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Truth, Justice, and Reconciliation Commission

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION HELD ON FRIDAY, 8TH JULY,
2011 AT BUNGOMA COUNTY COUNCIL HALL**

PRESENT

Margaret Wambui Shava	-	The Presiding Chair, Kenya
Tecla Namachanja Wanjala	-	The Acting Chair, Kenya
Ronald Slye	-	Commissioner, USA
Berhanu Dinka	-	Commissioner, Ethiopia
Getrude Chawatama	-	Commissioner, Zambia
Ahmed Sheikh Farah	-	Commissioner, Kenya

(The Commission commenced at 10.20 a.m.)

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

(Opening Prayers)

The Presiding Chair (Commissioner Shava): Please take your seats. Good morning ladies and gentlemen and welcome to today's public hearing of the TJRC. It is the first public hearing that we are holding in Bungoma. I will take you through what we are going to see today and what you can expect. We are going to call several witnesses who will be sworn and then will be led through evidence by the Leader of Evidence. We will ask questions to adduce the story of what the witness wants to tell us. Thereafter, the Commissioners may ask questions to that witness before he is stood down and another witness comes to speak to us.

We have certain rules of procedure which I will acquaint you with now. While photography is allowed, we do not allow flash photography as this may distract witnesses. So, during the evidence, although picture taking may be allowed, please do not use flash photography. I will ask you all now to, please, switch off your mobile phones; I will give you a minute to do that. The reason we are asking you to do this is because even if you put the phone on a silent mode, it may distract you which will lead to disruption of our proceedings. So, I ask you kindly to switch off your mobile phones to avoid any disruptions. Now, one of our principles is respect for the testimony of the witness. So, you may hear a witness saying things which you agree with and which reflect your own experience and you may also hear a witness saying things which you strongly disagree with, and which are contrary to your own experience. In all instances, we ask you to remain silent and let the story of the witness come out. Those are the rules which we have and which we will be applying today while we are here.

I will ask the Session Clerk to, kindly, lead the first witness to his seat, swear him and then the leader of evidence will lead him through his evidence.

(Major Maxwell Kivihya took the oath)

Mr. Patrick Njue: Good morning, Sir.

Maj. (Rtd.) Maxwell Kivihya: Good morning.

Mr. Patrick Njue: Kindly, for the record, state your names, where you live and what you do for a living.

Maj. (Rtd.) Maxwell Kivihya: My names are Major (retired) Maxwell Kivihya. I stay at Kaimosi and practise agriculture for a living.

Mr. Patrick Njue: Mr. Kivihya, you are here for the very reason that you want to present a memorandum on behalf of the Kenya Air Force (KAF) 1982 victims. Do you confirm this to be the case?

Maj. (Rtd.) Maxwell Kivihya: I confirm that to be the case.

Mr. Patrick Njue: Before you can begin your presentation, I note that you are flanked by a gentleman and a lady on your right. Could you kindly introduce these individuals to this Commission and to the public?

Maj. (Rtd.) Maxwell Kivihya: I confirm that the gentleman seated next to me is retired Captain Gedion Mutoro. He was a serving officer of the KAF in the administration wing. The lady on my extreme right is Hellen Barasa. She is a widow of one of the servicemen who was serving at KAF Eastleigh, and she is representing the interests of women, who were assaulted during the attempted coup d'etat on 1st August, 1982.

Mr. Patrick Njue: Could you be having any other people who are accompanying you today?

Maj. (Rtd.) Maxwell Kivihya: There is myself and Captain Mutoro. We have reached 54 former servicemen. Most of them are listed in the memorandum; a majority of them have come today. I would request that they stand up.

(The former servicemen stood up)

The Presiding Chair (Commissioner Shava): Thank you very much. We acknowledge the presence of those who have stood up. Thank you for coming today.

Mr. Patrick Njue: Thank you for that, Mr. Kivihya. You may begin with the presentation of your memorandum.

Maj. (Rtd.) Maxwell Kivihya: I am reading. First of all, I must thank the TJRC for convening this meeting. It is my intention to humbly submit what took place on the 1st

August, 1982 up to today. The events that I will be describing, or talking about, took place in the Kenya Air Force (KAF) Units. It was in KAF Nanyuki where I was personally based; KAF Eastleigh was where Corporal Barasa, who is present with us was based; KAF Embakasi is where Corporal Wanyonyi, who is with us today, was based and KAF Forward Base, Wajir, is where Corporal Barasa was initially serving before he was posted to join me at Nanyuki.

The KAF is one of the armed forces services that is responsible for air defence of this country. Its duty is to defend the airspace of Kenya and provide air support to other defence units, which include the Kenya Army and the Kenya Navy. This KAF was formed in 1964 and it took over from the Royal Air Force. The first air force commander was seconded to KAF by the Royal Air Force. He was brought from Stockwell. He was succeeded by Group Captain Ross Weru and also Group Captain Edwards until 1971 when he started preparing Col. Gichuru to take over from him as Air Force Commander. In 1973, Col. Gichuru took over the command of the KAF. At that time, I had just been trained as a technical officer in charge of air force weapons system and ground small arms for personal defence. I was a highly trained officer and I was a specialist.

Coming to the events that took place on 1st August, 1982 I would like to point out that the KAF consisted of airmen and servicemen. The servicemen were from the rank of Junior Private to Warrant officer 1, and the commissioned officers were from the rank of Second Lieutenant to General. There were also civil elements that were performing civilian duties. At that time, the Commander-in-Chief was the late President Jomo Kenyatta. As I am sitting here, I hold a commission signed by the late Jomo Kenyatta appointing me to be an officer in the KAF, and empowered by his authority and the law of the land. At that time, Col. Gichuru took over command of the KAF and its station at the time was only KAF, Eastleigh. Towards the end of 1973, I was posted to KAF, Nanyuki, as a pioneer officer to start preparing that unit for air defence. The commanding officer of the station was Col. Kariuki; at that time he was a colonel. My colleague, Capt Mutoro, was in charge of administration. Col. Gichuru served under Gen. Jackson Mulinge who was the Chief of General Staff (CGS) and the late President Kenyatta was the Commander-in-Chief.

We started forming air force fighter station at KAF Nanyuki; that station had the fighter platforms. They consisted of strike masters squadron, hunter squadron and air superiority defence squadron. The strike master and hunter squadrons were flying fighter platforms from the United Kingdom (UK) and the air defence squadron was flying fighter platforms from the United States of America (USA); they consisted of very highly trained members of air crew such as Major Marende, Major Mutua, Capt. Barasa, Capt. Nyamor, Capt. Ruperes and Capt. Mugwanja. These were very highly trained officers in addition to myself who was a highly trained engineering officer.

Coming to the events of 1st August, 1982, there was an attempted coup staged by junior officers. I personally knew nothing about it. Even Capt. Mutoro knew nothing about it. The coup was masterminded by junior officers as I came to learn later. That 1st August was a Sunday. I had spent Saturday, the 31st of July in a maternity hospital because my

wife was expecting a child. So, I did not know about the events that were taking place in the station. After my wife delivered at around 6.00 o'clock in the evening, I went to the station in Nanyuki while accompanied by my children and fortunately met Maj.-General Kariuki accompanied by two visitors. He was driving a private car. I greeted him and he introduced me to the visitors. I welcomed them to the officer's mess.

During a small excursion with General Kariuki, a Lt. Mwambura came and indicated that he wanted to have a word with General Kariuki. I accepted and invited Col. Kariuki to speak to Lt. Mwambura. Lt. Mwambura started by saying, and I would like to quote the words in Swahili: "*Generali, ninataka kukufahamisha kwamba serikali itapinduliwa leo usiku.*" (General, I would like to inform you that tonight there will be a coup d'état.) The general told him he knew all about it. He told him not to discuss it. He cautioned me also not to talk about it. So, I and the general went back to the mess.

In the officer's mess we continued to have a drink and General Kariuki even offered my children a crate of soda and congratulated me for having had a newborn baby. We just chatted generally and then Lieutenant Mwambura came with a note, which he gave me and asked me to give it to General Kariuki. When I gave the note to the general, the general declined to receive it and I returned the note to Lt. Mwambura. I did not know the contents of the note. Shortly after, the general left in the car; he told me he was going to his home in Timau. I stayed in the mess for a short time and went home. I told my children to have the soda which the general had bought for them. I ate supper with them and went back to town at around 9.00 p.m. to check on the condition of my wife, who had just given birth. I found she was getting on well; I stayed with her chatting until about 10.00 p.m.

When I got back to the station, all was quiet; I met Corporal Barasa who is with me here. He opened the gate for me; he had been deployed on duty as a member of the air force defence. I drove up to my house and found everybody asleep. I then slept and at around 5.00 a.m., Corporal Dira came to my house accompanied by other airmen. They were armed and I became suspicious when Corporal Dira told me that I should not worry; he asked me whether I had listened to the radio. I told him I had not. He told me to switch it on. When I did so, I heard a voice which sounded like that of Leonard Mambo announcing in Kiswahili--- It went: "*Serikali ya Kenya iko kwa mikono ya jeshi*" (The Kenya Government is in the hands of the military). It surprised me because I was a member of the KAF and I did not know who was announcing over the Voice of Kenya (VOK). I asked Corporal Dira who was announcing and he told me: "Let us go to the operations room and then we will be told about it from Nairobi". They escorted me up to the operations room. When I got to the operations room there were three hotline phones. One was connected to the defence headquarters. The next one was connected to KAF headquarters and the third one was connected to Jomo Kenyatta International Airport (JKIA). So, I took the one which was connected to defence headquarters and somebody called Col. Kiilu answered. He asked me to identify myself, which I did and he asked me whether I was aware that air force units had rioted. I told him that I was not aware and I had not observed any rioting in Nanyuki. He then asked me whether there was any other senior officer that was of the rank of a major, which was my rank. I told him no. He told

me to take over control until a senior officer, like Col. Njuguna, was available. I did that and managed to meet Captain Mutoro, Captain Liyo, Captain Gichuki, Major Ikiri and Lieutenant Mwambura; I briefed them on what had happened and what Colonel Kiilu had briefed me on. Col. Kiilu had maintained that I take orders until I handed over to Col. Njuguna.

This was happening at around 10 a.m. on that 1st August. Now, the station was tense and everything was quiet. Then Lieutenant Mwambura came to the Operations Room and asked me to show him where the pilots were. We drove to the aircraft maintenance hangar where I met Major Mutua, who was a highly trained combat pilot. There was Captain Barasa who was also a trained combat pilot. There was Captain Nyamor who was also a combat pilot. Captain Leperes was also a combat pilot and Captain Mugwanja. All these officers were members of aircrew, and were highly trained on air warfare. My duty was to ask them to prepare the aeroplanes, arm themselves and deploy them in whatever role, be it air-to-air or ground attack. The weapons which were hanged on these aeroplanes consisted of the air-to-air missiles and ground attack bombs; of course there were rockets which attack arms. These aeroplanes, particularly the one which Major Mutoro was standing next to, they had always been configured in preparedness for any eventuality like being told that national defence was required. There was a corporal called Njirimani who was commanding Major Mutua that he had to take off and drop bombs and those bombs were already on the aeroplanes. They were supposed to be dropped on defence headquarters, police headquarters, Lang'ata 7KR battalion and KAF Embakasi. So, I told Corporal Njirimani Injendi that the radio was saying that the Government was in the hands of the armed forces. I asked him whether he was aware that if the bombs were dropped in Nairobi, there would be no Nairobi and defence headquarters left. I asked if the announcement coming from the VOK was no longer relevant; I asked him who was announcing over the VOK. Corporal Injendi told me that I should go back to the Operations Room, and I would be given information later.

I told Major Mutua no take off and I mobilized all armament systems so that if the bombs were dropped in Nairobi or wherever, they would not explode. I left Corporal Injendi with instructions not to force Major Mutua and Captain Mugwanja not to take off. Major Mutua was the squadron of air defence. I went back to the operations room where I picked the hotline and spoke with Colonel Kiilu. I told him that according to me, the air force in Nanyuki had not rioted but there were riots in Eastleigh, Embakasi and down town.

The defence headquarters had dispatched forces to suppress rioting forces at Eastleigh, Embakasi, down town and Voice of Kenya offices. Since I had told him that Nanyuki had not rioted, I was to communicate with Major Nyamagwa of First Engineers Battalion who had been dispatched to suppress riots in Nanyuki Airfield Base. I communicated on air with Major Nyamagwa and he told me that they had been deployed to come and attack Nanyuki and suppress any rioters. I told Major Nyamagwa not to attack Nanyuki and instead, I was coming to meet him at the domestic guard room and then lead him into the station in an orderly fashion. This I did and I met Major Nyamagwa and his platoon commanders Captain Ndunyu, Captain Mwaura and Captain Mwema.

They merged their platoons and I led them to the operational guard room. The adjutant of the suppressing group Captain Kinyua observed that there was no rioting at the Air Force in Nanyuki. They did not attack in Nanyuki. With assistance of Major Nyamagwa assisted by Major Mutoro, who is presently with me, we did a reconnaissance and we confirmed some guarded positions that were there and we told them that air force units had rioted and Nanyuki did not therefore have all troops and the airmen should go to the operation area. Those that delayed to come were paraded by Captain Kinyua, Captain Ndunyu and Major Nyamagwa and they were brought to the operation room. Thus in Nanyuki, nobody was killed and all the airmen manning Nanyuki were all gathered waiting for instructions. I did not see Senior Colonel Njuguna join me at all, instead shortly afterwards, I saw Colonel Kurutu who was from Engineers Battalion and he gave me instructions to go to 1 KR thus leaving the air force station in Nanyuki.

At 1 KR, I was put at the officers' mess and I was told by Colonel Kurutu that I was a strong suspect of what had happened. That got me extremely worried because I had nothing to do with the events of rioting. The riots took place in Eastleigh and Embakasi and not in Nanyuki. By so acting, Major Nyamagwa, Captain Mutoro and I prevented Nairobi city from being bombed. We also managed to protect the flying platforms that were in Nanyuki when the orders to Major Nyamagwa that Nanyuki Air Force base were that they should be destroyed.

At 1 KR, I was put in the cells and I slept there until the following day. We were taken outside and we were lined up and those officers included Captain Mutoro, Lieutenant Mwambura, Captain Onyango, Major Wachira and Major Kiarie. During that spell of being paraded outside, my name was read out together with that of Lieutenant Mwambura and Captain Onyango. We were handcuffed backwards and each one of us was put in a Land Rover and we were heavily guarded. We were under instructions from Major Macharia of 1 KR that we should be taken to Nairobi and that we should reach there alive. I did not know that there was a heavy escort up to Nairobi. We were driven at very high speed and heavily guarded without knowing where we were being taken. As we got to Nairobi under that heavy escort, we were led to Eastleigh and that is when I started noticing that some airmen had been shot because their bodies were littered on the road. We were led into the air force station at Eastleigh and I was told that I was supposed to meet General Mohammed who was then commanding the air force. Captain Onyango, Lieutenant Mwambura and I were taken to air force base headquarters because the service headquarters, I observed had been bombed by Air Calvary of the Kenya Army. While at the base headquarters, I sat there for two hours still handcuffed backwards and I was told that I would not meet with General Mohammed until a later date. I was led to the air force guard room and I was put in the cells. All this time, I was telling myself that I had not been a planner, organizer or participator in the announced coup d'état of August 1. Why was I being treated that way? I had no answers. In that cell I had difficulties sitting down with my hands at the back. I was denied food and I did not know what was happening and I had personally not done anything in connection with the '82 coup.

I stayed in that guard room for two days and Captain Onyango also joined me and he was also put in a cell. I was not given a chance to talk to him and he was also handcuffed at the back. We were the two of us who had been given that high-profile escort from Nanyuki being kept in the guard room at Nairobi hoping that we would meet General Mohammed to tell him our version. We were not given a chance. I was removed and taken to Eastleigh officers mess and I met a board chaired by Colonel Njiru. He was assisted by Major Ziro of Kenya Navy and Colonel Wakii of Kenya Army. I was handcuffed backwards and I was escorted by Major Tuwei and then Colonel Njiru asked them to remove the handcuffs so that they could interview me. This they did and the first question Colonel Njiru asked me was if I knew anything that happened on August 1st. I told him that other than what I witnessed in Nanyuki, nothing else. He asked me if I knew those who were announcing at VOK. I told them no. They told me that I was hiding something and the fact that I did not allow Major Nyamagwa to attack the Kenya Air Force in Nanyuki meant that I was a strong suspect in this affair and, therefore, they were taking me to maximum security prison in Kamiti. I was led back to the guard room still handcuffed and in the evening, I was taken to Kamiti and I was put in G Block where I later learnt was a block for condemned people. This disturbed me. How could I get condemned and put in the G block without being properly heard, without participating in the coup and without even knowing who organized it?

I was put in the cell and the handcuffs removed and I was told by the prison warders that those people who are taken there were just waiting for the President to sign for them to be hanged and so, I should not be surprised if I was one of them. I kept quiet and I slept. In the morning in that solitary confinement, the cell was upstairs, I looked down and I saw three gentlemen. They were in the open. I recognized one of them and that was the present Prime Minister Raila Odinga and he was with two others. They were also in the G block. Thereafter, I was visited by some intelligence officers in the cell and one of them identified himself as Major Magiri and the other one was a captain who did not identify himself. They told me that in connection with what had happened in the country, and since I was a strong suspect, they were taking me to Naivasha.

