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Public Hearing Transcripts - Thematic - Media - RTJRC23.02 (NHIF Board Room) (Media Workshop)

Truth, Justice, and Reconciliation Commission

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON THURSDAY, 23RD
FEBRUARY, 2012, AT THE NHIF BOARDROOM**
(Media Workshop)

PRESENT

Tecla Namachanja Wanjala	-	The Acting Chair, Kenya
Gertrude Chawatama	-	Commissioner
Ronald Slye	-	Commissioner
Berhanu Dinka	-	Commissioner
Margaret Shava	-	Commissioner
Ahmed Farah	-	Commissioner
Mr. Tom Chavangi	-	Leader of Evidence

(Opening Prayer)

(The Commission commenced at 9.30 a.m.)

Mr. Tom Chavangi: Presiding Chair and commissioners, our first presenter is Mr. William Janak. He is the chair of Kenya Correspondence Association. He is going to speak about the issues arising from his organization. He is also going to speak about his personal testimonies. He has also come with some journalists who are coming to speak on personal issues that they have gone through.

The Acting Chair (Commissioner Namachanja): We will wait until we get the earphones and then we can start.

Colleagues from the media, on behalf of the Truth, Justice and Reconciliation Commission (TJRC), let me start by thanking you for the journey that you have journeyed with this Commission from the time we started our work up to now. I appreciate the role that you have played in amplifying the voices of the victims who came before this Commission to share their testimonies. From the time we started the hearings and when we went to North Eastern Province, the way the witnesses shared their stories with us, according to them and their world, they thought that they are the only ones who have suffered historical injustices in this country. As you highlighted the stories from North Eastern Province and when we went to the next region; that is, Western and Rift Valley, the people there acknowledged the fact that they were able to follow proceedings from North Eastern Province. They realized that they are not the only ones who have suffered. So, through your coverage you brought out the painful stories that this Commission has heard. Each part of the region now is aware of the historical injustices that each and every part of this region has suffered.

For the Commission, we are remaining with about three months to complete our work and hand over the report to the people of Kenya. The report will highlight the historical

injustices that this country has suffered, the context, the circumstances, the people who suffered and the people or institutions which might have contributed to the historical injustices. More important is that the report will have recommendations of this Commission. We hope that we are going to depend on you as one of the watchdogs to ensure that the people and the leaders who will be in a position to implement our recommendations are kept on their toes. We hope that you are going to watch out and remind the people concerned to implement the recommendations in the report.

We also know that this report will be incomplete without us hearing from the media because you are also Kenyans. Some of you may have suffered the injustices that we are hearing. Some of you may have been pained by the atrocities that fellow Kenyans have suffered. So, today, we hope this is a chance to share and to hear your stories. Without wasting any more time, I would like to welcome you to start your presentations.

Mr. Tom Chavangi: Thank you very much, Presiding Chair. Our first speaker is William Janak, the chair of Kenya Correspondence Association.

Mr. Janak, this is more of a workshop because it is interactive. Just tell us about your experiences and the way forward as the chair of the Kenya Correspondence Association.

Mr. William Janak: Presiding Chair, my name is William ole Janak, the chair of Kenya Correspondence Association. I would like to speak about the case of Kenyan journalists especially those in the field and the kind of suffering that they have gone through. I want to tell the Commission that the structure of the media in this country is such that correspondents are largely not on permanent employment. That alone represents a face of suffering. Essentially, they are being exploited. When they are out in the field, they are not facilitated well. During conflicts, they bear the brunt of the conflict. Over the years especially the period that the Commission is dealing with, the correspondents have suffered a lot because they are at the centre of the conflicts that we have had in this country. There are a few of our colleagues from Mt. Elgon, Oyugis and Murang'a who have been victims of police harassment and torture. In the case of Mt. Elgon, we are talking about an organized gang that the Government was not able to deal with at the time they were harassing journalists. The Government was guilty of inability to protect journalists in some of those circumstances.

I also want to say that the Kenya Correspondents Association as an advocacy professional organization is concerned with the plight of journalists. Over that period, many journalists have suffered. I have a case of one of our colleagues who was detained under the KANU regime. I have a presentation here which I will hand over to the Commission. He was called Munene Kamau. He was a reporter with the Government, that is, Kenya News Agency, and because of the political forces in Kerugoya at that time, he was deemed to be a member of *Mwakenya*. During a visit by President Moi, a senior politician from that area, pointed him out and a few days later, he was arrested. They wanted to manipulate the media where they were only supposed to report about certain personalities. Based on that, he was arrested a few days later. He was brought to Nyayo House torture chambers where he stayed with other detainees. He lost his mother while in

detention and his children suffered so much. That represents the kind of suffering that we have gone through. I am talking about the entire group of journalists. We also remember the case of Wallace Gichere who was thrown from the second floor of his apartment here in Nairobi. He got injured and remained in a wheelchair for a very long time. He sued the Government but the compensation was long in coming. He died two years ago.

I am aware that there are other journalists who might come and make presentations but I want to focus on the period of 2007/2008. The year 2008 represented one of the worst periods for journalists in Kenya because they were caught in the violence. One of our colleagues who is not able to come here recorded the Kisumu case. He is called Baraza Kalama. He recorded a case where police officers shot dead two young boys. The case went to court and the police was freed but our colleague had to hide for a long time. That is a case that is reflected in many other incidents. In Eldoret, some of our colleagues had to hide in offices for two weeks because they could not go home. One of them was nearly killed by a mob. The police were there and they did not intervene.

After post-election violence, we recorded cases of trauma that journalists went through. These are personal testimonies. The case of that journalist in Eldoret who nearly died by the mob is here. This is called killing the messenger. These are personal stories of journalists and what they went through. I want to report that during that period, we had journalists whom we referred to as Internally Displaced Journalists (IDJ). Perhaps the Commission has never had a chance to reflect on the fact that journalists were internally displaced. Some fled from Narok or Nakuru and have never returned back to their places of work. So, they had to request to be transferred elsewhere.

During the post-election violence, some journalists could not board certain vehicles or work in certain areas. When we were doing trauma counseling, some requested to go elsewhere other than where we asked them to go because they feared for their lives. I want to say that the police, the Provincial Administration, and powerful politicians have largely been guilty in terms of harassing journalists and putting them through a lot of suffering.

I want to cite a few cases as I end because I am aware that the Commission is constrained in terms of time. I want to talk about a few cases touching on me. In 1987, I was still a student but I was writing. I was arrested and detained for two days in a police station. They confiscated all the books that I had. They said that I was going to poison the minds of people. During that time, I was doing a lot of opinion articles for the weekly review. Later on, I wrote an article that was a bit critical of the *mlolongo* system. I did not know that the police were tracking what I was writing. So, they came and arrested me saying that I am against the Government. In 1995, I was threatened by powerful politicians in Nyanza. I was interrogated by the police a couple of times. I was associated with a Luo publication called *Mayienga*. There was a by-election in Nyatike and we had written copies on *Mayienga* to inform people about what was going on. The police confiscated 200 copies of that publication and threatened to arrest me if I continued to make demands. The then Provincial Commissioner (PC), Nyanza, Mr. Kaguthi, was fairly hard on journalists.

All the District Commissioners and other civil servants were fairly hard on the journalists. Remember that was an opposition area. So, they said that the journalists were working for the opposition, although we tried to be as fair as possible.

I want to stop there, but my point to the Commission is that journalists in this country have suffered. Unfortunately, many journalists are unwilling to talk about their own stories. We had to coax them to talk about that. There are many journalists even based in the newsrooms in Nairobi who are suffering silently. That is because politics in this country tends to divide people, even within the media. During that time, many of them suffered and had arguments in the newsrooms. Some of them had threats even in terms of hate mail, text messages and so on. As I speak now, there are many journalists that are threatened out of some of the cases of 2008. I need to report to the Commission that some journalists in North Rift particularly, have had threats especially over the ICC affair. One or two have had to run and seek refuge in Nairobi once in a while. We are following up some of those cases. Unfortunately, you will find that some of the politicians or people who feel that journalists have aggrieved them are not following the law. They are not even going to the Media Council to lodge their complaints. They want to hire hit men to target journalists. So, the Commission should be aware. We need to ask the entire country to realize that journalists have been suffering and as we go to the next elections, it is possible that many other journalists will be targeted. That is because, right now, politicians have marked out journalists in terms of the ones they perceive as “anti-them.” As we move towards that, unless something is done, then we are going to see many more journalists suffer. I am aware that there are certain journalists who may not want to work in certain areas because they feel threatened.

Our colleague here from Mt. Elgon, Benard Kwalia, suffered under SLDF and was nearly killed. He will tell his own story about how he survived. He had to be in a pit latrine for two weeks and he relocated from Kapsokwony to Bungoma. Right now, he is operating from Kitale. It is a combination of the police and some of those elements. So, how do we guarantee the safety of journalists?

Thank you.

Mr. Tom Chavangi: Thank you very much, William. Commissioners, I hand over the presenter to you for clarifications and a few questions.

The Acting Chair (Commissioner Namachanja): Thank you, William, for sharing your testimony with us. I will now ask commissioners to ask any questions for clarifications, starting with Prof. Slye.

Commissioner Slye: Thank you, Mr. Janak, for your testimony. You have painted a very bleak picture of the life of a correspondent here in Kenya. I guess my first question is whether you are aware of any efforts, maybe, by your association or others, to sit down with the police authorities to create modalities, so that journalists are protected when they are in the field. I understand that the threat comes from the police themselves sometimes,

but also it comes from other individuals. One would hope that journalists would be given even special protection given the important role that they play in a democracy.

Mr. William Janak: The Association represents journalists from various media houses. We think that the first duty is for the media organizations to ensure that the journalists that are deployed to the field are protected. But we also think that it is our responsibility. We have not formally engaged the police at the national level over how they ought to relate to the journalists in the field. That has not been done at the association level. But what we have done is to intervene in many cases in the provinces, where the police have attempted to actually harass journalists. When we get reports from the field on a daily basis, we are able to call the police at those levels. Sometimes, we are able to complain at this level, but that has been a fairly low level intervention. Therefore, we must say that we have not engaged the police at this level, because our thinking, first and foremost, is that the media houses that have employed or contracted journalists to be out there in the field have the first responsibility.

Commissioner Slye: Have the interventions that you have done on those individual cases been successful?

Mr. William Janak: To a large extent, especially in the post 2008 period. In fact, as late as last week, I was able to talk to an Officer Commanding Police Division (OCPD) over a case involving journalists who felt harassed and they were able to respond in some way. They were also able to express grievances against journalists and that kind of thing.

One of the things that we have also done is to issue statements condemning any acts of violations against the journalists. We circulate some of those statements worldwide. Through that, we have had human rights and journalists' organizations. At the regional level, we have what is called the Eastern Africa Journalists Association. At the continental level, we have the Federation of African Journalists. Under the international level, we have the International Federation of Journalists. So, what happens is that when we send the statements across, then we have human rights organizations, embassies and others helping us to intervene, so that pressure is put to ensure that journalists are protected.

Commissioner Slye: You said that in your view, the media houses should be liaising with the police to help ensure the security of correspondents. Have you engaged with the media houses on this? If so, what has been their response?

Mr. William Janak: I think we have had engagements with the editors. I sit in the Media Council of Kenya which brings together editors, media owners and other stakeholders within the media industry. Therefore, the Kenya Correspondence Association (KCA) is able to voice its concerns at that level. There has been dialogue around the issue of safety of journalists in this country. After the post-election violence, we did training on safety of journalists, but unfortunately, it is something that has not been done and picked up by the medial industry in a very strong way. It is being done by journalists' organizations on the side. But there is a major concern about the security of journalists. I must say, therefore,

that we have engaged media owners and editors on the issues of safety of journalists and concurred in many areas. We have even issued joint press statements that condemn some of the actions that constitute violations of press freedom or safety of journalists. I can cite three very recent cases. One is the case of Sam Ijaka who was threatened after he wrote a story at Malaba border where the police are taking bribes and so on. We also have the case of Robert Wanyonyi who reported on the cases of theft of coffee, where the police and possibly the Provincial Administration were involved. We also have the case of a journalist who was shot at and his camera damaged in Eldoret by prison warders. Collectively, the editors and the KCA were able to issue statements that condemned some of those incidents. I think there is a joint effort towards this, but I think much more needs to be done.

Commissioner Slye: Lastly, you mentioned that most of the correspondents are not permanent employees. I heard different things about how correspondents are paid. My understanding is that sometimes correspondents are paid both by the institutions that cover them and sometimes not by the media houses. Can you just speak a little bit about that, at least, to help us understand, because given that they are not permanent employees, I assume that they have to get paid somehow? How do they get paid?

Mr. William Janak: The situation has been worse in the past, but there have been improvements both in terms of engagement with the media houses to try to improve the correspondents. Previously, they used to stick to one media, but now we have encouraged them to venture out because there are many other opportunities, including web-based media. So, there is a great improvement in terms of how they are going by, but what you are talking about is corruption in the media. It does not just end at the correspondence level. There have been cases where senior journalists have also received bribes in this country. But speaking to your issue, because of the very nature or circumstances of journalists, they are amenable to manipulation by new sources, including politicians and others who want to subvert the truth. For example, if they are going for functions and they are not facilitated, they may take a ride on a politician's vehicle or have lunch with him. That constitutes a degree of influence on how they report. So, it is undeniable that there is a degree of corruption in the issues of brown envelopes within the media. It is not limited to Kenya, but we must tackle the Kenyan situation.

So, in terms of getting you to understand what we are talking about, it is true that journalists in the field have been manipulated.

Commissioner Slye: It seems to me that two different things go on here that may be related. One is sort of outright corruption and bribery and I understand that, that happens. The other is something that seems, to me, as a little more structural and insidious. For example, when we went to North Eastern part of the country, we provided some support to journalists in terms of transportation and food so that they could actually cover us, and that seemed odd to me. I thought that, that is something that the media houses should pay for. It certainly would have raised questions in my mind if I was in the media house and learnt that my journalists were being paid by an organization that they were supposedly objectively covering. That side may not be corruption, but it does seem to me that there is

a systemic or structural issue that would lead to reasonable questions about the objectivity of a particular report. I think, as you pointed out, that can be abused and manipulated so that it is outright or direct corruption.

I am not from Kenya. I come here with a fine eye and so, I might see things a little differently than somebody here might see them. I want to ask whether that analysis of that situation that I see is similar to what you see or whether in your view, it is something that, in fact, is reasonable.

Mr. William Janak: Journalists have worked with different organizations, especially in difficult circumstances like up north and so on. I was in South Sudan just a few months ago and I know that the UN has planes that carry people to different provinces once in a week and journalists sign and say: “The following will go.” Sometimes they are covering UN issues and other international agencies. For the commissions and some other organizations that work in some of those difficult areas, understandably they have had to get journalists in such areas. But now the question is about the understanding about the need to do this, rather than say: “Okay, we are doing this for you so that you slant the news.” Our concern is that where the politicians and political parties help journalists, the tendency is to get them to cover them positively. Journalists have tried to avoid this as much as possible, but sometimes it has not been possible. So, your assessment of our situation is basically what we see here. It is a major concern and part of the dialogue that we are having in the industry is about the need to address some of these issues, because we are feeding the nation with false dialogue from the provinces. If, for example, a journalist goes to a function and spends the whole week riding with politicians and so on, the kind of information we have is different. We have jokes, for example, that if a politician goes to a place where he is jeered, the possibility for the journalist to say that he was cheered is there. Where he had a small crowd, the journalist could possibly say that he had a mammoth crowd. So, some of these things have been there, but the point at the KCA is that it is important for us to uphold our dignity and hold professional ethics despite all those difficulties. That is the kind of interaction and engagement that we are having with the journalists. But also, we are saying that the difficulties that the journalists have or go through need to be addressed. Unfortunately, most media houses have not been able to address them. There have been responses from, at least, a few mainstream media houses. But if you are engaging the journalists, and right now we are going to the elections, deal with what is your capacity. Do not engage journalists across the country and then you are not able to pay them. For a whole day, for example, they are monitoring elections and so on, and then you expect that they will go without lunch; the nearest person, who is influential, maybe able to provide them with lunch. There are politicians who have sometimes been declared to have dominated by influencing certain journalist to sell a story even when they have not been nominated. But this is part of the structural issues that we are talking about. So, unless we are able to address this, then we will still have some of the difficulties. We can never blame the journalists on the ground because these are the things that ought to be addressed at a different level. But we must also ask journalists to uphold professional ethics, because that is important if they have to survive in the industry.

Commissioner Slye: Thank you, Mr. Janak. I think using your example, if I am a politician or somebody that travels around and brings journalists and say to you; “I want you to say that there were 200 people here cheering me,” and I give you extra money for that, that is one thing. It seems to me that the more insidious thing is that I fly you to Mandera to watch my activities and you are dependent upon me to get back to Nairobi. So, there is a tendency and temptation for you to self-centre yourself because you want to stay in my good graces, so that I get you back to where I took you from. So, there are obviously some cases where journalists are doing the whole things including taking bribes. But I think it puts journalists in a very awkward situation, where even the best journalist may find it difficult to be objective, because he or she is dependent upon the source of their story for eating, transportation and even safety. It seems, to me that that is the situation that one does not want to put a journalist in. The outright bribery is pretty easy conceptually to deal with, but the other seems, to me, a little more problematic. It may have an easy solution, although it may not be a solution that the media owners would want to do. I have no further questions. Thank you for coming here and speaking to the Commission.

Mr. William Janak: Thank you.

Commissioner Dinka: Thank you very much, Mr. Janak, for the presentation. You have given us very important insight into the activities of correspondents. Commissioner Slye has dealt with the ethical impact of being a temporary and not fulltime employee of the editors. I would like to ask how you assess the impartiality of these correspondents who happen, either to be from that same county where they are based and, therefore, they are beholden to individuals or organizations, like the elders’ council, or they are from a different province with a completely different background, but they have to protect themselves from any harm and, therefore, tend to be terribly cautious and, maybe, even go the other way in their assessment of issues. What is your assessment of the impartiality and objectivity of correspondents in those districts and provinces during the circles of violence, like in 1992, 1997, and 2005 and 2007/2008? Were they politically motivated or influenced? Were they objective and, say, “this is the truth as I see it and let whatever happens happen?” How do you ensure that, that would be the case?

Mr. William Janak: I think to a large extent, in the 1992 and 1997 cases of violence, the journalists feared the State more; that is, the police and powerful politicians. So, something touching on them would be treated with caution, but they never attempted to protect their communities merely because they reported from those areas. To a large extent, and that has been my own experience because I have also covered conflicts even from my own community, most Kenyan journalists want to say what is happening. But there are circumstances around them that often make it difficult, which you have correctly observed. But I want to point out that much more in 2007/2008, there was a degree. Earlier on, there was a smaller degree. The degree of self-censorship was much more because of the fear of what the state agencies and powerful politicians could do.

As to loyalty to ethnicity and some of these things, it appears to have been much more witnessed especially towards the last quarter of 2007 and a bit towards 2008. This is

because the media and journalists also, understandably, were very divided. Some of them were put under pressure by their communities. Some of them did so for survival. So, on the whole, my assessment has been that to a large extent, journalists have always wanted to project the truth, but there have been circumstances around them that have made it difficult. Of course, we can have a few excesses. We may have one or two who demonstrate extreme loyalty but that has not been the case because we have been monitoring all our members very closely across the provinces. We are able to tell exactly the behaviour of each one of them. Some, understandably, tend to retreat back into communities or say: “No! There is need to protect this or that.” But that has not been the whole projection of how the journalists work.

Commissioner Dinka: My next and last question is: During our travels throughout the country and the hearings that we held, what we heard from the population at large throughout the country is very much different from what is given prominence in the Nairobi Press, for example. They are talking about what is important to them at that level. They are not talking about the high politics and so on. They will do it during the election. They will go to the polls and cast their votes but they have the bread and butter issues; particularly the land issues. Those things are not properly reflected in the major media. Is that because of the correspondents based in those areas; that they are not reporting it or is it the television and radio stations and print media in Nairobi that censors them? There is a real disconnect between Nairobi and the local areas.

