

Seattle University School of Law

Seattle University School of Law Digital Commons

I. Core TJRC Related Documents

The Truth, Justice and Reconciliation
Commission of Kenya

7-11-2011

Public Hearing Transcripts - Western - Bungoma - RTJRC11.07 (Christ the King Catholic Church, Bungoma)

Truth, Justice, and Reconciliation Commission

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/tjrc-core>

Recommended Citation

Truth, Justice, and Reconciliation Commission, "Public Hearing Transcripts - Western - Bungoma - RTJRC11.07 (Christ the King Catholic Church, Bungoma)" (2011). *I. Core TJRC Related Documents*. 132. <https://digitalcommons.law.seattleu.edu/tjrc-core/132>

This Report is brought to you for free and open access by the The Truth, Justice and Reconciliation Commission of Kenya at Seattle University School of Law Digital Commons. It has been accepted for inclusion in I. Core TJRC Related Documents by an authorized administrator of Seattle University School of Law Digital Commons. For more information, please contact coteconor@seattleu.edu.

**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON MONDAY 11TH JULY, 2011
CHRIST THE KING CATHOLIC CHURCH, BUNGOMA**

PRESENT

Gertrude Chawatama	-	The Presiding Chair, Zambia
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Kenya
Ronald Slye	-	Commissioner, USA
Tom Ojienda	-	Commissioner, Kenya
Ms. Patricia Nyaundi	-	Commission Secretary

(The National anthem was sung)

(Opening Prayers)

(The Commission commenced at 10.25 a.m.)

The Presiding Chair (Commissioner Chawatama): On behalf of the TJRC, I wish to welcome you all to our hearings today. Our hearings are a continuation of the hearings that the Commission held in Mt. Elgon. Before I give my opening remarks, I would like to introduce the panel for today's hearing.

*(The Presiding Chair (Commissioner Chawatama) introduced herself
And other TJRC Commissioners)*

In the proceedings that we have held, a number of witnesses have been called and they have shared with the Commission their experiences. Some of the violations that we have had the privilege of hearing about relate to land issues, rape, abductions, mutilations, displacements, killings and others. You will have an opportunity to listen to more testimonies today. As we have said in the past, when witnesses are testifying before us, we expect members of the public to accord them the respect that they deserve. You may not agree with everything that they are saying or you may identify with the testimony they are giving, but all the same accord them the opportunity to say what they have to say before us. We are eager to hear from every witness because at the end of our hearings we are to come up with a report. This will be accurate and complete on violations that have taken place in Kenya within our mandate period.

There are a few ground rules; we would like you to switch off your cell phones because they cause a lot of disturbances. If you have an urgency to deal with, you can walk out of the hall quietly and attend to whatever matter. We have relaxed our rules to allow for still photography on condition that those taking photographs remain in the position where

they are and that they do not use flashes. At this time I would like to find out if there are any lawyers present. There being no lawyers present the first witness to be sworn in.

(Mr. John Bomett Serut took the oath)

The Commission Secretary (Ms. Nyaundi): Welcome to the Commission. I will ask that you state your name for the record and your current occupation.

Mr. John Bomett Serut: My names are John Bomett Serut, former Member of Parliament Mt. Elgon. I am a farmer and also a businessman. However, I am still in the field of politics.

The Commission Secretary (Ms. Nyaundi): Thank you very much. The Commission invited you in recognition of your participation in the leadership of Mt. Elgon and you have furnished the Commission with a statement and documents. I now invite you to make your statement to the Commission regarding the issues in Mt. Elgon.

Mr. John Bomett Serut: Thank you very much.

Presiding Chair, Commissioners and all protocol observed, I want to start by thanking the Commission for having thought it wise to invite me to this Commission to say what I know and what I believe in. I want to declare my interest. First and foremost, I was born in Mt. Elgon, Kopsiro Division and I grew up in Kopsiro Division. I got married while in Chebyuk Settlement Scheme. I believe that the reason I am here is because of the said Chebyuk Settlement Scheme and the security during and before I became a Member of Parliament.

You will allow me to start by informing the Commission that most of my family moved in Chebyuk Phase II. I also used to reside in Chebyuk up to 1989 when I moved out and bought land in Trans Nzoia. I left my house in Chebyuk intact. Unfortunately, it was destroyed during the 2006 – 2008 clashes in that region.

Allow me to say something about Chebyuk Settlement Scheme the way I know it. Chebyuk Settlement Scheme was conceived in 1965. This particular scheme was conceived to settle the Ndorobos who were living in the Moorland. The history of Mt. Elgon tells me that they were about 609 households. I am not a Ndorobo, I am a Soy. I want to correct an anomaly which has been appearing in newspapers. There is no clan called the Soy and there is no clan called the Ndorobo. I guess somebody somewhere mislead the media.

We have several clans in Mt. Elgon. I hope the Commission will amend that to show that the people from the Moorland who are Ndorobos have a number of clans among them and they are not a clan themselves. The Soy have so many clans; almost 100. The word “Soy” refers to the people who live on the lowland. The word “Ndorobo” as far as I know refers to people who were living in the forest. To me it was like an insult to those people

because they were being referred to as backward. I am even requesting that in the 21st Century the word “Ndorobo” should be erased from our books.

The movement of the Ndorobos to the Chebyuk Settlement Scheme did not take place when it was conceived in 1965 because of logistics. The Ndorobos as they are referred to were moved in 1971 by the then Government. Allow me now to say that the Government did not do its work because it never identified how much land out of the forest was going to be allocated to these Ndorobos. So the excision exercise did not take place. The Government did not appoint a Commission or Committee which was credible to settle those people. The Government left those people to settle themselves. What people am I referring to here? What were they doing? What was their occupation? These were hunters and gatherers. Where were they being taken to so as to start farming? This was strange to them.

What happened is that they invited their brothers the Soy to assist them to clear the forest because this was forest land. Some of them decided to sell certain pieces to facilitate themselves to till the land. The Government did not facilitate them. This is how the Soy came in. However, that is not the only way the Soy entered Mt. Elgon. There are those who bought land in the so called Mt. Elgon Chebyuk Settlement Scheme from the Ndorobos.

Madam Chair, when Chebyuk Settlement Scheme was taking shape, there were pockets of forest which were left as island within the proposed scheme. Some of them are the current Cheptoror. The Soy people grabbed land and settled themselves. The current Cheptoror was then referred to as Shauri Yako. The reason for this was because they had not been allocated the land.

I want to be very brief. In 1974, the Government went ahead to de-gazette. Under Legal Notice No.51 of 1974 the Government de-gazetted 3,686 hectares which is the current Phase I. I want to repeat that the Government did de-gazette but it never did what we call fixed survey. Who are those living in this Phase I? They were the people who were moved from Chepkitale together with the Soy people. The Soy had come in as I have already stated.

As I sit here today, Phase II and Phase III have never been degazetted. They are still Government forest. Someone else might ask me; why de-gazettement? I want you to take note of this. In 1932, Mt. Elgon Forest was gazetted. By then it was 49,382.9 hectares. So for anybody to settle in Chebyuk and call it a settlement scheme it must be degazetted. That is why I have introduced the issue of de-gazettement.

Allow me to move to the year 1989. In 1989, I have already mentioned that I moved out of Chebyuk. I moved out because the Provincial Commissioner by the name Francis Lekoolol used unorthodox means to remove the Soy people who were already settled in Chebyuk Settlement Scheme. He declared all the agreements between the Soy and those who had moved from Kitale null and void. He was the PC, a police officer, the prosecutor and the judge. This was very unfair.

It was sad in Mt. Elgon. It affected a large population. Most of them moved. Some of them went as far as Trans Nzoia and Bungoma districts. Those who could not leave Chebyuk engaged in issues to do with insecurity. That is when we had the worst insecurity in Mt. Elgon. Killings started. The Government of that time came in very fast and quashed the killings. In 1998, we had another problem. We had a DC called Christopher Munguti at Kapsokwony. He carried out balloting for Chebyuk Phase III at Kapsokwony in the office. So many people were issued with balloting papers for land in Phase III. By 2005, there was no land that existed as Chebyuk Phase III. Somebody might ask me why. There was no boundary which had been identified for the proposed Phase III and the remainder of the forest. So, to me it was still Government forest. There was no way you could tell how many plots were there because there was no boundary. There was no survey to find how many plots were in Phase III. So, whatever they were describing as ballot papers, they were being issued for land that never existed.

Interestingly, if you invited those who have ballot papers today, they are over 4,000 of them and the land that has been surveyed, if it is to be allocated as five acre plots, would be only 800 plots. I do not know where the rest of the people would have gone. This was an error committed by the Government. I want the Commission to note that so that those who will come to lay claim on Phase III on the basis of those ballot papers the Government should compensate them.

Madam Chair, in 2002, I developed interest in politics after having seen what my people were going through, especially in Kopsiro and Chebyuk where I was born. One of my agendas was to finish settlement in Phase III. I am happy to report today that Phase III was done during my time and finalized. Part of my agenda was development. We could not develop Mt. Elgon without settling people in Chebyuk. Despite what happened, I sit here proudly today saying that when it comes to Chebyuk and development, I did my bit.

Allow me to turn to the other side of the coin which is nasty. How long did it take for me to lay claim that I had finalized settlement in Chebyuk? From 1965 up to when we finished, is about 37 years or 38 years. Where was the Government? Where were the leaders? Were we leaving in Independent Kenya? Those are some of the questions that I have been asking myself. Chebyuk had become a platform for politics. When you wanted to go to Parliament you would say, "It is me who is going to allocate you land in Chebyuk." People would then give you votes. That happened in Mt. Elgon starting from the late D.C Moss, my brother Hon. Kisiero, and my brother-in-law, Kimkung. It is interesting that I am the one who edged out Kimkung yet he is my brother-in-law. That is what politics is all about. I want to tell my brother that even next year we are there together.

I have talked of insecurity in Mt. Elgon. Much of the insecurity in Mt. Elgon was in Kopsiro Division. Some of it was theft of cattle, general insecurity and killing of politicians. In 2003 we lost a councillor for Chongeywo Ward. He was shot many times and he died. It happened about 500 metres from the police station. To date, we have not heard of any credible person being taken to court. There were other killings even by police officers. In Masaek, a young man who was drinking *busaa* with some family

members was killed in 2003. To date no police officer has been prosecuted. In my opinion I thought that should have been treated as murder case.

In Mt. Elgon much of the insecurity has been generated by police officers. Allow me to deal with those cases separately. In a place called Chemondi, while the killings were going on in Chebyuk there was an Anti-Stock Theft Unit (ASTU) Officer who had a relationship with a lady. This officer became part of the SLDF. He would get firearms from the Government and sell or lease to his colleagues in SLDF. We were informed that he was arrested, but we have not heard anything about it. Rumours are that he was never even taken to court. One of the guns was recovered during the *Okoa Maisha* Operation.

This Commission must have heard evidence that the killings in Mt. Elgon took place between 2006 and early 2008. I want to deal with an incident of 26th September, 2007 during the night. A number of GSU officers presumably from Amagoro, Busia drove a GK Land Rover A60E and a canter motor vehicle with Uganda registration number, UAF 952M. They raided factory at a place called Chebich on the lower sides of Kopsiro taking advantage of the insecurity there. They raided the factory and killed a watchman, Mr. Robert Wafula Namunyu. An alarm was raised. Senior Sergeant Simon Koskei was killed that night. A man by the name of Alex Wanjala was killed. Mr. Robert Wasike Kitutu was also killed by members of the public who responded at night. Some officers were arrested. They are Nderitu, Maina, Rotich, and a driver of the Land Rover, Mr. Mwachu. This happened in Mt. Elgon District, Kopsiro Division, Kapkatei Location, Chebich area. Why did they raid this place?

For the purpose of record, I am the one who came up with that factory. I built it for the community using CDF money. Mine was to empower the community. I want to declare that this is where I was born. Why have I raised this issue? I said that I will speak nothing, but the truth before this Commission. Mine is to justify that the police officers who were supposed to protect my people turned against them and killed, maimed, injured them and looted their property. I request that this Commission follows up this case and those people must be compensated. I request that even the poor watchman who lost his life, his widow should be compensated.

Madam Chair, I want to state that I was not involved in the killings of the people of Mt. Elgon. I did not own any militia group neither did I unleash Government security agents to my people. My people are so dear to me. The problems of Mt. Elgon started in 2003. I am talking of insecurity and bad politics. When I entered Parliament in 2003, I had been elected on a KANU ticket. The KANU Government had led Kenya since independence, but in 2003 it was the NARC Government. There was fear and panic. People grieved. Why? They were scared of the uncertainty. We were used to KANU *juu, juu, juu zaidi*. The cock had been slaughtered. We had been threatened that those who had been singing KANU were going to be followed to their hideouts and thrown out or jailed. There was bad politics in this country; politics of revenge. Some even referred to title deeds as mere papers. I am on record having issued a statement as the shadow Minister for Lands then and telling off Minister Kimunya.

The talk was that those who had grabbed land had done so during Moi's regime. Anybody who got land during Moi's time was being perceived as a land grabber. We formed a Club 14 of the Kalenjin MPs. We even threatened to secede. I was on the front page of every newspaper at that time and I have no regrets for it. I was a very bitter man because some of us had acquired our property genuinely. We knew that President Moi had led this country peacefully for 24 years. To us, peace was paramount. Peace was almost everything and that is why we are here today. If we had peace in Mt. Elgon, we would not be here. Development without peace is not development. We made a lot of noise, but when I looked back there was nothing in the basket for my people. There was no bread, tea or milk. Who had the milk? It was the then Government.

I told my people that I was going to co-operate with the Government. That was the beginning of my problems. I chose to work with my nearest friends, that is, the Bukusu MPs. They came to Mt. Elgon and they assisted me to fundraise and we did development. They assisted me to meet the President where I was granted the only tarmacked road. Several projects were initiated and I want to thank the Kibaki administration. My people were not happy about it. They called me names. At one time, they called me Wanyonyi. Other times they called me a traitor. When the CDF money was released, I decided to develop the entire district irrespective of who occupies it. That was not happening before.

We have a sizeable number of Bukusu in Mt. Elgon and they occupy certain pockets. There was no development there, but I initiated development in those areas. My Saboat Community was not happy with me. There arose incitement from within and outside. Members of Parliament from the Kalenjin Community started to come to Mt. Elgon to fight me. Those who were watching television know that the leaders went as far as Chebyuk. They even tore the security agents who were there. Some even removed shoes. A lady MP even removed shoes wanting to hit an officer. The man they were fighting is one small man called Serut.

Come the Referendum, when we were in Bomas, I ensured that Mt. Elgon got a special county. I can see one of the commissioners who was there. They know the war I fought. At one stage Bungoma wanted to swallow us, but I convinced them to set us free. Kuria and Teso were given counties – special ones for minorities. My friends the Kalenjins, the big brothers, were not happy because they insisted that we join them, but I told them no. We had been sat on by Bukusus for too long. There was no way we were going to join the Kalenjins and again become a minority. That is what I campaigned for in 2005. My people decided to say no. I am happy today that they have gone to Bungoma. That is what I had predicted. I warned them in advance to listen to their own son, but they said no. Today my prediction has come true.

What insecurity was there? Most of the councillors deserted me including those I had sponsored using my money. One man called Reuben Samoei Ndara punched me in broad daylight on 12th December, during the burial of Kimkung's father. I am the one who had nominated him. I learnt that they had a meeting in Kitale to plan to attack me. Unfortunately, I had just arrived from Geneva, Switzerland and I did not know what was happening. The police did not take action. It took the intervention of Harambee House for

that case to take off. The police had been compromised. I became a hunted person, but I did not relent on my course.

I want to thank one person who is in this room who did not join the rest of the people: Hon. Kimkung and not to forget former Chairman County Council Mt. Elgon, Mr. Magas. He saw a lot of sense.

Who voted against the referendum? Almost the entire Saboat Community in Mt. Elgon--- That included the so-called “Ndorobos”. Why have I introduced the word “Ndorobo”? It is because I will deal with it later on.

Madam Chair, I will go back to Chebyuk Settlement Scheme. When I joined Parliament, I sat down with the Provincial Administration together with the elders at the DC’s office. The then DC was Mr. Ole Serian who is the current PC, North Eastern Province. He was a very good officer because he brought us together and we discussed the way forward for Chebyuk. We had to start from where my brother, Kimkung had left. My brother, Kimkung had dealt with Phase I and almost finished. He should be congratulated for that achievement; they were just small disputes. So, we decided to start from the known to the unknown and finalized Phase I.