On the 5th of August, I was taken to Naivasha and I was put in solitary confinement. I stayed there for two months without any communication and a gentleman who identified himself as Jim Majani visited me and he told me that he was from the security intelligence and they were going to interview me. I was led to an office while at Naivasha where they asked me whether I knew anything concerning events that caused the coup d'état of August and if I knew the planners and the organizers. I told them that I did not know.

They asked me if I was aware that on 1st August, 1982, there was an attempted coup organized by a few junior officers and one officer Lieutenant Mwambura and the chairman of those officers was Senior Private Hezekiah Ochuka, Corporal Odira and Corporal Oriwa. They also asked me if I was aware that they had information that I had prior knowledge. I replied to them that this junior officer Hezekiah Ochuka was a serving serviceman from Eastleigh, Corporal Odira was serving in Air Defence Control unit together with Corporal Oriwa and Lieutenant Mwambura was an administrator.

Those officers were not in my section. I also did not know that they were organizing a coup d'état. We estimated that about three quarters of the officers did not know about the occurrence of the coup d'état of August 1st. They told me that I knew more and since I was in custody, they would extract it out of me. When the interrogation was going on, the other airmen I had left at Kamiti and those that were with me at Naivasha were also undergoing severe interrogation, torture, dehumanization and intimidation of the highest order. With the consent of the Commission, I would like to give one of my colleagues who is here a chance to say something.

The Presiding Chair (Commissioner Shava): We will hear your colleague after you have finished.

Maj. (Rtd.) Maxwell Kivihya: On 1st August, 1982, there was an attempted coup organized by a few junior officers and those junior officers included a non-commissioned officer Lieutenant Mwambura. Senior Private Ochuka, Corporal Odira, Corporal Oriwa, Corporal Njeremani, and Corporal Obuon. I came to learn they were the ring leaders of the coup. As I said earlier on, at least three quarters of most airmen and officers did not know anything about the coup. The units of Nanyuki, Eastleigh and Embakasi were conducting joint exercises with the Kenya Army and the Kenya Navy. The operational area was Lodwar and 90% as I am aware of the army was based at Lodwar and only 10% was in Nairobi and Nanyuki. I have Corporal Baraza here who had been deployed to provide a specific task force in that exercise. Therefore, because of that joint exercise, it was evident that the air force had no concrete plans to overthrow the Government. The junior officers who were involved in the event were not members of the air crew and they could not have conducted any air attacks operations because they did not involve the flying cadres who are officers.

Therefore, in my view, the exercise of the coup d'état of August 1 did not affect many of the serving servicemen and officers. The torture and rape that happened to families in Eastleigh and the killing of service men at Embakasi and Nairobi city is considered to be excessive force exerted by the army, particularly the Kenya Army. It was the Kenya Army that conducted all those atrocities and that caused airmen to get killed, others were tortured, others were sacked and we even do not know whether others exist or not. Family members of the Kenya Air Force in Eastleigh were intimidated and the wives raped.

(Power failure)

The Presiding Chair (Commissioner Shava): I think we are now ready to proceed. Major, you were telling us what it is that had happened to families in Eastleigh, Embakasi and in the town center.

Maj. (Rtd.) Maxwell Kivihya: The families that were in Nanyuki Air Force Base--- I, Major Nyamwaga, Captain Mutoro and others who are present here assisted in preventing Nanyuki station from being attacked and families were not subjected to that intimidation.

The families that were affected were at Eastleigh Air Force Base. The women service corps were tortured.

The Presiding Chair (Commissioner Shava): I am sorry that is not the translation of women service corps. Perhaps Major for the benefit of our interpreters, maybe, you can describe to us what the women service corps is.

Maj. (Rtd.) Maxwell Kivihya: The women service corps is a sporting arm attached to the Kenya Army and they were based in the Kenya Army. They were all enlisted and they are the ones that conducted atrocities which families at Eastleigh experienced.

The Presiding Chair (Commissioner Shava): I am sorry we still do not have the correct translation. Am I correct Major if I say that the women service corps to a civilian mind could be classified as a branch of the army and that they were women army officers?

Maj. (Rtd.) Maxwell Kivihya: That definition is accurate. The women service corps and male soldiers who were on duty at Eastleigh intimidated family members of service men. They beat up women, they intimidated children and they treated the entire complement with total disrespect and dehumanized them. It is something which we have not appreciated up to today. Why was it done? That is because the families never rioted. So, why were they subjected to that intimidation?

Coming to the issues after the coup attempt, on the 1st August, 1982, there was an attempt to overthrow President Moi and it was suppressed by the Kenya Army. That event affected the Kenya Air Force Eastleigh and Kenya Air Force Embakasi and a few organizers who I have mentioned earlier on, and who were from Nanyuki Air Force Base. Those that were from Nanyuki were Corporal Odira, Corporal Oriwa, Captain Onyango, Lieutenant Mwambura, Corporal Injendi and others. Those men masterminded the coup which three quarters of the air force did not know about. Three quarters also did not have prior knowledge and I for one also did not have prior knowledge except when General Kariuki mentioned to Lieutenant Mwambura that he knew about the attempt. General Kariuki who was the air force commander discouraged me from discussing or taking any action when he knew that I was in charge of the armoury. I was also in charge of the air force air defence and I was not briefed nor did I know what to do after he told me to take no action and he drove to his home in Timau. The one quarter who knew raised the alarm at Eastleigh, Embakasi and finally in Nanyuki when the assembling of the service men was taking place. As a military rule, everybody responded and armed themselves in expectation of the next order. Corporal Odera of Embakasi ordered men to go to town and wait for the next order.

I had to wait for the next order, but that order never came. Instead, the army in which 90 per cent had been deployed in Lodwar, travelled all the way and dispatched attacks on complements of those Air Force personnel based at Eastleigh, Embakasi, town and those that were announcing on the Voice of Kenya (VoK). The information I received was that the servicemen that were at the VoK were all shot dead under the command of General Mohammed. The Embakasi Station had just finished participating in a joint exercise that

I had mentioned earlier. It was a practice by the Kenya Army, the Kenya Air Force, the Kenya Navy and the Women Service Corps. They did this in preparation for any eventuality of Kenya getting attacked. This confirms that one quarter of the Air Force that organized the coup d'état did not let the entire Air Force know.

At Embakasi, I have a Corporal Wanyonyi who was next door to a Corporal Musyoka and Corporal Musyoka was attacked by the Kenya Army soldiers and shot. I must confess that I do not know whether he is still alive today, but Corporal Wanyonyi was arrested and taken to Kamiti. He was stripped naked, caned and exposed to public degradation. This was an excessive treatment meted to him by the Kenya Army and is just one example from the Kenya Air Force in Embakasi.

There is also another Corporal from Eastleigh and he is also with us here; Corporal Wafula. He was also intimidated, stripped naked, caned and frog-marched up to Lang'ata where he was subjected to intensive intimidation, interrogation and torture. When these people were rounded up, it affected the stations of Eastleigh and Embakasi. Those of us in Nanyuki, apart from me and the other two officers who had been taken to Nairobi, were assembled and interrogated and dispatched to King'ong'o Prison. Some were taken to Kamiti and others to Shimo la Tewa. They stayed in prison with no charges preferred against them until there was international pressure. This resulted in Senior Private Wekesa, Captain Mutoro, Corporal Wanyonyi and the list of 54 behind our memorandum to be dismissed. These mainly came from this region of Bungoma and there are others who came from other regions. There is a total of 1,000 people. They were dismissed with loss of total benefits.

This dismissal was wrong, unlawful and it should be considered null and void to ensure a proper form of discharge of these people who were dismissed for no mistakes and are now living at home with their families. They have no employment and they are living in utter poverty for an offence that they did not commit.

I would also like to refer to the interrogation conducted by General Musomba. General Musomba confirmed during his interrogation as he was a member of the Kenya Army that three quarters of the Air Force did not know about the coup attempt. Only one quarter knew about it. There were some servicemen from Embakasi and Eastleigh who resisted the coup d'état. These people were not treated kindly because they raised a sign of surrender and they were shot by the Kenya Army. A total of 300 servicemen were shot, but fortunately, no officer was shot. On 2nd August 1982, President Moi ordered that all Air Force men should be put in prison and executed. To this end, they started with the ring leaders who had organized the coup and they included Senior Private Ochuka and the others who I had mentioned before. For the information of this Commission, Senior Private Ochuka and others were flown to Tanzania by Major Leshan and Major Marende. These were transport pilots from Eastleigh. We have information from reliable sources that when Major Marende and Major Leshan returned to Kenya, they were treated kindly, but Major Mutua, Captain Mugwanja, Captain Baraza and Captain Leperes who were commanded at gun point to go and bomb Nairobi and they declined, were not treated kindly because the army had a deep seated resentment for the Air Force.

It looked as if they had got an opportunity to wind up the Air Force through the interrogation, torture and confinement in cells without trial and summarily dismissing people who had not committed any offence and winding up an expansive Air Force that had taken ten years to train and to prepare for the Air Territorial Defence of Kenya.

I take exception that Captain Mutoro who is here with me, Major Mutua who is deceased, Captain Nyamwagu who is not with us, Captain Mugwanja who is deceased and Captain Baraza who is deceased, those of us who prevented the fighter platforms from being destroyed in Nanyuki got dismissal without any offence committed. During the interrogation, which was conducted by legal officers, Major Githiora and Major Mbwewa misled the servicemen through false confessions and they were imprisoned. Right here, I have Corporal Baraza who served a prison sentence of two years and on being released, he was suspected to be a member of FERA. I will request him to tell this Commission what FERA stands for.

The Presiding Chair (Commissioner Shava): We will not be able to record what Corporal Wanyonyi is saying unless he has a microphone. What we will do is let you finish with your testimony and those others who would like to say something will be accorded the opportunity to say something.

Maj. (Rtd.) Maxwell Kivihya: There are instances where after these officers were summarily dismissed, some were followed at home. I have a case here of the wife of Sergeant Baraza who was followed at home here in Bungoma County and was interrogated whereas she was not a member of the Air Force. The lady is here with us and perhaps you will accord her an opportunity to say something later. Her husband Sergeant Baraza was traumatized during that interrogation and suffered speech problems and was paralyzed. He is now dead. Some officers' services were just terminated without being afforded any trial. Such officers like me were taken before Colonel Kamunya in Eastleigh and he told me that the defence council had decided to terminate my commission with loss of all terminal benefits. Captain Mutoro is also such an example.

Referring to Maj. General Kariuki, he was court martialled and I was a key prosecution witness. He was found guilty and he was imprisoned for five years. Thereafter, I was dismissed and Maj. Kariuki was pardoned. He has been rehabilitated and appointed the Chairman of the Communication Commission of Kenya. Captain Mutoro and I particularly are concerned, since I gave evidence that led to his conviction. Despite being an expert having been highly trained on air defence, having committed no offence on 1st August and preventing the Air Force airplanes from being blown by Maj. Nyamwaga, I have been unceremoniously dumped. There are cases of servicemen who appealed against their conviction and they include Corporal Wafula who is here with us today, Henry Nyongesa and Dr. Sitati. They appealed and they were granted successful appeals. The court ordered that they be reinstated in the Air Force. This has not happened because the army defied the court orders.

I am not sure whether this is not the beginning of lack of respect for the rule of law. I am also not sure whether the beginning of impunity did not start from this point. There were

those with the means to do an appeal such as James Namasake who is here with us and they were refused filing. We are concerned whether this is in the interest of justice.

Those of us who were highly trained and were sacked from defence totaling 1,431 servicemen and some of them were under the age of 25 at the time of dismissal, have never been properly cleared to seek employment in civilian sector. I have mentioned that I was trained on improvised explosive devices. We have had instances where children are being blown in Ngong. This falls in my domain and I am concerned that I have not been deployed to perform that role. At the time these servicemen and officers were sacked the State looked at us and we were called rebels and looters. I have never been formally cleared. I walk around being referred to as an Air Force rebel and looter. This is something that I have not done. That hurts my conscience and it hurts the conscience of all those who are present here today. As I said earlier on, Maj. Nyamagwa, Captain Mutoro and I prevented any happening in Nanyuki where I was based. I am aware that there was no looting, so I am concerned that I am called a rebel and looter. If anything, from the discussion I have had with my colleagues here, the servicemen that conducted looting in Nairobi City were from the Kenya Army because the Air Force had already been rounded, confined in Kamiti, King'ong'o and Shimo la Tewa. How could they have conducted the looting from a maximum security prison?

There are those of us who were dismissed. There are cases where we have mental disorders. We have the example of Ndegwa, Nabiswa, Gilbert Wafula, Khaoya, Kauka and Joseph Mukanda. This happened to these servicemen because they were traumatized and forced to accept offences they never committed.

Therefore, we would like to suggest the following recommendation with regard to all the victims including myself that were conscripted officers and Servicemen of the Kenya Air Force within the Kenya Armed Forces between 14th May, 1964 and 13th March, 1993, which is a period spanning 19 years of distinguished service.

The victims were never servants of the created 82 Air Force yet they were terminated by the 82 Air Force and they had no contract with it leading to loss of pension, gratuity, unpaid salaries and loss of reputation. All these servicemen present here were wrongfully dismissed for want of jurisdiction. The victims were neither in the service nor had they contracted service with the 82 Air Force. The victims were conscripted officers and servicemen of Kenya Air Force from 14th of May, 1964, and since they were never discharged, they are still in the Kenya Air Force.

The victims aver that the commanding officer of the said 82 Air Force had no powers of jurisdiction to discipline, dismiss or take any enforceable action against servicemen contracted to serve the Air Force. They were famously known as the Kenya Air Force because it was reinstated through a court decree by Justice Akiwumi. As constituted by the Kenya Air Force Act Chapter 199, Laws of Kenya, the punishments meted to these servicemen by the 82 Air Force were illegal.

The victims aver that from 25th August, 1993, the Kenya Government reinstated the Kenya Air Force which is the legal authority by law established, thereby replacing the illegal 82 Air Force authority as held by the High Court which they had a lawful contract with.

The victims also aver that the Commander of the 82 Air Force could not dismiss them lawfully and legally and there was no contract of service between the two parties. The contract of service with the Kenya Air Force could only come to an end through lapse of service. It is our prayer to the Commission that these victims be considered to be members of the Kenya Air Force including the deceased.

The victims aver that the victims of 1st August, 1982 and 30th March 1983 were wrongfully confined and kept in prison custody without trial for eight months and they were released without having been charged or pardoned. Their confinement was wrongful false imprisonment and the victims were not in any way implicated in the said attempted coup. The victims would like to be granted to claim general damages for wrongful arrest and loss of earnings. The victims also aver that the prison custody subjected them to torture. They were beaten, stripped naked and Corporal Wanyonyi was sexually assaulted. Up to now, he cannot sire children.

Therefore, the victims should claim general damages for pain and suffering. There were others, if I may quote Captain Kariuki who suffered permanent disability and has been on treatment. He died recently because of the assault and illegal confinement. The victims demand for the Department of Defence to compensate them and this effort has been thwarted and obstructed by the Office of the Attorney General. We have a High Court suit Case No. 548/1995 involving officers and servicemen who filed for their dues and to date, the case has not been decided because the Attorney General has obstructed justice.

We would also pray that the Government publicly apologizes to these victims and all the others in Kenya. That, perhaps, might improve our morale. President Moi, General Mulinge and General Kariuki knew about this as expressed by Lieutenant Mwambura. We pray that these officers should be investigated by the International Criminal Court, so that we can get some justice because to date, we have got none. General Mulinge and General Kariuki had prior knowledge of this attempted coup d'état and they did not institute measures to prevent it. General Kariuki confessed it in my presence and discouraged Lieutenant Mwambura from discussing it. I am concerned that I was punished when I had been ordered to keep quiet.

Finally, the victims would like to make a declaration that they were members of the Kenya Air Force and they are loyal to the Kenya Government.

We have always been loyal to the Kenya Government and we have never been members of the 82 Air Force. They should be declared still in the Force.

There was the issue of welfare. At the time, we served as officers of the Armed Forces, the welfare of servicemen was undermined. I would like to pose for a moment to give Capt. Mutoro to update the Commission on that subject.

The Presiding Chair (Commissioner Shava): Leader of Evidence, how would you like to proceed?

Mr. Patrick Njue: Presiding Chair and commissioners, Capt. Mutoro, can perhaps address those issues that have not been raised by Maj. Kivihya so that we can also give a chance to Madam Hellen, the two who are franking him, again, to mention what Maj. Kivihya may have left out after which we can pose questions. For the other witnesses, under your direction again, maybe they could record statements if they have not done so, for their individual accounts. But, again, we are subject to your direction.

The Presiding Chair (Commissioner Shava): I think Maj. Kivihya's presentation has been very thorough. We have got a lot of detail and understanding. I think perhaps what he has not said will be filled in by his colleagues. I would like to give the opportunity, first, to Madam Hellen to speak to us and tell us her perspective from the point of view of women and then thereafter, we will conclude with the last witness. As the Leader of Evidence has suggested, anybody else who wishes to supplement what has been said can therefore make statements. I think perhaps Mr. Wanyonyi could be one of those who will speak after the gentleman at the table. Now we can have Madam Hellen, then the gentleman at the table, Mr. Wanyonyi and then we conclude.

So Madam Hellen, can then be sworn-in. Continue, Leader of Evidence.

(Ms. Hellen Luzike were took the oath)

Mr. Patrick Njue: Good afternoon, mama?

Ms. Hellen Luzike Were: I am okay.

Mr. Patrick Njue: Mama, kindly, once again for the record, state your full names.

Ms. Hellen Luzike Were: I am Hellen Luzike Were. I live in Bosino in Sirisia. I am a farmer.