Mr. William Janak: That is true. The mainstream media and even the media consumers in Kenya have actually been socialized in terms of consuming more political news over the years. This has defined how the media often looks at news. So, if you find a story about farmers struggling with certain things, drought and so on, the uptake of some of this within the mainstream media has been fairly low. The editors from Nairobi may dismiss a story that you are filing from the ground, saying: “No! No! Ask this question to this particular politician.” That has been there, but much more in the past. Right now, there has been some change, but not quite in the mainstream media because, again, they have their own constraints. They want to survive in the market. They are under pressure to sell and so on. Some of them are shareholders, owners and that kind of thing. But with the expansion of the media industry, a lot more of the communities’ concerns are now getting on board. Currently, we have more than 100 radio stations in this country. Some of them are located in different areas and speak about those issues. They can report about a lost goat. At the national level, I am happy to say that the KCA has partnered with an organization called African Woman and Child Features Service and its sister organization called Media Diversity Centre, and our colleague, Rosemary Okello, is right here. Having realized that some of the important news from the communities were not coming on board, especially on the mainstream media, we have established 11 content generation centres across the country manned by correspondents. From there, they generate news from the communities which we publish twice a month. It is online and then we also distribute a hardcopy through *The Star*. It is called Reject. We call it “reject” because it is absorbing rejected stories. But right now there is a difference because the mainstream media look at it and even ask the correspondents to follow up on some of the stories that are carried in the reject. So, there are efforts to remedy this kind of situation, but it will

take a while because the pattern of media ownership and demands that they have, are much more geared towards what can sell. It will also take a while to change the medial consumers' perception. If you put something that is agriculture based and something political, perhaps, your newspaper will not sell on that day.

So, those are things that we will have to struggle with for a while.

Commissioner Dinka: Thank you very much. Just one question: Do you have a code of conduct for your correspondents as an association?

Mr. William Janak: Yes, we do.

Commissioner Dinka: What happens to them if they go off the straight and narrow?

Mr. William Janak: We have internal sanctions, but you will also appreciate that this is a voluntary association. So, they get in as people who want to belong. Some choose not to belong, but those who belong to the association must be subjected to the sanctions and we make it fairly clear. Some of them can be suspended or denied certain benefits, even training and so on. So, I must say that between 2004 and now, we have managed to bring a lot of order and discipline among journalists, especially the ones who are directly members of the association. I need to also mention the fact that the formation of the association faced a lot of hostility from the media houses and so on. During that time, a paper that belonged to the Government even fought journalists and said that they were serving the opposition because we were trying to organize. As a labour market, when you organize labour and start making demands, then that is not very good for employers.

Commissioner Dinka: Thank you very much.

The Acting Chair (Commissioner Namachanja): Thank you, Janak, for coming to share with us issues affecting our correspondents, who at times work under very difficult conditions there. They are traumatized and at times, have nobody to look to. So, we are happy to learn that we have this association where they can look and receive support.

Thank you so much. That is all from us.

Mr. William Janak: May I hand over this to the Commission. This is the statement from the journalist, Munene Kamau, who was detained. He was unable to come because he is doing exams in Kerugoya. It talks about his story.

The book entitled "Killing the messenger from the Trauma" has stories of journalists. We have also suggested how journalists can deal with trauma, so that other journalists who may go through trauma, including the ones in Somalia--- We have never covered war. They are doing it for the first time. Some of those coming from the field have a lot of difficulties. So, we are handing over this to the Commission to share internally and also in your report about what journalists have gone through. Some of them speak to the issues that I have just talked about.

Thank you.

The Acting Chair (Commissioner Namachanja): The documents are so admitted. Thank you.

Mr. Tom Chavangi: Commissioners, our next speaker is Macharia Gaitho, the Chair Editors Guild of Kenya.

Mr. Macharia, welcome to this workshop. It is more of a workshop and an interactive session. So, you are free to do your presentation.

Mr. Macharia Gaitho: Thank you very much for giving me this opportunity. My name is Macharia Gaitho. I am the Chairman of the Kenya Editors Guild.

The Kenya Editors Guild is basically a gathering of editors working with the media in Kenya, who subscribe to a certain code of ethics and standards; committed to the professionalism of the industry and the rights of a free and independent media. We have a membership drawn across all sectors of the media in Kenya, from the independent media to what you might call the mainstream media, covering broadcast, print and all other platforms. We are aware of other presentations which have come, which I think are going to cover a lot of the ground that we could have covered on very critical issues affecting the media, including cases of police harassment, media laws which maybe repressive, Official Secrets Act and what we are seeing as a reluctance to pass the Freedom of Information Bill. I think these things are going to be covered in great detail as we move along.

So, we have decided to focus on one particular case which we think represents some of the hazards facing the media in Kenya. Two days ago, on 21st February, the Committee to Protect Journalists (CPJ) released its worldwide survey on attacks on the Press in 2011. This report actually was good for Kenya because it acknowledged that the media in Kenya is relatively free and that Kenya is actually a refuge for journalists fleeing repression in other countries within the East African region, including Eritrea, Ethiopia, Uganda, Somalia, Sudan and so many others. We acknowledge that, but there are also cases where officialdom projects a very harsh hand against the media.

We would like to highlight the case of Francis Nyaruri who was murdered in 2009. He was a reporter for Citizen Weekly, one of the alternative media outlets. On 29th January, 2009, his body was found by the edge of the Kodere Forest, about two weeks after he had gone missing from his house in Kisii. He had just finished a story accusing police officers in Nyamira and Kisii of corruption. An investigation by the CPJ found that senior officials had engaged in a large-scale effort to obstruct investigations into Nyaruri's murder. The then Attorney General, Amos Wako, seemed to agree. In a letter in 2009, Mr. Wako said: "There is strong suspicion that police officers could have executed the deceased." Nearly three years later, no police official has ever been charged or even questioned in connection with the killing. Two men are currently being tried on murder charges in relation to Francis Nyaruri's killing but it is likely that they are peripheral

players in a larger conspiracy. A police officer who seemed to be close to the killing has never been questioned. Investigations have been compromised by the transfers of the officers who originally investigated the matter and found very crucial leads. One of the officers has left the police force. The original investigating officer was Inspector Richard Nafwoli. He initially appeared to make fairly good progress in the case. By March, 2009, he had questioned the suspect taxi driver, Evan Mose Bosire. By May, 2009, he had detained another man, Japheth Maranga, said to be a member of a local gang known as *Sungu Sungu*. In a statement to the police in Kisii on 12th March, 2009, Bosire recounted how he drove Nyaruri to the home of a Kisii Town Councillor, Samuel Omwando, on the day of the killing. Omwando had promised Nyaruri a big story, according to Bosire. He said that two police officers and two *Sungu Sungu* members accompanied them in the car. Bosire reported that Nyaruri grew nervous during the trip and attempted to leave, prompting one of the police officers to strike him with the butt of his gun. Bosire said that the group dragged Nyaruri to the councillor's home in Suneka and severely beat him. At around 7.30 p.m., the group took Nyaruri to Kodere Forest and killed him. That was Bosire's statement. The body was dumped just two metres from the road and Bosire drove the group back to Kisii. He was eventually arrested and held for several weeks. At one time, he was freed by the police to visit his family. That was in late May, 2009. He then disappeared. Mangera, the second suspect, had been arrested wearing a cap belonging to Nyaruri. He told the police that he had no involvement in the killing, although he pointed to two other potential suspects.

Mang'era told the police that he had no involvement in the killing, although he pointed to two other potential suspects according to his statement of 26th May, 2009. He was charged with murder and he is still in custody along with another *Sungu Sungu* member who was arrested much later. Councilor Omwando moved to an undisclosed location as the investigation got underway. There is no record that investigators ever questioned him. The story that apparently got Nyaruri in trouble focused on the construction of housing for police recruits in Nyamira and two other locations, a project valued at Kshs20 million. Nyaruri was reporting that substandard iron sheets were being used for the roofing. His story in the *Weekly Citizen* accused the Nyamira OCPD, Lawrence Njoroge Mwaura, of defrauding the Government. The story was published on 19th January, 2009; four days after Nyaruri went missing. But by then, his findings were widely known because before it was published in the *Weekly Citizen*, he had discussed it in radio stations like Egesa FM and Citizen Radio. Nyaruri had differences with the same police officer before, notably in a 2008 article accusing Mwaura of using police vehicles to transport prostitutes. The reporter, Peter, further said that police officials had threatened Nyaruri after the 2008 story forcing him to hide for several weeks.

According to lawyer Andrew Mandi, who represents the Nyaruri family, Mwaura was not happy with such critical coverage. Mandi said he had witnessed the officer – that is Mwaura – threatening Nyaruri in early January, 2009. I quote: “He confronted Francis in my presence and warned him of dire consequences if he did not stop writing about him.” That was Mandi's testimony to the Committee to Protect Journalists. Inspector Natwoli, who was the original investigating officer, recalled his supervisor, Mwaura, expressing

dissatisfaction with Nyaruri in December, 2008. He said: “He simply told me that the Government was not happy with the way Nyaruri was writing stories about the police that embarrassed the Government. He then informed me that Nyaruri was to be dealt with once and for all.” This is from the policeman who eventually came to investigate the murder.

As he continued with the investigations, life became increasingly difficult for Inspector Natwoli. “After he arrested the two suspects, he recounted, soon after, Mwaura and his deputy came to my station and ordered that I be charged with disciplinary offences of idling, negligence, disobeying lawful orders and acts prejudicial to good order and discipline in the force.” Natwoli said this in an affidavit he filed in connection with the murder investigations. He was then transferred out of the jurisdiction in June the same year, the first in a series of transfers involving officers assigned to the case. He told the CPJ: “For simply carrying out my professional duties, my life was turned upside down.”

Another person who expressed concern about the case was Prosecutor Mary Oundo, who told the CPJ in October, 2010: “The investigation is at a complete standstill; all those investigating it in the beginning were transferred.” In June, 2009, the Attorney-General, Amos Wako, had directed the investigating officer to examine the potential role of OCPD Mwaura in Nyaruri’s murder. Wako wrote: “From his conduct, it is clear that he must have participated in the crime in one way or the other. He should be investigated.” That was the same month Inspector Natwoli was transferred. The directive was not followed. A new CID Officer was assigned to the case; that was Inspector Sebastian Ndaru, who told the CPJ that he could not arrest Mwaura, who was his senior and who by then had been transferred to Turkana.

The two suspects in custody were last brought to court in November, 2011. At the hearing, Peter Nyaruri, the father of the deceased told the court that his son had confided in him that Mwaura had threatened his life. Proceedings stand adjourned until March, 2012.

Thank you very much. That is basically a summary of the investigation by the Committee to Protect Journalists. I have with me here the full excerpts on this particular case. It is a report which covers the whole world, but I have extracted just the Nyaruri case and I would like to present that.

Thank you very much. I think I have nothing more to add.

Mr. Tom Chavangi: Commissioners, I hand over the microphone to you.

The Acting Chair (Commissioner Namachanja): Thank you very much, Mr. Macharia, for highlighting that case. It is, indeed, a sad case. I do not understand how directives from the Attorney-General cannot be followed and the question is; who was expected to enforce such a directive?

I now ask the Commissioners to ask you any questions or clarifications. I will start with Commissioner Dinka.

Commissioner Dinka: Thank you very much, Mr. Gaitho, for your very important presentation to us. It is a very sad story that you have just recounted from the report of the CPJ and we hope that the murderers or the culprits will be soon brought to justice and the law will take its course. This shows that no matter how vibrant or how free the Press is in most of our countries in Africa, these are the kind of conditions under which very serious reporters work. But I would like to encourage the media community to continue to be courageous and carry on like before.

My question to you – and I completely confess my ignorance about the media and how it operates; I only consume their reports. What is the objective of the Editors Guild? Guilds are usually like architects guild and medical associations and so forth. They are meant to kind of set up standards for the professionals who belong in that category. Is the Editors Guild that kind of association of editors to set out rules of conduct to guide editors? Or, is it some kind of getting together and setting media policy or editorial policy for the media? Which one is it? Is it for them to set up the standards for themselves, how to operate or to set out editorial policy guidelines for the media in Kenya?

Mr. Macharia Gaitho: The Editors Guild is really. We could call it a professional association of editors. We are focused on promoting professional journalism, observance of our code of ethics and guidelines for the media in Kenya. We subscribe to the code of practice which falls under the Media Council of Kenya (MCK). We also get engaged in other matters of professional interest, particularly laws relating to the media. We are always engaged with other stakeholders, whether it is the Kenya Union of Journalists (KUJ), the MCK or the Media Owners Association. Right now, for instance, we are helping rewrite the media laws ahead of the elections. We are also rewriting the guidelines on election reporting. We are involved in the broadcast laws as far as they relate to the media. So, we engage a lot with the Attorney-General and the Ministry of Information and Communications on such matters.

Commissioner Dinka: Thank you very much. I have just a little bit of understanding now.

Just before you came in, we had the pleasure of exchanging views with Mr. Janak, who is the Chair of Kenya Correspondents Association, and we are talking about his correspondents outside Nairobi in the provinces, counties, districts and so on and so forth. I was asking him if he had noticed, like we did during our travels throughout the country that there was a very serious difference or information gap between Nairobi and the countryside as to things that are very important to the people living down there. I will give you a concrete example. When we went to Lamu, the people of Lamu told us that suddenly, they are being evicted from places where they have lived for 300 or 400 years and people are coming from Nairobi with something they called “title deeds” and claiming their land. They said that this land is going to become part of the new Port of Lamu and they say that the people that are coming now with new title deeds from Nairobi

are going to sell it back to the Government, which needs the land to build the port. They are asking: “Why can we not get the title deeds and we do the same?” I read the three major newspapers every day – and from what I have seen, there are all kinds of reports on the Lamu Port. On 2nd March, the Presidents of South Sudan, Kenya and the Ethiopian Prime Minister will be there to break the ground and so forth. It is about the building of the pipeline by the three countries and so forth, but nothing about the worry or the concerns of those people from outside. So, I asked whether it was the reporters from below that do not report properly or what happened? Well, he gave his answer. I want to really know from you; when the news is printed and the editorial decisions are made, it is the editors who exclude or include stories. Why are these not reflected? Why should there be such gap between what is of concern to Nairobi and what is of concern to the countryside?

Mr. Macharia Gaitho: First of all, as the Editors Guild, we share a lot of concerns with the Kenya Correspondents Association and we try to work closely together. We depend ourselves so much on correspondents to bring us the news, not just in Nairobi, but from all parts of the country. We do want them to be professional; to be enabled to do their jobs properly and capture issues which are of concern out there, particularly in the more remote parts of the country but there are also major challenges. For example, access to some of those places can be sometimes very difficult and very expensive. The other is the capacity of some of the correspondents out there, particularly in some of the more remote areas. We will often find that many of them are not trained journalists and it is not their full time occupation. It is something they do as a hobby or it is something they do basically when they have the time aside from what might be their main income generating activity. I think the common joke in some of our newsrooms is that “my correspondent is a local butcher” or “my correspondent is the local barman.” But as editors, we have tried to pressurize the media owners – so to speak, our employers – to really work and enable these correspondents to do a better job. One is training; first of all recruit the right ones; secondly, help them with training, help them with tools of the trade, whether it is telephones or laptops, internet access and all these things. It is a slow process and I know that some media houses have really worked hard in the last few years to enable their correspondents to do a better job. Some have not been able to for various reasons. There is a huge cost element, for instance, and so many other things.

So, it is true that, sometimes, we may not have been able to capture some of those things in the remote outposts which may be of such critical importance to the local people, but in Nairobi, unless we actually get the right story from out there, we will not even see how important it is. Or quite often, we find that the correspondents out there do not see the story. That is a big problem we face with the correspondents in the field. It so happens that when you are in a certain place, which is the way things are, you do not see a story in what, to you, is part of the normal conditions. Sometimes it makes us send somebody from Nairobi to go and see a story in Turkana, or Lamu or Lodwar or anywhere else and yet we have a local correspondent who does not see it simply because to him, that is the natural order of things. I think that is an experience we all share when we move out of our environment. It is just for me to move out of Nairobi to go to Kisumu City and see so many stories, and yet we have very many correspondents there, but to them, those are

non-stories. The same applies to somebody who comes from Kisumu to Nairobi; he sees very many stories. Just visiting the market is a story; just visiting Dagoretti Slaughterhouse is a big story. But us in Nairobi, we do not see it as a story because that is normal and there is nothing strange in it or there is nothing to tell about it. It is just there. So, those are the issues sometimes, but we do try. A lot depends, of course, also on the priorities and policies of individual media houses. The Editors Guild, of course, has its limitations. It does not own any media outlets and it does not set editorial policies for individual media houses. These are our limitations. But we do try to encourage our members to think outside the box, and to encourage their reporters and correspondents to bring the stories which really do make a difference. We try to do that.

Thank you.

Commissioner Dinka: Thank you very much. In this connection, I was not in this country during the 2007/2008 elections and what followed, but there are all kind of talk when we talk to people outside Nairobi and also in Nairobi as to the role played by the media during those days before the election, during the election and after the violence started. As the Chairman of the Editors Guild, what do you think editors should do to protect the integrity of the next elections and also, as much as possible, try to create some kind of a firewall between the reporting of news and making comments, editorial writings and so on and the possible violence? In other words, so that the media would be the peacemaker, no one belonging to the media should be inciting violence, hatred or something like that. What can the editors do as of now?

Mr. Macharia Gaitho: That is an issue that we are very much dealing with right now as we speak. We have been discussing it as the Editors Guild; we have also been engaging with other stakeholders across the board from the individual media houses, media owners, correspondents association and the Kenya Union of Journalists because we are aware of the kind of responsibility we bear as media people and not just as editors. I am saying now we go beyond editors as media people. As I mentioned earlier, one of the things we are doing is reviewing the guidelines on election reporting which are part of the guidelines overseen by the Media Council of Kenya. So, with the lessons from 2007, we are taking them out and looking at them afresh and asking; “what can we do to make sure that whatever the media does is responsible, we avoid provoking communities, parties or individuals; we avoid getting entangled ourselves in the politics of the day in the political and ethnic hatred that sometimes come up during the elections? We are reviewing those guidelines and I think just in the coming week, we are planning for a big stakeholder’s conference because this is not just for the editors but also for the entire media. We have our concerns, but we need to cascade them downwards to all the reporters and correspondents, and also upwards to the employers – the media owners or the media houses. Our main concern is that, at a critical period when there are elections, professionalism must override any other factor when it comes to reporting.

Commissioner Dinka: My last question is, again, some people everywhere--- I mean, in fact, even in the developed countries, there is no consensus most of the time on the results of pollsters. In developing countries, it must be even more so and that could also be a

cause for some kind of conflict and disharmony. Are you, as the editors, thinking of perhaps giving some kind of short-term or a few days course to your reporters, including senior reporters on how to read these polls when they come out, particularly going into the pollster and doing some research as to the universe he or she used and the so-called plus or minus five; what that means and so on, instead of just reporting “so-and-so said this” so that they can also do analysis for the ordinary man on the street who reads the newspaper. So, I hope you get my point.

Mr. Macharia Gaitho: Yeah. We are working on a whole range of training programmes for editors and reporters on elections. Apart from issues of ethics, balance, fair play and everything else, one of the elements we have in mind is understanding, interpreting and reporting opinion polls.

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

Commissioner Slye: Thank you, Mr. Gaitho, for coming and speaking to the Commission. I am relatively new to Kenya and Kenyan history. I guess what I wanted to ask you to help me with is to understand the pressures that have been placed on editors throughout the history of this country. One thinks of editors as embodying the independence, integrity and the reliability of a media outlet. My sense – but I would like you to correct me if my understanding is incorrect – is that maybe in the first two or three decades from Independence, the main threat to that independence and integrity came from the State. But that today or let us say in the last ten or twenty years – I am not sure what the appropriate timeframe would be – the threat may still be from the State, with the State trying to influence editorial policy. There is a threat, may be equal or may be greater from other sort of interests; whether they are ownership interests, business interests, international interests or what have you. So, I wonder if, briefly, you can just give us an overview of how you see the different pressures placed on editorial houses or the editorial offices roughly from Independence in 1963 until today.

Mr. Macharia Gaitho: It is correct that in the past, the main source of pressure was the State. During the one party system, which was basically from Independence up to 1992, there was a lot of pressure to only take or stick faithfully to the official line. KANU was the party and there was no other party. There was supposed to be no other source of information; the President was the State and the State was the President; everything was so centralized in terms of information that if you stepped a bit out of line, then all of a sudden you would find yourself in for sedition and all kind of things. There was a very repressive Special Branch which is, of course, what is now the National Security Intelligence Service (NSIS) and in those days, walls had ears. So, everybody was being arrested, tortured and detained even just for thinking unofficial thoughts, let alone speaking it. Things have changed a great deal, but that is not to say that even today, there are no pressures. The case I highlighted of Francis Nyaruri happened well into democracy. So, we still have a lot of rogue elements within the State who can commit all kinds of atrocities.

But also now, we find that we have a multiplicity of pressures, not just the State, but rather from groupings, either within or outside the State. We have all kind of political parties and political leaders who are all having an interest in what the media is saying about them or about their opponents. I think our politicians operate on the principle that “if you are not with me, you are against me.” Therefore, for them, the issue of balance and fairness does not make sense; either you support me, if not, it means you are against me. And if I think you are against me, then I can apply all kind of pressure on you.

