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**ORAL SUBMISSIONS TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON SATURDAY 9TH JULY,
2011 TOURIST HOTEL, BUNGOMA**

PRESENT

| | | |
|---------------------------|---|---|
| Gertrude Chawatama | - | The Presiding Chair, Zambia |
| Tecla Wanjala Namachanja | - | The Acting Chair, Kenya |
| Margret Shava | - | Commissioner, Kenya |
| Nancy Kanyago | - | Director of Gender and Special Support |
| Rahab Robi | - | Assistant Regional Coordinator, Western Region |

(Opening Prayers)

(The Commission commenced at 10.10 a.m.)

*(The Acting Chair (Commissioner Namachanja) introduced herself
and other TJRC Commissioners)*

Ms. Rahab Robi: Good morning. I am Robi, the Assistant Coordinator for Western and Nyanza regions. Today is your day. I would like to welcome Ms. Kanyago, who is our director.

Ms. Nancy Kanyago: Good morning, women. Thank you for your warm welcome. My name is Nancy Kanyago. I work with this Commission. My work is to ensure that women and their problems have been presented officially.

Today, we are very happy to be with the Acting Chair of this Commission, Commissioner Tecla Wanjala Namachanja. She is in her home ground. We are also expecting Commissioner Margret Shava. My work today is to inform you briefly about the mandate of the Commission.

Some of you have written statements to the Commission. This Commission was formed to investigate the violations of human rights since Independence to the post-election violence in 2007/2008. We are looking at historical injustices for about 40 years. We have heard very many things especially issues of land, killings, rape and defilement, lack of education and lack of health facilities. All those are issues we are going to listen to. We know for women, there are issues you cannot speak openly. That is why we decided that as a Commission, we must have a special hearing for women. In every place that we go, we must have this kind of hearings.

We have been hearing stories of violation of women. Widows are being violated against and even when married, they are still affected. The women are very happy with these hearings because it gives them an official opportunity for them to speak on how they have been violated. We are requesting you to feel free to speak. Be sure that whatever you are going to speak here is not going to be made public. If you hear what your fellow sister is talking about, let it remain here. As a Commission, we will try our best to ensure that we get solutions to these problems. However, the solutions should come from you. So when you speak about the problems you have come across, you should also have ideas and recommendations.

You can see that we have tried to be women only but we have a few men. They are here for specific jobs. There is one who has a video camera. It is not for the television but for the Commission so that we can have records of what is being discussed. We also have another man who is doing the audio recording for all that is said. So when we are going to make our final report, even if we have heard them, we will want to confirm and we can find somewhere we can refer to in order to be sure who spoke what. Therefore, be free to speak.

The procedures we are going to follow for today's hearing is as follows; when you are given a chance to talk, say your name, where you come from and then you will tell us how you have been affected. Because we are many and time is short, we would like to finish by 1.00 p.m. because we have other public hearings today afternoon. So, let us say all that we want to but bear in mind that there are also others who also would like to speak

With those few remarks, I would like to invite the Acting Chair to make some few remarks.

The Acting Chair (Commissioner Namachanja): Good morning, fellow women. It is my pleasure to join you today. I can see my sister Margaret Shava has arrived. I can see you have mentioned my name. I am with Commissioner Margaret Shava.

This hearing is for Bungoma County and Mt. Elgon County. I would like to welcome my two sisters from Mt. Elgon from the Maendeleo ya Wanawake. Please, greet your sisters.

We also have Milka Kenei who has also assisted us. We will give Milka an opportunity to explain to you what affected those from Mt. Elgon. Today is your day and I would not like to waste time. I would like to welcome you to explain yourselves the way you want.

Ms. Nancy Kanyago: I was told that there are six people who are going to speak first. After that we will take others. The first one is Florence Nabwala Kirario.

Ms. Florence Nabwala Wanambole: Our Acting Chair, our Commissioner, all protocols observed, good morning. I am here on behalf of the Bukusu women. My name is Florence Nabwala Wanamboe. I am as old as Kenya.

I am going to speak as a Kenyan. Apart from leading the women from Bukusu Community, I am also a traditional representative from here to Mt. Elgon. There are issues that I am going to speak about that I have seen in all these communities. I am only going to speak about the Bukusu.

I see that the Bukusu girl child is marginalized from the time she is born. When the mother goes to deliver in hospital or at home and the family hears that it is a baby girl, they fold their forces and start saying they wish she had been a boy. If this woman continues getting female children up to the third or fourth born, the husband will not discharge her from hospital. Even her mother in-law will not go for her. They will leave her there because she only bears girls and she is bringing shame to the community. A female child in the Bukusu Community starts being discriminated right from birth.

During circumcision, you will see it is a woman who is used. The child will tell the mother that he wishes to be circumcised in 2012. The mother will tell the father the issue. We take so many responsibilities. The mother will then go to her brothers to get a cow because the daughter is to be circumcised. The mother must be ready to welcome the boy when he comes back. The mother is used as a vessel but when the boy has been circumcised the discrimination will start. She will be told, "You are a woman and woman is like a child". Although the Bukusu woman is not circumcised we play a major role in the process; from the preparation up to the child is circumcised. Bukusu women are discriminated and looked down upon by the men.

You will see that from independence, 47 years ago, a big number of educated people among the Bukususes are men. The big jobs again, are taken by the men. The girl child is taken as somebody who brings property to the family. We should be seen as equal partners. We are not given enough education. When a girl child reaches Form One or Form Two, they say she has had enough education. If she must continue, they will ask for very expensive dowry. It is just like a girl child is an economic tool for the family. If the girl child gets a job, they will start saying, "What can a woman tell us?" For example, I am a county council officer, however; you will see that many things we tell people like Government policies, our fathers and brothers will say, "What will this woman tell us?" This happens yet I have had enough education just like men. If we are given a chance to work, let us work on equal platform like our brothers.

From today, if we hear the women asking what women can do, we will report them. We thank God for the new Constitution because it takes care of women's interest. The Bukusu women are not given their rights when it comes to inheritance. When my father died in the year 2007, all my brothers were given pieces of land. The girls were more but they were not given anything. They have nowhere to go. Some are married and others are not. Because our father died without leaving any inheritance for us, we are just staying

and taking poverty levels higher. I would request the Bukusu community to remember that even a girl child is a child and should be given inheritance. If my husband dies even if I go to court, I will not enjoy the wealth because they will be bringing robbers to rob and disturb me to the point that I move away. We are not given land or any form of wealth. When we are getting married, they are the first one to come and receive our dowries. This must stop.

Another example is on reproductive health or health in general. The infrastructure in Bungoma County is horrible. If I am pregnant, I am supposed to go to hospital two weeks before I get my baby. However, there are so many responsibilities and I will have to wait until the labour pains begin. If there is no midwife, I will just struggle to death. This is because from the time of independence, no woman has vied and been elected as an MP in Bungoma. Men are like sharks and we are like small fish. We are going to be small fish until Jesus comes back. If you give a small fish a chance, it is able to do very many things.

It is us women who have contributed to the injustices meted on the Bukusu woman. If I want to be elected, they will ask: "Who is that? Whose wife is she?" We have been used as vessels for men for 47 years to perpetrate injustices.

Let us start loving each other. I was talking about reproductive health because we do not go to hospital in good time to get children. We stand a chance of losing the child, mother or both the mother and child because we have not brought clinics and health centres near us. Even if they have been brought the health facilities near, there are no roads to take us there and there are no vehicles to lead us there. Even the traditional midwives have not been adequately trained so that they have facilities like the ones that are in hospital and, yet, 70 per cent of the children are being born in the villages. Why can the traditional midwives not be trained so that our children and mothers do not die at childbirth? There is a high rate of infant mortality. Because you have denied us education, you can see that the women who are seated here, when you talk in English, they say that they do not know. So, the persons who have marginalized the Bukusu woman are the Bukusu men. So, please, change these ways.

The other things that we are encountering are cultures which are counterproductive and retrogressive. They say that the place of the woman is in the kitchen. For how long will I be in the kitchen? If you say that my role is in the kitchen and you are going to drink, even when I get a small job and the Government pays me, it is me who takes over the responsibilities. So, the Bukusu woman has no way of breathing. She cannot breathe fresh air. She must look for *kiberiti*, school fees, vegetables and even maize. When shall we get ourselves out of this burden? I want to thank the Bukusu women; because we are very respectful and we have gone down until we have become stupid.

(Applause)

Even the food that the Bukusu woman is allowed to eat must be inspected. All the sweet food like chicken and the gizzard are not eaten by women, and yet we are told that those are the boneless meat. Then they tell us that we cannot eat the best part of the chicken. We cannot eat all the nice things because of the male-dominated culture. So, our community has discriminated against us; men have discriminated against us and we are also discriminating ourselves against each other because we do not love each other.

If you look at decision making positions, you will find that a woman is very far away. I want to thank the Kalenjin Community, where when you are going to receive dowry, women have a say in bargaining in the dowry negotiations. However, this is prohibited in the Bukusu Community. You just remain in the kitchen and you have no way of making decisions even on things that concern you. You just sit there like yesterday. For how long are we going to continue sitting? Bukusu women have been silenced by the community. Even when you are raped, you cannot even tell your mother because if you tell her, she will tell your father and you will be beaten, and yet it is you who has been violated. You will stay with bitterness until you get high blood pressure because you will be stigmatized. They will be saying: "This one, do not marry her because she was raped when she was 10 years old". Because we fear the stigma, you just die with your high blood pressure. Even when your husband beats you or brings another woman to your bed, yours is just to shut your mouth and keep quiet. Is this good? Why are you allowing this?

So, Commissioner Namachanja has said that change will start with us. I am not saying that you should go home and become bigheaded so that you are chased away from your home, but you should know your rights as a human being.

I do not have more to say because I had written in English. But on average, our rights have been violated and we have nothing to say. We request that we should be assisted to come out of this hole that we have been in for 47 years. Let us wake up and know our rights and let us contribute to the development of our country, because unity is strength and disunity is weakness. Together we are strong, is that not so?

Thank you.

(Applause)

The Presiding Chair (Commissioner Chawatama): Thank you very much, Florence, especially for representing Bukusu women.

We are going to continue but I want to request that we mind time for the others I am going to call. I am now calling upon Kellan Mabomba.

Ms. Kellan Mabomba: Thank you very much, Presiding Chair, and my fellow women. Good morning. My name is Kellan Mabomba. I am here today to represent a woman teacher. I am a teacher and I will be very brief. I am going to represent to the woman teacher who is in primary school. There will be a fellow woman who will be representing the secondary sector. The first thing I would like to speak about is discrimination. In this

line of work I am in, every now and then, you find that if there is an opportunity for promotion, the person who will be considered first for promotion is a man because they have met somewhere when we are just in the kitchen, as my fellow woman has said, discussing this promotion and making plans for it. When there is a chance for a promotion, that man will get it and by the time you will have gone there, the man would have already taken the position. I believe that as women teachers in primary schools, you cannot be given a big school. For example, here in Bungoma Town, we have big schools like Moi Primary School, Bungoma DEB and others, but you cannot head such schools because they believe that you, the woman, cannot lead such a big school. Therefore, you will be given small schools like Murayu and Railways. You will go to the mud place and fall like the “*boda boda*.” You will go by the *boda boda* and even wear a trouser like me so that you can sit on it. By doing that, you would have made a mistake because you are supposed to wear a dress. How are you going to ride a *boda boda* in a dress? That is how we get problems as primary school teachers. Even when you are in school teaching different subjects like Mathematics and Science, you cannot be allocated mathematics. Instead, you will be allocated subjects like CRE or Home Science, but not Mathematics because it is for the men. This is the case and yet all of us went to college and we graduated like the men and we can do that job. That is what is affecting us, we the women teachers in primary schools.

We also have the problem of transfers, which are not good. If you just collide with the head teacher, you will be transferred to another school. You just wake up one morning and you are told: “This woman is not coming to school” or “She is always sick.” This is the case and yet we do not bring diseases to ourselves. For example, you can deliver a baby and then fall sick. When you request for additional off days or for an extension of the leave so that you can stay at home for medical attention, you are told that it is too much. So, when you go back to school after the maternity leave and after recuperation, you are transferred to the next station because it is too much for the men. They say that you are always going home for maternity leave followed by sick leave. Those are the problems we are undergoing.

Similarly, at times, we have the problem of sexual harassment and this is violating us, as women. For example, I am going to an office and, as you know, many offices are managed by men. When you start explaining your problem, the man then tells you: “Let us go and meet at the coffee garden, you cannot address your issues in that office.” So when you go to the coffee garden, you buy lunch and additional love. That is the violations we are exposed to in the offices. A person does not care whether you are married or not. Those are some of the violations that we are undergoing. I know that the issues concerning teachers are in primary and secondary schools. My fellow from the secondary section will raise them because they are one and the same thing.

But I would like to say that even during the teacher’s elections - I was elected the Assistant Executive Secretary just the other day, and it was very difficult for me to get a promotion to that post of Secretary because they asked: “Is she married?” I failed to understand this and I asked: Is it my husband who is going to represent the teachers or it

is me? They asked: “Does she have children?” I said that I have a problem with fibroids and I want to get children, but my children cannot go to represent the teachers. Such are the violations that women face during our work.

Thank you, Presiding Chair.

(Applause)

The Presiding Chair (Commissioner Chawatama): Thank you very much. We are grateful to hear some things we had never heard in our previous sessions. We have been hearing about elections of the Kenya National Union of Teachers (KNUT), but we have never heard about how teachers are affected. I have one or two questions. When you talked about wearing of trousers and yet you are supposed to be in a dress, is it a uniform policy or is it a culture?

Ms. Kellan Mabomba: Thank you very much, Presiding Chair If I may clarify; in the Department of Education, we are allowed to wear suits like any other people, even if you are a primary school teacher. At times, you can appear before the pupils when you are wearing miniskirts, but you would have violated those pupils. So, the Teachers Service Commission (TSC) allowed us to dress as I am dressed now. But you find that when you go to school dressed like you are dressed, the headmaster will tell you to go and change your dressing code, and yet he himself is not asked by anybody on what to wear. You cannot dress like you are and be happy. If you wear that, you are wearing it by mistake. We also have cultures regarding dressing code and it is affecting us, the women teachers, in the Department of Education. The TSC has given us permission to wear the way I am dressed, but according to the people who still believe in culture in their heads, they harass us by telling us that we are not dressed properly.

(Applause)

The Presiding Chair (Commissioner Chawatama): Thank you very much. The other question is about subject allocation for women teachers. You said that women are given subjects like CRE while men are given other subjects. Who makes these decisions? Does the Ministry or the TSC have any gender policy? What is the solution to this?

Ms. Kellan Mabomba: Most of the time, let me say that in primary schools, the classes that are being looked into seriously are from Std. VI, VII and VIII because these pupils are heading to their final exams. So, if you want to teach Mathematics, may be in Std. VI, VII and VIII, the head teacher of that school can refuse to allow you to teach that subject because he believes that women are not capable of teaching Sciences and Mathematics. They believe that we can just teach subjects like English, Kiswahili, Social Studies and CRE. But I believe that when I went to college and I know that the pupils I am teaching are boys and girls. When I go to class, I am not going to say: “You, girl, go out” or “You, boy, go out.” We teach all of them. So, the solution is this; we have gone to school, we have taught and we should be given our time and our opportunity to teach all these subjects that we feel we are capable of teaching. Because when we are in teacher-training

colleges, we are being taught every subject and by graduating from there, you must have attained good grades and must have passed your exams. But they say that men are the best and that they are well placed to teach Mathematics, but we are also able to do that. The Ministry knows that they have teachers in the field who can teach Mathematics and Sciences.

(Applause)

The Presiding Chair (Commissioner Chawatama): Thank you very much. Fellow commissioners, do you have questions for her?

The Acting Chair (Commissioner Namachanja): I just want to affirm what Madam has said, and I think our community use culture differently. The culture that works for them, especially for the men is promoted and the culture that works against women is also promoted. I will use my own example of putting on a trouser.

(The Acting Chair (Commissioner Namachanja) spoke in Kibukusu)

Mama Florence, stand up again? She is very smart the way she is. Is there a place she is being seen? Why can she not dress the way she is? There was a time I went to Netherlands and it was very cold. Because my husband did not want me to put on trousers, I only carried clothes, and I had to fall sick. When I went back, I said no, I had to put on trousers. So, with some things, we just have to be firm if we see that they are not good for us.

Thank you.

Mama Kellan, the report you have given us--- Just sit down as teachers and then give a recommendation so that we can see how we can put it in the Report of the Commission.

(Technical hitch)

Ladies, we apologize. Our systems have problems.

Thank you very much. I would like to call Linda Mayama, who is representing the secondary school teachers.

Mrs. Linda Mayama: Thank you very much, Acting Chair. As my fellow colleague has said, what I am going to speak about is almost similar. But, first, I will start by greeting you. All protocols observed, ladies and gentlemen, how are you?

My names are Linda Mayama. Just like the previous speaker has said, I will talk about some of the things she has already mentioned, only that they affect the secondary school teachers in a slightly different way.

So, I want to start with sexual harassment. In secondary schools, this has come out more clearly, especially on the female teachers on teaching practice. We sympathize with the girls who come to our schools because you can see men sitting together trying to choose them, as if they are goods in the markets. They do booking, saying “This one is mine and this one is mine.” These children are assaulted, not just by teachers, but even by the university lecturers who supervise them. When he comes to see a student in class, then he will tell her: “Let us meet at Westgate so that we talk about the report that I will write.” Because the girl is desperate and because her parents have paid school fees and she wants to finish her studies and graduate, she has no option but to follow the male lecturer to the hotel. We see this every day and we sympathize with them. Kenya is spoilt.

The second thing is low participation in leadership. Amongst the women, there are many female leaders who have really graduated and have been promoted to Job Group “M,” which is the job group that gives them a chance to be heads of departments and even be head teachers. But you will see that when they are given this letter to go to a different school, which is a male school, to be a head of department, she will be denied the chance and she will be told that she will be a subject teacher to teach subject “x.” So, this teacher will just sit there. But when another teacher comes who has not been promoted to join that job group, he will be appointed by that school to take the chance of the teacher who was posted to that school. So, we ask ourselves; why is the larger percentage of heads of departments in our schools men? It is not because women do not qualify but it is because of discrimination. Where is the 30 percent representation which the beloved President said would be composed of women from 2007? He said that we needed 30 percent representation of women, but this is not taking place.! It is not because we do not qualify, but it is because we are looked down upon.

The third issue is about the appraisal system. In every company, the head of the company is given a chance to write reports on the people who work under him. But in secondary schools, the TSC agent is the head teacher and he is allowed to write private reports on us. This gives them a chance and a lot of power over female teachers because if you want a good report to be written about you, you have to sleep with him, otherwise, he will write negative reports about you. At the end of the day, your file will be full of bad reports and you cannot get a promotion. That will be the end of you, every time a bad report goes to your file. There are those ones who accept to sleep with them and they engage with them sexually and, in the process, they get promoted, but their lives are not good. There are those ones who refuse to sleep with them and they end up mark timing in the same position. You will find somebody who has been working in the same post for many years until she retires. This is discrimination and oppression.

The other thing I want to touch on is representation in KUPPET. For a long time now, the chances that women who try to vie as representatives in KUPPET is just to be a treasurer, meaning that our men and all the rest have accepted that it is only the woman who can be trusted with money. You are told that if you want a post, just try being a treasurer, but never would we be allowed to take the top seats like that one of the chairman or the organizing secretary. A woman will not get such a chance. You will be blamed for many

things. You will be told that: “She is getting into politics or she is sleeping with all these men.” So, many bad issues are heaped on us until we just fold ourselves and we do not know what to say and keep quiet. It is like we keep asking for favours. So, they do us a favour by giving us the treasurer’s job. There is another post of gender representative which women will be given, but all the other bigger posts are reserved for men.