Mr. Patrick Njue: Mama Hellen, you have heard what Maj. Kivihya has told us since morning?

Ms. Hellen Luzike Were: Yes.

Mr. Patrick Njue: And also in his testimony or presentation, he has alluded to the families that were affected especially during the torture of the main breadwinners. Perhaps from your own account, you can share with us your perspective of what you went through as a family. I noted in his introduction, he said you are a widow. Maybe you can tell us who your husband was and the plight of your family.

Ms. Hellen Luzike Were: My husband was called Edward Namasaka. He worked at Eastleigh as a driver. At that time, my husband was on leave at home. On 31st, he left briefly. When he came back, he told me that he had been recalled to go back to work.

His mother was very unwell and was in hospital. She had been referred to Kenyatta National Hospital. So when we heard that he had been recalled, he told me to take his mother to hospital. We travelled together at night after taking a bus from Bungoma at around 6.00 in the evening. We reached Nairobi at around 3.00 a.m., in the morning and went to Kenyatta National Hospital. He left us in hospital and decided to go to the camp. When he went there, for sure, after that, I never saw him again. I really suffered with his mother. At around 2.00 p.m. on 1st, I saw some other women coming. I knew them because we lived with them in the camp. One of them had been raped. They had put a bottle in her private parts. This lady actually died together with her child.

My mother in-law was seriously ill. She was bleeding. So there were people who were near my mother-in-law's bed who told us that they were wondering what was happening because they had seen children and some people running away. They told us that things had happened at the Air Force and that all the Air Force people had been killed. When my mother in-law asked them to explain what had happened, they told her not to ask them because they were only reporting what they had heard. They told her that they had just heard that the Air Force people had been killed. When my mother in-law heard this, she got a shock and died instantly.

I had an uncle who was my mother in-law's brother, I went and told him about what had happened to my mother in-law. He came and took care of the body. When I asked my uncle what had happened, he told me: "You can be talking like this and maybe your husband is also death." I asked my uncle if I could go to see my husband at the camp and he told me not to go there. He feared that if I went there, I could also be killed. So I did not go to the camp. I sat there with the body of my mother in-law.

They took her body to the mortuary where it was preserved after which I went to my brother's place in Kahawa West. I stayed there for one week and then went home. My uncle made burial arrangements for almost a month. As this was going on, my uncle also looked for the whereabouts of Edward. He looked for him in all prisons including Kamiti, Naivasha and other places. He did not get him. He came back and told me that maybe my husband had been killed. After one week, my uncle went back to Naivasha where he found him immersed in water. He stayed in Naivasha until my uncle went brought the body of my mother in-law for burial.

We went home together and buried my mother in-law. After that, they started selling a few things at home to go and appeal for Edward's release. Indeed, Edward was not guilty and had done nothing because he had just been at home. He did not know what was happening. Later on, my uncle came and told me to look for money so that he could go and appeal against Edward's imprisonment, maybe he could be released.

He appealed against the decision to imprison him for 36 years. He was taken to court and later, he was jailed for five years. He stayed in Naivasha where I used to go to see him but I could not see him. They would only show me where he was but I did not see him at all. Later on, I stayed at home for three years after which I was told Edward was to be released. Again, my uncle came for me and we went with him to Naivasha but the person who was brought to me looked so different, frail and was not the same person I knew. He was so thin with long nails and swollen legs. I was so shocked and I fell down. I did not know what to say as he was even mentally unstable. When he asked us about his mother, my uncle lied to him and told him the mother was at home. My uncle had a car, so he put us in the vehicle and we went home. On reaching home, we were unable to communicate with Edward. If you said one thing, he said the other. Later on, he told me that he was sexually molested and he could not even get a child. When we got home, he got stuck on the way and said he wanted to see his mother. They hid from him the information about his mother. Later on, the grandmother told him that his mother had died long ago. On hearing this, Edward fell down and fainted. My uncle took him to Alube. On reaching there, there was a cousin who looked after him and he got better. He stayed in Alube for two years. That is when he recovered fully. Later on when he came home, I stayed with him but he was not the person I knew. He did not have anything. When he went to work, there was nothing that he came back with. We started a new life without anything. We did not have means of supporting ourselves because we had sold everything including all the cattle and even the *shamba*, and his mother had died.

So Edward started ailing again and eventually, he passed away. He left me with children who are going to school. I do not have means of supporting myself. I am very sad because I do not even have a job or even a piece of land. I just do manual jobs to support the children.

Mr. Patrick Njue: Thank you so much, Mama Hellen. Are you through?

Ms. Hellen Luzike Were: No, I have not finished. Later on, I took care of my husband. I sold everything and then after that, he died. He left me with nothing. He left me with a large family and I have no means of supporting them. That is all.

Mr. Patrick Njue: Thank you once again, Mama Hellen. We will be coming back to you in case we have further questions to ask you. Presiding Chair, we proceed with Capt. Mutoro.

(Capt. Gideon Mutoro Musukuya took the oath)

Good afternoon, Sir?

Capt. Gideon Mutoro Musukuya: Good afternoon.

Mr. Patrick Njue: Kindly, once again for clarity of the records, please state your names.

Mr. Gideon Mutoro Musukuya: My names are Gideon Mutoro Musukuya.

Mr. Patrick Njue: And where do you live at the moment, Mr. Mutoro?

Mr. Gideon Mutoro Musukuya: Currently, I live in Arondo Village, Central Bungoma.

Mr. Patrick Njue: And what do you do for a living?

Capt. Gideon Mutoro Musukuya: Currently, I am a farmer.

Mr. Patrick Njue: Mr. Mutoro, you have heard what Maj. Kivihya has shared with us in his presentation this morning. You confirm that you are alive to what he was presenting?

Mr. Gideon Mutoro Musukuya: I confirm that the sentiments he gave are correct.

Mr. Patrick Njue: Mr. Mutoro, since in his presentation he talked on behalf of all of you, the victims, I want you to share with us what he might have left out in his presentation.

Mr. Gideon Mutoro Musukuya: Thank you. Before I go to the areas that he did not cover, I would like to say something about my joining the Kenya Air Force. I joined the Kenya Air Force on 28th March, 1966, just two years after Kenya attained independence.

I trained locally and later on, I was recommended by the Royal Air Force to go and train in UK. My training in UK was on aircraft emergency and survival training for the pilot. When I returned, after one year, I continued doing so. Thereafter, I was appointed as a staff officer in the Air Force Headquarters on matters dealing with personnel and administration. At the same time, I was also appointed and made responsible as the secretary general of the Armed Forces Sports Control Board. Finally, in 1981, I participated as an Aide De Camp, that is a personal aide of the Head of State of Austria, Dr. Kurt Waldheim, during the All African Heads of States Conference that was held in Nairobi on 18th June. Those are the special assignments that I had on my last days in the Armed Forces.

Coming to 1st August 1982, I am not going to repeat what the Major has said. I will only touch on a few points that he may have left out. One of the issues here is that on 13th March, 1983, I was together with the Major at Kamiti when we were being told to go back home. We were a good number plus servicemen. We were all ferried to Machakos Airport which is commonly known as Machakos Bus Park. When we were being dismissed at Kamiti, we were given fares ranging from Kshs10 to Kshs50 to ferry us to our final destinations. At that time, the fare from Nairobi to Bungoma was over Kshs100 and I was given Kshs50. I had accompanied the Major. We were all in rags with our hair so far overgrown and beards almost reaching our chests. We looked like apes in the streets. That was the position of the final destination of those officers who had been trained by the Government and highly respected by the foreign training countries. When we reached Machakos Bus Park, I parted with my brother here. He went his own way and I went my own way. We were all barefooted. I walked up to the Attorney General's Chambers where I found my sister who was working there at the time. When I knocked the door of her office, she opened the door. When she looked at me, she did not believe I was a human being. She started yelling in the office and everybody started running around. Woi! That was the welcome.

From there, I came back home and started a new life without a single penny. The rest of my other colleagues were also treated in the same way as my colleague has already explained. Coming further down, I had my son in Moi Forces Academy who was then in Form One. My dismissal from the Air Force left an everlasting stigma on him. He also had other colleagues who came from the Air Force and they were extremely discriminated against. I am happy to say that my son is here today. He is one of those seated there. He is the only one who managed to continue with his studies while the rest lost their education. The expectations which were high at the end of the day never yielded anything. I will continue still further.

I have already mentioned that the children whose parents were in the Air Force were so much intimidated and most of them could not continue with their studies. Also, certain events that followed related to the welfare before the coup and after the coup. Generally, having been an administrator in the Air Force, the standing rules were that as every service man normally joins the Armed Forces when he is single. When he reaches the age of getting married, he has to make an application to his commanding officer to get the approval for his marriage. This was considered necessary so that other formalities could be followed like providing special married quarters for them. In other words, I had already been an officer with a family while in Nanyuki before I was eventually posted to the Air Force headquarters. So I was quite versed with the welfare of the servicemen and officers because I was in charge of keeping their demands and records. So when it reached that level, the quarters of married servicemen were not easily available within the station. So they were given authority to go and stay outside the military camps. But because they were not entitled to house allowance, they were supposed to meet the cost of rent from their own pockets. We then realized that there was a very big demand for housing for the servicemen. This problem was not quickly addressed by the Government. So the servicemen continued paying rent from their own pockets.

Another issue that cropped up was that the Air Force had about three stations including Eastleigh, Nanyuki and Embakasi. Under those stations, we had what we call wings. Below the wings, we had squadrons all running in that order. But what was most surprising was that all the key positions starting from the commander were from one ethnic group which I know up to now is featuring so much in the new Constitution.

Another point that came to the notice on welfare was that there were parcels of public land which were being allocated at times by the Government but they all ended up in the hands of one ethnic group.

Finally, after 1st August, several things featured out again while we were already out of the service. Housing for the married quarters became a priority in the restructuring of the Air Force which proved that the corrections were being made.

The issue of salaries which was a big problem was addressed. There was a review board of salaries in the Armed Forces. In October 1982, the same year of the *coup de tat*, a review interim report on pay and pay structures for the Armed Forces was put in place. In July 1983, just after one year, another report on pay of allowances, terms and conditions of service for the Armed Forces was also put in place. In December, 1984, a report on pay and adjustments for servicemen in the Armed Forces was also put in place. In July,

1989, a report on pay and allowances and terms and conditions of service for the Armed Forces was once again revised. In January, 1983, again another pay and allowances related to fringe benefits was put in place for the Armed Forces.

I conclude on this again, that this Board had been appointed and gazetted through Legal Notice No.34 of 96 of 1979 which was supposed to be implemented after four years but after the coup, from the records, you can see this review was done on a yearly basis. So with those few remarks, I conclude my report by once again thanking the commissioners for allowing us to express ourselves and give out the information that was related to our lives. Today, the majority of us are living under very difficult conditions. The image that was created by the arrest and confinement has played a very big role in the destruction of our lives. Once again, thank you very much indeed.

Mr. Patrick Njue: Thank you, Mr. Mutoro, for that input. Again, we may be coming to you if other questions arise.

Commissioners, Presiding Chair under your direction we had said that we would take one more witness in relation to the 1982 coup.

The Presiding Chair (Commissioner Shava): Leader of Evidence, do you have many questions for these witnesses?

Mr. Patrick Njue: They are not many. I have about five questions or so.

The Presiding Chair (Commissioner Shava): Then we will allow the final witness to come down and be sworn, say a few words alluding to things which have not been mentioned by the other witnesses and then we take questions. Cognizant that time is not on our side, it is already 1.00 p.m. and I am sure people have a few things to do over the lunch hour. We would, therefore, like to take a break quite soon and then reconvene in the afternoon.

(Mr. Pascal Barasa took the oath)

Leader of Evidence, I think we are just expecting a clarification of the meaning of FERA from this witness.

Mr. Patrick Njue: Good afternoon. Kindly once again for clarity of the record, please, state your names.

Mr. Pascal Barasa: My names are Pascal Barasa Olaimo.

Mr. Patrick Njue: Where do you live?

Mr. Pascal Barasa: I live in Busia Township, Busia County.

Mr. Patrick Njue: What do you do for a living?

Mr. Pascal Barasa: I am a peasant farmer.

Mr. Patrick Njue: Now Mr. Barasa, Mr. Kivihya has taken us through his memorandum that you prepared as victims of the 1982 Kenya Air Force which presentation I hope you were able to follow as you were seated back there. Were you able to follow?

Mr. Pascal Barasa: Yes.

Mr. Patrick Njue: He told us details of sufferings that you, as members, went through. All I will ask of you is to stick to that which he has not touched on especially in relation to your own account when he said that you were also a victim of torture by virtue of allegations that you are a member of a group identified as FERA. Narrow down to that one which has been left out and more specifically on FERA and what you know about this movement.

Mr. Pascal Barasa: First, I will start by giving my profession. I was enlisted into the Armed Forces in 1978. I underwent my training at Lanet Training College and taken to Eastleigh, Kenya Air Force Headquarters. After this, I was transferred to Nanyuki, Laikipia Air Base. I took three years there. I was then transferred to North Eastern Province, Wajir Frontline Operational Base. I stayed there for one year under hardship.

To come back to 1st August, it has been talked about by my colleagues. I am not going to repeat it. I am getting to FERA. FERA was an illegal organization which I was not a member. I had been followed after my release in 1983. It was in 1992 November when some gang of people visited my home at midnight. They picked me up, took me to Nakuru Police Station right from Busia. My family did not know where I was taken. I was taken to the Rift Valley Criminal Investigation Department Section whereby I was being tortured by plainclothes officers whom I cannot identify. The responsible officers--

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The Presiding Chair (Commissioner Shava): Can we take a short break so that we can correct the translation? The witness has said that he was tortured. The correct translation of torture is not *kupigwa*. Can we have the correct translation?

Mr. Pascal Barasa: The responsible officers beat me up using hard wood, clubs, strong iron bars, strong wires and even kicked me with the high ankle boots. I was electrocuted and stayed in water for several days. I had swollen legs and to date, I do not put on shoes. I have had difficulty and pain. I have been left with a permanent erectile prolapsed. I cannot meet with my mama.

After that torture in Nakuru, I was taken to Kericho GK Prisons. Later, I was taken to court and charged with an offence of being a member of an unlawful organization which I denied. However, the then magistrate, Mr. Tuiyot, said I have a case to answer and I have to accept. I asked for bail, it was refused. After some time, I was told I have to pay a bail of Kshs200,000 which I could not raise. After Mr. Tuiyot was transferred to Nakuru, the magistrate who came in left me suspended pending consent from the Attorney-General's Office. The case was No.70293. I thought the crescendo had ended.

I was rearrested in March 1995. That is when I had the longest detention with torture beyond recognition. I was taken to Ukwala Police Station, then to Siaya and then

Naivasha GK Maximum Prison torture chambers. The officers could beat me without mercy. They forced me to mention who Brigadier John Odongo Kashmir is. Some said I was the one, of which I was not. I was transferred to the Nairobi Provincial Police Headquarters for further interrogation. I was sometimes taken to Nyayo House and Nyati House. I have had several kangaroo courts of which nothing could come out of. After that, I was taken back home where I was asked to report to the Special Branch Office in Busia and Kakamega Provincial Special Branch Offices. I was to report daily of which I refused. This is because I had been a loyal citizen and I had taken oath to look after this nation. I could look forward to join my family at the dinner table instead of taking the life of a man hunted continuously by the police, living separated to those closest to me in my own country. I continued to have detentions and arrests all the time, off and on. This has been a life more difficult than serving a prison sentence. I could say that no man in his right senses would voluntarily chose such a life instead of one of having a normal family life. Social life exists in every civilized community.

The law enacted by the Nyayo Regime waived the right of *habeas corpus* and empowered any police officer to detain any person without warrant or grounds of suspicion for a political crime. Those arrested could be detained without trial, access to a lawyer or protection against self in termination for months. As a result, the police became more savage. Prisoners were brutally beaten, electrocuted, shock suffocated, beaten using blunt objects and stayed in cold water without clothes. They also stayed in the cold without food. This resulted in one swelling of the legs. On my ribs, I have a protrusion.

Prisons are designed to break one's spirit, destroy one's resolve to do this. The authorities attempt to exploit every weakness and get all signs of individuality all with the idea of stamping out the spark that makes each of us human and who we are. I had not seen my family for all the time I had been behind bars. My wife and children had grown up without me. On arrival, I looked at my family with amazement. They were happy because they had not known my whereabouts. All of them were astonished to see me back home after their suffering. My wife remained stoic, behaved like much as a soldier as well as a wife. I appreciated her behavior. God bless her and my family.

I now request the Amnesty International or the TJRC to chip into this matter and assist me or us in any grounds they can. I have suffered due to low income and poverty. My children dropped out of school due to lack of school fees. I hope and believe that observations will be made for my appeal to rehabilitate my home. I have not settled since all that happened. I request the present Government to compensate me. A hero as a man would not break down even under the most trying circumstances.

Thank you.

Mr. Patrick Njue Presiding Chair under your directions if you could take questions from the last speaker, Mr. Barasa, because personally I want to ask one or two. Under your directions, you can proceed as you deem fit.

The Presiding Chair (Commissioner Shava): Leader of Evidence, please, go ahead with your questions.

Mr. Patrick Njue: Mr. Barasa, kindly once again for clarity of the record, what does the acronym FERA stands for?

Mr. Pascal Barasa: FERA is an organization which was formed in Uganda by a group of persons led by John Kashmir Odongo. FERA means, February Eighteenth Resistance Army. I am not a member and will never be a member.