In 2007, the media was under a lot of pressure where politicians would go to the public platform in a certain part of the country and say; “this newspaper is against me.” The message is that, when you try to distribute your newspapers in that area, your distribution van could be burned or your vendors could be beaten. Those things were happening; there is no guarantee that they cannot happen again as we move to another critical period. There are also commercial pressures and they are the ones that sometimes we tend to ignore. The main source of revenue for any media is advertising and not sales. For electronic media, the revenue comes 100 per cent from advertising. For the print media, probably about 70 or 80 per cent comes from advertising and not sales. So, we will always have situations where big corporations and big advertisers expect to be treated leniently; expect special treatment; expect that anything wrong they do, they will not be exposed and they always have a very powerful weapon - they withdraw their advertising. That is a big pressure on editors and reporters and it always put editors and reporters at odds with the commercial side of the business. Journalists are not very good at the commercial side of the business, but every newspaper has a whole army of accountants, the marketing people and the advertising salesmen, who have different priorities. Their priority is to maximize on revenue. We find that our priority is not revenue so much, but the quality product. So, there will always be those contradictions. We have to live with them and find ways of getting around them. I believe that most media houses do have their internal policies and editorial guidelines which are actually supposed to insulate the editorial side of the business and not just against the political pressures from outside and anything else. They are not just about quality issues, but also to insulate us from pressure from within – from the commercial side of the business – which means that the advertising manager cannot come to me and demand that he wants a certain story done in a certain way. Internally, we call that the separation of Church and State, and I think that is a principle which applies in any serious media organization.

Commissioner Slye: Thank you. You have spoken a little bit about this; but today, in your opinion, what would you identify as the biggest threat to editorial independence? Would it be the State; would it be a politician or a political organization or would it be commercial interest?

Mr. Macharia Gaitho: Right now, as we approach elections, I would say that the biggest threat is politics, not just the State, but all political players. And here, what we have particularly to watch out for is that there is always the danger that some of us – journalists, editors, and managers in the media houses – may become captive to political forces and try to slant the news towards their favored side. That is the biggest threat. I mean, if we cannot uphold our own integrity on that issue, then we are in trouble.

Commissioner Slye: On that, are you aware in the last, let us say three years, there have been incidents where a story has been changed or has been killed from the editorial side because of those sort of pressures; because of a politician or a political organization saying either I do not want that story to run, or I want that story to be run but with a different slant to the story?

Mr. Macharia Gaitho: These pressures are always there within individual media houses. I am not in a position to point out any specific cases. I had actually not prepared for that as I was coming here. But I would concede that those pressures are there and I hope that we all have our policies on how to deal with them. What I would say is that, as professionals, it is our responsibility to resist them.

Commissioner Slye: My last question is on the story that you recounted from the Commission to Protect Journalists (CPJ). You mentioned – or correct me if I misunderstood this – that while things like that happened in the past, things are better today. That is the trajectory in terms of incidents like these happening and the last of them maybe 20 years ago or 10 years ago. Correct me if I may have misunderstood that. Given today, is the incident that you related, in your view, an aberration or is it something for which there may be a number of similar incidents? This one was highlighted because the CPJ highlighted it in their report, but there are many other stories like that, in your view, are occurring that just are not being reported because they are not being given the sort of attention that that particular story was given?

Mr. Macharia Gaitho: There are many instances or cases of harassment, but this one stands out because it was not just harassment; it was murder. While we may celebrate that things have changed a great deal and there have been real improvements in the conditions and the way the media works, the fact that, that one incident can happen – it is not an old incident. I think it is an incident of today; 2009 is part of today – and today the fellows who the Attorney-General said should be investigated – the policemen – have not been investigated. I think, to me, my intention was to highlight that while we may have made great strides, there are still these dangers. Then you have to wonder; it is easy to say that it is an aberration or the work of one rogue policeman. If it is, then why is no action being taken? I am sure the Commissioner of Police is aware of this matter. I am also sure the new Attorney-General is aware of this matter. Why is no action being taken if it is just one rogue policeman? Or, is there something systemic within the way the police behave that some cases cannot be touched? I think that is the important thing.

Commissioner Slye: I thank you, Mr. Gaitho. I think my impression based on my almost three years here now is that the story that you related, I have not heard a story like that specifically with respect to a journalist. As we travelled throughout the country, we heard stories like this with respect to average Kenyans; victims of crime, sometimes murder and the case is never investigated thoroughly, nobody is brought to trial. Sometimes it is because people claim it is because of political influence or other powerful interests and sometimes it is just because there are no resources or the competence available on the ground to follow up on such crimes. So, I think what you have highlighted is something

that, in some ways, is not new, but in some ways, it is new. That is new because it is hitting at – as I said earlier on – that very important element of democracy; that is the independence of a free Press. Killing a journalist obviously has a chilling effect and it obviously stops that particular journalist, but also cautions and, perhaps, even stops other journalists and, therefore, leads to the lack of unearthing of injustices, corruption and other things. So, that particular incident is particularly worrying in terms of the health of the democratic process here.

So, I thank you for sharing that with us. I would like to ask if we could follow up with you on some of these issues after this hearing to get additional information, if that is something that you will be open to.

Thank you.

Commissioner Farah: Mr. Macharia Gaitho, thank you for your good presentation. I just want to add to what the other commissioners have said. As an editor, do you think there will be radical change in the Kenyan media as we approach 2012 elections? I am asking that because when one is abroad and shares with foreigners copies of our newspapers, one's comments will always be, "you have a vibrant country, but it is in conflict with itself." It is about the man biting the dog, rather than the dog biting the man. There is a lot of negative reporting. Do you think reporters and editors should concentrate on positive reporting? As a nation, I think we have a lot of positive things out there but they do not get reported.

I know each media firm has some leaning just like in the USA or the UK where you will easily tell that this newspaper is conservative or liberal and so on. In the olden days, the *Weekly Review*, even in the middle of suppression of the media and freedom of speech, it was popular in and out of the country. I do not know whether or not it used to report the truth. Do you think there will be a radical shift by the media houses or it will just be business as usual and, therefore, corruption and poverty will continue?

Mr. Macharia Gaitho: I am proud to have worked for the *Weekly Review* at its height. That is where I got my training as a journalist. When you talk about radical shift, I think we are already seeing it with the new Constitution in that Nairobi will no longer be the centre of everything. Every media is running to strengthen its presence outside Nairobi in the counties. So, counties will be the new centres. That is where most of the news will be generated. That is the shift we are talking about.

About positive or negative reporting, that is debate that is as old as history. It is very hard to shift to what you call positive reporting when there are bad things happening. If there is corruption, violence, political feuds which take us away from more important things, I do not think we can hide them under the carpet. Our responsibility is to expose them and to put them up for public debate. Many things happen and even within a single day's newspaper often the headlines will look very stereotyped. It is always the politician and everything else. However, within that newspaper, there will be so much else which may

not make headlines. There will be very important business finance pullouts, pullouts on technology, pullouts on gender issues and so many other things.

I work for the *Daily Nation*. We introduced the DN2 which is the magazine section. One time we went round just to see how readers are reacting to them. One of the complaints we gathered in Kisumu is that the newspaper was too big. "I cannot finish it in one day." That is true with many newspapers. When you get the Sunday Times of London, I think you need two weeks if you have to read the whole of it. However, you must learn to pick the section you want and let your daughter pick the section she wants and the driver too. Then you will all be happy.

Commissioner Farah: I agree. I was talking about the very many good things happening in the country that should actually go for the Guinness Award. I read one about the GSU man who at the height of the post-election conflict was talking to mobs telling them that this is our country and we need not destroy it. So, there are many good things happening, but we are only being told that so-and-so poured hot water on the husband or so-and-so hacked someone to death. Could we report the good and bad things in equal measure so that the readers decide what to read? However, I cannot blame you, Mr. Gaitho, because you are an editor. I blame the reporters. When we went to Mt. Elgon, when we arrived in Bungoma, one reporter came to us and told us: "You cannot go to Mt. Elgon. There are people there in lorries and with weapons. They are going to demonstrate against the TJRC. They might hurt you. Do not go there!" Some of us took a vehicle and went there. We said that even if we were killed, our colleagues would remain alive. We found nothing of the sort. The following day, we were welcomed. I think it is individual reporting which should be sieved at the editor's level. The newspaper needs to look balanced.

Mr. Machaira Gaitho: As I said, that is as old as history. Often, when nothing is happening, that is the good news that everything is going on as normal. People are taking vehicles to work and in the evening, they come back home with milk and bread. It is difficult to report that good news that nothing is happening. It is when something out of the ordinary happens that it is reported. When the *matatu* crashes and that guy does not get home with his milk and bread, then that is the news that is reported. I think in every single newspaper, you will find stories of good things happening. They catch attention because they may be out of the ordinary. Somebody in a conflict situation like the GSU officer you mentioned, this is somebody who is risking his safety to save someone from another community or somebody in a remote outpost doing something that makes a difference, say, introducing a new breed of goats. These things are reported, but maybe the readers do not notice them because they may find them boring and they are more interested in the story of a woman cutting her husband.

Commissioner Farah: In our neighbouring countries, you have to look over your shoulder when you want to say something. I am glad that is no longer happening in Kenya. Therefore, the media now is the checkpoint. Thank you for your presentation.

Commissioner Chawatama: Thank you. I am sorry for coming late and I missed your presentation. In work, we come across situations where we ask ourselves what is in the best interest of the nation. Have you had an incident where you had to make a decision as to whether what you had to report was in the interest of the nation or the people? How did you cope with that? What are the struggles that you went through in reaching a decision on whether to publish or not to publish?

Mr. Macharia Gaitho: These are situations that we confront on a daily basis. When we have our editorial conference in the morning and the afternoon to review what has come from reporters in the field, we have a whole deluge of stories. We have to decide as editors how to handle them. What prominence do we give them? Which ones are worth publishing and which ones are not? On specific cases, say, when dealing with potential for conflict, every day there are utterances from political platforms and so we ask ourselves what value will be served by highlighting a comment. Might it be divisive? Might it make people start fighting each other? Based on experiences of 2007, we are seeing politicians make statements which might qualify as hate speech. We need to make a decision as to when should we publish and when not. If we make a decision not to publish, are we in effect covering up for this politician who is saying objectionable things which are not exposed on a wider platform?

Commissioner Dinka: For you and your colleagues in the Editors Guild, there are external sources of information such as Reuters, Associated Press and so on. These are big countries which had all manner of roles in Africa and continue so. African newspapers, I think the Kenyan media is the most vibrant in Africa and it can do a lot of good for this continent. In South Africa, the media is still controlled by the same old people. In Kenya, it is controlled and reported and edited by Africans and so you can do a lot of things. Sometimes those external news agencies have an agenda which could be linked to the countries they belong to. For instance, they called the 2007 post-election violence a civil war, but they never called the 50 years of war between Britain and Ireland a civil war. They use different words. Our media take the news generated by these agencies and feed them on the local newspaper pages without any analysis as if the agencies are beyond suspicion. What can the Africa editors do to mitigate the negative effects of this kind of reporting on Africans?

Mr. Macharia Gaitho: As the Kenya Editors Guild, we hold that media in Africa should get away from this dependence on western news agencies, that is, foreign news agencies. We are members of the African Editors Forum which is also of the same view and has been working towards establishing networks of newspapers on the continent who could exchange news so that, for instance, if I want news from Nigeria, I get it from a newspaper there rather than depend on Reuters, UFP or whatever.

However, Kenya Editors Guild does not have news outlets of its own. Its views are clear on this. I am not here to represent the Nation where I work, but I can say that at the *Daily Nation*, it is something we have taken up in terms of having our correspondents in all the key African capitals. Also where there is important news breaking in places where we are not represented, we try to engage somebody on that end on a temporary basis to write for

us. As I speak, I think we have attained about 70 per cent of African news come from our own correspondents. Two years ago it was less than five percent. We still want to increase that. There are many areas we are not present and we do not have contacts. It is also very expensive. The *Daily Nation* is big and might be able to undertake such an initiative. Many of the smaller newspapers simply cannot afford it. Therefore, it is an ideal that we are pushing as an Editors Guild. We are glad that those who can do it are doing it.

Commissioner Dinka: Thank you very much. I am happy that about 70 percent of the news comes from your own reporters. I hope you will take our concerns into consideration and do real vetting of news before printing. As editors, you have an editorial responsibility as far as the image of Africa is concerned.

Mr. Macharia Gaitho: We are cautious about that.

The Presiding Chair (Commissioner Namachanja): Mr. Macharia, thank you for your presentation. It will greatly enrich our report. Thank you.

Mr. Tom Chavangi: Presiding Chair and your fellow commissioners, the next presenter is Jaindi Kisero, the Managing Editor Economics and Investigations. We have apologies from Patrick Quarco, CEO, Radio Africa Group, but he will send a detailed presentation. We also have apologies from Mr. Otieno, Chairman Kenya Union of Journalists who will also send a detailed presentation.

Mr. Jaindi Kisero: Thank you, Presiding Chair and your fellow commissioners. I am here to present a statement made by the Editorial Director, Mr. Joseph Odindo, who is not here with us. I have sat here and seen the trend. I think the interactive session takes more time than a presentation. So, since this is not my own presentation, I will go over it so that we have a longer interactive session. I speak more than anything else as a veteran journalist. I have been in this trade for so many years. I have been running columns in the *Nation* for many years. My background is economics, but I have postgraduate training in journalism and politics.

This is an attempt to catalogue and tell the story of State interference to media freedom through independence. The point is made that the legal and regulatory framework for interaction between the State and media was coined in the colonial days. That framework has not changed and over the years, it has been tinkered with as the society progressed and became more and more open. The point is made that as early as in the 1930s, the State banned so many publications. They banned a publication called *Sauti ya Mwafrika*, *Uhuru wa Mwafrika*, *African Leader*, *Ramogi*, *Inoorero Ria Agikuyu*, amongst others. These publications were killed because they were basically championing the nationalist cause. During the Mau Mau emergency the Press was gagged to the extent that if you have read historical books by David Anderson: *The History of the Hanged* or Carol Elkins: *The British Gulag* you will not see accounts made therein in the Press. This, in my opinion, reflected the state of repression of the Press in that historical period. By

Independence, the newspapers remained largely in the hands of the colonial white settlers and the colonial Government and that practice remained.

The Defamation Act and libel laws exist all over the world, but in our experience, the way in which defamation has inhibited Press freedom was the large court awards that they gave to a claimant that nearly bankrupted institutions. That can be catalogued and documented.

There is the penal code which creates sedition. Seditious operates on the premise that people can be imprisoned for things that they say. For us, journalists, we believe that free speech no matter how distasteful can never justify repression. We have the Books and Newspapers Act and many other laws that I will not go into – the presentation is not mine. I will leave it to you to look at the whole legal framework.

There were instances of oppression or State intolerance to the media in the Kenyatta era. The Kenya Broadcasting Corporation, initially, a private entity, was nationalized. It catalogues situations where government officers such as Permanent Secretaries, Directors of Information, and so on summoned media houses to their offices to tell them that they were not toeing the line. It is all recounted in the presentation I will give.

The first journalist to be kicked out of the country was a Chinese chap in the 1960s. The story is recounted here by the late Jaramogi Oginga Odinga who was then the Minister for Home Affairs. We also recount how the Official Secrets Act was used to suppress access to information. In 1960s, Amb. William Artwood authored a book called *The Reds and the Blue Blacks*. It was banned.

In the Moi era, there was banning of a lot of publications. You remember *Pambana*. There are several cases where journalists were imprisoned for belonging to underground movements. For example, the late Njuguna Mutahi and his brother Njuguna Mutonya; they were imprisoned for being members of *Mwakenya*.

Then there is the relationship between the Press and Parliament. We have several cases where Motions were moved in Parliament to censure media houses for reporting what the political elite did not like.

We have a situation where private media houses were forced into co-option by the State. The story is told of the *Nairobi Times* which belonged to Hilary Ng'weno. By merely withdrawing advertising, it became difficult for *Nairobi Times* to exist as an independent media house.

So, basically, we have other stories where journalists were harmed. There is the famous story of photojournalist Wallace Gichere and Francis Nyaruri.

At the height of the post-election violence, the State came in and banned live broadcasts. That is still fresh in our minds. There are cases of KTN cameramen being harassed for doing what a journalist is supposed to do.

So, I will hand this presentation to Commission. The things that I say are really my own views as a veteran in this game. Thank you.

Commissioner Farah: Thank you, Mr. Kisero for your presentation and for realizing that the meat of the presentation will be in the discussion.

You have reminded us of the journey starting the time when Oginga deported a Chinese to where we are this morning. We have come a long way. Can you tell us something about freedom of expression versus the other freedoms? I am a Muslim and I would like people to express themselves, but I would not like my prophet to be insulted. So, what do you say about cartoons that are abusive of the prophet of Islam and the westerners come up to say that it is freedom of expression. Our freedoms must respect each other. Can you say something about that?

Mr. Jaindi Kisero: Like I said, it will be restricted to my own experience and personal views. As a journalist, I am a writer more than a person who gives guidelines on the gate-keeping side. I am on the poaching side where journalism is concerned. I am convinced that the role of journalism is to inform and entertain and all that stuff we are told in journalism schools, but more important is to deliver surprise. The freedom of speech, in my opinion, is more important than harming or offending your views. Journalists always struggle to defend the right to be offensive so that even though we will always be factual, but the right to be offensive is one of the most important journalistic rights. We may say something that does not belong to your taste, but freedom of such like John Stuart Mills and other said, is not something to be divided into bits. It is wholesome and that is what our new Constitution states.

Commissioner Farah: Thank you. Even when it inflicts harm upon others? Is freedom of expression wholesome and beyond other people's rights?

Mr. Jaindi Kisero: No, it cannot be beyond other people's rights. It should not be compromised at the altar of tastes by sectarian groups whether they are religious groups or Christian groups. If we say that this offends Muslims and tomorrow, this offends Christians and the following day, this offends Evangelicals, then you will lose the moral high ground of informing and entertaining truthfully as you can and being offensive sometimes.

Commissioner Farah: Thank you. I am one of those Muslims you can call modern Muslims and if you did that tomorrow, I will not be injured. I am just thinking of those who are lesser than me who have been indoctrinated who have been made to believe that religion is so sacrosanct that anybody who expresses opposing opinion is being blasphemous. I am satisfied with your answer.

Commissioner Slye: Thank you, Mr. Kisero for coming here in lieu of your colleague. We appreciate your summary of the presentation. Based on your own experience, you

outlined the legacy of State interference of the media, what is the impact of that history on the operations of the media in Kenya today?

Mr. Jaindi Kisero: It has been a long road. The space expanded as we progressed and the society opened. That is as much as I can say. The history of repression also got us--- We have been fighting for space at every opportunity so that the space that you see the media operating in at the moment was not doled out. The media responded and every time they got some little gap they grabbed it and so that what you see today is really a culmination of spaces we have been grabbing over the years.

Commissioner Slye: In this TJRC process we engage Kenyans to reflect upon the past and historical injustices. In other countries – I spend some time in South Africa when they did the same thing – one of the interesting things that happened was that other institutions sort of initiated their own truth commissions within their own institutions.

Some of the media houses and hospitals had their own processes of self reflection in terms of their own complexity and courage in their case during the apartheid years. The media story is like the stories that I heard in South Africa – a complicated one. There is the story which you alluded to which was the one of courage and fight for space and one sees the benefit of that, but there also stories of media houses and journalists engaging in activities that furthered some of the injustices. One, has there been any conversations that you are aware of in the media trying to take that self reflective process? Two, given your own personal experience and history, are there examples when in your mind the media made the wrong choice, or a journalist, reporter or editor colluded with the State, a politician or some outside interest to change a story or to push a story that, perhaps, was not true?

Mr. Jaindi Kisero: On your point about self reflection, this society has gone through tremendous changes. If you take what has happened in the economic field for example, when I was a journalist we used to have somebody called a price controller who would sit down and dictate what prices were to be charged. He used to have foreign exchange allocation committees. They would value currency when the IMF was in town. So, even in the economic field, this country has gone through very serious and fundamental changes; I think we are really on an irreversible path which cannot be changed. On the political front, we have also gone through very important milestones and changes, but my point is that we may have not organized it in the way the South Africans did, in terms of having caucuses and getting the media in engaging in self reflection but I think it is a permanent thing because the speed at which the society changed has been fanatical. I think even though we have not approached it the South African way, this nation is one which is in constant reflection. Look at what happened in 2007. I am sure all media houses are sitting and saying what guidelines they can put in place because we are learning and running.

The second part of your question invites me to make comments about my personal experiences and to give examples. I think I am not in a position to do that. Thank you very much.