The other thing is the dressing code, just like my fellow colleague said, a woman is not allowed to dress and feel comfortable the way I have dressed today. We dress to please the ones who are looking at us, especially the men. If you dress in a certain manner, they tell you provocative things. Then I keep asking myself about these provocative things. If a woman comes there and a man gets in, all these women will all run away. But if a woman came here naked, all men will run towards her. Whose mistake is it? And you can see that even our children, whom we are bringing up are thinking like the men. I keep saying every day, even as I teach – I teach in a boys’ school – that you are being misled because you are not going to stay with us forever. You will go to the university and you will find girls there and you will think that they are wearing strange things. Will you be following all the girls? Will you live with HIV/AIDS? So, we are not protecting our children by forcing female teachers not to wear trousers. Let them know in advance that the trouser has no problem other than cheating them to ensure that girls wear dresses, and then when they go to find people in trousers, they get confused. I do not want to say that this is culture. I teach culture and I know that during the days of our grandfathers, there were no clothes. They would walk with aprons – a small piece of cloth which will cover their back and front and yet there were no rape cases. It is just moral decadence and people have just refused responsibility or they just have the culture of impunity in their heads. No, this is not an African culture.

The other thing is discrimination due to maternity leave. Many times when you are posted to a certain school, especially in boys schools - I have even suffered the same problem – when I get there, the greetings that I will get are; “You mean there is no other school they could post you to?” When they see that it is a female teacher, they just see you in terms of maternity leave. But I remember when we were being taught in college, there was no lecturer who told us that it is a mistake for a woman to get children. They should have told us if it is and, may be, we would have thought twice on the choice of being teachers. But even the society knows that even a female teacher is permitted to get married and get children. So, why are we suffering because of our natural right to have children? People do not want us women to teach in their schools. You would think that they will live there forever; but the schools are not theirs. It would have been fine if we agreed that the brothers and sisters work together.

The other thing is what I would call late employment after teacher training. Many female teachers graduate from colleges with certificates, diplomas or degrees to be teachers, but you will find someone who graduated in 2004 and, up to today, she is still looking for a job. Why is this the case? It is because there is something called “decentralized teacher recruitment at the district level”. At the district level, there are panelists; people who sit on the panel that interviews and employs teachers. Many of them are men. You are

expected to befriend them so that you exchange love with employment. If you refuse to do that, there is no job for you. If you accept, you will get a job immediately. But you have no surety over your life. This comes out clearly if you look at the records of teachers who have been employed through the decentralized teacher recruitment system. You will find that many teachers who graduated in 2004 or 2007 have been employed. You will see another one who finished in 2001 still at home. She has been employed by the board of governors on contract. May be in primary, she is paid Kshs10,000 per month, which is not enough to cater for her needs. This is so just because she did not accept to engage sexually with the panelists so that she could be employed.

The Acting Chair (Commissioner Namachanja): Is there any evidence of any female teacher who has faced such discrimination when looking for employment?

Mrs. Linda Mayama: No, there is no evidence because these are things which are spoken. This information is exchanged underground. You are told that if you want a job, talk to panelist so-and-so. If you go to talk to him, he will tell you; “Let us do this so that you can get a job.” So, it becomes very difficult for women to get employed.

This is all that I wanted to say.

Thank you very much, Acting Chair.

(Applause)

The Acting Chair (Commissioner Namachanja): Thank you very much, Linda. I have some questions for you and I am sure the other commissioners will have some questions for you.

You are gallant; you have done very well to represent the teachers and as I know, there are more than 250,000 teachers in this country. You have done very well to represent the woman teachers. I think some audit should be done of those teachers to see which grades they have so that we can see if that discrimination is there and also find out if the minimum 30 percent threshold representation of women has been met. The question I have for you is; on the decentralized recruitment, where you say the panelists are largely men, what is the solution, especially now that we have a new Constitution where a lot of matters have been devolved to the counties? So, what are the recommendations that you have so that such panels are representative and have women well represented? How they are represented? How men and women get to that position is not about whom you know. It is not being done under the table. So what is your recommendation? We will benefit from that.

Mrs. Linda Mayama: Thank you. In my opinion, I would suggest that a solution to this problem would be found by using information technology so that all the people who are seeking jobs either in teaching or in any other field could apply online so that I do not have a one-to-one relationship with the panelists. Let this be online where everybody can

apply, include their grades and all the things about you that appear on your curriculum vitae so that anybody who can access that information online can do that. If this is done, then the exercise will be open.

The Acting Chair (Commissioner Namachanja): And for the panels that make these decisions, would you have any suggestions on them?

Mrs. Linda Mayama: I do not know or I am not in a position to know the criteria that is used to select the panelists. So, I do not know why it is that there are more men than women in those selection panels.

The Acting Chair (Commissioner Namachanja): May be, what is the source of all that you have said; that if women are appointed to be heads of departments or head teachers, they are discriminated against in those schools they are posted to?

Mrs. Linda Mayama: If you are writing a report about me, why should I not see it so that I also have a chance to comment and sign? If it is true that I have been failing to come to work, then I know and both of us know that it is a mistake. I can also say that I was late for one reason or the other and then I can sign so that when such a report goes and it has my signature and comments, it will be open. But if you write things about me under the table and I do not know what you have written about me and when I request for promotion and I do not get it or the TSC does not approve it and the TSC does not tell me why it did not shortlist me it, we could be thinking that it is a bad report that has been written about you. We wish appraisals could be done openly.

The Acting Chair (Commissioner Namachanja): One way of struggling is forming an association. Have you, as women, thought of an association specifically for women teachers as a way of helping you to push for some of these things?

Ms. Tecla Kazi: Maybe that is a challenge that we need to take up. It is an eye-opener to us. We need to start an association of women that can take care of women issues, especially women teachers.

I understand women issues. I am the Chair of Women Empowerment Initiative in Bungoma which I use to make contributions on issues that can make women develop.

Ms. Jennifer Mbatiani: My names are Jennifer Mbatiani. I am the Chair of Maendeleo ya Wanawake, Mt. Elgon District. I am here to represent the Sabaot woman. We know that a mother is a mother whether you are a teacher, a farmer, or a housewife. The challenges facing women are the same.

I will not repeat what has been said. We also come across the issues which have been mentioned as women. I will mention what has not been mentioned in detail. First and foremost, we, women of Sabaot Community, are viewed as children. The men look at women as part of their properties. They say that the first property is the woman, then the

children and then cattle. So, a woman is a property of the husband. In that case, a woman has no voice or power over property. As a mother, it is the woman who looks after the property at home.

In Mt. Elgon, we are farmers. We farm onions, Irish potatoes and other crops. A woman does a lot of work. However, after that, it is the husband who will go to sell the farm produce in the market. They would go to Chwele Market and stay there for, say, one week. When he is done with spending the money, he comes back home with bare hands. Since as a mother you do not have any powers, when you probe how the money was used, you are subjected to beating. A woman has no voice here. The men would ask: "What can a child tell us?" That is one of the challenges the Sabaot women are faced with and it is very disturbing.

Another issue is Female Genital Mutilation (FGM). Here in Mt. Elgon, we do not have many educated women. Why? It is because of the culture of FGM. This has affected the girl-child's life. When you undergo circumcision, you are told that you are now a woman and capable of starting a home. After a child has been circumcised, she does not continue with education. There are many school drop-outs here. Girls are many in school from Standard I to Standard VI. However, from there to Standard VIII, the number of girls reduces. They get married at a very tender age and bear children. Our men also marry very many wives. You will find a man who is less than 30 years old married to more than two women. The reason is that they use the women to acquire wealth in the home. The girl-child is, therefore, denied an opportunity to get proper education.

The FGM has been used to oppress the girl-child. They would say that the woman should be circumcised to reduce the sexual urge and she should remain at home when the husband is away. When the husband is busy loitering, the woman cannot say anything. With regard to sexual matters, a woman has no power to speak about them. Very many women, therefore, get hurt because it is the man who holds everything about their life. If you try to talk, you will be beaten. You will be told that you know so much. Women do not get their conjugal rights because the culture has undermined them. When the man wants sex, he demands it and the woman has no control about that. When a woman delivers a baby, the man says that the woman is dirty and he cannot even come close to you or handle the baby. He would sleep very far. One can stay even for one year or six months because the man will be in the other houses. After the child begins teething, that is when the man comes close to you and when he comes back, he is not interested in love matters. He just tells you to turn and so you turn.

There are many issues about us that are violated and we do not have space and time to talk about them. We appreciate this moment because we are all women and it is good for us to speak out our issues. It is one way of getting healed. We appreciate the work being done by the TJRC because we can now speak openly. The Sabaot woman has been sexually violated. Even when one's sexual urge is reduced, she is just there. Our men knew that circumcision is bad and they now go to look for Bukusu ladies. They will tell

you that you cannot satisfy them and so they had better go and look for a person who knows issues about sex. So, we are just there and other women are brought to us.

Another issue is conflicts. When there were conflicts here, it is the women and the children who were affected most. We do not have good hospitals. There are cases of women who died during delivery. Women walk long distances to get to hospital and before she gets to hospital, she dies. We lost very many mothers in that situation. Those who cause conflicts are men. When the men are planning their issues, you cannot know. When a woman learns what the men are planning, because of the woman's pain of bearing a child, she would try to save the community. When the men plan, the women are not supposed to participate. That is why the conflicts were planned and those who were affected were innocent women and children. Many women got divorced from their men while others lost many children. Many women lost their husbands and this problem was brought about by very few people.

My colleague talked about inheritance. A Sabaot woman has no right to inherit property. We are one of the properties of the man. So we do not have an opportunity to inherit property. A woman is told that she came from her home bare handed and she belongs to the man. Even when a woman goes to the merry-go-round and buys a sheep, or a cow, they all belong to the man who has power to sell the animals.

With regard to leadership, women are being discriminated because they are considered children. If you want to vie for a seat, you will be asked; "What can a woman tell us? She should be given guidance." If there is any seat being vied for, the one we can get is the position of Treasurer because they know women can take care of property. The men take the decision-making positions.

Finally, about economic empowerment, for a woman to be financially stable, she needs to have her money. Many women do not have the power to get their own wealth and so they depend on men. When there are benefits, all the wealth goes to the man. That is why the women are crying. However, we cannot continue crying because we are our own saviours. We are the ones who can bring this violation to an end. We will do that by coming together and speak with one voice. We need to stand up and support women in leadership positions. That is the only way we can save ourselves. The men love it when we cry and sympathize for ourselves. We must bring this to an end.
Thank you and God bless you.

Ms. Nancy Kanyago: Thank you. Maybe we expect a woman Governor or Senator from this region.

Commissioner Shava: Thank you, Jennifer. What is the state of FGM? Is it still going on even for the children the age of your children?

Ms. Jennifer Mbatiani: At the moment, there are some parts in Mt. Elgon where FGM is being done because there are elders who still hold onto that culture. I remember there is

a time we went to Cheptais to conduct sensitization about FGM. My colleagues and I were almost being beaten by men. They were saying; “You,. Women, want to mislead the community. Your mothers were circumcised and yet you are here to cheat our children.”

In the interior parts of Mt. Elgon, FGM is still being practiced. If you want to know that that really happens, if you come over in the months of November and December, you will witness girls being circumcised. We, women leaders, are trying our best although we have not managed to eradicate it completely.

Ms. Nancy Kanyago: I will now call upon Ms. Bridgit Mukhwana.

Ms. Bridgit Naliaka Mukhwana: I am Bridgit Naliaka Mukhwana from Dudi Sub-Location, Kibabii Location in Bungoma County. I am standing here as a widow who was molested. I see no future ahead of me. The truth is that widows have certificates to show that they are widows. There are others who do not have those certificates.

My husband died in 2006. He left me a farm of one-and-a-quarter acres but he did not leave me with the title deed although I looked for it and got it. The people who sold the land took the whole piece of land and they want to kill me.

In Bungoma, widows are really suffering. I have three daughters and no son. In the Bukusu Community, girls are not regarded as children. When my husband died, I was told to go away so that I could bring up my children who will then take care of me but I was clever. It is good to be a clever widow. I was denied land in my father’s home. I was given one quarter of an acre and it is on a swampy place. That is my shamba. They say that they sympathized with me and that is why they gave me that land but I was very sad because I have children. However, God knows. When I see women in this Commission, I can see God remembers widows.

We are told that there are NGOs that help widows and orphaned children. From 2006, I have never got any assistance be it in the form of uniform or books for my daughters. There are things like fertilizer and seeds that we are supposed to be given as widows, but we do not get that. Those things are given to those people who have husbands and can support themselves. I started a group of widows in Dudi. We sit under a big tree and yet there is no single day somebody has ever told us that we will get assistance. Who will I ask this and that? Are there special widows?

I have to till my land to feed my children. Where I am, there are termites which destroy my maize. I have no food for my children. They took away my piece of land and I have been running up and down. I look like a child. I request the Commission to help us. Let us stand together as women and look at our welfare on our own. Let us love each other so that we can continue.

We do not have any means. When you, women leaders, come to us, we see light. When I tell you this, my heart opens up and my burden gets light. I ask this Commission to help us educate our children. If my children do not go to school, they will lead a life similar to

mine. If, however, they get educated, there will be a change. Here in Dudi, we do not have help. The other day, nets were brought but I was told that my name was not on the list. I really do not know what to do.

Ms. Nancy Kanyago: Thank you very much. Who are these who give out seeds and fertilizer?

Ms. Bridgit Naliaka Mukhwana: The Agricultural Extension Officers. They bring these things to the location and they do not give us. If we are given, we are asked to return a certain portion. I have termites and other pests affecting me.

Ms. Nancy Kanyago: Who was distributing the nets? How come your name was not in the list?

Ms. Bridgit Naliaka Mukhwana: The local officer told us that we are supposed to be given nets. When I asked him about the process, he said the list of names and ID numbers was being prepared. I wrote my name down and my ID number. I also wrote the number of children I have. When I went there, I did not find my name. So, I kept quiet because I did not know what to do.

Ms. Nancy Kanyago: With regard to your husband's piece of land, did it have any title deed?

Ms. Bridgit Naliaka Mukhwana: When my husband was still alive, a surveyor came and gave us a number. After my husband died, I went to the surveyor, Pepe Lapita who told me the number and asked me to process the title. My husband was not understandable. I did not have any agreement, but I know the number was with the surveyors. So, the number enabled me to process the title. I wanted to sell the quarter of an acre to get money to process the title deed. In the process of doing that those who had sold the land started saying that he had stolen the one-and-a-quarter acre and he had not finished paying. They took away the land and they started tilling it. They now want to sell murrum from my *shamba* to repair the main road to Malava.

Ms. Nancy Kanyago: You have a title deed for the one-and-a-quarter acre?

Ms. Bridgit Naliaka Mukhwana: I have a title deed for the one acre because I sold a quarter an acre. I do not dig the whole of it though.

The Acting Chair (Commissioner Namachanja): Ms. Bridgit, you are a very clever woman. I am happy you have a group of women who are widows. What are your objectives as a group?

Ms. Bridgit Naliaka Mukhwana: I am the Chair of the group. I want us to be able to educate, feed and clothe our children. We do not have money, we are trying hard and we are appealing for help. We need money. My first born is Standard VII. I took her to my

sister's child and now I live with the other two but I am not okay. Please, madam Commissioner, help us, we, widows.

We have places where widows are paid. There is a time we asked our chief to assist us get payment like other widows but he told us to keep quiet until we are told what to do but it is now ten years. If you give me Kshs3,000 it will help me raise my children.

The Acting Chair (Commissioner Namachanja): Is there anybody from Bungoma Maendeleo ya Wanawake? Madam, come over and advise these widows.

Ms. Audrey Wanyama: I want to thank God for this meeting. We have not had a meeting such as this one. I am the District Co-ordinator of Maendeleo ya Wanawake. We deal with capacity building on projects. When we have cases of women whose rights have been violated we refer them to other groups like FIDA and you have seen FIDA help us. We have lawyers who have been helping us like Elizabeth Chunge and Lucy Nanzushi. They help us on cases of rape or land violation. We normally go through the DC. When you have cases, you come to our office and we go to see the DC who will take up the cases. If you are not in a position to support yourself, we make the follow-ups.

Maybe you did not know that this office takes care of the women issues. From today onwards you know where to bring your cases. You will now have a way forward. We formed a group called "Bungoma Women County Lobby Group". It listens to women issues. We have a female lawyer who will also assist when you do not have money to follow up on your case. Have I not given you the way forward?

The Acting Chair (Commissioner Namachanja): Thank you very much. Concerning the case that pertains to your shamba, collaborate with Audrey so that you can discuss the issue.

Commissioner Shava: Thank you very much Audrey. I am very glad to hear that there is a place where women can go and get legal aid, in collaboration with FIDA. I know Roseline, I am with her in Nairobi, but there are some parts on the side of the Government, as Brigit said when she was talking about nets and fertilizers. Those are not issues of legal aid, but it is something from the Government's assistance to the citizens of Kenya. There are people who are in the list and others not. I would like to be in that list and I get the assistance, what can I do to get that assistance?

Ms. Audrey Wanyama: Thank you Commissioners. In Maendeleo ya Wanawake, we have leadership from Sub-locational level where we have an office of the Chair person, vice Secretary and Treasurer. We also have women delegates who are given a chance during funerals to address the funeral gatherings. So, they address the congregation on women issues and, if you have an issue you go to them. Sometimes it is very difficult to look for us at the county headquarters.

We have our representatives at the village level but not at sub-location level; very soon we will get them. The leadership starts from the constituency level then goes to the county level. Just as the current office bearers are changing structures at the National and County Government, we are also going to change our structures to agree with that. So, we will start with the sub-locations and locations. We have leaders whom you can channel your problem to and then you go to the division, district; all the way to the national level.

With regard to development committees within Bungoma, there are women who sit in these committees. So, if you go to Constituency Development Fund or even hospital Committees, you will find the Maendeleo ya Wanawake representatives. It is only that women do not know that there are women representatives in all those forums. It may not be a lady representative from Maendeleo ya Wanawake, but a representative is a representative. Just get to know which representative sits in which development panel, be it agriculture, if it is the division, find out who sits there. The government is looking at gender balance; so when they make any development, they make sure that there is representation from both genders; the disabled people, the youth and women. So, that you present your issues to the representative. If you see that she is not helping you, get to an officer in the next level.

Commissioner Shava: Thank you very much. You have told us about the structure of CDF, the development committees and the structure of Maendeleo ya Wanawake. So, before we came you would have spoken to them.

Ms. Nancy Kanyago: Thank you. I wish to call upon Elizabeth Wekesa.

Ms. Elizabeth Nafula Wekesa: My names are Elizabeth Nafula Wekesa and I come from Mt. Elgon. Issues about Mt. Elgon for sure are many. As women, we face a lot of problems and we have been affected very much for a long time since 1992 when we ran away. I almost got speared on the leg while I was running away. We lived outside for a very long time. In 1994, they told us to come back home as there was security. When we came home, for sure we stayed safe.

In March, 2006, in our area of Kakilong and Cheskaki (?) we saw young men in the area and they started moving away in a very slow pace. Us women of Mt. Elgon, if we had power we would have spoken it out. If you go to school you cannot find children of sixteen or eighteen years and above. There are no boys in the area and this continued until July when we started hearing about the issue pertaining Chanjawits. When we heard about that, after a very short time the young men who went away never came back to the area. For sure I have seen a lot with my naked eyes.

It was on Friday 3rd November, 2006, as I was sleeping at night, at around 11.45 p.m., I heard somebody knocking my door, when I opened the door, my in-law's son who was sleeping with my children in the same house called and told me to get out of the house. He said: "Come out of the house mother, our relatives have died!" As I opened the door, I saw my child running away and people were following him in hot pursuit. As I stood

outside there, I saw people running everywhere and touches flashing. My husband, the Children and I went out of the house. The Children came out naked. For sure I ran with those children into the forest. We went into a coffee plantation and my husband also ran into the neighbour's house and called him and told him that he had heard a report that his children had been killed by the Chanjawits.