Mr. Patrick Njue: Mr. Barasa, I appreciate that you are not a member of FERA but as we have come to understand it now, what were its ideals or what was it formed for?

Mr. Pascal Barasa: To my knowledge, I came to understand that it was a clandestine movement that was to come to Kenya to overturn the Government.

Mr. Patrick Njue: Again, I noted you were reading from a statement. I do not know if this is a statement you would like to share with us. We could run a copy of it for our record purposes.

Mr. Pascal Barasa: Yes, I have already given them. However, I can pass some more copies.

Mr. Patrick Njue: We will appreciate. I empathize with you for your sufferings. Certainly you have been able to present your case and I am sure a note has been taken of it. Our commissioners can now ask you questions.

Commissioner Dinka: Mr. Barasa, thank you very much for coming to this Commission and sharing your suffering with us. It is a very difficult story for you to go back and relive it again. It is a very painful process. We thank you very much.

I just have a single question. You have been to different prisons; Naivasha, Nyayo House and so on, you have been tortured, do you know of any names of those who tortured you?

Mr. Pascal Barasa: I do not know any because most of these people were in plainclothes. They could come any time they felt like, remove me from my cell and take me to the torture chambers when blind folded.

Commissioner Dinka: When you went home and refused to report daily to the police station, what happened to you after that? Did they tolerate that?

Mr. Pascal Barasa: They had to tolerate that because I refused. I had to ask the officer in charge if I am to report to the police station daily, they had to pay me Kshs300 daily for survival of my family.

Commissioner Dinka: Thank you very much. I empathize with your suffering.

The Acting Chair (Commissioner Namachanja): Mr. Barasa, I would like to join you in thanking your wife for standing with the family, taking care of the family in your absence. May God bless her.

Mr. Pascal Barasa: Thank you.

Commissioner Farah: Mr. Barasa, I join my fellow commissioners in empathizing with your trials and tribulations. We have heard evidence from other people who were also tortured like you in Kakamega and Busia in connection with FERA. However, yours is even worse because having been dismissed from the Armed Forces, which was pain by itself, to be subjected again to suspicion at a time when you served your country loyally. So we have taken note. We have heard you and I join my fellow commissioners in empathizing with you.

I have no question for you, Your evidence is straight forward.

Commissioner Chawatama: I join the other commissioners in thanking you for testifying before us this afternoon. Like your colleagues who testified before you, you have ascertained that you are not only representing yourself and what happened to you. We have seen a number of your colleagues who stood up earlier and note that all those who have spoken have done so on behalf of so many others. In thanking your wife, I would like the records to also show that there are many men and women who suffered like you whose families stood by them. Therefore, in celebrating and thanking your wife, let our record also show that we also acknowledge the other men who have not sat on that chair to speak but whose families have also stood by them.

I have no questions for you, Sir.

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

Leader of Evidence, I think the commissioners may have questions for the two other witnesses. Therefore, they can exchange seats while I ask if commissioners have anything they want to say to Mama Hellen.

Commissioner Dinka: Mama Hellen, I would also like to thank you for coming here and testifying and really salute your courage for going through your pain again in narrating your story. Your story is a very difficult one, all I bet a common one from our hearings in this region and other places. What I would like to say if it is helpful in any manner is the fact that what you said will go down in our report and will be reflected together with other compatriots who have suffered similar situations. It will be reflected in our report and appropriate recommendations will be made out of that.

Since the recommendations of this Commission are mandatory to be implemented as a matter of law, we hope that something will come out of it which would in some fashion or measure contribute to consoling you and your family.

Thank you.

The Acting Chair (Commissioner Namachanja): I would like to seek one clarification from Mama Hellen. She said that the husband was called from home. Was she living in Nairobi or at home in Bisunu?

Ms. Hellen Luzike Were: He was on leave at Bisunu.

The Acting Chair (Commissioner Namachanja): For how long had he been on leave before he was recalled?

Ms. Hellen Luzike Were: He started his leave in July.

The Acting Chair (Commissioner Namachanja): The whole of July, he was on leave?

Ms. Hellen Luzike Were: Yes.

The Acting Chair (Commissioner Namachanja): This took place in August?

Ms. Hellen Luzike Were: Yes.

The Acting Chair (Commissioner Namachanja): I would like to seek clarification from the senior officers who are present. Would a driver be involved in any plan, for example, like the allegation concerning the coup? Any of you can answer that.

Maj. Maxwell Kivihya: Yes, a driver can get involved.

The Acting Chair (Commissioner Namachanja): In which way would a driver be involved?

Maj. (Rtd.) Maxwell Kivihya: In the Armed Forces, driving is a trade and he may be involved in conveying planners, plotters and perpetrators.

Two, the moment he gets involved in transport, the planners and plotters will get suspicious that he might divulge their plans.

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

In view of the fact that this particular driver was away for a whole month, after you came out, did you find out how long it took to plan the attempted coup?

Maj. (Rtd.) Maxwell Kivihya: To me and Capt. Mutoro, it has been difficult for us to know how long it took to plan the coup because the information we have received, and having mentioned that I had seen Hon. Raila, Mr. Mak'Onyango and Prof. Otieno at Kamiti, I understood that they had hired a building on 4th Avenue Ngong' Road Nairobi to plan and carry out the coup. The period they took planning has not come to light particularly so as much as Senior Private Ochuka was brilliant, I have found it very difficult to believe that junior airmen of the rank of Senior Private would be planning and order a unit like Embakasi and Eastleigh for service men to take guns and go to town.

To be quite honest, I have never known the truth of who had hired Ochuka, financed him and gave him directions to carry out the coup.

The Acting Chair (Commissioner Namachanja): Thank you. Those are the clarifications I needed.

Commissioner Farah: Maxwell, my questions to you are more of clarifications. First of all, before I do that, I empathize with you because a highly trained engineer like you who was in Moi Air Base and who went up to his Air Force Commander and informed him that somebody has just told me there is this and then being ignored and dismissed and later on to go to a court of law to give evidence against him when he was imprisoned for four years. You should have been in the company of Leshan and Marende. I empathize with you.

For your benefit, I want to you to tell me about your recommendations. You said the victims confirm that all material times they were conscripted officers. English is not our mother tongue but I think you need to correct this because conscription is forced like some countries have it that everybody who has reached 18 years, it is mandatory to serve in the Armed Forces. The way I know, in Kenya, it was voluntary recruitment but immediately you are recruited, you sign a nine year contract if you are a senior private. If you are a commissioned officer, then you are commissioned under the Constitution where you are also under contract. You can say you were legally recruited and was under contract.

Maj. (Rtd.) Maxwell Kivihya: I concur with that correction. The only application of conscription here is all of us were imprisoned by 82 Air Force. We had never been enlisted by them---

Commissioner Farah: You can say, “We were recruited by the Kenya Air Force as a legal entity as per the Constitution”.

Before you were taken to prison, were you forcefully conscripted into the 82 Air Force?

Maj. (Rtd.) Maxwell Kivihya: I was not.

Commissioner Farah: Now I understand the way you used the word. We can correct that.

Maj. (Rtd.) Maxwell Kivihya: Yes.

Commissioner Farah: There are three judges you mentioned here; that is Justice Bosire, Justice Gicheru and another judge---

Maj. (Rtd.) Maxwell Kivihya: Justice Rop.

Commissioner Farah: Yeah. Did the three judges sit as Court of Appeal Judges or did they individually sit as High Court Judges to review your appeals?

Maj. (Rtd.) Maxwell Kivihya: They sat individually to consider and review each individual application. It was not a three-judge bench or panel.

Commissioner Farah: They sat as High Court Judges?

Maj. (Rtd.) Maxwell Kivihya: Yes.

Commissioner Farah: Not as the Court of Appeal?

Maj. (Rtd.) Maxwell Kivihya: No, Sir.

Commissioner Farah: Thank you very much. Those are the only two queries I had, but all of you who are seated here, I really empathize with the situation that you went through in view of the fact that, as you put in the memorandum, there were no hard facts available to anybody that you planned, took part and executed the coup.

Maj. (Rtd.) Maxwell Kivihya: No, Sir.

Commissioner Farah: And yet you suffered very badly. You said that you were not afforded legal representation. Does that mean that you were not accorded lawyers to defend you?

Maj. (Rtd.) Maxwell Kivihya: We were not accorded lawyers who could give us justice because Maj. Githiora and Maj. Mbewa were forcing servicemen and officers to plead instead of giving them just legal guidance.

Commissioner Farah: And they were the two armed forces lawyers?

Maj. (Rtd.) Maxwell Kivihya: Yes, they were the two armed forces lawyers.

Commissioner Farah: So, they were actually the prosecutors?

Maj. (Rtd.) Maxwell Kivihya: They were the prosecutors, investigators and the torturers.

Commissioner Farah: Therefore, they could not have been the defenders?

Maj. (Rtd.) Maxwell Kivihya: They could not have defended us and given us any justice.

Commissioner Farah: Thank you very much. That is all. I have no further question.

Commissioner Chawatama: You mentioned that when you were taken to Eastleigh, you saw bodies scattered. Could you just take us back to that place and just describe what you saw? How many bodies were there? Were you able to identify any body?

Maj. (Rtd.) Maxwell Kivihya: I could not identify any body, but at the guard room as I was brought in from Nanyuki under that high profile escort, I started seeing bodies naked and three of them were littered outside the gate. Their clothes had been removed and piled somewhere and they were covered with flies. Other bodies littered the guard room and the parking area. That is what I witnessed.

Commissioner Chawatama: Thank you very much. You also mentioned an interview in which you were called to be interviewed. Was that an interview just to find out information or was it a court martial?

Maj. (Rtd.) Maxwell Kivihya: It was an interview just to find information, because I was never court martialled.

Commissioner Chawatama: I think we should have received a number of documents from you. I do not know whether or not your colleagues were given any letters of dismissal, discharge or--- So, if those documents are available or if any of your members have those documents, I think it would be helpful. Are there any certificates that were used to discharge them? If people were paid, are there any documents that they received to show what was paid or what was denied? That would be helpful.

Thank you.

Maj. (Rtd.) Maxwell Kivihya: Presiding Chair, I have a letter of dismissal and my colleague, Capt. Mutoro, has a similar letter. Most of these servicemen who are with us here today, their documents were destroyed at Eastleigh , including their civil qualification certificates. There is only one document from Corporal Wanyonyi. He was given by Colonel Josephine and it was signed by Maj. Kwanda. I have that copy.

Commissioner Chawatama: Thank you. That would suffice.

Commissioner Dinka: Mr. Kivihya, thank you very much for the testimony. I just have a few questions to help clarify certain things. It would appear that the whole coup that happened in August was some kind of bad dream or nightmare. It appears that you, the good guys, were punished and the bad guys were rewarded. I am saying this because from your discussion with us, Gen. Kariuki and Lt. Wambari knew that the coup was going to take place that day because they were informed about it. He gave you instructions that nobody should discuss it. He went to court, was sentenced for four years, he came out, was reinstated and appointed a parastatal manager. The same thing happened to those who resisted and saved Eastleigh and Nanyuki Airbases from being destroyed. Those officers were not punished. On the other hand, the first Kenya Rifle Battalion which co-operated with the conspirators went scot free. The two pilots, Wanende and somebody else, went into exile in Dar es Salaam, came back and were rewarded. When you see these things, what do you think happened? I mean, it cannot be a series of mistakes all the way in the system of military justice. There must have been something. Why was it that those who actually wanted the coup to fail or did not participate in the coup were punished while those who did or helped the conspirators and so on were rewarded? I am not asking for your assessment.

Maj. (Rtd.) Maxwell Kivihya: From my own assessment, if I may cite one specific example. It is true that the wrong people were set free and the right ones were punished. For instance, if Maj. Mutua and I had not rendered redundant those jets that overflowed Nairobi – because there were two F-5s jet fighters flying and instructed to bomb Ulinzi House, Police Headquarters, GSU Headquarters and Langata Barracks--- First of all, I prevented it because I rendered all armament systems redundant. So, even if Maj. Mutua had the intention of dropping the bombs on those specific targets, the bombs could not have exploded.

The second consideration is that Maj. Mutua was escorted to Nairobi by Corporal Jeremani at gunpoint, but because Maj. Mutua is an experienced combat pilot and Corporal Jeremani was a technician, Maj. Mutua managed to maneuver the aeroplane to the extent that Corporal Jeremani could not know what was going on and where he was. This is an account from Maj. Mutua. He told me that because I was with him in jail at Naivasha and we were both dismissed from Kahawa Barracks. So, Maj. Mutua, who saved the Capital City of Kenya and my skill as an expert, rendering the F-5 fighter aircraft unable to release the bombs live and the patriotism and the doubting of taking over Government being announced over the Voice of Kenya (VoK)---So, the servicemen who were not members of the air crew because in the Air Force, it is only officers who go to combat while others play the support role, we felt that we, particularly in Nanyuki were unjustly treated for reasons not understood. Capt. Mutoro and I had been investigating the loss of rations involving Lt. Mwambura and we felt that Lt. Mwambura, whom we learned later had been assigned the task of maintaining contact with the plotters was officially tasked to maintain contact with the plotters. Capt. Mutoro and I felt that Lt. Mwambura was tarnishing our name and implicating us so that we do not participate, if we had been retained in the service, in giving evidence where servicemen rations had been lost. So, I felt that I was implicated by Lt. Mwambura because of having conducted the board of inquiry as the Chairman and Capt. Mutoro having arrested him in Nairobi for taking an imprest of Kshs20,000 and disappearing to Nairobi. Capt. Mutoro who was tasked to arrest him found him in Grogan Hotel, Nairobi, and arrested him. So, Lt. Mwambura maliciously ensured that we were kicked out of service so that he could escape being tried for misapplying troop's salaries and the rations.

Thank you.

Commissioner Dinka: Thank you very much. I have another question for you. Have you met with Brig. Kibwana and Maj. Musomba, who you say in the statement were appointed by President Moi to conduct investigations? Did you meet them while in custody?

Maj. (Rtd.) Maxwell Kivihya: While in custody, I was never visited by Brig. Kibwana or Maj-Gen. Musomba. What I do know and I have proof is that that Gen. Musomba was assigned to retrieve Moi from Nakuru and take him to Nairobi. He did that because he was in charge of the Western Command of the Kenya Army. During his Nairobi stay, he was appointed to be in charge of interrogation by Gen. Mulinge and it was confirmed by His Excellency President Moi. We got massive condemnation because of limited justice during the interrogation. Personally, being a senior officer like Brig. Kibwana and Gen. Musomba, they were highly prejudiced not to have met me to find out what I knew about the allegations made against me. In the Press – and I have said I have a copy – Gen. Musomba, who was in charge of the interrogation asserted and stated that three quarters of the Air Force personnel were not aware of the coup; only one quarter was aware.

Thank you.

Commissioner Dinka: Thank you very much. My last question, again, for my own clarity, is; you mentioned that when the Air Force officers who were incriminated appealed in court and the court decided in their favour that they be reinstated in the Air

Force, the Army intervened and made that decision of the court useless. My understanding is that there are three services; Kenya Air Force, Kenya Navy and Kenya Army, each independent of each other. How would the Kenya Army intervene to stop the Kenya Air Force from reinstating its former officers?

Maj. (Rtd.) Maxwell Kivihya: When the coup took place, first of all, the Air Force Commander who was Gen. Kariuki was kicked out. He was succeeded by Gen. Muhammed, who was an infantry officer in the Kenya Army. He knew nothing about Air Force operations because his duty was to defend the country on the ground and not in the air. He could be most incompetent to head a specialized fighting air force because he was an infantry soldier. I am sure Maj. Gen. Ahmed Farah would confirm that. He is now a general, taking over the Air Force command. Eastleigh Air Force Base was also taken over by another infantry commander, Colonel Kamunya; Nanyuki Air Force Base was also taken over by infantry commander, Colonel Chelagat. So, any instructions emanating from the Judiciary being handed over to be implemented were simply defied by those army officers who were heading the Air Force at that time.

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

The Acting Chair (Commissioner Namachanja): Mzee Maxwell!

Maj. (Rtd.) Maxwell Kivihya: Yes.

The Acting Chair (Commissioner Namachanja): On the story you have shared with us here on how you saved this nation, have you shared it anywhere else?

Maj. (Rtd.) Maxwell Kivihya: I have not shared it anywhere else. Just like I said, I was given orders, together with my colleague, Capt. Mutoro, that on being given Kshs50 to go home, we should not be seen anywhere near military bases. We should also not have any audience with civil leaders and if we do it, we were threatened that we would be sent back to custody and detained. I have not shared that story with anybody else and nobody has expressed interest to find out what happened to us to date.

The Acting Chair (Commissioner Namachanja): Most of the audience here are civilians. We have no idea of the impact, had you not sabotaged the bombing of the areas that you have shared with us. Can you, in a few words, just help us understand what would have happened, had those planes left the base and bombed the areas that were designated?