(Laughter)

Commissioner Slye: That is fair. Let me just finish by asking a question on self research. One of the things we have noted down here is that the media is a very strong source of interesting information for this commission. It has done serious articles sometimes in the *Daily Nation* and some other times in other print media, and also sometimes in the visual media; they have been based on very serious investigations and information about historical injustices, whether it is sometimes the land issue, political assassinations or the Wagalla Massacre and what have you. I see that as opening up of the space that you talked about that the media now has obviously a lot of freedom to speak about those things than they did during the time those events took place. But I have not seen a lot of critical self reflection on the media's part on why the stories were covered, or why they were covered in the ways that they were covered in the past. So, what in your view would be a vehicle to encourage that kind of self critical reflection? Is it something that a Commission like us should be pushing more forward? Is it something that the media houses should be pushing forward? Is it something that some other process may, in your view, be best suited to push that sort of self reflection?

Mr. Jaindi Kiseru: My response to that would be the following: Newspapers and media houses in general are constantly involved in reflection. We sit everyday to find out why we splashed this story and not the other one, but I always believe that the people looking at you from the outside can give you perspectives that you ordinarily do not see. So, I get your point about initiatives outside what we do that can bring reflection to bear on our processes. I take your view and I do not know who can do that. Maybe the media personalities like Mr. Gaitho. They deal with the unions, or associations of professionals can do that. That is my response.

Commissioner Slye: Thank you very much, Mr. Kiseru.

Commissioner Chawatama: I know that you have had an opportunity to meet with the Chief Justice of the Republic of Kenya but has the legal framework obtained in Kenya right--- You have mentioned the law on libel. If you were given the opportunity to redraft, add or take away from that law, what is it that hurts the journalists so much? Is it the law itself or is it the interpreters of the law? If you were going to redraft, what would that particular part of the law contain?

Mr. Jaindi Kiseru: I must say that I do not have any legal training. I can only speak for journalism and I cannot say anything specific except to say that I believe in a legal framework that does not stop me from exercising my right to offend and to surprise. I can speak to you generally like that. I recognize that you are a judge but I think that the most important thing is to tell out the journalist the space to inform and sometimes to offend and for you to recognize that for me to offend; I am still doing my job.

Commissioner Chawatama: I know that somebody has walked into the room and I will ask this again. There were persons who talked with His Lordship and I would like to

know what they took away from that discussion and what they were actually proposing because it is also very important to us. Maybe it will be very important for us especially in our recommendations. So, I will keep asking that time and again. Thank you very much.

Commissioner Dinka: Thank you very much, Mr. Kiseru for your very concise and clear presentation. I have two questions. One is very objective and the other one is subjective. Let me start with the objective question. In most African countries people are illiterate and they do not read newspapers; most people do not own television sets because they do not have money but most of them have radios. In our travels throughout the country what struck me most was that most women came and talked to us and told us that their husbands died and the brother or father of the husband came and kicked the widow and the children out of the house and took over the property, yet the new Constitution is in their favour; but they do not know their rights in the new dispensation; the whole problem emanates from lack of information. Do you not think African news media, both electronic and print does have real corporate responsibility to go out and give some kind of space, informing these people through some media? They can afford a radio to tell them what their rights are under the new Constitution. In fact, they are telling us that they have not read the Constitution, and they just hear politicians tell them so. So, is there some responsibility on the part of the media to inform and educate them?

My second question is one that you hear in all countries, including developed ones. Media houses are owned by owners of money and professionals are employed by those media houses and then they issue information either electronically or through the print, which is read by millions every day. They actually not only inform but they package and shape opinions, yet they are not elected. They are kind of a self-selecting group – both the owners of the media and the professionals. They pontificate every single day. Is there some kind of sitting back and saying are we right in the propagation of these views? Who are we representing and how can we be certain? Do you question yourself if you are really sure what you are sending out is the right messages? How do you protect yourselves as an unelected group reaching and shaping the millions who depend on you? How do you protect yourself?

Mr. Jaindi Kiseru: The first point that I want to make, and I think you have raised these concerns much earlier, is about what role we can play in terms of developmental journalism. I believe you are not saying that we should abandon what we do which is to inform, entertain and deliver a surprise and get involved in human rights advocacy, because there are other institutions in that space.

Commissioner Dinka: I am not saying that you stop that but while doing this you also educate people who have no other source of education about their rights. You have entered a new dawn in Kenya and 70 per cent of people who talked to us have no idea of the changes.

Mr. Jaindi Kiseru: I agree with you on the point you made when you were talking about Lamu. One thing that is happening, and these are trends I am witnessing in the

whole of East African, is that journalism has become commercialised. They look at issues from the prism of the--- We are very urban and it is the profit imperative that makes them operate like that. If you look at a Kenyan newspaper of the 1970s and of today you will be surprised. Today we have modern news gathering machines and they do these things called rebranding; if you look at the space for information and the space for social issues, what I call fluff, you will find that newspapers have a lot of fluff. They are hooked to a culture of celebrity worship and we have chunks of sections in newspapers devoted to that direction. In my view, if the trends continue today, then development information will continue to be pushed to the periphery and the story about Lamu will not get national attention if we continue the way we are going, where everybody believes that if you write more about women and youth you get more circulation than if you write more about Nairobi, Kisumu and Mombasa. I think for non-profit journalism--- I have seen things like *Pro Publica* and many organizations that are coming in. If there was any time that East African needed non-profit and developmental journalism I think these are the times. I did not answer about hubris but I think as I said, we are in constant reflection and listening to complaints from readers and constantly adjusting so that you protect yourself from hubris.

Commissioner Dinka: Thank you. I am glad everybody is here; the chairman of the Editors Guild is here to listen to me.

Mr. Jaindi Kisero: Am I released?

(Laughter)

The Acting Chair (Commissioner Namachanja): Kisero, do not tell me that was a hot seat.

(Laughter)

Mr. Jaindi Kisero: It was not.

The Acting Chair (Commissioner Namachanja): Thank you. I think you have represented Joseph very well. Let us share the document we have and I hope you will open your doors. We do not have time to dwell on everything, but we are sure we may knock on your door to get some clarifications.

Mr. Tom Chavangi: Thank you Presiding Chair. We seek a five-minute break for the next presenter. He has a PowerPoint presentation.

The Acting Chair (Commissioner Namachanja): No problem.

Mr. Tom Chavangi: Thank you.

(The Commission resumed at 12.25 p.m.)

Mr. Tom Chavangi: Presiding Chair and your fellow Commissioners, we have Paul Melly, the Chief Executive Officer and Deputy Chair, the Standard Group; there will be an interactive session. Yes Paul.

Mr. Paul Melly: Thank you Madam Commissioner, Commissioners, ladies and gentlemen. First of all, let me say that I am the only barefooted journalist because I am a media leader, but I am backed by well grounded journalists like the Chief Editor, Deputy Chief Editor, Director, Francis Munywoki, and our lawyer, Nelly Matheka.

Listening to the presentation, we are elected to reflect on media freedom and responsibility; hopefully I will also deal with the question of the quantum of libel awards and what will be our recommendations. Wearing another hat, I used to be a financial regulator who found himself in the murky media world, and I will touch on the practicability oversight *vis-a-vis* self regulations since I hope your recommendations will be useful on that. Then hopefully, I will touch on the dictates of commercial interest *vis-a-vis* the inherent conflict it has with the public interest responsibility of the media. These are the dynamic issues that will emerge in the course of your interactive session, and which I hope we will touch on.

First, Madam Chair, let me go back to us and I want to characterize the media from a broader perspective. Listening to my colleagues, they have actually given you a detailed presentation of the evolution of media and the challenges they are facing in this country; therefore I will not go back to them. What would be my characterization of the media in Kenya? First of all, we can describe the Kenya media as fairly free and robust but I must add that underlying that perception is inherent atmosphere of suspicion, intolerance and conflict; largely this centres on the conflict between the media and the State, in fact the State agencies as well as the corporate one. So, these are the loaded scenes in the environment we are operating in. The response to the critical role of the media by all the players and stakeholders is varied. I could say if you look at it, they are happy if the editorial content favours them. If it is favourable, everybody is happy. If it contributes to their brand then everybody is happy, but media practitioners also realize that the critical role of the media is serving public interest, and as such where the dictates of public interest override commercial interest, then the media organizations directs itself to serve public interest; it is part of that expectation by the general public and you will find that media content may not be favourable all the time to either the corporate consumers, or for that matter, to public agencies, including Government. Therefore the general reaction by these actors and partners would be to retaliate somehow. So, they will be very unhappy and, as you have heard previously, the retaliation takes the form of stopping advertisement as leverage to dictating or causing favourable editorial content. Sometimes they go to court and ask the justice system to protect their individual rights; sometimes, unfortunately, the dictates of public interest are ignored; sometimes we have seen judgment where the media is gagged and then denied the ability to have access to information or, for that matter, to report on matters that are of compelling interest to the general public; we have seen the use of the courts. Therefore, when you talk of affront to the media, I will say this is twofold. One, commercial affront or legal affront and of

course there is third one which is the affront through intimidation, actual harassment and sometimes threats to journalists. We have seen several.

Madam Chair, but it is not our intention today, nor yours, to pursue any retribution as part of this process. I think the expectation and the truth lies in knowing the truth no matter how bitter it is. While hopefully finding ways of achieving a convergence in terms of national healing and harmony, and that is why the expectation of the finding of your commission should reflect--- As the media we will know some hard truths which we are seeking to pursue. The interesting thing to note is that first of all, if the dictates of the media are to be fair and to serve the wider general good, then national assets such as television and radio frequencies should reflect a fair distribution in terms of ensuring that these assets are used largely for the support of the wider role of the media but not for speculative purposes. The hard truth is that this is not the case in our own situation. We have many radio frequencies that are still being held for speculative purposes in the market place, while there are many media houses which wish to use these frequencies but they are not able to have access to them. That in my humble assessment, is actually an inhibiting role of the media because media consumers are denied the opportunity to have access to wider assets and where these frequencies are allocated, sometimes they are not fairly allocated and the concentration is lopsided. This is apparent and these are verifiable facts. I am not making speculative statements. Our media house, for example, has made application for frequencies but we have not been able to secure them; in one case we had to buy them from those to whom they had been allocated. We have very many areas of the country which desire frequencies but have not been given them. So, I am using this as an example where the state can use or elect to use media frequencies to gain positive influence or to control the influence of the media by ensuring that those assets lie either in compliant hands or, for that matter, those who are believed to be critical, are denied access to them. That is an area that, of course, we would like to get some truths and these are verifiable facts.

Madam Chair, I think it is also necessary to appreciate that we have made progress in terms of media freedom. It is fair to say we have made progress but some challenges still remain, and nothing is characterized in the period under your review; nothing characterized that challenge than the affront that was witnessed in 2006 with respect to media intolerance as far as the Standard Group operations--- In particular *The Standard* newspaper and the KTN broadcast services were actually interfered with in a more direct way by goons who, unfortunately, it eventually transpired that they were hooded State agents. In an hour of darkness they paralysed our operations, with our equipment being taken away. Newspapers were burnt. Our journalist were beaten up and harassed and all was aimed at denying the freedom of the media to Kenyans in this country; of course I must say that this remains unfinished business on our part through our justice system. Therefore, I am constrained in elaborating in greater detail but we will be able to give you an overview at some stage; that was the most glaring day for us.

In fact, we do mark this day every year as a day of infamy but we now take it as a Standard Group Press Freedom Day, March 2nd. We have marked it over the last six years now and if for anything is to allow us an opportunity to reflect and also acknowledge the

journalists who continue to play that particular role of serving the public. For this reason, we have attached some of the critical information which is already in public domain and which is a parliamentary report on the matter of the Standard Group. We also have a short video clip which we invite you to look at and then we have some photographs that document what really happened on that infamous day.

Madam Chair, we know you have compelling powers as far as your mandate is concerned and we would want to hasten to add that you will exercise your role by compelling those who are in custody of the Kiruki Commission Report to make it available for your consumption, if they cannot release it publically. Of course, we believe that the report was undertaken at great public cost; therefore, the public have a right to know and, therefore, we are urging the commission to demand a copy of it.

I think I have already covered that point and the fact that it remains unfinished business.

I would like now to deal with the question that Commissioner Chawatama rose, which is the question of libel awards and the decisions of the courts. We have three points of concern here. The first point of concern is that first of all the decisions of the courts that denied the media to report on matters of public interest affecting individuals who are serving either influential positions in Government, or have direct participation in Government, and that is a major concern that when the media is denied an opportunity to report about them, even temporarily, this inhibits our ability to serve public interest, which is a critical role of the media. So, we feel that in the courts in the recent past--- We are media practitioners seeking to actually challenge some of these decisions all the way to the Supreme Court to ensure that, that does not become a practice which is used by the courts. So, that is one concern. We hold the view that anybody who holds a position of influence as a public official should accept that their position and conduct are subject to public scrutiny; they cannot hide behind the courts but they can hold us as media accountable if we get the facts wrong.

The second point that we are concerned with is with respect to quantum of the libel awards; we have seen a consistent rise in amounts that do not give the impression that the intention is to make it punitive and deterrent to recklessness as far as management of editorial function by the media houses is concerned; they are actually intended to have the consequences of financial paralysis and cripple media houses. This is an issue that we need to challenge because I think we expect judges to take into account in their decision on the quantum the motive, and to determine whether the reports were guided by malice or they were actually intended to serve public interest; but while pursuing that course, errors of judgment were made by the journalists by not getting their facts correctly. So, the bigger picture should inform the quantum rather than actually seeking to award financial gain to those who may be affected. Of course, we recognize that these individuals have their rights and recourse to protect their individual rights, but we also suggest that the individual rights be weighed upon the collective rights of public interest and should dictate and influence the quantum of the awards rather than the situation where we have seen that even matters that--- I will give you one example. Our media house got a former Minister wearing a torn shirt but the journalists and the editors did not

take a photograph of the torn shirt, but it was true the shirt was torn. Like today, I do not have a tie and if somebody reports and says that I came without a tie and there is no photograph, I can say really I had a tie; if there was no photograph to prove, I may end up convincing my judge to say that I actually had a tie. So, in this particular case there was no photograph evidencing the fact that the shirt was torn. In this case, this particular leader went to court and secured judgment and a significant award was given. Of course we are still appealing but just for the torn shirt, the award was in the region of Kshs5 million and I can tell you that for a fact. We are giving you that as an example of how the intention was not reward; if it means buying the individual the shirt, the cost is not consistent.

(Laughter)

So, I am using that to give you an example of how these awards can be reckless in a way.

Therefore, Madam Chair and Commissioners what would be our recommendations? Our recommendations would be that it is critical to put in place guidelines for determination of awards that help the judges weigh the bigger public interest *vis-a-vis* the perceived damage to the individual's reputation and that quantum should always be reasonable, so as not to appear to have the intention of crippling the media houses financially or, for that matter, offering the individual financial gain at the expense of great public interest, or protecting the individuals who are reported on at the expense of the right of the public to know in terms of matters of public interest.

So, I hope and remain prayerful that your Commission will make specific recommendations in this particular regard.

The final point is that, of course, as the media fraternity, we expect to ensure fairness and balance in our reporting. We have enormous responsibility to ensure that our contents remain consistent in meeting that particular criterion and that, as a media, generally, we need to find time to reflect on our report. I would like to comment on one particular matter that has been in the public domain and might, in fact, be part of the aspect of what your Commission will be looking at which is the question of whether the media exacerbated the post election violence and whether in fact, the media should be held accountable in some way. I would like to hasten and say that a person who worries about the picture, in other way, my role is looking at the forest rather than the species and sizes; I can tell you that I also pay sufficient attention to the details so that where we get it wrong, we correct it subsequently. Our editorial policy as a media house is to allow the journalists to exercise their rights to decide what contents they include on a day to day basis. When they get it right, they all celebrate but when they get it wrong, they know that they will be asked questions and this is the issue that was raised previously. With the knowledge of the media for the last seven years, I am aware that the journalists themselves - and this is a verifiable fact - went about supporting the wider public interest with a lot of risk. They went to report and got pictures from areas that were volatile and some were hurt while pursuing that course of letting Kenyans know and the international community to be aware of what happened. So, it is an area that I would like to say that it must be acknowledged and that, without the lenses and the acres of space dedicated by

media houses, the international community would never have known what was happening in Kenya. Therefore, I want to say that they contributed positively in resolving the post election violence rather than undermining or exacerbating it.

Looking at some of the contents which they elected not to utilize in terms of giving to the public for consumption, I can say that there is a lot of content that was not used by media houses through the process of reflection and not causing incitement. So, there is a lot of held back content that was not produced. For instance, the individuals who slipped to the ground; we did not show them graphical. There is some where you see somebody being cut, but we did not show. We have seen people bleeding on the ground and so there are many graphic images which media houses chose, out of their own responsibility, not to utilize. But there are some that when you look in the narrow course of looking at the few, you might get the impression that we were reckless but those were the necessary minimum we had to use to call the international community and the general public to be aware that this is a matter that was deteriorating and we were at the tipping point as far as our nation is concerned.

The media houses at some point agreed to send one clear message. In fact, I remember one day all the media houses had one headline saying “Save our Country” and immediately, thereafter, the situation changed. So, this is what I call responsible journalism and I try to do that. Of course, there are a few isolated cases where we sometimes do not get it right but those are in the minority. Those are very limited instances that in the wider characterization, the media generally contributed positively as far as the matters of the last elections are concerned.

I also want to comment on the point of self regulation *vis-a-vis* oversight regulation. The best way to regulate the media is to put in place a workable self regulatory mechanism that allows them to take steps to learn from events of the past and also to reign on those who may use their opportunity to propagate or advocate on behalf of vested interests. There is no need of an oversight regulation if you have a legal system that works; the recourse to court in terms of libel. So, we do not need to worry about a public regulation of the media. But I know self regulation sometimes can only work if you have structures that are punitive. This is to say if you find a journalist who is regularly violating the expectations, then they are denied the opportunity to participate and everybody knows so and so has been denied for the following reasons in terms of transparency of the process. We also know that self regulation is like chopping your fingernails because you always try to do it nicely. But if somebody is trying to do it for you, they might hurt you. That is why people believe oversight regulation is more deterrent. But I do not believe that?

There was also the question of what are the borders and limits of the media freedom. The limits must be there to ensure national stability. If a media house is consistently inciting people to war, that is not media freedom and our Constitution acknowledges that as a limitation. One, the use of content that incites religious tension, there is no public interest being served in that case. We cannot have a blanket legal justification to prevent the media from performing its role because media freedom is a main pillar as far as our

Constitution and country are concerned. So, we have to identify areas where we have those inherent conflicts.

Finally, media freedom can only be secured. It is free from commercial capture or vested interests. If you have captured content, then you already undermine the freedom of the media. Journalists cannot claim that they are seeking media freedom to propagate a vested agenda because we must remain true to expectation of performing the role of watchdog and agenda setting without pursuing vested agenda.

Allow me to play a clip that we are not going to comment on, but it is for your eyes only.

(A video presentation is relayed)

That is the price of media freedom!

Let me finally deal with the question we are praying for your Commission to find out. We hope the country will know the truth on the following questions: - Why the Standard Group was raided? Who was involved in the decision to raid? Why our equipment was taken and where is it? Why the heavy handedness in carrying out the raid by hooded agents at night? Why were journalist harassed, beaten up and some locked up in police stations? Please compel for the release of the Kiruki Commission. We are also praying to know who were the foreigners captured on the CCTV leading the raid and why we could not do what is fair and just. Why not do it during the day and put us to account if we were wrong? When will the Standard Group be compensated? If it was not for the early statement of the late Mr. Michuki who in consistency with his forthrightness said that it was a Government raid, we would have taken many days speculating. But we were ready as we captured the operation in the manner that they did not know we could. We have since learned and we are better equipped in future should anybody try again.

Thank you again for the opportunity and I think your Commission will help the country know the truth. We are also aware that this is a position of great responsibility and it is our expectation that we find a way of healing and close the past as a matter of record in our history so that, those who will come after us as the next generation can learn our past and avoid it so that we can have a better governance structure for our country.

Thank you!

The Acting Chair (Commissioner Namachanja): Thank you for the detailed presentation from the Standard Group and for the video clip which leaves us with a lot of questions but, unfortunately, you said we cannot comment on it. Is it because of the court case?

Mr. Paul Melley: Yes!

Commissioner Chawatama: I am from Zambia and we have a newspaper called *The Post* but Zambia is a friend of Kenya. As a Commission, we have heard from many people and many Kenyans feel they are not Kenyans and that is the question they ask

maybe because of the way they have been treated or ignored and many other reasons. Also, reading between the lines and this nation is going into an election year, one of the things that one can gather is the fact that people are also saying that this time they will not be caught napping. So, what does that mean? Other things that one can read between the lines are that this time around, we are not the ones ending up in IDP camps. So, what are people thinking? You will be interested to hear that there was a nine year old who said: "I do not know why I lost so much; my friends, school and I moved away from where I was staying and yet I did not vote?" Many people are also weary that elections are coming and it scares them because all they imagine is what happened in 2007 and whether it will happen again. I do not know the extent of preparedness as the media or if at all you have spent time thinking about this and avoiding the mistakes of the past. So what is the state of your preparedness?