My children and I hide in the coffee plantation until 1.00 a.m. at night as my husband went out to our neighbour's house. Truly speaking, there were a lot of fear. I came back from the forest to my house, wondering where I was to get the children who were missing. Although my husband caught my hand, I was not thinking properly. I decided to go slowly to where my children were sleeping. When I arrived there, and on reaching the door, the first thing I saw was blood scattered everywhere. I just moved slowly and I found the door was open and my two sons had been slaughtered like cows and they were just there naked. I was mentally disturbed by the scene. I moved from that place and I do not know who followed me. I left that place and ran home, and my husband asked me why I was running and I told him that I found our children dead. I screamed and the neighbours came running and they came up to my door and went to where my children were sleeping and they witnessed that my two boys had been slaughtered and the bodies were just there. People were frightened, but I just persevered and went back home, I took a blanket and covered the heads of my children as I thought dogs could carry away the heads.

After that we moved from that place, we went back to the forest and we slept up to 5.00 a.m. in the morning. My husband woke up went to Cheskaki Police Station where he reported the matter and police from Kivisiro and Kapsokwony police stations came. They saw the bodies of my children and they carried them in a blanket to Webuye Mortuary.

All of us went away from that place that year and nobody remained. I was wondering where I was to take my children. My husband came from Kibabii accompanied by his father, my father in-law. They said that the children should not be taken back there. What has happened to me and what I have seen is a lot. To speak the truth, when the Government says that we go back there - yes, we will go, but somebody like me with the marks in my life cannot go back.

Secondly, those were the only boys I had and they were killed at once. We people from Mt. Elgon have really suffered. I want the Government to tell us; they are tell us to go back, while those conflicts and killings were going on there was security and now they are telling us to go back.

For sure, "people from Mt. Elgon, am I cheating?"

The Audience: No!

Ms. Elizabeth Nafula Wekesa: No! It is true. Women like me have suffered. When I remember those incidents, I do not even eat. We have suffered in Mt. Elgon. We,

Bukusus, and the Sabaoti have the same blood, and there is nobody who is having different blood! Why are we suffering every year because of conflicts of 1992?

In Mt. Elgon, in the years 2006, 2007 and 2008, we suffered. For sure the women from Mt. Elgon have suffered and we are in trouble. Our children have never gone to school and they have no education. How are we going to take our children to school when we do not even have school fees? When they go to school they need school fees and examination fee; where are we getting the money for that? The child did not eat and ours are being chased away! You sleep there two days and you are told: "You are a refugee." You just see something happening though small but they say people should be refugees. Is it not correct people of Mt. Elgon?

The Audience: Yes.

Ms. Elizabeth Nafula Wekesa: It is true. Another issue that I would like to touch on is: We would like the Government or this Commission to help the women first. My husband got mentally disturbed and he does not have anything to tell me after that incident of our sons' death. Those who have remained are the girls. Now with such kind of pain, then somebody tells you to go back home while the Janjawits are just there--- They come out when we want to borrow salt. When you go out to the land to till; you are just passing through the Janjawits' farms. What can I do with those scenes of my sons being killed so that I can leave those people? What I am appealing to the Commission is to help us.

The Bukusu who are living in Mt. Elgon have suffered for so long. There are women who came from there in 1992 and are still in rental houses. They are just suffering in rental houses and their children are not even going to school. You find that a woman is staying in rental house and at night somebody knocks at her door; others do not even have husbands and somebody forces himself into your house and you know that he will be infecting you with HIV/AIDS or some infection. Is it not like that ladies?

The Audience: Yes.

Ms. Elizabeth Nafula Wekesa: It is true. Now, we are requesting the Commission to try and protect us. We have seen a lot and the person who has not seen this is the one who is happy. What I have seen with my naked eyes - I will go back home because home is best. I cannot refuse but at the moment let my pain first of all go away from my heart. I even wanted to carry the heads of children into my pocket and disappear into the forest.

Imagine, the children had eaten and had gone to their house to sleep and then at 11.45 p.m. at night they were slaughtered. My in-laws' son is still losing blood up to date. They ran after him and caught up with him and cut him! He has a family but he does not have any support and there is nobody supporting him. He is still suffering with his three children because he does not have strength to go and look for their day-to-day bread.

What we went through in Mt. Elgon is oppression. If the Sabaot women had powers, they could have told us about what they experienced - as the woman from Mt. Elgon said, if you speak out you will be slaughtered that night.

I would like to ask the Commission to help us bring peace in Mt. Elgon. We want the Government to bring sustainable peace in Mr. Elgon in order to develop the area. As the lady who spoke earlier had said, there are no educated children in Mt. Elgon. The child just goes up to Standard Six or Seven and you hear that so-and-so's daughter has been married or got pregnant. Men do not take any interest, and when the girl comes from school saying that she has been sent out of school; they are told: "Go to the farm with your mother." The children are not going to school in Mt. Elgon! We are in problems and we would like this Commission to bring sustainable peace. We have suffered as the women and we are still suffering.

If you go to Mt. Elgon, the Sabaot men have died and left widows who are just there and their children. Who will take care of those children and who will pay their school fees? Who will stand by those children? As a mother, would you really take care of those children? We have suffered with our problems up to the last minute. Women from Mt. Elgon especially those in rental houses are just suffering.

The other day, I found one woman whose things had been thrown out of the house and she asked me, where she could take her children and who was going to educate them. We have suffered a lot! For example, my mother who is 75 years old ran and got tired and slept. At 9.00 p.m. we found two people holding her, she had been raped and since then we have treated her but she is not even getting well. We have really suffered and we want sustainable peace in Mt. Elgon and in our country so that we can live like other people. Why are we carrying burdens every year? We carry our luggage and live outside for very many years and then we come back. In every election year we must take our property and run away and we must vote and then come back to stay. What can we do?

I do not have many issues to deliberate on before this Commission; I am still feeling the pain in my heart and body. There is also one child who was the follower of the deceased; when she saw the blood of her brothers she got shocked and she could not continue schooling. She could be in Standard Seven now, but she is in Standard Four. My husband does not even have peace; after his sons died he is not even interested in anything. He says it is better to die than to live.

It is my humble appeal to this Commission to help people of Mt. Elgon who are suffering in rental houses.

Thank you.

Ms. Nancy Kanyago: Thank you Elizabeth for elaborating about your problems and representing other women who were affected like you. We are sorry for other women who are here. So that we can understand, could you tell us the age of your sons who died?

Ms. Elizabeth Nafula Wekesa: The elder one, Robert Simiyu, was around 16 years old and the second one, James Wanjala, 13 years old.

Ms. Nancy Kanyago: Thank you. Did you say that the running away started in 1992 or was it just during the last General Elections?

Ms. Elizabeth Nafula Wekesa: In 1992 we ran away and came back in 1994. The conflict arose again in 2007 until 2008.

Ms. Nancy Kanyago: Thank you and sorry for you and the women who ran away from Mt. Elgon. So, do you live with your relatives in town or elsewhere?

Ms. Elizabeth Nafula Wekesa: I ran away together with women from Mt. Elgon and they are staying in rental houses in Mayanja, Kibabii, Tuti and Kanduyi. There are others who are living in Mukua, Marakaru and Shasuri. But we ran away together.

Ms. Nancy Kanyago: You are afraid of going back. Can you plough your land and do activities in your land?

Ms. Elizabeth Nafula Wekesa: For sure in Mt. Elgon, we can go and cultivate the land. But what happened to us and what we saw--- If you just try, for example, to go to Kakulong, Namwela, at the corner of Shiundo and Kaptunai, you just become frightened. All my thoughts start to remember what had happened. So, I do not think we will go back to cultivate the land. We are still frightened and we still have fear.

Ms. Nancy Kanyago: Thank you very much. Maybe, the Commissioners have questions for you.

The Acting Chair (Commissioner Namachanja): Mama Elizabeth, we are very sorry for what you went through and we leave this to God. I wish to ask you a question; not just specifically to you, but to all the Internally Displaced Persons (IDPs). There was Government aid in terms of money and other things. Did you ever get this assistance from the Government?

Ms. Elizabeth Nafula Wekesa: There was a time when they brought some Government aid here in Bungoma. That time other people had gone back to the villages. Those who heard about it came and registered their names for the first round and got kshs10,000 each. The second round they got Kshs25, 000 and the rest did not get anything. The rest did not know when the names of IDPs were being taken because those who heard about it were the ones who came to Bungoma. Those who did not hear about it did not get that money. I did not get that money because we got the report when already everything was over. Those who wrote their names during the first round have got the assistance and the rest did not get the money. Those who got the money, for sure, had debts. They paid rent and the money got finished.

The Acting Chair (Commissioner Namachanja): You have talked about life and the needs that you have in your rental places. Is there a lady who lives in a rental house who can come here and tell us how she lives, feeds her children and how they go to school and whether her husband helps her?

Ms. Rose Nekesa Khaemba: My name is Rose Nekesa Khaemba and I come from Cheptais. I am very grateful to God because He has really taken care of our lives. Personally, I have stayed in the rental house since 2007 to date. I am still staying with five children and I do not have a husband. As you can see, I look like I am living a good life, but if I do not wash cloths for my neighbour, I cannot eat. If I get kshs100 to start charcoal business it will help me. At the moment I do not have means, the money I get gets finished and I start suffering with children. My children do not go to school because life has become very difficult. Others have become prostitutes because they neither have any means of taking care of themselves nor their children. I am really passing through a very difficult stage in my life. When I sleep in my house I do cry because I do not have anybody to support me. If the Kenya Government can visit us, because we cannot support ourselves in paying rent, we will be grateful.

The Acting Chair (Commissioner Namachanja): Why have your people not gone to Cheptais?

Ms. Rose Nekesa Khaemba: We cannot go there because of what we saw. It was around 11.00 at night when I ran away with the children as the Janjawits had already gone to the neighbour's house and there was no time to save him. I did not want them to come to my house because I could have been beaten too. I tried to rescue myself before they came to my house. I ran away and I fell down in a hole where they were making bricks, it was around 5.00 a.m. in the morning. I ran away and walked up to Namanja where I am staying at the moment.

The Acting Chair (Commissioner Namachanja): Who is living in your farm now?

Ms. Rose Nekesa Khaemba: None. I am staying in a rental house in Cheptais.

The Acting Chair (Commissioner Namachanja): The Government is trying to help people like you. You have heard through radio that people are being assisted and others have been taken to different farms. Have you ever got any assistance from the Government?

Ms. Rose Nekesa Khaemba: Yes. We wrote our statement to the TRJC, but we have not got any assistance. When they were being given Kshs25,000 we were not there.

The Acting Chair (Commissioner Namachanja): Mama Rose, the Government has assistance for people like you; those who cannot go back to their original land. Others have been bought land and I know that even you people from Mt. Elgon, should make

sure that you are registered as IDPs so that you are given land in other places. Have you registered your name or have you been asked such things?

Ms. Rose Nekesa Khaemba: No, we have never seen such kind of thing.

The Acting Chair (Commissioner Namachanja): You are living in a rental house. What is the meaning of land to you? Is it that you pay rent or live with a relative?

Ms. Rose Nekesa Khaemba: I am paying rent of Kshs600 per month.

The Acting Chair (Commissioner Namachanja): What I should advise you is that you should make use of the leaders among the IDPs. You should also try to help yourself because you have the responsibility of going back during the day to Cheptais and find out whether there are people who are being resettled as this has been announced on television and radio. Make sure that your names are registered and if your names are not there, make sure you put your names on the list. You do not have to go all, but go as a group.

What this Commission can tell you is that, if you made individual statements, the Commission wishes that you make a common memorandum amongst yourselves, if you have not brought one. Were you among the people who received Kshs10,000 or Kshs25,000?

Ms. Rose Nekesa Khaemba: When they were registering people I was not there, therefore, I did not get it. I was not near as I had gone to my sister at Malasi centre. When they were registering I was not around.

Ms. Nancy Kanyago: Thank you very much. We have heard a lot on Mt. Elgon. We have also heard about women who are being discriminated against in different ways. We have also heard about issues concerning widows and the way they are suffering. But because time is moving fast, I would wish to give this chance to people who think that their issues have not been articulated or no one has touched on those issues.

Please, let them raise their hands so that I can have to talk to them. We do not have much time. There is a lady behind there, please, come and talk. The rest will follow the old lady.

Ms. Sussy Cherop: Madam Chair, my name is Sussy Cherop Cherono from Kopsiro. In 2006, I was a victim of torture. I am married and I have two children. By that time I had one child, I was slashed and I have multiple cuts all over my body. I hear that there are rehabilitation centres which are supposed to assist people who were tortured but I have not been assisted. Why do they announce that there are rehabilitation centres and yet they do not assist us? We have not received any medical assistance either. I was a sports lady but my legs were hurt and I am still suffering to date. I was called to come to Bungoma by a Non-Governmental Organization (NGO) called Mwaisko. They told us that they were offering medical assistance, guidance and counselling. I am asking the Commission

to recommend that we get a rehabilitation centre in Mt. Elgon so that the people on the ground can be attended to. In Kimilili, IDPs got Kshs10,000 and were also promised Kshs25, 000 but on the ground, there is no money. We do not know where the money that we were supposed to get went. We went to the District Commissioner (DC) but he only took our names. So, I am asking whether those who were given Kshs10,000 were genuine IDPs. I would like to request the Commission to help us because we have many problems. We hear that there is money which is supposed to assist certain people but we wonder where the money goes. Those who were affected never got the money.

The Acting Chair (Commissioner Namachanja): We have heard that people were slaughtered in Mt. Elgon and others were tortured. I want you to tell us what you went through. For example, how were you tortured?

Mrs. Sussy Cherop: I was a business lady selling clothes. When those people came to our home they demanded money. We gave them money but they were not satisfied. They told us that we are doing business with the Kikuyus. That shows that there was an aspect of tribalism in the whole issue. They came in the house and shot a Kikuyu boy at my doorstep. I took the money that was meant for business and gave it to them. They told me to go out where I found other people who were armed with guns, *pangas* and knives. They had covered their faces and you could not recognize them. I was told to lie down and they removed my clothes. They then started slashing me. Others went into the house for my husband. He was also slashed and he still has a mark on his back. I was living with a certain boy and they also hurt him until he broke his spinal code. He is now totally disabled. I was taken to my stall and they demanded for more money. Then they took me to the forest near Cheptororia. They asked me whether I can recognize them but I said no. They told me that if I reveal anything then my life would be in danger. When they took me to the forest, I was raped and became pregnant. I am appealing to the Commission to help me because I did not receive any treatment. I came to Kapsokwony but received little assistance. We really suffered and want the assistance of the Commission. I am also appealing to the Government to help us in whatever way they can.

Commissioner Shava: For the record, I would like to confirm that the Commissioners have viewed scars on the witness's legs and on her forehead.

Ms. Nancy Kanyago: Thank you very much my fellow women. I can see that there is a lot of pain in this room. We are also very happy that you have trusted this Commission to be able to speak out your problems. I know that you will heal and we encourage you to speak to each other and to form groups so that you can counsel each other, share information and find ways of sharing your common problems. For example, there could be an IDP who received money and others have not but when you come together as IDPs, you will be able to share that information. By doing that you will know what resources are there for you and encourage each other. As Brigid has said, they have formed a group where they are encouraging each other as widows, we also encourage you to form groups as IDPs from this region. That group should not be based on tribe but on your common

problems. That way you will be able to see how your issues can be raised in forums like this where people can listen and see how they can help you.

Our time is running out but I will still want to listen to some women who had raised their hands. I want to ask that you can come to speak if your issue has not been raised by somebody else. All of us would like to talk but we only want you to speak about an issue that has not been presented here.

Mrs. Joina Nasike: Madam Chair, my name is Joina Nasike from Bungoma Town. In Mt. Elgon things were difficult. I ran away and came to Bungoma. I left everything behind. I am a widow and I ran away with my children. I ran away after staying in the House for one week without even going to the market to get food for my children. Later on we went to the DC and we were given Kshs10,000. The Kshs25,000 that we were supposed to get was not there. We are crying because there is too much corruption. That is all I want to say. I request this Commission to take care of our interests.

Ms. Nancy Kanyago: Thank you for being brief so that others can also get a chance to speak.

Mrs. Frida Wamocho: Madam Chair, my name is Mama Frida Wamocho and I work with Western Kenya Human Rights. My office oversees the rights of women, children and the vulnerable. My office is in Naitiri. What has brought me here is to tell this Commission the problems that I encounter when a child has been defiled. When I report that problem to the police in Kapchonge the case is thrown out because someone has already bribed the police. Sometimes when I go there I get arrested. For example, there is a three year old child who was raped in 2007. I followed up that case and I was arrested and released on bond after staying in Kapchonge for two weeks.

My appeal to the Commission is that we need to get assistance because when such cases are reported to the office we need to have money in the office to help people get treatment. We need intervention because the cases in Bungoma are many. Parents come and when we go to hospital they are told to pay money before the children who have been defiled are treated. Sometimes, even the P3 forms have to be bought. Sometimes I have to tell them to arrest me but give out the P3 forms. Such things are giving us problems and I urge the Commissioner to visit my office so that you can see for yourself and if possible give me any assistance you can to enable me help people.

Ms. Nancy Kanyago: Thank you very much for representing the children and overseeing their rights. I am asking you to write a memorandum to the Commission and list to us the cases that you have attended to and also tell us the problems that you are undergoing then you will talk to Rahab Robby and she will assist you.

Mrs. Elizabeth Wamukota: Madam Chair, my name is Elizabeth Ndinyo Wamukoto and I am a teacher. I am in the same school with the other teacher who spoke earlier. I am supposed to speak on behalf of Tachonis. Our traditions and cultures are similar to those

of the Bukusu. So, I do not see the need to repeat what has been spoken here. I have a sister who is also a teacher and when she got married the in-laws did not have any job. She tried her level best and bought land. She built a very beautiful permanent house. Unfortunately, her marriage broke down because of the in-laws. Later on she was chased away and she left her children and the land that she had bought behind. Today, she lives in a plot near the market. At the moment she is a primary school teacher looking after eight children which is a very difficult task.

I am a teacher and I would like to say that as women we have very many problems. We are mothers and we take care of the children. We are the workers in the home. If children sleep on empty stomachs the father will not struggle to do anything. What I want to say is that we should not just sit there and cry and we should not see ourselves as not being strong. That is why I decided to team up with other women and start a SACCO in Kanduyi Constituency. I am advising the mothers to join such groups and seek assistance. It is very difficult to get money but let us try our best. I have a dream that the next Member of Parliament in Kanduyi will be a woman. Let us put aside our problems and do something because men want us to stay in the kitchen, cry and after that vote for them. We should vote in a woman as governor or senator so that she can be able to articulate our issues. When we vote for a man he goes to Nairobi but if we vote for a woman as governor she will stay here in Bungoma. Let us look for a woman who will be able to fight for us. A mother is the one who knows the problems of other mothers. If we do not do something for ourselves we shall remain the property of men but for how long? I do not have much. Thank you very much.

Ms. Nancy Kanyago: Thank you very much *Mwalimu*. Our time is now fully over. We have another session at 2.30 p.m. but I want to give this chance to three people. The first chance goes to Milcah, the lady behind there and Maendeleo ya Wanawake, Bungoma. I am sorry that others cannot get a chance to talk but I am hoping that those who have talked have presented all the views and all the problems that you have encountered have been talked about. For those who are coming to speak, please, be brief and go to the point.