Maj. (Rtd.) Maxwell Kivihya: Thank you, Madam Acting Chair. As I said earlier on, I am an expert trained in that field both in the UK, America, Israel, France and India. So, I was an expert on aircraft weapons systems. I even had the pleasure to meet the general down at Mombasa when he was in the navy because any detachments involving fighter aeroplanes--- I was the first one because I was the one to arm the aeroplanes. Arming aeroplanes is an engineering operation and the pilot is simply an operator who releases the weapons by simply pressing a switch but he is conversant with the damaging and the consequences of the war head he is dropping. The war heads which Maj. Mutua was carrying on the F-5 jets was being deployed in ground attack. The ground attack role

would mean supporting the army and the navy and any other targets that might be difficult to be combated by the navy or the army. So, Maj. Mutua was carrying four 500 kilogramme high capacity bombs. To my knowledge and experience, if one of those bombs was dropped, for instance, at the Police Headquarters, it would destroy not only Police Headquarters but it would destroy Parliament, Jogoo House, Railways, where the American Embassy was and Hilton Hotel. It would also destroy even targets at Uhuru Park. That is only a single war head and he was carrying four! So, if he had co-operated with the plotters, first of all, with I letting the weapon systems live so that the pilot would drop the bombs--- After Maj. Mutua flew Corporal Jeremani to an extent he never knew where Maj. Mutua was, he dropped all those bombs on Mt. Kenya but they did not explode. So, these were weapons of very high destructive effect on ground targets. If the bomb exploded from the areas I have described, it would destroy every target within 500 meters range. So, if the four of them were dropped, I am sure the whole of Nairobi would not be there, and Maj. Mutua and I prevented it.

Thank you.

The Acting Chair (Commissioner Namachanja): Thank you. I have just been full of admiration as you have been sharing and thanking God that you did what you did. Thank you, Baba Mutoro, for representing others on this Commission but what I leave this place with now, is that we have unsung heroes like Maj. Maxwell, who saved this country and the rest of Kenyans have no clue about it. So, it is not by chance that you have appeared before this Commission but it is God's will that the truth may be heard. I have no further questions.

The Presiding Chair (Commissioner Shava): I just have two questions for Maj. Kivihya. You alluded to the relationship, at that time, between the Kenya Air Force and the Kenya Army. You said that there was envy on the part of the Kenya Army to dismantle the Kenya Air Force which had been built up over a period of ten years. Can you tell us a little bit more about the relationship at that time between the Kenya Air Force and the Kenya Army?

Maj. (Rtd.) Maxwell Kivihya: Thank you, Madam Presiding Chair. The Kenya Air Force, as you have clearly heard from Hellen, Capt. Mutua and Corporal Baraza and of course, Corporal Wanyonyi, was an elite service. It recruited officers who were highly educated. For instance, the cadre of members of air crew during our time - perhaps I did not mention that I was recruited into the Kenya Air Force in June, 1970 - I had Division 1 in the O-Levels. The ones that were going to the engineering department like me had Division 1. I did my A-Levels at Maseno but I was not admitted to the University of Nairobi because of reasons that were not clear because I had the qualification. So, I was absorbed into the Air Force and I was trained in the UK as an engineering officer in charge of aircraft maintenance and armament. I was recruited also to train in the United States because when President Amin threatened Kenya, there was no meaningful air force defense. So, Kenya went to buy fighter platforms from USA and included in their superiority the F-5 jets. People trained to maintain and fly those platforms required high educational level and one such example was Maj. Mutua, Maj. Marende, Capt.

Mugwanja, Capt. Nyamor, Capt. Baraza and Capt. Leperes. So, when it came to duties of defence, the Air Force was an elite organ; that was not taken kindly by the Army. For instance, the Air Force and the Navy recruited highly trained people as opposed to people with low education who were going into the Army because they were going to form infantry men. I have mentioned that Gen. Muhammed and Colonel Kamunya were infantry officers. Most of those officers did not have our level of education but they were heading not only the Army but the whole Ministry of Defence. So, when it came to Air Force matters and weapons systems, which is the back bone of defence, we used to leave Nanyuki and get attached to DoD Headquarters, to perform duties relevant to the Air Force needs. Similarly, the Navy used to do the same. This, as we observed, those of us who were interacting with the Army, the Army was feeling that if the services were made autonomous, we stood a better chance in terms of profession and leadership than them. That was causing a rift and deep seated resentment. So, when the 1982 coup happened, the threat to the Army was the Air Force based in Nanyuki because it was the only one which would have struck the army, of which 90 per cent was in Lodwar and other Army units based and scattered all over the country. So, as the Army was taking over control of the Air Force, they felt that they did not need us, the engineers and the air crew. The consequence was, as we left, all fighting platforms were grounded because they could neither be maintained or flown, a fact which we all know that Capt. Mutua and myself, that some officers had to be hired from the US Air Force and the Royal Air Force to come and fly on our behalf when the Army had made the mistake of sacking the locally trained and qualified people. That was the situation. There was, definitely, deep seated resentment.

The Presiding Chair (Commissioner Shava): Thank you very much for painting that picture to us. My next and final question was to Capt. Mutoro. You were experts in terms of welfare in the services, as you have said, within the Kenya Air Force, both before the coup and you are in a good position to explain to us what happened after. My question is to do with some of the things that were outlined in terms of availability of married quarters, salary levels *et cetera* and I am wondering about the purpose of the coup attempt by those junior officers; those few officers who decided to carry out those actions. Was there a relationship between the welfare issues and the action that was taken by those officers? Did you ever see any manifestation of discontent with regard to welfare of soldiers?

Mr. Gideon Mutoro: Yes, Madam Presiding Chair. About married quarters, what actually happened was that, I had been stationed in Nanyuki for some time before I was posted to the Air Force Headquarters. And as I said earlier on, I was the Families Officer in Nanyuki and we used to have what we called “COs Barazas; that is Commanding Officers Barazas”, where I used to address the officers separately, the Warrant Officers and Sergeants separately and servicemen. We used to address those people on different occasions and whenever we had those types of barazas, those questions used to come up from the servicemen, especially relating to the married quarters. They wanted to know what was actually happening about the married quarters. They also wanted to know about the low pay, because the servicemen were not provided with married quarters. They rented private quarters and yet, they were not being reimbursed. At any time, we had the

COs Barazas when I was in Nanyuki because I was like the special adjutant to the COs. So, I used to accompany the CO and when those things were being addressed, I used to take a very strong note on that. So, that is how it came to me that I was more conversant with whatever was happening, especially on the salaries and the general welfare of the servicemen.

Maj. (Rtd.) Maxwell Kivihya: Madam Presiding Chair, if I may amplify on it further, you will find that Senior Private Ochuka was living outside the Eastleigh Station and he was paying for married quarters out of his salary. Now, this is a manifestation that he was vulnerable to manipulation by any malicious plotters, such as the ones who plotted the 1982 coup. Secondly, because those people were living in Mathare Valley, places which are crime prone and they could access any meeting any time unchecked, as opposed to having been in the camp, then that living outside the station was a security risk to issues of defence. More so as I mentioned, I learnt that hon. Raila Odinga, Prof. Otieno and MacOnyango were implicated because they were using those servicemen. The servicemen were accessible because they were not living in confined areas and that was as a result of their welfare having been neglected.

Thank you, Madam Presiding Chair.

The Presiding Chair (Commissioner Shava): Thank you. Was there any manifestation of this discontent? Capt. Mutoro, you have said that you would accompany the CO and those would be the discussions whenever you were addressing those different cadres of officers. Was that ever, for example, brought to the attention of the base commander in a general meeting or to any other higher military authority in any general meeting? Was that something that was discussed openly, shown or demonstrated openly?

Mr. Gideon Mutoro: Well, with the general welfare, after having undergone those steps, it was always a common issue that whenever we had service commanders meetings or, for that matter, those issues or problems were being raised. Through the ladder, they were going up to the Ministry of Defence and, so, the effectiveness and the effects were supposed to come from the Ministry of Defence; so that, that could be corrected but it was not forthcoming. It took some time and there was no proper response but if there were, then they were very slow.

The Presiding Chair (Commissioner Shava): Thank you very much. I have no further questions.

Leader of Evidence, would you want to say something?

Mr. Patrick Njue: Yes, with our indulgence, Madam Presiding Chair. Mr. Kivihya, can you confirm if that is the memorandum that you have been reading from in your presentation this morning?

Maj. (Rtd.) Maxwell Kivihya: Yes, I confirm this is the memorandum I have been reading this morning.

Mr. Patrick Njue: And you would like it to be formally presented to this Commission as part of the record thereof?

Maj. (Rtd.) Maxwell Kivihya: I would like to present it to the Commission as part of the record.

Mr. Patrick Njue: Madam Acting Chairperson, could this memorandum be admitted?

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

Mr. Patrick Njue: The witness has also referred to certain documents in his possession. I wonder if these are documents, Mr. Kivihya, that you would like to share with us as well?

Maj. (Rtd.) Maxwell Kivihya: I confirm that Gen. Musomba said that three-quarters of the Air Force personnel did not know about the coup and that came out during their interrogation. I have a fresh copy which I would like to give in support and the information is reflected.

I also quoted that there were attempts by officers to appeal for justice. They were denied by the Army and were denied by the office of the Attorney-General. I have one such specific case to table.

I mentioned that Corporal Wanyonyi, after being released from jail, was given a document to take to the DC and in that document, he was supposed to have been paid. This has never happened and I table that document in support of it.

I also mentioned that Capt. Mutoro and I were sacked or dismissed from the Armed Forces by a memo. That memo was written to the Chief of Staff and the Secretary, Mr. Karunga who was an Under Secretary. That memo includes our names plus others. I mentioned that we are speaking for the whole country that we were being processed out on the decision of the Defense Council without having been accorded any hearing, charge or even told any mistakes that we made. I would like to present that memo there.

I would like to present that name because I have the dismissal certificate with me. It states in part; “---terminated due to being dismissed.” This is a very vague certificate because no mistake is cited and it confirms that I was wrongly dismissed. This is the original certificate and I request a copy to be made.

The other certificate I have is that of cadetship and Capt. Mutoro has it too. It shows that I was discharged from cadetship to being commissioned and I have a Presidential Commission patchment. It is also an original document and I request the Commission to make a copy together with the photography from State House.

I also brought with me papers showing that I am a qualified engineer. I do not find it necessary to table that.

The Presiding Chair (Commissioner Shava): I think that is an important document because of the testimony you gave us with regard to how you disabled the weapon. You could table it.

Maj. (Rtd.) Maxwell Kivihya: Fine. I will then submit it. It is also an original document and I want to preserve it.

The Presiding Chair (Commissioner Shava): Copies will be made and the original documents will be returned to you.

Maj. (Rtd.) Maxwell Kivihya: There is also an extract of the Armed Forces salary review which my colleague, Capt. Mutoro referred to. It gives a time table of the frequency within which the reviews were carried out after the 1982 Air Force.

Those are the documents that I have.

Mr. Patrick Njue: Presiding Chair, I ask that the documents be admitted as part of the record of this Commission.

The Presiding Chair (Commissioner Shava): The documents are so admitted. Is that all from you, the Leader of Evidence?

Mr. Patrick Njue: That is all.

The Presiding Chair (Commissioner Shava): Maj. Kivihya, I have heard you twice in response to questions regarding Private Ochuka, say that you do not think he would have been the brains behind the operation. In that context, you made reference to the Prime Minister hon. Raila Odinga and Mr. Mac Onyango and Mr. Otieno. For record purposes, what was the connection between those two groups of people?

Maj. (Rtd.) Maxwell Kivihya: There was hired accommodation on Fourth Avenue Ngong Road which was being used as the headquarters by the plotters. That command post implicated hon. Raila. Prof. Otieno was the land lord and Mak Anyengo who was a journalist was associated with the two. They tasked Ochuka to carry out the plot from that accommodation.

The Presiding Chair (Commissioner Shava): I would like to believe that you are aware that those allegations were also made in court but were not proved.

Maj. (Rtd.) Maxwell Kivihya: I am aware but I would like to say before this TJRC that the three implicated people, it appears hired very sophisticated lawyers that got them off the hook.

The Presiding Chair (Commissioner Shava): Thank you, Maj. Kivihya. I would like to thank all the witnesses this morning for their testimony. They are Maj. Kivihya, Capt.

Gideon Mutoro, Mama Hellen who is the widow of Edward Namasake and Corporal Olaimo Pascal Baraza.

The thing that ties your stories together is the issue of service and injustice. I see in this room, very dignified Kenyans. I see men who are ready to serve and die for their country. Instead of being thanked for that, we see individuals who have suffered mental and physical torture and anguish.

We thank all of you very much for your courage and effort to come before this Commission to say things which have not been said in public before. We recognize your contribution to this country. We also recognize that it has cost you very dearly.

We have taken into account all that you have told us and we have looked carefully at the kind of recommendations you made. We want to assure you that we take that very seriously. We salute your courage and consider all of you to be the unsung heroes of Kenya today.

Thank you very much.

We will reconvene at 4.00 p.m. to hear other witnesses.

[The Commissioner temporarily adjourned]

(The Commission resumed at 4.10 p.m.)

The Presiding Chair (Commissioner Shava): Welcome all of you to this afternoon session. The Leader of Evidence, who is our next witness?

Mr. Patrick Njue: We have memorandum from Sitatunga Farm.

(Mr. Francis Munoko took the oath)

Mr. Patrick Njue: Once again, state your full names, where you live and what you do for a living.

Mr. Francis Munoko: My names are Francis Munoko. I come from Kitale in Trans Nzoia East District, in a farm called "Sitatunga". I am a farmer.

The people I have come with from Sitatunga Farm are Moses Waswa, Mama Chelel and Christine Wamalicha. Others are seated in the forum. On my right, there are those who have come with me from Kitale. There is one from Liavo and others from Maridadi farms.

Mr. Patrick Njue: From the brief that I have, you are making a presentation on behalf of the Satunga Group. I believe you the input of those from Liavo and Maridadi farms. If you are ready, you could begin your testimony.

Mr. Francis Munoko: I live in Sitatunga Shirika Farm. My complaints, on behalf of the people of Sitatunga Farm, concern land grabbing. I was born in Western Province and I am 47 years old. I am a Roman Catholic. I went to Sinyerere Primary School and then Sitatunga Secondary School.

The Sitatunga Joint Farm is in Trans Nzoia East District, Kaplamai Division in Sitatunga Location. At the beginning of 1972, the Government of President Kenyatta announced through the administration that people who were poor and landless should go and register their names and that was done. Later in the year, the Government announced that those who had registered needed to look up their names at the DC's office through the Chief.

On 1st November, 1972 - 100 people who had registered their names were told to go to Maridadi Farm where President, Mzee Kenyatta gave out three pieces of land. The first one was Liavo, then Maridadi and lastly, Sitatunga. Those pieces of land were issued on the same day. The total acreage of the three farms is 8,293. Liavo's acreage is 2,023 and it was allocated to 150 people. Maridadi's acreage is 4,057 and it was allocated to 200 people. Sitatunga had 1,683 acres and it was allocated to 100 people. Out of the three farms, the Sitatunga people were allocated 1,683 acres. These are LR.NOs.5519 and 5520.

The following are the documents which show that Sitatunga was communal land. There is the letter of offer; a second letter of offer of two-and-half hectare; certificate of co-operative; the *Daily Nation* Newspaper showing Mzee Kenyatta giving out the three pieces of land; a master roll and maps of the land in its early form and as it is presently.

The following are the officers who worked on Sitatunga Farm. They are Mr. Joseph Lingere; Mathew Gichuri Gichuki and Joseph Gichogo. Others are Momanyi, Ooko, Mwaura, John Chege and Mukundi. Also on that piece of land, there were officers assisting in administrative work. There was an accounts clerk who was called "Charles Kelingei"; a secretary, Mr. Japheth Warunga and a store keeper, Mr. John Chelimo. There was a veterinary officer by the name John Wasike Masinde and Mr. Moses Waswa looked after the animals. He was taking care of the dairy cows while Mr. Napoo Raila looked after the pigs. The area settlement controller who was in the office of the settlement was called Kabwe. The second one was called O.J. Njungwa. The others were R.D.G. Wachira and Muhindi.

Later on, 52 of the 100 workers were working for a white man and 48 were out of the farm through registration as I had mentioned. Each person was allocated 2.5 acres when they came to Sitatunga Farm. With regard to the remaining piece, it was used to do other works such as planting maize, rearing cattle and pigs so as to create wealth for the purposes of repaying the loan that was used to buy the farm. The whole process went on for about 10 years to repay the loan.

Within the farm, we had 700 cattle, 124 pigs, 134 pots of milk, 14 milking pails, two pick-ups, three tractors, three trailers, three ploughs, two tillers, two planters,

refrigeration facility, three Lister engines for pumping water from the river, a fertilizer distributor, a small tractor of 135 MF and its sprayer and water distribution system whose pipes were destroyed and sold by the manager.

The farm was being managed by a committee and a manager under the care of the SFT, and according to co-operative rules. Work went on up to 1978 and officers from Nairobi, among them the Minister for Co-operative Development, the late Masinde Muliro; the Area Controller Officer, Mr. Njungwa; Rift Valley PC, Mr. Mathenge and others came and announced that we had completed repaying our loan.

Mr. Francis Munoko: Work went on until 1981 when it was stopped and the surveying work started. The remaining bit of the farm was divided into five acres each. Later on, members of the co-operative each added five acres; so in total, they had five hundred acres. The remaining piece of land was grabbed by the people who were working in the then Government of the retired President Moi. Nevertheless, members were followed up by the officers from the lands and settlement office and they were told to pay land rates for the extra five acres. That meant that they were supposed to pay the loan for the second time. That was among the injustices that were done to us. Our expectations and recommendations as members are as follows:

- (i) Members want their land to be returned.
- (ii) Hundred and six acres which were taken by GEM to be paid for.
- (iii) The land which was taken by the provincial administration, the hospital and the resources centres in the farm be paid for.
- (iv) The piece of land which had been set aside, members are requesting that that piece of land be returned to them because it was grabbed by Nzoia County Council.