In Phase II, there were problems because there were people who had already settled in Phase II, and some of them had lived there from 1971. Although this was the case the records were reading other people’s names. Unfortunately, for those who were living elsewhere, I had to use the little knowledge I had about land. The little knowledge I have about land is that if somebody lives on a piece of land – be it Government or any other person’s – for a period exceeding 12 years, that person has a right to claim ownership in totality of that piece of land or a portion of it. The legal fraternity refers to it as adverse possession. I advised my DC and PC and I told them that if these people have been living there for all that time, I think they were the people to be considered because that period was too long. That was from 1971 to 2006. We delved into those records but, unfortunately, those people who had been allocated that land and were not there were the “Ndorobos.” The Ndorobos created a problem because they wrote to the Government saying that if they were not going to be settled in Phase III, then all the Soys in Phase I and II must move out and the Ndorobos be the sole owners of Phases I and II. That was not feasible. I want to repeat; that was not feasible. Why? Over 40 per cent of Phase I was being settled by the Soy. About 60 per cent of Phase II were Soy. So, they could not fit into Phase III. We pleaded with them and we said that they should sit down and agree. We came up with a committee of *wazee* and they agreed that they would share Phase III 50-50 – whatever plots were there, 50 per cent to the Soys and 50 per cent to the Ndorobos. The issue of the boundary came up, because there was no boundary. I have mentioned this earlier on. We had to involve the Forestry Department, the Ministry of Lands and the Provincial Administration and then the community. We managed to come up with a proposed boundary. A survey was carried out and we managed to identify 879 five-acre plots, excluding public utility plots. We asked the elders in the PC’s Office Boardroom whether they were satisfied that if only 879 would be allocated land, others would not come grumbling. The elders said that they should be given time to discuss this;

they went back and discussed this issue and they agreed that the acreage be reduced to 2.5 acres. A re-survey was done and they came up with 1,732 plots. That was now the genesis of the problem that we are discussing here.

When the re-survey was almost finalized, I raised one pertinent issue that I saw. There were people who had ballot papers whom I had mentioned laying claim on the said piece of land. There were others with letters of allotment; there were those who had already settled on that piece of land; there were others who had been promised the same piece of land and there were others who had got more than 200 acres for themselves, claiming that was their land. That group who had acquired large chunks of land included the Laibon and Jackson Sengeiyo whom the conservative put the figure at about 400 acres. There was another *mzee*, Patrick Komon, who was said to have taken over 200 acres and others about 20 acres or more. We had a problem at hand. Later on, we learnt that money had been raised which paid a lawyer in Kitale. We did not know whether that was true or not. The money had been paid to Fatuma Sichale's office in Kitale. That is according to my records. The lawyer had been paid to go to court and obtain an injunction or *kibali* – to stop the Government from identifying Phase III and subdividing it and allocating it to genuine squatters.

After a short while, I learned while at the PC's office that they had been advised that it is not possible to get an injunction against the Government, because that was Government land. I said "Halleluia!" We will finalize the scheme. We decided to go through a process; identify the number of plots, which we had got to be 1,732. Have the people register? I would like to say that 7,000 people registered against 1,732 plots. That was a worrying figure. The group which had grabbed chunks of land did not register. We had information that they had been persuaded by certain politicians not to register because the land was theirs. That is the community of Mt. Elgon. I have said that politics has been playing a major role in Mt. Elgon. I want to thank two PCs who dealt with that issue – Hassan Noor, who is heading the Mau Secretariat. He was the then PC and later PC, Mwasera. They were very patient. They went through the process peacefully, involved and engaged the community properly. When we had identified the land, we agreed that to identify those who should be beneficiaries, we should use the panel of elders. I have already provided the list of panel of elders who carried out the exercise to the Commission. The panel of elders did its work and in a priority manner. The Ndorobos were told to get 50 per cent and the Soys 50 per cent. We also agreed that those who would have been identified as beneficiaries, the list to be held for one month for the public to ventilate and find out whether there were people who had been undeserving. I want to report to this Commission that, that was done, and it was done to the satisfaction of the people. I want to thank some of the politicians who include Kimkung, the Chairman of the County Council. We agreed that we would not interfere and that we would not even hold *barazas* in Chebyuk. We agreed that we would not influence with the selection of anybody. Those politicians are here and they never did that and there was no time they called me to say: "*Mheshimiwa, saidia*" or help So and So.

When this list had been hung for one month, nobody raised a finger against anybody to say that he or she did not deserve. There were rumours that there was corruption and that

there were brokers. When we asked those who were making the allegations to come up with the names, they would shy away. I do not blame my community because that is our behaviour always. We do not take issues head on; we are good at accusing others but we are not ready to give evidence. There was no evidence because nobody came forward. If they did, some people would be in jail. When the exercise was almost over and what was remaining was to take people for identification of the plots, the surveyors were attacked by our boys. This was an organized group.

Thereafter, the District Security Committee (DSC) rushed to the office – I am talking about the CDF Office – while I was in New York attending a population meeting. I was called and told: “*Mheshimiwa*, there is a problem in Chebyuk and we require money urgently to put up a temporary police post in Chebyuk.” I asked my CDF Committee if there was any money in the emergency kitty. I want to report to this Commission that the money was released. After about two or three days when a structure was being constructed under the supervision of Korng’otuny Sub-Location Assistant Chief, on the night of 27th and 28th August, the Assistant Chief was attacked by goons, shot dead together with his 13-year old daughter and two other people. One person was hospitalized. I had arrived from New York because I had to cut my trip short. I went there with the DC and we had several *barazas* with the people. We pleaded for calm and the PC joined us the following day. We even agreed that we should stop the settlement temporarily and deal with insecurity. I want to report that, that was done. It did not require us to go to the meeting because it was an in-house issue. It is unfortunate that before the Assistant Chief was killed, the person who was being targeted was me because I had issued money from the CDF kitty to have a police post constructed. My last day should have been on 26th August, during the burial of a former TSC Commissioner, Joseph Ngeiwo, but I got wind of the plot and I took a different route. I escaped---

(Mr. Serut broke down in tears)

I know the people who shot at me because I had done nothing wrong. I received a message on my cell phone; I have it and I recorded a statement with the police. The message read: “*Bwana JB, uko tayari kupambana na Vijana?*” This translates to: “Mr. J.B., are you ready to face the youths?” I got a message on my cell phone asking me whether I was ready to face the boys. I asked myself who were those boys? What crime had I committed? I thought I was committed to my work to assist my people.

The unfortunate bit, Commissioners, through you, Madam Chair, is that I had very many followers in Mt. Elgon who released information to me; I had very many informers now on the ground who could give me information.

Unfortunately, most of them today are dead and buried because of mismanagement of information by police officers. I know of a young man – whom I would plead with the Commissioners – that he gave his life to assist the people of Mt. Elgon by taking information to the police. But what happened? He was shot dead at 2.00 p.m. I am talking of none other than a young man by the name of Dennis Chemining’wa, who used to live in Kaboriot. He had leaked information to a police officer called “Omondi”, the DCIO,

Mt. Elgon, by then, 14 firearms had been procured from a neighbouring country. But, instead, the same information was leaked out by the police officers to the same fellows! They arrested this young man before his brothers and they gave him the entire story on how he went to the police and what he told the police. I was aware that the young man died leaving a young widow with children, who are now languishing in poverty.

There was another old man, Jackson, who used to work with KFF who also comes from Chesikaki, a place called Chesiriyot. I am told that he went to the DC's office to pass information. The officers at Kapsokwony leaked that information and when he returned to his home at Chesiriyot he found young men were waiting for him. They picked him up before his family, took him away and to date, it has not been established where his body was taken to! The presumption is that he is dead with several other people. A chief from Kapkateny Location by the name of "Sonit Cleophas" who unfortunately was a brother to the CDF Manager--- While in his office at 1.00 p.m., a young man alleged that he had reported them to the police. They took him away and shot him dead at the door of the office while there were police officers and they did nothing! I know what I am going to be asked. While all this was happening, what action did I take? I want to deal with that.

Madam Chair, I reported each and every case to our Government, which seemed not to have ears! I reported all the deaths and eminent attacks, but what happened? I was being investigated. Instead of I being the complainant, I was the accused. I started my reports from the small office –the report office – to the Head of State, both orally and in writing, and I have letters which I have written. I have supplied copies – some of them were responded to by various Ministers or by various officers. I remember when hon. Michuki the then Minister of State for Provincial Administration and Internal Security visited Mt. Elgon together with Prof. Kivutha Kibwana, they could not allow me to participate in any meeting; they shut me out! Yet, I was the MP for the area and I was also an Assistant Minister in the Government. Something shocking is that, they were able to have a meeting with councillors and I raised that issue with them at Kapsokwony High School. I want to say here that I told them off point blank! That required me, now, to search myself; I almost resigned as an Assistant Minister for Planning and National Development. I almost resigned, but fear came in. What fear? By then, people had been displaced in almost the entire Kopsiro and Cheptais Divisions and part of Kapsokwony up to my home in Kapsokwony. My home had become a camp because I had over 300 people whom I was feeding, thanks to my farming – I had a lot of maize – and I had to feed the people of Mt. Elgon. People were sleeping outside my compound and the security had been provided to me by the Government and I knew that if I resigned, that security would be withdrawn. My wife and my children advised me against it and they told me that whoever will go to Parliament, do not petition; there is not going to be any election here! I almost withdrew as a candidate, but my followers said: "We want to show them that you are still a force to reckon with" and they gave me 11,000 votes. I was second and I want to thank them!

I want to tell you, Chair and the Commissioners, that I went through thick and thin in Mt. Elgon. After soul searching, I investigated the Government and this is what I came up with. There is a former MP called "Kisiero" who was a friend to hon. Michuki and he

used to mislead hon. Michuki. He used to campaign for the current Member of Parliament, Mt. Elgon and his was to fight me because he knew that if I am out of the way, then his candidate would go through. He even announced at Kapsokwony when hon. Michuki came there that the boys that hon. Michuki had agreed – the boys I am referring to are the SLDF – to listen to should down their tools and come back home. He even promised to reward hon. Michuki with a heifer in public and I was shocked when I was called to talk. I told him off! We cannot exchange a heifer with the blood of the children of Mt. Elgon. It was cheap politics!

Madam Chair, what did I establish? I found out that there was outside interference. There was a man called “Lilei”. I do not know; he claims to be a Church person in Eldoret. I have given you his letter – which I managed to acquire through good friends – which he had written to the Government claiming that it is me who is procuring firearms and that I was harassing women and the Provincial Administration in Mt. Elgon! The letter speaks for itself. Where does Lilei live? He lives in Eldoret but he purports to talk for the people of Mt. Elgon! And my Government – that I so much cherished then – could listen to such a man.

Madam Chair, I also established that some of my brothers from Mt. Elgon had written letters that I had unleashed the Government against my people. My good friends in offices came with the letters, including those in State House. Some of them had used Bishop Yego of AIC. There were also other letters written by Ugandans; I do not know what interest they had in Mt. Elgon. The worst day is when the President visited Mt. Elgon. I had agreed with His Excellency the President to meet the elders from Mt. Elgon to be able to be told what should be done so that we could have peace in Mt. Elgon. I did not want him to hear from me, but I wanted the elders to talk with him. But when His Excellency the President came the same hon. Kisiero, through his proxies, Mark Too - *Bwana Dawa*; Bishop Kewasis and Bishop Korir hijacked the President. They went to the DC’s office while we were waiting together with the PC, excluding even the DC, other leaders and I. They had a talk and from there, the President did not talk to some of us, including me, who was his host. We went to Kapsokwony Primary School, I raised the issues and the President never responded to even one of them! I escorted him to the airstrip and he flew away. As a human being, I suspected that something had gone wrong. After two days and after calming myself, I wrote a scathing letter to the Head of Civil Service. I told him off. I said: “I have now established that the problem of Mt. Elgon is not the killings going on; it is the Government itself” and that is the truth! The Government did not take the issues of Mt. Elgon seriously. I was a pained man because my brothers had been killed; my nieces had been killed; my in-laws had been killed and my people of Mt. Elgon were being killed. Who was killing them? It was the SLDF. Whom were they working for? I want to correct one anomaly here - there has been a write-up in papers that there was inter-tribal clashes. I want to disabuse that now. That is not the truth. If anybody holds a contrary opinion, I want him or her to rise up in this forum. There is no time the so-called “Ndorobos” and the Soys fought. The people who killed the people of Mt. Elgon was a militia calling itself the SLDF and they were working for a group which was resisting settlement of genuine squatters. Those were the people killing the people of Mt. Elgon. If you do not have proper records, then you

should know that 90 per cent of the people who were killed were the Soys. Were they killed by the Ndorobos? No! They were killed by the SLDF. I know the Commission has concentrated on the army. The Commission and other civil society bodies have concentrated on the police. But I want to say that I am not going to spare the police either. I will not spare the army because I have sworn to speak the truth! I want it to be on record that the SLDF are the people who killed 90 per cent of the people of Mt. Elgon for no apparent reason, and they should be able to stand up and tell us why they killed those people.

I am not saying that the small fish should be dealt with; the people who bear the most responsibility should be the ones you recommend to face the law. That is what the truth is all about. Your Commission is about truth; truth and nothing less; justice, justice and nothing less. I want to tell this Commission that when you are released from a court of law – I believe that most of you are lawyers – for lack of evidence, that does not mean that you did not commit a crime! Public judgment is always there. If you walk today in Mt. Elgon and you ask even a small kid of five years who was killing people in Mt. Elgon, they will tell you. If you ask old ladies, they will turn around and check whether they are safe and they will tell you. If you went to any pit latrine, it is written; “judgment is already written on the wall. You can run away from the law but you cannot hide. You cannot hide from the truth. You can earn a big salary in this world; you can fly and go to any country, but your consciousness will never set you free unless you come forward and confess your sins. You have killed the people of Mt. Elgon and you know who you are. The beneficiaries know themselves.” This Commission should ask why was hon. Kimkung and I, who are here, not allowed to step in Cheptais? Why were our agents chased away during the elections? Why were several other candidates, like Chemwei Sammy, whom I think has written to this Commission--- Who are the beneficiaries? That should be investigated. It is up to the Commission to make its judgment; if it is hon. Serut, I am ready to face the law. If it is somebody else, let him or her face the law. The dice has been cast and the truth has come out. I am talking this afternoon.

Chair and Commissioners, you have been appointed to assist the children of this country. Do what you think is just and assist us. I know there has been talk that the army should leave Mt. Elgon. Let me deal with it now. I am one of the people who wrote to the Government that they should bring in the army. I cannot disown that statement because my conscience tells me, “Hon. Serut, you did it.” I did it and I have no apologies over that. I wrote because my people were dying. The children of Mt. Elgon were dying and women were being raped by the SLDF. Men were becoming widowers and women had become widows.

Why did I do that? Whenever I made any report to the police or informers made the reports, there was no prompt action. Whenever police were transferred and new officers were brought in who were not used to the terrain, they became overwhelmed by the SLDF. What did that give rise to? The innocent boys who had not joined the SLDF had to join the group unwillingly. They did that because they were looking for their own security because the Government had failed to protect them. The only haven was to join

the winning team. Some of the boys were forced to join the militia while others were lured financially.

The teachers of Mt. Elgon, I want to sympathize with you. They used to pay taxes to some illegal entity for their own security. All these arose because the police had failed. Some of the police officers had become part of the SLDF. I have information that police at Chesikaki--- A man called Kangogo and another Mamboleo who was the OCS were friends of certain politicians. Whenever new police officers were posted to boost security and organize to raid criminal hideouts, they would inform them in advance. That frustrated the efforts of new officers. I saw a problem coming because my people were dying. Who was killing them? It was my people. Would a stranger differentiate between a criminal and non-criminal? That made me to write another letter to the Government asking it to beef up security by recruiting home guards. They would be our own boys to assist in the areas of identification, the bad terrain and so on. Had the Government gone by my advice, the people we witnessed die in Mt. Elgon would not have died. This is because the SLDF would have been wiped out. But because it listened to people in the streets, whose interests they did not even know--- I want to announce today that Bishop Kewasis, Bishop Korir and Bwana Dawa should be summoned to this Commission so that we know whose interests they were fronting. This man called "Lelei" who wrote--- The Commission has powers to summon him to come and state further what he meant by saying that hon. Serut was the one perpetuating crimes in Mt. Elgon. He should tell us the source of his information and what interest he had in Mt. Elgon.

This issue of throwing people's names left and right without substantive evidence should not be entertained in the 21st Century. Bwana Dawa was in the Moi era and not this one. I have given a copy of the letter to the Secretary of the Commission.

On 11th March, 2008, when I had ceased to be MP for Mt. Elgon, a leader from the area was seen by me and others who watched KTN accusing a local politician from the same area for having directed the army to Cheptais. He was questioning why not Kaptama, or Kapsokwony. I know of a few people, seven of them, who were killed by people from Kopsiro and Cheptais. They raided Kapsokwony Town. There was no fighting in Kaptama. It was a haven for those who were running away. I think this Commission should summon that leader to tell us whose interests he was serving. He said that the SLDF was just a militia group of small boys fighting for their rights. Small boys killing over 1,000 people. Even the life of a single person is precious.

