State distinguishes itself by its capacity to punish and to correct such. Therefore, we saw very elaborate proceedings that went on to punish those particular soldiers and in a very public way so that for citizens, both in the US and the countries concerned would see that the process was just and fair. To answer your question, we need to go through a similar process so that when and if we have rogue elements within State agencies, there needs to be a public process of dealing with those sorts of wrongs because one is not sure when processes take place in closed doors whether these persons have been punished, who is guilty, who gave instructions, did this person act on their own behalf or on behalf of the State? Therefore, in my view, it is very important that the process of identification and punishment of rogue elements is made very robust.

I would also like to draw your attention to the possibilities of citizens' arrests that can be carried out. That provision has been there even before the new Constitution and it is still there. So, if we are looking, for example, at situations where you have citizens against citizens massacres, there is a very big element of information and education that citizens need to affect such citizens' arrest and bring them before the State. It was very heartening to see in the Commission's hearings across the country people showing their willingness to come forward to the Commission and say what they have to say. That tells me that given the correct environment, people will come forth and talk. When the Commission finishes its job, what must logically follow is a process, an institutionalized process that continues to allow citizens to be able to bring issues that happen within their communities to such a forum.

**The Presiding Chair** (Commissioner Chawatama): Going by your definition of massacre, the mass sacrifice and from what we heard in Wagalla, especially, I real shuddered because it was their sacrifice of men and the implications of that are some things that you have highlighted. The frustration that we have as a Commission which you have also probably gone through is the records or the lack thereof. For example, when you said that 800 people died during the post election violence, the number that has stuck in my head is about 1,135. When we were listening to witnesses in Wagalla and according to the official records, those who died were about 70 and yet the people on the ground were mentioning a number of about 5,000. Then when you look at the population at that time, it may have been about 600,000. So, from that, you try to guess the number of men who would have been in that particular community and then you look at the number of 70 and if what we heard that all men were gathered, the issue of the records of those gathered and the records of those who died is so distorted. Those are some of the frustrations that we are having, but there was no denial that deaths took place and the fact that there were other human rights violations that took place. I do not know what your comment would be on these observations that we made and they are not restricted to Wagalla alone. We found that with many of the massacres that we have investigated.

**Dr. Linda Musumba:** What you have narrated is the story that has been said since Independence where official records are secrets; and in instances where they were disseminated, there has been lack of confidence as to the authenticity of documents. I think Kenya has moved on. Today in the Constitution, we have the freedom of information clause and in addition to that, we have citizens participating very much in the

collection and dissemination of information. An event only needs to happen and people have already recorded it on their mobile phones, have written blogs about it and if Wagalla was today, we would have photographs, people would write about it and in the environment we have today, people are free to talk. There would be a lot more openness. So, it is regrettable looking at the figures that you have given there of 70 people being recorded as having been killed as opposed to the community's figure of 5,000. In today's Kenya, that disparity might not be as great because of improved technology.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much for making time to come and speak to us. You will continue to work and inform Kenyans and we will do our part as a Commission. I do not know whether or not you are going to sit in here and listen to other presenters. You might learn one or two things from what they have to say, but if you are busy, we understand.

Leader of Evidence, can you take your next witness?

**Ms. Nancy Kimani:** Our next witness will be representing the witness listed 5<sup>th</sup> on our program for the day. He is Mr. Eric Kiraithe. This is the Police Spokesman. I welcome you to our session this morning. Thank you for making time to be with us this morning. Before I invite you to make your presentation, I request you to start off by telling us your full names and your title from which you proceed to give us your testimony. Feel most welcome.

**Mr. Eric Kiraithe:** The Chairperson for today's session, the Commissioners, all persons here present, my names are Eric Kibara Kiraithe. I am a Senior Assistant Commissioner of Police in charge of public communications. The popular title is Police Spokesman. The office includes a docket on human rights. This morning, I am here in response to an invitation which required the Commissioner of Police to give the Commission a brief overview of the National Police Service structure, mandate, powers, duties, functions, a departmental evaluation of the gains and challenges posed by the new Constitution. Also, the role of the police in enhancing human rights, analysis of the force Standing Orders and the policy of the National Police Service on the conduct of security operations, the ability of the service to investigate itself, is there room for an independent policing authority, past efforts by the police to address cases of extra judicial killings, armed militia groups, massacres and police brutality, statistics of civilians and State officers killed during the post election violence. Also, efforts by the Police Service to create a civilian friendly force and the challenges thereof and an overview of police preparedness, resources, detention and prevention of crime, challenges to effective policing and, finally policing under devolved units. The Commissioner was also invited to make any other presentations he may deem fit to the Commission.

Before I start on the written text which will be improved further before submission, the Police Force was looking into four aspects which they believe that the TJRC should look at very deeply especially bearing in mind that the Commission is one of the institutions formed after the PEV. There is the national attitude and history on the pursuit of power and wealth. There is also the perspective of use of violence as a means to any end. We

have in mind, if I can elaborate briefly that in the Kenyan war of liberation, the nationally acclaimed method is the Mau Mau War of liberation which included murder and robbery of properties believed to belong to colonialists and their collaborators. There is also the issue of value of life. If I can end with the issue of violence, we were looking at the manner in which persons believed to have put up structures illegally were demolished and removed a few months ago. There are several other incidences in between. There is also the issue of the value of life.

If I can elaborate on the value of life, for example, in most of Northern Kenya, it is a very unfortunate thing to say that several women, children and innocent people are killed in the process of killing cattle. Finally, it is the motive for giving evidence or testimony on anything that has happened. If I can elaborate this further, every Kenyan who is above 20 years was present in this country in the build up and occurrence of the post election violence. They therefore, know, although they might not have the details what the politicians did, what the media did, what civil servants did or did not do and generally what the ordinary mwananchi did compared to what we read in newspapers today and what the other classes of people say. Having given that preamble, I will now proceed to our prepared brief, which limited itself to the questions asked.

The first question was mainly a brief overview of the National Police Service, powers and functions. We have said that this is in Article 244 of the new Constitution which binds the National Police Service to strive for the highest standards of professionalism and discipline, prevent corruption and promote and practice transparency and accountability, comply with constitutional standards of human rights and fundamental freedoms, train staff to the highest standards of competence and integrity to respect human rights, fundamental freedoms and dignity and to foster and promote good relationship with the broader society. Article 43 establishes the National Police Service with a structure that will have the Kenya Police Service, Administration Police Service and gives it a national mandate as opposed to a devolved system. Article 245 creates the office of the Inspector-General. Here, I wish to note the independent command for both the Kenya Police and the Administration Police Service.

The Article also creates the offices of the Deputy Inspector-General for the Administration Police and the Kenya Police. For the benefit of the members of the public present, Article 10 also provides for the functions of the Inspector-General which includes implementation of policy, audit of police operations and functions and coordination of all police operations. Another major function is also to advise the Government on policing matters and services and the other issues related to management and discipline of the Police Service. In the National Police Service Act, 2011, the National Police Service is given the responsibility of prevention of crime, detention of crime and investigation of all reported cases, over and above maintenance of law and order. It also binds the police to the national values and principles to uphold national values and objects as set out in Article 10 to 32 and 244 of the Constitution.

The second question was issues of evaluating the Police Service under the new constitutional order, gains and challenges posed.

Let me state here that if there is any institution in this country which has benefited from our Constitution it is the Police Services. Historically this is a police service whose management, tooling, equipment and human resources functions cannot be said to have engaged the successive Governments of Kenya as would have been expected.

So, overall, some of the most obvious gains are that the National Police Service will be under a unified command under the Inspector-General. This will not only afford unified command but an avenue to collectively present their grievances, an opportunity to create uniform professional standards and also to deny the politicians that aspect playing one unit against the other. Others are; the Inspector-General will be able to allocate resources both human and non-human to the best interest of the public, there will be a strict requirement on training and observance of human rights. This way we have been able to come out with a new curriculum and it is being implemented. This is both for APs and the regular police.

The new Constitution has also raised the bar to be achieved by the police. That means that the country will be bound to allocate extra resources on police buildings, level of investigations; both equipment and training of personnel and also in the equipment of public order policing. If I can elaborate on the issue of public order policing, if you just casually look at the conduct and character of riots in Kenya although the situation is improving, they have been very violent and they tend to attract very large numbers. When you look at the equipment given to the police as compared to services facing them, they are very inadequate.

The role of police in enhancing human rights; certainly the Constitution has placed very high standards of human rights in Kenya and even without going into details, the police, being a law enforcement body will have the responsibility not only to comply but also to ensure that individual citizens are also observing these principles. The major challenge here is that the thinking - I am mentioning this because you are the TJRC and your mandate exists – among individual Kenyans is that they do not associate themselves with respect for human rights. They think about it in terms of Government services and military. Certainly you will point a finger across the fence. For example, Kenya Police have been blamed for being brutal and using excessive force. I will provide the accurate data but last year less than 40 people died during contact with the police. Over 400 died of mob injustice.

If you recall what I said in the preamble about use of violence and bearing in mind that the police are products of the society 100 per cent, that tells you something about our role in enhancing human rights and the challenges there in. generally to be able to actualize this, we have made our new Constitution an examinable subject. It is an examinable subject in the initial police training course and all other trainings which include police constable to corporal, corporal to sergeant, up to superintendent. Then of course the Kenya Police Standing Order will also be reviewed to be able to comply with the new standards.

Analysis of the Force Standing Orders and the policy of National Police Service on conduct of security operations; the Force Standing Orders provide instructions on how to handle complex police operations and operation orders or operational plan as the case may be. The current Article 125 of the National Police Service Act (2011) directs the Inspector-General to make National Police Service Standing Orders to provide for order and good management of the service.

If I can mention the major thing which will be introduced there in the operation order will be an aspect of the role of the community in the execution because it is a constitutional requirement. Of course, this will attract a lot of discourse because there is also a limitation as to how much you can give prior to the execution of any operation order, bearing in mind security considerations and the objectives of such an operation.

Also, the police Standing Orders will be reviewed to look at whether the devolved police system and how the NPS will relate to the county governments. If I can just mention here as a police officer, it would be very interesting bearing in mind how the Governors who are politicians and since this is a forum of truth, the truth is that our politicians have shown a lot of partiality especially ethnic partiality. There is plenty of evidence all over and I can imagine what would happen if the Governor of Samburu is involved in an operation order, for example, in an operation intended to recover cattle from Samburu stolen in Pokot. Of course, the same applies between Pokot and Turkana. In some areas it is even clans; Gabra and Borana. These are very small differences. Therefore, I think the TJRC might find it fit to come up with that truthful advice to the Government. That is the advice which looks at the reality. One of the past and even current challenges is about what the law requires and what you have on the ground.

In terms of the police Standing Orders, we will look at what our fleet management policy should look like, internal accountability, community policing and other issues.

I will go to item V this deals with the ability of the police service to investigate itself. Is there room for the Independent Oversight Policing body? I will start with the latter, the answer is yes, and there is a lot of room for an independent oversight. What the country should protect is this independent oversight policing body being used to influence the police to victimize certain police officers or to limit their capacity to work. In brief, we have had a system which has been working but it has not had a lot of credibility from the public. I would want to inform this Commission that in the last six years 21 police officers have been charged in court with 18 cases of assault, seven have been charged with the offence of manslaughter, three with defilement and six with causing grievance harm. A total of 38 police officers have been charged with murder. Therefore, the space for independent oversight body is there and it is welcome.