I want to say more about the market. The market is the area that has brought a lot of problems to the point that we started running to different offices looking for help. We have written letters to different offices requesting for help so that the market piece of land of Statunga Trading Centre be brought back. The person who will explain this in detail and who was close is Mr. Benjamin Mburu - he is not here, but he is here with us; he is not sitting among the group in the centre. The land grabbers should pay for the land grabbed since 1982 to date because they have been living on the land which is not theirs without authority from the owners. Ministry of Lands should give title deeds at once after the land has been sub-divided.

The following are the offices which have received our grievances from the members of Statunga:

1. The Ministries of Lands and Settlement,

2. The Ministry of Co-operative Development,
3. The Deputy Prime Minister and Ministry of Local Government,
4. The Prime Ministers' complaints handling Committee,
5. The Kenya National Human Rights Commission,
6. The Kenya Anti-Corruption Commission,
7. The Legal Resource Foundation Trust, and;
8. The Truth, Justice and Reconciliation Commission (TJRC)

On the part of TJRC, I wish to request that, it would be good for us to get this chance to bring our grievance to your office. I am suggesting that you step in and help us.

According to the history of this farm, it was for the poor people and what is surprising is that now, it is for the rich people who came and grabbed the land. They were officers who had been seconded by the Government of President Moi and many of them were actually military people. It is surprising that they would come in Government choppers and land in that place. We thought that we were the beneficiaries; the poor people who worked hard and paid for the land but we did not know where they came from.

On the terms and conditions of membership to that farm, it had been clearly stated that Government officers at that time, were not supposed to be beneficiaries of that land. If you were a government officer and if you wanted a small piece of land like that, it meant that you would first resign from your job and then be given a piece of land. But what surprised us is that they came from nowhere and they settled in those pieces of land. They grabbed many acres and we do not know whether they paid the loan or not. They just came from nowhere!

So, we are asking the Commission to intervene before this matter goes too far because it has been the tradition that when we are approaching election time, many people use such chances to grab land and to destroy other people's property. Even in our place, we just keep pacifying the youth. Otherwise, if we left them, they would have invaded the grabbers land and taken it up. Many of them keep timing election time and get into vehicles or planes and they take off; they do not live there. So, there is fear in that area. We are asking the Commission to intervene to save the lives of the people, so that justice will be seen to be done.

The following are the mistreatments that we have gone through. The things which have hurt us more and retarded our development and which have impeded justices in the farms are: When people were working to pay for their loan, there were several women who were affected; for example, Ms. Billospio was bitten by a snake as she was working and

when she was taken to hospital, she got a little bit well, but later on, she became sick and passed away.

Secondly, during the time of selling maize, when we worked from 7.00 a.m. to evening, those who were working in the farms went without food. Because of that, it forced them to roast dry maize and some would eat raw maize secretly. If one was found or caught eating maize, she/he would be sent home and would not be paid for that day. Work was hard because people were given work in measures of three lines covering a distance of two kilometres. If you would not finish that portion, you would not be paid for that day. Because of struggling to finish those lines without food, especially lunch, one of the women by the name Miriam Wangui fainted. We tried to give her first aid before taking her to hospital and she was admitted for two days.

Another one known as Anyango Mpendo, she weeded and finished her portion but on her way home, while carrying firewood she had collected from that piece of land, she fell by the wayside at five in the evening and died on the spot because of tiredness and hunger. There was no work that was set aside for men or women. If it was uprooting trees, preparing the farm, both men and women did the same jobs. The payment was meager because we were paid one pint of milk and then, deductions made from our salary. The salary which we got would help us to buy soap, salt and other utilities and to repay the loan. People worked very hard because they expected to reap good fruits.

Kenyatta had given a warning to the people not to entertain laziness; he had said that all the lazy people should be sent away and the land be taken away from them. Inside the farm, there were many traditional trees and exotic trees. All of them were cut down and others were used to demarcate the land. There were those like the eucalyptus trees which were cut down by land grabbers.

When the surveyors came, the farms were demarcated into five acres and when the grabbers took their share, they took together all the five acres and roads which had been demarcated, hence making communication impossible going to the water wells which had been set aside. The grabbers also grabbed water wells; they took them, personalized them and gave them to the leaders of that time and hence, water from the wells did not help us. Because of taking our land away and giving us five acres only, many issues have come up. The population has increased and the farms are now small. It has been demarcated into small and little plots; therefore, there is hunger among the members.

The Presiding Chair (Commissioner Shava): May you, please, switch off your mobile phones!

Mr. Francis Munoko: The population has increased and the pieces of land are very small. We now have small and little settlements within the farms - the initial farms have been split into very small plots and hunger has struck the farmers because of the smallness of the land. Poverty has struck most families because they do not have places to till to provide for the many people who are increasing every year.

Diseases have increased and there have been many deaths as a result and about 51 of the members have already died through unexplainable reasons, especially those who had reliable information about the land. Education levels are very low because of inability of parents to pay fees. The Genuine members of the farm and the grabbers are living together in a situation of hatred and fear. There is a time bomb and anything can happen. Our children and our grandchildren have started engaging in criminal activities. I hope up to that point, the whole picture has been painted to you through the history and the injustices that the members have gone through have been equally explained.

Therefore, we are requesting the Commission to give us chance so that members who have accompanied me, especially the one who is facing me - he is a witness and he was the clerk of the dairy station. He worked very hard for a long time taking milk to Kenya Co-operative Creameries. He understands the history of the farm in detail and given his age and mine, it means that it is only through stories that I have been able to know all the information for I did not work with him. But the older people, the three people; the old man and the three ladies, practically worked in that farm. If it is possible, let them be given chance so that they can explain a little further exactly what happened.

Thank you.

The Presiding Chair (Commissioner Shava): Thank you very much. Leader of evidence, we may want to confer with the witness who has just spoken to determine what additions the following witness he has suggested, are likely to make and maybe, make suggestions to the panel how you would like to proceed in terms of witnesses and the oral questions.

Mr. Patrick Njue: The Presiding Chair and hon. Commissioners, the Witness, Mr. Munoko, has indicated to me that he does not feel that the old lady and the man right in front of us, will have anything new besides what he has already said, save for one witness whom he is referring to being in the crowd; one Mr. Mburu, who could, perhaps, shed more light in terms of the grabbing of the plots that were at the market place. It is my humble opinion that you can take the additional evidence of the said Mr. Mburu, upon your directions.

The Presiding Chair (Commissioner Shava): Please, proceed as suggested.

(Mr. Benjamin Mburu took the Oath)

Mr. Patrick Njue: Good afternoon, Sir?

Mr. Benjamin Mburu: I am fine.

Mr. Patrick Njue: Kindly, once again, for record purposes, please, state your full names.

Mr. Benjamin Mburu: My name is Benjamin Mburu. I live in Kitale, Trans-Nzoia East District.

Mr. Patrick Njue: What do you do for a living?

Mr. Benjamin Mburu: I am a farmer.

Mr. Patrick Njue: Mr. Mburu, have you heard what Mr. Munoko has shared with us this afternoon on Sitatunga?

Mr. Benjamin Mburu: Yes, he has talked about the grabbing of land that took place in 1982.

Mr. Patrick Njue: Besides what he has shared with us, he specifically said that there is an area of concern which you are well versed with and I think that is to do with the land at the market-place. Kindly, tell us about this in brief.

Mr. Benjamin Mburu: In June, 1978, two months before the death of the late President Jomo Kenyatta, officers from the Settlement and the Co-operative Ministries came to announce to our parents the good news that they had completed paying the loans.

On the same day, they advised the members to put aside certain sections of their land which would help them in future. First of all, they would build us a school in Sinyelele on 14 acres and a place for a Cattle Dip on five acres; the hospital on two acres and, lastly, a 20 acre-land to build a market.

So, I would like to talk about the market area because all the other things are in proper use and there is no problem. But because the market has brought problems, I will concentrate on it. When we finished paying the loan in 1978, we were told that the surveyor were coming to demarcate the land and give us each, our rightful parcels of land. We waited and the surveyors never turned up.

In 1981, many people came and grabbed the land where the market was supposed to be. It was taken by the county council in an unlawful way. In 1985, the one who was the Clerk of Nzoia County Council, Mr. Lamugat together with Sawe gave out that piece of land which was initially meant for the market to people from only one tribe and only four members of the farm were given. So, we were not happy and we start following up the issue of our market closely and in the 2002, we realized that the farm had been given to non-members and they admitted that they would return it to us. We have a copy of a document where the current Clerk, Mr. Ndakwa, openly admitted that the market has gone back to the members of the Sitatunga Co-operative. But if you come to the ground, you will realize that members have been given only half of the market and non-members still own the whole land. So, what we are complaining about is that the market should be given back to membership of Sitatunga Co-operative because we have documents showing that it is us who demarcated that piece of land and not foreigners.

Therefore, we are requesting this Commission - I have talked in brief because I had submitted a long statement. I have only said what I have briefly. I am requesting this Commission because we have tried to go to the County Council Clerk without success.

He still says that the land belongs to them. So, this has brought a lot of problems to the point that, the other day, we demonstrated to the DC wanting elections to be done because the out-going chairman, who is not there now, had also started colluding with the Clerk. Even there are two plots which were sold in order to sub-divide the market. What we are requesting is that, we are being told the market is in the county council but the Sitatunga co-operative money is being used to sub-divide the market land. When surveyor come to sub-divide the land; it is us who foot expenses of bringing him from town to the working place and back after buying him lunch.

When the first surveyor came to look at the four beacons of the field, he was paid Kshs45,000 from the co-operative. There is also money which we contributed from everyone who had been given half an acre; we were asked to pay Kshs9,000 out of which Kshs1,500 was to go to physical planning. The county council was supposed to take money to the physical planning department but after the money had been paid to the council, when the physical planners come to draw the map, the council said there was no money. We do not know what they did with the money we had contributed.

Again, they sold two more plots to get money to pay the physical planners to do the demarcation. I am requesting that the Commission assists us because justice has not been done as our money is being misused. We have gone to many offices but we have not been assisted. We have tried to go to the DC, the council, and several other offices. There was a press release which came from the Deputy Prime Minister, Musalia Mudavadi which said that, "there is no civil servant who is supposed to struggle for little pieces of land with poor citizens. But in this piece of land, the chief and the District Officer have been beneficiaries and, therefore, when we complain, they do not help us; instead, they threaten us. One of my relatives who had been struggling for the land was arrested for asking his rights. We also live in fear because any time, someone can come, knock your door and when you open for him, he can even harm you. Therefore, we are asking for help.

Thank you very much.

Mr. Patrick Njue: Thank you Mr. Mburu for that additional input and for keeping it brief. With the direction of the Presiding Chair, I will ask if we can put questions to the two gentlemen; Messrs. Munoko and Mburu for Sitatunga. Before that, perhaps, we should hear from Riavu (?) and Maridadi if that is okay.

The Presiding Chair (Commissioner Shava): Please proceed as you suggest!

Mr. Patrick Njue: Thank you.

Mr. Munoko, I have a copy of memorandum here with me that was presented to the Truth, Justice and Reconciliation Commission (TJRC) from Sitatunga Farmers Co-operative Society. You can look at it and confirm whether the issues therein are as you have presented them and that, indeed, that memorandum came from Sitatunga Community.

Mr. Francis Munoko: Yes, I have confirmed it is okay.

Mr. Patrick Njue: Equally, in your testimony, you have referred to certain documents; I have a letter of offer issued to Sitatunga Farmers Co-operative Society by the then founding President of this country. I also have a certificate of registration of Sitatunga Farmers Co-operative Society and a list of members' names of the said co-operative. Do you confirm that these are the documents you were referring to?

Mr. Francis Munoko: Yes, they are the ones I referred to.

Mr. Patrick Njue: Again, Mr. Munoko, in your testimony, you have referred to illegal beneficiaries from the said Sitatunga Farm. From the memorandum, I notice that there is an annexed list of 36 individuals. Please, confirm to me if that is the list of the individuals that you accuse or suspect of having illegally acquired land at Statunga farm. Perhaps, you can tell us the total number of the people.

Mr. Francis Munoko: The number is 36 people.

Mr. Patrick Njue: Does that reflect the individuals whom you have termed as the illegal beneficiaries?

Mr. Francis Munoko: Yes, I can see these are the illegal owners or unlawful owners; they are grabbers!

The Presiding Chair (Commissioner Shava): Could we please, have you repeat that; the statistics are?

Mr. Francis Munoko: The thirty six people are the unlawful owners; the grabbers of Sitatunga farm. I have a separate list of the real owners or the lawful owners of the farm and they are 100 people.

Thank you.

Mr. Patrick Njue: Together with the letter of offer from the then President; you have also said or talked of the newspaper cutting referring to the issuance of land by the late founding father of the nation to Sitatunga. Could you confirm that to be the newspaper you are referring to?

Mr. Francis Munoko: Yes, I have confirmed it is okay.

Mr. Patrick Njue: Would you want to present all of these documents formally to this Commission for record purposes?

Mr. Francis Munoko: Yes, I would wish to present these documents to the Commission to help the genuine land owners follow up the matter.

Mr. Patrick Njue: Equally and perhaps, Mr. Mburu has also talked about the land at the market place that was allegedly given back by the Nzoia County Council, which he says was not the case--- Indeed, it is a newspaper cutting from the *Daily Nation* of Thursday, 18th 2010, from the said county council, claiming that they had returned the illegally acquired land, which Mr. Mburu says is not the case.

Mr. Francis Munoko: I can explain a little further on that issue. I can see they had put this in the headlines.

This newspaper was of 18th of November, 2010 and it says: “Council gives up illegally acquired land.” This is the market area that we are talking about. In short, they are saying that they surrendered land back to the Sitatunga market area. But if you go to the ground, they have not surrendered it because you can find the area councillors have been given plots there. The chief, as you have already been told, has a plot there. So, this is just a cover-up story. I know that on the ground, nothing has been done.

Mr. Patrick Njue: Mr. Munoko, lastly from me, what are the representative tribes that we have at Sitatunga Farm?

Mr. Francis Munoko: The tribes that are represented in Sitatunga Farm are almost from all the Kenyan tribes. The tribes that are largely represented are: The Kikuyu, Luhya, Kalenjin, Luos, Turkanas and Teso, respectively. There are other small communities whom you can find one or two people from the Pokot *etcetera*. So, many communities are represented there; it is actually the true face of Kenya.

Mr. Patrick Njue: Thank you for your testimony and further investigations will be conducted and appropriate remedy found for the people of Katunga. Before I hand over the witness to you, I would like to ask that these documents be admitted as a record of the Commission.

The Presiding Chair (Commissioner Shava): It is accepted.

Thank you very much for your testimony. I have two questions: The first question is on the letter of offer. I observed that there was a letter that was sent to the Settlement Fund Trustees. Who were these trustees?

I have been guided that this is on another piece of land. I will ask the question regarding the demand notice. I do not know whether the Leader of Evidence has that demand notice dated 25th October, 1999. Does the witness recall seeing a demand notice from the District Land Adjudication and Settlement Officer?

Mr. Francis Munoko: Yes.

The Presiding Chair (Commissioner Shava): What I wanted to find out is whether other members of your scheme received such demand notices apart from Jason Kisia? Did any other member receive a demand notice like this?

Mr. Francis Munoko: Yes. There are many people who were given that notice.

The Presiding Chair (Commissioner Shava): The notice seems to suggest that there were some payments that were not made and that there was a breach or default. In your testimony you said that as far as you know, all the payments that were due were paid. Is that so?

Mr. Francis Munoko: According to my evidence, in 1978, officers came from Nairobi and said that members had finished paying their loans. In 1982 it was announced to us that there was a balance of about Kshs400, 000. I do not think that we owed them money. Members had paid up their loans and some had even overpaid.

The Presiding Chair (Commissioner Shava): Were you given any documents by the people who came from Nairobi who said that you had finished paying off the loan?

Mr. Francis Munoko: They did not give us any documents. They came with them but they just read them to us and went back with them.

The Presiding Chair (Commissioner Shava): I want to seek clarification on the total number of people who were given the land and were not members.

Mr. Francis Munoko: They were about 48 people.

The Presiding Chair (Commissioner Shava): Do you have their names?

Mr. Francis Munoko: Yes. I will read them: Brigadier Lazarus Sumbeiywo, who got 125 acres in plot number 257, 258, 259 and 260. Mrs. Elizabeth Kegode, she was a Secretary in the Office of the President, got 125 acres plot number 92. Mrs. Filgona Okundi, who was the managing director KPA has 80 acres plot number 74. There is also Brigadier Nyager who got 85 acres plot number 131 and 121. Nicholas Wambugu, lecturer in Moi University got 70 acres plot number 118. Major Maloba who was a navy officer got 65 acres plot number 100. Samuel Mutari, former Member of Parliament Kitutu Chache got 60 acres plot number 261. Captain Rono who retired at the rank of captain got 65 acres plot number 11. John Kimareng, Estate Manager – Ministry of Lands got 70 acres plot 125. Joshua Kegode, got 25 acres in plot number 116. Tom Imbuaga, Settlement Officer – Ministry of Lands got 17 acres plot number 74. Pius Chelimo, Kenya Ports Authority (KPA) got 15 acres plot numbers 41 and 8. Peter Tarus got 10 acres plot numbers 32 and 33. Cyrus Ruto, Ministry of Agriculture, got 10 acres plot number 16. Mary Cherotich got 5 acres plot 156. Chebii Chemweno got 10 acres in plot number 155. Kosgey who was in the army got 5 acres plot number 13. Johnstone Ashimene who retired from the military got 5 acres plot number 44. Oluoch, Weights and Measures officer got 5 acres. John King'atha, Settlement Officer got 5 acres plot number 31. Joyce who was an advocate got 5 acres plot number 123. Johnson Nyamiaka got 5 acres plot number 41. Charles Kolongei got 5 acres plot number 41. Joan Chelimo got 5 acres plot number 41. Mrs. Lopokoro got 5 acres plot number 41. Joyce who was in the

army got 5 acres plot number 7. John Bosire who was a teacher got 5 acres plot number 41. Rhoda Samson got 5 acres plot number 88. Sitati got 5 acres plot number 157. William got 5 acres plot number 122. Okanda who was a police officer got 5 acres plot number 112. Joseph Gichugu got 5 acres plot numbers 195 and 196/255/21/158/171/172/172. Mwangi Kabura got 5 acres plot number 18. John Marita who was a teacher got 5 acres plot number 41. Cyrus Wanangwe got 6 acres plot number 124. Elizabeth Nyaguthie got 6 acres plot number 124. Wycliffe Werunga got 6 acres plot number 124. Tom Wekesa got 6 acres plot number 124. Atoti Marko got 6 acres plot number 124. Maasai got 6 acres plot number 124. David Loroo got 6 acres plot number 124. John Kimaru got 6 acres plot 124. Sylvester Keitang, Council Clerk Kabarnet got 5 acres plot number 15. Saiwa National Park 106 acres plot number 12. Sylvester Keitang Council Clerk Kabarnet again got 5 acres plot number 15. I think this is a repetition. That is all I have.