Today is a sad day for those who committed crime, but it is a happy day for us the victims because we are going to speak out. We have been sat on for too long. The army came to Mt. Elgon and went to Cheptais and no politician had control over the army. If he meant any one of us, that is, myself, Kimkung, or somebody else, I am sorry that utterance was misplaced. We never directed anybody. I can even speak for my colleagues. The army should carry its own cross if it committed any crimes. Let that politician not associate everybody in Mt. Elgon with that.

It is common knowledge that when the army goes to a place they will not leave without murmurs here and there. They are normally accused be it in North Eastern, Central Kenya and so on. That is why they have been referring to it as a force including the police or else they would have been called what they are calling the police now; that is, service. I do not want to appear to be speaking for them. As a leader I followed whatever they were doing. Without the army coming to Mt. Elgon, some of us would be no more. The SLDF had taken over Mt. Elgon. They had come up with camps and cells. They had structures and commanders. So, the coming of the army was a relief. Let us give credit where it is due. If there are crimes that were committed, I request that this Committee deals with specific cases. I also want to request the civil society not to become inciters. I know this is where you earn your living, but let it not be in Mt. Elgon. We have been used as cash cows for too long. I know that most of the civil societies operating in Mt. Elgon are not from Mt. Elgon. When we are dying, to them, we become cash cows. I think that must stop.

I want to request the people of Mt. Elgon to open their eyes. I want to ask this Commission that before you appoint anybody to assist you in co-ordinating activities, try to vet that person because some of them were SLDF sympathizers. I am shocked that I see them walk with you, escorting you left and right. I have vowed to speak the truth. I know some are looking around asking, "Who is this?" I think I have called the TJRC already and I made my statement clear. I said, "You have chosen the wrong people."

The army should stay in Mt. Elgon. Why? They only managed to recover 102 guns. Where are the rest of the firearms? Have all the commanders been arrested? Most of them are still on the run. Did they surrender their firearms before running away? The answer is "No". I want to make a big allegation. In Mt. Elgon, some people have resolved to elect me back to Parliament, but they have been told, "When you return that man, we have plan B." What does this plan B mean? I am saying that the SLDF has not been wiped out of Mt. Elgon. An operation should be carried out. The operation I am talking about is a civil operation where the law applies – house to house. If you want to know these people have not been wiped out, a census should be carried out from village to the district level; how many people are not accounted for? Most of the people are still in Uganda and West Pokot. They ran with firearms. Is this then the time to withdraw the army? Let us weigh the pros and the cons. I want to request the civil society to know that we are the victims. I have missed the bullet severally.

On 4th August, 2007, a peaceful MP and Assistant Minister called Serut went to Kamneru, a place which had never seen electricity. I had insisted that the children there must have power so that they can read. I had gone there with the KPLC personnel to install electricity. I had taken with me Kshs1 million cheque from the CDF to put up houses for nurses for my people. Before I realized that my Chair and that of the Chairman of CDF had been put near some maize plantation. My instinct asked me why my chair and the others had been placed near the maize plantation. I ordered that the chairs be taken to the field. God is still with me and he loves me. I hope I will not die soon. My prayers, I know, are always heard because I have not done any evil. My God protected

me. When we sat down, hell broke loose in the presence of small children from Sacho Primary School who had come to sing for me.

We were sprayed with bullets. We rolled. More than 50 rounds of live ammunition were fired at us. Thanks be to God, none of us was hit; not even the children who were lying flat on the ground and yet bullets were overflying them. What crime had Serut and those children committed? We were only doing good for the school and the community. We left on foot and disappeared. We were given a lift by the KPLC lorries. I left all my vehicles behind. None of them was shot. They were protected by God. I left behind my driver and some of my security men. None of them was shot and I praise God for that.

Who was doing it? Somebody shouted, “*Hili ni jeshi la Kapondi!*” I said that Kapondi is my brother-in-law. My wife is his half-cousin and Kapondi used to live in my house. Kapondi drove my vehicles and I paid rent for Kapondi. I got a job for Kapondi in Southern Sudan and the people of Mt. Elgon can attest to that. It was even announced at Kapsokwony. He turned it down. What I got from him was; “who told *mheshimiwa* I want any job? I want that seat he is occupying.”

I have sworn to speak the truth. I am not saying that because of that utterance he was the one leading the SLDF. It is up to this Commission to determine who was behind the SLDF and not me.

The Presiding Chair (Commissioner Chawatama): At this point I would like to ask the leader of evidence--- I know a number of names have been mentioned. We have looked through the documents this witness submitted and we have seen the letters and the names that were mentioned. When he said that he would mention a certain lady in camera, I took it that he was well cautioned on the mentioning of names of people we were unable to send notices to on time. I want to know whether hon. Kapondi is in the room.

The Commission Secretary (Ms. Nyaundi): He was here earlier in the morning and we had issued him with a notice that indicated to him that he has been mentioned in connection with the SLDF and a number of the issues that arose in Mt. Elgon. He is actually slated to appear before the Commission later in the day.

The Presiding Chair (Commissioner Chawatama): Thank you very much, Leader of Evidence. I thought that there ought to be a caution. It is only fair that if people are mentioned that they are present. Since you inform us that he will be a witness and that he was given notice, then we are satisfied that the witness can proceed.

Mr. John Serut Bomet: Thank you, Madam Chairlady. Allow me to say one thing. May be I was carried away by emotions. I realize that some of the names that I wanted to issue under camera, one of them is that one. I beg for forgiveness because I have other information. I hope I will not mention it here because I might go overboard.

The Presiding Chair (Commissioner Chawatama): We will inform the witness when he comes that his name came up.

Mr. John Serut Bomet: Madam Chairlady, I think it will be in order that since there was indication even earlier on that his name had been floated, there is no harm. His name is still being mentioned now. I have not appeared before this Commission over this issue. So, other witnesses must have mentioned him. Let me proceed.

I was talking about Kamneru where we were shot at. I do not want to mention all that took place. If a case will be established in any court of law under your recommendations and I am called as a witness, I think I will give the details. I want to save time for others.

Generally, there was insecurity and I was one of the victims. The people of Mt. Elgon were victims; and the details of which if we are called upon in specific cases, we will be able to bring forward.

The army assisted us and I want to repeat that. Allow the army to continue to be in Mt. Elgon. If there is any errant officer, let that case be dealt with in isolation, but let us not withdraw the army and put the lives of the people of Mt. Elgon at risk. As I sit here today, there is peace in Mt. Elgon and we can walk freely. It is not because somebody is leading, but it is because of the presence of the army.

With regard to Rapid Deployment Unit (RDU), kikosi cha AP---

The Commission Secretary (Ms. Nyaundi): Thank you, Mr. Serut. You have been very useful to the Commission this far. We needed to know, in terms of your submission, how long you will be going so that the Commission is able to direct on how it will continue with its proceedings.

Mr. John Serut Bomet: I am about to finish. If I refer to my notes which you know I have not referred to--- Let me look at my notes.

Madam Chairlady, I have given an overview of Chebyuk Settlement Scheme. I have corrected an anomaly which has been there that; there were clashes in Mt. Elgon over Chebyuk. What happened was a resistance. No politician or Provincial Administrator was involved in identifying the squatters in Phase III. It was done by the elders who came from Chebyuk, Kaimugun and Kubras for the Dorobos. The Soi were from Emia, Chepkurkur and Korong'utun. I have also stated the action that I took when we had problems with insecurity. I could not go beyond that. I have floated names here and there of Ministers, individuals, clergymen, and politicians. I have no apologies for mentioning those names. However, allow me to mention what I think the way forward is. This is my opinion.

I will start with the SLDF. I have stated categorically that the SLDF would not have spread in Mt. Elgon had the Government acted promptly. So, my first recommendation is that the Government of Kenya, through the President, should apologize to the people of Mt. Elgon for the killings, displacements and looting of properties of people of Mt.

Elgon. This is because it is correct that the Government's cardinal role is to protect life and property of people, but in this case it failed in totality.

My second way forward is that the people who are being settled in Phase III identified by the elders and approved by the task force should not include anybody who did not go for registration or vetting because there is a lot of talk that councilors are being rewarded. I have told the DC, Cheptais that that should not happen. Let the poor get their share in Chebyuk.

My other way forward is that the remainder of genuine squatters, there was Kshs400 million which was issued by the Government in promise to purchase land for the squatters--- It is high time the Government moved with speed to identify and purchase land wherever it is and settle the remainder of the squatters.

On the issue of the settlement scheme, I want it to come out clearly that the Chebyuk Settlement Scheme was specifically for the Dorobo, but because of the circumstances I mentioned, the Soi also asked to be taken care of. Historical injustices, in terms of land allocation in this country, were the failure of the Government and the leaders then. I know my people have been crying that they were neglected when schemes were being given out. That is true.

Another issue is that of the boys who are still in cells. I said that if you are released by courts of law for lack of evidence, it does not mean you did not commit a crime. It is common knowledge that those who bear the most responsibility are walking freely while the poor with no support languish in jail. Some of them could have been forced to join the SLDF. Some could have been induced because of promises of land. Some went there willingly out of ignorance. Some of those walking freely handed over guns. Who committed the most crime? The one found with a gun illegally or the person arrested without one? The answer is common knowledge –the one found with a gun. If you were found with a gun and you were set free, what about the person who was found with nothing? What I am saying is that let all the boys be released, be they in remand or in jail. Let them come home and as a community we will try to reconcile them. However, those who bear the most responsibility, please, pursue them.

Those boys who are in cells have families. They must be assisted. It is the obligation of the Government whether these are as sons or daughters or wives or husbands of those in cells. They are innocent and they should be taken care of by the Government.

Last but not least, I went to Rwanda and saw the people who were killed. We need to come up with a memorial, maybe, once a year. Let us construct one at Kopsiro to remind us of the evils of the people of Mt. Elgon that we committed against ourselves. I want to rest my case there.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. The Commission would like to recognise the presence of the victims and

widows who have travelled from Mt. Elgon. I request you to stand up so that we acknowledge your presence.

(Several people stood up)

We want to thank you most sincerely for having travelled in order to be a part of our proceedings today. You are very welcome.

The Commission Secretary (Ms. Nyaundi): Mr. Serut, in your evidence you referred to a number of documents and we now wish to admit them to the record of the Commission.

There is a letter dated 8th May, 2003 addressed to the Minister in charge of Internal Security and Provincial Administration signed by you and copied to the Attorney-General, amongst others.

There is also a letter dated 5th March, 2004 authored by you and addressed to the PC, Western Province.

There is a list of suspected members of the SLDF.

There is a list of elders who were named to assist in the vetting exercise. There is a letter by the Mt. Elgon Professionals Association addressed to hon. J. Michuki as Minister for Provincial Administration and Internal Security dated 15th January, 2007 and attached is a list of non-deserving persons.

There is also a status report authored by you and threats addressed to you, which you received on 7th May, 2007 and another one dated 12th February, 2007.

There is a letter addressed to you by the then acting Minister for Lands; Prof. Kivutha Kibwana dated 3rd July, 2007 and your memorandum addressed to the President, dated 3rd July, 2007 and a response thereto by Ambassador Muthaura, dated 21st August, 2007. There is also a letter dated 25th September, 2007, authored by you and addressed to the Permanent Secretary; Secretary to the Cabinet and Head of the Public Service.

Finally, there is a letter dated 11th October, 2007, addressed to the Chairman of the Electoral Commission of Kenya, authored by you and referring to the movement of polling stations in Mt. Elgon.

You had also referred to a letter written by Rev. Lelei concerning security and it is titled: "Conflict and Security Alert." Then there are memoranda written by you and addressed to the taskforce that was handling resettlement of beneficiaries of Chebyuk. There is also your statement that you made to the police on the 23rd September, 2006.

I want to confirm whether you would wish to have those documents included in to the records of this Commission.

Mr. John Serut Bomet: I do.

The Presiding Chair (Commissioner Chawatama): The documents as read out by the leader of evidence, which documents have been perused by the Commissioners are so admitted.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you very much, Chair. I would just want to ask you a few questions. Prior to your entry into Parliament, what were you engaged in?

Mr. John Serut Bomet: Madam Presiding Chair, I used to work at the Ministry of Lands, as a registrar.

The Commission Secretary (Ms. Nyaundi): You have said that one of the issues that you celebrate about your tenure is that you resolved the issue of settlement in Chebyuk Phase III.

Mr. John Serut Bomet: Yes. It is correct your honour.

The Commission Secretary (Ms. Nyaundi): What exactly did you do in terms of resolving that issue?

Mr. John Serut Bomet: Madam Presiding Chair, I identified the problem. After identifying the problem I looked for a cure, and with the assistance of the Government, we got a cure. That is why the taskforce has worked so independently, and has gone ahead to approve the same list.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you. Now, a number of witnesses who have testified before this Commission and the research the Commission has done appears to suggest that, at least, clashes that began around March, 2006, in Mt. Elgon are related to the publication of a list of names of people who were to benefit from Chebyuk Phase III.

Mr. John Serut Bomet: Madam Presiding Chair, I want to answer: “Yes and No!” That list acted just as a catalyst. The real issue was not that list, but those who owned large chunks of land were not ready to part with even an inch. They were either misled that, that was their land or they were misinformed. As I explained, to date the only entity or institution that has a right over Chebyuk phase III is the Government. I am saying so because phase III is part of what was gazetted in 1932 and that position has not changed.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you very much. You have also mentioned and, indeed, in the whole country that the 2005 Referendum was very much contested. Some witnesses have suggested that during the 2005 campaigns towards the referendum, this was also linked to the Chebyuk Settlement Scheme Phase III. The issue kept coming up.

Mr. John Serut Bomet: Madam Chair, it depends on who is the source of that information. I want to deny categorically and, I am going to prove that it had nothing to do with the settlement. I had mentioned it earlier and it is unfortunate that I did not go to that length.

If you look at the voting pattern during the referendum, the entire “Ndorobo” voted against the referendum. So, if Serut was assisting those who were with him, then he should have settled those who voted “Yes.” That is common knowledge! Why is it alleged that I was pro the “Ndorobos”? That is the question that the Commission must ask itself. I want to say this: I love my community in totality. If you look at my track record in development, from Chebukube up to Kaboywo, it speaks for itself. I did not discriminate against any single area in terms of health, education, bursaries; name it.

Thank you.

The Commission Secretary (Ms. Nyaundi): Thank you very much. You have said that you were in the group which supported the draft during the referendum. What the Commission has been told is that, around this time, there was a group that was fronting for allocation of land and the criteria was house by house, what they referred to as: “Nyumba kwa Nyumba.” They said that, in opposition to that, you pushed for allocation by ballot and this was the source of major contention at Mt. Elgon.

Mr. John Serut Bomet: Thank you, Madam Chair. Let me thank the one who brought that issue. Whoever raised it has done me good service so that I can clear the issue. I think the issue has been lingering for too long. Allow me to give a brief of my pronouncement of “Nyumba kwa Nyumba” slogan during the referendum campaign. It started with my campaign to Parliament. What I meant by “Nyumba kwa Nyumba” slogan---

In 1989, when the former Provincial Commissioner (PC), Mr. Lekolol, moved people out of Mt. Elgon, he started what we called resettlement and people were moved from one end to the other. A good example is when people were moved from a place called Kipsigon to Kupsigon, while others were moved from Kupsigon to Kipsigon. Some were moved from Chepkurukur and were taken to Cheptoror and those at Chepkurukur were moved to Cheptoror. Does that make any sense? Simple economics!

Economics of scales tells me this: Why move somebody from Chepkurukur to Cheptoror and then somebody else from Cheptoror to Chepkurukur on the same acreage and same land? What a big waste? What I said and I request my people of Mt. Elgon to understand me - I used to work with the Ministry of Lands and I know the Government policy on

land. You cannot sub-divide land beyond 2.5 acres. If we had gone house to house, the way they interpreted it, then we would be having a slum. There would be no land that you would call agricultural land. Not even an urban land, because houses would be sitting on each other. It is unfortunate that that misinterpretation came about. The interpretation is simple and I want to repeat myself. It was not there! What was there was a Government forest and today it is still Government forest! Let us speak the truth. Why do I say so? I have said a few minutes ago that Chebyuk Phases II and III are still Government forest land by virtue of the Gazette notice of 1932 and that has not been repealed. It has to be repealed!

The problem with Chebyuk Phase III as I said earlier, and even the purported Phase III, had not been identified because there were no boundaries and, therefore, you would not know how much land was allocated. So, what did I mean? I meant this: Proper procedures were to be followed. Identification of the genuine people to be settled; and thereafter, those who were already on the ground, should be settled on the same piece of land, not to be moved. So, after vetting, the list should be re-vetted for the people who were already on the ground. If you are already on the ground, it only made sense that you are returned to the same piece of land. That is what I called “Nyumba kwa Nyumba”. Not a man coming to squat on land and within two days and then you are told, now you have ownership of land.