Other course of action includes internal disciplinary actions. One of the major weaknesses is that police investigations against other police officers are generally not made public. This is a very old practice in other institutions whereby in the event of dismissal you do not intend to deny the person the opportunity to be rehabilitated and get

other gainful employment. The intention of any investigation is not to humiliate the individual concerned.

The internal policing body is in the process of being implemented, officers have visited Botswana, England and a few other countries to benchmark. The unit will have an investigative sub-unit, an intelligence sub-unit and an analysis sub-unit.

I will move to the sixth issue which is; efforts of the police to address cases of extra-judicial killings, armed militia groups, massacres and police brutality. What I would want to highlight here is that basically, in as far as extra-judicial killings means and includes a sanctioned policy to kill any class of people, criminals and so on, such policy has not existed. However, there have been questionable deaths during police contact. Some have been investigated resulting to prosecutions for example the 38 cases I have given of murder and manslaughter.

Another thing that I may wish to mention is that in several instances, politicians have given utterances historically indicating things like “shoot to kill order” and so on and so on. The extent to which these utterances affect the police that is their action towards any crime is a matter of conjecture. However, in police practice and the law in this country including internal operation orders, such a policy has no place. Under all circumstances police are at least expected by the law to account for every use of a firearm by the Force Standing Orders. We may have fallen short of implementing that requirement 100 per cent but it has never been interfered with.

For the sake of time, I will move to the issue of statistics of civilians and state officers killed during the Post Election Violence (PEV). The TJRC may wish if it deems it fit to offer the police service and internal closed door hearing on some of these matters. Suffice it to say that during the Waki Report we gave a figure of 600 and also acknowledged that there could have been deaths that we did not record. Whereas we do not want to compete with NGOs or other people who have given other statistics, we wish to mention that police figures are evidence in all cases and we limited ourselves to people and we rely on figures where we have names and places where the incident occurred.

In respect of PEV, because we believe several reports missed this, we would wish the TJRC to ponder the presence of illegal guns which are supported by many researches and the annual rate of recovery. The commonly passed information is that all deaths of gunshot wounds during the PEV were perpetrated by the police. The question arises, during this dark moment in the history of this country, firearms have been used in robbery, mugging, cattle rustling and even in private disputes, where were they?

Then I will move to the next issue; efforts by the police to create a civilian friendly force and the challenge thereof. We would want to say that the National Police Act (2011) put community policing into law for the first time. Pursuant to this and several other efforts, we have continuously reviewed what form community service should take. Community policing is not about policing. It is an issue of the community playing its role in preventing crime, detecting crime, apprehending offenders; apprehension here means and

includes providing evidence which can stand in a court of law, and generally maintenance of law and order. It is not an issue of getting a few unemployed men and declaring them community police officers. Community police officers are usually police reservists who are provided for by the law. So, today, as we are seated here, the Minister is launching a pilot project in Kikuyu area.

Then an overview of police preparedness, resources for detection and prevention of crime; let me say that being the police spokesman I hope the Commission will find time to visit a police station and spend at least half a day there. We are striving by offering quality training, we are providing more houses, we are building more police stations and posts and we are pestering the Government for training and equipment.

To conclude my very long presentation, I would want to draw the attention of this Commission to the terms and conditions of service of the police service. We are now talking about an Inspector-General. We are very concerned about the fact that we have lost sight of the fact that it is the ordinary policeman who does the work. Kshs15, 000 is not a rational pay.

Another thing we would want to draw the attention of the TJRC to is the creation of “nobility” within the civil service. That we have some civil servants earning millions of shillings and others earning Kshs15, 000. This kind of disparity is very irrational. Well, you may want to look at the fact that any salary beyond Kshs300, 000 is basically an attempt to enrich the holder of that office. Today, any salary in Kenya below Kshs50, 000 is an attempt (using the words of one of my NGO friends) at institutionalized slavery. When I say this we expect civil police officers, we expect corruption free police officers, people who are composed and slow to be provoked and if such people are not feeling fairly treated and feeling discriminated against, it is very hard to create a desirable work force from them.

I will end my presentation there.

**The Presiding Chair** (Commissioner Chawatama): Leader of Evidence, I think we will ask Commissioner Farah to ask the first questions because he is about to leave us in a few minutes then we will come to you.

**Commissioner Farah:** Erick Kiraithe, we thank you very much for your eloquent presentation. Being the spokesman of the police force, I did not doubt your eloquence. Your in-depth presentation is very much appreciated by the Commissioners. Thank you very much for having proposed that we should have an in-camera hearing with you and some of your officers so that we can engage on those sensitive issues which we would like to know.

I liked your last point on salary. At night when I sleep I always want to dream that the police are looking after my security because those KK guards who are tremendously mushrooming in the estates are even part of the problem. When a police station is nearby one always feels secure. In order for you to put your trust of safety on policemen, I am



one of those people who advocate that they should be appropriately remunerated. Of course, I liked when you said that policemen are recruited from amongst the public. Therefore, there are certain traits that however intense you train them you cannot erase from them as a reflection of the society. However, at least we can make them better by remunerating them properly and accommodating them properly so that when they are on duty, they do not have to look over their shoulder and worry about the problems of their families and the problems of things like food, school, fees and many other things that we all have to struggle for.

Therefore, what I propose for you even though you gave that line that anybody who earns Kshs50, 000 today is equivalent to slavery, if you could have given the Commission, even though there is a remuneration commission that is being set up, for the benefit of the Commission what do you as a service think should be the minimum which policemen should be paid in order for us to train them and work 24 hours for your safety, then we would have been very happy.

That is a suggestion and a question but you can say something on that.

**Mr. Erick Kiraithe:** Let me thank you a lot for one of the very few good remarks the police service gets to hear. We shall certainly give the Commission what should be the minimum pay. But if I can give an indication, we attach police officers to Parliament and we attach our police officers to the Central Bank of Kenya. In their research, they have given the lowest they would want to pay their police officers not forgetting those are some of the officers who do some of the lightest duties remembering that today we have officers in North Eastern or closer here in Kibera. You realize that their benchmark has never gone below Kshs50, 000. We shall oblige.

**Commissioner Farah:** I do not have any other question because I think your presentation has given all the documents. I will leave it to my other Commissioners who will do the good work.

**The Presiding Chair** (Commissioner Chawatama): Leader of Evidence, please, proceed with your questions.

**Ms. Emily Kimani:** I have a few questions for you Mr. Kiraithe. The first one is; do you feel that the ratio of police to civilian distribution in Kenya is in line with the international standards?

**Mr. Erick Kiraithe:** Approximately we have 70,000 police officers who do the general duties and also do other support services like expert investigation in the CID and operations support in the GSU and the RDU. When you compare it to the UK, the metropolitan police alone, London City have 60,000 police officers. We do not have a research which has certainly put the ratio in Kenya but we are seriously inadequate. That ratio is just too low although the Government is making a lot of effort to increase those numbers.

**Ms. Emily Kimani:** My second question is: do you feel that the police force is doing enough to assist the Judiciary in achieving its mandate of giving the citizens justice? In this I am talking about; we see on TV the officers mishandling evidence. We have also heard instances of people saying prosecutors are compromised and investigations are incomplete. What is your take on that?

**Mr. Eric Kiraithe:** Presiding Chair, the role of the police, as part of the criminal justice system, is one of the areas which will require a lot of investment and re-thinking of the law. Let me throw a little light. When a criminal case is brought to the police, the police are supposed to proceed to the scene, identify the exhibits and identify the witnesses; in case of stolen property, recover that property and, of course, identify and apprehend the offender.

The police are also required by law to submit the exhibits collected for expert interpretation. If it is a firearm, it is presented to the ballistic experts. If it is a document involving accounting matters and matters of fraud, it is presented to an auditor. If it is injuries involved or death thereby requiring post-mortem reports and all those things, they are taken to the appropriate experts. Those experts are supposed to put this evidence together, give an opportunity to the suspect to tell them something. For example, somebody might not have been to the scene and he could have a good alibi.

Basically, a police station comprises of almost an entire criminal justice process in itself, in that at the end, you might decide to warn. The law provides that the police officer may warn or forward the case to court with the evidence.

Presiding Chair, when you look, historically, at the resources availed to the police for training and analysis of evidence, for example, in sexual abuse related cases, some of the things involved, assuming that an officer is in Isiolo or Turkana and the only analytical laboratory that we have is the Government Chemist, who is based in Nairobi. The law requires you to take somebody to court within 24 hours of arrest. Looking at the culture of our people to escape justice, even the senior-most, 24 hours is still a very contentious issue yet it is in the law.

So, to answer this question, we need to have a review of our laws, consider equipment available and resources for training. We are referring to very massive training. Therefore, going by the available resources, let me mention that we have been able to operate with other police services. We have investigated cases with the Scotland Yard and the FBI. We have been involved in police services in Sierra Leone, Bosnia Hergovena and East Timor.

Believe it or not, the little we achieved is like a miracle. In fact, officers from other police services who come to Kenya acknowledge that. So, given the limitations, we are doing our best but certainly, for the future, without very in-depth and committed reforms, the national police service will not be able to play its rightful role in supporting a credible criminal justice system.

Thank you.

**Ms. Emily Kimani:** My other question is this, when you were talking about point number six – past efforts of the police to address cases of extra-judicial killings, armed militia groups, massacres and police brutality – you limited yourself to murder, illegal possession of firearms, organised crime and assault and you added that these are contentious areas. What is your understanding of those four terminologies? You could, kindly, give us your definition as contentious as they may be.

**Mr. Eric Kiraithe:** Presiding Chair, let me say that I was saved by the first presenter. We would be safer going by the definitions she provided but let me state that “extra-judicial killings” does not certainly refer to situations where an officer shoots a member of the public over disagreement on a lover. It does not include a situation where a policeman uses his firearm to rob resulting in death. It certainly does not refer to situations which, after investigations, are proved to be excessive use of force, where the officer would be charged with manslaughter. It has an element of policy.

Thank you.

**Ms. Emily Kimani:** Thank you very much for your response. Could you, kindly, give us a brief comment on the welfare of the families of police officers who die in the line of duty?

**Mr. Eric Kiraithe:** Thank you very much for that question. Let me state here that in my own opinion – this was not discussed by the committee that put together this presentation – the issue of officers injured while on duty, injuries of any degree, the manner in which their families are treated, if they die, is, by any imagination, an historical injustice.

Thank you.

**Ms. Emily Kimani:** You also gave us something on community policing. My question, in light of that, is how successful community policing has been since its inception.

**Mr. Eric Kiraithe:** I would want to say that community policing has had mixed successes in areas like Malindi, Kisumu, where there is an area which I cannot remember, Matuu and Rongai, where the communities in entirety came to work with the police to solve issues of insecurity and crime. It has been very successful. However, in areas where it has been hijacked by vigilante groups, criminals or where it has been politicised, it has failed.

**Ms. Emily Kimani:** My last question is to elicit your comments on the effort to make the police force independent from political interference, elimination of corruption and such like matters.

