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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION HELD ON FRIDAY, 1<sup>ST</sup> JULY,  
2011, AT BUSIA COUNTY COUNCIL HALL**

**PRESENT**

<b>Tom Ojienda</b>	-	<b>The Presiding Chair, Kenya</b>
Margaret Shava	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya
Berhanu Ahmed Dinka	-	Commissioner, Ethiopia
Mr. Patrick Njue	-	Leader of Evidence
Mr. Simon Njenga	-	Hearing Clerk

*(Opening Prayer)*

*(The Commission commenced at 9.45 a.m.)*

*(The Presiding Chair (Commissioner Ojienda) introduced  
himself and other TJRC Commissioners)*

**The Presiding Chair** (Commissioner Ojienda): I would like to welcome you to this morning session's hearing. Hearing Clerk, you may swear-in the first witness.

*(Mr. Oduya Oprong took the oath)*

**Mr. Patrick Njue**: Kindly, for record purposes, state your names and where you come from.

**Mr. Oduya Oprong**: My names are Oduya Oprong and I come from this area of Teso. I have had a privilege to represent this region during the colonial period in Parliament. I have also done a lot of other work even in the workers' union in Kenya. I was a leader of Kenya Quarry Mine Workers Unions (KQMWU). When I left that job, I went to a company called Multi-Bata Exchange where I worked as a clerk. After that, I again started from the KQMWU. I worked so well and then I left it and went to join politics. That is when we started the Kenya African National Union (KANU).

**Mr. Patrick Njue**: What are you doing now?

**Mr. Oduya Oprong**: At the moment, I am doing my own work at home.

**Mr. Patrick Njue**: Sir, the witness seated with us here this morning is for the purpose of making a presentation on behalf of the Teso Community.

Mr. Oprong, as you have rightly put it, you were among the first people who had an opportunity to represent their community in Parliament. If I got you right, you said that

you were the first Teso Member of Parliament. So, in that very context, I do believe that you are well versed with the issues that affect this particular community. That is what you are here to share with us this morning. So, kindly, I will ask you, in the very brief terms, if you are ready, you may begin your presentation.

**Mr. Oduya Oprong:** The issues that affect the Teso Community I have said them more than once, year after year and it is not a new thing today. I know those who are doing the recording of the history of the Teso Community can clarify more than that so that it can benefit the coming generation as we continue.

There is nothing new that I can say at the moment. It is only those things that we have been saying now and then. Those who are writing books, I know up today, they have written a lot.

**Mr. Patrick Njue:** Kindly, for the benefit of those of us, who for the first time, are coming into contact with you and also for the purposes of the record for this Commission, maybe if you can share with us some of those issues that you have constantly repeated over the years, and also for sake of the public who are here today, so that we may take note of the same.

**Mr. Oduya Oprong:** The issues that we have already talked about and we have been repeating them year after year are the same issues. Where the records are, I know they are in tones and tones of very many words. At the moment, I will just be doing repetition. We are just repeating what we have spoken about since time immemorial and we are just repeating them up to date.

**Mr. Patrick Njue:** Mr. Oduya Oprong, may be you can refer us to where you think we can find those records you are referring to. I also do not know if you have a memorandum that you will be presenting to this Commission this morning.

**Mr. Oduya Oprong:** Yes, I have written it but I know all this is in use. You can take them from the records because I know what you are talking about. There must be a place where there are records of what has been spoken for every year. When it is being compiled together and when they want to write a book, they can do so to help the people understand them even in the future. This is because human beings will die but when there are records, they will be there for a long time. I think that can be a very good way of keeping the records for future.

**Mr. Patrick Njue:** Thank you, Mr. Oduya Oprong. Sorry, I should have started by asking you to introduce the person seated next to you on your right. Perhaps, you can introduce her?

**Mr. Florence Oduya:** I am Florence Oduya. I have lived with my husband since the time of his politics. What I have seen since the time multi-party came to Kenya - there was a lot of hatred between people from different parties - because people who were strong in other parties tried hard to get rid of the persons so that that particular party can grind to halt.

In 1994, my husband was a very strong supporter of KANU and he was an Assistant Minister and that is when he got involved in an accident and he was shot in the head. That is why he is not clear because he had some mental problems as the bullet is still lodged in the head. So, God loved him as he has lived to date. But he has a small memory of what happened. I think since advent of the multi-partism there was a lot of hatred in our country and people were looking at each other as enemies. If a party was very strong, members of that party looked for the other weak parties and they could kill members of that party. The accident in which my husband was injured was politically induced.