Thank you Presiding Chair.

The Commission Secretary (Ms. Nyaundi): Again, we would just need some clarification from you. We were told by some witnesses that, soon after the results of the referendum, you addressed a meeting in Mt. Elgon and you told them that you had asked them to follow the bees so that they would get the honey, but they refused. So, now they would follow the flies and eat human waste. Do you recollect making such statement?

Mr. John Serut Bomet: Madam Chair, I want to say “Yes and No!” Certain facts are correct, and I will explain. But others are additional to make me look a bad boy. I want to speak the truth. I do not know whether it was in Kapsokwony or where, but I remember I addressed people, not after the results; but before the results. I was warning the people about the issue of the counties; the one I have already mentioned. I was telling them that I had fought in Bomas so that we could have our own county as a minority group in Western Province.

In general we could decide our own issues and priorities. I told them to vote for “Yes.” The issue of women marrying women and men marrying men; these were allegations and did not exist in that draft. Whether it was called the Wako Draft or whatever draft, it was none of our business! This is what I told my people as a leader. I told them that they did not elect me to Parliament to go and eat and forget them. I had to guide them.

I told them that there were two things at stake; one, I had engaged the Government in terms of development, which I have mentioned, the roads and et cetera. The Government had to come in full force to assist us. I told my people that, whether this referendum was

going to succeed or not, we were to be on the right side so that we benefit. The right side was the child holding bread. That is the language we were using. To put in plain language, I told them that: I had engaged His Excellency the President. It is even on the record; the first place his Excellency the President landed in Western Province, after the general elections was Mt. Elgon. The first stop was Mt. Elgon and yet I was not the NARC candidate! That shows how much I cared for my people. What I was interested in was development. I told them; let us vote for “Yes”. I told them not to follow promises which would not work.

I was not happy with the other wing because, to me, it was populism. I had asked myself; why did I have to go to Parliament and why was I elected? Was it not because my people were suffering? Am I not there to deliver? These are questions which bothered me. I told them nothing but the truth.

But Madam Chair, I want to give them the benefit of doubt and I had even said it. Could that have led to the killing of the people? Would you go and kill today and say: “I was told to kill?” It makes nonsense of that person who made such statement.

Madam Chair, I want to beg, you cannot add issues to make others look bad. I am on record for fighting for my own people. Even today, I am fighting for the poor and I stand for that, even if it means losing my life.

Thank you.

The Commission Secretary (Ms. Nyaundi): It has also been suggested that you were instrumental in the deployment of the RDU unit which a number of the residents say was responsible for a number of violations that were visited upon the residents of that region.

Mr. John Serut Bomet: Thank you Chair. The position you have taken or whoever brought it that, I was instrumental in the RDU unit; I want to say this: I am not an expert of the forces and I am not in charge of their actions and omissions. But allow me to say this: The District Security Committee through a DC called Pirik, approached me and told me that they realized that the regular police had been overwhelmed by SLDF and they required reinforcement. I asked the DC a simple question: Which reinforcement? I told him that we had already written to the Government to assist us in the recruitment of home guards and the Government seems not to be willing. I thought that would be the way forward because the home guards should assist in the identification of the criminals and suggest ways of protecting wananchi when there are no police officers around. He said: “No, they had written. And we require your input because you are a minister in this Government. Talk to the Government to assist us.”

I called the Provincial Commissioner and he said that he had forwarded the matter to Nairobi. I went to the Permanent Secretary then, Mr. Cyrus Kithua, who told me that they were already taking action and I rang my own DC again. I told him, whatever he had recommended, action was being taken. Am I the one who initiated it? I think, let us be civil in whatever we want to present. Let us not just throw issues there because you hear about them by the roadside.

The Commission Secretary (Ms. Nyaundi): Thank you, hon. Serut. What we are also trying to do is to get an accurate record and that is why we will raise issues with you which we have heard other people stating.

Now, you have mentioned that within this period there was mushrooming of armed militia and the one that you have mentioned is the SLDF. But, I have seen in your communication with the internal security agency, where you have said that they are, at least, ten that were operational in the region. Could you, please, tell us the names of these groups?

Mr. John Serut Bomet: Thank you Chair. You realize that most of what I am saying is what the legal fraternity would refer to as hearsay. I say so because I am never on the ground all the times. I get information from people and the information could be either correct or misleading. First thing, information is not a crime; it is up to the recipient to investigate.

Presiding Chair, as a politician I was a representative of the entire people; whether they were criminals or not, they were all my people! As such, I did not have the capacity to investigate anything. Mine was to pass such information to the relevant authorities to investigate and come up with either the truth or the lies that is before you. So, what I am saying is that, I wrote a letter - it is unfortunate, the person who gave me that information is not alive. But I can name some.

There were allegations that there Ndorobos had their own militia group which was operating in Chebyuk. There were also allegations that there was another group in Chepkitale that was fighting or purporting to protect the people. There were also allegations that the Bukusu had also come up with their own and my question was simple. Why were so many militia groups coming up? Those who gave me information told me that the Government had failed to protect them. It had become part of the militia and they had to defend themselves. I asked them whether they had a name for whatever they were doing. They told me no, they were only proposing. But then as a leader, I used not to take anything lightly. Mine was to pass information to the Government and let the Government do investigations and find out whether they are ten, 100 or one militia group!

That was not my business and I did what I was supposed to do as a leader. It was up to the Government to do that; I do not have a letter from the Government to date, refuting the fact that they were ten. So, I want to declare here that they must have been even more than ten because the Government did not do its works. If it did, I would be having a response.

Thank you, Madam Chair.

The Commission Secretary (Ms. Nyaundi): Thank you. You mentioned in your statement earlier that you were part of a grouping that referred to itself as Club 14 and your major issue was that there had been allegations of land grabbing. Were you referring

to the Ndung'u Report on Illegal and Irregular allocation of public land, where it was alleged that you were a beneficiary of 50 acres of land that belonged to ADC in the SIA settlement Scheme in Trans-Nzoia.

Mr. John Serut Bomet: Thank you Madam Chair. I think I have more land in Trans-Nzoia than--- (*Inaudible*)

The Commission Secretary (Ms. Nyaundi): (*Inaudible*)

Mr. John Serut Bomet: (*Inaudible*)

(*Technical hitch*)

Mr. John Serut Bomet: Why were they not talking about it? Was the allocation done in church? Was it not done like any other allocation? So, we were against selective allocation and we have no apologies for it.

The Commission Secretary (Ms. Nyaundi): We heard that as a consequence of the crisis in Mt. Elgon, a number of people were displaced. I do not know whether you are aware that people were displaced. Could you confirm that people were displaced and whether or not the Government up to date addressed their situation? Did you as the Member of Parliament have occasion to engage with the Internally Displaced Persons (IDPs) and did you resolve the issue in any way?

Mr. John Serut Bomet: Thank you and that is a good question. Yes, people were displaced. I even mentioned earlier on that I had refugee IDPs in my own compound. I used my own resources to ensure that they got food. I talked to the Government at that time. I wrote a letter to Prof. Kivutha Kibwana. In that letter, I said that the Government was the enemy of the people of Mt. Elgon. It should provide security for phases 1, 2 and 3 so that people could return to their farms and they should suspend the sub-division and allocation of land until after the general elections. Even the general elections should be suspended because there is not going to be any genuine elections in Mt. Elgon. Another issue I raised was the feeding programme. I warned the Government that if they do not facilitate the return of the people, then they should come up with a feeding programme. I mentioned in the letter that it should be from September. That is in black and white. That shows how serious I was and concerned about my people.

The Commission Secretary (Ms. Nyaundi): Just for the record, I would like to confirm if you paid equal attention to the persons who were displaced regardless of their ethnicity because you have said that there are different tribes that inhabit Mt. Elgon. We were told that some people were displaced during the elections of 2002 and 2007 which shows that there is a cycle of violence that follows every election. Are you aware of that and did you, during your tenure as the MP, address the plight of the displaced persons, either from Bukusu or Teso community?

Mr. John Serut Bomet: That is another very good question. You have asked me what I did for other communities. You have also asked about the violence that erupts during elections. I did not want to dwell on those issues but since you have brought it, I want to tell you that in 1992, so many people lost lives from other communities other than the Sabaots in Mt. Elgon. So many others lost their land and some vowed never to return. I want to amuse you. The land that I believe I build on belongs to 13 Tesos who came looking for me and told me that they know what I stand for. They told me that they have suffered so much and even had moved out of Mt. Elgon. They told me that they will never come back to Mt. Elgon. They wanted me to assist them to get settlement elsewhere. They wanted me to buy their land so that they could go and look for land elsewhere. That was a desperate move. So, I went to investigate. I was warned by my own community. I was told to buy three bulls to be given to the “boys”. That is how they referred to themselves. They told me that I should either do that or I will not live there. The person who gave me that ultimatum I know him and I will mention him but not here. I will do so in camera. I guess it will be the right forum for me to face him. I did not yield to their demands and I went ahead to buy the shamba and paid for it. So, those people were able to buy land elsewhere. I am saying that the Tesos and Bukusus lost their land in Mt. Elgon. That is a fact. Let us not beat about the bush. The issue is simple. When I grew up in Mt. Elgon the people were selling land to Bukusus, Tesos and other strangers. They believed that there will come a time when those strangers would go away. They were not comfortable selling land to each other. When those people could not move out, they saw an opportunity and they have been seeing an opportunity during election time.

I want to say that in 1992 people were displaced, in 2002 people were not displaced, in 2007 people were displaced. That is a fact on the ground. During the elections, I am not ashamed to say that the Bukusus voted for me. I am not ashamed to say that the Tesos voted for me all of them because I tried to defend their interests and they see me as their saviour. That is why I said in my earlier presentation that I was given names like Wanyonyi, a betrayer and so on.

Commissioners, there is need to come up with a homegrown civil society in Mt. Elgon to carry out civic education. Let my people know their rights. People should be driven out of ignorance. People should be told what is right and what is wrong. Failure to do so there are a few elements who think they own Mt. Elgon. If I may touch on the Constituencies Development Fund (CDF), this fund was meant to empower the community including children from poor families but today in Mt. Elgon it has been turned into a personal property. I do not know what Dr. Lumumba’s office is doing. The money for roads, I wish you could go to Mt. Elgon today---

The Presiding Chair (Commissioner Chawatama): I wish to remind you that the question that was asked by the Commission Secretary is whether you paid equal attention to the persons who were displaced, irrespective of the community which they came from.

Mr. John Serut Bomet: Madam Chairlady, I think I have explained that but it has also provoked another dimension of non-observance of the law because that has to be said here.

The Presiding Chair (Commissioner Chawatama): Could we proceed this way: The Commission Secretary is asking questions which you are required to respond to. There will be an opportunity for Commissioners to put questions to you or ask you for clarifications. Should that issue that you want to bring up not come up then we will give you an opportunity to bring it up.

Mr. John Serut Bomet: Thank you, Madam Chair. Much obliged.

The Commission Secretary (Ms. Nyaundi): You had mentioned that at an individual level you lost family members in the conflict in Mt. Elgon. Will you be willing to mention the individuals who died and the circumstances under which they died?

Mr. John Serut Bomet: The first immediate family member to be killed was my brother, Mr. Edward Kale Serut, on 30th June, 2007. He was not even living in Chebyuk but he was abducted on the way, taken away and we found him dead the following day. He had been slaughtered with his hands tied behind. It was a sad moment. When I received information I was at home. I called the security agents whom, I must say, were inept in their duties. They never went to the scene until I went personally and they followed in the company of the District Commissioner (DC). That was on 30th June, 2007. My eldest brother, Mr. Jeremiah Chepkwony Serut, the first born in our family in my mother's line was also killed outside his house at a place called Kibuk. He had gone to Kapsokwony for treatment and they decided to visit his son near my home. I heard gun shots and one of my brothers told me that; "be careful we are being killed here". He said that it is better for them to die but I should not die. It was not only my brother who was shot. He was killed together with the daughter of my brother. She was a young girl who was just sitting in the house. My security officer had escorted one of the IDPs in my compound who was sick. He had been taken to Kapsokwony. So, I only had two *askaris*. I called my security and when they arrived they found the two had already been killed. That was around 9.30 p.m. I told my security to take the bodies to the mortuary using my vehicle because when I called the police they told me that they are already on the scene but there was none. I want to tell the Commissioners that when these people were being killed, there were Administration Police (APs) nearby but they did not even come out. Those were not the only people killed that night, a neighbour and his wife were also killed. So, four people died that night. The following day my security and police officers took the bodies to the mortuary.

Madam Chairlady, there is a letter which I have written there, accusing the Government. My allegations to the Government are that the work of police is to collect corpses. The police in Mt. Elgon were just collecting corpses. That was not the end of the killings of my family members. When my first brother was killed, my uncle, who heard the news collapsed and died. So, we buried my uncle and my brother. My brother in-law, Mr. Cleophas who lived in Kapkatim was shot dead. So many people died. If I come up with a list here, you will be shocked.

Those who were seen greeting me were also killed. I want to give you one incident. An aspirant in Chepkube called Stephen Morei met me at Kapsokwony CDF office and told that there were children who had been displaced and could not meet their needs. He wanted me to take money from the emergency kitty and pay schools for those children who had been displaced. I knew the situation and I was ready to assist. I told them so. I gave that man Kshs2,500 from my own pocket and I told him to go and have lunch with those who had accompanied him. I instructed him to come back later. As soon as he reached Cheptais, he was followed and shot dead. The councillor, Mr. Benson---

The Commission Secretary (Ms. Nyaundi): Thank you very much, Mheshimiwa. I can see the list is long. The Commissioners will direct us on when they can hear you in camera and when we can receive the additional information, for instance the list of persons who have died.

The Presiding Chair (Commissioner Chawatama): I think this could be a good time to break up for lunch and then we will then have an opportunity to ask the witness questions. We will give direction on what you have mentioned about camera hearing and we shall communicate to the witness.

We will take a lunch break and come back at 3.00 p.m.

[The Commission temporarily adjourned at 1.50 p.m.]

[The Commission resumed at 3.25 p.m.]

The Presiding Chair (Commissioner Chawatama): Welcome back to this afternoon's proceedings. We will continue where we left off. We shall ask the Commission Secretary to take over.

The Commission Secretary (Ms. Nyaundi): Madam Chairlady, with your kind indulgence, there is a group that represents internally displaced persons from Bungoma Central; I have informed them that we will not be able to hear them but we can accept their communication and I was requesting that you acknowledge receipt of the same. They have furnished me with a letter dated 30th June, 2011 addressed to the DC Bungoma Central and attached to it is a list of 671 names of individuals who have been identified as IDPs. I will ask Mr. Erastus Maruti to stand up and confirm that those are the documents he has given me. Once he does that, I will also request that you admit them to the records of the Commission.

The Presiding Chair (Commissioner Chawatama): Could you assist him to come forward, so that we can do a little ceremony? He should formally hand over the documents to the Commission.

There is a letter dated 30th June, 2011 addressed to the DC Bungoma Central and the list of IDPs which should be admitted as part of the Commission's records.

I wish to call upon Commissioner Dinka to ask the witness any questions.

Commissioner Dinka: Mr. Serut, thank you very much for coming and testifying before us. I have very few questions. You told us about the reluctance of the police to restore law and order and to take action against people who caused insecurity on time, even when they were informed. Sometimes, when they were informed, they leaked it and those who gave information were victimized. Why do you think it happened so? Is it because they belong to certain ethnic community or was it bribery and corruption?

Mr. John Serut: As a leader, I did my own research and there were several reasons why the police were reluctant. The first reason is; there were police officers who had overstayed in the district and even had married from the community. As such, they were not ready to arrest and punish people who they saw as their relatives. Secondly, I established that most of the police officers who had been brought to Mt. Elgon were those who had been rejected elsewhere for being undisciplined. Mt. Elgon was a dumping ground for such officers. Those officers continued with their behaviour
The third reason is that there were officers who had been compromised. As I said earlier on, they were officers who were friends of certain people who were perceived to be involved in SLDF. There came a time I even requested the Government if there was a way they could disconnect mobile phones in Mt. Elgon because whenever officers were posted there and they wanted to raid the hide-out of those criminals, the criminals could get information before they could get there. The last but not the least is that officers became overwhelmed and they did not want to be involved in the killings of the people of Mt. Elgon. So, there was “a don’t care attitude”. We had an OCPD who even if you reported anything to him, no action would be taken until he was transferred.

Commissioner Dinka: My second question is that in your statement, you said that the army should continue to stay in Mt. Elgon and gave us an example that the police at that time raided a factory which you had started setting up and plundered everything. In other words, the police were caught ready-handed committing the crime. You were a Member of Parliament and you were interested in what was happening in Mt. Elgon and I am sure you must have discussed that with senior police officers. How do they explain what had happened?