On the question of libel, is it the law or is it the interpreters of the law? In as much as the quantum might at times appear to be more of a financial gain than a deterrent, you are also saying that the independence of judges should be interfered with because the quantum in most cases is a discretion of the individual judge taking a lot of things into consideration, being guided by the law and exercising that discretion judiciously. So, what is fair in the quantum and to whom? Who stands to lose the most and issues like those? Would it be me or my maid? I do not know whether you are one of the people who attended the meeting with his Lordship; what did you gather from it?

Mr. Paul Melley: It the whole question of what you have as a leader and looking at things from that perspective. As a country, we were almost at the tipping point and it is clear that our politics have had a rare opportunity to influence people in a manner that sometimes they act as if they are in control of everyone's rights. We have seen the political class every year rallying supporters and causing them to elect leaders who you wonder why we would elect them in the first place. So, I think Kenyans are themselves to blame if they elect leaders who are not fit and proper to run for offices or who cannot contribute to good governance in this country. But that is democracy. Because this is an African democracy where people refer to their leaders and numbers are what counts, then leaders should know that what they say can have an intended consequence because the level of understanding may be different from what the political leaders themselves expect. As a result of that, it is the responsibility of the media to ensure that in the course of churning out content, they churn out what can help the country. Journalists are faced with a difficult task of either to show information and content of pictures that will help the public to know who of their leaders have the wrong intention. But the same intention could have consequences of inciting violence. It is important to see a reckless person being charged but, at the same time, if we were not to release that information, would we deny the public the right to know who among their leaders are more responsible?

It is therefore our hope that we have learnt from our mistakes of the past and that, as a country, what we need is national healing and reconciliation and not sustained retribution. We also acknowledge that we must look at our past that helps us get well informed.

The other issue was the question of the state of preparedness of the media. The media is now more sensitized that not everything a politician says is for public consumption. They can elect to select the content they need while at the same time meeting the criterion of ensuring that we do not deny the public the right to know well their leaders while trying to be too prudent in our reporting.

On the question of libel and the interpretation, the award all over the world is a delicate area of balancing the right of the individual and the right of the media and public interest. Therefore, without guidelines in the legal framework, then the charges are left at their own individual's discretion and assessment. Many a times, they may elect to decide on a matter based on individual rights and violations and sometimes, they do not pay sufficient attention on the public interest question. I am putting the challenge to the law and to some extent the interpretation by the judges. Sometimes, they give undue weight to the right of the individual while the dictate of the hour should be to consider the wider public interest question as well.

With respect to who should get more, you should certainly get more given that the integrity and expectation to you as a person and your career and influence in society has more weight. However, that is not to say that the maid has no rights. If you are always slapping the maid and you are the judge, at that point, the dictate of the law, expectation and protection should favour the maid. At that point, we hold you as the judge more accountable but as far as libel is concerned, if it is a question of quantum and award, they say the value of your personal brand and this is a discretionary question which is assessed by the judge--- So we need to talk about it so that our judges become sensitized on this question. So, the brand is important. For example, the High Court awarded Kshs6.5 million to the Chief Justice of the Republic of Kenya as the highest award but we have seen in some situations a magistrate being given a higher award than the CJ of the Republic. In one case, we gave out Kshs10 million and we had to appeal and so we need some guidance. Sometimes, if you have to decide an award to the CJ and a politician, we would know who should get more. But you might find a situation where the award was in the region of Kshs30 million for a politician and it is inconsistent.

Commissioner Dinka: Thank you for your presentation and the video. I was asking whose white face that was but you told us it was white. We were not so sure. One of your recommendations talks about people holding public positions to remain under constant scrutiny by the media, which is correct. Then you say the media report must be factual and must be based on criteria of fairness and balance. It is a very difficult criteria because who judges fairness and balance? I do not think you are talking about fairness and balance from the point of view of regulatory policy, but from the societal point of view. But there are at times societal consensuses on certain issues and, maybe, more of the society accepts that existing consensus. But, sometimes, that consensus could be perceived as not being fair. So, would it be unfair and unbalanced of the reporter or columnist or editorial policy to begin a media campaign to alter that existing consensus although 90 per cent of the society agrees with the existing consensus? Would that be an unbalanced or unfair if the media house launches a media campaign to alter that consensus?

Mr. Paul Melley: First of all, the agenda setting role of the media must be acknowledged and we must also acknowledge that there comes a time when the public itself is wrong and that the public is not at all the time right. The public on the basis of the information available to them may reach a particular consensus which may not be informed by facts supporting that consensus. If for that matter, it is the media in its reporting role that brings the fact to achieve a particular consensus in an agenda setting based on new facts that inform the society to make a particular decision or direction, then the media will be performing its role. But if the media selectively pursues a role of misinforming the public contrary to facts and expectations, then they would be failing the public interest as well. So, it is incumbent upon the media to make sure that the criteria of fairness and balance means reporting all facts about a particular subject or angle. If you are reporting a negative aspect of an individual, surely, you should also consider some positive aspect so that you can achieve fairness.

But it might happen that there are more negative than positive. So, if you can demonstrate that you have put in a few constraining positive, but those ones are the only ones you could tell at that hour, but you have actually put more negative aspects and you can prove you did not do it out of malice with the intention of injuring the reputation of individual, then you can say you were pursuing a public course.

The criteria of fairness and balance are what the journalists have expected and accepted that every story they write on a daily basis must meet fair and balanced criteria. For that matter the journalists then weigh upon themselves to see whether all angles of the story have been told. They are telling one side and then it does not meet that fairness. Manytimes they get it right, but sometimes they get it wrong. This is, perhaps, motivated by anger. Let me give you an example. For instance, immediately after the infamous raid, our journalists were asked to cover a favourable story on the establishment the following day. You can see how constrained they would have been because they would not have had anything to say about a hostile environment. Their attitude and everything would have been informing them to take a particular angle of being critical at that point.

Commissioner Dinka: My last question is you are from the media owners' side. You are the CEO and Chairman of the Standard Group. It is said that there are frequent tensions between media owners and editors. What do you think is the most frequent tension generating issue in the case of Kenya between owners and editors? Do you think it is getting less frequent if you compare five years ago and now? Is it getting less frequent or more frequent?

Mr. Paul Melly: I see myself as a media leader and not an owner. Therefore, you would expect in my general day today work if my role as a media practitioner meets the public interest expectation then everybody wins. I take that view that everybody wins. You will not even have a conflict with the owners at that point. The day you, as a media house, decide to pursue a vested agenda then your days as a media house are numbered. You will not succeed for long.

The area of tension largely is a commercial interest where the commercial interests of the shareholders may be inconsistent with public interest. Then you would expect in well-functioning media that the public interest should dictate where the overriding rights of the public come to question. After all, it is the public that fuels the media in terms of readership, viewership and listenership in terms of radio.

So, if you undermine your audience and constituency, you cannot survive for long in the media. As a result of that, it is only unwise leadership that will elect to pursue commercial or vested interest because that will be short-sighted and will never lead to progressive influence as a media house. So, the intention is commercial and sometimes vested agendas.

Fortunately, the society is so punitive that it is able to know a media house that is pursuing a vested agenda. It is not sustainable. Therefore, in terms of history, I think we are progressively seeing a more robust media in the country with more outlets and alternatives. For every country, if you do not have more than one media house then, no matter how hard you try to achieve public interest, you will not be able to achieve it all the time. The fact that we have multiple outlets and with the role of the social media it is also actively influencing the direction of things, the public has more access to media content through non-traditional sources than before. So, we are seeing growing room and space for the journalists to exercise their rights and responsibilities. We are also seeing a general improvement in allowing visitors and journalists to exercise their rights deciding on content. I can say it is progressive. But that is not to say there are no isolated cases where you find one journalist is captured today or tomorrow. It will always be there because, after all, journalists are part of the society. The risk of society facing us is also reflected in the journalist profession because we are part of the same society.

I will give you an example. During the post election violence, journalists came from different parts of the country. As the tension grew, you could see the reportage at that time was influenced by the domestic jurisdiction of where the journalist comes from. Without the media editors as an editorial committee or board moderating, you could find that the situation was inherently conflicting. In any part of the society, we cannot say journalists cannot make mistakes. They make mistakes, but most of the time they get it right.

Commissioner Dinka: It is good to know that. I will ask these questions because none of us, as far as I know has any degree in journalism, we come from very different backgrounds. So, it is an educational morning and afternoon for us.

Commissioner Slye: I want to start by offering you an apology. You may have noticed during your presentation I was fooling around with my phone which in my culture is frowned upon in events like this. The reason I was doing that was to confirm that we do have the Commission's Report. I cannot tell you whether we have the complete report or not but we do have something that purports to be the report.

There are two issues that were raised this morning and I think they may have been raised before you were here. The first concerns the payments of correspondents. We were told that correspondents generally in Kenya are part time or work on contract basis. One of the effects of that is that individual journalists are dependent upon in many cases the source of their story for support. An example I gave was one that I know of first hand which is when we were in the North Eastern part of the country travelling up to Mandera, Moyale and other parts. We provided transportation to journalists. We also provided them with meals and other forms of support. It was described to me that if we did not do that it was unlikely that we would have any journalist with us. The issue there is that it puts the journalist in a very awkward situation where he or she is dependent upon, in this case, the TJRC for their transportation back to Nairobi. Understandably, the journalist will be a little careful about how critical he or she may be in reporting our story because they do not want to be stranded in Mandera or where have you. We also heard testimonies about more overt problems in terms of bribery and corruption. But I am more interested in what I would describe as a more structural issue and I do not know whether that is something that the media owners have given much thought to, whether there are plans to put into place a system including a compensation system or support system that would not create that sort of problems between the journalist and the source of their stories.

Mr. Paul Melly: That is a key point you have raised. First of all, let me just comment because I also know this from our own media house. As a media house, you have generated content based on in house staff who get a regular salary then you have out-sourced content. The ratio of this differs from one media house to another. An out-sourced content is where you have correspondents throughout the country because it is impractical to always have everybody throughout the country generating content. The compensation structure for the out-sourced content takes the form of paying for content used in the newspaper. The media houses have rates and they pay that. For a media house, this is a good way of managing costs, if you think about it. The other side of the coin is that even the compensation is based on content. So, if you have a correspondent that does not churn out content regularly then they might not earn any allowance in particular month because it is based on effort. Therefore, that brings the other side of the coin, the weakness of those correspondents then; I hope it is a few of them. It is not the whole lot. These then are at the mercy of the vested interests, including you, in this particular case, who offer them transport, buy them lunch or pay for their accommodation in the hopes that they will get content. As a media leader, my concern is that if that content then is influenced by the level of entertainment offered by the source to this particular individual then we might get a one-sided story. So, what have we done?

What we have done and we have seen many media houses generally increasing their attention in this area is that we have now started paying the outsourcing correspondence retention money. So, we pay them a retention amount for which we expect a certain minimum content expectation. On top of that, we do pay them a reward based on content provided. That helps. It is a serious matter even in a political year like this one. What will happen is that you will have politicians going for multiple rallies throughout the country. They are always using choppers to move from one point to the other. You will find a political leader moving to three or five areas one after the other. So, sometimes it is not

possible for all media houses to move with them rapidly because we do not own a chopper. Maybe we should collectively own one. You will find that the politicians give these journalists a lift from one rally to another to make sure their rallies are covered. Worse still, sometime after the event is over, the video clips are brought back by some of the politicians to the media houses. This is the risk we saw in the previous election. So, most media houses now are looking at alternative ways of achieving the case. One way is to make sure that the reports are not necessarily brought overnight to Nairobi or by air, they are downloaded at the point of recording and they are picked online from Nairobi to make sure that we minimize all that. If a politician is bringing a report, you can imagine they can go and edit that content and actually create a crowd that was not available. They call it mixing the content. They get a larger crowd and mix them up. They want to be seen to be having bigger crowds. So, it is a risk that all media houses are facing, but we are taking steps to make sure that we have systems to download the content. Secondly, to appoint correspondents in most parts of the country so that the need for reporters moving from one point to the other, is minimized. So, this is a challenge. What you have said is right. It is about pay. There is a saying that he who pays the piper calls the tune. So, if you are buying for them lunch and providing entertainment – there are PR agencies that are known to give reporters after press conference lunch money in the envelopes - this is an indirect way of influencing them. As such, the editors and the journalists are trying to discourage that. But what you have said is a fact.

Commissioner Slye: That is helpful. My understanding on the new Constitution and devolution, somebody had said before that media houses are now moving to devolved systems, so that they have more people out in the fields. That will obviously help. I hope that, that will become less and less of an issue.

The other thing that one of your editors had mentioned to us is that the NationMedia went from 5 per cent of its own content to 70 per cent. I do not know the media business that well, but I know it well enough to know how expensive that is. Very wealthy media houses in the United States of America have cut back on the foreign coverage because of the expense. The fact that you are actually expanding local content here is quite admirable. I assume that expanding also internally is something that will happen as well. We have had incidents and obviously this was heightened during the post election violence of 2007/2008 where we had an incident that was recently publicized by the community to protect journalists when a journalist here in Kenya was murdered because of a story that he was involved in. I had asked a question about whether there were any conversations held between the media houses and the police or rather security forces to try and create modalities to increase protection of individual journalists. I know that sometimes the threat is from the police. In fact, the example that was given to us this morning was that the police were complicit. But it is not always the police. Sometimes, it is other non-state actors that provide the threat and the police should be protecting every individual from other Kenyans as well as from the State. I think that obligation extends more to journalists given the important role that journalism plays. So, I wonder if you are aware of any efforts to try and increase that security for individual journalists.

Mr. Paul Melly: First of all, let me also underscore that given the nature of the reports journalists churn out on a day to day basis, many a time their content is not seen favourably by those affected by the said content. We have seen incidents where they are in fact directly or indirectly threatened or intimidated in a way that is aimed at cowing them or making them not to continue with the content in the manner that should serve the wider public. Media houses generally have been supportive of one another when it comes to defending the rights of journalists and also calling for the protection of journalists. In fact, you will be happy to note that during the infamous raid on *The Standard* all the media houses suspended their day programme to cover the event live for almost 24 hours until we were up and running. So, media fraternity united in defence of public interest as far as the media is concerned. We feel that is collaboration. When journalists of one media house are under attack, we have seen other media houses also protesting and raising issues. That has helped in a way.

The only challenge is that the source of the protection is not always as reliable as we would want. Many a times the source of the protection happens to be the police. Either the police are either the direct command of those political influences that have concern with our reportage so we may not always guarantee that the protection we receive is consistent with the best security for our journalists.

I have one case, for instance, in the recent past about four months ago, some of our investigative journalists had content that revealed three years human rights violations and those who were included as part of the content happened to be senior police officers. When this happened, you could, therefore, imagine how difficult it was for these journalists. They were getting direct threats from even their traditional sources within the police. Basically, there was nowhere for them to hide. I can tell you that for a fact.

In one particular instance, we had to arrange for what I can characterize as a cooling period in a friendly country for the duration of the hostility at great cost. That demonstrates the extent that media houses go to protect journalists. We all wrote to the police. We drew their attention to the fact that our journalists are facing serious threats. We covered the story in the media. We also issued statements condemning those threats, across media as well as media owners association. That helped because there is nothing big than public insurance. Public insurance is big than the police insurance. I think that has been proven to work. Is there any specific recommendation you can make in this area? I think what we could do is that if we could characterize journalists as performing a good public course and that it is incumbent upon the State to ensure their protection and create a framework through which we obligate those in charge of security to assure and guarantee the protection of journalists, I think, we will go a long way in insuring journalists against the risk. This is not to say we will always protect even where the law requires a journalist to go through a due process. We acknowledge that. It is where non-legal means are applied to intimidate or even hurt them in some cases.

Commissioner Slye: In terms of recommendations, we will welcome ideas that you or others in the room may have in terms of that sort of issue. I am embarrassed to say that I owe you or even Mr. Gaitho an apology because I confused the Nation Media with the

Standard Media. I apologize for that. The Nation sounds like it has increased African content.

Commissioner Farah: Thank you so much, Mr. Melly. I always find it pleasurable to have an intellectual intercourse with you. The raid on *The Standard* media house cannot be viewed as an isolated incident. As far as I am concerned, it should be viewed in the totality of the mis-governance of this country by those in authority, whose deterioration culminated in the post election violence of 2007/08. Whereas the matter is *sub-judice* and whereas you are looking forward to TJRC to unearth the truth, why do you think the sixth anniversary is approaching on 2nd March, 2012 and yet the courts are unable to dispense with this case this long?

Mr. Paul Melly: I agree the raid cannot be looked at in isolation. It is part of the need for this country to reign in impunity. This is a word that we might be overusing. The truth of the matter is that if there is anything that accepts impunity it is when those in authority for even misguided reasons can do the sort of thing they did to the Standard Group and get away with it. That suggests that we have not made progress in terms of holding people to account. We still remain hopeful that one day someone or a few will actually tell us the real story. That will help, even if it is for the sake of truth, reconciliation and closing the past; that will help. I think that is what we need.

When we hold people to account for their decisions in public responsibility, we then reign in impunity and make progress as a country and we learn from it. But if we condone, then we have issues. I can tell you for a fact that it is possible in our raid that there was an element of misinformation that the content that we were about to publish may be what it was not. You saw the newspaper that was being banned was talking about school children results and champions. It had nothing to do with any story whatsoever that would have compelled them to do what they did. In fact, they were embarrassed as a result of that. But you never know what information was given. So, we will never know the truth until we get those involved to tell us the truth. We hope that the wheels of justice will eventually prevail. We are told that the wheels of justice are always slow; too slow, but eventually it catches up with people. We still remain optimistic that with the judicial reforms that have been implemented and the growing independence of the judges that we are witnessing in this country, this matter will be dispensed off in a manner that will ensure that justice is served. We are told that because of the backlog of cases the wheels of justice are slow. But we also know, even though nobody tells us that when it comes to matters affecting the State and any individual or organization the wheels of justice, tend to be conspicuously slow. But we remain optimistic.

Commissioner Farah: I think you have answered my question. Maybe when this Government goes and another Government is elected, maybe we shall get to know the truth of the matter. As Commissioner Slye has said, we will try to do our best.

The Acting Chair (Commissioner Namachanja): Just one question for you Paul. Some journalists work under very difficult and traumatizing situations. Are there any mechanisms put in place to give them psycho-social support?

Mr. Paul Melly: It is true that the working environment and the nature of stories gathered by our journalists sometime subject them to conditions that mainly can be overbearing on their continued role as a journalist. We saw that during the last post election violence. In fact, many of our journalists were actually facing issues at the personal level in a most traumatizing manner and we had actually extended counseling services for them because we know that as much as you are a journalist, when you are holding the camera and you see somebody being attacked or killed, you still have to get the story out there; but you are being beaten, at the same time, tear gas is being thrown at you and you are being chased. You are still rushing to tell that story to the world so that through the lenses you hope and as it happened, Kenya got peace. So, they face a lot of traumatizing experiences.

The good thing is that we have men and women in the journalism profession who are willing to spend many hours and take risks to tell the world the truth and tell the country the truth in their content. But they remain human beings and are vulnerable in their daily quests in performing their roles. Thank you.

The Acting Chair (Commissioner Namachanja): Those are all the questions that we have for you. Thank you so much for your presentation and recommendations. We shall look at them and take them seriously.

Mr. Paul Melly: Thank you for the opportunity, Madam Chair and Commissioners and thank you for listening. I now understand why Jaindi was sweating.

(Laughter)

Mr. Tom Chavangi: Thank you Presiding Chair and your fellow Commissioners. Dr. Levy Obonyo, Chair Media Council of Kenya, has sent an apology. We will now have James Oranga after lunch. We will also listen to individual journalists after lunch. It is about 2.00 p.m., so I seek directions from you.

The Presiding Chair (Commissioner Namachanja): I think we can break for lunch and come back at 3.00 p.m.

(The Commission adjourned for lunch at 2.05 p.m.)

Mr. Tom Chavangi: Thank you Presiding Chair and your fellow Commissioners. We have Mr. Samuel Otieno Owida. He is going to speak about the murder of a Kisii journalist and his harassment in the process of covering the same story of murder.

Welcome, Mr. Samuel Otieno Owida.

Mr. Samuel Otieno Owida: Thank you Commissioners, members of the public and the editorial team.