**Mr. Eric Kiraithe:** Commissioners, on the making the police politically independent, whereas it is debatable whether a government led by politicians can produce an agency

which is totally politically independent--- To achieve a level of independence that will enable professional and honest police officers deliver quality services will remain a challenge for a long time to come. You only need to look at the debate surrounding the appointment of the Inspector-General to realise that we still have quite a way to go.

Corruption is a vice which is very easily stoppable, but what I would say is that away from the police, in this country, we have overcome big challenges. We rejected single party rule. Therefore, we have the capacity as a country to eradicate corruption. Within the police, with a serious and committed look at the factors contributing to corruption, we can reduce it by 90 per cent. This is an aspect of deviance, and eradication might not be very practical.

My emphasis is that corruption requires a new national commitment because it is not something in respect of which we can point fingers or sooth ourselves by trying to see who the most corrupt person is. It is a very big problem for this country. It also contributes to violence and crime.

Thank you.

**Ms. Emily Kimani:** Thank you very much, Mr. Kiraithe, for taking time to appear before the Commission this morning. I have no further questions for you.

Commissioners, through the Chair, I hand over the witness to you.

**The Presiding Chair** (Commissioner Chawatama): Thank you, Leader of Evidence. Commissioner Dinka, do you have any questions for this witness?

**Commissioner Dinka:** Thank you very much, Mr. Kiraithe, for your testimony, which was very interesting and very enlightening. I have a few questions for you.

During our public hearings in the field, we were told by several witnesses that for children and for people who are victims of sexual violence, most of the police stations do not have special desks. You can understand why that kind of thing is necessary for victims of sexual violence and for children. In your estimation, what percentage of the police stations has such desks at the moment? What is the police service trying to do to ameliorate the situation?

**Mr. Eric Kiraithe:** Certainly, this is a matter of serious concern. So far, we have been able to establish desks in about 30 per cent of the stations. We have also carried out a lot of trying, even with the help of NGOs and the Kenya National Human Rights Commission, which has assisted in generating resources. Certainly, we view it as an area which requires accelerated implementation around the country.

**Commissioner Dinka:** Thank you. I forgot to mention people with disabilities, particularly when they are arrested and put in cells. They need special facilities. Are you thinking along that line to provide those special facilities?

**Mr. Eric Kiraithe:** Thank you for that question, Commissioner. The new police station plan, not very new--- Although its implementation started in 2004, it was proposed in 1999 by the Police Department. It has places for mentally handicapped persons and other people with special needs. We do not look at it as disabilities. It is being implemented. I believe we now have such a facility in Kondele, Kayole and in a few other stations. All the new stations are taking this into consideration. Even the entrance at Police Headquarters is being re-engineered to allow people on wheelchairs and other such things to be able to access the building; we recognise it as a matter that requires urgent attention.

**Commissioner Dinka:** Thank you for that response. I am going to ask you about a little bit more complicated thing than this one. In our hearings, even last week and yesterday, people said that so-and-so was arrested, beaten up at the police station and tortured, and that he was taken to court 48 hours or 72 hours later or something like that. People think that a police officer in uniform or without uniform can go to somebody's house, knock on the door, show an ID card, talk to him gently and humanely and ask the person to accompany him wherever the officer wants that person to accompany him to. However, people tell us that the beating of the suspect starts at his house. They then put him in a car and tell him to lie down on his stomach and take him or her to the police station, and a lot of things go on.

Do you think this situation is improving? These are stories we have heard all through.

**Mr. Eric Kiraithe:** Commissioners, certainly, these malpractices are there. It is a long history of unprofessionalism but I believe we are improving a lot. One of the indicators is that since 2004, when we started the police reforms in earnest, only one police officer has been prosecuted for assault. However, between 2006 and 2011, 36 police officers have been charged with common assault and two have been charged with grievous bodily harm. That has improved the situation by far. The action has not only been punitive but there has also been a lot of training, a lot of internal disciplinary action and it is continuing.

**Commissioner Dinka:** Thank you very much. Can you in two or three minutes tell us what human rights training for the rookie policeman would look like? How many hours would you give them on human rights training, how extensive it would be and how deep it has gone within the police force? Is there any kind of refresher courses on human rights?

**Mr. Eric Kiraithe:** Commissioner, could you repeat your earlier part of the question, please?

**Commissioner Dinka:** For a police recruit, what is the course content? How many hours of that course content--- How many weeks of that course are on training on human rights? Are there refresher courses on human rights for serving police officers?

**Mr. Eric Kiraithe:** When we were preparing for the implementation of the new Constitution, the target was that every police officer should undergo 20 hours of training on human rights. That is, of course, progressive. What we have also attempted to do is to put an aspect of human rights in all aspects of policing. This is because when, for example, you want to effect a search, whether on the person or on their premises, there is an aspect of dignity, which is a human rights issue. The fact that you have explained to that person, and you are doing it equally across the board - you are not discriminating - shapes an officer a lot with regard to furthering human rights.

The manner in which you effect an arrest and the reason, for which you effect an arrest, have also a lot to do with human rights. When taking statements and carrying out interrogation, there is also a lot of human rights issues involved for the suspect. When weighing the amount of force to use, for example, as to whether to use your firearm or not, the consciousness that your decision should not be limited to the pursuit of the criminal, but it also guided by the sanctity of human life, is also a factor. Then mainly, and we have benchmarked this, any treatment of a victim of crime of whatever description is a major consideration. Whether you are looking at preventive activities or you are looking at how you treat them when they come to report after the incident, the emphasis should be on the recovery of their property. You should also be very conscious about the sanctity and the use of the right to property and all the implications thereof.

So, it was a re-engineering of the entire curriculum, so that any police officer who will have undergone the 20 hours of training – those who are in college are getting more hours although I do not have the figure now – can appreciate that the ultimate aim of a police officer is to facilitate the rights and freedoms of individuals in society and in respect of the rest of the community.

I must say that the Kenyan community has really come up. These days we have at least a demonstration every week and very few of them are ever violent. We would want the police to look at themselves as facilitators of such democratic rights expression and the right of conscience. We want an officer to be conscious that at no time should he be used to suppress the rights of any individual or group of people.

Thank you, Sir.

**Commissioner Dinka:** Thank you very much. I hope we will see you again. The Presiding Chair has just accepted your offer. So, I have one last question for you today. How do you see the role of the national police in the devolved system? Do you expect a lot of friction or is it going to be a very smooth interaction? This is because, after listening to people in the countryside, we realised that the views that they have not only on the police but regarding devolution are quite divergent from the views that people have in Nairobi. Please, share your views with us on that aspect.

**Mr. Eric Kiraithe:** Commissioners, what I would like to say is that whereas devolution will probably have a very positive effect on development and delivery of service, the Constitution is right in making the police a national service. Certainly, the county

governments will play a big role in actualising community policing, but once again the assumption is that the people elected at the county government level will be persons with alertness and commitment to the rule of law.

Going by the landscape we have looked at, I am glad that the Commissioner has mentioned the difference in the boardrooms of Nairobi, and of course the hotel retreats, and the reality on the ground. Having worked as a police constable and as an inspector and superintendent of police in all the provinces of this country, and being a consumer of crime reports and intelligence reports on a daily basis to date, I know that we have to be very cautious. There is need for a lot of caution and realistic research on the extent to which we can devolve the police service.

If there is an area I would say, as an individual, that we are not ready for is the devolution of the police service. This should not be mistaken with a deliberate and accelerated effort to involve communities in meeting their local needs, including provision of security and maintenance of law and order. To illustrate this, the local needs of, say, Westland, Lavington and Runda and the local needs of Mathare and Kibera and those of Turkana, Kisii and Nyeri differ a lot in emphasis. A structured involvement of communities is very necessary but we must be very cautious on the issue of devolution. Remember that it is a provision in the Constitution. We shall do it and we are preparing for it but the manner in which it should be implemented should certainly involve a lot of piloting, and a very clear assessment and analysis of the challenges and projection of future challenges.

Thank you, Sir.

**Commissioner Dinka:** Thank you very much, Mr. Kiraithe. I have no further questions for you.

**The Presiding Chair** (Commissioner Chawatama): Mr. Kiraithe, I will ask Commissioner Namachanja if she has any questions for you; but I was thinking that the way in which we are going to proceed – because we are going to have a special session with you, which we will arrange – is that we can ask, maybe, a few questions. I have a lot of questions because of where I come from and my experience with the police; but we will, maybe, share with you some of the topics that we will want you to address when you come next time, so that you can also be better prepared. We will just have a few more questions because we still have one more witness waiting to be heard.

Thank you.

**The Acting Chair** (Commissioner Namachanja): Mr. Kiraithe, in view of what the Presiding Chair has said, mine is just to appreciate the role of the National Police Service. I do not know what we can do without it. Mine is also to note that it is very painful at times to watch the public cheer whenever a police officer is cornered and is being beaten. Even our media or human rights activists sometimes do not care. It is as if the life of a police officer does not matter; the police are there to care for us. So, my prayer is to see an improved relationship between police officers and the citizens they serve. I remember

that when we paid a courtesy call to the Commissioner of Police, and when you were escorting us out, at the time the debate was very hot concerning the role of police officers in the post-election violence and your concern was what will happen if we have a repeat of what we experienced in 2007/2008.

Thank you, Sir, for coming to share with us.

**Mr. Eric Kiraithe:** Presiding Chair, thank you very much. I am glad to have attended this session under your chairmanship. I understand that you are an Honourable Judge from Zambia. When I served in Sierra Leon as a senior police advisor for disarmament, mobilization and reintegration, my last and very able boss was Mr. Hudson Benzu also from Zambia. He has ever since been a friend and colleague.

Thank you.

**The Presiding Chair** (Commissioner Chawatama): I apologise to Commissioner Shava. I should have introduced her the minute I was able to. I would like to introduce Commissioner Shava and welcome her. She had other duties to attend to and has joined us. We are grateful that you are here. I know that you have not been here for the actual presentation, but you are a lawyer, and lawyers always have questions. I wonder whether you have one, two or three questions that you wish to ask the witness.

**Commissioner Shava:** Thank you, Presiding Chair. Good afternoon, Mr. Kiraithe. Thank you for being with us. I will reserve my questions for the next session, which I understand you will have with us. I believe we will benefit immensely from your knowledge and experience as a senior police officer who has served widely in the Republic and elsewhere.

Thank you.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much. Amongst some of the things that we will want to hear from you – you have touched briefly on these but we require a response with more details – is whether you are attracting the right people to join the police force, what kind of people you are looking for and how decisions around recruitment are made. We are also concerned about the conditions of service, which you alluded to. We are concerned about not only salaries and terms and conditions of service but also housing and promotions within the police force. We will want to know who makes the recommendations for promotion and when is a person promoted, for what reason and considerations?

You also touched briefly on corruption but maybe you could speak to us on whether or not you have any strategies or policies to combat corruption within the police force and what your efforts are. One of the things that keep cropping up, which we would also like you to address us on when you come, is the handling of lawful and unlawful commands, where police officers find themselves in a situation where a senior officer is commanding them to do something that is clearly unlawful and contrary to the duties of an officer.



We also want to know how well you have received the reforms that are taking place in the police service. I would like to call the police a “service” and not a force although I have seen the word “force” in your presentation.

We would also like to know what are some of your concerns with these reforms and what else would you have wanted to see because we are going to make recommendations and we may be able to put your concerns across maybe a little bit better than yourself because of the interest that you have to serve.