Mr. Serut: You were right that I discussed that issue with senior officers. The answer I got was that action was being taken. Whatever action they were taking, I do not know and there is not much I could do.

Commissioner Dinka: You mentioned about the SLDF commander who was perceived to be the senior-most, is still on the run and that others are in Marakwet and Uganda. My interest is those in Uganda. How many would they be and are they still refugees or have they settled there?

Mr. John Serut: Thank you Commissioner. Point of correction! I said West Pokot and not Marakwet. Since you want me to talk about those in Uganda, I cannot give you the exact number but the commander of SLDF is said to be in Uganda. He is known and his

home is known. He was a police officer who had deserted the force. For benefit of doubt, let me mention his name. His name is David Chemaimak Sichei. He comes from Cheptonon, Kopsiro Division, in Kapkateny Location.

Commissioner Dinka: Has there been any extradition process to get him back?

Mr. John Serut: By the time he was identified as the commander, I had already left office and I did not have mandate of anybody to follow up the issue. My mandate ended as soon as I ceased being a Member of Parliament. The best person who can answer that question is the current Member of Parliament.

Commissioner Dinka: We have visited Mt. Elgon and we have heard about two organizations; one called Moorland Defence Force and the other one is called the Political Revenge Force. What do you understand by those terms?

Mr. John Serut: It is interesting that nobody is talking about SLDF? They are talking of perceived organizations. I can say that whoever gave you the information, I want to urge you to investigate him. Immediately I left Parliament, the name revenge force came up. It was coined by sympathizers of SLDF. I am not ashamed to tell this Commission that they were out to divert attention. We want those who have made such allegations that there is a revenge force to come forward and name the leadership of the revenge force instead of just making claims. I have heard of Moorland forces and I want to affirm there that 90 per cent of people killed in Mt. Elgon were killed by SLDF and the 10 per cent died under other circumstances like the army and diseases. I have not heard of Moorland Forces having attacked a village and killed people. It may be that it exists but I want to tell this Commission that Moorland consists of the Ndorobo. It is unfortunate that they have no representation and in most cases, the Sois have sat on them. What is happening is that we want to always point fingers at them because they do not have representation. The truth is this; Let those who have made that allegation come up with documentary evidence or all evidence that is credible but not making allegations that you cannot even stand in a court of law and defend.

Commissioner Dinka: Thank you very much, Mr. Serut. Your testimony has been very helpful to the Commission. I do not have any more questions.

The Presiding Chair (Commissioner Chawatama): Mr. Serut, you highlighted the issue of land is usually used to gain political mileage and that is why the completion of the settlement scheme has taken long. You also acknowledged that your *nyumba kwa nyumba* campaign did not happen during the referendum but during other political campaigns. Could you please share with us how you used land to gain political mileage?

Mr. John Serut: That is a very good question. My agenda number one was to deal with the issue of land in Mt. Elgon because it had taken 37 years and there was no development in Kopsiro Division. People were living like birds. It was a concern and I told the people of Mt. Elgon, especially, Chebyuk that if they elected me to Parliament, I would sort out the issue. I am a proud man today that it was sorted. Whatever happened

was not about land. I say so firmly because the people who were resisting were not the owners of the land. They were only laying claim but we followed the process and we proved ourselves right. That is why I mentioned earlier on that I am a happy man because the issue of Chebyuk was finalized. I say so for purpose of clarity because I have evidence that the task force is almost through with allocations. They are using the same list and nobody has been dropped and nobody has been added. That shows that we did the best job so far.

The Acting Chair (Commissioner Namachanja): Thank you, hon. Serut. I think it was on Saturday when we were in Cheptais. We met some witnesses, amongst them, the widows. The worry they shared was the tension between the families whose parents had been killed, some by the SLDF and others by the military operation. The worry is about the children in school, who tend to even blame each other. What recommendation do you have, as one of the leaders from this region, to deal with the relationship amongst the families that lost their dear ones in the hands of the SLDF and in the hands of the military? The children in school even blame each other.

Mr. John Serut: That question is not easy but I will attempt to answer it. My belief is that the focus of genuine reconciliation is at the grassroots. I am happy that you have identified the young children in school, who cannot agree with each other. The causes are the crimes committed by their parents or relatives.

As a leader, I said this morning in this hall that the way forward for the people of Mt. Elgon is reconciliation. It is not about sentencing people. It is not about pointing fingers at each other. You can be compensated for the loss of your family but does that heal the wound in your soul? It does not. I am among the people who lost quite a number of relatives. Whenever I think about it, it disturbs my mind, but what I have said to myself is that life must go on. Therefore, one of the recommendations I made in the morning still stands.

I want us to look at this issue holistically. I said, let us look at the young man with a gun. He is told to surrender the gun and he goes scot-free. Think of a young man who was arrested by the police while going home. He has not committed any crime, but because there was an operation going on, he was thrown into a cell. After being thrown into a cell, as usual, the police would tell him; “go and plead guilty and this matter will be simple”. So, out of ignorance, this young man says: “Yes, I committed the crime”, without knowing the consequences of his plea. He is sentenced to seven years’ imprisonment.

Who really committed the crime? Is it this boy who is lamenting in jail for seven years? Is the man who surrendered the gun freely? Is he walking freely? Chair, allow me to say this: This young man in jail is not in jail because his conscience tells him that he ever committed a crime. The young man who surrendered the gun is not free because his conscience tells him that he did not commit a crime. How do we deal with the two?

I want to recommend to the Government to release all the boys and the old men who are in jail. Let them all go home. Let the old men and the old ladies sit down and reconcile

these people. Let us start at the homestead, and we go to the sub-location. We then go to the location. Let us stop this issue of reconciling people at the top by promising them land, or Heaven, yet you cannot deliver Hell.

Commissioners, I want to tell you that the children of Mt. Elgon are crying. They are waiting for the outcome of the work of this Commission. Every day, whenever I pass through villages, people ask me: “*Mheshimiwa*, what is happening with TJRC? What is happening with our children?” I want to repeat: Release all those innocent children. Let us plead with those ones we perceive to be keeping guns to surrender those guns, be free and let them prove to be free.

There is one particular civil society organisation, which I have admired – Free Pentecostal. It has been taking these young men, talking to them and counselling them; a number of them have changed. Why do we not say “Halleluyah” to Free Pentecostal? That is the direction to go. We should have counselling sessions at least once or twice per week for the children in school and tell them that they have to learn and live together. There is no other way. Punishment will not assist. But punishment for those who bear the most responsibility, including myself, should be administered.

Thank you very much.

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

The Presiding Chair (Commissioner Chawatama): Commissioner Farah, do you have any questions for this witness?

Commissioner Farah: Yes. Hon. Serut, thank you very much for your eloquent testimony. It was very enlightening but I want to ask you a question. It appears as if the centre of the problems of Mt. Elgon is Chebyuk Phase I, Phase II, and more so, Phase III. If I may recall your testimony, you said that the settlement was mooted in 1965 but Phase I was allocated in 1971 and that, it was meant for the Mosop community. You indicated this morning that the name “Ndorobo”, which other people use in reference to members of the Mosop community, is not a very good word to use. The Ndorobo, being what they are, later sold their land. In your testimony, you said that the Sabaot do not sell land to each other. I understood that to mean that they sold their land to the Bukusu and the Teso. That was in 1971.

Life went on until 1989, when PC Lekolol balloted plots in Chebyuk Phase III and that was the exercise which brought uproar. However, still, there was no violence between 1989 and 2006. The question I want to ask you is: What is it that you said during the 2005 Constitution Referendum campaign that alienated your people from you, to an extent that they took up arms even against you? I know that you have said a lot. You have said that you were always working for the protection of your people and all that, but, please, answer the following question in a few words: Why is it that between 1989 and 2006, even after the allocation of plots in all the three phases of the settlement scheme,

there was no armed conflict in Mt. Elgon – not even a conflict involving bows and arrows – but after 2006, following the dispute between the Banana and Orange parties, which were on either side on the Question of the Referendum on the proposed Constitution then, and after the subsequent outcome of the Referendum, hostilities started flaring up? Why is it that thereafter, you became very unpopular and the SLDF was formed, leading to the uprising, hatred and killings that occurred, until when the army arrived to intervene? Please, answer that question.

Mr. John Serut: Thank you, Commissioner. I will not answer that question directly.

Hon. Commissioners, allow me to repeat what I said in the morning. I want to start with the availability of that particular piece of land. It is correct that the idea to move the Mosop was mooted in 1965. But I said that the actual movement did not take place because of logistics. The actual movement took place in 1971. According to conservative figures of 1965, there were only 609 households in Mosop. But by 1971, the number had increased.

When the Mosop were moved to Chebyuk, the Government did not identify the land that was to be allocated to them. By “identification”, I mean that the Government did not adjudicate or gazette or declare it a settlement area. In 1974, the Government went ahead and degazetted 3,000 hectares of land to settle the Mosop. By then, already, members of the Mosop community had allocated themselves land, which was still a Government forest.

Hon. Commissioners, I said that the Mosop were hunters and gatherers, and that they were not used to farming. So, they invited the Soi to join them to clear off the forest and, on a gentleman’s agreement, they would tell their helpers: “You can have two acres there and settle down”; this is African. There were even others who sold their pieces of land, on mutual understanding, to the Soi. Let us not confuse this issue with the Bukusu and Teso issue. I am talking about the Mosop and the Soi.

The Mosop inter-married with the Soi and their relationship grew. There was integration. They lived together but they never lived in harmony. I want to tell you that there was fighting but on a small scale. People used to go to Uganda, procure firearms and even kill their own relatives or others who were against their welfare. I did not want to go into the nitty-gritty of that particular time.

In 1989, when PC Lekolol came in, was one of the worst times, because he declared everything owned by the Soi in Chebyuk null and void.

If I may use his words, even if you bought the land you owned; “you had bought the trees on that land, and not the land itself.” That annoyed the residents. Lekolol became very unpopular. There was also fighting. There were people calling themselves Major Gunia, Maj. Kiroboto and other funny names. Those fellows were armed. Most of them were killed even in Chebyuk by the people themselves. So, I did not say that there was no killing.

Come the year 2006, the bone of contention--- Allow me, first, to deal with the Bukusu issue. The land I referred to and said that the Sabaot could not sell to their fellow Sabaots, is the original/native land. That is the land which belongs to our ancestors, which they used to refer to as the “reserve”. So, let us not mix the two issues. What made Serut unpopular?

There is an issue I tried to clarify in the morning. Almost the entire Sabaot community voted against the proposed Constitution in the referendum of 2005. I will repeat this even 100 times. When I talk of “Sabaot”, I include the Mosop. The Mosop voted unanimously against the proposed Constitution during that referendum. I am saying so because I know that there are people who have come to you and said that I favoured the Ndorobo. I did not favour the Ndorobo. I declared my interest. I am a Soi. I lived in Chebyuk. That is why the facts are at my finger-tips.

What made me unpopular was not the land issue in Chebyuk. It was politics. I talked of wanting “home-grown civil society” for civic education in Mt. Elgon. My people have not been exposed. Anybody can come and lie to them. There are boys who were promised that “if you resist the distribution of this land, the foot soldiers will get 10 acres each.” There were even leaflets on the eve of the elections, which said: “If you vote Serut, you are voting for your grave”.

I want to open up. In Chesikaki, the Bukusu voted for me overwhelmingly. What happened to them? If you have not received evidence, a total of 18 members of the Bukusu community were slaughtered because they voted for hon. Serut. Is that the direction we want to go? Is that democracy? Was it not politics? Were they being slaughtered because of land? Let us tell Kenyans the truth. What happened was that the people moved away from the land issue but land was used as catalyst to aspire to leadership, and I say so without apology. Look at Cheptais. Nobody could contest other than the candidate---

If you do not know that it is politics, have you asked yourself why some people were elected unopposed? Are you not aware?

Commissioner Farah: Hon. Serut, I think you have answered my question.

Mr. John Serut: Thank you very much.

Commissioner Farah: You have answered my question. There is no point of dwelling on the many things that you said in the morning. My last question is; whose answer will be either “yes” or “no” is: Did you at any time in your political career organise a militia to further your cause, particularly in 2006? Put the other way round, did you have a hand in the Moorland Defence Force?

Mr. John Serut: Hon. Commissioners, those are two different questions. Which one do you want me to answer?

Commissioner Farah: I want you to answer “yes” or “no”.

Mr. John Serut: Hon. Commissioners, I will not answer; “yes” or “no”. I beg to differ. We should be putting the record straight. I want to say that I had never stepped into Moorland before the campaign period for the elections of 2007. I went there once in 2007, only two days to the election. Since I was born, I had never been to Moorland despite the fact that I was born and brought up in Kopsiro Division. So, I knew nothing to do with Moorland, and I had no relationship with anybody there.

You have asked me about violence. I will give you the answer. In 2002, I was shot at in Kaboywo during nominations. We were going there for campaigns for nominations. That is on record. Who were shooting at us? Hired goons who did not want us to campaign in Kaboywo! Come the general election in 2002, I went to Cheptais Town. Before I landed, bullets rented the air. We were shot at properly. I was lucky because I had a bodyguard who was armed. I was with my son and my wife in the same vehicle. We thought we were at home. I was a worried man – I was going to lose my life, that of my wife and my child.

We took off to the DO’s office, where we were given shelter. A crowd followed us and I swore to them that I would not step in Cheptais to carry out campaigns. If they so wished to vote for me, they may do so. Who was doing it? I will mention the name in camera, and I want you to follow it up. These are some of the issues I have said we have to speak about in camera. If those fellows are there, I want them to be called, so that we can face each other. I will have a chain of witnesses.

There are people in Mt. Elgon who have all along thrived on crime. They have taken over the leadership of KANU through violence. They are known. I do not want to mention their names in public. I will tell you their names in camera.

Thank you very much.

The Presiding Chair (Commissioner Chawatama): Thank you very much for that. We are going to facilitate an in-camera session.

Commissioner Farah: Thank you very much, hon. Serut. I have no further questions for you.

Commissioner Ojienda: Thank you very much, hon. Serut, for your testimony, which is obviously helpful to the Commission. I also want to recognise the widows of the Mt. Elgon violence who, out of no fault of their own, are now on their own because of the loss of their spouses due to the unfortunate violence that has characterised this part of the country.

Hon. Serut, I just want to ask you a few questions that will help to clarify some of the testimony that you have given the Commission this morning. The first one relates to your statement about secession. You said that it was as a result of the elections of 2002. I just

want to find out whether that was purely as a result of the declaration by hon. Kimunya that titles were pieces of paper or were there other causes that may have led the Rift Valley region to want to secede?

Mr. John Serut: Thank you, Commissioner. I will be brief. It is true that we actually announced, or declared, in Bomet that we were going to secede. The reason was what you have said. The Kalenjins were perceived as beneficiaries of the Moi regime. Declaring of title deeds as pieces of paper was intended to target the Kalenjin community. We saw it that way, as a leadership elected by the people; we represented our own community. We said we could not allow that. Why? Because we knew that every community benefited during the Moi regime, even if they were two or three people. We did not see any reason as to why it was narrowed to a community. Ours was to tell the Government that we could as well move away because the declaration targeted only the Moi regime period.

Thank you very much.

Commissioner Ojienda: Thank you very much. My second question relates to your assertion that the Government did not do much to halt the violence in Mt. Elgon. If you were in the position of the Government at that time, what prescriptive measures would you have recommended to nip the violence in Mt. Elgon in the bud and avoid the deaths that occurred?

Mr. John Serut: Thank you very much, Commissioner. I am happy that I know you as a man who speaks nothing but the truth. I have known you for many years. You know that when *Mungiki* killed a few people, the Government moved in very fast to make sure that peace returned. Whenever something happened in other areas, the Government would only issue a statement. In Mt. Elgon, even the Minister of State for Internal Security then, Mr. Michuki himself, could not come to Mt. Elgon until we pressurised him at the KICC. All he was saying was that he was already in Mt. Elgon because the Provincial Administration was there. I want to say further that where more than 1,000 people have died, it is only honourable for any Government that deserves recognition, and which cares for its people, to make even an apology for the people who have died or even send condolences. When Mr. Michuki and Prof. Kibwana came to Mt. Elgon, there were no condolences to the families of the bereaved.

To me, it meant that the people of Mt. Elgon were not of importance to them. That is why I am saying the Government did not care about the lives of the people of Mt. Elgon. If I were the Government, as you have put it, I would have moved in very fast to establish the cause of the problem and even cause what I may call; “cosmetic remedy” to the whole issue. You cannot sit in Nairobi and ask the DC in Mt. Elgon: “How many people have died? What have you done? How many corpses did you collect today? How many are you burying today?” It makes nonsense of the Government.

Thank you.