**Mr. Patrick Njue:** Thank you, mama, for sharing with us that bit of information. Indeed, it is helpful because we now understand the position that Mr. Oduya is in. Nevertheless, we appreciate his presence here and also you franking him.

We thank you.

**Mr. Florence Oduya:** Welcome and thank you too.

**Mr. Patrick Njue:** The other bit that Mr. Oduya had been called upon to appear before this Commission was also on his individual account to tell us the suffering that he has gone through. I believe that is what you have just alluded to when you told us that you see political involvement in the accident and his being shot, hence his current state. I will maybe ask you one question as you are seated and assisting him. Would you also brief us on the issues that affect the Teso Community and, if you also know whether your husband had prepared a memorandum that he would have wanted to present to this Commission?

**Mr. Florence Oduya:** According to my understanding, Mzee was fighting for the rights of Teso Community, their boundaries and other development issues like education, public schools, hospitals, roads etcetera. But what affected him was the side of boundaries. Up to date, there are people who are fighting about the boundaries, according the Mongovia Commission, from there no reason or report has been given. So, when people of Teso go to the Government for services, they are referred to Bungoma, and when they go to Bungoma, they are referred back to Teso and so on. That is what is really affecting the Teso Community on boundaries.

**Mr. Patrick Njue:** Thank you, Mama Florence, for that brief. I will ask if the commissioners have questions to put to you or mzee. Please, Chair.

**The Presiding Chair** (Commissioner Ojienda): Thank you very much, Leader of Evidence for that. I want to ask the commissioners if they have questions for the Witness. I will start with the retired general, Ahmed Farah.

**Commissioner Farah:** Thank you very much, Mr. Oduya Oprong, for coming forward to this Commission. As you know, this Commission is investigating into historical injustices that had been meted out to the people of Kenya by subsequent regimes. I notice from your write-up and, I congratulate you for being a leader of the Teso people and that you had relationship with famous people like the late Tom Mboya and that you have always been in KANU, except for a short spell of time when KANU split into KANU A and KANU B. Later on, when KPU was formed and you joined it, you lost the elections. I do

not know whether you lost the election favourably or whether you lost it by mistake. But anyway, nevertheless, you lost an election and you never gave up. I can see that you have led your people throughout the rule of KANU regime until multi-party politics was introduced in 1992.

Now, my question is, you were shot at in 1994, after the elections where you won. At the time you were shot, you were a Member of Parliament. So, what the Commission wants to know is the circumstances under which you were shot at and who shot at you; whom did you suspect. Please, if you can shed some light on that.

Your memory is short because of those injuries, so if it is difficult, I think your wife can help you.

**Mr. Florence Oduya:** Okay. After the old man got an accident, there were two people who ran away after he had been shot. They did not follow him, my children followed the vehicle and they tried to rescue the father. In the vehicle, there was a briefcase and there was more than Kshs50,000 mzee was taking to a fundraising in his constituency. If they were just thieves, they would have taken the money and then kill him completely. It is as if they wanted to take his life and take off.

From that time, there has been no Member of Parliament who has come up to know who did that, why and whether they have been arrested. Up to date, we have not known who did that. The most painful side, although he is alive, but he is now mentally disabled, is that he cannot do anything, like going for his normal calls as he used to do previously.

**Commission Farah:** Thank you, madam, for shedding that light. Which party did he contest in 1992 elections?

**Mr. Florence Oduya:** He contested through KANU party during retired President Moi's time and he won over 30,000 votes from the Teso people.

**Commission Farah:** I also notice that, in his statement, he was taken to UK for treatment and later to USA. Was it the Government that took him or it was by himself?

**Mr. Florence Oduya:** Okay. We had a family fundraising and the Government also helped us. First of all, he was taken to London and after three months, he was taken to New York, America, for rehabilitation. After that, they said they could not stretch any more. We thank God for that.

**Commission Farah:** I am now clear in my mind. On behalf of the commissioners, I empathize with your trials and tribulations. As you know, in Kenya, we have had political assassinations and you must be lucky to be alive today. So, we thank you for coming forward and I have no more questions to ask you.

**Commissioner Shava:** Thank you very much for coming here today, Mr. Oduya Oprong. We are, indeed, privileged to have you speak before this gathering. You have had a long and distinguished career in serving Kenyans and Kenya.

I note from the statement you have given to this Commission that, over a period of 25 years, three sitting Members of Parliament, including yourself, have suffered accidents; two of them have died and yourself severely injured. I wonder whether there is anything that you read into this. Is there any sort of pattern that you read in these incidents and which you would like to speak about?