Commissioner Dinka: Thank you very much, Mr. Munoko and Mr. Benjamin Mburu, for your testimonies. I have some questions just for clarification. When the surveyors came, did they survey your land? Was it being surveyed as your land or were they surveying it to give to the big officials?

Mr. Benjamin Mburu: After demarcating the land in 5 hectares they went back. That is when the officials came and started sub-dividing it in five acres per person depending on the acreage that one wished. Even the roads that had been left out were joined because they wanted 100 acres.

Commissioner Dinka: If you were given five acres of land each at that time, it would have come to about 500 acres. That means you would not be utilizing the whole 2000 acres. Is that correct?

Mr. Benjamin Mburu: That is correct.

Commissioner Dinka: So, what the big people came and grabbed was out of the 500 acres allocated to you?

Mr. Benjamin Mburu: Yes. That is correct.

Commissioner Dinka: When you say that you paid for the whole lot, do you mean you paid for the entire 2000 acres or only for the 500 acres?

Mr. Benjamin Mburu: Let me clarify something. In our farm it was 1683 acres and we paid the debt for 6 years. That is when the officers came and said that the surveyors will come to demarcate the land for 100 people but they did not come immediately. They came later in 1981.

In 1989 the former President, Mr. Moi came to St. Joseph's School and said that there are three farms under co-operative in Trans-Nzoia and that people should be added five acres more for farming and the rest should remain under the co-operative. That gazette

notice was issued and we have a copy which we have given to the TJRC. The gazette notice shows that after finishing paying the loan we were supposed to be given the whole land but we were only given five acres and the other one remained under the co-operative.

Commissioner Dinka: I understand that the former President Mr. Moi pronounced that, but my question is; how many acres did you pay for?

Mr. Benjamin Mburu: We paid for 1683 acres.

Commissioner Dinka: The other question is; how many acres were under the council?

Mr. Benjamin Mburu: It was 20 acres.

Commissioner Dinka: The council is talking about 20 acres. Would it be sufficient?

Mr. Benjamin Mburu: It could be correct.

Commissioner Dinka: Are you saying then that the council never gave you back any of the land that they had grabbed?

Mr. Benjamin Mburu: They did not return the land. It was still under the council.

Commissioner Dinka: Was it the whole piece of land?

Mr. Benjamin Mburu: It was not all the 20 acres. Some members were given part of it. There are other people from outside who got plots including administration police officers. They were allocated two and a half acres and also the dispensary was allocated two acres.

Commissioner Dinka: How many acres are you still demanding?

Mr. Benjamin Mburu: The land has not been demarcated. We want to return all of it so that we can sub-divide it by ourselves. We do not want it to be divided by the council.

Commissioner Dinka: You said that you have been given some land back. So, how many acres have not been given back?

Mr. Benjamin Mburu: It is about 60 acres.

Commissioner Dinka: My last question is; there are people who came and grabbed your land, have they developed it or is it still lying idle?

Mr. Benjamin Mburu: The land is being used by those people who took it away from us.

Commissioner Dinka: Which year was that?

Mr. Benjamin Mburu: That was in 1982.

Commissioner Dinka: Thank you for your testimony. I have now understood how the situation was.

The Presiding Chair (Commissioner Shava): I have a follow up question. You said that each society member was given two and a half acres to settle on?

Mr. Benjamin Mburu: Yes. The remaining land was being used for livestock and pig farming.

The Presiding Chair (Commissioner Shava): Is that how you were using the land?

Mr. Benjamin Mburu: No.

The Presiding Chair (Commissioner Shava): Let me repeat my question again. You said that each society member was given two and a half acres which they settled on; what happened to the remaining acres? Was it being used for development? I have seen that you had 704 heads of cattle, 224 pigs and other assets like cars and tractors. Were these things on the farm that was later grabbed?

Mr. Benjamin Mburu: Yes and the money that was being generated was being used to pay the loans.

The Presiding Chair (Commissioner Shava): Is it true that this land was not in use at the time it was demarcated and given to other people? When the surveyors came they demarcated the land and sub-divided it for those people you have mentioned. What did they find on this farm? Was it lying fallow or was it being used by the society members?

Mr. Benjamin Mburu: When the land was divided to the society members, they were not allowed to continue farming on the remaining one. They were told that if they speak, they will be removed from that place and taken to a different place. So, everybody was in fear. This was in 1981 when demarcation had been done.

The Presiding Chair (Commissioner Shava): You are saying that when the demarcation had been done you were told not to do anything on that farm. Which year was that?

Mr. Benjamin Mburu: It was in the same year that the land was demarcated. Our parents were told that everybody should go to the five acres of land and when they complained about the remaining piece they were told not to say anything. That was in 1981.

The Presiding Chair (Commissioner Shava): In 1981 before you got a report that you could not use the land, were you using it. If so, how were you making use of it?

Mr. Benjamin Mburu: Before we were stopped from using the land, it was being used for agricultural production.

Commissioner Dinka: You mentioned in your memorandum that you had 786 heads of cattle, 628 pigs, two cars and four tractors. When the land grabbers came did they also take these assets together with land or what happened?

Mr. Benjamin Mburu: When they came they took the assets. There is a list of how they shared the property. Some of them took 10 or 15 cows but for us we were given one cow each. Cars and other assets had already been sold earlier by the managers of the farm.

Commissioner Dinka: How did those people who grabbed your land and took away the cattle move them away?

Mr. Benjamin Mburu: They took only the cows but the pigs had been sold by the last manager and the settlement officers. It is the same managers who gave them the cows.

The Presiding Chair (Commissioner Shava): You were saying that the cows were given to them; but were they for the society or for the government.

Mr. Benjamin Mburu: When we were given that land in 1972, it was under the settlement with a manager who was being paid by the government. It was supposed to be like that until we finish paying. After that, the management committee was supposed to be constituted to continue with running the farm in partnership with us but when the grabbers came the other manager was still there. He was being paid by the government and he is the one who was distributing the cows.

The Presiding Chair (Commissioner Shava): Was the property on the farm under the ownership of members of the society or the government?

Mr. Benjamin Mburu: It was for the members of the society under the Settlement Fund Trustee. This is a body that was requesting for loans on behalf of farmers who were supposed to pay for it. Even the list of the assets that were taken is here. The cows were 704, 224 pigs, 37 jerry cans and 14 pails, one vehicle, three tractors and three water pumps. Dr. Wambugu took 15 cows, John Kimareng 15 cows, Lazarus Sumbeiyo 15 cows, Mr. Rono took 15 cows, Philgona Okundi took 15 cows, and Samuel Mutari took 16 cows, giving a total of 106 cows. Mr. Kabue who was the area controller took 10 cows. The Settlement Officer, the name is not mentioned here, took 10 cows. Mr. Gichuki, the veterinary doctor took 10 cows. Mr. Macharia the settlement officer took 5 cows. Manager of Emoru took five cows, Mr. Wairugu took 15 cows and officers from settlement took 55 cows. Some 242 cows were also taken to pay the loan. They were 242 cows. The Kitale prison took 15 cows. Ole Kadong ADC took 15 cows. The total came to 272 cows. The manager sold 80 cows for a cheap price.

The Presiding Chair (Commissioner Shava): Do we have that list in our file?

Mr. Patrick Njue: Madam Presiding Chair, I would like to request that the file be part of the record of this Commission.

The Presiding Chair (Commissioner Shava): Yes, the document is so admitted.

I have one question to Mr. Benjamin Mburu; you have given us one statement of how many cows there were, who bought and how many each bought. So, where did the money go?

Mr. Benjamin Mburu: The money was taken by the management committee. They are the ones who know where the money went. The manager was not even able to give the value of the property. We did not even know how transactions were being done.

The Presiding Chair (Commissioner Shava): Is it true that the same strangers came on your land and were given title deeds and that the government representative was the one managing the farm and your representative was kept in the dark?

Mr. Benjamin Mburu: At that time, our parents were illiterate and they were afraid. For example, my colleague was working in the dairy farm section but when he complained about something, he was transferred to another farm because he was seen as someone who wants to know too much.

Because they were seen as people who very much wanted to know what was happening. The secretary is alive. He can talk.

The Presiding Chair (Commissioner Shava): Who are you talking about?

Mr. Benjamin Mburu: Moses Waswa.

The Presiding Chair (Commissioner Shava): Mr. Waswa, we are going to ask you to give your statement to our statement takers, so that it can form part of the record of the Commission. We have been told that you are an expert in the field in which you were working, and you can enrich the story that has been given by the representatives who have presented the memorandum that you all together crafted.

We have no further questions for these two witnesses. Leader of Evidence, how would you like to proceed?

Mr. Patrick Njue: Hon. Commissioners, we had representatives from Liavo Farm and Maridadi Farm, whose issues are more or less similar to those of Sitatunga Farm. With your direction, we could take them all.

The Presiding Chair (Commissioner Shava): It would be fair to ask one representative from each of those societies to come forward and speak very briefly, just to let us know whether the issues that have been captured in the case of Sitatunga Farm also capture

their issues, and if there is anything special or specific they would like to add about their own particular cases. You can call one representative from each of those two societies.

Mr. Patrick Njue: We are guided.

(Mr. Stephen Kamau Ngugi took the oath)

Mr. Patrick Njue: Mzee, once again, state your names; tell us where you live and what you do for a living.

Mr. Stephen Kamau Ngugi: My names are Stephen Kamau Ngugi. I am an elderly person. I am a farmer in a co-operative society.

Mr. Patrick Njue: Have you heard what we have heard this afternoon from Mr. Munoko and Mr. Benjamin Mburu on Sitatunga Farm?

Mr. Stephen Kamau Ngugi: Yes.

Mr. Patrick Njue: On your part, coming from Liavo Farm, are your issues similar to those of Sitatunga Farm?

Mr. Stephen Kamau Ngugi: They are similar in certain aspects but different in other aspects. For example, the acreage, number of cattle and pigs and number of vehicles are different. Also, we have a generator, whereas they have tractors. We are a bit different.

Mr. Patrick Njue: Kindly, present the case of Liyavo, especially the issues that are considered of concern to the community at Liavo, of course touching on the issues that you have said are a bit distinct from those of Sitatunga Farm.

Mr. Stephen Kamau Ngugi: I want to start by saying that I am a member of that farm. I was elected as the chairman of Liavo Co-operative Society. Therefore, in addition to speaking as a member of the co-operative society, I also represent the society as their chairman.

The farm was registered as a co-operative society limited on 1st April, 1972 under Section 7 of the Co-operative Societies Act. We have a copy of the certificate of registration, which is Certificate No.2040.

Liavo Farmers Co-operative Society has an average acreage of 2,802 acres or 1,123 hectares. Its number is 5751, and is in Trans Nzoia County, Kwanza Constituency, Kapsitis Division, Kapsitis Location within Rift Valley Province.

This farm was demarcated into small sections for 150 families living there as squatters. That farm was given to us by the late President Jomo Kenyatta, when he was the President of the Republic of Kenya, on 1st November, 1972. It was then under the Ministry of Lands. It was registered under the Lands Act as LR. No.281. I have a cutting

of *The Daily Nation* newspaper of 2nd November, 1972, which I will show to this Commission. The cutting shows that the late President allocated 8,293 acres of land to people who could not afford to purchase land anywhere.

After allocating each family two-and-half acres, those people worked there for nine years, paying the loan. It was a debt we could not pay off easily, but we worked for eight hours in a day. We used the land to raise livestock, including pigs. We also cultivated maize, wheat and other crops. We embraced the spirit of a co-operative society to bring together the 150 families. At that time, it was Shirika Co-operative Programme. We have a copy of the letter showing the acreage of the land. This matter was also mentioned at a rally in Nairobi on 8th June, 1973.

The land was registered by the then Settlement Officer, Mr. R.D.G. Wachira. He was the one who signed on behalf of the Government. We had 786 head of cattle and 630 pigs. We also had a maize plantation. All those assets were sold to pay the loan that was used to buy the land. In 1978, President Kenyatta died, after which former President Moi took over. At that time, we took information to him, that we had been paying the loan and requested him to direct the Government surveyor to demarcate the land amongst the 150 families, who owned it. He agreed to our request. He said that the surveyors would come.

After four years, the surveyors came and demarcated the land into five-acre plots. When we asked why, we were told to keep quiet. Those who were in Government during that time were intolerant to divergent views. You could not say anything. They could even follow you at night and kill you. So, you would be told to keep quiet. We were told that we could be thrown out of that farm, and that the only thing we could do was to keep quiet.

So, the surveyors sub-divided the land into five-acre parcels to settle the members of the society, leaving a balance of 2,050 acres, which was sub-divided and dished out to high-ranking Government officers. An example of those persons is somebody who is largely known by the name of Bethuel Kiplagat. He is also in Liavo Farm. He has 120 acres. That is shamba number one in Liavo Farm.

When we tried to defend our rights, we were told that we were not allowed to do so. Probably if we had continued complaining, we could have been beaten. For instance, I was beaten up. I was living in Nairobi, and I knew that the law gave me the right to own what belonged to me. I was beaten up for asking what was happening. I was not given any reason.

I want to prove that when Liavo Farm was sub-divided, it was not only Bethuel Kiplagat who got some land there. I have a list of other people who were given land on Liavo Farm, which I am going to show the Commission. There are 45 persons who benefitted from this land. These are persons who were held high offices during the reign of former President Moi.

Mr. Bethuel Kiplagat, who was given 110 acres, was a former United Kingdom ambassador; Zackary Onyonka, who was given 120 acres, was a former Cabinet Minister; Mr. A.C.K. Tororei, who was a former Commissioner, was allocated 50 acres; Dr. Mukasa Mango, who was also a former Minister, had 50 acres; John Kosgey, a former Trans Nzoia Settlement Officer, has 50 acres; former Director of Kenya Seed Company Limited, Michael Sang, had 50 acres; former secondary school teacher, Francis Cheregon, was given 50 acres.

A former Provincial Commissioner, Nyanza, Mr. Joseph K. Leting, was given 50 acres; Mr. Enock Kigen, a former DC, was given 50 acres; Mr. Fred Marika, who was a university lecturer then, was given 30 acres; Mr. Michael Cheserem and Jimmy Kangogo were given 30 acres each. A former councillor, Mr. James Tirem, was given 30 acres. A former ADC Manager, Mr. John Bore, was given 20 acres. Ms. Milka Anyon, wife to a former ambassador, was given 20 acres. Michael Maina, a former ambassador to Japan, was given 20 acres. Mr. Benjamin Kipsang, former Chairman of the KGGCU, was given 20 acres.

Mr. Ruben Chesire Seruto was given 20 acres. A Mr. James ole Siola, whom we do not know what public office he held, was given 20 acres. A Mr. John Bakeba, whom we do not know what public office he held then, was also given 20 acres. Andrew Lisika, whom we do not know what office he held, had 20 acres. Ruben Katam was also given 20 acres. John Osuko and Henry Sigan had 20 acres each. Benjamin Katam, a former chief in Marakwet District, was allocated 20 acres. Paul Seruto was given 20 acres.

We do not know who he was. Joseph Kangogo, a former councillor, also got 20 acres. Daniel Heho, a former Manager, Riago, got 20 acres. Erastus Nanja, Peter A. Manyara, R.A. Ramie and Nahashon Kague had 20 acres each. Osolo Obayo, who was Personal Secretary to Mr. Nyachae, had 10 acres.

Others who got land in our farm are Jonathan Osiemo, Begat Mukuna, William Keitany, Korir Chirchir, Simon Rebokoe, Philip Komen, Steven Shugut, Dr. Watid, George M. Mwalo and Julius M. Renyeri.

Those 45 people were brought by the Government and given land in that farm. These we people we did not know before. The land was paid for by us for a period of eight years.

In 1983, they wrote and informed us that we should start paying again for land in that area. As of now, we are paying close to Kshs80,000. We initially paid for the land, and we are now paying for it again.

We have documents to prove ownership of the land, which I would like to mention quickly. We have a certificate from the Co-operative Department then, which shows that we were registered as the members who were working in Liyavo Farm. The certificate was well written and stamped in 1971. We have submitted a copy of the same to this Commission.