Commissioner Ojienda: Thank you, Mr. Serut. My third question relates to the pain you went through as a victim. You lost your brother, your niece, your in-laws and many other people who were dear to you. I do not know whether you were able to know the killers by names after those occurrences. I am asking this because I would want you to share with us what you would have to say to those killers if you met them today.

Mr. John Serut: Thank you, Commissioner. It is a question to which I have an answer. I want to refer the Commissioners to what has come out of those who were confessing at the Free Pentecostal. There are people who have already come forward to confess that they shot at me but missed me and they are asking for forgiveness. I have already forgiven them because I know that some of them were cheated. In fact, three quarters of them were cheated. Some were forced to do the things they did. They acted under duress. As a lawyer, you know that if you kill under duress, you are not guilty.

I am saying, on behalf of my family, that we have already forgiven all those who killed our family members. We have no problem with them. If you do not know, despite what happened, there was no election in Mt. Elgon but Serut did not petition because I value human life. If I had petitioned, the Mt. Elgon election would have been nullified. We have forgiven them and I ask the children, the *wazee* and *akina mama* of Mt. Elgon to forgive each other. We must move on as a community.

Thank you.

Commissioner Ojienda: Thank you very much, Mr. Serut. What then are your prescriptions for lasting peace that will integrate and reintegrate the soldiers? I am concerned about the child soldiers and also the widows. I am asking this because one of the things that you have said to this Commission is that those who were held and are awaiting trial should be let freed.

Mr. John Serut Bomet: It has been very hard for me to see the best way forward. But allow me to say that I have looked at everybody in Mt. Elgon as a brother and sister. They had a purpose of being brought to this world. I have also consulted my soul on this line. Whatever happened in Mt. Elgon during that tenure when I was the area Member of Parliament was bound to happen. That was a decision made elsewhere. I presume it is God who had made such an arrangement. It is a testimony I have given elsewhere. I have given it with a very clean heart. Since it has happened, let it act as a cleansing. Let us love and cherish one another. The people of Mt. Elgon should look at each other as one people, irrespective of our backgrounds. Whatever crime that took place, let us look at it as a cleansing, because I sincerely believe that it was bound to happen. It has happened and Chebyuk has been finalized. The cause is believed to be Chebyuk. Why is it finished? Maybe, it was a cleansing. If that is the soft way forward, it is my prayer that we forget the past and forge forward. But that does not mean that those who bear the most responsibility should be set free. They have to be dealt with according to the law. That will serve as a lesson, but the small people should work together. That is my prescription to the community. It is a prescription that if we deviate from, then we will

not have Mt. Elgon anymore. This is because it will be hatred. We killed each other, neighbour against neighbour, brother against brother and sister against sister.

Commissioner Ojienda: Thank you very much, Mr. Serut. I have further questions to ask you. You have alluded to reconciliation and that is key to the people of Mt. Elgon. You have also alluded to the need for continued and sustained peace. You and the current Member of Parliament for Mt. Elgon, hon. Fred Chesebe Kapondi, have been and were very good friends.

He campaigned for you previously and lived with you. You said in the morning that you were even able to help him secure a job in Sudan. It appears that the problem that came between the two of you was a result of the issues around Chebyuk III. I want you to confirm if that is the position and to tell us whether the relationship between you and your Member of Parliament is the same as it was before the elections. I say this, Mr. Serut Bomet, because this is important for reconciliation amongst the people of Elgon.

Mr. John Serut Bomet: That is a good question. I want to disagree with you that Kapondi campaigned for me anywhere. Somebody somewhere must have misled the Commission. Kapondi joined politics in 1992 and that was the start of the violence in Mt. Elgon. He pitted the supporters of Kisiero against his. He almost secured that seat during the nomination through violence but KANU nullified him and Kisiero was nominated as the KANU candidate and did retain the seat. In 1997, Kapondi was back. He lost miserably to me. Kimkung. I was not a politician but a civil servant. So, I was watching on the periphery. Come 2002, there was shooting in Cheptais. I have mentioned that we were shot at and I declared that I would not go and campaign in Cheptais. But thanks to the people of Cheptais, they voted for me unanimously, despite me not campaigning. He lost again miserably. In 2007, he never campaigned. He was handed over the seat by SLDF. So, I do not need to go further.

Commissioner Ojienda: Mr. Serut, thank you for the chronological details of the political life of hon. Kapondi but you have not addressed the question. For the sake of the people of Mt. Elgon, what would you say about reconciliation between you and Mr. Kapondi?

Mr. John Serut Bomet: Mr. Commissioner, reconciliation is two-way. There must be consensus, but you cannot reconcile when somebody is chest-thumping. You can only reconcile when you move from the point where you are standing and your colleague also moves and you meet midway. I do not want to open up what I wanted to say in camera. Allow me to reserve that because it might open a can of worms. Let us have reconciliation at the grassroots. Let us not reconcile the people. First of all, let us find out where the problem is. You cannot reconcile when there is a wound which has not healed. Allow us, the leaders, to be last to be reconciled. But let us plead with the small people without shoes, food and shelter to reconcile, because there is a long history about what could have transpired, which we do not need to talk over.

Commissioner Ojienda: Mr. Serut, I am sure that you know that the role of this Commission is not just to find out the truth, but to foster reconciliation and secure justice

for victims. It is good that you have said that those small people need to be reconciled, to enable the leaders eventually be reconciled. I hope that you have a heart for that final reconciliatory process, because it is important for the people of Mt. Elgon.

The next question is: When talking about the intervention of the Army, you raised issues about the failure of the police to contain violence in Mt. Elgon. How did the Army succeed where the police failed?

Mr. John Serut Bomet: That is a very good question. The police failed because there were elements within the police who did not do their work properly. If they had worked, I do not think we would have required the Army. How did the Army succeed? I talked of the terrain of Mt. Elgon. We have a very hard terrain. What the Army did was to smoke those boys out of their hideouts. Some took off and some surrendered. That is a thing that the police had not managed to do. The police attempted through the GSU, but they lost four firearms to the SLDF, including eight bullets. Two GSU officers and several police officers lost their lives. They were killed by the SLDF. That means that the SLDF could not be handled by the police anymore. How many Army officers were lost? According to my records, although people say it is confidential, I know of only one corporal who was buried in Isiolo. Was that not success?

Commissioners, let us give credit where it is due. I know that the Army officers were not perfect. They committed crimes; beat up my people and did all manner of things, but when it came to restoration of peace, I think they tried. That is my opinion and it is subject to confirmation. But my belief up to this minute is that they tried.

Commissioner Ojienda: Mr. Serut, the other question I want to ask you relates to what we witnessed when we toured Mt. Elgon. Many bodies in Mt. Elgon were not given a decent burial. In fact, in your own words, many people disappeared and have not been traced to date. There were mass graves where we still have bodies lying. They have not been identified and buried. You talked about the possibility of having a Rwanda-type memorial. I do not know what recommendations you have and how you think that they will further peace amongst the communities in Mt. Elgon.

Mr. John Serut Bomet: That is a very tough question, but I will attempt to answer it. Let me start with the last bit. How would that memorial help? It will remind us that out of our own shortcomings as a community, we lost quite a number of people. That is my thinking. It will keep on reminding us, because people will ask questions like: "Why was this built here?" Stories will be told. It will help to a certain extent to prevent any future insurgents.

Allow me now to deal with the issue of those who are in mass graves and still lying in the forests. I did not dwell on that issue in the morning. I had also been asked the same question. There are so many people who were killed in the forest. Who killed them? Evidence tells me that SLDF killed so many people in the forest. Why do I say this?

Anybody who was picked by the SLDF was taken to the forest and never returned. Our suspicion is that the bones and whatever we see there must be of those people who were abducted and taken to the forest. There have also been allegations that the Army abducted some people from their homes and took them to Kapkoto where they were either killed or flown to the forest and dropped. Those are allegations. One of the cases is that of the Assistant Chief, Sewei of Chebwek. I have been following it very keenly and was even there yesterday. As a leader, I have a keen interest to find out what happened, because he was my constituent and a leader. I went to collect data and was still given information that the Assistant Chief has not been found. All fingers are pointing at the Army. Whether or not it is true, it is subject to confirmation. I am pursuing it and one of these fine days, if the Commission is still on, I will be able to communicate. If not, I will inform the relevant authorities. I have an interest. Life is precious and we cannot just let such cases go. That is my understanding.

Thank you.

Commissioner Ojienda: Mr. Serut, I want to thank you once again for your testimony and the answers that you have given. I only want to say, because I see hon. Fred Chesebe in the room, that peace is paramount. As a leader, you must strive to work, if not for, but towards peace.

Thank you.

The Presiding Chair (Commissioner Chawatama): It seems all the questions have been exhausted. I wish to just join Dr. Ojienda. I feel that I would be failing in my duties if I did not inform you that one of the reasons that the people of Mt. Elgon gave in their testimonies, apart from the issue of land, was the failed leadership. They did not refer to one leader in particular, but they just said failed leadership has contributed to some of the problems in the area. So, I am saying this just to give you some food for thought. On behalf of the Truth, Justice and Reconciliation Commission, hon. Serut, I would like to thank you most sincerely for accepting to come and appear before us.

Thank you for your testimony. We can only wish you the best in future.

Leader of Evidence!

The Commission Secretary (Ms. Nyaundi): Chair, we were seeking direction on the in-camera proceedings as has repeatedly been sought.

The Presiding Chair (Commissioner Chawatama): I would suggest that hon. Serut remains within the premises and we will give directions in a few minutes as to how we are going to proceed. Bear with us a little bit longer. I know it has been a long day. Hearing Clerk, please, lead the witness to a comfortable place to have a little bit of rest and prepare the next witness.

(The witness was stood down)

I believe that the next witness has Counsel. Could Counsel, please, identify himself so that he is placed on record?

Mr. Omondi Bonchiri: My name is Omondi Bonchiri. I am an advocate of the High Court of Kenya. I practice within Bungoma Town. I am here purposely to represent hon. Fred Chesebe Kapondi.

The Presiding Chair (Commissioner Chawatama): Does Counsel have any preliminary issues that he wishes to raise?

Mr. Omondi Bonchiri: I do.

The Presiding Chair (Commissioner Chawatama): Has Counsel had the opportunity to share the preliminary inquiries with the Leader of Evidence?

Mr. Omondi Bonchiri: I did.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence!

The Commission Secretary (Ms. Nyaundi): Chair, we did have an information discussion. I must confess that I am not fully aware, but he had said that he would be raising some preliminary concerns.

The Presiding Chair (Commissioner Chawatama): Counsel, it is your opportunity to raise your concerns.

Mr. Omondi Bonchiri: My client has had about four cases in court, which were concluded in his favour. I want to inform the Commission that I have also had a chance to look at the Act that is governing this Commission (2008). I am talking about the Truth, Justice and Reconciliation Commission Act, 2008. I have realized that one of your mandates is to recommend prosecution. Some of the issues that you are discussing today were canvassed before the court of law and a verdict given. So, my concern is that my client was not given enough time to prepare and even lay before this Commission, the proceedings and even the judgement. We were desirous that we were to use those proceedings. That is my concern.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence, would you like to respond?

The Commission Secretary (Ms. Nyaundi): Very briefly, if I understand, the concern of Counsel is that probably, his client will be at trial again and they feel that he has already been acquitted and so, he should not answer those questions. My submission would be that this is a truth Commission and, therefore, there are various levels of truth. Therefore, unlike a judicial process, we are not inquiring into the legal truths, but there are many truths that hon. Kapondi may offer the Commission. I have full confidence that it is

unlikely that the Commission would be recommending prosecution of issues that he has already been acquitted.

On the issue of the need to refer to those proceedings as part of his evidence before the Commission, I will leave that to the discretion of the Commissioners. But I believe that these proceedings can be availed to the Commission later without prejudicing hon. Kapondi in any way. In any event, Counsel is seated here and will have opportunity, if he feels that any line of questioning is improper, to advise us.

Finally, the participation of hon. Kapondi is really at his discretion. I think it is only fair that he is informed that the Commission already has certain information and there is a very real risk that the Commission may proceed and make certain determinations without the benefit of his voice or opinion on some of the issues that have been raised. Having said that, I really leave it to the discretion of the Commission.

The Presiding Chair (Commissioner Chawatama): My suggestion is that we rise for a few minutes and then come back and make our decision. It will not take more than ten minutes. Yes, Counsel!

Mr. Omondi Bonchiri: I am not saying that my client is not ready to take this process. What I am saying is that as a matter of natural justice, we need to be given time to lay those proceedings before this Commission, so that you can give a conclusion that can properly address the issues. Could we be given time to lay the basis and bring the proceedings and judgements before this Commission?

The Presiding Chair (Commissioner Chawatama): We get your point, but we also want you to understand that we would not even act as a Court of Appeal. It is a different process altogether. Give us an opportunity to deliberate, so that we can also come up with a decision that is in the best interest of your client. We shall be back soon.

[The Commission temporarily adjourned at 4.55 p.m.]

[The Commission resumed at 5.10 p.m.]

The Presiding Chair (Commissioner Chawatama): Please, be seated. Counsel, you brought up two points. One was time for preparation and the other was the desire to have the proceedings of the court in which your client was acquitted to be presented before us. Our understanding is that your client is willing to proceed to be heard and we will accept the submissions of the court proceedings any time that counsel is able to obtain them.

With that, could we swear in the witness, please?

(Hon. Fred Kapondi Chesebe took the oath)

The Commission Secretary (Ms. Nyaundi): Please, state your name and your current occupation?

Hon. Fred Kapondi Chesebe: I am hon. Fred Kapondi Chesebe, Member of Parliament for Mt. Elgon. In our Parliament, I chair a departmental Committee on Administration and National Security. I am also a Member of the House Privileges Committee, a Member of Equal Opportunities Committee, and by virtue of being the chairman, I am also a Member of the Liaison Committee and a Member of the Budget Committee.

The Commission Secretary (Ms. Nyaundi): I have here with me, a statement recorded on 10th July, 2011, and I now invite you to present it together with any additional information that you may have, regarding the conflicts in Mt. Elgon up to 2008.

Hon. Fred Kapondi Chesebe: I will give a summary of the statement because I strongly believe that some information which is very key, I will give in camera. But to give a summary, I want to confine myself to a period between 1992 and 2007/2008. I started competitive politics in 1992 after my studies at the University of Nairobi.

I want to state here very clearly that I contested for the first time as a student before graduation in 1992 and I was No.2 in elections that were repeated twice. That was the KANU primaries. At that time, once you had the ticket, then you were assured of the eventual victory in the ballot.

After 1992, I emerged second out of 10 other aspirants who included very serious professionals. I came again into the limelight in 1995 because that was during the KANU elections. I was elected as the Chairman of KANU unopposed. That was in 1995.

In 1997, I contested again on a KANU ticket during primaries, but I had lost a brother who was working in the police force. That was during the time of campaigning for primaries. So, I could not campaign. I only moved around three days to voting during primaries and I emerged second to hon. Kimkung. The incumbent at that time, hon. Kisiero was number 3 behind me and other candidates followed suit. So, I do not know if being number two is a miserable position.

In 1999, I was removed as a KANU Chairman. That was during the time when a number of KANU chairmen were ousted in the branches. One was hon. Kirwa in Cherengany; hon. Nyachae in Kisii--- So, I went to Nairobi, courtesy of hon. Kirwa and we linked up with hon. Nyachae. So, when hon. Nyachae came up with Ford People, I was taken on board as the Executive Director, helping in putting in place structures for Ford People as a party countrywide.

In 2002, I contested on a Ford People ticket. I went to the ballot and I was number three. Hon. Serut won; he was number one. Sammy Chemwei was number two on a NARC Ticket and I was fifth on a Ford People ticket.

What is very fundamental here and is important for you to note is that 2002 was a turning point in the politics of Mt. Elgon. Between 1992 and 1997, after contesting against hon. Kisiero and other candidates, there was no acrimony at all among us. Even in 1997, there

was no acrimony at all among us. You were defeated, went back to what you were doing and wait for another election. Going to Parliament was not a matter of life and death. However, in 2002, the story changed. That was the time Serut came from the Ministry of Lands and he contested against hon. Kimkung. So, during the primaries, other candidates experienced violence. That violence was carried on to the general elections - the three of us that ultimately went to the ballot; that is Mr. Serut on a KANU ticket, Sammy Chemwei on a NARC ticket and myself on Ford People. Hon. Serut never wanted anybody from a different party other than KANU to campaign in Mt. Elgon.

I was one of the victims. I come from Cheptais. When I was hosting hon. Nyachae in Cheptais in a public baraza, hon. Serut came and surprisingly, it is good for the Commission to know, that while Serut was campaigning even as a KANU candidate during the primaries, he had armed escort. He had been given armed escort by the Government.