**Mr. Florence Oduya:** If I may assist him. Every person sees that this is not enough; “I am the one who is able, and in order to take his position, I have to kill the person.” These are normal events but they are politically instigated. Yes, that is my perception.

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

**The Presiding Chair** (Commission Ojienda): Thank you very much, Mr. Oduya Oprong. Thank you very much, Mama Florence, for sharing to the Commission frankly what this area has gone through in terms of representation. I can see from Mzee’s statement that Ojamaa Ojaamong and Stephen Echakara lost their lives soon after going to Parliament. But, I think Pancras Otwani and Moto Ebu are still alive. Is that the right position?

**Mr. Florence Oduya:** Yes, they are still alive.

**The Presiding Chair** (Commission Ojienda): I just want to take this opportunity to share the pains that Mzee has gone through in seeking treatment after the unfortunate incident. I also want to just confirm to you as a family, and I think to members of the public who are here, that the objective of the Truth, Justice and Reconciliation Commission (TJRC) is to look at the root causes and why certain incidents that touch on the violation of human rights of the people of this country and certain historical injustices that have occurred over time, precisely since December 1963 to 28<sup>th</sup> February, 2008. We hope that by the end of the work of this Commission, we will be able to recommend a road map that will reconcile the people of this country. It will also point specifically to reparations and also ensure that there are certain actions taken against certain people who are responsible for certain things that occurred in the past. That is why we would want witnesses to honestly speak to this Commission and to tell us because this is the first time that this country has the opportunity to write its history and to make those hard decisions that we have been unable to do in the past; because running of activities of the past Governments has been characterized by many commissions and writing of reports that have never been implemented. That is why we are here.

So, when mzee talks about reports, we will look at those reports to find out what issues Teso people have. We know there are issues of marginalization, development, conflict and boundaries. I think all these will be key in the recommendations that we will make.

I will only ask one question and I know Mama Florence will provide an answer. After the pains and problems that Mzee went through, having served as a Member of Parliament for two terms, is there any form of compensation of any form that he got from the Government?

**Mr. Florence Oduya:** Okay. After he got treatment with the assistance of the Government - after the elections of 1998, he remained free – I was an education officer. I

used my money to assist him until the year 2006, when he got his pension from the Government.

Just recently, after the hon. Retired Martin Shikuku called the former Members of Parliament in Nairobi, with a plea to the Government for compensation in terms of leadership and an order was passed but we have not got anything.

Even now, they say that there is something which should come from the Treasury, but it has not yet come.

**The Presiding Chair** (Commission Ojienda): Are you saying that hon. Oduya Oprong has not been paid the dues that were paid to former Members of Parliament?

**Mr. Florence Oduya:** He has not been paid!

**The Presiding Chair** (Commission Ojienda): Have you made a follow up?

**Mr. Florence Oduya:** We were there in April and we were told to be patient; that the dues are not ready. At the moment, if God is helping him to live, he will get the dues.

**The Presiding Chair** (Commission Ojienda): Mama Florence, would you say that the Government has treated you well?

**Mr. Florence Oduya:** Yes. It assisted us during the times when he needed medical attention. After the medical attention, it took us around three years before we got any assistance up to the time he received his own pension in 2006. That is what has assisted us in his life.

**The Presiding Chair** (Commission Ojienda): So, what is your prayer? What request would you want to make on behalf of the retired Member of Parliament to the Government?

**Mr. Florence Oduya:** The English people talk about compensation and because he was injured while he was at work, then the Commission can look into that.

**The Presiding Chair** (Commission Ojienda): Thank you very much. I want to thank you once again for finding time to come and speak to the Commission. Mzee, thank you very much and we wish you a long life.

Leader of evidence, call the next witness.

**Mr. Patrick Njue:** Commissioners, our next witness will be making presentation on behalf of the Teso Community, more specifically, on the plight of women and children. We may not have the statement because it is supposed to be a memorandum.

*(Ms. Mary Emadau took the oath)*

**Mr. Patrick Njue:** Good morning, Mama Mary?

**Ms Mary Emadau:** Good morning, Sir.

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

**Ms Mary Emadau:** As I said, I am Mary Emadau. I am a teacher by profession and a professional counselor. I live in Amagoro Division, Kongoro Village, Amagoro Location. I work in Malaba Township Primary School.

With regard to community affairs, I am the Chairlady of Gender Based Taskforce that deals specifically with women and children in distress. But before I get to that, maybe I will give a little overview of the Teso Community.