We also have the letter of offer, which was given to us by the late Jomo Kenyatta. The letter shows that the land was officially given to us. We did not grab the land. The land was given to us officially as stated in this letter, which partly reads:-

“I, Mzee Jomo Kenyatta, CGH, MP, President of the Republic of Kenya, offer the Liyavo Co-operative Society Limited---“

Hon. Commissioners, this document proves that we got this land officially and legally. As the chairman of our co-operative society, I tried to investigate with a view to establishing whether the land grabbers who invaded our farm had a letter like this one from Daniel arap Moi, who was the President then. They told me that they did not have any letter. That proved that we got this land legally.

We also have another document showing the terms and conditions of offer. This document is a bit long but it explains things to the management committee. These were the people who were supposed to be together with the manager, who oversaw the sale of the cattle and established how much money was raised and how the money was used to pay the workers and meet some other expenditure.

I was in that committee. When we tried to peruse through the documents, they stopped us. They said that if we tried to know more, they would sack us. They never wanted anybody to peruse through the records. So, the terms and conditions say that anybody who had no land rights would not be given land in that area.

The Presiding Chair (Commissioner Shava): What is it that the members have lost? What have they been cheated on in terms of assets? Are there any lists that the association might have, which would be useful to us in determining how we can go about tracing what has happened to the land and the assets?

Mr. Stephen Kamau Ngugi: We have some papers. I will ask the secretary of Liavo Co-operative, Mr. Erastus Muringi, who is also here, to show you all those documents. If you allow me, I will ask him to come and prove matters, one by one, so that we can be well understood.

I have been informed of something very important, which is that I have to explain what we lost. We lost 2,050 acres of land to the people who came and grabbed it. So, we have lost that land even though we had paid for it.

Secondly, we lost more than 700 head of cattle, which we had bought through loans. The cattle were later on given to land grabbers, who were the businessmen who were selling the livestock to slaughterhouses. We also lost 630 pigs, which were sold off.

We lost four tractors we had bought for use by the co-operative and farmers who were within the farm. We had four generators which were pumping water around the farm. Those generators were sold by the Settlement Manager, who was there at the time. We

also lost two trailers which were in the farm. We have papers which prove who sold them and where they are.

Our people who bought the land never got it. They were mistreated. Others just died. They died poor because their 2,050 acres of land had gone to grabbers.

We want this Commission to help us get back our land, as a co-operative. We have tried several times without success. If you ask a person who grabbed your land to give it back to you, he will not say anything. However, when you leave, he will ensure that you continue being mistreated.

We want the co-operative society to be given back its 2,050 acres of land. We also want to know where the money that was realised from the sale of the assets of the co-operative society went to, and who was in charge. The land was distributed to other people.

Another problem is that, personally, two months ago, I paid a total of Kshs33,000, and they still need Kshs41,000 from me. This shows that I am paying for that land again. I do not know how many times I am going to pay for that land. Therefore, I would like the Commission to help us establish the actual amount of money that each farmer is supposed to pay. This is because the debt seems to increase every now and then.

Within Liyavo the Farm, there were 15 acres of land we had set aside for the development of a shopping centre. We set aside that land for development. We sat with the local council and agreed. We have, however, seen the Clerk to the Council come and cultivate the land. The people were annoyed. We, therefore, decided to use half of it and build a school, and the remainder was to be used for development of the shopping centre. However, that eight-acre piece of land has been subdivided amongst 45 of our members.

The area councillor at that time intervened. When we took the list to the County Council, he followed the list there and added 19 more people, whom he said should also benefit. We want that shopping centre to be returned to the co-operative society because those people had no right to get land from there. Those people were not members of the society. They were not local people either. They were people whose origin we do not know. As soon as they were given the plots, they sold them off. I have a photocopy of a document which shows who was allocated what.

The councillor grabbed 19 plots, which we want the Commission to assist us recover. We asked him to surrender those plots back to us but he refused. So, we are asking the Commission to help us recover our plots. The 45 plots could not be shared out amongst the 150 members of the society but the councillor grabbed 19 plots. We are, therefore, requesting this Commission to help us by establishing the truth of these matters, so that we can get back our plots.

Hon. Commissioners, we have more issues of similar nature, which I do not want to mention. We have a letter here on those issues, which we addressed to the KACC. We also have a letter addressed to the Minister for Lands, Hon. James Orengo, by which we

have informed him about the same issue and what happened. The Minister said that he would come to see the land. Unfortunately, he has not honoured his promise.

I want to thank the Commission for giving me this opportunity. My brother here has something to tell the Commission. In case I have forgotten something, he can tell it to you. As I said, I do not have formal education. If I were educated, I would have read out the documents. Since the Commission has already heard evidence from Sitatunga Farm and also Maridadi Farm, I would like my colleague here to present our bit, so that you can see how our information relates to that given to you by the other two gentlemen.

Hon. Commissioner, I request that my Secretary be allowed to add something to what I have said.

Mr. Patrick Njue: Mr. Ngugi, in my view, you have been clear on your memorandum. There is much detail you have not talked about, but which is contained in the document you are holding. I am sure that when you present that document to this Commission, we will have a good opportunity to go through all these documents and then appropriate findings will be made. So, would you wish to present the additional information, in terms of the booklet that you have, to form part of the record of this Commission?

Mr. Stephen Kamau Ngugi: I just want to talk about the mistreatment that we received as we were working in that area.

Mr. Patrick Njue: Mr. Ngugi, please, address yourself to my question. Maybe, the interpretation was wrong or you did not get it quite clear.

Mr. Stephen Kamau Ngugi: Yes.

Mr. Patrick Njue: I will now hand you over to the Commissioners for them to ask a question or two for you to clarify your testimony. Presiding Chair, maybe, you could admit the witness' memorandum.

The Presiding Chair (Commissioner Shava): The memorandum is so admitted. Are there any questions, fellow Commissioners?

Commissioner Chawatama: I have two simple questions. First and foremost, did you also have trustees in place?

Mr. Stephen Kamau Ngugi: From the beginning, this farm was called Liavo Co-operative Farm. So, it had trustees.

Commissioner Chawatama: Who would have kept the records for the loan repayment?

Mr. Stephen Kamau Ngugi: There was the Manager, who was appointed by the Government to help us do that work. He was the one who kept the records.

Commissioner Chawatama: Did you ever meet, so that this Manager could account to you?

Mr. Stephen Kamau Ngugi: Yes, we had nine people who were appointed by the President. However, when we started making follow ups, they started causing conflicts. So, because of the conflicts, we decided to keep our distance. Those people joined hands with the area Settlement Controller and the Manager. So, if you said anything, you would be told: “You will be moved away from the shamba”. We were given five acres each and since we were very poor, we could not defend ourselves. That is the issue regarding the Manager. We have other documents by which we were told that the money was going to the bank.

We were being told that the money was going to the bank, but we were not supposed to know how much it was and what the money was doing. He just wanted to keep the record to himself.

Commissioner Chawatama: Thank you very much.

The Acting Chair (Commissioner Namachanja): *Mzee*, were the 786 heads of cattle and 629 pigs given as part of the assets on this land that you were supposed to pay also the loan on?

Mr. Stephen Kamau Ngugi: We did not get even a single cow or pig. They were all sold.

The Acting Chair (Commissioner Namachanja): At the time when you acquired this land, were these cows and pigs on the same land?

Mr. Stephen Kamau Ngugi: The pigs and cows were with the white person who was there. They were bought together with the land. For a period of eight years others were being milked and others sold. The milk was going to the Kenya Co-operative Creameries (KCC).

The Acting Chair (Commissioner Namachanja): *(inaudible)*

Mr. Stephen Kamau Ngugi: The slaughter-houses and managers were buying. Some were taking 25, like Daniel Kheho who was the manager. Dr. Onyonka took 19. I was counting those head of cattle and know how many they were. More than 300 head of cattle had also been taken by the officers. Some were taken to the Kenya Meat Commission and money put into the bank.

The Acting Chair (Commissioner Namachanja): How did the members of the society get these head of cattle and pigs?

Mr. Stephen Kamau Ngugi: I said they did not get even a piglet or cow. All of them were sold.

The Acting Chair (Commissioner Namachanja): Perhaps, I can assist. The question is: The first day when the members bought the farm, the farm came together with the animals. Did you pay separately for these animals using cash in order to own those animals? Was the cost of the animals taken into account in the price of the loan?

Mr. Stephen Kamau Ngugi: The cows and pigs were with the Whiteman who was the owner of the land. The land, cows and pigs were bought separately but they were given to us as a loan and we were to pay back. That is what we paid for the eight years.

Commissioner Dinka: Just a follow up question. Had you, in your estimation, paid fully for the land, cattle and pigs when the land was grabbed?

Mr. Stephen Kamau Ngugi: Yes, we had already paid for them.

Commissioner Dinka: Did you not owe anything to the Government?

Mr. Stephen Kamau Ngugi: We did not have any debt.

Commissioner Dinka: Just to confirm again, the cattle, pigs, tractors and everything that was sold in that land actually belonged to the society?

Mr. Stephen Kamau Ngugi: Yes.

Commissioner Dinka: Was it given to the people for free or somebody sold to them and took the money, but you did not get it?

Mr. Stephen Kamau Ngugi: Yes. They came and took the cows and paid the manager. The money was taken to a place that we did not know.

The Presiding Chair (Commissioner Shava): Leader of Evidence, we have no further questions for this witness. I think we should now hear the witness from Maridadi Farm along the same line, just to raise issues which have not yet been raised and bring out for us the particular circumstances of the members of that co-operative society.

(Mr. Stephen Noah Pakachini took the oath)

Mr. Patrick Njue: Good evening, Mzee.

Mr. Stephen Noah Pakachini: I am fine.

Mr. Patrick Njue: For the record purposes, once again state your names.

Mr. Stephen Noah Pakachini: I am Stephen Noah Pakachini.

Mr. Patrick Njue: Mzee, where do you live?

Mr. Stephen Noah Pakachini: I live in Maridadi Farm in Kwanza Division, Trans Nzoia County.

Mr. Patrick Njue: What do you do for a living?

Mr. Stephen Noah Pakachini: At the moment I am a farmer. Also, I am one of the members of the Maridadi Farm.

Mr. Patrick Njue: Mzee, this afternoon we have heard from representatives from Sitatunga Farm and also from Liavo Farm on issues that were more or less similar. By extension they could be similar to those of Maridadi. Without repeating what has been said by your brothers, please, tell us what it is that affects Maridadi. Perhaps, you may begin with a brief history and then tell us of the losses that you have gone through before giving us your recommendations.

Mr. Stephen Noah Pakachini: This is the report from Maridadi Farm, CS2036 Farmers Co-operative Society Limited. The postal address is 2912 Kitale. This is a short history. The Maridadi Farm is in Kwanza District, Kwanza Division, Trans Nzoia County. It is 3,806 acres or 1,525 hectares square. The indigenous members are 200 and their family members, plus those who were given land in general. The people who are living there are now 10,000. Before that, the land was owned by the colonialists for more than 200 years, after maybe dispersing all the indigenous people of that area. This was before Independence.

Mr. Patrick Njue: I will lead in asking you questions; that will better bring out your testimony. That way, we will be able to move in a consistent manner. First, how many families were allocated land initially at Maridadi?

Mr. Stephen Noah Pakachini: They were 200 members.

Mr. Patrick Njue: What was the acreage at Maridadi Farm?

Mr. Stephen Noah Pakachini: It was 3,806 acres or 1,522.4 hectares.

Mr. Patrick Njue: Was it supposed to be divided amongst the 200 families?

Mr. Stephen Noah Pakachini: Yes. We were given this land the same way my brothers in Sitatunga and Liavo were given. The only difference was that our farm had 200 members and their land was bigger. But our property was also grabbed.

Mr. Patrick Njue: How was it grabbed?

Mr. Stephen Noah Pakachini: Our land is divided into 505 sections instead of 200 representing the 200 members who were there.

Mr. Patrick Njue: The additional 305 were the people who illegally acquired land?

Mr. Stephen Noah Pakachini: Yes. These are the people who took the land plus all the wealth that was there under the leadership of Olingo. He was the leader of SFT.

The Presiding Chair (Commissioner Shava): Is that the Settlement Fund Trustee?

Mr. Stephen Noah Pakachini: Mr. Shadrack Olingo was the leader of the Settlement Fund Trustee (SFT).

Mr. Patrick Njue: I see you have a memorandum with you that you are reading from. Does it have a list of the individuals who benefited from the illegal acquisition?

Mr. Stephen Noah Pakachini: The list that I have here is of the property that was grabbed in that land.

Mr. Patrick Njue: Again, from your memorandum, what annexures do you have that can accompany the memorandum as evidence of the bona fide owners of Maridadi and, perhaps, any title documents if any? Take us through any annexures that you may have.

Mr. Stephen Noah Pakachini: I have some of the documents which I have mentioned here. What I have here is the certificate of registration of the co-operative. All the other issues are like the ones of Liavo and Sitatunga.

The only recommendation that I can give here is that we finished paying for the land and we were forced to repay again Kshs6,100 and a deposit of Kshs625 afresh. Other people were given land free of charge. We want our land to be returned to us with all the property that was in that land in 1983.

Mr. Patrick Njue: Mr. Pakachini, would you want to present the memorandum formally to this Commission, so that it may form part of the record?

Mr. Stephen Noah Pakachini: Thank you very much. We have tried to follow up the issue up to the Government level, but up to now, we have not succeeded. We have letters here which have come from the Ministry of Land, informing us that more documents are needed. Our land in Maridadi has L.R numbers which are there. So, we do not understand what more they want from us.

For example, the L.R numbers of Maridadi farm are 9253, 3207, 5504/2 and 1540. The number of the land is 515. Our LR numbers read Maridadi. We wonder what they want from us again, yet the number is registered under our name.

Mr. Patrick Njue: Mzee Pakachini, would you want to formally present the memorandum to this Commission, so that it may form part of the record?

Mr. Stephen Noah Pakachini: I want to present it.

Mr. Patrick Njue: Presiding Chair!

The Presiding Chair (Commissioner Shava): The memorandum is so accepted.

Mr. Patrick Njue: Thank you, Mzee Pakachini for your time. The Commissioners may now ask you questions.

The Acting Chair (Commissioner Namachanja): Mzee, Pakachini, would you know the people who later grabbed that land? Were they also in the loan that was paid, the Kshs6,000?

Mr. Stephen Noah Pakachini: We just started repaying for land afresh.

The Acting Chair (Commissioner Namachanja): So, you were required to pay Kshs6,000 as loan and also gave an example of Dr. Mukasa Mango who was a former Minister, who was also required to pay Kshs6,000.

Mr. Stephen Noah Pakachini: Yes, because everything was taken. We were threatened because we did not agree with the new instructions. We were forced to start repaying for the land afresh. The documents were taken from us for two-and-a-half years, so that evidence could be lost.

The Acting Chair (Commissioner Namachanja): Was this Kshs6,000 being paid generally, for example, who was getting five acres? Was the Kshs6,000 for every acre?

Mr. Stephen Noah Pakachini: We were supposed to pay Kshs6,100 for five acres. If you paid once, you would be given the title deed. But we were given the conditions of payment.

The Acting Chair (Commissioner Namachanja): For the people who got 10 acres, especially the grabbers, how much were they paying?

Mr. Stephen Noah Pakachini: The people who grabbed the land which was divided into three pieces--- If you join them together, it could be five acres.

The Acting Chair (Commissioner Namachanja): Let us say it was ten acres. Was one required to pay Kshs6,000 or Kshs12,000?

Mr. Stephen Noah Pakachini: All these things were being done at the settlement scheme. You could go there and pay for your part and go.

The Acting Chair (Commissioner Namachanja): Thank you. I do not have another question.

Commissioner Chawatama: Leader of Evidence, I just have one question. Were you ever given receipts for any payments that you made?

Mr. Stephen Noah Pakachini: Yes, we were given the receipts.

Commissioner Chawatama: Do you have copies of these receipts?

Mr. Stephen Noah Pakachini: They can be found.

Commissioner Chawatama: I think that would help us. Leader of Evidence, please, facilitate.

The Presiding Chair (Commissioner Shava): Mzee Pakachini, thank you very much for your testimony. I have no questions for you.
Leader of Evidence, you may stand down the witness.

(The witness was stood down)

Leader of Evidence, how are we proceeding now?

Mr. Patrick Njue: Presiding Chair, Commissioners, we still have three memoranda that were lined up for presentation and one individual. Some have since left, but I see a group that has earnestly been waiting to present their memorandum, from the Bongomek. I note that it is also some minutes to 7.00 p.m. Subject to the time and your direction, we stand guided.

The Presiding Chair (Commissioner Shava): Leader of Evidence, bearing in mind the time and after consultation with fellow Commissioners, we have decided that we will start tomorrow at 9.00 a.m. We are aware that people have been here the whole day waiting to testify. We hope that when it is also their opportunity to testify, people will listen with the same patience that they have exhibited. So, we will be guided by you on the order in which we will proceed tomorrow. But I think that we should probably start tomorrow morning with those who have been waiting patiently the whole day.

We have now come to the end of our first day of hearings here in Bungoma. We would like to recognize and thank your witnesses, Maj. Maxwell Kibihia, Capt. Gideon Mutoro, Mama Hellen Namasaka, Corp. Pascal Barasa Olaimo, Mr. Francis Munoko, Mr. Benjamin Mburu, Mr. Stephen Kamau Ngugi and Mr. Stephen Noah Pakachini.

We will conclude today's hearing with a prayer. I now hand over to the Master of Ceremonies.

(Closing Prayers)

(The Commission adjourned at 7.00 p.m.)