Mrs. Milcah Kemei: Madam Chair, my name is Milcah Kemei from Mt. Elgon. I have listened to what has been said and it has touched me. I was going to talk about Mt. Elgon although right now I am in Bungoma County. I am the wife of Mr. Kemei and I have children. I am an IDP from Mt. Elgon. What happened in Mt. Elgon was sad. There is a lady who talked here and I was touched. I want to say that I am sorry but you are not alone. Most of us were affected. I am a Sabaot, married to a Sabaot and given birth to Sabaots. This problem affected me and it was painful. I remember that on 15th September, 2007, I lost my daughter-in-law through attacks from the gang. My son joined Sabaot Land Defence Force (SLDF) but he ran away. Then the SDLF came and killed his wife. They shot her as I watched. When she was killed she was found to have been pregnant with twins. The police came to rescue us but they burnt the houses instead. I took the body to the mortuary. I did not have the means of bringing the body for burial and there was no place to bury it. I decided to walk from my home to Kapsokwony which is about

16 kilometres. I did not have any clothes on. I went to the DCs office and when they saw me they were shocked and thought that I had gone mad. They started running away saying “Mama Milcah has gone mad”. Other people brought lessos for me and I wrapped myself. The DC was so shocked and asked what was going on. I told him that the gangs had killed my daughter-in-law and the police had burnt down my home. At that time, I saw my cows being driven to the police station and some young men had been arrested. I was told that my son was in custody. I asked what my son had done. I cried and felt like dying. I told them to arrest me so that I could stay with my son in police custody. That is a situation that I never expected to find myself in. After two days, the DC gave me a vehicle to transport the body. We just buried the body and ran away.

My last born was 13 years old and he was supposed to sit for the Kenya Certificate of Primary Education (KCPE) exams. I had advised him not to join the SLDF. When he had finished his exams the gang took him to the forest. I had hired a motorbike so that when he finishes his exams we could run away with him. When I was told that he had been taken away I cried. I asked myself what mistake I had done. I hoped that he was alive. He went there and he was given a gun. When the soldiers came they almost killed him because they threw a grenade where they were but he managed to run away. All his friends died. My son was injured but the doctors took him to Webuye. I felt a lot of pain. All of us went through a lot of pain. The tragedies did not choose whether one was a Bukusu, a Sabaot or Teso. We are pleading with the Government to assist us with school fees. My son passed his exams and was to join Kamusinga Boys but since he was injured I thought that it would be easier for him to be in Kapsokwony. I talked to the head-teacher and he was admitted. He is now in Form Four but he says that he might not perform well because people mock him calling him “Janjaweed”. Sometimes I think he can even go crazy. I am asking the Commission to consider bringing to us counselling services so that people can be assisted.

If you watched television at that time and you saw a lady screaming, it was me. I have handled many rape cases. I even followed up many cases and took children to hospital. The police were just looking at us and saying, “it is your people who are doing that”. I just want to thank the Commission because if they could not have come, I think I could have gone mad because the pain I went through was too much. I have never gone back to my home.

At one time the Janjaweed came home and took me to the forest. So many bad things were done to me. I am a mother but they asked me very many questions. They removed my clothes and asked why I was talking to the DC. Those were small children the age of my children. Some of them are even friends to my children. They removed my clothes and others were making bad remarks. They wanted to cut my neck from the back. I told them to go home and take all the cows and leave me alone but they declined. They took me to another place and I sat down on a stone because I was tired. I was beaten but I got angry and started removing my clothes violently. I knew that once you reach there it is the end of you. They remarked that since I talk to the Government I will see. They told me that in Sabaot women have no say. They told me that it was me who had advised my

family to run away. I was then interrogated close to 19 hours. I told them to give me a chance to answer them one by one. One of them was like a magistrate and after listening to me he said that there was no reason why I should be killed. He said that since I had answered all the questions, it seems I did not talk to the Government but I only had an NGO. I told them to take the Kshs5,000 I had and the cows. I went through a lot of tribulations. When I talk I recall everything and I feel sad. I was then released after surrendering everything. They asked me if I knew them and I said I did not know any of them. I heard them saying that they wanted to chop off the head of one of the women. My body went limp and I became paralyzed. When I was told to go I could not even stand up. I was shaking and sweating.

I told God that if that was my last day then I should die in peace, and if it was not then let Him give me more days. I said to Him: “God, please, come in. God, intervene in all the problems we have.” So, as they tried to wake me up, they sympathised with me. I could not wake up. They encouraged me. I could not walk. They tried to dress me up but I pushed them away. I was mad. They helped me up to the stage. That was when I started walking.

I know the pain I went through. What is even more painful is the fact that my daughter-in-law and young son were misused. I do not know what kind of child he will be in my house. He will probably be a person who will be killing people yet that is not what I expected of him. When I look at him, he does not look like he is the same child. He looks like a different child.

That is all I wanted to say. May God bless you.

Ms. Nancy Kanyago: Thank you very much. We are very sorry, Milcah, for what you went through, and for representing the others who have gone through problems related to yours. As you have said, it is true that all the communities were affected. As a Commission, we have heard that what the people of Mt. Elgon want is peace. It is only peace that all the communities living in Mt. Elgon want. As you have been speaking since morning, it seems that the community sees women as weak people. But who died in Mt. Elgon? Only the other day, we were in Cheptais. There were almost 300 widows who never buried their husbands. Their husbands were taken away and never returned. When the widows tried to tour around, they just found bones of human beings.

There are also those whose children were slaughtered, and they did not leave their bodies in the houses. The bodies were thrown into boreholes and pit latrines. The people who dug out the skeletons were women, and not men. I just wanted you to touch on that one very briefly, *Mama Milcah*.

Mrs. Milcah Kemei: So, when I came home, we stayed a little. There was a time Commissioner Namachanja visited the area. We came. We were involved in bringing peace between the Soy and Ndorobo communities. What we went through was difficult. We were chased away, together with Commissioner Namachanja, by the Ndorobo. What

I saw was terrible. I was amongst the people who should have died then. So, I decided that since I had survived, I should participate in efforts to bring peace. After Tecla left, we formed a group of people to exhume bodies and identify their families. I was the chair of the body exhuming group. There were bodies whose families we could not identify. We managed to identify some bodies based on their faces and teeth. There was a man who was involved. It was the women who were exhuming the bodies.

We would ask some members of the *Janjaweed* and others: “Where did you bury him?” They would then show us a pit latrine. They would tell us that the other one was in such and such a hole. We called the media. We used one person who looked mentally disturbed to exhume the bodies for us. We then collected the bones, put them into sacks, and took them to the police. We exhumed about 17 bodies.

During this exercise, I found the body of one student of Bungoma High School, who was in Form Three, and I suffered a stroke on one side of my body. I said: “We, women, are heavily affected on behalf of our children”. Our children were the ones who were used to slaughter other people and go to the forest. It was our children who were slaughtered. It was us who buried the bodies. In the Sabao community, a woman is not supposed to dig a grave or bury the dead, but this time round, women did the job because we could not leave the bodies unburied. Otherwise, they would have been eaten by dogs and foxes.

So, we took it upon ourselves to bury the dead. When one of us saw someone who had been slaughtered, she would call two or three women. We would dig a shallow grave, wrap the body in a blanket, drag it into the grave and cover it with soil.

That is all I can say concerning bodies and skeletons.

Ms. Nancy Kanyago: Thank you very much. I would like the Commissioners to give us an extension of time because it is already 1.30 p.m. and we still have quite a number of women who have not yet shared their sad stories with the Commission.

The Acting Chair (Commissioner Namachanja): You have an extension of ten minutes. Within those ten minutes, two people should speak.

Ms. Nancy Kanyago: We now have ten extra minutes. Let us have Mary first.

Ms. Mary Nekesa Marabwa: Hon. Commissioners and fellow women, I greet you in the name of Jesus. My names are Mary Nekesa Marabwa.

I am personally a victim of the clashes. They bombed my house and all my children were burnt. They were looking for my husband, but he ran away. As the children were burning, I wanted to scream. The cows were running away. What a sound! The grenade shrapnel cut the stomach. I just saw that the dogs had taken the legs. I saw the intestines exposed. So, I pushed them back into the stomach of the child, held him and ran away with him. As I ran away, I thought that I would wake up my child, but he did not wake up.

Thereafter, some police officers came and asked me about the whereabouts of my husband. I told them: “The clashes have forced him out of the village. I do not know whether he has been killed or not. I do not know where he is”.

The police arrested me. I had with me a one month old baby. They took me to Bungoma Police Station and then to Kakamega. I came back at around 3.00 p.m. When they released me, they said: “We are going to give you Kshs100,000 if you tell us where you husband is.” I told them: “The clashes made him run away from the village”. They took me back to the cells.

They told an 80-year old man: “Onto your marks”. The old man bent down, and they started to sodomise him. The sodomising went on for 24 hours, up to the morning. In the morning, at 10.00 a.m., he was left for 15 minutes. Another one bent down and the ordeal went on. Another one was mistreated in a similar way. There were 99 women. I was the 100th woman.

There were four policemen who were guarding us. One of them came and asked: “Why are you leaving this one? She has hidden her husband. We want her husband”. They put me in the position women take in a labour ward. I was still bleeding because I had delivered a baby recently. They inserted a bottle of beer into my private parts and said: “That is not enough.” The policeman came and shot me. I was kept in from March to August.

Human rights officials heard rumours that there was a woman who had been arrested, and who had been tortured. They looked for me. When they found me, they took away my child. During the period March to August, the child went blind. They took me to Kakamega where six white men removed the bottle from my stomach. All this was happening to me when my husband was not around. My children could not go to school. They could not make it home. They got lost. The baby I had was only one month old.

The child is mentally disturbed. Sometimes she cries in class for no apparent reason. When the teachers called me, I told them: “I was arrested with this baby.” They asked me: “Is this the only child you have?” I told them: “I do not know where the others have gone.” I got no assistance. My daughters have been married but I do not even know where they are. For the ones I am with, they are not getting any education. I have not received assistance from anywhere. Even getting something to eat is a problem.

As you can see, I am just a woman who sells kales. Sometimes I get money to buy food. Sometimes I do not get any money. I am living with two children. It was even difficult for me to bury the one who died. The people who came with her body said: “Just dig the grave because we do not know where your husband is at the moment.” As of now, I do not know where my daughters went to. They were not getting education. The ones I am with sat for primary examinations, but I have not received any assistance.

When the police arrested me, they said that they were looking for my husband's head. They told me that if they got him, they would shoot him at the back and throw his body into the waters of Malakisi River. I was semi-naked. I had a skirt on but I was not wearing anything on top. That was what I went through. To date, I do not know what kind of assistance I can get and from where. I have heard that there are people who are assisting those who have lost their children and husbands, but I do not know how to start looking for such help from them.

I do not want to speak much. That is all I have.

(Ms. Mary Nekesa suffered an emotional breakdown and started crying)

Ms. Nancy Kanyago: Thank you very much although you are in pain and crying. It is good when we cry together.

We thank those who have shared with us their painful stories. For those who have not been able to talk, we hope you can see that the Commission is concerned about the things that affect women. We know that more people would have liked to speak, and that the things you want to speak about are so touching that they cannot be said in a minute or two minutes. We do not want to rush you. So, I apologise that we have to bring this meeting to an end because we have to listen to other people in the afternoon. I hope that this forum has given you an opportunity to hear of ways in which women in this area are affected.

We are also happy that you have your *Maendeleo ya Wanawake* leaders here; this is the largest women organisation in this country. It is our hope, as a Commission, that it will facilitate similar forums on different things, whether it is on IDPs, it is to do with widows, or it is to do with the victims of the Mt. Elgon clashes, so that this is not the only place where those issues are raised. I hope that is something which *Maendeleo ya Wanawake* can take forward. Even on other issues, you know that your leaders from *Maendeleo ya Wanawake* and other community leaders are here. So, do not feel that because you were unable to speak to us today, your issue has not been heard.

Finally, before I hand over to the Commissioners, I would like to introduce our Regional Co-ordinator, Rahab Robby. If you have not written a statement with the Commission, and you feel that you want to submit a statement on your issue, this is the person to see. So, please, stay behind after the meeting and speak to her; we have other staff. She is not the only staff member of the Commission. There were other people who were taking statements in this area. So, together with Rahab, they will hear your concerns and those concerns will reach us.

Ms. Nancy Kanyago: Thank you very much for your testimony. I think the Commissioners will tell us what we are going to do with what you have told us.

On behalf of the Commission I want to say, thank you very much for sharing your stories with us especially some of these things which we know you have not spoken about before.

I want to give this opportunity to Maendeleo ya Wanawake, Bungoma to give a vote of thanks and then we hand over to the Commissioners and finish this meeting.

Mrs. Wanyama: Commissioners and ladies who are here today, I want to thank God for this chance we have had today which is special. We have never had a forum like this and thank God for it. We thank the Commissioners for sitting with us. I want to say a few things about the way forward. The way forward is that we request for another hearing in Bungoma County that will give us time to be heard.

We also wish the TJRC could facilitate Maendeleo ya Wanawake and Bungoma lobby group that listens to women's issues, children, widows and people with disabilities. Women have issues that are different and we expect to be heard by women. We thank you because you have heard us. Those who have been listening to us are women. You have not only just been listening to us but also empathizing with us.

Another way forward is that we would like the TJRC to help us facilitate formation of networks from the county level to the national level. We believe that this kind of network will help us to be heard. It will be a channel of information flow.

We also request the TJRC to set up a rehabilitation centre that will provide professional psycho-social to victims of gender based violence.

Thank you and welcome to Bungoma again. God bless you.

Commissioner Shava: After a meeting like that I do not think I have much to add. I would like to thank the women of Bungoma and the women of Mt. Elgon for coming here and speaking so frankly. Many of the things you have spoken about are very painful. I am feeling heaviness in my heart. As has been said we cannot continue being sad forever. We have heard some of the solutions. We have to remember that all of us are women. When somebody's child is being killed, somebody else's child has been taken to do that work. None of those women were expecting that. Each of the women has pain. What we have to remember is that we are all women. The things that affect us are all the same. The discrimination whether teachers, widows, married the things that affect us are the same.

Many of our problems are caused by people who are not like us because they have a different way of thinking and they control the society. We have to recognize this and be wise like Bridgette. We have to be wise and alert like her in order to guard our rights. We must remember we are all women, have a unity of purpose, identify our objectives and get into groups. We heard the *mwalimu* here telling us of the group she has started and it is helping them so that the kind of things that happened to her sister do not happen to other people. The challenge was put out; why do we not form an organization which is for women teachers? They have specific concerns in terms of sexual harassment, access

to decision making positions and dress code. When you form an organization, you can attract funding from the Government and other bodies.

We are good at identifying our problems; let us also identify solutions for ourselves.

Thank you. I am humbled by your contributions today.

The Acting Chair (Commissioner Namachanja): Thank you Sister Margret for that encouragement. I do not have much to add but I want to tell the audience that what you have heard today here is just a tip of the iceberg. I have worked in this region from 1992 during the ethnic clashes. So many women suffered. I am happy that some of you have had a chance to share.

As sister Margret has said, the solution will come from us. Audrey listed a number of things that need to be done. TJRC has a mandate and all these problems we are supposed to package within two and a half years. We are almost through with the time allocated. If we do not get extension we might be expected to finish our work by November this year. If we are given an extension then add six months on that deadline. We are moving from one place to the other. We have only finished one region; that is North Eastern. We are now in Western and next week we are moving to Nyanza. We have not touched the Rift Valley, Central, Nairobi, Coast and other places.

I look at the women before me; they are professionals and leaders in their own way. If I were you, I would not have left this hall without getting representatives; women victims, widows, teachers, Government workers, co-ordinators for Maendeleo ya Wanawake need to get together. We need to organize first before we even look for funds to facilitate us.

Audrey if you came up with a proposal as a way forward from this meeting, as a follow up on trauma healing or support for widows, move from here and move out there. I expect the solutions to come from here.

What we have done now is to awaken the trauma. This woman will not sleep today. She will be seeing the pictures of the children who were slaughtered. The woman who has gone away will not sleep today. She will be remembering the bottle being inserted into her private parts. But that trauma needs to be healed. The healers need to come from us. If we do not have the healers, organize so that you invite people to support.

I have seen so many times IMLU coming to this region to work with Western human rights groups, Mwatiho and other organizations. Maendeleo ya Wanawake can call IMLU to come and support. What we need is to move from our comfort zones. We need somebody to walk out to lead the process. That is what I need to encourage you about.

For those who have shared, thank you for honouring this session to come and share your painful stories. I know for some of you it is the first time you have had a session like this. Some of the things that happened to us are unspeakable. You do not have the words to verbalize them. I thank God that today you had courage to verbalize what happened to you.

I know that during statement taking many of you were not reached. We have our regional coordinator here, Rahab. We expect a memorandum from widows, IDPs and teachers on the negative impact of culture to women.

The last speaker is the woman who was tortured in the hands of the Armed Forces. We hear so much about Nyayo Torture Chambers. We hear so much about men having been tortured. Women who have been tortured like that mama, their stories are not heard. By the time you leave this place, please, let us help them to package this memorandum so that they can help us in terms of the recommendations this Commission will come up with.

The Commission is not going to just sit in Nairobi and come up with recommendations. Share the problems you have, the challenges you are experiencing and the road blocks but at the end give us recommendations on how they can be solved for future healing, peace and national unity of this country.

Thank you so much and God bless you all.

Ms. Nancy Kanyago: Thank you so much. We have finished this session. We started with prayers and would like to end with prayers.

(Prayers)

[The Commission adjourned at 2.00 p.m.]

[The Commission resumed at 3.45 p.m.]

The Presiding Chair (Commissioner Chawatama): Welcome back to the afternoon sitting. Leader of Evidence, could you please swear in the next witness?

(Mr. Joseck Simiyu took the oath)

Ms. Emily Kimani: How are you, Mr. Simiyu?

Mr. Joseck Simiyu: I am fine, Madam.

Ms. Emily Kimani: Kindly tell us your full names for the purposes of the record.

Mr. Joseck Simiyu: I am Joseck Simiyu.

Ms. Emily Kimani: Mr. Simiyu, you are before us today because you did remit a memorandum about a land parcel in Kimilili. Is that correct?

Mr. Joseck Simiyu: That is correct, Madam.

Ms. Emily Kimani: Now, I kindly request you to give us a brief background of the issues, after which, you will give us the issues and recommendations thereto.

Mr. Joseck Simiyu: A brief history of the land parcel in Kimilili, No.1407, the present number2 being 1408, 2268 and 2269 measuring about seven acres. The land was owned in 1947 by Aaron Mukubui Kiberiti. He is Muriuri by clan. This farm was given to Zephania Murunga as the administrator after the death of Mukubui, who left two sons. On registration in 1965, Zephania Murunga registered the whole land in his name. In 1964, Chesamis Primary School became a secondary school and on expansion in 1969, it acquired the lands of Henry Wanyonyi and Herman Khakula. Within the same time these people were bought land in land parcel No.337, which eventually became 1407 and 1408. So, Henry Wanyonyi bought 1407. The Church in Chesamisi Secondary School, which held monthly meetings, also bought two acres from 337. When Henry bought that land in 1969 he established a home and market. In 1975 he filed a case in court for purpose of title. He lost that case that was filed against the registered owner, Zephania Murunga and the son of Harun Mukubui whose name was John Kundu Mukubui. After losing the case, the two old men came back home and entered into another agreement. In that agreement he gave cash amounting to Kshs4,000 and a bull worth Kshs1,700, which was effectively setting aside the lost case in Kakamega No.244 of 1975. That is a brief summary.

Now the issues are:

1. The ruling of 7th December, 1987. That ruling was delivered before a case was filed. The case was filed later on 18th October, 1989. There was no service for that hearing. On 29th January, 1991 an eviction order was issued against Henry Wanyonyi Wekesa and all the people who were staying on that land. In the meantime, when he established a market, there were eight buyers from 1976 up to 1991, who had established their businesses and built permanent shops. There was very serious business going on. This eviction order was carried from Kakamega Court by one Gladys Nekoye Murunga. She took the order from that court to the Assistant Chief in Kamukuywa Sub-Location who signed to evict. The Chief also signed that people should be evicted. It was moved to the DO 1 in Bungoma who also signed for eviction. Then it was given to the DC, Mr. William Changole, who also signed for the eviction of people. On 27th May, 1991, policemen from Kimilili Police Station armed themselves to the tooth and went up to Kamukuywa Market and hired *manambas* who armed themselves with crude weapons up to the farm. They demolished everything that was in sight. The homes for the old man and his son who were married and all the shops were all demolished. In the meantime, all the time from the time the ruling was delivered up to the time of action, there was no service for the hearing of anything.