My names are Samuel OtienoOwida. I work with the Nation Media Group (NMG). I would like to inform the TJRC that before I actually joined the media I had known the slain journalist, the late Francis Kaunda Nyaruri. The late Nyaruri was a close friend to another journalist called Jack Nduri who hailed from our area and was working with the Standard Media Group (SMG). He was also my friend. So, these guys had influenced me to join journalism when I had just finished my secondary education, ten years before he died. It was in 1998 when I came to know Francis Kaunda Nyaruri. By the time he was dying, I was already a journalist. I had known him in a few areas where we interacted, like in some functions where we covered some programmes we shared information. So he was a person I knew. Okay, to be concise, I would like to say that Nyaruri had expressed some fear to some of us that his life was being threatened. This was as a result of the kind of stories he was doing concerning issues of corruption within the police force and more so in the local authorities, in both what we now call Nyamira and Kisii Counties. Occasionally, he could do an overlap in our Homa Bay County; that is in the local authorities like Oyugis and any other issues that were affecting the community.

So, basically, Nyaruri's friend was also to unearth whatever was happening within the corridors of power and any other injustices in terms of how public funds were being misused, police harassment as well as the laxity of the police to deal with crimes. So, this is where I admired him. What I admired in him was that he was very brave. When I had just joined journalism, I was also following his footsteps.

So, at around October, 2008, I got information from another journalist who was by then based in Kisumu. He informed me that Nyaruri had expressed his fears that an OCPD who was at Nyamira that time, Mr. Lawrence Mwaura Njoroge, had threatened him and the kind of threats he received forced him to flee Nyamira Town to Kisumu. He actually stayed in Kisumu for about two months.

While he was in Kisumu, he also narrated how certain government officers who were working at Nyamira Town Council at the time were also part and parcel of the threats he received. He gave the names to the journalist he talked to. Then the journalist happened to know one of the chief officers in the Nyamira Town Council. This journalist did manage to get the contacts of the said chief officer whom he talked to but the chief officer denied having any ill motive against Nyaruri except that his people on the ground were the guys who were on his neck and that it had nothing to do with him.

Towards the end or in middle of December, the same year, 2008, Nyaruri, through the phone of one of the chief officers made a call directly to that journalist telling him that things were now well and he had no problem with the officer, so everything was okay. But a few days later, he received another threat; one on one, where he met the former OCPD of Nyamira, Lawrence Mwaura, warning him not to be publishing stories that were damaging the police characters and the Government as a whole. This was in early January, 2009.

In an average of about ten days, Nyaruri disappeared and his disappearance was reported on 16th January, 2009, at around 11.00 a.m. At that time, his phone could not be accessed

after he had talked to his wife. The wife tried to reach him at around midday but she could not. But she took it lightly. The wife was also aware that Nyaruri had been threatened and therefore, by Saturday she took the initiative to report the matter to the police station in Nyamira. But, the officers who were manning the Police Station at Nyamira on Saturday, the 17th January, 2009 were not keen to book whatever the lady was trying to report about the missing husband, whom she could not reach on phone at the time. They just laughed at it saying that maybe he was somewhere drunk, he would emerge. That was the statement the lady got when we enquired from her after Nyaruri went missing, two weeks later after the lady realized that the police were not co-operative, she went to her rural home about 15 kilometres away from Nyamira Town and reported the matter to the father of the late journalist. The father came on Monday to report the matter of his missing son. The father was also aware of the threats because the son had informed him that he had received some threats from the OCPD, Nyamira. The police refused to co-operate. On Tuesday, the father made another effort together with his daughter-in-law and their family lawyer, Andrew Mwangi. That is when the police accepted to note that the journalist was missing. But on the other hand the signal was nowhere; because when you report at a police station that somebody is missing, the signal goes across the country.

One of the police officers intimated that they were under instructions not to release the information that Nyaruri had gone missing. That is why when we tried to find out if at all this matter was reported and the information was circulated to all police stations in the country as it is usually done, there was nothing to that effect. That is just the background I have on how the whole episode took place.

On Thursday, the 29th at around 10.00 a.m., my colleague , Jack Nduri, who was a close friend of Nyaruri and who was by then still working with the Standard Media Group called me on phone while he was in Nairobi and informed me that he had received information from the family of Nyaruri, that he had gone missing. So he asked me to use my connection in the media houses so that this information could be put on air and in the newspapers so that people know that something serious was happening somewhere.

So, I took the initiative and did the story because this was a colleague in the profession. I thought it wise also to involve other media houses to spread the information that Mr. Nyaruri had gone missing against the threats he had received before because there were accounts of how he was being threatened now and again.

Then this information went on air. The same day at around midday the wife of Nyaruri called me because she had learned that I was a close friend of her husband, to inform me that her husband was missing. I asked her some questions which I noted down. The same day at around 3.00 pm, our local OCS, at Oyugis police station, Mr. Mohammed Bakuli, informed me of a body discovered by some hunters in some forest about seven kilometres away from Oyugis Town. He told me that a body had been discovered so that I could accompany them to the scene to go and see what could have transpired.

So, I accompanied them and when we went to the scene we found a body whose neck was separate, at about 400 metres from the road into the forest. We found the neck somewhere about 15 metres away from the main body, while the hands were tied on the back. So, when I looked at the body, I could not actually identify who the deceased was, but we could see that it was a body of a male of an average age.

The body was then collected by the Oyugis police and because there were incidences of people being killed in Kisii region and dumped in our local forest, in Rachuonyo South District; it was easily guessed by the police officers that this body was actually killed elsewhere and dumped there. This was a trend which had been witnessed before by people in the neighbourhood from the Kisii region. So, the police officers alerted their colleagues in Kisii and Nyamira.

Then the Kisii Police Officers told their counterparts in Nyamira that there was only one journalist who was missing from Nyamira so maybe they could talk to their Nyamira counterparts. Our OCS managed to talk to Mr. Mwaura who was not keen to co-operate. Then the OCS shared with me, and wondered what that was all about. Then I asked him to give me the number so that I could call. When I talked to Mwaura, he was not ready to co-operate. He denied that he did not---

First of all, he said the person did not come from that area and that he did not know him and if at all he was dead they had nothing to do with him. They had not even received any report about a missing person. When I tried to hold him to account of what transpired between the times he disappeared up to the time his body was discovered, he hang up.

So, in essence, that is what transpired. But later on, through my investigation, I came to realize that a group of leaders; businessmen and political leaders, some of who were civic leaders were working in conjunction with the police officersto make sure that he was eliminated. This put the Kisii and Nyamira police stations and the civic leaders on the spot.

From our investigation, we found out that this person was lured to go and cover news. This was done after some guys had sat somewhere, including a lecturer of Gusii Institute. There was a lecturer from Gusii Institute of Training who had supplied sub-standard materials for the building of Nyamira police houses and the journalist had exposed him. So, they executed this with the full knowledge of the police. He was lured by a councillor who was kind of a close friend that there was some very scandalous news he was going to get. They knew he could be lured into that. So, he actually went there and by the time he reached there, he found that he was a stranger. So, that is what happened. He was lured from Kisii Town and taken to Suneka about ten or 15 kilometres on Kisii-Migori route. So, he was lured into a civil leader's house and that is where they executed all their plans.

Suneka is strategically positioned with some road leading to our local forest, Rachuonyo. So, they went through Asumbi, a big Catholic Centre and then they ended up dumping his body there.

The reason why we, the media linked some of the businessmen to the murder is because according to one of the key witnesses police interrogated; a taxi driver, after killing him on 16th January, 2009, they were to go back on Saturday to collect his head and bring it to some restaurant in Nyamira before the police boss and these other so-called stakeholders, to prove that they had actually killed him. They were to be paid a balance of Kshs160,000 for the job they had done.

So, the taxi driver refused. It forced these guys to force one of the killers to use his vehicle with the registration number, which I will provide, to go and collect the head which they brought to some restaurant. After confirming that actually he was killed, then they were paid the difference of what they were promised as a token to eliminate the journalist. So, that is evidently what transpired.

When one of the police officers at the station, the OCS, now started to take an initiative to do independent investigation, his hands were always tied. It reached a point where after arresting one of the key suspects who was found with the cap the journalist used to wear at some place called Nyakoe, a market place about six or seven from Kisii Town, the OCPD started behaving in a manner that was threatening the OCS, Mr. Robert Nyatwori.

This man could not continue with investigations. He was actually threatened and at one point they wanted to snatch a gun from him but he refused. This they did with the then OCPD of Rachuonyo who was there. So, this is what the OCS who was in charge of investigation went through. He was eventually transferred and I am told he eventually left the job after facing a lot of frustrations.

After doing all this effort, at one point the father of Nyaruri was referring to me as his second son. Much as he is a Kisii and me a Luo, the people there gave me a standing ovation when I was given a chance to give my eulogy during the burial. Then everything went silent for some period of time.

Around 17th November, 2010, I received a threatening call from a male voice saying: "Are you Samuel Otieno Owida who works with the Nation? This time we are on you. You are the one who tried to expose those who killed Nyaruri. We are on you and you will share the same fate."

Then the caller hung up the phone. I tried to call back to find out what the caller was up to, he then asked me. "Had you not set foot in Nyamira before?" I answered: "I was there and I actually came to participate in the burial of Nyaruri." Then he told me; "This time round we are on you."

I really got scared. I took an initiative of informing my immediate boss, the Bureau Chief, Mr. Daniel Otieno, of what had transpired. It was round 7.00 p.m. in the evening of 17th December, 2010. I relayed the same information to the OCPD, Rachuonyo, who is still the OCPD, Madam Gichami and she promised to investigate the matter.

Two weeks later, I received another threat and I realized I was a lone and I had to move in manner that nobody could know my movement. It was also proving very expensive because my movement was curtailed. I left my family of three children and a wife. I could not concentrate on my job as I was on the run every now and again.

So, when these issues persisted, I managed to secure an audience with one of the guys in the management of this country; one of the chief officers of this country, to explain the problem I was undergoing. This was after he had also been asked; when he attended UN meeting in 2009, whether the Government was doing anything to ensure that justice is done on the death of the late journalist. He promised the Government was going to see that justice is done. I told him what the problem was and what I was going through and he told me to give him the details.

A week later, on 1st January, 2011, I was in some hotel in Kisumu City. I had sneaked into some hotel in Kisumu and in the middle of the night, some guys were knocking on the window demanding that I either open the door or they break the window. Fortunately, they could not manage because the window was made of steel, same with the door. So, they could not penetrate.

On 2nd January, 2011, I actually travelled to Nairobi a place I thought was a bit secure. So, I kept on receiving either calls or messages. When I got any call, I would share with anybody I thought would be of help to me to sort out this matter; either the police or other leaders. So, far nothing has come out. The last time I got threatened again was on 30th September, 2011. I got another call telling me that it does not matter how long it will take for us to catch up with you. He talked in Kiswahili and I could guess from the dialect that he was not a man from Nyanza.

So far, I have been living in fear up to recently when I was diagnosed with high blood pressure because whenever anything burns, I feel like something serious is affecting me; something serious or horrible is about to happen. So, I was diagnosed with high blood pressure and I am trying to manage it. Despite the fact that at my age and by virtue of my physique as well as the profession which requires that I move up and down and also by the fact I am a trained karate, I could not be diagnosed with this kind of problem; that I have hypertension.

These are some of the problems I have and on the process of being on and off , for example, I am not in touch with the family, a lot of things have happened. I am not in control of what happens to my children because I am the bread winner. So many things are at stake and this is where at times you may be wondering whether the employer is very keen on the welfare of an individual, as a human being, not even as an employee. So, these are some of the problems we normally undergo.

Basically, that is what I have had so far.

Mr. Tom Chavangi: Thank you very much Samuel. Commissioners, the presenter is now in your hands.

The Acting Chair (Commissioner Namachanja): Commissioner Dinka, please give us your wisdom.

Commissioner Dinka: Samuel, thank you very much for this information and for telling us what kind of difficulties or challenges are faced by the journalists. Sometimes people just look at journalists and say: “Oh, this is very glamorous blessed and--- They do not see what happens behind the scenes.

Is this OCPD still around?

Mr. Samuel Otieno Owida: The OCPD was actually transferred to Turkana, accordingly to the information. He was actually transferred there after allegations that local Members of Parliament from Kisii and Nyamira County; kind of also joined in the fray to ensure that certain investigations could not go on. So, I was getting some allegations that--- I was given this information by journalists from the area who could not report the matter. That is why I took the initiative to cover the story much as the area is not under my jurisdiction, as journalist there feared covering the story. There are many journalists in Kisii land, but they feared reporting the missing of their colleague. You report the matter and there this gang called *Kisungusungu* which was used to eliminate people.

Kisungusungu is a gang some businessmen, politicians, or the police use to achieve their “justice” to people they have differences with. In Kisii whenever you have any difference with anybody they can use *Kisungusungu* to eliminate you. So, I am told by the journalists that they fear even testifying like I am doing today. They even feared reporting this incident; this was their friend and colleague and native. They could not dare cover the story.

They were telling me that even the politicians feared to get involved in this matter. Even when journalists pleaded with politicians to ask the question of the murdered journalist in Parliament, one of them, who is now an Assistant Minister, refused to ask questions in Parliament as to why the journalist was killed and why investigations were dragging and the police had not been held to account.

Commissioner Dinka: Following the death or assassination of the late Nyaruri, what happened with investigations, was it done? Was it published, followed up or just dropped there and nothing happened?

Mr. Samuel Otieno Owida: There was some laxity, I would say. But an organization like Kenya Correspondents Association as well as the Committee to Protect Journalists (CPJ) more less have done a tremendous job by both informing the public and taking initiative to investigate what took place and has tried to expose the matter. This matter which is still pending before court in Kisumu has been there for nearly three years now, despite the fact that suspects were arrested but there are some issues of transfer.

First of all, the person who was in charge of the matter, was called John - I can get his name later - was the then Deputy Provincial Criminal Investigations Officer who was in charge of this matter. He was later transferred and these other small guys under him, who were also in-charge of this investigation, have also been transferred here and there. The lawyer of the family was scared and I do not know whether he is still in the country. I have not met him and I have not heard of him. But by around June, he had indicated that he was leaving the country into exile.

So, far the matter is pending before Kisumu Court and the evidence is gathering dust in the court shelves.

Commissioner Dinka: On your part you followed the manner in which the late Nyaruri died. You went to the place and you saw the body and so on. Did you publish the story in the papers, and if you did so, did you find difficulties to get it published.

Mr. Samuel Otieno Owida: Whenever I got space in the papers there were no pictures of the late journalist's charred body as it was found in the forest. That one was actually not published but we described how we found the body and how it was. The lower jaw was missing and we described the scene and what we saw on the ground; that he was not actually killed on the scene where the body was found. He was killed elsewhere and the body dumped there. It was a bushy area where one could not walk while standing but bending. So, we walked 400 meters while all of us were bending inside the bush. So, there was no way they could go with him there and then start struggling with him. There was no sign of commotion or some movement to show any evidence of some struggle on the scene.

So, whatever was reported was based on what we gathered and then the perceptiveness of the police as well as what we gathered from how some police officers behaved.

Commissioner Dinka: When you were writing the story, did you receive any kind of pressure from the politicians or Members of Parliament you mentioned?

Mr. Samuel Otieno Owida: I just remember one of the Members of Parliament from the Kisii region who called me one night to find out about the story I had run in the Standard Newspapers. That was now after a long time. The Standard story came afterwards but I knew it was a story written by one of the journalists from that area, but he did not put the name.

But because this Member of Parliament had a rapport with me, at one point in the night he called asking me who could have run that story. He asked if I know him and maybe the source of that information and something like that. I told him I did not know him and I told him to ask guys in Nairobi who could have known him. I may only know when a story is run when the name of the story teller is there.

But later on, I learned that the political wing of that region came together in liaison with the civic leaders to kind of compromise investigations. They were pushing for this case to be dropped all together.

Commissioner Dinka: I have no further questions. But I would like to really salute you. As a friend, you did what a friend should do for the late Nyaruri. You have also been courageous enough. To stick out and go publish in the papers a story of a body that was discovered in the bush is not easy. I think you are a good example of how a journalist should behave. I am going to express my admiration for you and we want to encourage you to continue in that kind of fashion because you are still in the profession.

Thank you very much.

Mr. Samuel Otieno Owida: If I may wind up. I would also personally take this chance to actually congratulate or praise KCA or as well as an organization in the UK called Loll Peck. These two organizations have really alerted the world over my fate. In one way or the other they have also made sure that I move from one place to the other. Even now, I am just on the run you cannot know where I am headed to next and that is the thing.

I have to appreciate and thank Janako for his network and the kind of personal initiatives he has taken and all the information he has given to the relevant authorities; institutions or organizations so that my case is known. For now, I know that what I have done is right, but God will ensure that I am safe.

Thank you very much.

The Acting Chair (Commissioner Namachanja): Commissioner Chawatama! We still have more questions for you Mr. Samuel.

Commissioner Chawatama: Thank you very much for sharing with us. I am sorry I was not here at the beginning of your testimony and may be that is why you thought I will not have questions for you. It is very sad hearing what you have had to go through. Although I acknowledge the organizations that supported you; I think of the things that I noticed when I came to Kenya; how powerful and angel- like the media was in this country. Are you satisfied with the support that you have received as a journalist from everybody in the world; from the media owners' organizations, your friends and other organizations? Are the voices being loud enough and are you satisfied with the support that you received so far?

Mr. Samuel Otieno Owida: So far, I would be very frank. Apart from the KCA, the Loll Peck and the CPJ, the others have not been supportive; they have also behaved the way the Government of Kenya would behave when an individual, a mere citizen like me has any problem or threat to his life. The Government has nothing to do with you because, to it, it is like you do not even exist in the first place. I would say I have not got enough support. But to the three organizations; the KCA, the CPJ and the Loll Peck, they have

actually been on it. In fact, they have behaved as if they are more Kenyan; they are more of brothers than my Kenyan brothers.

I responded to some e-mail to one of the guys in charge of Profile Africa in UK, called Nicholas Rogers. I wrote to him telling him that, in spite of the distance of thousands of miles away, he was more or less like a brother. I told him: "You are like a Luo. You are more or less my fellow Luo or Kenyan." So, when I see Janako, I feel like I have a brother in Kenya, but the rest, I see them as those who have come across and they are just passing by. So, to some extent I would say, justice has not been done because, given the initiative I took, the Government should have taken a step further to ensure that justice is done.

The late journalist, Nyaruri, died and left behind a widow and two children of five and two years. You can imagine what the widow and the children are going through. So, apart from me, those children as well as their mother and even the entire family who had a lot of hope in their son; need justice.

But another person in the name of me is also suffering this side and may not have what he needs or is operating on an empty belly despite the alerts the likes of Janako have made everywhere and the Government agents both intelligence and the guys who are holding some positions whom we have shared with.

When I told you that I talked to one of the co-Chief Executive Officers (CEO) of this country of my situation, it means there is nobody else I should talk to in this country. This is because I climbed the ladder up to the point of talking to a co-CEO of the country. So, definitely what do you expect? First of all, now that my movement is curtailed and my family is also suffering because I am not sure of where to be. Then it means somebody should be somewhere there to provide them with milk in the morning or to give them some tea or supper. Even small basic needs that a family would need and for my personal needs.

Even as I am here now, I am not sure where I will be next. So, that is what I would give as an answer.

Commissioner Chawatama: You have also talked about the role of the police and we have heard of the good policeman and we have also heard about bad policemen. When you look at the police then and you look at the police now; and this is in light of the reforms that are taking place. Do you have some confidence that the police are going in the right direction? May be now with the on-going reforms, could this particular incidence have been treated differently or your hope is still lost? I hope you get what I mean.

Mr. Samuel Otieno Owida: I do. Right! With the reforms going on, I would say that we are getting to a better direction. But it is going to take time because it is a whole generation of generations. You know when you join an organization even if you are an employee, for you to make a difference, it will take you take time or you will rub many

people the wrong way so that you create the difference. This is because in one way or the other, the Kenyan community has also become a reflection of what we have in the police. In more ways than one, I would say that the reform agenda in the police force is going to help us, but it is going to take time. Those institutions, even if they are as physical as where we are here, I think in one way or the other they infect whoever goes in as fresh also gets infected in the process.

Commissioner Chawatama: I do not know whether I missed the details of this matter, but from what I have gathered, it is either the police did not investigate it properly or they did not investigate it at all. This matter has not gone to court and, therefore, there is no court case.

Mr. Samuel Owida: There is a court case.

Commissioner Chawatama: There is somebody who has been charged for murder---

Mr. Samuel Owida: In fact, some of the guys, who were involved in the killing, were actually on the run after they realized that the very police officers were working with another splinter group to kill them so that they conceal the evidence.