As we have travelled around, the public have spoken about the confidence they have in the new Constitution and to some extent the judiciary but there was still a lot of negativity towards the police. Now with the new Constitution what kind of police service will the people of Kenya expect?

You have given us some details on how in the last six years on the number of officers who have been disciplined and what type of offences they committed. If there is more information on that, then it would be helpful, that is, the type of offences and how you have dealt with them.

You also mentioned the fact that you have 70,000 officers. We would like to know how many are women and what you are doing to attract women to join the police service. You have also talked about community policing. This is something that we have also introduced in Zambia and elsewhere. Based on what we have heard about the relationship between the police and the citizenry, we would also want to know what you have done, first and foremost, to improve other relationships between the police and the citizens so that they can willingly participate in community policing. From the questions that have been asked, there are some other issues that you would probably want to address. The list is not exhaustive but we want to make sure that as the police service, you are given an opportunity not only to be heard but that we can also make recommendations that are meaningful to make an impact on the service. If they do make an impact then they will also make an impact on the citizenry in a more positive way as you begin to clean up the image of the police service.

On that note, I would like to thank you most sincerely and I am so glad that you are a friend of Zambia. When I see my husband, I will tell him that we have met.

**Ms. Emily Kimani:** Presiding Chair, with your kind permission, the witness has prepared a written presentation and I wish to ask him that the same forms part of the Commission record.

**Mr. Eric Kiraithe:** This particular presentation will form part of the evidence but it will need to be enriched a bit in terms of statistics, a little bit of editing and the preamble which was agreed on has not been included.

**Ms. Emily Kimani:** Thank you for your willingness to share with us.

**The Presiding Chair** (Commissioner Chawatama): We will admit this one in this condition but on condition that there will be another one to replace it.

**Ms. Emily Kimani:** I pray that the presentation be admitted to form part of the Commission record.

**The Presiding Chair** (Commissioner Chawatama): Admitted as prayed.

Thank you very much. You are free to join us and listen but if you are busy, we shall excuse you. We shall have the next witness.

**Mr. Eric Kiraithe:** Thank you, Presiding Chair.

**Ms. Emily Kimani:** Commissioners, our next witness is listed 3<sup>rd</sup> on the cause list. There is a slight mistake in the programme in terms of the topic to talk about.

**The Presiding Chair** (Commissioner Chawatama): We welcome you to our sittings and please, be comfortable.

**Ms. Emily Kimani:** I want to thank the Presiding Chair in welcoming you for a session this afternoon. Capt (Rtd) Simiyu Werunga, the Director African Centre for Security and Strategic Studies, you have been invited to give us your take on civil society's role in promoting and enhancement of human rights among other things. I welcome you to give us your presentation. Kindly inform us your full name for record purposes and then proceed to give us your testimony. Feel most welcome.

**Capt. (Rtd) Simiyu Werunga:** My full name is Simiyu Werunga. I served in the military for a number of years, then I retired and went back to school. We are now running this centre called the African Centre for Security and Strategic Studies. I have been asked to do three things. One is to give a brief outline of the civil society's role in the promotion and enhancement of human rights; an overview of some of the achievements and challenges facing the civil society in the security sector and to give a brief analysis of the legislative, structural and policy gaps that can be addressed within the police service.

I thought it was prudent that before I get to that, I should take about three minutes to take you through what the national security architecture in this country is, so as we speak and talk, we understand where the problems are coming from and if the way we are engaging the Government and the system is ideal for us to achieve what we are looking for.

At the national level, we have something we call the Cabinet Sub-Committee on Security. We have the National Security Council/Committee, the National Security Intelligence Committee and then we have the Permanent Secretary for Provincial Administration and Internal Security. I have mentioned this because it is going to touch on why we have the provincial security committees, the district security committees and the divisional security committees.

We have three organs of security in this country; the Kenya Defence Forces, the National Police Service and the National Security Intelligence Service (NSIS). What is the legal framework that entrenched these organizations? The Kenya Defence Forces is still operating under the Armed Forces Act. I have been told that it is being amended for discussion. The National Police Service has already got a new Act. The National Security Intelligence Service Act is also undergoing amendment because it has now been changed from the NSIS to National Intelligence Service (NIS). Then we have the Provincial Administration. Kenyans do not know how the Provincial Administration has been anchored in the issues of security and intelligence. This was done under what is called a Sessional Paper No.1 of 1965 where the President delegated part of his duties; that is, security and gave it to the Provincial Administration to assist him in ensuring that the country is safe and secure.

What other services do we have in this country? We have Kenya Wildlife Service (KWS), Kenya Forest Service (KFS) and the Kenya Tourism Act which is recent. This will create the Tourism Security Service. All these three have also been given the power under the law to use weapons in the enforcement of the rules and regulations under those specific Acts. Who are partners to all these services? We have the Kenya Private Security Industry Framework, Kenyan people, civil society and Non-Governmental Organizations (NGO), academia and scholars, experts, research and training institutions and development partners. I mention this because one of the Bills that have not been enacted into law is the Kenya Private Security Industry Authority Bill. This read together with the National Security Police Service Bill, have been mandated under community policing to work together to improve security and safety in this country.

Why do I mention the Kenyan people? Under the Constitution, the Kenyan person has a civic duty to ensure that the environment is safe and secure. They have also been given the powers under community policing to work together with the Kenya Police. Lastly, the National Police Service Act has created the County Policing Authority. The County Policing Authority has a membership of nine people and out of the nine; seven of them are going to be civilians. That is why I mention it so that we understand as we look at our security, we understand that some of the issues that we undergo and why we think that we are not able to deal with them is because of the national security architecture that sometimes under not very good democratic systems, you will find that even the police themselves might not be able to deliver services because of lack of political will.

Let me now get to the issue of civil society's role in security. One of the things that we have achieved is that people do civic awareness campaigns. We go to the people and explain to them about issues of human rights, and capacitate some of them so that when these officials are not there, members of the community can continue being empowered. The second thing they have done is that what they used to promote through this is through lobbying for elimination of the instruments of violation. We have done a lot of advocacy especially on police reforms programme and this, to us, has seen what we are achieving now in terms of new laws, new paradigm shift and even the police training curriculum has changed. We also use publications of materials; disseminate them to the people, policy makers and political leadership. Some organizations have actually placed

paralegal staff especially in the prisons to empower prisoners to understand their rights and how to have access to justice. They also use picketing when it gets to most difficult areas and we do not seem to be getting it. So, we picket ourselves. We also do publication of materials. An example is that when we got the new Constitution, many organizations came up with what we call “a shortened version” translated into Swahili so that a big number of Kenyans can understand what the Constitution is talking about.

Some of our organizations have also gone and put boards within police stations explaining the rights of an arrested person. For example, if you go to Central Police Station, you will see a board, as you are entering stipulating the rights of an arrested person. That is meant to ensure that rights are not violated. Most of our colleagues have also participated in developing training material. Right now, at Kenya Police Training College and the Administration Police, we have new modules on human rights and access to justice. Lastly, in a major way, we participated in ensuring that all these rights are in the new Constitution.

We feel that that was the greatest achievement. In a nutshell, that is how civil society promotes and enhances human rights in this country. When I mentioned about the three organs; the Kenya Police, Kenya Defence forces and National Security Intelligence Service (NSIS), somebody might ask where the administration police is. Administration Police is now part of the national police service. So, all this time we need to know that every time they operationalize the Act, then the two service units will be working together.

What could be our achievements so far? One of the things we believe we have achieved in this country after a very long struggle is that the levels of acceptance by the police service, the civil service bureaucracy and the political leadership is very high now. Most of the time, they want to do something to do with police service in the security sector, they always ensure that the majority of us are always invited to have an input in whatever they are trying to come up with. We have also partnered in major areas in community, safety and policing initiatives. We have also worked very closely to produce specific sector knowledge materials to assist Kenyans and the police so that we have a common understanding. We have also participated fully in all the Bills that we are talking about today from the National Police Service Bill, Police Service Commission Bill, Independent Oversight Authority Bill, Public Security Industry Authority Bill and the Coroners Bill. The three of them are now Acts of Parliament and only two have not been done.

We also participated fully when they came up with the new training curriculum for the police. We are happy that most of the things that we suggested are now part of the training modules in their training colleges.

When you go to both police colleges, that is, Kiganjo and Embakasi, they have seven pillars they call values of a police officer. The last one is “Respect for Human Rights” and the person. It never used to be there but now we are happy, it is there. We are happy

with that achievement because every police officer must go through training on the essentials of the rights of the Kenyan person.

The last one is the appointment of the membership to the Independent Police Oversight Authority. We are aware that some appointments were supposed to be made. Yesterday, the appointments were made for the Police Service Commission although we are not sure how it is going to end up. If it ends up well, then that is another achievement for the civil society and all partners. What are our challenges? One has been dealing with the police service that has a bad history and it needs to change. Unfortunately, the senior leadership in the police service has not been willing to change and has been very difficult for us to push them to accept most of the things that we have in the new laws.

The second challenge we have as civil society is that we do not have capacity in the membership of the civil society. Most of our members have failed in capacity in knowing and understanding the security sector in total. That is also coupled by the very approach in the way we want to ensure there is change and reforms are anchored in our security sector. Majority of our membership are pure theories. People have read, they have seen these things happening but it has become very difficult for most of our Members to come with whatever they have gotten outside and domesticate what they have seen in the Kenyan context. That has made it very difficult for us to penetrate some of these security organs because we lack the inside understanding.

I will mention the National Intelligence Security Bill. We ran the first workshop and most of those people came incognito but we know them. At the end of the day, we realized that our members were not giving the gist that we expected them to give into critiquing this Bill. So, we think and believe that we still have a bit of time to critique this Bill before it gets to the Constitutional Implementation Commission (CIC).

We also have a problem of credible institutions especially research based institutions. Modern policing and security sector reforms are normally assisted by credible research institutions so that we allow the reforms and the change to be based on information. Unfortunately, in this country, we lack this and the few that we have are seriously competing with foreigners. It is not that we have any problem with foreign institutions but we also understand that when we go to them, they have their own things but we need to domesticate what they are bringing here so as to have a homegrown solution to our problems.

As a sector, we also experience uncalled for competition and this plays very well to the people or an institution that is not ready to change. So, every time they think they are working with another, it would be very difficult to accept another one because we are not working together. At the end of the day, some of us came up together with one organization called Usalama Reforms and we decided to work together so that we have one voice and a critical mother of knowledge that can assist us deal with those people.

We also lack the capacity to engage in constructive criticism. If we were in the human rights docket, it becomes very difficult for us to be forthright and look at things, both

positive and negative and combine them together so that we provide constructive criticism. This has led to situations where some of us, if we are engaging in constructive criticism, we are labeled agents of the system. That plays very nicely on an institution that is not willing to change. Those are the challenges and achievements that we think other sectors have achieved.

What are the legislative, structural and policy gaps? First, even as we implement IPOA and the Police Service Commission as of yesterday - unless I am corrected -the National Police Service Act has not been operationalized. As much as we talk about engaging ourselves with these people, until this thing is operationalized by the Minister through gazettment or whatever process, I think it would be very difficult for us to achieve immediately in the short-term what we think we should have.