He came to Cheptais where we had erected a podium where hon. Nyachae was going to address the public baraza and he ordered people to get out. He said that nobody from the Opposition would campaign in Mt. Elgon. What followed was that the people charged against him. The reaction of his security personnel was to fire in the air. That is a testimony that can be affirmed by the security and the District Officer at that time in Cheptais.

He shot in the air several times, retreated to the District Officers office where the administration police protected him from the surging crowd and managed to whisk him away. So, turning around, having sworn over oath, I think it is an insult to the intelligence of many people. That was the time again when several shots were fired in Kaboiywo when he was campaigning there. When I attempted a few days after the Cheptais incident to go to Kaptama and I approached Kaptama from Kaboiywo, that was Kitwama on the Trans Nzoia side, I could not go beyond Tiesmende because Serut had his goons there and there was stone throwing the whole afternoon. We could not campaign. We had to cut it short and go back via Koboiywo-Gituamba, back to Kitale and then back to Cheptais.

Sammy Chemwei of NARC was not spared the violence either, because there was an incident where his supporters in a Pick Up truck were chased in Kapsokwony Division. The Pick Up veered off the road and plunged into a river, but nobody was hurt.

Another incident which ended up before the Electoral Commission of Kenya which the Commission can confirm is that Sammy Chemwei's vehicle in Kapsokwony was smashed under the orders of Serut. He said NARC had no business campaigning in Kapsokwony. His posters were torn and the posters of the then presidential candidate of NARC who is now our current President hon. Kibaki, were also torn. That incident ended up with the ECK in Nairobi where the two were summoned because of electoral violence. So, it is very unfortunate for somebody to try to divert all that and pretend innocence, having been sworn under oath. That was the turning point in the history of violence in Mt. Elgon.

Rightly, the issue of land if it was about violence, the entire settlement exercise was reorganized in 1989 by the then PC Western Province, Francis Lekolol. Nobody rose against what Lekolol had done. Instead, there was a peaceful delegation which went to the then President Moi at that time and he said he had been cheated. Many people had been left out; so, he urged those people to go back. When they want back, that was the story of Phase III. That was 1989. By 1993, the Government had created two sub-locations out of Phase III. Those were Korong'otuch Sub-Location and Chepkurkur Sub-Location. There was a chief for the entire location called Emiya.

So, people were settled. That was the reason why I was ousted as a KANU Chairman in 1989. That was the time when a DC called Munguti wanted to undertake a resettlement exercise in Phase III. What some of us said was that, that settlement required formalization and adjudication. That was because people were settled. Somebody could be having an acre, another one could be having 20 or 30 acres, but nobody was complaining.

The Government had gone ahead to recognize these people and created the two sub-locations and a location. To some of us, that was legitimization of the process. What was simply required was land adjudication. On top of that, there were number of schools within Phase III, for example, Kaboret Primary and Cheptandan Primary School, among others. There were also market centres which had thrived. For example, we had Huruma, Chepkurkur and Kaboryot markets. All the primary schools there were polling stations. This was further evidence that the Government had recognized these people as *bona fide* settlers.

So, when the DC attempted to undertake the exercise afresh, I together with the elders petitioned the President then. I went to Kabarak with two mini buses to see the President. President Moi gave us audience after church service. After explaining everything to him, he said it is not right. These people have been staying there and we have administration units and schools there. President Moi said the exercise would stop. He said that he would instruct Mr. Ogongo, who was the PC, and Mr. Munguti, who was the DC, to halt the exercise. However, Mr. Munguti was recalled after a few days to the Central Government. A new DC was posted to Mt. Elgon District. This happened in January.

By March, I had been ousted as a KANU chairman because of apprehension at that time by the MP then to avoid two centers of power. He could not imagine a KANU Chairman leading a delegation to Kabarak and having audience with the President when he was not aware, which to some extent was an embarrassment him. So, that is when I was ousted as a KANU Chairman. But at no single time, did I have any bitterness, and at no single time did the community say we will resort to violence. However, as I said, 2002 was a turning point. Campaigns were conducted in a very violent manner. They were full of violence.

After Mr. Serut had won the elections, all of us gave him respect. The problem is that he failed to manage the people. So passing the buck really does not make any sense. Shortly after that, there were incidents of thuggery in Phase III. Those people who had sold their

farm produce would be visited and told to surrender the money from the proceeds of the produce. The MP never stepped there.

There is a very critical incident that happened which I beseech the Commission for the purpose of getting the truth to focus on. There was an unfortunate incident in Kitale Town whereby six revelers were shot dead on a Christmas Day. One of them was a bodyguard to the former MP Kimkung. He lost his life. Everybody mourned those people. All of us visited the homes of the deceased because they are just neighbours. All of us went for the mass. Members of Parliament came including hon. Kombo from the Bukusu community. But hon. Serut never stepped in that home which raised a lot of question marks. There is a lot of explaining to be done.

Just before that, there was an incident whereby a senior police officer from the Sabaot Community called Chemworei was shot dead by security officers in Kitale Town. This affected the entire community. All of us mourned including Mr. Serut. We all attended the funeral. It was also attended by hon. Ruto and hon. Biwott. However, a few months down the line, another incident happened, but hon. Serut was not here although it was said he was out of the country.

In 2005, there was a referendum. During the referendum, Mr. Serut was campaigning for *banana* camp while we were campaigning for the *orange* camp. He made it very clear, particularly to the people of Phase III that if they were not going to vote for “*banana* camp, they would face the consequences. He said in Kiswahili Language: “*Wanaume mtakimbia mpaka uume wenu urudi ndani*” (*men you will run until your manhood will disappear*). I can give further details in camera.

After the referendum, there were consequences. Houses were burnt down and a vetting committee was put in place. People were not comfortable with this committee and they protested. The seeds of violence and discontent were sown. Going back a bit, there was somewhere where KANU elections were conducted. Both hon. Serut and hon. Kimkung contested for KANU chairmanship. Somebody said we were friends with Mr. Serut. So, I campaigned for him for the KANU seat. We even took delegates to his place of residence in Kimobo overnight because the elections were going to be held the following day. So, after having delegates, we had to put them together. Kimkung also had his few delegates at his place. I assisted him. But the process was so acrimonious that it was repeated. They went to Nairobi. Again, in Nairobi, there was violence at the Bomas of Kenya which was meted on Mr. Serut by Mr. Kimkung’s supporters. It went all the way to Kasarani. After Kasarani, there were two factions; Serut’s faction and Kimkung’s faction. That was the end of that relationship between me and Mr. Serut. Immediately after that, there was a referendum and we took different positions.

It is also important for you to note that during Serut’s campaign in 2002, he told the people in Phase III that there was nobody who would be moved from where he was staying. Given his experience in the Ministry of Lands, he promised he would make sure that those people got title deeds. That is the reason why the very people we took to President Moi in 1999, voted for hon. Serut. They did not vote for me in 2002, partly because of the party KANU and secondly, the promise of being issued with title deeds.

It is important to note that the violence in Mt. Elgon which started from Phase III would have been contained right from the beginning. The person who spread the violence in Mt. Elgon will talk about the liability of the police and the administration. It is sad that instead of the police focusing on what had happened in Phase III and dealing with the problem immediately, they passed the buck to Provincial Administration. Hon. Serut as a Member of Parliament and an Assistant Minister directed the police officers at Cheptais on what to do. The people of Cheptais bore the brunt of the operation even before the Army came.

In places like Bero, the houses were razed to the ground. Granneries were burnt. In places like Amangura and Tuikut along the hills, there was a lot of violence and destruction. There was also violence in Phase III in Kopsiro Division. The people who were facing the music were the people from Cheptais. If that was not politics of evicting as many people as possible because that area had been my stronghold all through from 1992 and it is the most populous in Mt. Elgon, I do not know.

So, I believe that the strategy by hon. Serut was to displace as many people as he could from Cheptais. That is why the focus was in Cheptais and no focus was put on Kopsiro. In the process, the violence grew. As it grew, hon. Serut was on public record and the Commission can check with the CID headquarters, saying and I quote:-

“This is a bunch of a few young men with 14 guns and I know the serial numbers of the guns.”

The information can be verified from the CID. If you know the serial numbers of the guns, how can you deny the ownership? There was terror everywhere. He intensified his campaign. I ended up being a victim. Despite the fact that I had been in politics from 1992 and my profile was high, but this was a politician successfully being number two twice and number three once where many other candidates were. If that is miserable performance, it is up to the Commission to judge.

What transpired after that was very unfortunate. It was a further diversion from addressing the problem on the ground because out of the blues, I was declared as the most wanted person. Posters of my picture were put all over Mt. Elgon. One of the people distributing the posters was hon. Serut. My posters were everywhere in police stations saying that Kapondi was wanted for what was happening in Mt. Elgon. I asked myself a very simple question: How can I be declared a wanted man when I had not been summoned to go and appear before the District Security Committee given my prominent position in the community? Even though I had not been elected to Parliament, but I had been elected as a KANU Chairman which I had successfully defended for four years from 1995 to 1999.

That was the beginning of a long sad journey for me. I had to present myself before the CID in Nairobi. I went to the CID Headquarters. I went alone because I was innocent. When I went to the CID Headquarters and identified myself, I was referred to the Serious

Crimes Office which was headed by a lady, who is now the PCIO Western called Lillian Kiamba. I presented myself to her. I identified myself before her and I wrote a statement explaining myself. By around 5.00 p.m., they told me because they were not aware as the CID Headquarters, but because I was saying that posters with my picture had been circulated in Mt. Elgon and its environs, they said my life was at risk. So, we shall keep you in custody as we contact Western Province so that the CID, Mt. Elgon can come with the allegations against you.

I ended up at Muthaiga police cells where I stayed for five days. I will reveal some details in camera. After five days, I was moved from Muthaiga because a team from Mt. Elgon came. I was taken to CID Headquarters and given an additional escort from CID Headquarters. We were on our way to Mt. Elgon, but on reaching Naivasha, just after Delamere, suddenly the vehicle pulled out of the road and was parked. The officers were communicating and then received orders that I should be taken back to CID Headquarters and not Mt. Elgon.

Then I went back to the Criminal Investigations Department (CID) headquarters, I found the late Director of CID, Gatiba Karanja, a man who was in charge of operations then was also present. The Personal Assistant (PA) to the late Gatiba Karanja, Mr. Diru, was there and an Assistant Commissioner of CID, a Mr. Baraza, was there and somebody from the Criminal Law Intelligence Unit, Mr. Cheptoo was also there. The late Gatiba Karanja asked me one question: "What differences do you have with your Member of Parliament?" I explained. After listening to me, he told me that he did not want politics amongst his officers. He told me that I was free and he was releasing me on a P22(???). He told me to be reporting there every day, but he had instructed the District Criminal Investigation Officer (DCIO), Mt Elgon, Mr. Kimilu, to come with a file so that we could go through the allegations against me that warranted me to be declared a wanted person. I reported to the CID Headquarters for three days consecutively and by the fourth day, the DCIO, Mt. Elgon, Mr. Kimilu, had come. He told me: "*Kapondi, usinifute kazi?*" I then asked him: *Nina uwezo gani wa kukufuta kazi?* So, Diru, a Mr. Baraza, myself and Kimilu were to go through the allegations which were nothing but hogwash and absolute nonsense. When the file was taken to the Director of CID, he told me he did not want the nonsense. The file was returned to Kimilu. I became a free man but again hon. Serut was not satisfied. He started protesting that I had been released.

A Motion of adjournment came up in Parliament to discuss a matter of national importance by hon. Kajembe. Hon. Kajembe was the Chairman of the Security Committee. He moved an adjournment Motion to discuss violence in Mt. Elgon, because people were dying. It appeared the problem was not getting sorted out. What happened on the Floor of the House, which was very charged--- I was seated in the public gallery because I was interested in the proceedings - Hon. Serut said that the violence in Mt. Elgon had receded after one Fred Kapondi Chesebe was arrested. He wanted to know who had released this man. He went further to say that the perpetrator, financier and commander of the violence in Mt. Elgon was Fred Kapondi Chesebe, and the Commission can confirm that from the HANSARD.

One, hon. Charles Keter, the MP for Belgut, who is now a colleague, and was in the university at the same time with me--- He was at Kenyatta University and I was in Nairobi University. We were involved in Kalenjin student politics because at that time, we did not have SONU, which was proscribed in 1986. So, we had these tribal allegations. Hon. Charles Keter stood and said that the MP for Mt. Elgon should withdraw his remarks because he could not discuss a person who could not defend himself in the House. He said that Fred Kapondi was a person he knew and he did not have money. He said that he would even assist me once in a while and asked: How can he be a financier? That can also be confirmed in the HANSARD.

It did not take long after that before I was branded as a warlord on the Floor of the House. Hon. Kaparo, who was the Speaker at that time, told hon. Serut to withdraw the fact that he had mentioned my name and I could not defend myself in the House. Hon. Serut apologized. A few weeks down the line, I was told that there would be a meeting by the CID; hon. Prof. Kibwana, who was the acting Minister for Lands, would be having a meeting in Kakamega and then in Mt. Elgon and he wanted all the leaders to attend. I said that I did not have the transport to go to Kakamega and Mt. Elgon. The CID offered to give me a ride because they said that they were going to Malava. Mr. Baraza, an Assistant Commissioner of Police and a corporal called Mr. Kosgey, who was in a CID unit, gave me a lift. Then there was one Mogusu from Kitale who had aspired for the Saboti seat twice. We went with him. Instead of going to Kakamega, we went to Bungoma. The Deputy PCIO, Western Province, the late Nyaga Reche, who recently was the PCIO, Rift Valley, Mr. Seif, DCIO, Bungoma, and Mr. Kimilu, DCIO, Mt. Elgon, were waiting for me. They told me that they were requesting that I stay there overnight, because the following day, there were people who wanted to have a word with me. That was a polite way of telling me that I was under arrest.

So, I stayed in Bungoma police cells for an overnight. The following day, I was taken to the National Security Intelligence Service (NSIS). I was interrogated on the distribution of leaflets in Cheptais and Sirisia to the effect that other communities should move out and that this was our land. I disowned them. After that, I was taken into solitary confinement in Nzoia Police Post, where I stayed in a container as a cell for five days. When I was brought back to Bungoma, a Mr. Baraza, who was an inspector of the CID, prepared a charge sheet that I was charged with murder between some dates. Those are some of the details that my advocate will provide. They told me that I had killed a young man in Kopsiro at a place called Cheptandan. He told me that I had shot him and burnt him in the house. I did not know this young man. That was the beginning of my long stay in prison, from April up to December 2007.

I appeared in court but the judge was not there, but, for the purpose of being remanded in Bungoma Prison, I was taken before a Chief Magistrate, Mr. Nyakundi. A mention was fixed; I was to appear before a judge so that I could take a plea. After a few days, I went and pleaded not guilty. When my advocate asked for the statement of witnesses, it was shocking. The fabrication was shocking and it would not support another case. They simply wanted to charge me with an offence that was not bailable, so that I could in the cells stay in until after elections, because my predecessor, having done his analysis, knew

I was a threat. Here I was, a young man without money. In 1992, I had missed to be an MP by a whisker. In 1997, I was number two. In 2002, I missed because of the party affiliation. He knew that I was a man to watch. I will provide other details.

After taking a plea, I was given a hearing date after three months. I stayed in Bungoma Prison for three months and would appear before a High Court judge. The prosecution had realized that it was very embarrassing to prosecute that case. They decided to enter a *nolle prosequi* and substituted fresh charges. My advocate will be able to provide them, and that is why I was asking for some more time. The charge was replaced with a lesser charge of promoting warlike activities using the same statements of murder. There were the same witnesses to testify against me.

All along, my predecessor was boasting that I would never come out of prison alive, and that he had put me in a fridge. He would say it openly. At some places, people were tempted to tape him to provide evidence in court, but after they had replacing charge with a lesser one, my advocate worked on the proper papers.

Instructions had come that I could not exit Bungoma Prison because the CID officer, Mr. Seif, who was in Mt. Elgon as the DCIO, was at the gate with other CID officers. I felt that there was something malicious against me. So, my advocate could not process the bond, and there was no way the CID could get me out of prison without a production order from a court of law. After two days, the CID came with an order from the Senior Resident Magistrate of Webuye. I was bundled into a Land Rover very early in the morning under a heavy escort. They had decided to soil my name by saying that they were taking a very dangerous commando to Webuye. For your information, apart from pre-university NYS training which I did not complete, I had not been in any military career but they were branding me a commando. They said that you can give a dog a bad name and then hang it. I was in Webuye. The charges that were read before me in a packed court were in Kiswahili, and I remember them very well. They read: "*Mnamo tarehe hii---* "On this particular day, you, among others--- Those who are not before court were armed with a gun, AK-47. You killed a certain person and then you took Kshs50,000 from him and one cow estimated at a value of Kshs15,000. Is it true or not true?" The same witnesses were going to be used to prosecute that case. There was no change at all. Not even one. They were playing with justice.