Commissioner Chawatama: So, I guess one of the things we could possibly look at is why the wheels of justice are moving slowly in this particular matter. Is it not?

You have indicated that for the sake of the family, you know you mentioned the children who were left very young by their father; that justice needs to be done. That is understood. But is there something else that you would like to see done so that your friend is remembered and never forgotten?

Mr. Samuel Owida: One, I would challenge the Government to know that every citizen regardless of age, academic qualifications, background, creed, or colour, is as important as any other person in the country because that is how we affect the development of the country. Whether you are young, whether you are educated, whether you are employed and whether you are non-employed.

That is why I think the loss of this person is a great loss not necessarily because of whatever state or whatever position he was holding, but by virtue of him being a human being. The fact that he was lost, because somebody else had interest to ensure that he is eliminated is unjustifiable by all means. So, I would say that the Government should consider everybody as important, whether young or old.

Then the employers, especially of the media houses should not behave like the politicians who think somebody is no longer useful and, therefore, we do not need him or who may behave as if that thing is happening maybe somewhere away; maybe in the periphery, while this is one of their own.

Like now, this issue of this journalist Nyaruri, to be honest, apart from the NGO and the organization like KCA, our media generally is not keen. Even now, this is the third year the media did not even capture the story and his case is still pending in court. This is the third year running. Look at that! Even if he was not working in your media house, where you head, it is important to highlight such things that so and so was also lost in a manner that is unjustifiable. This is because whatever happens in the neighbourhood can strike you anytime. So, that is the challenge I would give the media houses; they should not behave as if there is some seclusion of some people somewhere and others in the periphery.

Commissioner Chawatama: Thank you. I have no more questions. But that is pretty heavy and you would be in my prayers. You need to be safe and you should be allowed to live and see your children grow and to even see your grandchildren. You just have to.

Thank you very much, for making time to come to speak to us.

Commissioner Slye: I also apologise for not being here at the beginning of your testimony. I do not have any additional questions. But I want to add my voice to those of my fellow Commissioners in saying that you have chosen a very difficult path, perhaps more difficult than you thought when you first chose it. But it is an incredibly important path. I think what you are going through in part, emphasizes the importance of what you have been doing and trying to do, thus exposing some of the wrongdoings and ugliness of this society.

I think my experience in having been active and studying human rights issues like this is that the more public they become, the less likely it is that they would continue. So, I think the fact that you have continued to fight on behalf of your friend; the fact that you have continued to speak out now, risking your own life and perhaps even the life of your friends and family, it is a difficult thing to do though I think it is also the right thing to do.

I think it is good coming before this Commission which I hope would further publicise this issue and make it less likely that people would think they cannot get away. These people have gone far away. So, I want to agree with my colleague that you need to stand with your family. I hope that would happen very soon. I wish you all the best and I want to thank you for doing what you are doing.

The Acting Chair (Commissioner Namachanja): Sam, do you have anything to respond to what the Professor has said?

Mr. Samuel Owida: I just want to say that the Government should do something about these terror gangs especially in Kisii. When a terror gang like *Sungu Sungu* takes over, there is the possibility of the police misusing the group to execute injustices which go unchallenged and then many people suffer.

I was just telling you a while ago that neighbours from that area could not report this incident whereas, their colleagues or neighbours may be sharing an ancestral background.

In fact, by the time we were attending the burial, I met a colleague whom we were working with at the *Nation* newspapers up to now. I met him in Nyamira town but he was going to do the burial about six kilometres away. He told me that he was pursuing some news, so he could not attend. I knew he was just avoiding attending because he could also be eliminated. If he attended, he had to talk. He knew what could be in the offing. So they live in fear. That is what I wanted to say. I do not have any other issue.

The Acting Chair (Commissioner Namachanja): Thank you, Sir. Please, if we do not have your testimony on paper, just print it and leave it with us. If there are any names that you feel are useful for further investigation put them there.

Mr. Samuel Owida: You can give me the e-mail so that wherever I am I can do that.

The Acting Chair (Commissioner Namachanja): Thank you so much. We shall also continue praying with you. But, at least for now, the public knows that your life is in danger. It is not in danger because of outsiders, but because of Kenyans. So, let them know. Thank you.

Mr. Tom Chavangi: Thank you, Samuel. Our next speaker, Commissioners will be Benard Kwalia who will speak on issues of torture by the SLDF and failure by the State to provide protection. So, Benard welcome.

Mr. Benard Kwalia: Thank you Presiding Chair, Commissioners, my fellow colleagues. I am Benard Kwalia, a true trained journalist, because I heard of some being butchers down there. I work with the *Star*. Currently, I am based in Kitale.

I have four different experiences as my personal experiences while covering the case of Mt. Elgon. I suffered at the hands of police, SLDF, politicians and the media houses I was working for.

As I speak today, I am still traumatized for all that I had undergone for the past three years. My trouble started in 2006, September, when spot killings began as a result of disagreements in Chepyuk Settlement Scheme. From my own data, I did cover 20 different cases of deaths. All were just directed at the dispute. These raised a lot of concern as a reporter. I did pay a courtesy call to the District Commissioner because I had gone round to collect my own report from my sources. I realized there was a group that was coming up with two particular agendas. One was about land and another one was for political reasons.

After a long discussion with the DC, he dismissed me and said that these were normal crimes. I insisted this was not normal, because I had one advantage; I was born in that district. Before the tribal and land clashes, I had covered Mt. Elgon for five years. So, I really understood the nature of conflict because of the land in Chepyuk way back to 1971. So, I was in the true picture of what was happening.

After I had been dismissed, I had nothing else, but just to go out. As usual, I packaged the same story, talking of normal crimes. But I had to go an extra mile. I had to get the contacts of one of the leaders; the one leading the militia in the forest. I was given the number. It took me two weeks for the SLDF commander to accept to give an interview. I was just telling him; “you may be fighting for the right cause, but nobody is telling the story”. Perhaps come out so that you can share. The Government and other agencies can get the truth.

When he granted the interview, my colleagues within Bungoma and Kitale were scared to meet the militia. So, I had to contact guys from Kapsabet. From Bungoma, there was one person from the *Standard* and others from Kapsabet and Eldoret towns and they joined me. We went to Chepyuk controversial scheme. On the way, we met the OCPD. He was a close friend. I had to lie to him because if he learnt that I was going to talk to the militia, of course, my deal would have failed. So, I told him I was going to do some documentary on schools affected by the clashes. He paved way and we went six kilometres from the settlement area. We met the SLDF commander by the name Wylciff Matakwei. He gave us an interview. After the interview as we were leaving the forest, we had a successful travel through the settlement scheme but when I reached a place called Namwela in Bungoma West District, I received a call from the DC, who said: “yes, I am aware that you have met the militia. Do not release that tape.” He insisted. But I only answered, there were colleagues who came from the head office as we are speaking, I have just been dropped, and they have already left. So, I can do nothing in saving this tape. But I can still give you the number. I gave him the number for the Nairobi office, which I know if they call Nairobi, they could not get the tape because the tape was still being processed. The story was aired and that was the first time Kenyans knew about the SLDF and who were behind it.

I think until his death, nobody else got the interview from the SLDF commander. The pictures we took during that exclusive interview were the ones that were used by the military to track down the commander and you can get that, evidently, when he was killed he was taken round the market for people to confirm whether he was the right person.

This interview, I did not know, would land me into a problem. The second day, while seated at my place with my children, a plain clothes officer came and asked me to accompany him to the DC. I went to the DC and the District Security Committee had just held their meeting and they were waiting for me. So, when I appeared, the DC told me: “So you are the guy, you have grown horns, OCPD teach him a lesson”.

The OCPD had to ask the OCS to take me to a cell. So, I was detained for two days. They did not give me food. But my wife brought a bottle of soda for those two days. I was released. I continued performing my duty without fear.

At that point, my fellow journalists within that region could not cross the tarmac road that is from Chwele to Kimilili. They could either contact people from Bungoma to get news

from the other side which was the main news to them. They could send me airtime so that I give them any material that I had.

On 10th February, 2007, ten people were killed in a village called Chesikaki in Cheptais. Being my duty, I had to visit the home, just to get facts right. At the time, the police were not giving the right figures. When two people were killed, they would tell you nobody was killed. People were injured. If five were killed, they would tell you one. So, I was going by the physical count and I could make sure, if I get the information early, I would be in the scene a bit early, because the police feared. At that time the police could not visit those places at night. We would wait until around 9.00 to 10.00; that was when they would go and pick the bodies. So, I would take the earlier hour to do my work.

So, when I visited this home, while taking details and getting reactions from the surrounding, young boys came in style. You could not even know whether they were militia members. They were young boys of 14 years to 15 years.

They asked me: "Who are you?" That is when I was doing the interview. I told them I am Benard Kwalia from the *Nation*. They said, okay, you are the one who has been calling us criminals. We have been looking for you, could you accompany us. They took me, and joined me with the other people, who were abducted in a different village. I went there and the issue of interview ended and everybody ran away. So, I remained with these boys. They were six of them. They continued abducting other people until the number went up to 11 and then we were asked to line up and go towards the forest. At that time, you are under their mercy. You cannot speak and the police cannot come. The police at that time had boundaries with the SLDF.

For those who have gone to Mt. Elgon and Cheptais, to be precise, we have a road running from Cheptais to Kimabole junction. So, that road was actually the boundary between the SLDF and the police. On the road, the lower side was manned by the police. The upper side was manned by SLDF. So, if anything happened on the upper side, you were under the mercy of those people. That is why you had people being disciplined. People having their ears chopped off, people being hammered and many other atrocities that were committed.

So, we accompanied these people to the settled areas of the forest; about two kilometres to a place called Mesa. Mesa is a place where the administration of this militia had been established. They had all armouries and soldiers there. All briefings would be done at that place.

When we went inside with these boys, the seniors had to take over from them a few kilometres from the settled area. So, these young boys handed us over to the senior ones. We accompanied those ones to the scene where these other administration is done. We were lined up. You maintain the line and your number. In that line of 11 people, I was No.7. So, one of the commanders asked us, as you wait for further direction, choose how you want to die. Do you want to die by gun or do you want to be hanged. There was a big tree that was cut, meant for that purpose.

So, at that point, I could not say anything because whatever choice we made, we were going to die. So, we just waited for instructions. In less than five minutes, the guys who were specialized in that work came. They picked the first person and hanged him while we were watching. They hanged the second one, third, fourth, and fifth one. Then the communication manager for the team appeared. This man was our church member. We used to attend the same church with him. When he saw me, he asked the team, why is this guy here? They said, no, this man has been calling us criminals, yet we are fighting for our rights. He deserves to be disciplined. But the communication man pleaded with them. I was placed aside and the rest 10 were hanged to death. So, I remained there. They took me to the higher level where the main commander was. They grilled me on many things regarding the operations; how people are behaving there, how people talk about them. Then, they gave me one condition; we are releasing you and from today, do not call us criminals. Two, do not tell anyone, what has happened. So, I had to obey and was freed and escorted from the place to the border of the forest and the settlement area and left alone.

So, I only walked for about 50 metres away from the forest and met security men on patrol. They quickly lay down, thinking that I was a militia, because anybody coming from the forest was a militia. I raised my hands up and said: "I am so and so". I had been abducted. So, one of them who had, at least, overstayed in Mt. Elgon noticed me, and said this is just a victim. So, they drew closer and then they began asking me what had happened. So, I narrated it to them and they escorted me to Chesikaki Police Station where the OCS gave a vehicle to help me go to where I was residing. By then, I was residing in Bungoma. So, life continued. But, because I was in Bungoma, I knew there was nobody else who was covering activities at home. Everybody had run away. Even the DC by then was spending in Bungoma. The OCPD was spending in Kimilili. It was only the OCS, who was within the station. But even that one, he was also disappearing at his own will. That concern pushed me again. I had to go back.

I went back to Kapsokwony. I continued a bit, of course, with a lot of caution when I was doing my things. I was also conscious where I had to sleep. At times, I slept in a cave. At times, I spend in a toilet. On 1st April, 2008, the militia attacked Kapsokwony District headquarters. These people launched the attack as early 7.00 a.m. and they managed to ambush the district headquarters. So, the officers by then had been dispatched and the few who were around could not manage to come out. They did the operation. I was almost caught up because I delayed in a kiosk buying something to eat. When I entered, where I normally hide, I heard the first bullet. So, I had to jump in a pit latrine that was just dark, about ten feet, just to hide in order to see what was happening.

On that particular day, about six people of our family were killed in Kapsokwony. So, accidentally, these criminals shot their own during the operation. Because they were not able to carry this member who had been injured, they decided to kill him so that they could seal information coming out from him.

The following morning, security came around just to crack down, to know what had happened. We were given a Press conference by the Acting DC, who was called Julius Otieno. He said, we managed to kill one person and, indeed, I was sure, and clear that no askari came out. This was false, and I wanted to stand by the truth as to whether the police are able to protect ordinary Kenyans. So, I had to expose what I knew and I gave my version. I did not know that this would put me into more trouble.

Again, I was summoned to record statements to state whether I was with these people and how I knew that it was the militia who killed their own. They claimed that I could be part of them. So, I was placed under investigation. This continued until I had to move away from Mt. Elgon. I would sleep in Webuye and sometimes I would go beyond Webuye. I would hide in some markets at my own cost.

At this point, the media was only waiting for the news. They did not bother whether I survived. As I have told you, what made me to survive was either an airtime sent by a colleague who wanted information. If I saw a policeman who was carrying some biscuits, they would give me some. So, at this point, I observed so many things; the killings. For the first three years I used to go to the site myself. So, I viewed so many bodies that in the process affected me.

Sometimes while sleeping, I find myself seated in the middle of the night. So, it is something that I am yet to cope with. But I would like to thank the KCA because they took me to some counseling on trauma, which has reduced it a bit. But I believe I still need some trauma counseling.

The last experience I want to share with you is the recent one on the constitutional referendum; the Yes and No campaign. After I was moved from Bungoma I went to Kitale. Trans Nzoia County is cosmopolitan. That is where we have 42 tribes, and the Yes and No campaign almost took a tribal aspect.

On 1st June, during a public holiday in Cherangany Constituency which falls under Trans Nzoia East District, leaders assembled and spoke. A Member of Parliament from that region went ahead to threaten people who he perceived to be his opponents. He frankly told them that I am sending boys to remove your heads this evening, and the DC and the OCPD were seated there. I was also accompanied by other colleagues. I saw this was not right for an ordinary Kenyan like me. I took an initiative, being a reporter. I packaged and sent my story. I was the only one who sent the story, out of six journalists, who had gone there. My questions were very clear. I told them: "We have the DSC here; a person is being threatened with death. It is classified information, and there was no action. I think this is not the Kenya we want".

I did the story and tried to get other agencies coming in, because I know how sensitive Trans Nzoia is. If you kill one person, you would be opening tribal clashes in that County because there are 42 tribes. If you interfere with one tribe, you are interfering with other tribes outside Trans Nzoia County.

When this story came out, this Member called me at 10.00 a.m. He said:” Okay, you are growing horns, I am going to discipline you and then he wrote different messages”. I called the DC and asked him: “Have you looked at my copy”? Was that the true picture of what happened at the public day? He said, yes, I quite agree with you. But I have received a threat. I do not own a gun. My only weapon is a pen and notebook. How do you help me, because I know the nature of a person? He is a person who goes with the masses. The DC said: “I will talk to the Member”. The next day, he told me openly again on phone, I do not want to see you in any of my functions within my area. I talked to one of my editors in Nairobi. He called him and he repeated the same statements. To date, this person has not been grilled over this case. This is the situation we under go when we are trying to perform our roles.

Thank you. I have just made it very simple.

Mr. Tom Chavangi: Thank you very much.

Commissioner Chawatama: First my heart was heavy, but by heart is now in my throat.

I think I need to apologise, maybe to the journalists. I think so often, although we have heard about a lot of things that have taken place, I know journalism as a source of a lot of information that has come our way, even forgetting that they went through such difficult times. I am thinking of myself and the fact that just by listening to witnesses, I have been unable to sleep. I cry, but you were there to witness so many things and here you are and you can still talk about these things. I know you have said that you have been traumatized. But I have been traumatized just by listening to you; but you saw and witnessed a lot of these things. You are a very strong man. That is all I can say. I thank God that you used to go to church or you still go to church and the communication person knew you because you attended the same church. Thus your life was spared. Your life is precious and I hope that because you have spoken to us and a lot of people, you have not lost the hope in mankind. It is my hope that even after this process, as we do our work you will contribute to making life for persons such as yourself a lot easier and a lot safer.

Thank you very much. I listened to you very keenly. I do not even have any questions. Again, my heart is not only painful but it is in my throat. Thank you.

Commissioner Slye: Thank you, Mr. Kwalia for the very moving and disturbing story. I guess, when I listen to you and the previous speaker, I come across similar stories by journalists and other people.

One of the things that I sometimes want to ask and I would like to ask you is that: Why do you do this? You are in this cause at the risk of losing your life. None wants but this, but it happens many times and yet you continue to do the work that you are given. What compels you to do that?

Mr. Benard Kwalia: Thank you, as Christians say, shepherding is a calling. I would still say even journalism is a calling. Not all of us can take that risk. It is about what you

believe in. This courage has taken me through to an extent that even when the military blocked journalists from accessing Mt. Elgon for nearly three months, I was able to take another trouble through the Red Cross by actually getting a different identity, an ID card for a different person, an emblem and masquerading as a doctor so that I could be able to access the people who were being alleged to have been castrated in Mt. Elgon. So, it is a calling.

Commissioner Slye: Thank you for highlighting the call of that calling. I would like to ask you just one specific question, if you feel more comfortable in answering in private, we can do that as well. When you were almost killed and there were the ten individuals, did you know any of those individuals, whether you knew them or not, did you have any idea why those individuals were chosen to be hanged to death?

Mr. Benard Kwalia: The people that were hacked to death were people I knew, though not all of them. Some were younger. But I knew some of them.

From the information, I had gathered before I was abducted these people had voted the other side. The SLDF were supporting a different party and these people had voted the opposite and that prompted their killing.

Commissioner Slye: Thank you. I have no further questions. But I do want to wish you well, and I hope that you are able to get the healing that we need. I know that as you demonstrated you would continue to do this work and I wish you all the best.

The Acting Chair (Commissioner Namachanja): Bernard, thank you for your work and sacrifice, and for informing the Kenyan public and the international community about what was happening in Mount Elgon. I have written a lot and I have quoted you a lot. It is my privilege that I have met you. Your testimony just confirms the news we have been reading from that area. Do you come from the Sabaot Community?

Mr. Benard Kwalia: Yes.

The Acting Chair (Commissioner Namachanja): Prof. Slye asked you what motivated you because this is a highly marginalized area and we do not have many journalists. I remember in the 1992 clashes when there was a lot of distortion of information because they did not have one of their own reporting. So, I understand why you found it difficult to report what you were saying. You have talked a lot about castration. In fact, when you talk about people in Mount Elgon, they think they have lost a whole generation. Is this an exaggeration? What is your comment on this?

Mr. Bernard Kwalia: Madam Chair, I agree with many people that many people are just seen as men but they are powerless. When I was pretending to be a doctor, I managed to see more than 250 men who had been castrated. Besides castration, there were a lot of gang rapes that took place between September, 2006 and April, 2008 when the military came in. When we paid visits to the military camp because they had a component of

medical doctors, all militia who were arrested and tested, tested positive. So, as they gang raped people, there was the spread of the scourge. This story has not been told.

The Acting Chair (Commissioner Namachanja): You have also touched on the Kangaroo courts that were set up there and you have said there were professionals who were involved. Would you know, for example, whether the magistrate was a lawyer? What have you heard?

Mr. Bernard Kwalia: On the key commanders of the SLDF, there has been only one who has been tracked down and that is Wycliff Matakwei. The rest are alive. With regard to the judge, he is not trained. This is a person serving in the current leadership. He is serving at home. He is an elected person in the current leadership. He was also serving as a judge. Many people lost their lives because of him. I managed to escape because when I was being interrogated, he was not there. It was the late commander who was present. Perhaps if he was present, I would not be alive, but today, those who lost their loved ones still see him.

The Acting Chair (Commissioner Namachanja): In December, we went there to explore how the former SLDF could be assisted in terms of psycho-socio support. Most of them talked about two ways, the traditional way and the church way but most of them said that they could not go through the church because they knew that there were pastors who were part of the militia. What comment do you have on that?