If I may have to put down the summary of who did what at what time in terms of the name of Government officers, designation, date of signing for the eviction, they are:-

- (i) Mr. Edward Kuyela Matete, Assistant Chief, Kamukuywa Sub-Location signed on 4th February, 1991.

- (ii) Mr. Peter Namaswa Wanyonyi, Chief Kamukuywa Location signed for eviction on 4th February, 1991.
- (iii) Mr. Mbugua, DO 1, signed on 5th February, 1991.
- (iv) Mr. William Changole, DC, Bungoma District, signed on 5th February, 1991.
- (v) Mr. Serem D.K, OCPD, Bungoma Police Station, signed on 6th February, 1991.
- (vi) Mr. Rono G.P, OCS, Kimilili Police Station, executed the orders on 27th May, 1991 and 11th June, 1991.

As a point of notation, when they were signing for eviction, they had not called the evictee Wekesa, his sons and the businessmen to tell them what was going to happen before it happened.

For this issue, I have the following recommendations: The names of public officers, the Magistrate who gave the ruling, Mr. Sylvester Ong'anyi--- When Justice Ringera came here for the judicial clean-up in 2003, I gave his name and that man was sacked. One of the advocates was Onyingwa and Lucy Nansusi who was an employee in that office. Both should be disciplined. The eviction order was signed but there was no owner of that signature. I have had to go up to Kakamega Court wanting to know the owner of that signature, up to last week. I was told that, that order was fake. At the same time, the file could not be traced because it was destroyed. Therefore, for purpose of recommendation, all the civil servants named above should be prosecuted for causing the death of Henry Wanyonyi Wekesa, resulting from denial of basic human rights, lack of housing, food and profound mental torture. The ruling dated 7th December, 1987, whose file cannot be traced, should be set aside. The eviction order dated, 29th January, 1991, should be withdrawn. Gladys Nekoye Murunga, the only child of Zephania Murunga Lusweti must give the name of the officer who signed the eviction order, dated 29th January, 1991. This is because in her evidence somewhere in a criminal case, she said, when Henry Wanyonyi was arrested for forced retainer, that she was given the order from Kakamega Court. The Kakamega RMCC No.244 of 1975, original file that is lost, must be released jointly by the Magistrate, Sylvester Ong'anyi, the advocates, Onyingwa, Nansusi and Nekoye.

Also, the Provincial Administration should explain why they executed the eviction order without knowing the author or seeing the proceedings in case No.244 of 1975. Mr. Onyingwa Ibrahim, Lucy Nansusi of Onyingwa and Company Advocates must name the person who used his or her thumb to sign the affidavit dated 18th October, 1989. This is because that application had only a left hand thump print. Now, if it was Zephania Murunga who did that, he could have signed because he signed so many documents before. Onyingwa and Company Advocates should explain why they could not file and serve a substantive suit against Wanyonyi to evict, instead of an application in a case where he was a plaintiff.

Gladys Nekoye Murunga should be charged with forgery.

She should be prosecuted for a destructive court order and corrupting Government officers. All the transactions on the land parcel should be cancelled, and the land be transferred to the administrators of the estate of the deceased. All those people encroaching on land parcel 1407, namely; Gladys Nekoye Murunga, Geoffrey Wasilwa, George Wesonga, Fred Sitati and any other party should be removed and charged for forceful and illegal---

The people whose property was destroyed should all be compensated with their children and grandchildren for:-

- (a) Forceful, inhuman and illegal eviction.
- (b) Lack of homes.
- (c) Lack of food, clothing and proper sleep.
- (d) Lack of education for all the children and their grandchildren.
- (e) Inhuman destruction of coffee, bananas, maize, pasture and tree plantations.
- (f) Inhuman destruction of businesses and business premises.
- (g) Inhuman destruction of livelihood for the livestock.
- (h) Permanent loss of income for old people.
- (i) Consequences of the abuse of basic human rights.
- (j) Exemplary and aggravated damages should be paid.

Compensation for all the victims by, at least, - I have tried to put an estimate - Kshs1,000 for each day in the cold since the eviction, which is about 20 years. They are 15 of them times 365 days each plus five leap years times 366, which is about 7,300 days. You can imagine if you have no hope and house. Some of the people who were affected are as listed below:

1. Myself.
2. Moses Mumbuani.
3. Sylvester Muyobo.
4. Peter Soita.
5. Xmass Namunguba.
6. Patrick Wanyama.
7. Elizabeth Akhabi.
8. Nora Nekoye.
9. Joseph Wanyama.
10. Barasa Evans.
11. Wafula Peter.
12. Wafula David.
13. Wanjala Wanyonyi.
14. Anne Naswa.
15. Nasambu Gladys.
16. Juliet Nangekhe.
17. Margaret Naswa.
18. Nasimiyu Wanyonyi.

19. Nasipondi Wanyonyi.
20. Naliaka Wanyonyi.
21. Nanjala E. Wanyonyi.
22. Peter Muliro.
23. Nekesa G. Wanyonyi.
24. Nanjala J. Wanyonyi.
25. Nanyama Wanyonyi.
26. Nekesa C. Wanyonyi.
27. Nasimiyu Wanyonyi.
28. Wanyama Fred.
29. Martin Kituyi.
30. Kennedy Nyongesa.
31. Caro Nafula.
32. Walter Bahati.
33. Nasambu Wamukota.
34. Naliaka Josephine.
35. Nafula Simiyu.
36. Maximilla Khisa.
37. Nicholas Sanya (deceased) and his wife Irene Njeri.
38. The late Henry Wanyonyi Wekesa.

2. *Ex parte* order of 22nd December, 2000 in the Bungoma High Court in Civil Case No.141 of 1995.

Briefly, on 12th May, 2000, the late Henry Wanyonyi Wekesa obtained an order from Bungoma High Court, before Justice Mbito, that land parcel No.1407, should be his land. He ordered that the executive officer of the high court signs all the documents to vest the title in the names of the late Henry Wanyonyi Wekesa. Now, the executive officer signed the forms for transfer on behalf of Gladys Nekoye Murunga. Henry Wanyonyi Wekesa took the forms to Kimilili Land Control Board. It was registered on 13th July, 2000, waiting for the board to sit and grant the transfer. As bad luck was on his side, Henry Wanyonyi who was under serious torture succumbed to death on 2nd July, 2000. By this time he was not in the land. After consultations with the community, we buried Henry Wanyonyi Wekesa on land parcel 1407, on 6th July, 2000, against the eviction order. The registered owner, Gladys Nekoye Murunga, rushed to court to get an exhumation order to exhume the body, which was not successful. She filed an appeal in the High Court and on 17th October, 2000, when we met, the case lasted three minutes. The reason was that we refused to act for the defendant who was deceased. So, the prosecuting lawyer, who was Areba C.K., requested to be given two days to bring the defendant in court, who was the deceased. When he left the court, he has never gone back to that case again. So, the tricks started.

On 22nd December, 2000, Areba with Gladys Nekoye Murunga went to court, before Justice Mbito, without any application or return of service, and made an oral application. Mbito in his wisdom issued very far-reaching orders, without our knowledge. He stated

very clearly that we were restrained permanently for ever trying to go into that land. But I lost my own natural intelligence and went to the land and started ploughing. I ploughed the land for three years.

On this issue alone, let it be noted that the order on 22nd December, 2000, was during the Christmas vacation when Judges were supposed to be on vacation. At the same time, the Judge fixed the hearing of that case on 13th February, 2001, because the case was *ex parte*. According to my own layman's knowledge, that order expired on 4th January, 2001. So, on 10th January, 2001, the lawyer of the deceased was served with that order, which had expired. On 13th February, 2001, when I went back to court for the hearing of the case, there was no file and so, there was no hearing. On that date, it, therefore, ended up being that there was no confirmation for the order given on 22nd December, 2000. On 15th February, 2001, there was a Kimilili Land Board sitting. So, Gladys Nekoye was meant to transfer the piece of land to new people. I rushed to the board with the order that the case was still pending. When I showed the order showing that the case was still pending, the board could not approve that. So, they went back home. When neither the family of the deceased or buyers nor I were aware, another order was released on 18th January, 2001. That order and the one of 22nd December, 2000 were very much identical, except for paragraph 5. Paragraph 5 was removed in the second order to show that the case had been heard and finalized, and, therefore, we were permanently restrained from entering that land.

My recommendations are:-

- (i) Justice G.B. Mbitio should be made to account for why he made such far-reaching orders *ex parte*. If he fails to do so, he should be disciplined.
- (ii) The Deputy Registrar, who was a Magistrate, C.O. Mutui, must answer why he issued another order on a different date, without indicating the next hearing date.
- (iii) The Counsel for the applicant C.K. Areba should explain legally why he extracted two serious orders contradicting each other and used both of them *ex parte* with far-reaching consequences.
- (iv) The *ex parte* orders of 22nd December, 2000 should be set aside, as they were irregular and the main suit No.141 of 1995 reinstated since the matter was after the death of the plaintiff.

3. Fraudulent acquisition of land titles, Kimilili-Kamukuywa 1408, 2268 and 2269.

After the death of Henry Wanyonyi and on the rejection of the Land Control Board to transfer the land parcel on 15th February, the fraudsters deliberately and determinately and irregularly obtained inordinate court order to the chairman of the board, the D.O, Mr. F.A Muli, to execute malice in the following manner:

1. An application for transfer dated 11th April, 2002 for the transfer of the parcel no.2269 from Gladys Nekoye Murunga to one Victor Nalianya.

2. On the same day, 11th April, 2002, the two parties obtained a letter of consent No.511998 on Form 2A to transfer the names signed by the chairman without the knowledge of the board.

3. The same chairman, Mr. F.M. Muli, commissioned the forms for the transfer of the land to the same on the date 11th April, 2002.

3. The same date 11th April, 2002---

Ms. Emily Kimani: Mr. Simiyu, you have dutifully served us with the memorandum. So, maybe you could just highlight the issues because you have already recorded them for us; if you do not mind.

Mr. Joseck Prichan Simiyu: Our recommendations are that the following public officers be prosecuted for the abuse of office and they should be barred from holding any public office. These officers are: Mr. F.M. Muli; Mr. Peter Akelo, the District Lands Registrar of Bungoma who issued a title deed on 11th April, the same day of the applications; Mr. Julius Khakula Sawenja, an advocate of the High Court of Kenya who did all these transactions. Given that he also comes from Chesamisi, he knows the owners of those parcels of land and he was transferring them irregularly to parties that did not purchase. A police officer by the name of Leonard Bam Ademwa, police Constable No.4944 for removing the key witnesses' statements and prosecution documents before forwarding an empty shell of a file to the State Counsel. Gladys Nekoye Murunga should also face the same charges. Hon. Nalianya, John Ngoya, Jonathan Olukano, Tom Isiye, Amos Toto.

I wish to commend and recommend, without any reservations, a good police officer, Corporal Charles Musyimi, PC No.63493 from the Western Provincial Police for his dedicated work. Within my recommendations there should be established a Land Committee in Bungoma County to thoroughly look into all the rampant complaints, land issues, particularly those through the law courts handled by advocates.

Three, the advocates complaints commission which currently sits only at the headquarters in Nairobi should be devolved to the counties.

Four, the Commission should make public advocates performance by showing how many cases have been lost and how many have been won by an advocate, just as we in the teaching ministry, have our performance made public. If you look at the list of schools that have done well and those ones that have not done well, it is easy to check and see which teachers are performing well.

May I just conclude by saying this issue has gone through the Land Tribunal in Kimilili but because of corruption, it has never been resolved.

Ms. Emily Kimani: Thank you very much, Mr. Simiyu for your very detailed testimony. Before I proceed to ask you a few questions for clarification, I can see you are accompanied by a group of people. Maybe you could tell us who they are.

Mr. Joseck Prichan Simiyu: The one sitting on my right next to me is the co-administrator for the deceased's estate. He is called Joseph Masika Wanyonyi. The lady on the extreme is the daughter of the deceased. She is Edna Nanjala Wanyonyi. On the extreme end, the gentleman in spectacles is called Fred Wamalwa Kiriswa. He is representing the Chesamis Friends Monthly Meeting Church. The one in the middle is a brother to the deceased Wanyonyi. He is called Peter Soita. The last person is called Moses Mumbwani. He is representing the people who had shops that were all demolished. Thank you.

The Presiding Chair (Commissioner Chawatama): The Commissioners acknowledge the presence of the persons that have been introduced to us and we thank them for their presence in the Commission today.

Ms. Emily Kimani: Mr. Simiyu, I wish to ask you a few questions from your testimony and also from the memorandum that you have presented to us. For clarity you say that you bought this land from Mr. Henry at that rate?

Mr. Joseck Prichan Simiyu: That is correct.

Ms. Emily Kimani: Was there a sale agreement that the parties signed?

Mr. Joseck Prichan Simiyu: Yes. I have three sale agreements. One of them was in 1983. Another one in 1984 and the last one was in 1987 when we entered an agreement that I assist him about the case in Kakamega court, but if we won he would give me two acres of the land.

Ms. Emily Kimani: Do you have those agreements with you here today which you wish to adduce as evidence?

Mr. Joseck Prichan Simiyu: Yes, madam.

Ms. Emily Kimani: After buying the land, was it ever transferred to yourselves?

Mr. Joseck Prichan Simiyu: It was not transferred to us because the seller was still struggling to acquire the title deed.

Ms. Emily Kimani: In your memorandum, you said that the matter affects hundreds of people. You bought this land as an individual or was it group land? Maybe you can clarify that to us.

Mr. Joseck Prichan Simiyu: I have said there are about 500 people who were affected; adults and children. This old man had mature children who are married. They had families while staying on the land. They had built houses on the land and they were using that land. Also, we had shopkeepers who had shops and were doing business. They had their families there. At the time of eviction, in 1991, on 27th May and 11th June, there were about 124 people. From that time up to now, is about 20 years. If you multiply that by about four or five times, you could have the number, approximately.

Ms. Emily Kimani: In your presentation, to be more specific, your first issue on the ruling of 7th December, 1987, is it that there were no proceedings, or you just did not know of their existence?

Mr. Joseck Prichan Simiyu: There were no proceedings. In any case, if you go to court, the first time you file an application of the suit then you get a ruling after the hearing. But you do not get a ruling before you file. So, if the ruling was given in 1987, on 7th December, and the applications were filed on 18th October, 1989, it is very clear that it was unprocedural.

Two, in my submissions about documents, when Henry Wanyonyi went back to the land by force in 1992, he was arrested. In the Criminal Case No.724 of 1992, a court clerk called Mabachi from Kakamega court, in his own evidence, stated very clearly that there was just a ruling, and that there were no proceedings.

Three, when I saw Justice Ringera, he of the radical surgery of the Judiciary, in this hall, he wondered whether it was not a typing error. But before me, he concluded that there were no proceedings. In my documentary evidence which I have already given to the Commission on the newspaper of 18th October, 2003, Sylvester Ongangi, the magistrate, was sacked.

Ms. Emily Kimani: Touching again on that first issue which is on page 3 of your memorandum, you talk of the eviction order. Were you ever served with the order or notice for the evictions?

Mr. Joseck Prichan Simiyu: I should be able to confess before the Commission that between 1987 and 1991, we, the residents of the farm, never knew what was happening. We were just ambushed.

Ms. Emily Kimani: Given that there are avenues for appeal, did any of you attempt to appeal any of these orders at the point at which you found out about them?

Mr. Joseck Prichan Simiyu: I have had to struggle a lot about these orders. Between 1987 when the order was issued and 1991 when it was executed, we were time barred because it was four years. When we forcefully went back to the land, this old man was arrested and taken to prison where he stayed for about six months. The case lasted for about two years. We were now more interested about survival. We had been displaced;

we were looking for a place to stay. We had families. We did not have the means. On 15th August, 1995, Mzee Henry Wanyonyi Wekesa filed a case No.141 of 1995 originating from the tribunal for adoption. One of his prayers was to set aside that order. This was done, but eventually when he died then Justice Mbiti, from some technical chambers there, and hiding from us, issued the restraining orders permanently.

Ms. Emily Kimani: In most of your recommendations you have talked of prosecution of individuals and disciplinary action against some named advocates. Have you tried, for instance, to begin with the advocates to pursue the avenue of the disciplinary committee?

Mr. Joseck Prichan Simiyu: I am requesting the Commission to assist me because I have so many other duties to do.

Ms. Emily Kimani: In light of the prosecutions, have you made any statements in respect to your allegations of forgery or otherwise against those public officers?

Mr. Joseck Prichan Simiyu: Yes, Madam. I have had to make a lot of complaints. In fact, he must be having a lot of my letters. In 2003, after learning of the corruption in the Lands office, I wrote a letter dated 20th May, 2003 to the OCS in Kimilili complaining about the forgeries. What came out is that the people I was making allegations against, used their influence to have me arrested. When I complained that I was very innocent and that I was only talking about justice, the police did not listen to me. I have had to see the police in Bungoma District and the Provincial Police Officer. The file is now with the DCIO in Mt. Elgon, Kapsokwony. I am sure I have complained everywhere, including to the TJRC. I have also informed the Kenya Anti-Corruption Commission in Nairobi.

Ms. Emily Kimani: Have you attached some of those documents to the memorandum?

Mr. Joseck Prichan Simiyu: Yes, madam.

Ms. Emily Kimani: Have you ever conducted a search to reveal the true owner of this land?

Mr. Joseck Prichan Simiyu: Yes, madam.

Ms. Emily Kimani: What did the records indicate?

Mr. Joseck Prichan Simiyu: Kimilili Kamukuywa, 337 was owned previously by Zephania Murunga Lusweti. In 1986, it was sub-divided into Kimilili Kamukuywa 1407 and 1408. In 1995, 1407 was sub-divided into 2268 and 2269 and 1408. Now 1408 is owned by Nekoye Murunga, 2268 is owned by the Heritage of Society of Friends and 2269 is owned by the Heritage of Society of Friends. While 2269 is owned by Nalianya.

Ms. Emily Kimani: You have also made the allegations of some of the orders and signatures being fake. Could you substantiate those allegations?

Mr. Joseck Prichan Simiyu: The ruling of 7th December, 1987; I had talked about a left thumbprint for the affidavit. The ruling is signed by Ong'anyi. The eviction order was signed, but there is no name.

Ms. Emily Kimani: Where are the evictees currently?

Mr. Joseck Prichan Simiyu: The evictees do not have a proper place of residence. They were dispersed; some of them in Trans Nzoia. Some of them are in Nairobi and Bungoma. Some of them are squatting around the farm.

Ms. Emily Kimani: Thank you, Mr. Simiyu. I have no further questions for you. Before I hand you over to the Commissioners who may ask you a few questions for clarification, I would kindly request if you wish to produce these two sale agreements, one dated 11th October, 1983 and another one dated 3rd September, 1984 and also the memorandum in respect to the Kimilili land parcel as evidence before this Commission.

Mr. Joseck Prichan Simiyu: I do.

The Presiding Chair (Commissioner Chawatama): The documents are so admitted.

Ms. Emily Kimani: Thank you, Commissioners. I have no further questions for this witness.

The Presiding Chair (Commissioner Chawatama): Thank you very much, for your testimony. You have touched on various things. You have touched on corruption and some failings in certain institutions such as the Judiciary, the police and the Ministry of Lands. You have also touched on the operations of certain officers within these institutions. I will ask the Commissioners if they have any questions for you.

Commissioner Dinka: Mr. Simiyu, thank you for your testimony. I have some clarifications to seek from you. Is the matter of appeals finished and done away with? Now there are no more appeals on this issue?

Mr. Joseck Prichan Simiyu: The issue of appeals is not there. But there are other cases coming up. We are trying to challenge succession court No.187 of 1986 by Gladys Nekoye Murunga from Zephania Murunga the deceased.

Commissioner Dinka: You have said some cases are coming up, but there will be no more appeals. When you say that, does it mean you have accepted the decision on the findings that have been made by the court?

Mr. Joseck Prichan Simiyu: No, Sir.

Commissioner Dinka: Then what does that mean?