When Independence came, I was of age, so I understood things and I celebrated but the celebration was short-lived. The name Teso means grave and suffering. So, from Independence, Tesos have been known as a group in Uganda. So, when we were put in Busia District, our friends called us man-eaters, that is, *Abamia*, in their language. We have not left our cradle in Uganda and we always refer to it. Whenever there is terrible marginalization, we cry and fall back to Emor mor.

That is not the only marginalization that we realized. Teso has always been in the Government but we have been given the position of an assistant minister from time immemorial. Even now Hon. Ojaamong is in that position. That is a position where you have to keep begging for things. Another issue is that we have never had a boundary as the Teso Community. Even when we are given a district like when Mr. Kiilu announced one, we do not actually know where it went. The Mwangovia Commission promised us that the report would be given to the President but we never heard about it. Our land has moved to other neighbours although originally Teso has been covering most of Bungoma District. That is where the name Bungoma came from. The Teso call it *Ebukongoma* and *Ebukusia* for Busia. Those are original Teso names. When Tesos started their farming activities, they first planted their wimbi in Kimaiti. Even up today, it is called Kimaiti but it is in Bungoma District. Even Igara that is one of the clans of Teso is now in Busia under Nambale. When we move up, there are other places bordering Mt. Elgon but all of them are in Bungoma. Those are the boundary issues.

Teso has never had a tarmacked road except the Trans-African Road. We have been told from time to time that the road that joins us with Busia and Mt. Elgon is supposed to be tarmacked but even today, I used it and it is a murram road. It seems nobody wants to give education to Tesos. When we take our little boys to universities, they end up dead through the bullet. From time immemorial, there has been a KEMRI institute in Alupe as a research centre under the East Africa. It was only last month when the Prime Minister came and made it a university. It will be a branch of Moi University but the surprising part is that when he came, he was not accompanied by the Minister concerned with health matters. So, we are not sure whether it will be a university dealing with health.

There is congestion in that small road with many trailers whereby we lose lives every day and yet we are so few. When these trailers move to Uganda, they have a trailer park and they move in order. In Kenya, since it is in Teso, which is a marginalized land, they move the way they want and they kill the way they want and we are not compensated.

During the post-election violence, our people suffered. Most of them came back home empty handed. They were not allowed in IDP camps. At that time, I was sick and using crutches. As the voice of this community, I walked using my crutches and looked for any assistance at hand. The Lutheran Church was there and I joined them. They used us on the ground to work with the Red Cross. We gave these people food but the Tesos did not benefit until we had to make another small camp in Kapolok Primary School where we took some maize for IDPs and gave the Teso IDPs. When the Lutheran Church came with maize and fertilizer for planting, we called our people at Kapolok and Kamolo and gave them something to start life with. There was an announcement in West FM that a vehicle killed a Teso and the matter was reported and the body was transported to Bungoma and then the family brought it for burial at Kamuriai. The report we got is that the person died of typhoid. There was a demonstration at Malaba Police Station and two people were shot. One is dead and another one is seriously injured and lying in Bungoma Hospital. That is marginalization.

Teso Community has no national school. Even right now, we are still waiting. Maybe our God is not yet awake. At this level, I want to appreciate Hon. Oduya Oprong. When we were being called man-eaters and supposedly belonged to Uganda, he was the first Member of Parliament to bring Mzee Jomo Kenyatta to Malaba to show him the land of Tesos. Mzee Jomo Kenyatta planted a Mvule tree. If you go to Malaba Town today, it is a landmark. So, we now belong to Kenya.

Let me now move to women issues. In the task force dealing with violence against women, there is plenty here because 90 per cent of gender based violence happens to women and children. These are acts that result in physical, sexual and psychological harm. When I move to the physical part of it, women in Teso are considered children. They can be bought or used. The working hours of a Teso woman are 16 hours and above. They wake up very early, take care of the whole family including the husband, the clan, the extended family and the children. They also have to look for food. When they are married, they go with joy. A Teso man does not become a man before he marries but when he marries, the woman becomes nothing. She is not supposed to be heard.

Women have no decision to make regarding land. When the man wants to sell his land, she will be informed after the land has been sold. Even when she is informed, she is not supposed to raise a voice because she did not bring land from her parents. When the children are left with her, she suffers because the land will go back to the family.