Mr. Bernard Kwalia: This Militia, I would say three-quarters of them are church members. From the brief that we were given by the late commander, they even prayed first before launching an attack. Regarding rehabilitating and integrating them into the community, I will answer that in two ways. Some can be rehabilitated while some may not. You have recently heard of cases in Mount Elgon which have claimed a number of people for the past one month. The suspects that the police are holding now are ex-SLDF. The people I am talking about are the section commanders. If the commander is still alive and still believes in his past strategies, can we rehabilitate his soldiers? This is something I have always presented in different forums when people talk about Mount Elgon achieving peace. Other Kenyans may know about the SLDF. But remember, they may know about the SLDF split depending on how one benefited. Remember the first agenda was land. There are those who missed land; there are others who remained in the SLDF as the military force. There are those who benefited from the land and gave themselves a different outfit called the “Political Revenge Movement” and this one was managed politically to counter the SLDF. We have one group again that is casually mentioned but on my side, it is a time bomb. This is the Moor Land. You may recall that during the operations that the Political Revenge Movement and the Moor Land had protection from the leadership that was supporting the wrongs that had happened in the settlement in Chebyuk. These people are armed and even security agents are aware of that. So, how can we talk about reforming this team when we know that they are really there looking at the immediate enemy because the Moor Land do not want to see SLDF men and the SLDF do not want to see the Political Revenge Men. So, these are the teams that unless

we disband them and rehabilitate them as a whole, anything that is happening will be for the time being. I will say strongly that peace is still very elusive in Mount Elgon.

Commissioner Berhanu Dinka: Thank you very much Bernard. Earlier on, the Chair had asked me if I would ask you any questions and I said I would not. At that time, I was putting myself in your place when 10 people were being killed and I asked myself, what would I have done? So, I did not pay attention to questions I would ask you. But you survived and I hope that you continue to survive to give service to the people of this country. My question is; you touched a little on it, the new leadership and the Moor Land Defence Force and the Political Revenge Movement. We have been hearing in the last two months that the SLDF is being reconstituted. Do you think they have the same agenda, (a) land, (b) political agenda? Is this a totally new configuration of the two movements you have mentioned about? The Moor Land Defence Force and the Political Revenge Movement sum up the configuration and call themselves the SLDF?

Mr. Bernard Kwalia: Thank you. The SLDF, from my own view, I would not say strongly that they are regrouping. However, as I earlier on mentioned, we have the SLDF, the Political Revenge Movement and the Moor Land Movement and besides the three groups, we have also spotted criminal groups of two or three people. The SLDF, during their time recruited boys in their villages. Not all of them had to join them fully. Again, they did not stop being criminals and in their own set up, they have been committing crimes. This will depend on the kind of politics we will play in that constituency because the two leaders that contested during the 2007 elections are still the same ones that are in the race and there is a possibility that they believe in using the boys to achieve their ends. So, perhaps, this may recur again because of that arrangement.

Commissioner Berhanu Dinka: My second last question is that we have been getting all kinds of comments about the military that went to confront the SLDF at that time and stayed there and whether they should stay or leave. We talked to some people in Mount Elgon and unless I am mistaken, the Chair would have a better idea about this. What I understood is that people wanted them to stay there. What is your view?

Mr. Bernard Kwalia: I have also heard about demonstrations. First, I would say that the military was established on permanent basis on Mount Elgon. The military came along, did their own bit and discovered that it was a potential place for them to guard against other aggressions from our neighbours, besides the SLDF. They also discovered that the terrain was very good for training soldiers. People may have heard that the people wanted the soldiers to go, but from the report I have, the military may not leave now because it was established on a permanent basis.

Commissioner Berhanu Dinka: I am asking you if you have heard also from people because except one or two individuals, what we heard in the public hearings or with our discussions with the people of Mount Elgon are that the people want them to continue staying. Is that your assessment as well?

Mr. Bernard Kwalia: Yes, the entire community feels comfortable when the military are maintained in Mount Elgon. Many people have undergone a lot of things and they also foresee what I have just mentioned that all has not gone and there could be the same repeat as we gear towards elections.

Commissioner Berhanu Dinka: Thank you Bernard. As I said to someone earlier, I salute your courage. This is what they call profiling courage. You have taken the kind of risk few people take. You can go somewhere else and come to Nairobi but still continue. I would like to encourage you to do what you think is best for the country, regardless of the risks it contains. At the same time, be very careful. Be very cautious. Do not be afraid. God will be with you if you are doing the right thing.

The Acting Chair (Commissioner Namachanja): Lastly Bernard, have you heard a rumour that we have people in Uganda training from Mount Elgon?

Mr. Bernard Kwalia: I have heard and used my network because recently, I was in Uganda. I went to investigate the issue of Ugandans coming to register as voters in Kenya in the border of Pokot and Bumbo, one of the districts bordering Kenya. I have heard but I am yet to exhaust my sources. However, the little we have heard is that we have boys who ran away during the military operation and have been hiding there. They have now seen that their time is coming. These things happen during the election time. They could be regrouping because even the two that were arrested two weeks ago are people who had fled and had come to recruit some boys. There are some leaders that I am also following up and in a couple of weeks; I will know who is doing what in Uganda. However, training could be there.

The Acting Chair (Commissioner Namachanja): Thank you very much. That is all we had. Thank for your courageous work. I wonder if we have any national awards so that these people like Janak are awarded. Surely, I am sure that the people who get them are not the people from Mount Elgon or Oyugis. Please, think about it.

Mr. Tom Chavangi: Thank you, Presiding Chair and fellow Commissioners. Thank you, Bernard. Our last speaker will be Waigwa Maina who will speak of harassment by state security agencies. Our other presenter, James Oranga has not shown up as of now and the other one, Barrack Karama has also not showed up. The presentation for Munene Kamau was given out by William Janak in the morning session.

Mr. Waigwa Maina: Madam Chair and fellow Commissioners, my names are Waigwa Maina. I am from Nyeri but previously I worked with *Nation* in 2003 and 2008 December. I have written my presentation which I will go through very fast and hand over a copy to you.

Harassment of journalists by police is very prevalent in Central Kenya especially in Nyeri. In some cases, the police are used by the politicians or influential people when stories are published or when they are still under investigations. On the other hand, police officers blacklist journalists who expose them on corruption, misconduct, abuse of human

rights or failure to do their duty. As a result of harassment and little support or none at all from media institutions, most journalists are compromised by the police. Once a journalist is blacklisted by the police, they are denied public information in custody of the police such as crime-related stories; they are scolded in public and go through arbitrary arrests. Performance of journalists is affected as their freedom of movement and association is endangered. On the other hand, friendly journalists get favours such as easy access to senior police officers, stories, and transport to scenes of crime, securing release for arrested relatives or friends, among other favours. There is also conspiracy. Transferring journalists from one station to another after they have collided with the police does not help. I realized this when I was transferred by the Nation Media Group from Othaya to Murang'a where on arrival, police knew a lot about me. I have severally been a victim of police and I, hereby, sample a few cases.

Around 2003, I did a story on a politician who had sworn to commit suicide should Mwai Kibaki ever get elected as the Kenyan President. The politician was very powerful during the KANU Regime. In the company of two CID Officers, the fellow raided my home early in the morning after the story had been published. They arrived just after I had left and so they harassed my family members and demanded to know my whereabouts. Information that the police and the politician were looking for me spread through Othaya Town very fast. Kshs5, 000 was to be given to any person who would give information leading to my arrest. Fortunately, I was popular with the community and despite the prize most of them updated me on the movement of the CID Officers who were led by a Senior Sergeant. The Sergeant was later arrested and charged with the murder of a taxi driver and handed a life sentence.

Later, I called the District Commissioner who was then the area DO, David Kosgey and he advised me to visit him in his office. That was shortly before 2.00 p.m. The DO called the CID Officer in charge of Othaya and inquired about my case. Inspector Mugo who was in charge of the CID in Othaya informed the DO that I was required for questioning. Mr. Kosgey advised me to go and see Inspector Mugo. The CID offices were about 20 meters from the DO's Office and so I walked straight there. On arrival, a friendly CID officer informed me that a charge sheet was already drawn and I was to be arraigned in court as soon as I was arrested. He also revealed to me that the prosecutor was under instruction to oppose my release on bond as my case was still under investigations. Therefore, he advised me to escape from Othaya since the case was a civil matter, according to him. However, luck was not on my side. I met the Officer in Charge of my case, the Senior Sergeant who pushed me back to the office and ordered me to sit on the floor. As he was perusing through my file, I dashed out of the office and escaped. He and another officer came after me with pistols aimed at me. But I managed to escape and mingled with members of the public. I went through a butchery whose backdoor led to a coffee plantation but at the same time I realised that the CID officers had spotted me. I then entered a shop adjacent to the butchery and remained there for some minutes.

The police officers thought I had gone into the coffee plantation and went looking for me. My plan was to escape to Nyeri but someone must have tipped the police officers. I spotted them as they approached the Nyeri Othaya Matatu Stage but I still managed to

sneak out and take refuge in a local bank manager's office. I later escaped to Nyeri where I was hidden by journalists for three days as they tried to raise the matter with the then DCIO, Mr. Cheruiyot. I understand that he is now in Nyanza Province. He later intervened and told the officers in Othaya to terminate the case together with any further investigations.

I later sent complaint letters to the Commissioner of Police which I later copied to the Director of the CID. The CID officer from the CID Headquarters by the name Wanjala, and I cannot remember the other name, interrogated me at the Central Province CID offices but nothing came out of the investigations.

In 2006, I did a story of two police officers who had a habit of raiding entertainment joints, beating up customers and stealing from the public. In this case, the three officers raided a pub in Othaya Town where they attacked customers, stole money and three mobile phones. I was informed of the incident by the bar owner by the name Hosea Githaiga. I was lucky to get the drama as it unfolded. The Commissioner of Police, Maj. Hussein Ali ordered the three errant police officers to be dismissed from the force with immediate effect the same day that the story was published in the nation newspaper. However, senior police officers in Othaya and provincial headquarters wanted to cover up the matter, one of the reasons being that one of the errant officers was a relative to a Senior Superintendent of Police. I was, therefore, branded a liar and summoned by the Central PPO, then Mr. Njue Njagi. Other journalists accompanied me to his office. However, before we entered, we met Mr. Githaiga, the owner of the pub and the victims leaving the PPO's office. They were summoned to disown my story but they declined and demanded action against the three officers.

Back in Othaya, the OCS, Shama Wario, summoned me to his office where he issued threats and accused me of tarnishing the good names of his officers and his station. Wario was posted to Othaya by the Commissioner of Police, himself and so he was a power to reckon with and nobody could joke with him; not even the DO. I reported to the same to the DPPO who assured me of my security but it was obvious that the OCS was waiting for the opportune time to hit back. That time came a day I was holding a birthday party for my son which was attended by majority of journalists from Nyeri and other senior Government officers from Othaya. The event was through before 7.00 p.m. All the reporters could not fit in the Nation vehicle and so it was decided that it first drops the first group in Nyeri Town and then it comes back for the rest who included Wilfred Muchire, Daniel Kamau and a lady who was on attachment. We decided to wait for the vehicle at a lodge called the Silent Lodge, less than 30 meters from my home. But a few minutes later, the OCS, Sham Wario stormed in and ordered the door closed. I sneaked through the back door leading to the lodgings but after a few steps up stairs, Wario ordered me to stop or he would shoot. He had a gun pointed at me and I surrendered and went towards him. He then arrested me. I recall him telling me in Kiswahili, *nilikuambia nitakupata. Siku yako imefika. Leo nimekupata.*

That means that I told you that your days are numbered. I have now found you. So, he took me to the Land Rover. One of the officers told me: "We advised you to be very

careful. There is nothing we can do now that he has arrested you himself.” I learnt that the OCS, himself had instructed some police officers to spy on my movement. The other journalists were also arrested when they came to the police station to demand for my release. They were Muchire, Daniel Kamau and the lady. Efforts by the DO and the OCPD to have us released were fruitless and eventually, the OCS switched off his mobile phone. Mr. Kosgey, the DO, sent Senior Sergeant of AP, Mwenda to trace the OCS and allow him to use his phone (Mwenda’s phone) until our case was settled. We were released two hours later but none of us were booked in the Occurrence Book.

The third case was in 2007 and at that time the crime rate in Murang’a was high and I had been moved to Murang’a. Incidentally, it so happens that when crime is very high, the police in that area are accused of corruption and harassment of innocent people. That was the case with Murang’a. I did a number of stories related to the same issues and police officers were not happy with me. They complained to my bosses at Nation but I had facts and evidence to support my stories. The OCPD, Jacinta Muthoni, who is now the Deputy DCIO, Coast Province openly scolded me and even warned me never to step into her office. Later, I learnt that some police officers were trailing me. I, therefore, ensured that I was at home by 6.00 p.m. But as fate would have it, my brother who had not visited Murang’a before had come for school fees. I decided to wait for him in the company of a Standard Journalist by the name of Boniface Gikandi. My brother arrived shortly before 8.00 p.m and Gikandi who was aware of my fate and situation escorted us towards home until we felt that we were safe. However, a few meters to my house, we were confronted by two police officers who demanded for our identity cards. We gave them our identify cards and they attempted to conduct a search on me but I refused. I then handed everything I had to them for verification. One of them called the CID and said; “*Afande tumempata;*” meaning, “Officer, we have found him.”

The Land Rover came and I was unceremoniously loaded in. I was already handcuffed by this time. I informed Gikandi who called the DC, Kennedy Lusaka, who is now the PS, Ministry of Livestock Development. However, his efforts to intervene failed. Gikandi alerted other journalists in Murang’a and Nyeri. The adamant OCPD switched off her phone when she could not bear the pressure. We were driven around the town in dark areas and the arresting officers kept on giving false information that they had already released and escorted us home. They had also taken my phone. At about 10.30 p.m, they packed the Land Rover in a dark isolated area and ordered me out telling me that they had released me. I protested as I was still handcuffed. I raised alarm and demanded that we be driven to the police station. At this moment, the Deputy OCPD, Inspector Marangu arrived. When the OCPD switched off her phone, the DCIO, Mr. Meme was involved and I later learnt that he was under instruction to ensure that we were free and safely home. We then sent two police officers to pursue the matter. We found the two CID Officers at the station waiting for us. There was lot of confusion as the arresting officers and the Deputy OCS insisted that they had already taken us home. We were released shortly past midnight. The officers escorted us to Murang’a Town but I declined to have them drive us home. None of us were booked in the OB. Much later, the Deputy OCS, Inspector Marangu was demoted and transferred to the Nyeri DPPO’s Office on a different incident related to corruption and misconduct.

There is something I have not indicated in this paper; that most of the time, these senior officers have juniors whom they trust to do their dirty jobs. I have come to learn that in Nyeri it was like that, in Othaya it was like that and in Murang'a it was a similar case. That is all I had.

Mr. Tom Chavangi: Commissioners that is the presentation.

The Acting Chair (Commissioner Namachanja): Thank you very much, Maina, for what you have shared. Sorry for what you went through. I wonder if the situation is still the same with the new Constitution and the new changes. What is your view on this?

Mr. Waigwa Maina: We appreciate that there have been changes. However, let me say they will take time. Most of the senior police officers were also at one time constables and they know what happens at that stage. I know of a case of senior police officers, and he is now one of the Senior Assistant Commissioners of Police from Nyeri. That guy is corrupt but he has moved up the ranks through corruption. If the police force was to be headed by such a person, I do not see us going very far. So, a lot of vetting has to be done when reforms are taking place in the police force.

Commissioner Slye: I just want to thank you for what you have been doing and for your testimony. Before I became a Commissioner, I must confess that I read all the three newspapers but at times, when I read some of the stories that people like you write, on incidences of crime and police corruption, I tend to get scared. I think one of the effects of sitting here today and hearing that story is that I will look at them much more closely. Your testimony and that of the others impresses upon me the importance of some of those stories and also because I now understand the risks that people like you take to bring those stories to people like me. I do not have any specific question about your incidence but I would like to ask you the same question that I asked the previous presenter. Why do you do this? Why do you risk your life? Clearly, the police have you on their radar and you continue to do the work you are doing. What allows you to do that?

Mr. Waigwa Maina: I would say that there is some motivation in what I do. At times it is not possible to run away from the truth. Something is happening like on the case of the police officers who are stealing from the members of the public they are supposed to protect. This community depends on me to highlight those issues and I have no option, but I am driven by that passion to perform my duty.

Commissioner Slye: Thank you for the work you are doing and the risks that you take in bringing stories to us. We really appreciate.

Commissioner Chawatama: Thank you very much for your testimony and it makes very sad hearing that police threaten families. They are looking for a person and if that person is not there, then they take it out on the family and this also happens even in my country and makes the work of a judge or a magistrate very difficult. You mentioned in one of the examples of your experiences that you actually appeared in court and the court was told

that you could not be released because you are still under investigations. Did that happen?

Mr. Waigwa Maina: I was advised by a friendly CID officer who knew my case. He advised me to escape from the police before the investigative officer comes because immediately he comes, I would be arraigned in court. The court was just opposite the CID offices so I was just to be taken across to the court, charged and the prosecutor ensures that I am not released on bond.

Commissioner Chawatama: So do you think that the police and the courts would have worked together in such a way? Did the police have enough for a reasonable adjudicator to detain you or when you escaped, you did not have the confidence that if you went to court, the courts would deal with you fairly?

Mr. Waigwa Maina: I have also covered court stories and traditionally, what happens is that when you are charged for the first time and the prosecutor is opposed to your being released on bond, most of the time, the prosecutors carry the day until the second hearing when you are given a chance to express yourself. During the plea, the prosecutors carry the day most of the time.

Commissioner Chawatama: I think it is a good thing that we are going to meet with the police and we are also going to meet with the judiciary and a lot of the things that you and your colleagues have talked to us about are real life examples of how the system can sometimes work against innocent people who are just doing the work that they are called to do. Thank you very much for sparing the time and I struggled to come this morning but I am so glad that I came just to listen to you because as my colleague Commissioner said, I am now seeing real people who went through real experiences and I would read the newspapers a little bit more and respect you a little bit more. Thank you very much.

Commissioner Dinka: Thank you very much Maina. The Nyeri police seem to be very persistent from what you told us but luckily for you, you were also very resilient and so you survived. Just one question, what did they want when you were having your child's birthday celebration with your friends? Why did they come? Did they tell you why at that particular point?

Mr. Waigwa Maina: The OCS had previously issued the threats because of the story I wrote about his three officers who were attacking the public and stealing from them. That was sometimes back but within the same year.

Commissioner Dinka: They must have come just to create trouble for you so that you will not have any happiness with your family and with your child. Otherwise, they could have taken you the next morning. Why come at that particular time except just to spite you or something like that?

Mr. Waigwa Maina: I think it was the most opportune time for them.

Commissioner Dinka: But why take the other guys; the guests?

Mr. Waigwa Maina: They were also journalists.

Commissioner Dinka: Thank you very much. You have gone through a very difficult time. Are you still in Nyeri?

Mr. Waigwa Maina: I operate between Nyeri and Murang'a.

Commissioner Dinka: Are you having the same problems with the police? I hope not. I wish you good luck but what you have gone through is a test of fire for you and you passed the exam brilliantly. So as the judge said, we will look at the papers more respectfully from now on. Thank you very much.

The Acting Chair (Commissioner Namachanja): Out of curiosity, Maina, why did you refuse to be searched? Just educate us because I would have given myself to be searched.

Mr. Waigwa Maina: Most of the times, when a police officer conducts a search on you, he is most likely to get contraband. It is also like when he comes to conduct a search in your house. However innocent you are, you may never have seen *bhanga* with your eyes but they will surely get that *bhanga* in your house.

The Acting Chair (Commissioner Namachanja): And these are things you learnt in college or out of experience.

Mr. Waigwa Maina: This is out of experience.

The Acting Chair (Commissioner Namachanja): And while you were going through all this, did the bosses at the headquarters know what you were going through and what support did you get from them?

Mr. Waigwa Maina: Most of the time, I got no support. The media companies are never concerned as long as they get their stories. So, most of the time, the Kenya Correspondents Association has been of support to us. They actually take up the matter and it acts but the employer has no time for you.

The Acting Chair (Commissioner Namachanja): Thank you for sharing with us and with Mr. Maina's story. We have come to the end of our workshop. On behalf of the Truth Justice and Reconciliation Commission, I would like to thank the colleagues who came to share their stories with us. Mr. William Janak, Macharia Gaitho, Jaindi Kiseru, Paul Melly, Sam Owida, Bernard Kwalia and Maina Waigwa.

I would also like to thank the team that organized this workshop led by our Director of Communications, Madam Kathleen and everybody else who has facilitated us to have this very important dialogue with our colleagues.

Thank you Commissioners! As the judge said, yesterday she heard horrible testimonies and she has been having nightmares so do not think you are alone but she struggled out of her bed to come and be a part of this process. I am sure she said that we do not regret sitting here and listening to you. Please continue journeying with us and continue being there even after the end of the term of this Commission to ensure that our recommendations are implemented. Thank you so much and God bless you all.

(The Commission adjourned at 5.20 p.m.)