Mr. Joseck Prichan Simiyu: We are still fighting the case.

Commissioner Dinka: As the presiding chair said, you have mentioned a number of things; you said some lawyers are not honest. You also talked of judges who rule without any proceedings and citizens who actually commit fraud. You have gone through some judicial process and you mentioned that there have been decisions which were not favorable to you and your group. My suggestion is although the mandate of the TJRC is to record all kinds of injustices, including socio-economic injustices, in this particular case, these things went through the courts. There are decisions which you may not very much appreciate, but they were made by the court.

I believe there is a new process going on in this country, particularly after the promulgation of the new Constitution. The Judicial Service Commission (JSC) is becoming very powerful in terms of vetting all judicial officers and it is going on. Vetting will go from the top to the lowest rank of the Judiciary. Would it be natural for you and the group to take the matter of these Judges whose decisions you find fault with to this JSC and actually present your case to them while the vetting is going on, so that they will actually have to answer to these types of questions.

Also as the leader of evidence said regarding the lawyers, why did you not try the route of disciplinary committees of the legal profession like the Law Society of Kenya? If you had done that you will not only be helping yourself by exposing these kinds of people. You will also be helping the entire restructuring of the Judiciary. So, I think you should also look at that.

The TJRC is not a law court. It is a forum where people come and narrate their stories. We appreciate that you told us this story and we empathise with the problem that you have gone through, probably unjustly. But what the Commission would do is to take these things into account, create a pattern, look at the pattern in the country and its report will produce some kind of recommendations to ensure non-recurrence of this kind of situation and also possibly that what has happened already should also be looked at again. That is for the report. In other words, if further investigation from the Commission and also the pattern that will be developing in the country about the land issues warrants such a recommendation from the Commission, then we will make it.

So, I think right now while what you have done is good, that is, coming to the Commission to have immediate effect, I think you should consider taking this matter to the JSC and to the disciplinary committee of the legal profession. That is my suggestion to you. Otherwise, I have no further questions for you.

Commissioner Farah: Prichan, we really empathize with the situation. It is a case which has taken a long time, but you are right in some ways. This is a human rights violation, but it is heavily legal. So, I think what we can do is to give it to our investigative arm of the TJRC to do further investigations and then we shall make recommendations to the

Government whether something should be done against all those people you have mentioned, so that there is justice. I empathize and that is all I can say. I now hand you over to our presiding chair.

The Presiding Chair (Commissioner Chawatama): I have been able to follow and to understand. I have been able to follow when they were ex parte applications. I have been able to understand that what that means is that you were unable to tell the court your side of the story because you were unaware of the proceedings in court. Is that correct?

Mr. Joseck Prichan Simiyu: That is correct, Madam.

The Presiding Chair (Commissioner Chawatama): I have also been able to follow the fact that you were not properly served in order for you to go and defend your position before the court. Is that the position?

Mr. Joseck Prichan Simiyu: That is correct, madam.

The Presiding Chair (Commissioner Chawatama): I have also been able to follow that orders were made and these orders were, probably, made based on one side of the story because you did not participate; not due to your fault, but because you were not served. Is that correct?

Mr. Joseck Prichan Simiyu: That is correct.

The Presiding Chair (Commissioner Chawatama): I have also been able to follow and see a number of lapses that took place to the extent where you could not even appeal because you were statute barred; you had run out of time in which to go to the Court of Appeal. Is that correct?

Mr. Joseck Prichan Simiyu: That is correct, madam.

The Presiding Chair (Commissioner Chawatama): My conclusion then is that on your part, what you have seen is that justice has not been done because of all these lapses. It is clear. I have followed your testimony from beginning to end. We are also having thematic hearings and we will look at the operations of the Judiciary. We will look at the operations of the police and some of the institutions. This would be one of those matters where I think the Commission should look at this particular matter from that point of view because of the many lapses. I think it would also help a lot of other people who have encountered the same when faced with big institutions such as the Judiciary and the police and offices of other administrators in the province or districts.

I concur to a certain extent with Commissioner Dinka that it would be best for you not to go to the JSC, but the vetting board that is being established that will vet the current serving judges and also to go to the Law Society of Kenya for the purposes of

disciplining the counsel involved. We will then have further discussions on your case and see how best we can fit it in the thematic hearings. Do you also follow that?

Mr. Joseck Prichan Simiyu: Yes, madam.

The Presiding Chair (Commissioner Chawatama): We would like to have your contact number, so that we can get back to you. I do not have any questions because I have understood you from point “A” to “Z”. I think our role is to see how best we can assist in this particular matter. We, as Commissioners, will have other discussions. Thank you very much.

Mr. Joseck Prichan Simiyu: Not at all, madam.

The Presiding Chair (Commissioner Chawatama): Could you lead the witness out?

(Ms. Gladys Nasimiyu Waswa took the oath)

Ms. Emily Kimani: Hallo Mama. The reason why you are seated before us today is because you recorded a statement with us about what happened to members of your family. Before we proceed, tell us your names.

Ms. Gladys Nasimiyu Waswa: My names are Gladys Nasimiyu Waswa.

Ms. Emily Kimani: You are sitting before us today because you recorded a statement with us about the atrocities that your family has undergone due to the operations of the SLDF. Is that correct?

Ms. Gladys Nasimiyu Waswa: It is correct.

Ms. Emily Kimani: What is it you recorded with us?

Ms. Gladys Nasimiyu Waswa: It was in 1992. At that time we were living in Mount Elgon. We were just working, doing farming and tending to our livestock. We later saw the situation was changing from one of calmness to something bad. We just went on working with our neighbours. We never knew what was happening. We used to visit our neighbours and get Irish potatoes so that we could eat them in December. When we had problems we went and exchanged food. We worked and helped each other; we were given the Irish potatoes and we went back home. On the second day, we went back there and we collected food for December.

We were cultivating in the farm when we saw a group of people from nowhere. They came to us carrying arrows and we asked ourselves who they were. Everybody was carrying arrows and entered the house we were staying in. We became worried but the owner of the house told us not to be afraid of anything since we were his brothers and sisters. In fact, he told us to continue with our jobs. We went on with our job but we were

afraid because we never knew what was going on. As we went on with our jobs, we were afraid. We asked to be given our daily wages. He gave us our food and we left. While on the hill we saw two people in red shorts and red t-shirts and they told us that they wanted people of the same tribe and they did not want mixed tribes. We became confused since we had nothing that we could defend ourselves with. These people had guns, arrows and knives which were well sharpened and also machetes. So, we ran away and spent the night in the bush; we only went to our houses during the day. When we went back to our houses some people watched over the mountain to see if they were coming or not. If they did not come, we ate food and left for the forest where we spent the nights; in the forest we were at the risk of being bitten by snakes. I lost my brother-in-law called John Tauta. He was killed at home. It was at 2.00 p.m. We were very frightened by these people. We asked ourselves what sins we had committed. We prayed to God to change these people because we belonged to one God. We moved to Mayanja in 1992. We stayed there for some time. We came back again when the situation had relaxed, although it was not that stable since there was still a little tension. Our houses had been vandalized and we had to beg our neighbours for cooking utensils. We would eat in the forest and we never knew where some of our relatives were. The situation would improve and then deteriorate again, with gunshots renting the air. We had to adapt to the situation. It came to a time when we decided to stay in our homes because life in the forest was becoming hard. Our neighbours would come and we ate food together.

In 2007 we encountered a difficult time. I tried to tell my husband and my child to run but my child would only cry. Those people took my child and placed her on an arrow, and then speared her on the forehead. I feel very bad about how my child was killed.

(The witness cried)

The Presiding Chair (Commissioner Chawatama): Pole sana, Gladys, for the loss of your child. That is why we are here. We want to hear what happened but please take as much time as you want and when you are ready we will continue hearing your story.

Ms. Gladys Nasimiyu Waswa: From there we went back to Mayanja where we were really suffering. We left all our properties behind. Our people were farmers and herders and we do not know where our properties are. If you go to Mayanja you will find women engaging in prostitution in order to feed their children. What sin did we commit in order to encounter all this? We are requesting the Commission to assist us to go back to our normal lives in Mount Elgon. People have died. Those people in Mount Elgon may have just taken our property because they were looking for other people's wealth, but not to kill people like my child. I had only that child as my other son was a bit far.

Some of the children of Mount Elgon have attained 18 years of age. Some of them have married and have got children in this refugee camp. So, we are asking the Commission to help us to go back to leading our former lives. If the Commission cannot help us, then who will vote? If you help us we will be free and will live like Kenyans. When my child died, I fainted and was admitted to Webuye Hospital. When I came back I was told that

my child had been buried. When I asked for the burial permit they told me that they did not have it. After three minutes, the grave was dug and the child was buried. I do not know whether they buried him in a coffin or in his clothes. We are in sorrow and leading very hard lives. Some people try to help me by counseling me. Sometimes I think of committing suicide. Sometimes I think of going to the road and being knocked down by a vehicle so that I leave this world. I have suffered so much and I request the Commission to really help me.

Ms. Emily Kimani: Thank you very much, Mama Gladys. I can only imagine how painful it is for you to sit before us today and I salute you for your courage. It is a very painful story to give, of the loss of your child. I want to ask you a few questions so that we can understand. I know it is very difficult but, please, allow me to. I will ask you questions from your oral testimony before us today, and also from the testimony that you recorded with my colleagues. You talked of 1992. At this time, where was your family staying specifically?

Ms. Gladys Nasimiyu Waswa: We moved to Mayanja.

Ms. Emily Kimani: My understanding is that at this time, there were forthcoming elections. Was that when this trouble began?

Ms. Gladys Nasimiyu Waswa: It was during the elections.

Ms. Emily Kimani: What was the cause of your eviction from Mount Elgon to Mayanja in 1992?

Ms. Gladys Nasimiyu Waswa: The reason was that we women and men had no weapons and no knowledge that we would be attacked. So, immediately war erupted and we decided to run to a secure place in Bungoma, which was Mayanja. They told us that they only wanted one colour. They wanted only one tribe in red colour. So, we saw it fit to run to Mayanja; that is where we are living right now. We went there to continue with our daily lives.

Ms. Emily Kimani: Were the evictions premised on tribal animosity or were they politically instigated?

Ms. Gladys Nasimiyu Waswa: Tribal animosity.

Ms. Emily Kimani: You talked of people coming with arrows towards where you were living in 1992. Who were these people? Were you familiar with them?

Ms. Gladys Nasimiyu Waswa: I only know the owner of the home where I went to tend the Irish potatoes. He was called Wafula Maivei.

Ms. Emily Kimani: So, these people were being trained at Wafula's home?

Ms. Gladys Nasimiyu Waswa: These people were living in a group and taking liquor.

Ms. Emily Kimani: What was the common factor for this group of people? Was it that they belonged to a particular community?

Ms. Gladys Nasimiyu Waswa: There was a time a plane passed and landed somewhere. We thought the President had come to visit us. We never knew what was going on. Later when we went to the mountain we saw arrows taken into that house. It was a grass-thatched house, and there were two people in it. A plane passed over and when we went there, we saw some sacks being removed from the plane. We asked them what they were carrying and they told us not to ask them questions. So, we did not ask questions again. We had no power over them. The Maasai, Sebei and the Janjaweed did not want to be asked any questions, because we would know the secret. This was because the chief was a Maasai. We had nobody who could divulge any information to us. Since we did not know what was going on, we ran to Mayanja.

Ms. Emily Kimani: You have told us that your family used to live in the mountain area. Which town specifically did you live in?

Ms. Gladys Nasimiyu Waswa: We were living in the lower part of Kaptama.

Ms. Emily Kimani: From the 1992 scenario you continued in your statement and testimony to talk about the SLFD operations, and you stated that the SLDF came to Kaptama area in 2005. Who were the SLDF in your understanding?

Ms. Gladys Nasimiyu Waswa: These people were killers. I did not know who they were because during the day they put on masks. We could not identify them.

Ms. Emily Kimani: So, as much as you could not identify them specifically by name, you talked of the SLDF. Did they belong to one group? In your understanding, who were these people?

Ms. Gladys Nasimiyu Waswa: They did not belong to one group. They were a mixture of the Sebei and the Sabaot people.

Ms. Emily Kimani: You have talked of them having attacked your husband, and the very inhuman act that they did to your deceased daughter. They attacked your family. Did they give you reasons for what they did to your family?

Ms. Gladys Nasimiyu Waswa: They never gave any reason.

Ms. Emily Kimani: Did what happened to your family also affect other communities; did it affect your family only?

Ms. Gladys Nasimiyu Waswa: So many people were affected. So many people died. Before the army came, there were many dead people who were taken to Bungoma mortuary until it was full.

Ms. Emily Kimani: Sorry for what happened. So, I will ask you a few more questions. You said in your statement and testimony that you currently live in Bungoma. Have you after this incident gone back to Kaptama?

Ms. Gladys Nasimiyu Waswa: Sometimes I try to go up to Kimilili; I sometimes think that my child is there. I feel like I am seeing my daughter, who was speared.

Ms. Emily Kimani: In the light of what happened, I know you have said that you need some assistance but maybe you did not say what exactly you want. What form of help do you want, so that you can feel that some justice has been served on you and to the many other people whom you have told us have suffered the same fate?

Ms. Gladys Nasimiyu Waswa: I would like to find a place to live in; I do not want to remember the deaths that occurred, but want to focus ahead.

Ms. Emily Kimani: What do you feel the Government should do, so as to avert in future what happened in 2007 to your family and the many other families that you told us about?

Ms. Gladys Nasimiyu Waswa: Maybe I should tell the Government that kind of situation should not erupt again, because we will not go back to our farms. Recently, somebody went there, saw some people confronting him and he ran away. So, I am asking the Government to intervene, so that we can live freely as Kenyans.

Ms. Emily Kimani: Is it correct that there is still tension up to this point in time?

Ms. Gladys Nasimiyu Waswa: Yes, there is still tension there.

Ms. Emily Kimani: Thank you very much, Mama Gladys. I know it is a very painful ordeal that your family and other families went through. I salute you for your courage. I know it is not easy. Please, keep walking and do not give up, and may God give you strength to keep fighting. I have no further questions for you, but the Commissioners may ask you questions for clarity.

The Presiding Chair (Commissioner Chawatama): Thank you very much, Gladys, for your testimony. There are some other people at the table, and the Commissioners would like to know who those two gentleman are.

Ms. Gladys Nasimiyu Waswa: One is the chairman and the other one is the secretary.

The Presiding Chair (Commissioner Chawatama): Maybe they can introduce themselves.

Mr. John Wabwile Wangatia: I thank the Commission for coming here. My names are Jotham Wabwile Wangatia. I come from Mount Elgon but I live in Mayanja with the IDPs from Mt. Elgon. I am the chairman of upper Kibabii.

Mr. Vincent Waswa: I say thank you very much for the sitting today. I am Vincent Waswa. I am the secretary of the IDPs from Mount Elgon; I was born there and what has been said is the truth.

The Presiding Chair (Commissioner Chawatama): On behalf of the Commission, I would like to thank you both for attending our hearings today and giving support to Gladys that she very much needed. I know your presence here gave her the courage to speak; the fact is that you have said that she has talked the truth. I thank you as the chair and secretary of the IDPs in Mayanja. I will now ask Commissioner Dinka to ask questions.

Commissioner Dinka: I have no question to ask Gladys but I just want to empathise with her for the suffering and pain. I also express my sorrow at the loss of her daughter; hopefully her voice will be added to similar voices in the country of people who have suffered almost similar situations. It will be reflected adequately in our report recommendations. I have no further questions.

Commissioner Farah: Gladys Waswa, mine is also to join my fellow officers in empathising with your trials and tribulations. Since we came to Mount Elgon and Bungoma, we have listened to very many such stories. In fact, we now know that there are 714 widows who lost their husbands either in the hands of SLDF or security forces, yet they have not seen the remains of their husbands. So, you join the list and we empathise with you; we assure you that we are taking these cases of the SLDF very seriously. Thank you very much.

The Presiding Chair (Commissioner Chawatama): I would just like to ask you a few questions on the points that you missed. Did you say that you had other children?

Ms. Gladys Nasimiyu Waswa: I had two children. My son is alive; my daughter is the one who was killed.

The Presiding Chair (Commissioner Chawatama): And what is the name of your son?

Ms. Gladys Nasimiyu Waswa: His name is Evans Wabomba. He is 18 years old.

The Presiding Chair (Commissioner Chawatama): And what is he doing?

Ms. Gladys Nasimiyu Waswa: He is just a casual worker.

The Presiding Chair (Commissioner Chawatama): And what was the name of your daughter?

Ms. Gladys Nasimiyu Waswa: She was called Violet Naliaka.

The Presiding Chair (Commissioner Chawatama): What are the things you remember about Violet?

Ms. Gladys Nasimiyu Waswa: First, I remember some things but there is nothing I can say. I wish I died and she remained alive. Sometimes I cannot eat but just feel like dying.

The Presiding Chair (Commissioner Chawatama): Has talking to us relieved some of your pain?

Ms. Gladys Nasimiyu Waswa: Yes.

The Presiding Chair (Commissioner Chawatama): The reason why we are here is to hear people such as yourself and the experiences that you went through. Also we want to learn about events that took place in this nation that have robbed families of loved ones like your daughter Violet. Some of us are not Kenyans, but we cherish the fact that we came here to hear testimonies of Kenyans such as yourself.

I join the other Commissioners in thanking you for your courage and we are often very sorry that in this process, we open wounds and often at times, we cry with those who cry. You have heard from the two Commissioners about how sad they are about what happened to you. It was necessary for us to hear your testimony because we do not want this to happen again. Your testimony will help us make recommendations and hopefully, this will not happen again. There are so many mothers who have lost their children and some could not even come here to speak. You have spoken for so many mothers. Find it within yourself to have that interest to live because your son will need you and there are so many others in your community that would need you and you would be able to testify of this inner strength that you have. We would like to release you now. We do not have any further questions except to thank you.

(Mr. Nicodemus Osore Ashioya took the oath)

Ms. Emily Kimani: How are you this afternoon? Please tell us your full names, for the record.

Mr. Nicodemus Osore Ashioya: My name is Nicodemus Osore Ashioya. I am an electrician here in Bungoma and I live in Onze Estate.

Ms. Emily Kimani: Thank you for that information. You are before us today because you recorded a statement about what happened to you after the post election violence in 2007. Is that correct?

Mr. Nicodemus Osore Ashioya: Yes, it is true.

Ms. Emily Kimani: Please take us through what you recorded with us.

Mr. Nicodemus Osore Ashioya: It was on 30th when elections were being conducted in Kenya and we were at a neighbour's house watching television when the winner of the presidential elections was announced. Immediately, I went to my house and when I reached my house, I started preparing supper and then I slept. The next morning, I woke up and when I got out, I saw some people demonstrating on the roads from town. The police were throwing teargas and shooting in the air. We remained in the compound that day and the following day, I went out to buy milk to prepare breakfast. There was no milk in the shops that I went to and then, I heard my neighbours saying that the policemen did not want people gathering on the roadside. So, I decided to go back home. On the way, I saw some policemen in a lorry and they were firing in the air. I tried running toward my house and I was shot and fell down. The police alighted from the lorry and came to where I was lying. I had a phone and a wallet in my pocket and then the phone rung. One police man took the phone and the wallet from my pocket. I told him to take the phone but to give me the line and he told me that he would shoot me if I tried talking to them. I told them not to kill me and to take what they wanted and leave me.

In that situation, they carried me to St. Domiano Hospital and they left me there. I was given first aid in Domiano and then later I was transferred to Bungoma District Hospital where I was admitted for one month. When I was in hospital, the policemen never came to check how I was doing. They shot me in the leg and I was lucky that the bullet did not break my bone. The hospital bill was high and I told the doctors to discharge me so that they can treat me as an outpatient and they agreed. They asked me if I had anybody to help me and I told them that I did. I went home and I stayed in the house for three months and the dressing was done to the leg daily and at the time, I was not going to work.