Secondly, we do not have a national law that guides our Security Council operations. What we have in place is something that was brought up by the Office of the President. He is not answerable to anybody and we cannot hold them to account because there is no Act that established them and gave them the functions that we can ask them to answer to the Kenyan people.

Thirdly, regarding the Kenya Defence Forces, one year down the line, they are still using the old Armed Forces Act. I had the privilege to ask the CIC leadership and I was told that they are also going through amendments. I am not a lawyer but I am not sure if they are still using the transitional clause in the Constitution to make them operate the way they are operating or they are also supposed to have quickly enacted a new law to conform to the Constitution. That is another area that we are not sure. So, it is a gap that we need to take care of.

The National Police Service Act has been tasked to ask the Kenyan people and the private security industry people to work with the police and yet the Security Industry Bill has not been enacted. So, we cannot hold the private security industry in this country accountable for the actions they do because there is no regulatory framework that demands good working systems. That is another legal problem that we have. When a Criminal Investigation Department (CID) has been upgraded to a Directorate of Criminal Investigations, which means the powers have been enhanced but the reforms envisaged that we must remove the issue of homicide investigations because most murder cases have never been solved in this country. That is why we agitated for the establishment of a Coroners Department, which is independent and professional that will be working with the police and CID to ensure that homicide cases are dealt with exhaustively. As we speak now, the Coroners Bill is not even on the first lot. As much as we are empowering criminal investigations, we are not at the same time ensuring that we can hold them accountable because they will still be dealing with homicide cases in this country and Kenyans will continue complaining.

Let me comment on the next issue; the National Security Intelligence. The Constitution has changed it from National Security Intelligence Service to National Intelligence Service. So, we are removing the issue of security because this is what they have been

using especially during the Special Branch time. We advocated that they remove that security bit and just make it a national intelligence service. I still ask whether we are still going through the transitional system mechanism or are we still using the same old Act one year down the line; one year after the promulgation of the Constitution? That is another problem.

Lastly and not exhaustively, is the prison service. When we talk about criminal justice system reforms, we are talking about the entry, centre and exit. So, Kenyans have dealt seriously with the police service. The judiciary is working overdrive to reform itself but nobody is talking about prison service. You cannot reform the police and the Judiciary and the person who goes through to prison is not being served under a new reform legislation that is supposed to reform as opposed to condemn. With the same prison service, we are also looking at something we call after care service. Once somebody has left prison, we must have a period of time where the Government must follow this person. This happens in other countries. That is another challenge in terms of the legal framework.

What are the structural gaps that we can remember? This country has no national security databank. Every time we talk about the CID or the police not doing their work well, we should know that they have no machinery to speedily assist them in solving these cases. We do not have a forensic laboratory in this country. When you mention forensic laboratory, it reminds us what happened. As a country, we must have a modern sophisticated forensic laboratory for us to pretend that we can reign in insecurity. We do not have it.

Another gap we have is the Directorate of Public Prosecutions. We know that the Constitution has provided for the Directorate of Public Prosecutions but we still have problems there. We cannot expect justice or easy access to justice to the under-privileged in the country if that department does not have the capacity to prosecute cases effectively, professionally and ensure that the Judiciary deals with something that has enough evidence which can convict or allow somebody to be sent home.

We still have the Provincial Administration in charge of the security committees. How we are going to restructure them is a debate in this country. With the new Act, there is nowhere where the police are told to work with the Provincial Administration. Even as the Provincial Administration continues to chair the security and intelligence committees, if we had a rogue police officer, he would decline to sit in that meeting. How do we deal with that? That is another structural gap that we think should be dealt with very quickly.

The other issue is policy gaps. We have no national security policy in this country. Whatever we do is for the President, his Cabinet and his benevolent. Nothing guides us on how we should perform.

We have no national security policy in this country. Whatever we do is at the mercy or benevolence of the President or the Cabinet. Nothing guides us on how we need to perform. This country has no national policing policy. If you ask me what I understand

by policing, it is not the same way my sister here will explain what is policing. So, how do we hold the police to account when we have not given this country a policy on policing that will ensure that we all speak from the same level and understand what policing is and then with that, we can hold anybody to account if they are not performing their duty under the policing framework? We do not have that. We talk about crime prevention in this country and there is no policy. All these things are required in any country that is democratic and ruled under the rule of law. This is because these are the things that will guide our security agencies to perform within a legal framework. You can actually hold them to account by pointing “A”, “B”, “C” and “D” that you think they have violated your rights or the law. We do not have that in this country.

The fourth one is that we have been given the power to establish community-based policing, but we have no policy on that. That is why in Kisii you will hear of *Sungu Sungu* and in Central you will hear of other vigilante groups with different names. If you go to the Coast they have other names because nobody can tell you in this country what it is that we are supposed to do so as we establish and roll out community based policing. There are no standards or framework and so, you start it for as long as the OCPD is happy and you are assisting him. That is a very successful community based policing. But a country cannot be run that way in the security sector. We must have a framework that will ensure that this country is governed by the rule of law.

Now, under the Crime Prevention Policy, there is something we all hear about; the National Crime Strategy Paper. This one is supposed to be shared by Kenyans; including the police and politicians. We have been singing about this National Crime Prevention Strategy for the last six years and nothing has been done. So, even as we roll out community based policing, no Kenyan understands what we need to do as a country, to manage crime in this country. Nobody knows what needs to be done, the limit of what they need to do and the expectations that they expect from the policing services of this country. So, that is the major gap in terms of policy. We hope that one day it will be done. So, I think all these things that I have mentioned are the issues that, possibly, if handled well, this country can start seeing some safety and security to conform to the Constitution of this country.

That is what I present today.

**Ms. Emily Kimani:** Thank you very much, Mr. Werunga, for that very informative presentation. I have no questions for you. My plea to you is for you to share with us your presentation, so that it can form part of the Commission’s record.

**Capt. (Rtd) Simiyu Werunga:** Thank you, but these are in bullet points. So, I do not know whether you will need the bullet points or I go and--- My intention was to do the bullets today, but go and give you a comprehensive write-up, covering all these areas, so that you have it. I can still surrender this, but it might not be of much value.

**Mr. Emily Kimani:** Thank you. We look forward to your sharing with us your detailed presentation.



Commissioners, through the Chair!

**The Presiding Chair** (Commissioner Chawatama): I think we would like both. Let us have what you have and then we will look forward to a comprehensive presentation.

There are a lot of things that you have alluded to that are very important. This is because it is one thing to pass a Constitution and have all these provisions in the Constitution and timelines of when you are going to do what and the kind of legislation that will bring life even to a Constitution. But we are hearing from you that clearly, there are still a lot of things that need to be done, which as a Commission, we need to highlight. Since our recommendations are mandatory, it is important that the information that you have equipped us with is contained in our report.

I will ask Commissioner Shava if she has any questions for you.

**Commissioner Shava:** Thank you, Presiding Chair. Capt. Werunga, I would just like to say that I have found your presentation really to be, as the Leader of Evidence said, not only informative, but also very informed, lucid, concrete and just spot on. I think we have really been enriched by what you have said.

I take particular note of what you have said about the National Security Council. This is because when we have been investigating massacres carried out by security agencies of the Government, the National Security Council keeps on appearing. It is very shadowy. What we have been told by former Government officials is that it is purely a policy and advisory sort of organization. But this is belied by what we have heard on the ground, which is that this organization has the ultimate influence in terms of determining how particular operations are carried out, by whom and to what effect. The fact that there is no Act that establishes this helps us to understand and analyze why and how it is that this is the case. You also pointed at the fact that we have no national security databank. That is actually very important in terms of letting us understand the gaps in how our police, for example, perform. This is because it means that criminals get away very easily with offences simply by moving around the country, because information is not shared. So, when the CID is issuing certificates of good conduct, I really wonder how they come up with that. Is that sort of a lack of their ability to trace those persons in their databank? Does that mean that, that person is actually a crime-free sort of an individual?

Then, you also point out the lack of a forensic laboratory. In my experience, working on the Taskforce for the Implementation of the Sexual Offences Act, this issue has really come up. Although that Taskforce has recommended a databank for sexual offenders, that is just one area of crime. With the lack of forensic laboratory, what we have learnt is that it is really the Government Chemist which has to do everything. So, you will find on top of some desks soil samples, together with water samples and clothing from a person who has been a victim of a sexual offence. They get mixed up, are stored improperly and often disappear. So, what you have said with regard to the lack of a laboratory is really a very important underlying factor in the performance or lack thereof, of security services and our ability to deter and prevent crime.

I think those are the comments that I had. I have no questions for you. Thank you, again, for your presentation.

**Capt. (Rtd) Simiyu Werunga:** Maybe just to start from the last one, just to enforce, I had a privilege to train some magistrates and judges on crimes in management procedures, collection of evidence, and preservation of evidence and submission of the same evidence in court. They had never come across some of the things I was mentioning to some of the senior magistrates. So, the question I asked was: How do you convict people because if you had a sharp lawyer who understands what I am telling you, then you will never jail anybody because the procedure that assists you to do this must start from a serious modern forensic laboratory? How you pick your evidence from the ground, preserve and submit it; there is a process that must be done and systems and equipment we must use to preserve them. This country does not have that. Like you said, you will walk into the Government Chemist which is hollow and find a shirt and soil somewhere. So, that is the problem that this country has. Although I am not competent to say that we might be having many people in jail in this country with poor evidence, my gut tells me that we have quite a number of Kenyans in jail, and who were convicted on very poor and shallow evidence. I am talking of judges who are now in the Appeals Court, some of whom I was sitting with. For the two days that we went through that, some had never heard some of the things that I was talking about. So, it is very important, as a country, that we have a forensic laboratory if we have to be talking about easy access to justice, for especially the poor.

On the National Security Council, as we speak now, there is a Bill – the first one in the country – on National Security Council; establishment, functions and management. The last time I looked at it, it was with the CIC. This was an administrative organ that was established by the political leadership and, at the end of the day, the buck stopped with the President. So, we said that we must have a law that establishes this Council and gives its functions and mandate, so that we can hold it to account. For example, if there are issues of the Wagalla Massacre, if this thing was under an Act of law, then Kenyans would have said: “You came here because this is what you are. These are your functions. This is what you said. The District Commissioner (DC) or whoever acted on this is because the law gives you the mandate.” So, as we speak, I know that there is a Bill that has already been worked on. Of course, the stakeholders have not been asked to be part of this. We are expecting it anytime from March, to participate in it.

**Commissioner Shava:** Thank you very much, Capt. Werunga. My final point will be in the form of a question. What you have just said is very illustrative with regard to the National Security Council. That is an organ that was formed by a Cabinet decision and is now going to be governed by an Act of Parliament. In your view, in terms of enhancing the safety and security of Kenyans not only from criminals, but even in terms of excessive use of force by security agencies, when is it necessary for a policy to be upgraded into a law? When is a policy sufficient and when does it become insufficient, requiring the passage of an actual statute?