Regarding ownership, the woman has no saying on anything that belongs to the household. If the man dies, the brothers are there and she can only be a caretaker. When it comes to property, they are the main producers but no allocation is given to them. They may build on a plot but the title deed bears the name of the man. When there is an extra-marital affair, she can easily lose what she worked for and the new lady takes it all. If ever there is some to be returned, it will be very minimal. She cannot choose a site to put up a structure. Even if the man lives in Uganda, she has to look for him to come and show her where she will build. He will be an absentee husband but the owner of every

property. When inheritors come calling and especially with HIV/AIDS, she is the killer. It is only women who supposedly bring HIV/AIDS because men only die of witchcraft which is also brought by women. The suffering is so much. She is not supposed to be asked who will inherit her. Somebody is sent to take care of the brothers children and especially if there is wealth. When it is all gone, even inheritance goes and she remains with the children. So, she becomes a woman and children in distress.

In terms of communication, women are a lesser voice. They cannot make any decisions even in politics. When she stands up to talk, men will wonder what a woman can tell them. She will not be accepted in that family. She will be called a prostitute. This is a woman, a mother, a sister and so on. In the family affairs, when she speaks, it is taken as indiscipline. In terms of health, I do not remember if there is any maternity hospital in Teso. I cannot imagine. I do not even know whether there are women in Teso. There is still a lot of mother and infant mortality. The blood banks are empty. By the time, she is referred from Kocholia to Bungoma, she will be declared dead on arrival.

Women have so many health issues but medical assistance is very far. The distance to health care facilities is very far. Many children die of malaria because there is no health care. We do not have doctors in Teso. For example, there are no gynecologists and pediatricians. We have to look for them elsewhere. When we are referred, we have to go to Moi Teaching and Referral Hospital, Eldoret. So, most of our people die in the ambulance while being taken there. When we hear the sound of a siren, we know a woman is dying. We do not even have a mortuary to keep our dead bodies. So, if a child dies, the women carry the body of the dead child while crying as she waits for arrangement to take the body for preservation. Malaba Town Council is trying to build one at Kocholia District Hospital.

When it comes to family planning, decisions are a preserve of men. They decide how many children you have to give birth to. Women can be operated on three times but in Teso, a model woman is supposed to have eight children and above. So, with three operations already, the risk of death is high because there is a demand for giving birth.

Bride price is compulsory even when the woman is dead. Grievous bodily harm on women is a form of discipline and sometimes it leads to death. Last week, it pained me as a para-legal on the ground when I saw a man beat a woman to death. She was a very good woman. When the matter was reported to the police, they said that she died of pneumonia. The family of the woman is usually given bride price and in fact, it is the men who demand for it. The women in Teso are at risk because they can be beaten to death and their families are paid off. So, the cost of a woman is a cow. Reports on assault are shelved. I hope God lives. Cases of rape and defilement always end at the reporting desk. I have dealt with many cases of rape and defilement as a para-legal and I know that many school children come to report.

As a Standard One teacher, one day I noticed a small child with a strange smell and when I asked her, she opened up. I checked on her private parts I found that she had been infected with a sexually transmitted disease. I took the child to hospital and called the

parents and we went to the police station in Malaba to report the matter. I left them at the children's desk where they wrote a statement. A few weeks later, the child came back to school. I called the mother to school and she informed me that "*wazee walikubaliana*". So, my work is at risk. Men make decisions even on matters of rape and defilement but the pain remains with the women and children. So, we are bringing up a community that is full of pain. I have had several cases of defilement here. Last year, there were two cases of defilement in Bungoma Law Courts. I went to counsel one of the children on several occasions. During the first visit, the girl could not get out from under the bed but later on, she managed. In the subsequent visits, she insisted to talk to me and we became friends. Now that the case was in court, I left it at that point. Later the mother came for me in school. She told me that the case had been referred to Children's Department in Amagoro. That is what happens to defilement cases. It was only in the year 2000 that I felt fulfilled because a six-month old child was defiled by the father. I took the case to Malaba Police Station and the man was arrested, charged in court and jailed. He died while in jail. Although it is not good to celebrate death but because we had buried an innocent child, I felt fulfilled.

Regarding recruitment into forces, the ratio of girls to boys is 1:12. Today, in Teso, if you ask the District Education Officer (DEO) about primary school enrolment, you will find that the enrolment of the girl child is higher than the boy-child. So, what happened for the ratio to become 1:12? I hope the Constitution will work. Job opportunities here are a preserve of men. Even when we take our daughters to medical schools and they qualify to be doctors and when they go for masters degree, men make sure that they delay them until they give up or they have to accept to be involved in sex. What is happening to the Teso girl?