I thank God because my neighbours were good people and they really helped me and my family. I lived like that up to the month of April when I stopped using two crutches and started using one to support me. My fellow work mate called Jack Eliud is the one who was helping me to walk around. I gained my strength and started doing my work without support. Since I sustained the injury, I cannot run or carry water or jump or play football. I am proud to be a Kenyan and the Government has denied us our rights. I was injured by Government's hand and I wonder where I can take my complaint if the Government cannot help me.

After I was injured, all my development plans stopped because of my health. All the money that I had saved was used to buy medicine, food and for my treatment. I do not know if the Government is going to pay me for all the expenses that I incurred. I am unable to sue the Government of Kenya because I do not have the money. The Government should now assist me so that I will be proud to be a Kenyan and so that I can be free like other Kenyans.

Ms. Emily Kimani: Thank you very much, Nicodemus, for your testimony. I wish to ask you a few questions so that we may be able to understand your statement and your oral testimony.

I know you have told us that you live in Bungoma but at the point when this incidence happened in 2007, were you still living in Bungoma and if it is in Bungoma, is it in town?

Mr. Nicodemus Osore Ashioya: I was living in Bungoma town.

Ms. Emily Kimani: During the election period in 2007, what was the mood prior to the announcement of the election results?

Mr. Nicodemus Osore Ashioya: The situation was not bad but tension began in Bungoma town immediately the election winner was announced.

Ms. Emily Kimani: What was the reason why the youth were demonstrating?

Mr. Nicodemus Osore Ashioya: The people who were demonstrating were followers of Honourable Raila Odinga. They were demonstrating because he was not announced as the winner of the elections.

Ms. Emily Kimani: You have also told us that the police were just shooting. Do you mean that they were just shooting aimlessly at anyone?

Mr. Nicodemus Osore Ashioya: Yes.

Ms. Emily Kimani: In your statement, you have stated that after you got shot, you were informed that you were shot by a policeman by the name Maina. Did you know him prior to this particular incident?

Mr. Nicodemus Osore Ashioya: I did not know him before that. But there was one who was working with him and some students were also shot before I was shot. The person who told me said that the person who shot me was the same one who killed two children and that his name was Maina. At that time, he was retired and his contract had been renewed during the time of elections.

Ms. Emily Kimani: You also talk of the police taking your cell phone from you and they were the ones who took you to St. Domiano Hospital after shooting your right thigh. Did they give you any explanation as to what they did to you?

Mr. Nicodemus Osore Ashioya: They never gave me any explanation.

Ms. Emily Kimani: You have talked of going to St. Domiano Hospital and Bungoma Hospital. Do you have medical records as proof of that?

Mr. Nicodemus Osore Ashioya: Yes, I have them.

Ms. Emily Kimani: Can you produce the same as evidence to this Commission?

Mr. Nicodemus Osore Ashioya: Yes.

Ms. Emily Kimani: Chair, the witness has adduced two documents as evidence of his medical history after being shot.

The Presiding Chair (Commissioner Chawatama): Is this the first time we are having sight of these documents as a Commission?

Ms. Emily Kimani: Yes.

The Presiding Chair (Commissioner Chawatama): We are a little bit worried because there is a rule that documents should be produced, at least, seven days before. So, it means that you need to liaise with research and investigators. If people have documents, those should accompany their statement so that we are able to access them. I will allow the documents today but in future, please let us observe our rules. The medical reports are so admitted.

Ms. Emily Kimani: Thank you and the same has been noted.

After what happened to you, have you ever taken any course of action like recording a statement with the police or going to court over what happened?

Mr. Nicodemus Osore Ashioya: No, I have not taken any action.

Ms. Emily Kimani: Would you wish to tell us the reason for that?

Mr. Nicodemus Osore: The reason I said there was no need to report is because those people who shot me were police officers. So, there is no way I could go and report, yet they were the ones who shot me.

Ms. Emily Kimani: Thank you very much for your testimony. Before I hand you over to the Chair, what is the name of the witness who informed you that Maina was the one who shot you?

Mr. Nicodemus Osore: He is called Erastus Marika.

Ms. Emily Kimani: Are you still seeking further medical attention?

Mr. Nicodemus Osore: At this time, I am not.

Ms. Emily Kimani: Thank you very much Nicodemus, for your testimony; I have no further questions for you. Now, I hand you over to the Commissioners who may ask you questions for any further clarification.

The Presiding Chair (Commissioner Chawatama): Nicodemus, we thank you for your testimony today and for the statement that you gave earlier. Through giving that statement, you were asked to come and testify and you graciously accepted. Thank you very much for being a part of this process. I will now ask my colleagues if they have any questions.

Commissioner Farah: I have no questions but I just want to tell you that we empathize with you and we have listened to a number of cases like yours where on that day, people were shot at. We are glad you are still alive and I have no question for you but I empathize with you.

Thank you very much.

Commissioner Dinka: Thank you very much for your testimony Nicodemus. I empathize with you for your suffering and your pain. I have some questions for you. You said that you were standing near a petrol station watching the demonstration go by; were you at any point that day or the day before in any demonstration yourself?

Mr. Nicodemus Osore: No.

Commissioner Dinka: It is unfortunate that you were hit by that bullet. In your estimation and those people that saw you being hit, do you think it was directed at you or was it a stray bullet?

Mr. Nicodemus Osore: I cannot be sure because I just found myself falling down.

Commissioner Dinka: The person who told you that it was Maina who shot you must have seen it. Was Maina actually targeting you according to Erastus?

Mr. Nicodemus Osore: I can say for sure that he was targeting me because he had killed innocent children earlier and those children were not demonstrating. They were just running away from the teargas to their houses.

Commissioner Dinka: This is new. It was not in your statement. Had he killed some children?

Mr. Nicodemus Osore: Yes, Maina had earlier on killed some children on that day.

Commissioner Dinka: How old were those children?

Mr. Nicodemus Osore: I do not know their ages but I was told that they were young school-going children.

Commissioner Dinka: You said that Maina was from Bungoma Police Station and you lived in Bungoma. Have you seen him since?

Mr. Nicodemus Osore: No.

Commissioner Dinka: Do you still live in Bungoma?

Mr. Nicodemus Osore: Yes.

Commissioner Dinka: After you came out of hospital, you still lived in Bungoma. Did it not interest you to somehow pass by that station and have a look at him?

Mr. Nicodemus Osore: No, I have never had the desire to do that.

Commissioner Dinka: What would you say if you saw him today in this room?

Mr. Nicodemus Osore: It is painful. If I saw him, I would just request the Government to deal with him but let it not be the Kenyan Government; maybe, another Government or another body. He is part of the Kenyan Government.

Commissioner Dinka: Would you personally reconsider reconciling with him?

Mr. Nicodemus Osore: Yes, I can forgive him because I am alive and I know that God had a reason for taking me through this.

Commissioner Dinka: Thank you very much. I empathize with your suffering but I would like to salute your spirit of reconciliation; that, you are ready to reconcile if you met him and that God has saved your life and you are prepared to forgive him.

The Presiding Chair (Commissioner Chawatama): I have a few questions. I would like you to describe the scene as it was when you left your home to buy milk. Were there many people on the road and were there vehicles? What did you see?

Mr. Nicodemus Osore: On the road, vehicles were just passing and people were walking on the roadside going on with their businesses. But you could see that they were a bit worried.

The Presiding Chair (Commissioner Chawatama): Was that the second day after the announcement of the winner of the presidential election?

Mr. Nicodemus Osore: Yes.

The Presiding Chair (Commissioner Chawatama): You said that you learnt from your neighbour that the police had said that people should stay at home. Is that correct?

Mr. Nicodemus Osore: Yes.

The Presiding Chair (Commissioner Chawatama): Was that when you made a decision to go home?

Mr. Nicodemus Osore: No. After getting that information, I started going back to my house and that was when I met the police and they were throwing teargas and shooting indiscriminately. My intention was to go and buy milk and then go back to the house.

The Presiding Chair (Commissioner Chawatama): Did you identify those people as the police?

Mr. Nicodemus Osore: They were in a pickup and they were dressed in official AP uniform. It was in the morning around seven going to eight o'clock.

The Presiding Chair (Commissioner Chawatama): Did you see any soldiers as well as policemen?

Mr. Nicodemus Osore: There were just administration police alone.

The Presiding Chair (Commissioner Chawatama): I would like to know a little bit about the person who took away your phone. Was that the same person who had shot at you?

Mr. Nicodemus Osore: I cannot tell for sure but it was one of them. When they shot me, I fell and I was lying facing the other direction; so, one went round and took the phone but he was a policeman. I cannot identify him though.

The Presiding Chair (Commissioner Chawatama): Was he the one who took both your phone and your wallet?

Mr. Nicodemus Osore: Yes.

The Presiding Chair (Commissioner Chawatama): Did you see him come out of that vehicle that you saw and was that the only vehicle that had policemen in it?

Mr. Nicodemus Osore: Yes.

The Presiding Chair (Commissioner Chawatama): Would you be able to identify that person who took your phone and wallet if you saw him?

Mr. Nicodemus Osore: No, I cannot identify him because he was wearing a helmet.

The Presiding Chair (Commissioner Chawatama): Just as a follow up to questions that were asked by Ambassador Dinka, would you be able to identify Maina if you saw him?

Mr. Nicodemus Osore: I cannot identify Maina because he was also in a helmet but the one who worked with him called Erastus is the one who identified him.

The Presiding Chair (Commissioner Chawatama): Did Erastus introduce himself or did you say that, that was somebody you had known before?

Mr. Nicodemus Osore: Erastus is a man from our home and he used to work with the Kenya Prisons. When he retired, he bought some land near our home and so, we were neighbours.

The Presiding Chair (Commissioner Chawatama): You talked about hospital expenses; do you have a figure as to how much you spent for your medical expenses?

Mr. Nicodemus Osore: The expenses came to almost 50,000 shillings. That was what I used while admitted in hospital and after I had been discharged because I kept going back to the hospital. The people who I lived with charged me 300 shillings per day for the time I stayed with them and I slept there daily.

The Presiding Chair (Commissioner Chawatama): What about what you lost in terms of your business? Is that something you have given some thought to? Do you have a figure?

Mr. Nicodemus Osore: The phone was worth 15,000 shillings and I cannot remember exactly how much was in my wallet.

The Presiding Chair (Commissioner Chawatama): Do you have an approximate amount that you lost in terms of your earnings?

Mr. Nicodemus Osore: It is a lot of money because I deal with vehicle electrical wiring and I would make not less than 700 shillings each day.

The Presiding Chair (Commissioner Chawatama): Thank you very much. I do not know if we have had the opportunity to see the medical report. Can I just look at it quickly before I wind up?

Thank you very much for your testimony and for making yourself available and giving your story to the Commission. We are through with you and we have no further questions.

Ms. Emily Kimani: Chair, with your permission, I wish to correct that the document adduced by the witness is one and not two documents.

The Presiding Chair (Commissioner Chawatama): The document is admitted. I think if we ask for documents first, it makes the questioning easy. I almost asked him to show us his scar and maybe, that would have been unfair to him. We should ask the witness for documents, so that photocopies are made for us. Please, ask other witnesses if they have any documents before they start.

Thank you.

(Mr. Albert Simiyu Wamalwa took the oath)

Ms. Emily Kimani: Commissioners through the Chair, the witness is under slot 7. How are you this afternoon?

Mr. Albert Simiyu Wamalwa: I am fine thank you.

Ms. Emily Kimani: Give your full names for the record.

Mr. Albert Simiyu Wamalwa: My name is Albert Simiyu Wamalwa.

Ms. Emily Kimani: Where do you come from and what do you do for a living?

Mr. Albert Simiyu Wamalwa: I reside in Bungoma Town. Currently, I am running a family business in the town.

Ms. Emily Kimani: You are seated before us today because you recorded a statement about police harassment. Is that correct?

Mr. Albert Simiyu Wamalwa: That is true.

Ms. Emily Kimani: Kindly take us through that.

Mr. Albert Simiyu Wamalwa: My initial problems started when I got employed by the Ministry of Public Works in February, 1982. After getting employed at the Materials

Branch Headquarters, I was posted to Nakuru. When I reached Nakuru, I was posted to Eldama Ravine Materials Department which was in charge of making a road from Eldama Ravine through Nyaru to Eldoret. I was employed as the store and records officer. I was assigned duties by my immediate boss and then we started working. We worked well through 1992 and sometime in 1993, we were summoned to Nairobi and we were told that the people who were employed during that time were employed on the basis of plotting against the Government by one Charles Njonjo. We were sent home to wait to be recalled as investigations were going on. We stayed home for close to three months and nothing came up. We tried to follow up. I personally visited the Materials Branch Headquarters and I met the chief engineer, Mr. C.E. Maina and I inquired about my fate. He told me that they had not terminated my services but I should go and bring my appointment letter. He gave me the date to bring it.

When I went back, I found my colleagues who came from different parts there. I had carried my appointment letter and he started attending to us one by one. When I reached to the personnel officer in charge of the Rift Valley, Mr. Wangusi, he told me that they were not going to do anything but the truth was that the information they had got from the PS was that Mr. Charles Njonjo wanted to employ many people in Ministries so that the Government fails. We were not told what he could have done then. Mr. Wangusi told me that the letters had been recalled so that investigations are carried out. I gave the letter back and we were told to wait for further communication. Thereafter, nothing came out. I relied on my uncle who had got that job for me. Since he was working with the police at the Police Headquarters, I was partly staying with him in Nairobi and sometimes at home.

When I travelled to Nairobi after handing over that letter, I asked him what the position was. I knew he was close to Mr. Wangusi. He told me that he had talked with him and the chances that we could be redeployed were very limited. He advised me not to bother to follow it up but he would try to find out and let me know. Time passed and he told me that the issue was turning political and if I tried to follow it up, I might find myself in a problem. He advised me to keep off until they called me back. I left Nairobi without even passing my station of work where I had left my things. I have never managed to carry them home to date. Nothing has ever happened. We were not communicated to neither through the Ministry or anybody from the Materials Branch. That is how I lost that job and I came home. I could not get another job because I had some hope.

When I was associated with somebody called Njonjo who I did not know, I started wondering what it was all about with the Government. I stayed home all those years and in 1991 during the advent of multi-partism, I realized that I should be part and parcel of the team that was going to push for change so that this country gets liberated. We went through that agitation until 1992, when Section 2(a) was repealed and parties were allowed to register. Eventually, I joined the then FORD. In that process, I with my friends went to Agip House when we applied to open an office in Bungoma and we were told to come and open an interim office with the help of the late Masinde Muliro. He chose a Mr. Salim Ndamwe who is now deceased. He came to Bungoma and we launched an office at the Tourist Hotel. I was elected the first Executive Officer of the party and,

therefore, I was given the mandate to coordinate all the activities of the party linking the ground and the national office. As you are aware, doing that was a taboo to the system and all the police and the Special Branch were given orders to make sure that nobody or no activities in opposing line with the Government should be allowed. We went ahead and made sure that we forced our way and opened an office. We linked with Nairobi and we invited the leaders, for example, Masinde Muliro. We agreed to organize public rallies in Bungoma District. I was charged with that responsibility. Somewhere around May, we had a preparatory meeting in Webuye at Wangamati Guest House which was attended by the late Masinde Muliro, Mr. Wangamati, my party officials and the late Kapten among others.

At around 3.00 p.m., we were pounced on by the District Officer, Mr. Otieno and he ordered that we were all under arrest. The big fellows like the late Masinde Muliro and the late Kapten were led in a different vehicle and the rest of my branch officials were divided into different vehicles. I was taken to Webuye Police Station and I was locked up. I did not know where the rest of my colleagues were taken to. I stayed at the police station until around 6.00 p.m. and then an order came that I be transferred to Bungoma Police Station. I was transferred to Bungoma Police Station and while I was still at Webuye, I received a thorough beating. When I was transferred to Bungoma Police Station, I was put in a cell that had too many people. I was squeezed there but at around midnight, some policemen came in with the OCPD by the name Serem. They took me to a section of the police station called crime office and they started interrogating me. They wanted me to tell them our intentions as the opposition. I was adamant and I requested that I could only talk when there was a lawyer. They beat me up and took me back to the cells and I slept. We did not have mobile phones like we do now and we depended on landlines. I did not know where my friends were. I stayed in the cells and in the next night, they came for me and took me to the CID's place. They threatened me and told me many things like I am a small person, I was not better than Ouko and I should tell them exactly what is in the opposition. I had no idea what to tell them and I was returned to the cells. I was in the cells for four days.

The fourth day, Dr. Kituyi, who was our leader at the national level, came around with Mr. Orengo and they demanded for my release. They insisted and said that they either charge me or release me. Eventually, they accepted to release me that day but Mr. Orengo insisted that they must prefer a charge on me because he went through the OB and found that I had not been booked. He insisted that they book me and then take me to court which they refused. They released me and I was taken to the hospital, where I was treated for various diseases like chest pains, typhoid and my body was not the same. Thereafter, I was taken home but I did not give up on my course. I went back into politics and continued to prepare for further meetings. We organized the Webuye meeting and all the leaders in FORD came. Our next rally was supposed to be in Kimilili. We organized and from that time, we were advised by those who were senior in politics that we should not be free with those people.

We were playing hide and seek and when we were organizing the Kimilili Rally, our meetings were at the Tourist Hotel. All the leaders came and we met at the Tourist Hotel. We planned stop-overs before reaching Kimilili and one was Mayanja, Chwele and the final one in Kimilili. When we reached Mayanja, the police were on the road. They had blocked the road but since we had too many vehicles, we forced our way. We could not address the rally there. We went up to Chwele and when we reached Chwele, the vehicles stood and the crowd was waiting for us. As usual, it was me who was supposed to curtain raise the rally and then announce to the public the list of the guests. In the process, we did not have a platform and I just stood on a land rover. After I had just started, there was a shootout and people ran for their lives. Those who entered the vehicles took off. I was arrested and locked in a toilet in the market and they started chasing the others. The toilet was full but I sat there until I could not hear any noise outside. After close to five hours, I heard a friend of mine telling people that I was in that toilet. He had gone to Kimilili and came back with Dr. Kituyi and Orengo and they broke the toilet door and removed me from there. We proceeded to Kimilili and the meeting went on. Thereafter, I became a hunted person. They could come to my house and since I had been told not to go to my house, they were just frustrating and intimidating my wife, whom I had just married. I started getting messages from my branch officials that if we do not stop what we were doing, we shall either be found in Ngong or the nearest forest. We started operating under very difficult situation. The struggle that was started against that kind of brutality and impunity has culminated to where we are now.

In my conclusion, the Police Force and the Special Branch were too brutal that they could not give you time to exercise your rights. That is why when I heard that this Commission is here, I decided to appear before it so that we can put these facts on the table because if this does not come out, the transformation that we are talking about might not be met. I participated in serious party activities. When the land clashes of 1992 broke out, we had a link through Dr. Lynn, the wife to Dr. Kituyi, who brought us doctors here and we participated in treating people who had been chased away and shot with arrows. That is evidence that I did not put into my memorandum but it happened. At one time, we had to go into the mortuary here to bring out bodies because they were denying that arrows from Korea had not been brought. We carried bodies from the mortuary and took them to the DC's place and demanded for the transfer of the DC and the OCPD. It is only the OCPD who was transferred. That is a honest brief that I can give to this Commission. I brief that the impunity that existed should not exist anymore.

For the purpose of the Commission, in May this year, a group complained about the CDF and I am one of them. We wrote a memorandum to KACC but when we were delivering that memorandum, we were beaten up at the DC's place in the presence of the OCPD and the DC who were there holding a security meeting. That is only for the purpose of information in order to tell you that, that impunity is still there. The matters are still in court. They charged the person whose hand was broken and the perpetrators who had been sent by the MP were left scot free. That tells you that before we reach the reconciliation part, impunity that is still there should be dealt with seriously.

Thank you.

Ms. Emily Kimani: Thank you very much, Mr. Simiyu for your very articulate presentation of the troubles that you underwent in the advent of multipartism in Kenya. You have also taken us through the culture of impunity and police brutality using your personal examples. What would you recommend to be done to the Police Force in respect to the brutality that you described?