**Capt. (Rtd) Simiyu Werunga:** Let me speak with the experience of Kenya as a country, because I have had a privilege of visiting one or two countries, especially in Africa. We have been copying most of the things that we have been doing from South Africa, especially on police oversight. When you have a country that enjoys impunity and has a political leadership that refuses to be answerable to the people who elected them, then it is important that we have a national security organ that is anchored in law. Once it is anchored in law, when we debate that Bill, there is that clause of the right to information. Of course, we know what we can and cannot be given, but we shall ensure that under that Bill, some semblance of right to information on some of the deliberations must be anchored in that law. So, if the President of this country refuses to tell us why he decided to declare war, then we can ask him: What does the law say? Right now, they are saying 14 days or 21 days. But this one is very crucial for a country that is actually going through a transition. As a country, we need this one because this is what will ensure that hopefully, our next political leaders will not be doing things in a shambolic manner through benevolence, but will be guided by the rule of law. So, I think that is why we need these kinds of things.

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

**Commissioner Dinka:** Thank you. I think I have two comments and one question.

My comment is, first of all, to thank you for your extremely useful presentation. I do not think that there is any Commissioner here who has not benefited from your presentation this morning.

We all salute the efforts of the Kenyan civil society organizations for their struggle and contribution and success in getting a new dispensation for the people of Kenya. But as you said, there are certain things that also the civil society must look at. One is the issue of criticizing the Government or State when it does something wrong. That is perfectly called for. But also when something good is done, you should say that it is great and make it known to them as an encouragement. I think that the civil societies throughout Africa have to learn that.

The second comment is that changing the National Security Intelligence Service to National Intelligence Service does not change much. They have taken out one "S" and that means a lot in terms of law and people who want to be very legalistic about it. But when push comes to shove, States do what the States do. Intelligence collection or security operations are also dynamic processes. They really do not follow 100 per cent all the time, constant rules. For example, when you look at post 9/11, a number of democratic countries have changed the security operations and procedures for intelligence operations and even the incarceration of individuals. There is a hazy area whether human rights violations have taken place. But there is no question that 9/11 has changed a lot of things. In our area here, the issue of *Al Shabaab* could also mean a number of things that have not been envisaged. If the intention is for the protection of people for a very short period, one could look at it, but if it continues as a permanent feature or national policy, then of course, one has to speak against it.

During our trip throughout the country, listening to people, it seemed to me and a number of my colleagues in the Commission that there is very little interaction between the civil society, which is very vocal and vibrant in Nairobi, and the countryside. There is almost total delink. We asked people, for example: “Why did you not go to the Kenya Human Rights Commission?” They asked: “Who are they? They have no representation on the ground. There is no civic action to tell people that those kinds of organizations exist to support them” Yes, we have met the paralegals who are doing a very good job, but I think more of that kind should be done.

The Kenya civil society members – at least quite a number of those I have met - are very highly educated and well travelled people but, sometimes, they seem to be operating outside of Kenya in their mental frame. They are not, as far as I can see, really taking care to do things on the basis of what is the priority of most Kenyans and what can be done within the context of Kenyan sensibilities, without offending that sensibility. They, sometimes, go overboard. I think there is need to look at that kind of thing from the point of view of the civil society itself as well. What do you think about that? I want to have your clear view.

The second question that I want to ask you is: The civil society is talking about police brutality and corruption, yes; there is police brutality and corruption. But as we heard from Mr. Kiraithe, just before you came in, he told us that a policeman gets Kshs15, 000 and probably he has a wife and two children who go to school. It is very difficult--- I am not saying that they should be corrupt, but at least, one could understand why he is corrupt. Why is the civil society not saying something in terms of the Government improving the terms of service of the police also? Talk about the corruption, but at the same time it has root causes. To resolve those root causes, why does the civil society not come out and say that this should be done for the police as well?

Those are the two issues that I really would like you to respond to.

**Capt. (Rtd) Simiyu Werunga:** Let me run through your comments and then come to the questions. I think I had mentioned about lack of constructive criticism. We do not want to look at the positive and negative. That is an issue in the civil society that we know is a problem. As we come together in fora and networks, those are some of the things that we try to build with likeminded people in certain organizations, to ensure that we become constructive in what we do, so that when we do well, they will say that we did a good job. When we do badly, they say that we have done badly. That is the challenge that we have as a civil society and we are working on that. Some of these fora and networks are to develop that. I agree with you on NSIS, but I have gone through that Bill not once or twice. We know that there are some things that even if the national security is paramount, there are some things that we should not allow to go through this Bill. I speak with the background of the military and national security, because I also worked in that sector while in the military. But we also know that there are some things that if we do not take care of now, they will be used in future. When we were talking and discussing about this Bill, we were very clear. We said that national security is paramount. As a spy organ,

there are some things you will be doing that most Kenyans might think are not right. But depending on the circumstances, we must give you the power, but with limitations. We will give you the frameworks within which you can be doing such things. So, while I agree with you, I also think that we need to look at it.

You mentioned about the US. Most of the things that are happening in the US; the President at that time ran through what we call the Patriots Act. That is what gave the President all those things up to Guantanamo. When you go to Britain, they did amendments to the Anti-terrorism Act, which gave the Government a lot of leeway to deal with terrorism. So, I am just trying to say that most of those democratic countries quickly ran through their laws to entrench what they thought was current and good at that time. So, as much as we want the NSIS to continue having what it needs to do, we must be very careful that we do not give them a blanket leeway to do certain things. We shall tell them: "Yes, you can do this, but within these parameters, under these circumstances." Of course, there are those who will do it without necessarily using those parameters, but we must be guided by the law, so that we can hold them to account. You went to the ground. I agree that most of us are still in the cities. What we do is that we make forays to the countryside and come back. That is the challenge actually that we have sat down about, as members of the sector. Most of the things they are now doing are to get some funding, so that people can establish offices in the countryside. When we were doing reconciliation and training in the Rift Valley, we realized that, that was the major problem. This is because we would travel there to do things and come back to Nairobi. So, at the time you are not in the Rift Valley, things are changing. We said that we must have a presence on the ground, so that as you do this and come back to Nairobi, you will have your people on the ground to continue with the dialogue. So, yes, it is a challenge and we are addressing that.

You mentioned about international perspective with localizing. I think I mentioned that and said that it is another challenge that is with us. We do not like domesticating what we learn from out, to bring it to the national context. But I know that some of us started seeing these things a long time ago. Like when we started community based policing, we went all over the world, at that time under NCBDA. We went to Brazil, Britain, Russia, South Africa and Nigeria. We got all those perspective and came back to Nairobi and domesticated that thing. That is when we started it in Ruai. Ruai was actually a product and up to now, as we speak, I think it is the only successful community based policing system that we have in this country. The President used it to launch it all over the country. So, yes, it is a challenge, but we hope that along the way, we shall change that.

Regarding the last question, Commissioner, majority of us were involved from the Ransley time. We went through the recommendations and presented papers. Most of the things we are mentioning now, we did. We talked about medical allowance, shelter, systems and structures in the police service itself and the salary. The salary increment that was given to the police, I think a year or two ago, is not what we knew they were to be given. So, we have no idea what the Government did at that time. But we know that the recommendations were very good. Probably the decision was made at the Cabinet level, but we value them. We visited South C near Mombasa Road, where you enter a flat

and get bed sheets. In the sitting room, there were about three officers. One bedroom is shared by two or three officers. There was even actually one case, although we did not visit that one, where a lady officer was sharing with male officers. So, these are things we went through and made serious and credible recommendations. If the Government had picked on what we said, the police would be a different ball game as we speak. Even in terms of allowances, they were given a medical scheme the other day. That is not what we recommended. We did not recommend the police to be given blanket insurance like the civil servants. It was a special cover that we suggested they should be given. What we saw the other day was that they have been lumped together with the Civil Service. So, there are many recommendations and things that we agitated for, that we think were good for the police. But what we get out is not what we are seeing. So, I just want to say that we do both. We criticize and also really advocate for their welfare and well being.

**Commissioner Dinka:** Thank you very much, again. I have no further question. My aim in asking these questions is just to encourage you to do exactly what you are trying to do.

**The Acting Chair** (Commissioner Namachanja): Sitting here listening to you, Capt. Simiyu, as a patriotic Kenyan, I am thinking that you could be more useful when working within the Government, but you are now working with the civil society. Maybe, if you could share whether you are retired because of age or you moved out.

Secondly, could you share with us approximately how many civil society organizations work on issues of security and if you have a forum or network where you come together to share information? Also, how do you get funding for this African Centre for Security and Strategic Studies? In case you get funding from outside, how do you ensure that you maintain your objective and do according to what you wish to research on and not get influenced by the donors?

**Capt. (Rtd) Simiyu Werunga:** Regarding the first question, I retired about 16 years ago. I was fairly young, but in the military, you have an option after you do ten years as an officer and see something you want to do. At that time, I had applied for the first parallel law education and I was given the opportunity. But at that time, I was outside Nairobi. When I requested to be brought to Nairobi, it was difficult. I was determined to further my education and so, I resigned. At that time, I was flying helicopters. So, I told them that I could still be doing that job and going to class in the evening. But, at that time, they had posted me to Nanyuki and they refused. I am explaining why I retired early. I was determined to go back to school and I do not think I was wrong. I am where I am now because of that.

The second part of your question was: “Why are you not with the Government?” Most governments in Africa do not work with people they think might not agree to some of their things. People have been asking me: “Why did you not apply for a post in the Police Service Commission or Independent Police Oversight Inspector General, because you qualify for all those?” Normally, when you establish something the first time, things never go well. So, you might, in the process, not achieve what you intended to achieve, because the systems are not in place or maybe the procedure of recruitment is very right

although the law is there. You still have a political structure that is not willing to change. So I said, if God gives me more years, maybe I will try and apply in the second lot. At that time, I am sure we shall have worked with serious structural problems. After that, we can now serve the country. But hopefully, I will still be young enough to be there. So, that is about my retirement.

Regarding how many societies we have, we do not have many credible societies that work on security in this country. Actually, Usalama Reforms Forum organization is the only one which works on the security sector. Most organizations in this country establish programmes on security because, maybe, they have a way of getting funding to do security issues. But in this country we have very few – actually less than three – indigenous organizations that work on the security sector. Majority are on human rights and conflict resolution. Otherwise, we do not have any organization, apart from the South African one, the Institute for Security Studies, which has an office here. We also have the International Crisis Group which deals with international security conflict, but it is United Kingdom (UK) based. So, locally, we are not many. That is why we are hoping that our organization will slowly get into capacitating other organizations to understand the sector.

Regarding funding, the African Centre for Security and Strategic Studies is a think-tank. Maybe I need to explain here. We are not a civil society or Non-Governmental Organization (NGO), we are a think-tank. So, most of the money we get is through research based activities. So, anytime we want to do a research, for example, on *Al Shabaab*, we seek for funds and share the information. Most organizations in this country approach us to assist them establish security related programmes. So, that is how we make our money. As I speak to you now, we do not get funding to manage this organization. We also make our money through trainings and capacity building in Africa and East Africa. So, we go to Tanzania and Rwanda to train Government organizations and private institutions to capacitate them in the security sector. So, as I have said, we do not get direct funding from donors. The first time we were trying to get it, we approached one of the donors to see how we can monitor the implementation of the police reforms. This is because we really wanted to make sure that the reforms are implemented to the full. So, that is the first thing we are trying. If we get it then, of course, everybody will know. But we do not get funding for what we do. We are given money to carry out research. We also train and get paid for that. We also assist organizations capacitate themselves in the security sector initiatives.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much for your presentation. We look forward to receiving the full copy of your presentation this morning. What is exciting is that through your presentation, we will really come up with meaningful recommendations for policy changes and also push for the Bills that have not been enacted to be enacted. So, really, our report is going to be strengthened because you agreed to come to speak to us this afternoon. In your presentation, could you, please, also kindly – because you say that you want to monitor the reforms – share with us what you think about the reforms, if there are any gaps? I do not know whether or not you were

asked to participate in any way or contribute. If not, what else apart from what is before you, would you have recommended, so that we have the benefit of your thoughts on that?