In Webuye, the prosecutor requested, for security reasons, that I be remanded in Kakamega Prison. That was a long time for me shuttling between Kakamega and Bungoma prisons and Webuye police cells. Those were my three homes up to December. That was the time when the media caught up with my case and generated a lot of sympathy for me. I was being transferred from court to court, the details of the case and the witnesses were the same.

A few months down the line, we were given a hearing date in Webuye. The prosecution again did not want to proceed with the case. They entered a *nolle prosequi* and when it was presented, my advocates, led by Mr. Muchira and Mr. Ombae, objected to it. They rushed to make an application in the High Court demanding that the High Court allow the

case to proceed to its conclusion. They wondered why one should have a case against him, and at the beginning of the hearing, you enter a *nolle prosequi* and then you charge him again in another court, the hearing comes and then you enter another *nolle prosequi*. You want to take him to another court and bring against him the same charges, which are not bailable! The objective was one – just to keep me in until after elections. The High Court sitting in Bungoma agreed with my advocate after a hearing and it ordered that the case should proceed to its conclusion. The case continued up to 13th December, 2007. On 14th December, I was released from Kakamega Prison, twelve days to elections.

Prior to that, of course I had other charges like promoting warlike activities in a case which was going on in the Chief Magistrates Court in Bungoma. There was also another case which was framed against me. It was one of giving false evidence against the police to the media. In this case, they cited *The Standard*. They said that I had said that the police, while carrying out operations in Cheptais Division, were burning houses, destroying granaries and raping women. I was charged with those offences but that case ended because there was nobody who came to give evidence, not even the investigating officer. I won the case on promoting warlike activities when I was an MP.

It is important for you to note, as a Commission, that many roadblocks and frustrations were put on my way. During my first arrest, when I presented myself at the CID headquarters, my aunt in Cheptais was hacked to death at about the time of Orange Democratic Movement (ODM) nominations, which I participated in and was riding on sympathy. One morning at 7 o'clock, I was woken up by the second officer in charge of the prison and told: "Kapondi, I do not know how you are going to take this." I knew he had bad news for me. I asked him what it was. He asked me whether I was strong enough. I told him that I had gone through hell and there was nothing which I would fear. He told me that last night at 9.00 p.m., "some unidentified people went to your father's home and shot him three times." He told me that my father was dead and his body had been taken to Webuye District Hospital mortuary.

Those were the trials that I had to go through. It sounds very ridiculous and very unfortunate for somebody in his right sense to say that Kapondi was handed over the seat by the SLDF. The SLDF never created me. I was in politics before. I was a formidable force in politics in Mt. Elgon without the SLDF. To allude to that is sheer nonsense. I want to take you back a bit. During the burial of hon. Kimkung's father in Kapsokwony, violence erupted and it was precipitated by hon. Serut. He came to the funeral. I remember I was one of the ushers in charge of the very important persons (VIPs). Former President Moi came and before that, hon. Serut had sworn that Moi would never step into Mt. Elgon. So, he came and when hon. Ruto was speaking and alluding to the fact that there were some people in Parliament who were shy to take certain decisions, hon. Serut rose from where he was and went to confront hon. Ruto. Mayhem broke loose. Shots were fired into the air. Serut was beaten by one councillor to the ground. He was rescued by one of his chief campaigners. If you go to the papers of the following day, you will see that somebody held Serut by his shoulder and escorted him to his vehicle. That was the person who rescued him. That person is no more. He was shot in Nairobi. He was called Absalom Ndiema. Mayhem broke loose and he was the sole person responsible for it.

So, when you are talking of violence in Mt. Elgon, in a nutshell, it can only be attributed to one person and his ego. He thought Mt. Elgon was his fiefdom. He wanted to protect it. For your information, from 2003 up to 2007, there was nobody who was allowed to hold any political meeting in Mt. Elgon, not even a Harambee. I remember there was a Harambee I was supposed to attend in Toiwondet Primary School together with Henry ole Ndiema. Mr. Ndiema was the chief guest and I was the deputy chief guest. We could not reach the venue because policemen had very firm instructions that we should not go there. We ended up handing over our donations elsewhere to the organizers. Personally, I handed over my donation in Kimilili. So, Mt. Elgon was a fiefdom of an individual who wanted to protect it at all costs. I will say the rest in camera.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. I will now ask the Leader of Evidence whether she has any questions for you.

The Commission Secretary (Ms. Nyaundi): Thank you, hon. Kapondi. I have a few questions. You have also discussed the Chebyuk Phase III and its effect on the politics of Mt. Elgon, and you have said that hon. Serut's campaign platform was that he would ensure that land was allocated house by house. Was that your position also, that when land was allocated in the region it would be given house by house?

Hon. Fred Kapondi Chesebe: I think I made it very clear in my submission that when I intervened and took the elders to Kabarak in two mini-buses in January, 1999, the argument was that these were people who are purported to be squatters. The Government had gone ahead and created two sub-locations for them with two assistant chiefs to take care of them. They were not acting assistant chiefs. So, my position was that to avoid destabilization, what was required there was simply land adjudication. The people had been destabilized in 1989 when they started the resettlement afresh; it left many other people unsettled. It was only fair that the land adjudication was done to formalize the settlement of the squatters. That was what I did.

The Commission Secretary (Ms. Nyaundi): So, when you said his position changed, what did you understand to be his new position as far as the land allocation was concerned?

Hon. Fred Kapondi Chesebe: The position of hon. Serut changed from *nyumba kwa nyumba* to having the allocation done afresh. It meant everybody getting out, doing the vetting and then settling the beneficiaries.

The Commission Secretary (Ms. Nyaundi): Just for the record, you opposed that. You did not think that was right?

Hon. Fred Kapondi Chesebe: Patricia, my position is that by 2005/2006--- Remember that I did intervene and that never translated into votes for me in 2002. My message was not appealing. Many people have a short memory. The message by hon. Serut of *nyumba kwa nyumba* was very appealing. So, in terms of pursuing the issue of Phase III, it had

come to an end. I had played my part. The people voted for Mr. Serut and he had to provide a solution. I had no linkage with the issue at all. Furthermore, I had no single relative from my immediate family members--- I had played my part and the rest was up to Mr. Serut and the people. In any case, I did not have any elective post.

The Commission Secretary (Ms. Nyaundi): Mheshimiwa, are you aware of a group that was called the Sabaot Land Defence Force (SLDF)?

Hon. Fred Kapondi Chesebe: The SLDF came into existence out of a crisis. For your information, all the time I was in Nairobi. I was living in Nairobi in a rented house. I used to be in Nairobi. I never used to operate from upcountry. If you remember what I have said, Mt. Elgon was a protected fiefdom. You could not be allowed to hold any function there.

The Commission Secretary (Ms. Nyaundi): And do you know a person called Matakwei who was in the SLDF?

Hon. Fred Kapondi Chesebe: I cannot feign ignorance that I did not know him because I was in Toroso Primary School for my primary education, and I was learning with his elder brother and the family is from Kiptii. I come from Bukonoi. We are separated by a river. So, I cannot say I did not know the young man as a person.

The Commission Secretary (Ms. Nyaundi): Some witnesses who have testified before the Commission have said that Matakwei enjoyed your support, and you gave members of the SLDF land at Chebyuk on a house to house basis.

Hon. Fred Kapondi Chesebe: How could I agitate in Chebyuk? How could I access Chebyuk?

The Commission Secretary (Ms. Nyaundi): What would be your response to the allegation that you were sympathetic to the position of Matakwei and other members of the SLDF?

Hon. Fred Kapondi Chesebe: I would say that when you have people in a place and then you want to give them an uncertain future, any person will be sympathetic.

The Commission Secretary (Ms. Nyaundi): Thank you. Witnesses who have testified before the Commission have said that in pushing for their agenda, the SLDF turned against the inhabitants of the region and some of the things that happened were killings, mass rapes and generally torture of the residents of Mt. Elgon. Are you aware of these activities?

Hon. Fred Kapondi Chesebe: I think it is not fair for me because I spent nine good months in prison and had no access to a phone. When you are visited in prison, you speak a language that is understood by the prison warders. So, asking me whether I was aware of what was happening outside is not fair, because you want me to speculate.

The Commission Secretary (Ms. Nyaundi): Now, other witnesses who have come before the Commission have testified that while you were in custody, you maintained telephone contact with the SLDF in particular, and that you were even able to transfer airtime that you had received to some members of the SLDF. Are you able to confirm that information, which the Commission has?

Hon. Fred Kapondi Chesebe: I think that is sheer nonsense! How could I transfer air time when in prison? You can confirm from Bungoma Prison, which is near, whether telephones are allowed for remandees or convicts, and whether they are sold in any prison. What privilege would I be accorded under the intense prison spotlight to enable me access a telephone which is loaded, and be able to transfer air time to the people alleged? Those were speculations.

The Commission Secretary (Ms. Nyaundi): Thank you, hon. Kapondi. I hope you appreciate that we are under an obligation to inform you of information that we have received, and that you may wish to respond to it?

Hon. Fred Kapondi Chesebe: That is correct.

The Commission Secretary (Ms. Patricia Nyaundi): Thank you, honorable Kapondi. I hope you appreciate that we are under an obligation to inform you of information that we have received and that you may wish to respond to.

Hon. Fred Kapondi Chesebe: Correct.

The Commission Secretary (Ms. Patricia Nyaundi): The other information that we received is that while the case was going on and you were in remand, again using the telephone, you would mobilize for truck loads of supporters to come to the court.

Hon. Fred Kapondi Chesebe: I can just say that is laughable. It is hogwash.

The Commission Secretary (Ms. Patricia Nyaundi): So what do you mean when you say that your supporters did not come to court or that they came but you did not mobilize them?

Hon. Fred Kapondi Chesebe: How can somebody who is confined without any access to the outside mobilize people? For your information, when I was transferred to Kakamega Prison, they could only allow a visitor to talk to me when the officer-in-charge was present. I would be brought in handcuffs and talk in Kiswahili and everybody was listening. How would I mobilize unless those are people with malice?

The Commission Secretary (Ms. Nyaundi): You have said that you remained in custody from April 2007 to December 2007. Is that correct?

Hon. Fred Kapondi Chesebe: That is correct.

The Commission Secretary (Ms. Nyaundi): And you were released on 14th of December.

Hon. Fred Kapondi Chesebe: Yes, after processing the bond because I had a case of promoting war-like activities that had not ended. The one that had ended was the robbery with violence which went to its full conclusion and my advocate has the proceedings of all those cases.

The Commission Secretary (Ms. Nyaundi): Before you went in, you had secured your party nomination as the candidate for the parliamentary seat.

Hon. Fred Kapondi Chesebe: No.

The Commission Secretary (Ms. Nyaundi): When was it that you secured the party nomination and which party gave you its nomination?

Hon. Fred Kapondi Chesebe: I secured the party nomination when I was in because I had to put my name as one of the candidates on ODM ticket. While I was in, because of the massive sympathy that I had and going by my profile and my performance in 1992 and 1997, I had serious support on the ground on top of the sympathy.

The Commission Secretary (Ms. Nyaundi): If you were remanded in April, on which month did you get the nomination?

Hon. Fred Kapondi Chesebe: To give you the exact date, it means that I have to look at when the primaries were conducted.

The Commission Secretary (Ms. Nyaundi): Is it that safe to assume that someone else managed your campaign while you were in remand?

Hon. Fred Kapondi Chesebe: I cannot say in terms of management because if there is anybody who was exposed to all the impediments, it was me. For your information, even during the actual voting on 27th of December, because I was disadvantaged while I was in, all the polling stations above the main road from Chepkube, Chebwek, Kiporong, Ganaga and all the polling stations along the hills in Cheptais Division were transferred to Chepkube, Cheptais and Chesikaki where there were police. This was aimed at discouraging people from voting. They took all the polling stations in Emia to Kapsokwony out of mischief, instead of taking them nearer Cheptais. This was meant to discourage people from participating in the voting. If somebody alludes that Kapondi was given victory is absolute nonsense.

The Commission Secretary (Ms. Nyaundi): The other information that the Commission has received was that the parliamentary and civic elections in Mt. Elgon were flawed because partly SLDF intimidated voters and only candidates that had their support were to be voted for. Are you aware of such an issue?

Hon. Fred Kapondi Chesebe: It should be me to complain because I was in to say that the election was flawed but for somebody who was outside to say the election was flawed, I think that person is taking the jokes too far. Apart from myself and Hon. Serut, there were other candidates. Honorable Kimkung, Chemwey and Kirui were candidates. So to say it was flawed because I participated in the exercise, then it beats logic.

The Commission Secretary (Ms. Nyaundi): You have mentioned that on a Christmas day in Kitale, six revelers were shot dead. Which year was this?

Hon. Fred Kapondi Chesebe: For Kitale, I can check the dates. To be precise, when the counsel is giving the proceedings, you can note that so that I can give you the precise date it happened.

The Commission Secretary (Ms. Nyaundi): About SLDF and its role in the crisis in Mt. Elgon, maybe now that you are an MP, have you inquired and understood exactly what it was that SLDF did in Mt. Elgon?

Hon. Fred Kapondi Chesebe: Of course, after being elected as a Member of Parliament, the atrocities committed by SLDF and the security personnel in the initial security operations that were there and subsequently the military operation, what I found out was that one factor that led to the growth of SLDF was the intense operations that were conducted by police in Cheptais in the initial stages and the people in Cheptais were not affected by the land issue. There was that initial feeling that we are better off in the forest than outside here because you will become a victim of the police and the police were taking direct commands from none other than the then Member of Parliament. The Member of Parliament was moving around in Land Rovers full of policemen

The Commission Secretary (Ms. Nyaundi): My question was, what measures have you taken as the current MP to address the challenges that Mt. Elgon faces to ensure that there is no recurrence of such violence?

Hon. Fred Kapondi Chesebe: What I have done in public forum, and anybody can testify, is to embark on an intensive program to change the attitude of the people. I believe very strongly that land would never be enough. The small pieces of land that the people have, they can make the best use out of them. Most of my public barazas, and anybody can attest, are geared towards changing the attitudes of the people and telling the people to forget about the past. The moment you keep talking about what happened, suppose I keep talking about my aunt who was killed, my father who was shot and killed, should I be talking about it or should I be talking about reconciliation and telling the people the past is gone and focus on the future. That is the reason why I stood very firm and the settlement exercise is over now in Chebyuk without much noise.

We have said that those who remained have to pursue the Government so that they can also be resettled. As we speak, there is a piece of land that the Government has bought in Kitale which may not be able to accommodate the remnants, but it would go a long way

in addressing the problem. I have taken it along that way and you can confirm with the District Security Committee and other Government records. One man has come out very clearly and is never prepared to talk about reconciliation in his forum whether in funerals which are his preferred platforms is to talk about the violence in 2007. Continuing to talk about who did what, should that be our day to day discussion? Should that form the basis whenever we have a funeral? Elections are just about three weeks and the voting day is one. I have been asking people why they waste years talking about politics instead of economic empowerment or education. I have put a lot of emphasis on education and that can be attested to. For the first time, last year, the performance in our secondary schools was the best ever and all the stakeholders can attest to that. Ask anybody in Mt. Elgon, if Kapondi was to leave office now, what would be his legacy? They would tell you two things, one, he had prioritized education and two, he has discarded handouts.

The Commission Secretary (Ms. Nyaundi): Because the Commission is also meant to look at socio-economic rights, an issue that has been discussed nationwide with much concern has been the management of CDF money. Very briefly, if you could respond to this, there have been some suggestions that even in Mt. Elgon, allocation of CDF money has taken political issues into consideration,

Hon. Fred Kapondi Chesebe: That is a white lie. As Elgon, we are rated by the National Management Board as among the best five in the country. If I can provide records because you have raised that issue, I will ask the Funds Manager to avail the records for development projects. You will be shocked that some people are out to play mischief because the records are there and you can authenticate them. For your information, so far, as a constituency since I took over, I do not have a single audit query in the management of the CDF money. The previous CDF - and I will provide evidence to that effect - has more than four audit queries on misappropriation of funds. I would provide documentations to that effect when my counsel will be providing the proceedings.

The Presiding Chair (Commissioner Chawatama): We do not want to hurry you. We can adjourn to tomorrow. We are just trying to establish how much time we have been given to be here as well. We would like to know the position of the Honorable Member of Parliament, if he is available tomorrow for us to continue.

Hon. Fred Kapondi Chesebe: I think I am more than ready to continue tomorrow though I had some issues in Nairobi. However, I can assign one of my colleagues to handle them on my behalf. I will be available to proceed because I want to put this behind me.

The Presiding Chair (Commissioner Chawatama): Thank you very much and I think the rain has also decided for us. We are adjourning until tomorrow morning at 9.00 o'clock. You are all free to go home.

(The Commission adjourned at 6.55 p.m.)