Mr. Albert Simiyu Wamalwa: It has been my thinking that the police should be transformed to be of service to the people and not the perpetrators who intimidate human rights. We know that the responsibility of the police is to maintain law and order. If they become the assailants, then the common person will not have anywhere to go.

Ms. Emily Kimani: You have talked about several meetings in your statement at Bungoma and Chwele; were they meetings or political rallies?

Mr. Albert Simiyu Wamalwa: The first meeting that we were arrested in with Masinde Muliro was a preparatory meeting. That was in preparation of the main one which was supposed to be in Webuye. The one in Chwele was just a stopover meeting and the main rally was in Kimilili.

Ms. Emily Kimani: Did you have a permit for the same?

Mr. Albert Simiyu Wamalwa: We had a permit to hold the rally in Webuye and we also had a permit to hold the rally in Kimilili. So, the ones on the road were just stop overs.

Ms. Emily Kimani: So, would I be correct to sum up all the things that you went through as being caused by your political inclinations?

Mr. Albert Simiyu Wamalwa: I would want to believe so because we were trying to fight against a system that was entrenched in a one party system and they were against any divergent views from anybody.

Ms. Emily Kimani: Thank you very much. I have no further questions for you. I just thank you once again for your testimony. I wish to hand you over to the Commissioners who may wish to ask you a few questions for clarifications.

The Presiding Chair (Commissioner Chawatama): Thank you very much. Commissioners!

Commissioner Berhanu Dinka: Thank you, Albert for your testimony. I have some clarifications to seek from you. What exactly did you mean when you said that your uncle got you a job at the Ministry of Public Works? What does that mean?

Mr. Albert Simiyu Wamalwa: Actually, I cannot say that I applied for that job. After finishing school, my uncle told me to go to Nairobi for the purpose of trying to fix me somewhere. In fact, his first intention was to take me to the police and we had even seen somebody, Mr. Elija Mwangale who had promised to assist but in between, the job in the Ministry of Public Works came about. So, I can say that it is my uncle who assisted me to get that job.

Commissioner Dinka: What relationship was there between the public works and Mr. Njonjo? Mr. Njonjo used to be the Attorney-General and that was where he had his problems with the President. But why would the Ministry of Labour say that you were a Njonjo employee or something?

Mr. Albert Simiyu Wamalwa: Those were the stories that we were told. I cannot say that they were official but those were the stories that we were told, that emanated within the Department of Materials. They told us that the allegations were that a Mr. Charles Njonjo wanted to employ too many people in all the Ministries in a way to sabotage the Government.

There were issues that they could just tell us like that and we could not prove it beyond our means. I want to believe that, that was the reason they used to lay us off.

Commissioner Dinka: How long did you work in the Ministry of Public Works? How many months?

Mr. Albert Simiyu Wamalwa: I worked from February 1992 up to 1983.

Commissioner Dinka: Are you talking about 1992 or 1983? Which month of 1983?

Mr. Albert Simiyu Wamalwa: Up to around May, 1983.

Commissioner Dinka: It was about three months or something like that; four months?

Mr. Albert Simiyu Wamalwa: Yes.

Commissioner Dinka: You said after you left the Ministry of Public Works until 1991, you did nothing but just stayed home?

Mr. Albert Simiyu Wamalwa: I have not gotten any employment anywhere.

Commissioner Dinka: How did you start the political work in 1991? How old were you?

Mr. Albert Simiyu Wamalwa: I was born in 1961; so in 1991, I was 30 years old.

Commissioner Dinka: So, you did not have any job for 30 years?

Mr. Albert Simiyu Wamalwa: After I left Nairobi and came home, I assisted my father to run his business.

Commissioner Dinka: That is a good job too. Now, you joined FORD political party in 1991 after the multi-party system was allowed. How is it that you got that kind of a very high post within the party at one go because you started at very high level?

Mr. Albert Simiyu Wamalwa: I joined FORD in 1992. The reasons why I got that position was because of the courage that made us to leave here and go to Nairobi with a friend of mine and we went to Agip House, Nairobi, where they had called a meeting of two people from every province. So, for us in Western Province, we had only two people from Kakamega. But Oginga Odinga and Masinde Muliro were surprised to see that people had come from Bungoma. We were the only two fellows there and we insisted that they must come to Bungoma. So, that is how we found our entry into that arrangement.

Commissioner Dinka: What is your expectation now from the Commission on this issue? You said you do not want anything like that impunity, to recur. What else do you expect from the Commission?

Mr. Albert Simiyu Wamalwa: I have two high expectations in this Commission. One, I believe through what you are doing, we are going to have people reconcile. I have very much regard for this Commission because I believe that, part of the recommendations people are making here are truly going to be followed. So, my expectation in this Commission is that even after you have written your report, this country needs a team to stay on, so that it continues to reconcile the tribes on the ground. I am alive to your mandate that after this, you will write a report but my feeling is that Kenya is not reconcilable until we put a proper mechanism to continue the process.

So, those are my expectations in this Commission. I believe as a person, that if this country gets reconciled, the police do their work, and the departments work, my heart will be at peace. We have a new Constitution in place but still, people do not know that we have a constitution. So, I believe these recommendations will add value to the constitution and put safety caps so that Kenyans can get the true meaning of peace. But for my case, they have continued to brutalize me as at now but I believe that with this kind of Commission, we are heading somewhere.

Also, I believe that for this country to move a step ahead it is only important that those who wronged others should come forward and own up, apologize and we agree to move forward. If you discover what happened in my case, I will expect that besides the normal expectation of compensation or whatever, the highest level is to put this country on the right track. That is my take on that question.

Commissioner Dinka: Thank you very much. I just want to tell you that the Commission after it presents its report, actually leaves a mechanism behind which will see to it that the

recommendations are implemented because the recommendations of this Commission are mandatory and the Government is legally obliged to implement them. This mechanism will be the follow up mechanism to see to it that they are implemented properly and makes report to the public and to Parliament on a quarterly basis.

Secondly, the National Cohesion and Integration Commission, which is a permanent Commission, will take over from where we will have left and continue the reconciliation process because reconciliation is a long-term process. It is not an event. So, what you said on both issues; implementation of recommendations and also the continuation of the search for peace and harmony among Kenyans will definitely continue. There are already mechanisms in place. Of course, politically active Kenyans like yourself and others will be in the constituency; the peace, the reconciliation constituency and also the implementation constituency which will help this mechanism that will be remaining behind to follow up implementation of the recommendations. So, your role is extremely important also.

Thank you very much, Mr. Wamalwa.

The Presiding Chair (Commissioner Chawatama): Thank you very much for coming to the Commission and responding to the call to give a statement and also responding to the call to come and give your testimony. Your testimony was very clear on what you went through in the hands of the police. Looking back then and what you are seeing now, what do you have to say about the right to lawful assembly? Have you seen any changes?

Mr. Albert Simiyu Wamalwa: Yes, after now that we have gotten a new constitution, my instinct and my thinking and my brain is telling me that so many changes are in place and Kenya is changing; only that, it requires a bit of time. But within myself, I feel that where we have reached, we are going in the right direction. We have changes that are irreversible. The only obstacle that we have is our politicians, and Kenyans will sort them out. If we can keep onto the track of the current constitution, I want to believe that after five years, this country will see some good changes.

Thank you.

The Presiding Chair (Commissioner Chawatama): I have also heard you speak quite passionately about reconciliation and you see this as a way forward for this nation. When we have had testimonies in the regions that we have been to, there have been complaints against leaders, either past or present. Do you have any thoughts on how the people can reconcile with their leaders? What would you expect from your leaders? What would you want them to say or do in order for them to be reconciled with those that they are leading?

Mr. Albert Simiyu Wamalwa: Thanks a lot. This country has been torn into pieces by leaders. The common person here, if I can give an example of a Bukusu and Sabaot,

because I have interacted with them, you cannot tell me that these people have a problem. But the leaders are the ones who have caused the problems.

I would seek that we get a mechanism of reconciliation that emanates from the ground. The leaders will just come in because we have been relying on them to give us direction. So, if this Commission will be left to continue with its work, I think it will be independent enough to conduct civic education on the ground upwards. In fact, we will get leaders from amongst these people, and I am foreseeing that one emerging. For some 40 years back, we have been awaiting to hear what the President will tell us, what the Minister will tell us, what the MP will tell us and what the chief will tell us. So, that has been the biggest problem. That is how this country has not gotten a formula to reconcile. So, I believe and I want to imagine that after you, people, have done your work, you will leave a group on the ground that will be in every county to the sub-locations to set a formula of reconciliation upwards, so that we get a national re-union at the centre of the Government. But if we expect that they will come from the top, we shall continue to dividing ourselves. I do not foresee any practical solution from that arrangement.

The Presiding Chair (Commissioner Chawatama): Maybe, now a personal question on your experience in prison; from your testimony, you suffered emotional and maybe, psychological pain. Did you suffer any physical torture? Physically, were you injured in any way? Do you suffer any physical injuries?

Mr. Albert Simiyu Wamalwa: There were just those immediate reactions of the beatings like swelling but I did not break anywhere. In the cells, they gave us water that had--- They were forcing us to take water with urine. When somebody urinated there, they would give you that water to take. If you wanted water, they would give you that one. That was what we were doing. I have never gone to the cells again but that was the worst moment. The torture I got after was a threat to my life. They used to come to my house at night and as I told you, I had a newly married wife whom I had to leave. Were it not for that guy, whom I came with, who took her to his place, she would have left me but she stayed until to date. She is still my wife.

The Presiding Chair (Commissioner Chawatama): We are happy to hear that. And who is your friend?

The gentleman next to you has accompanied you? Is that what you are saying?

Mr. Albert Simiyu Wamalwa: Yes, I have come with him. He has played a role in my life.

The Presiding Chair (Commissioner Chawatama): Could we please, have his name so that---

Mr. Albert Simiyu Wamalwa: Because when my wife wanted to go back, he took her to his place until I came out and in those times of tribulations when askaris were coming to

my place and the landlord got scared, my friend took responsibility of my wife. She stayed there until I came out. He is called Richard Wasike Chesome.

The Presiding Chair (Commissioner Chawatama): Thank you. Our records will show that you were accompanied by a friend who helped you through this process and also helped you in the past when you needed a friend. I believe that everybody needs a friend like Richard. I pray that we all have a friend like you, Richard, who will stand by your friend through thick and thin. On behalf of the Commission, I would like to thank you most sincerely for having come today both of you and you specifically, Albert, for having come and testified before us.

Thank you.

Leader of Evidence, it is 25 minutes past 7.00 p.m. What do we have now?

Ms. Emily Kimani: Here, we have our last witness for the day.

The Presiding Chair (Commissioner Chawatama): We shall reopen our writing pads and then we shall hear the last witness.

Thank you.

Ms. Emily Kimani: Thank you, Presiding Chair. Our last witness is under slot 6 in the file.

(Wycliffe Wanjala Simiyu took the oath)

How are you this evening?

Mr. Wycliffe Wanjala Simiyu: I am okay.

Ms. Emily Kimani: Please, state your full names once again for the record.

Mr. Wycliffe Wanjala Simiyu: My names are Wycliffe Wanjala Simiyu. I reside in Ndengelwa at the Khakhahoya Village although these days, I have moved from there. I live in Mareli.

Ms. Emily Kimani: First, you are appearing before the Commission this evening because you did record a statement about land injustices that you have suffered. Is that correct?

Mr. Wycliffe Wanjala Simiyu: That is true.

Ms. Emily Kimani: Briefly but accurately, take us through the same.

Mr. Wycliffe Wanjala Simiyu: My dad passed away on 8th September 2004 and we buried him on 15th. In September, 2004, the entire community came together for the meeting. All of us as the children of the deceased came together for the meeting. We counted the number of children and we were 28 children. We were 16 daughters and 14 sons. There were 15 mothers and then they came to our property, including land and the bank account at Barclays Bank which was 11. We lived together in peace but after a short time, my brother, Isack Zakaria Mulati, went to the Lands Registrar and met Mr. Bosire. He approached him and he was given a title deed on 25th (?) 2005. It was registered under East Bukusu/South Kanduyi No.6985. I went to the Lands Registrar in 2006 being the 10th day to do a search. When I did my search, I realized that the title deed was in his hand. I could not wait any longer. I went to see the chief here in Bungoma Town by the name Wanakawa and told him what had happened. He advised me to put a caution on the land so that no transaction could take place because my brother had forged the land documents, yet it belonged to my father who had passed away. When I went to see the Land Registrar in Bungoma, I got the secretary and told him that my brother had forged documents for the land of our father who had passed away. The secretary told me that they could not do anything before they established the status of that land from the records. They established from the records that, that belonged to our father and that our brother had acquired the title for it unlawfully. They advised me to find out how we could solve that issue with my brother so that they revoke the title deed because he was not supposed to have the title deed. By that time, he was already looking for people to buy the land. But when he went to the Lands Office, he found there was a caution on the land. He went to the police and reported that I wanted to kill him.

The officers looked for me and got me at my barber shop and enquired whether I wanted to kill my brother. They arrested me and put me in for three days from Friday to Monday when they took me to court. I denied the charges of trying to kill my brother and I was released on bond. After a short time, they arrested me again on charges that I had beaten his son by the name Michael Mulati. Now, I was facing two cases. There was a DC by the name Irungu whom I told everything about the situation and that our father was dead and my brother was trying to forge the title so that he could sell the land and was harassing me because I had stopped him from selling the land. The DC called the land registrar by the name Bosire who confirmed to me that the number which my brother had was legal. I tried to look for my brother and I could not find him. So the DC Irungu said that the land should not be sold. We went on with the case and after a short time, the DC was transferred. He was replaced by another DC by the name Warfa. Even the land registrar, Mr. Bosire, was also transferred and he was replaced by a Mr. Nyaberi. I approached him and told him about my predicament. The DC called Mr. Nyaberi to establish about the position of the land. They proved that the land belonged to the late father and that my brother was retaining the title deed unlawfully. So, transaction on the land was restricted again and eventually, I won the case.

In 2009, he called another rich man in Bungoma West by the name Eric Kimingichi who sells machinery in Bungoma who gave him Kshs2.6 million. They went to the Ministry of Lands with Eric to remove that caution and the land was transferred to Eric Kimingichi.

After my brother had transferred our land to Mr. Kimingichi, he went to Kakamega to see the then PPO, Mr. King'ori Mwangi and told him that when my father died, he had a gun which he had left with me and that the police should come and get it from me. The police came from Bungoma and arrested me and took me to the station where they tortured me badly, demanding that I should produce the gun which was left to me by my late father. I told them that my brother had just sold our land and that they were torturing me for no reason at all. They tortured me but eventually left for Kakamega without getting anything. I was left in the cells where an inspector Mugambi interrogated me and charged me with robbery. I was then taken to Webuye where I took an advocate and he did the case for me. The lawyer wondered how I could be involved in robbery while in the cells. I took an advocate who asked the prosecution to explain how a person can be involved in robbery, yet he is in prison. They then called a witness who testified that I had not done anything. I was then released from the cells.

So, I ask the Commission to assist me because I do not have my father and even today, my brother is still at home and he wants to kill me because of the land. That is why I live here in town. I ask the Commission to assist me.

Ms. Emily Kimani: Thank you very much, Mr. Wanjala for your testimony and I empathize with you for what happened. I have a few questions to ask you for clarity purpose. You explained to us that you come from a large family and your late father had 15 wives and the fact that he allocated all of you land. Was it one big portion of land or were they separate portions and how much was each child given?

Mr. Wycliff Wanjala Simiyu: We were living on the land at home. The other one is in town. The elder son was given a land and a place. So, my brother forged documents for the land which was in town which my father had given to our young brothers, including myself. They also did not know what was happening.

Ms. Emily Kimani: Were all of you, yourself and your siblings, given parcels of land?

Mr. Wycliff Wanjala Simiyu: When you are old enough, you are given a place where you can live with your wife. The young ones were living with my dad.

Ms. Emily Kimani: Does that mean that the ones who are not of the maturity age? By the time your father passed on, was there any land left in trust for them?

Mr. Wycliff Wanjala Simiyu: That one is there for the young ones but for us, who were old enough, everybody was given his land but then, we did not have numbers.

Ms. Emily Kimani: You have also stated that no normal transfer was done after your father passed on. What was the reason for the non-transmission of the land?

Mr. Wycliff Wanjala Simiyu: My father was polygamous. The elderly sons were few but the young ones were the majority to re-demarcate the land into pieces for us.

Ms. Emily Kimani: You have told us about one of your brothers and in the whole of your statement, it seems like you are the one who has taken up this matter. What of the other siblings? Have they been involved in this?

Mr. Wycliff Wanjala Simiyu: I was given that position to take care of the land on behalf of my other brothers but when my brother came and took the title and gave it to other people, I had to stop him because the land belonged to us and to the family. I did not want him to sell the land because we did not know what he wanted to do with the money.

Ms. Emily Kimani: You have also told us that your brother got a fraudulent title deed for the Bukusu/Kanduyi/6985. In whose name did he get the title deed?

Mr. Wycliff Wanjala Simiyu: In his name!

Ms. Emily Kimani: You have also mentioned several cases; maybe, you could assist us with the case numbers, like the case of assault in which your brother said you assaulted his son, what was the case number and in which court did it take place?

Mr. Wycliff Wanjala Simiyu: I was locked up in Bungoma where I was taken to court for creating disturbance while the other was for assault but I could find the details later.

Ms. Emily Kimani: You have also told us that several restrictions were given and you got some assistance from some of the provincial administration officers but later on, your brother sold the parcel land to one Mr. Kimingichi who is the proprietor of Magaribi Machinery here in Bungoma Town. How did you get to find out about these details, the fact that he was given Kshs2.6 million in consideration?

Mr. Wycliff Wanjala Simiyu: The brokers who sold the land told us that my brother had already sold the land to Magaribi Machinery and that I could be moved from the land any time. That was when I went to my advocate to tell Kimingichi not to come to that land. That was when I was locked up on allegations that I was a robber and tortured.

Ms. Emily Kimani: Does that mean that there is a pending matter in the court as we speak in respect to the land, and if so, what is the case number?

Mr. Wycliff Wanjala Simiyu: The case number was 3909 at Bungoma High Court.

Ms. Emily Kimani: You have talked about allegations of bribery by Inspector Mugambi, so that they could charge you falsely on counts of robbery. Do you have proof of this?

Mr. Wycliff Wanjala Simiyu: Yes, I can prove this because he had just received money and even the PPO proved this but then, I was again arraigned in court; so, I just knew it was bribery.

Ms. Emily Kimani: Thank you very much for your testimony.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. Commissioners, do you have any questions for this witness?

Most of the questions that were prepared by the Leader of Evidence have already been asked. What is left is just to thank you for your patience. I know it has been a long day for you. We will look through the issues that you have brought before us.

Ms. Emily Kimani: Chairlady, we have come to the conclusion of today's hearing.

The Presiding Chair (Commissioner Chawatama): I encourage the person taking the video to please zoom in outside, so that if ever this clip is played, they can see that we worked until it was very dark.

On behalf of the Commissioners, I thank you for giving us company and being patient. Today, we have heard evidence from ten witnesses. I am encouraged to read their names; they are:-

1. Pastor Peter
2. Edward Murunga.
3. Tecla Kazi.
4. Pastor Fredrick Wayanyi.
5. Ruth Riziki.
6. Joseph Simiyu.
7. Gladys Waswa.
8. Nicodemus.
9. Albert.
10. Wycliffe.

I know what you are going to say behind my back; so, do not even go there. I would like to thank the witnesses. I would also like to thank the Leader of Evidence and all our staff present for a job well done. When we started off this morning, we did not know we will be able to hear all the cases. We have accomplished much this day. It is all because of the hard work you have put in, whether in investigations, research or legal department.

We thank everybody who has made today's hearing a success.

We adjourn until Monday.

(The Commission adjourned at 7.50 p.m.)