With that, I would just like to thank you for making yourself available and sharing with us. I enjoyed listening to you. As a Judge, yes, it is true that, sometimes, we are really stuck in-between. You may say: “I know that this is the person who either murdered or was involved in this aggravated robbery and so, do I convict despite this little gap here?” Maybe it is not even little because we are talking of matters of liberty. So, there is always a struggle in terms of training and education. There is such a wide gap between those who are carrying out the investigations and sometimes, they do not even know what is expected of them, in order for the Judge to be able to do his or her work. So, I agree with you. Please, continue to help us and we will get there.

Leader of Evidence, we are adjourning for just a short while. We will be back at 3.00 p.m. for the afternoon witness and then close. We would like to thank the public for having been so patient. Please, go and grab something to eat and join us at 3.00 p.m.

Thank you.

*[The Commission temporarily adjourned at 2.00 p.m.]*

*[The Commission resumed at 4.10 p.m.]*

**The Presiding Chair** (Commissioner Chawatama): Could we, please, take our seats? On behalf of the TJRC, we would like to thank you more sincerely, especially to the members of the public for your patience. I know that when we broke for lunch, we promised that we will be back at 3.00 p.m., but due to circumstances beyond our control, we were unable to be here with you at 3.00 p.m. I am happy to see that you are still here with us; this is, indeed, a testimony that Kenyans are interested in this process.

Before we proceed with our hearing, I would like to welcome visitors within our midst. We love our visitors and I would like to introduce them to you so that you may know who is here. I apologize ahead of time to our dear visitors if I am unable to pronounce your names the way they are supposed to be pronounced. But I am just a little girl from Zambia, somewhere in the north. We would like to welcome to these hearings Mr. Günter Nooke, who is the German Chancellor’s Personal Representative. We welcome you, Sir and we thank you for coming. Thank you for the interest that you have shown in our process.

We would also like to introduce – and we are proud to do so; as a Commission we do have friends, contrary to public belief – the German Ambassador to Kenya, Margit Hellwig-Boette. Thank you very much, your Excellency. It is so good to see you.



I would also like to introduce The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) General Representative and Country Director, Dr. Wolfram Jaeckel. Sir, we welcome you and thank you very much for coming.

We will now continue. I would also like to welcome the rest of the team that has travelled; there are a number of friends of ours from GIZ; we thank you very much for coming. I would also like to introduce our friend from our sister Commission, Fatuma. Thank you very much for coming.

Leader of Evidence, could you please, continue with the witness?

Thank you.

**Ms. Emily Kimani:** Thank you very much, Madam Presiding Chair. We will begin our session by swearing in our witness.

*(Mr. Gitari Cyrus Muraguri took the oath)*

**The Presiding Chair** (Commissioner Chawatama): Sir, we welcome you to this afternoon's session. I wish to remind members of the public that we should maintain silence. It is important for us to accord the witness the respect that is due to him. You may not agree with what he says but, all the same, he is here to tell us the truth and the experiences of what happened to him. So, I ask that we maintain silence. If you have a cell phone, I remind you to switch it off because the ringing of the phones interrupts our recording equipment.

What will happen now is that the Leader of Evidence will ask the witness to share with us his experiences. We have often seen that victims, as they testify, they break down and this is expected because of the difficulty of recalling the experiences that they have gone through. At times like these, as a Commission, we give them an opportunity to compose themselves and carry on with their testimony.

After the witness has given his testimony, the Leader of Evidence will ask questions, after which the Commissioners will have an opportunity to ask questions, make observations or clarifications.

Thank you very much. Leader of Evidence, you may proceed.

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

**Mr. Gitari Cyrus Muraguri:** I am fine.

**Ms. Emily Kimani:** I join the Presiding Chair in welcoming you for our session and the reason why you are seated before us is because you are a victim of the Nyayo House torture scenario. Before I invite you to give us your testimony, if you do not mind telling us your full names for record purposes and what you do for a living, we will appreciate.

**Mr. Gitari Cyrus Muraguri:** My full names are Gitari Cyrus Muraguri. At the moment, I am doing nothing. What I am going to tell the Commissioners is my former public life and private life. I have been in politics in this country for a long time and I---

**The Presiding Chair** (Commissioner Chawatama): Please, if he can repeat that statement because the microphone was not transmitting.

**Mr. Gitari Cyrus Muraguri:** I used to oppose one of the political kings in Kirinyaga by the name of James Njiru. Two, I was a businessman. Before then, I was an administrator in the University of Nairobi (UoN). The first attempt to arrest me was in 1975 after the assassination of J.M. Kariuki. I had left the university in 1974, contested the election and was not successful. I then went into business. It is my first time to attempt to write the history of this country. So, my opponent knew that I was going to do that. So, one day in April, 1975, six CID officers came to my house at 10.00 p.m. They went to my library, read books and finally asked me: "What book are you writing?" So, I gave them the manuscript. They went through it and they never arrested me. They told me to report to the CID Headquarters the following day at 10.00 a.m. So, when I went there, I found that they had read my manuscript and I was received by the Deputy Director of the CID, Sokhi Singh. I was warned to watch my steps.

The second attempt was after the 1982 attempted coup. My opponent by then was a very powerful KANU Chairman. He framed charges against me that I was plotting the downfall or the ousting of Daniel Moi. So, I was called to write a statement, which was a cautionary statement. So, after writing my statement, I was not arrested.

The third attempt was in 1988. By then, I had been kept under surveillance for one year. I do not know why I was under surveillance, but I decided not to go to exile because I am the only son at home. So, in December of the same year, 1988, on the 15<sup>th</sup> day of that month at 4.00 a.m., the Nyayo House torture squad came to my house; I think they were eight of them. They banged the gate very hard, shouting that I should open for them because they were police officers. So, I did open for them; they came and the first thing they did was to go to the library. They collected very many books of social science and some books written by Christians. At 6.00 O'clock, I was told that I was under arrest. I was taken out, blindfolded, made to lie on my back at the back of a white Land Rover and driven to my office. So, I opened my office and they searched the whole of it. They only managed to get two copies of Beyond Magazine, which was a Christian magazine which, by then, had been banned. So, they were happy that they had got me now. From there, my workers reported for work at 8.00 O'clock, I handed over the keys, car keys and then I was taken out. I was blindfolded, made to lie at the back of a Land Rover and driven around Nairobi, up and down highways and valleys. In fact, it confused me because by the time I was taken to Nyayo House, I was driven down a slope. Finally, I was at Nyayo House. So, the bell was rang and the door was opened and I was taken in.

They had to record all my valuables; my money, wristwatch and everything else. I was then locked up in a cell. It was a big cell which was painted cream and it had a mattress. I

was there for two weeks and I was not tortured. What I learnt later on is that they called for my file from Kirinyaga and they found it clean. So, I was released and they told me that they would come back for me should need arise. First of all, I was warned that if I knew where I was, I should not tell anybody. If I did, I was signing a death warrant. I signed papers to that effect. So, I was taken out, blindfolded, was made to lie at the back of a Land Rover and driven to Muthurwa Landhies gate.

I was released there and told to find my way back to my home. So, I went back to the office. From there, I was still under surveillance at my place of work because there used to be around three cars at a time. If a friend of mine visited me in a car, I witnessed number plates being photographed in order to verify who it was. So, I stayed the whole of January under surveillance. At home, I was still under surveillance. Over the weekend when I went home, I would be escorted by two cars up to Sagana. In Sagana, I would be handed over to the Special Branch from Kerugoya. I knew them, although they never talked to me because they used to come near everybody I talked to. So, at home, I had one sub-chief and one KANU Youth who always monitored all I did so that the following day, he would go to the DO and the Chairman of KANU, who was James Njiru to report. So, the whole of January and February, I was under surveillance.

On 15<sup>th</sup> March, one of the Special Branch officers who were guarding me came to a hotel next to my place of work. He sent one of the waiters to call me because he dared not come to my place. So, I went and saw him and he told me “be prepared for re-arrest any time from now.” So, we parted. I went back to the office and I never did business all the day. I just waited. I had talked to members of my family and my lawyers and I had alerted them on what was forthcoming. So, at about 6.00 O’clock in the evening, two Special Branch officers came to my office. They came to the waiting room and demanded to see me. So, I told the secretary to wait around, but I had not told my workers of what was about to happen. So, they came and told me that they had come to re-arrest me. I asked them to give me about ten minutes to talk to my lawyers and tell them that I had been re-arrested and they co-operated. So, I talked to my lawyers and I wrote a cheque of Kshs200, 000 which I deposited with them so that they could pay salaries when I was away or run the business or do whatever they could do. So, I was taken out, blindfolded, made to lie on the back of a Land Rover and this time I was driven to Nyayo House torture chambers straight away.

I was now taken to a red cell in Nyayo House, which signified that people had been tortured and killed there. I stayed there for the first week, second week and the third week without interrogations. During the fourth week, I was blindfolded, taken out to a lift which was inside and driven up to the top of Nyayo House torture chambers. I could hear being told to hold on to some pipes. This is in one of the stories; it is that office at the top of Nyayo House. I was locked in a separate office so that the torturers could assemble. After a while, I was called out and taken to the torture chamber. I was framed. I was told “you are a *Mwakenya* person; you are planning to overthrow the Government which was constitutionally elected,” and such-like. It was not actually questioning as such. It is evils imposed on the victims and one could not dare say no.

All the same, I refused. I said I did not know about *Mwakenya* or any other organization preparing to overthrow the Government of President Moi. They insisted that they had full details and I told them to produce it if they had it. I asked them to say where I had the guns and with whom I met to overthrow the Government. They could not do that. All they wanted to do was for me to admit the allegations. So, the whole week went by like that. I think on Thursday, somebody, who I later on came to know as James Opiyo warned me: "Muraguri, you have refused to co-operate and, therefore, we are going to go to another exercise," which he called "dry cell exercise." I did not know what it was, but I was brought downstairs. So, when I got down, I was completely naked just the way I was born. They kept my clothing in a different cell and I was taken to a different cell which was water logged. So, I stayed there and I was told there was no food, there was nothing because I had refused to co-operate.

I stayed there for one night and the following day, I was taken upstairs just naked. I was made to sit down facing the torturers, one who was a brown lady. So, I still denied knowledge of what they were asking me. By the way, I asked them; "Even if I tell you that I am a *Mwakenya* person, as you allege, I am trying to overthrow the Government and I have not done that with anybody, how would I have helped the Government?" I told them: "If it is death, just kill me; I am not going to talk about things I do not know." So, that day was over and I was taken down to the cell. When I wanted to help myself, I would just help myself in the cell. Because of thirst, hunger and pain that had been inflicted on me; I used to just take contaminated water. So, the following day, the interrogation was---

**The Presiding Chair** (Commissioner Chawatama): Excuse me, translation--- *Pole Mzee*. Contaminated water is---

**Mr. Gitari Cyrus Muraguri:** Urine and faeces.

**The Presiding Chair** (Commissioner Chawatama): Yeah, it is not just urine, but he was in a locked cell where he could go for long and short calls. But because of thirst, he was forced to take that water.