I wish to make this recommendation: Let the legal framework be strengthened and let there be justice. Referral systems should be swift. When we call you to Teso, please, listen to us because we are suffering. If you are able to come on the ground at the time we call you, you will see the truth. We need justice to be done. Let there be equality and the law should be there for all. Title deeds should be in joint custody especially when they have worked for it together. When a woman buys her own plot, let the title deed be in her name. The cases in the law courts, I hope the new chief justice will hear this, should be shortened. Tesos are very poor and so going to court every day makes them give up.

Thank you.

**Mr. Patrick Njue:** Thank you very much, madam, for your wonderful presentation. Do you have a memorandum that you would want to give to this Commission?

**Ms. Mary Emadau:** I will print it and bring it later.

**Mr. Patrick Njue:** I give this opportunity to the Presiding Chair and commissioners to ask you questions.

**The Presiding Chair** (Commissioner Ojienda): Thank you very much. I want to thank the presenter for that detailed, emotional and painful presentation. When one talks about women and the girl child, I know the kind of pain that accompanies it. I just want to salute you for the role that you have played in the society amongst the Teso People. There are very few people like you. It is very refreshing to hear because it is the prize that we must pay to get a solution to the problems in the society. I want to ask my fellow commissioners to seek clarifications if they have any.

**Commissioner Farah:** Madam Emadau, your testimony is very clear. We have come from North Eastern Province where it is mostly occupied by one tribe who are in one religion, so things like rape and defilement are unheard of. Unfortunately, today it is very rampant. It is something that the whole country is shocked about. I can see that the cases of Teso are more than other places and we have taken note of that. Your testimony was very moving. When you print your memorandum and bring it to us, it will enhance our investigation. I commend you once again for being brave by coming up to say these things in front of a male dominated crowd. Many women would like to say those things in camera but I congratulate you for having come forward to talk about them openly although it is very moving. I have no question because your testimony was very clear. Thank you.

**Commissioner Dinka:** I would also like to join my fellow commissioner in thanking you for your very lucid testimony and salute you for your courage. You have taken us through the tribulations of your people as a whole and then concentrated on the challenges facing the vulnerable groups, that is, women and children. I really thank you because we have not heard an emotionally delivered and yet lucid presentation such as yours. I also want to thank you for your courage to deliver your testimony in public. I hope that the male members of your society are well represented here. I hope they have heard what you have said. The Commission has taken it as a heroic but tragic story. I think the Teso Community as a whole is primarily responsible for correcting the ills in the community. As you have said, there should also be a legal framework to also protect, particularly, women and children, as well as protect the property inheritance rights of women. I would like to assure you that your presentation will form one of the prominent chapters in our Report to the entire nation of Kenya, which will be made public to everybody. It will have appropriate recommendations in it – recommendations which by law must be implemented. That is what the law of Kenya demands. So, appropriate recommendations will be included in that Report.

I thank you very much for coming forward.

**Commissioner Shava:** Ms. Mary Emadau, I salute and congratulate you for your courage in coming here today, as my fellow Commissioners have said, and speaking out. Your testimony has raised a lot of emotions in me as I am also a woman. I have worked in the women's human rights movement, and I know exactly what you were talking about. These are things happening to women, not only in Tesoland but also, as my fellow Commissioner has said, all over Kenya and, indeed, all over Africa and this region, if we look at D. R. Congo. It is something I understand when you speak about it. I just want to

tell you that although many people – both men and women – may understand what you were talking about, very few would have been able to put it as you have put it. What you have said is very clear. It was a very lucid, erudite and eloquent presentation; it was a rare human presentation. Without the emotions, I understand what it was that you were saying.

I also congratulate you for being such a selfless person, and for working for your community; you came up to work for them even when you are on crutches; you have tried to make your contribution at time of a crisis. You have also managed to help us to understand very well the political history of the Teso people. You have given us a very good analysis, with examples. That is going to go into our record and help us understand exactly what the issues are, in terms of violations of human rights in this area. I have very many things to say but I will try and be brief.

We will have a women's hearing, as we usually do when we go around during our hearings. I hope that you will attend. That will be a women's only hearing, with only the Commissioners.

Just to go into some specific issues, on the issue of the congestion of trailers, I have seen it myself. When this Commission went to the Kiryandongo Refugee Camp in Uganda, we came back by road. I saw exactly what you were talking about. What I did not realise was what it meant to the people of this area. You have just told us that even yesterday people lost their lives. That is a tragic situation, which must be brought to the attention of the proper authorities. That is something we can do immediately, and we will do it.