**Mr. Gitari Cyrus Muraguri:** So, the following day, I was taken upstairs and the same interrogation ensued. I did not have much to say because I told them all I had. Then I was taken down. So, for four days, that was the torture. On the fifth day, I was taken down, my clothes were given back to me and I was given a packet of milk and something to eat. First of all, I took the milk and rested for a while and then ate some food. Finally, they decided to charge me. I cannot remember the day because I do not have the records with me. But at 7.00 O'clock, I was taken to the law courts and charged before the Principle Magistrate, Mango and the prosecutor, Bernard Chunga. I was charged for being a *Mwakenya* member and for recruiting others. I refused the charges and I was remanded at Kamiti. They gave me a very long period to the hearing date so that they could punish me because being put in a cell was kind of detention. So, I was taken to Kamiti together with other detainees. From that time to 8<sup>th</sup> August, 1989, when the case was to be heard, I had had four lawyers whom I paid Kshs500, 000 and one of them is the current Minister for

Foreign Affairs, Moses Wetangula. He was my lead counsel. Then there was Mohammed Nyaoga, Z.N. Gathara and Wachira Kivanya. On the hearing day, because the State could not sustain the prosecution, I was released under Section 270 (a) of the Penal Code; meaning that they would re-arrest me if they wanted. Up to today, I have never been re-arrested.

So, that torture and detention without trial, because I was actually detained, had very adverse effects to my family. First of all, it had effect to my health. I developed hematoma in the brain and a blood clot, for which I had to undergo two head operations. I was physically very weak. I also was and remained stigmatized.

Members of my family, particularly my children never got the education that I intended for them because the business collapsed which was the intention by my opponent. He had become so powerful in Moi's Government. He was a Minister in charge of political affairs and national guidance – whatever it was. Moi used to believe him so much. Everything went into disarray up to now.

During my detention and surveillance, my family and other relatives were isolated people. Nobody dared come to my place. They did not want to be associated with me. So, nobody used to come to visit us.

**Ms. Emily Kimani:** Thank you, Mr. Gitari. I apologize for us having taken you back to those very dark moments in your life. Thank you for being able to share with us that very painful testimony. I only have one question. You have described various scenarios of your arrest. You told us about an event in April, 1975 where six CID officers came and took away from you a manuscript. What was it all about? Did you eventually publish the same?

**Mr. Gitari Cyrus Muraguri:** I never published the manuscript. I was so discouraged. I only wrote that history about four years back. I have managed to write histories under publication in two parts, that is, the first and second liberation. During the first liberation I was about 12 years or 13 years and I saw it come and go. The second one, I was deeply involved.

**Ms. Emily Kimani:** May God give you strength. I have no further questions, Commissioners through the Presiding Chair.

**Commissioner Slye:** Thank you, Mr. Gitari for taking your time to come and share your story with this Commission. The story you have recounted is one that we have heard before in this Commission. Each story has its own individual elements. The ones you have given us help us enrich our understanding not only of your experience, but that of many other Kenyans. We have heard from other individuals who were in Nyayo House like you. We have also heard from individuals who worked at Nyayo House either in detaining individuals or guiding people like you or interrogating and torturing people like you. I will ask you a few questions to make clear for the record what in fact happened at Nyayo House.

You mentioned that you were in the cells in 1988 for three weeks and you were never questioned. Did anyone come to speak to you during that period?

**Mr. Gitari Cyrus Muraguri:** The first arrest was for two weeks. It was from 15<sup>th</sup> December to 31<sup>st</sup> December when I was released. During the two weeks period, I was not questioned. What they did was to call for my political file from Kirinyaga. They found out about how I was mounting my campaigns. They found that I was a clean me. They released me with a warning that if I knew where I was I should not talk about it and if I did so then I would be signing my death warrant. And I signed a statement to that effect.

It was the second arrest that took five weeks now. It is when the torture was perpetrated against me.

**Commissioner Slye:** You said that you were picked up in March and driven to Nyayo House. I thought you had said that you spent three weeks in the cells with no interrogation and on the fourth week you were taken up in the lift to the interrogation torture rooms. Is that right?

**Mr. Gitari Cyrus Muraguri:** Yes, Presiding Chair. I stayed for three weeks without anybody talking to me. The torture came during the last two weeks.

**Commissioner Slye:** During those two weeks were you given food and water? Were you comfortable or not?

**Mr. Gitari Cyrus Muraguri:** I was given peanut diet and water.

*(Mr. Muraguri expressed agony)*

**Commissioner Slye:** I know this is a difficult thing to relive. Please take your time. I apologize that my questions are leading you to relive some of these experiences.

**Mr. Gitari Muraguri:** Presiding Chair, I would like to make some recommendations to the TJRC. In the first place, I would recommend that the torturers--- No, the political dictators who were there during Moi's time and the torturers to own up and apologize not only to the victims but to the whole nation because it is through our torture and struggles that Kenyans are enjoying new democratic changes which have culminated into the new Constitution.

I also recommend that victims should be compensated and put on pension like the freedom fighters of South Africa and Namibia. We are not very many. I think we are about 245. The Government can afford to give us pension.

The other recommendation has to do with our children who never got education. I should ask this Commission to recommend to Government to employ our children. Otherwise we shall be condemned to poverty like the *Mau Mau* freedom fighters and their children.

**Commissioner Slye:** Thank you, Mr. Gitari for those recommendations. You have seen and survived a lot and you are clearly an educated, learned man. You are a person who owns many books and writes books. On behalf of the Commission, I want to appreciate your coming here and sharing your experience and wisdom. Your recommendations will be considered by this Commission as we move towards finishing our final report which you should be able to see a few months from now. Thank you.

**Commissioner Dinka:** Thank you so much for your testimony. I would like to join my colleague in apologizing for making you go through that experience again. Thank you for your courage. I assure you that the Commission is grateful and we will do the appropriate thing in the recommendations and findings in the final report.

**The Acting Chair** (Commissioner Namachanja): Mr. Gitari, sorry for what you went through. I have a few questions for clarification. You were first arrested in April, 1975. Was this an election year or what was the context during this period?

**Mr. Gitari Cyrus Muraguri:** It is in 1975 that I attempted to write the history of this country. It is the year J.M. Kariuki was assassinated. Kenyatta's Government was cracking down on whoever was sympathetic to the assassination of J.M. Kariuki. I think my opponent had told me that I had mentioned J.M. Kariuki in my manuscript. That was untrue. I never wrote anything about J.M. Kariuki in my manuscript.

**The Acting Chair** (Commissioner Namachanja): In 1988 was this when we had Mlolongo? Were you contesting?

**Mr. Gitari Cyrus Muraguri:** I contested in 1988. In fact, I was cleared by the solo party KANU. I knew in advance that there were no elections and politicians were to be imposed. They were to impose Parliamentarians and councilors. This started in 1986 when the queuing system was introduced in the party of KANU. So, they weeded out anybody who was against Moi or who was talking about injustice. 1988 was the culmination of the institution of dictatorship in the party and the Government.

**The Acting Chair** (Commissioner Namachanja): What form of business were you involved in?

**Mr. Gitari Cyrus Muraguri:** I was a big importer. I was importing cleaning materials from Japan and selling them to big companies in Nairobi like Magadi Soda, Kenya Airways and many others. So, I was also buying locally manufactured goods and selling them, for example, office furniture and stationery. When I was arrested I had an annual turnover of about Kshs8 million.

**The Acting Chair** (Commissioner Namachanja): Thank you. Presiding Chair, I have no further questions.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much, Sir, for making time to appear before us this afternoon. Like most of the witnesses who have appeared before us, they have shared with us how they were picked up by the police without being told the reasons why they were being picked up. They were made to sign statements or confess to things that they did not know. There were no warrants that they were shown either for arrest, search, or seizure. A lot of witnesses like you did not even know the presences of Nyayo House and the torture chambers. A lot of them were threatened and mistreated and the impact it had on their families you have also shared with us.

What is different from the other testimonies that we had is that the others said that in the end they gave in because the torture was too much. They were taken to court. The relief was just to be taken away from Nyayo House. They preferred to be in prison. From your testimony, you did not even admit the charge in court.

The difference again is the presence of lawyers in court who were going to defend you. It is clear that the prosecution did not have credible witnesses or witnesses at all and so they had no choice but have the matter withdrawn under Section 72(a) which is not satisfactory. I think as a Commission we would wish to add to your recommendation because Section 72(a) is a discharge---

**Mr. Gitari Cyrus Muraguri:** Section 287(a).

**The Presiding Chair** (Commissioner Chawatama): If it is the same as the law in my country then it is a discharge meaning that you can be re-arrested at any time. So, we should really go for your acquittal. That will be one of our recommendations because that is what you deserve.

I would like to know whether or not you pursued civil action and whether or not you have received any compensation from the courts.

**Mr. Gitari Cyrus Muraguri:** Thank you, Presiding Chair. That is a very good question. I have filed a case for torture and detention without trial. I acted in person. I did not need a lawyer and the case was determined on 21<sup>st</sup> July, 2011. I was awarded Kshs8 million.

**The Presiding Chair** (Commissioner Chawatama): And this has been paid to you?

**Mr. Gitari Cyrus Muraguri:** It has not been paid because there are procedures to the payment. There is the principal amount plus the interest. So, the interest is also computed and then it goes for another hearing before the Registrar. Unfortunately, last year in November, I was a sick man. I did not pursue the costs. I did that in December, and I am going for a ruling on 16<sup>th</sup> of this month. So, from there I will go for a decree. Then I will get instructions from the Attorney-General.

**The Presiding Chair** (Commissioner Chawatama): Well, we are happy to note that you have been able to follow up your case until the very end. We will take down the course



number of your matter and we will be very keen to know the results of that ruling. We will also be happy to know that you have been able to enjoy the fruits of your matter.

We have no more questions for you except to thank you for coming and sharing with us. As Commissioner Slye has said, despite hearing so many people who were tortured at Nyayo House, there are other things you have brought that will help us in our report and making of our recommendations.

One of the recommendations your fellow survivors have talked about is: Do we really need to go to court and spend years just waiting for--- In some instances somebody gave us an example of a lawyer who has charged them Kshs1.7 million and the court awarded them Kshs1.5 million. They now have to look for Kshs200, 000 to add. We have been asked to look into this matter.

Leader of Evidence does this mark the end of our hearings?

**Ms. Emily Kimani:** Yes, it does.

**The Presiding Chair** (Commissioner Chawatama): On behalf of the TJRC, I would like to thank the following witnesses who appeared before us this afternoon: Dr. Linda Musumba, Mr. Erick Kiraithe, Capt. Simiyu Werunga, and Mr. Gitari Muraguri. I thank you most sincerely. We also thank all the members of the public who have sat with us throughout and have waited patiently.

On Monday, we have hearings right here with the militias. We are looking forward to seeing you on Monday. Thank you very much to our staff who has worked very hard. Thank you.

*(The Commission adjourned at 5.20 p.m.)*