On the issue of post-election violence, I just have one question to, perhaps, help me understand exactly what the obtaining situation was then. You said that the Teso victims of post-election violence were not served in the same way as the other victims. I wonder if you can help me to understand who the other victims were, and why the Teso were excluded. Where did they come from? Where did they become victims of the post-election violence? Where were they when they became victims of the violence?

**Ms. Mary Emadau:** The post-election violence that followed the 2007 elections was all over the country. Most of our people were working in the flower gardens of Naivasha. Some of them were in Thika, while others were in Nakuru. So, when that violence started, they were chased away. They came back empty-handed. They went to the IDP camps in Jamhuri Park, Nairobi. Later on, they were transported to Busia. Later on, they were brought to Teso. When they reached there, they were able to contact us, because we were on the ground with the Lutheran Church and World Vision. The World Vision was the active NGO on the ground. I worked as a counsellor at that time and provided psycho-social support.

There are three IDP camps in this area. There were IDPs from the Kikuyu community, who were put in the Amagoro AP Camp. There were 18 of them in that AP camp. We had another IDP camp at Jakii, which was relocated to the Africa Inland Church (AIC). During the day, most of those people would go to their businesses, and at night they

would go back to the camps, especially the AIC Refugee Camp. We realised that there was some game being played. Later on we went to give out assistance to them in the form of *sufurias* at St. James ACK Church. When we went to the AIC IDP Camp to check on the IDPs we had sent there, we would find that those *sufurias* and blankets were already on sale along the road.

We realised that there was a game being played, and the actual IDPs were not getting the assistance they needed; amongst dishonest IDPs were some who were genuinely in need of help. When they crossed to Uganda, most of my pupils at Malaba Township Primary School were among them. So, when these people were settled at St. Jude School in Uganda, the children demanded to come back to school. It was our duty to take care of them in school, and later on release them on the orders of the OCS, if the road was safe. Later on, we talked to the children to tell their parents to come back because the Teso were not violent people. They are not violent. They are people who can adapt to any situation that arises. They are people who can live with anybody. You can prove that at wherever members of the Teso community are found.

These other people could not be allowed in the IDP camps. So, we decided to request them to look for their ancestral homes. We traced their homes in Ikamolo and Kodedema. For those who had come from the Mt. Elgon area, we were able to send them there to live with their relatives in Ikotekoo and Kojolia. That is how we managed. Whenever any aid came, we used the church to reach them.

**Commissioner Shava:** Thank you. That is very useful information. On what you have said about the issues relating to sexual violence--- Translators, please, do not translate “sexual violence” into “*kimapenzi*” because that is not the correct word. It is sexual violence. So, it has nothing to do with amorous behaviour or anything like that.

On the issue of sexual violence and the work you do with your task force, I want to bring it to your attention that there is the Attorney-General’s Task Force on the Implementation of the Sexual Offences Act. This is a multi-disciplinary task force that involves the Children’s Department, the Office of the Attorney-General, the Office of the Director of Public Prosecutions and the Ministry of Health. There is a lot of work that is being done by that task force to try and adopt a mutli-sectoral approach in dealing with these issues. So, I would recommend that you get in touch with that organisation, through the Attorney-General’s Chambers, and see how you can work together with them to resolve some of these issues, in terms of delivering justice to victims of sexual violence and trying to rehabilitate some of these victims. Our Special Support Unit will be willing to help you to do that.

With regard to the issues that you raised about succession to land and other property, these are all issues to do with gender. There are two things we should remember here. Gender refers to both men and women. It is a question of raising awareness not only amongst women but also amongst men, as to why it is important and beneficial for women to get ahead. The Chair of our Commission right now is a woman – Commissioner Tecla Namachanja Wanjala. I am a woman. Commissioner Chawatama, a

High Court Judge from Zambia, is a woman. So, out of seven Commissioners, we have three women. So, it is possible.

I would encourage you to look at the composition of the Supreme Court, the highest court in the land now. The Deputy Chief Justice is a woman. We have another woman on the Supreme Court. So, do not be frustrated. Do not be discouraged. Encourage other women and our girls who are studying and trying to get somewhere to make their contributions to the country, just as we are doing. Do not be discouraged. It is a battle, and it continues. Link up with your fellow women to give you courage in times of despondency, and the battle will be won.

We must also work with men to make them understand why it is important for women to succeed. If a country has 52 per cent women and that 52 per cent of the population is unproductive, because they have been violated or are suffering from violence, are in a situation where they feel hopeless and have no access to education the country cannot move forward. So, all of us must work together to try and help everybody to understand, so that we do not suffer.

As my fellow Commissioner, Gen. Farah, has said, when we were in northern Kenya, we also saw terrible situations of sexual violation to women and girls. It seems to me that the further one is from the centre, the easier it is for some of these things to go undetected. What is happening, as you described it, is not within the law. It is absolutely illegal but it seems that when you are far away from the centre, and there are no “eyes”, things are done in darkness. I hope that the devolved units of Government are going to help us in these issues, and that we are all going to encourage women to try and get into the positions that will be offered by the devolved governments, so that we can keep an eye on these things and make sure that we help ourselves to move forward.

On the issues you have raised, you have made very strong recommendations. One of your recommendations is that you would like cases to take a short time; when people pursue justice and justice takes a long time to be delivered, they lose hope, and give up on their lives. I want to assure you that we are going to take your message to the Chief Justice. We are going to reinforce your message by saying that justice delayed is justice denied. We have understood that very well, and we are going to work on the kind of recommendations that you have made, which are very lucid. We are going to take them forward.

Finally, I would like to say that I am so happy that the Mvuli tree that is at the border point was planted by the First President of this Republic; it made you help Kenya. I just hope that as our new Constitution is implemented, you are going to continue to feel more and more Kenyan, because you are great Kenyans.

Thank you.

**The Presiding Chair** (Commissioner Ojienda): Thank you again, Mary, for your testimony. Hearing Clerk, lead the witness out to her seat and call the next witness.

**Mr. Patrick Njue:** Commissioners, our next witness will be making a presentation on a memorandum. I do not have his statement.

*(Mr. John Kelly Okila took the oath)*

**Mr. Patrick Njue:** Good morning, Sir. Kindly, once again, for the record, state your names, where you live and what you do for a living.

**Mr. John Kelly Okila:** My names are John Kelly Okila. I come from Maseno. I am involved in making construction materials and other things from clay modelling.

**Mr. Patrick Njue:** Thank you very much for coming to the proceedings this morning. Before you can start on your presentation, I note that you are flanked by a gentleman on your right. Perhaps there are other persons you came with. Please, take a minute or two to introduce these people.

**Mr. John Kelly Okila:** The gentleman beside me is Daniel Emitila from Maseno. The others are Machaka, Okonda and Ochami. There are others who are not in here.

**Mr. Patrick Njue:** Today you are here to make a presentation on behalf of your community, the Luhya community within Maseno, Emuhaya District. Is that the case?

**Mr. John Kelly Okila:** It is true.

**Mr. Patrick Njue:** In view of the fact that there are community members who would also want to make their presentations, I would ask you that, in a brief manner, you make your presentation by telling us who this community is and delving into the issues that affect this community, especially the boundary issue, which is a key highlight in your memorandum. If you are ready, you may begin.

**Mr. John Kelly Okila:** First of all, I am 64 years old. I come from the area neighbouring Maseno. It is about two steps from my house to Maseno area. During the colonial time, I worked in Maseno area. I worked in the missionaries' farms. My grandparents gave out the land to the colonial government when the colonialists came to Kenya. The colonialists used to help us by giving us jobs, providing healthcare and water. When the colonialists were helping us, we had hope in the work they were doing and that they were engaged in.

However, after Independence in 1963, many changes took place. Maseno has now been taken to Nyanza Province. It is true that previously it was in Nyanza Province but when we got Western Province, many changes took place.

We found that we were no longer getting jobs. Our children were going to Maseno High School, and they had been given a chance by the missionaries. They were even given Luhya classes. The church I used to go to was in the compound of Maseno High School.

From the time of independence, we started harassing each other. We were sent away from the church. We went to another church, which is half a kilometre away from that place.

As time went by, many problems came up. The elders who used to work there were all sacked. Our children would no longer be employed. We also realised that even just walking around there was not allowed. So, we started asking: “What has happened now?” We started planning on what we could do. There were no benefits. We had thought that when we got independence, we would get more help than we were getting from the missionaries previously. We realised that the water wells we had dug were in Luanda County Council, which was in Maseno area. Those wells were blocked. After blocking the wells, they directed sewage into the rivers and springs. We started getting problems of diseases.

Later on, Maseno University was built and we hoped that the institution would bring light. However, instead of light coming, we saw tears. We realised that every post was guarded. We had seen a difference but we thought that this would bring big problems in our area. The guards would get into the villages with guns and sniffer dogs, which would bite our people. We would report this to the police, but nothing would be done. So, we went to the DC and appealed to him to come and help us because we were suffering. The DC of Emuhaya tried to bring about some good relations, but when he called his counterpart from the other side, he refused to come for discussion. So, the DC, Emuhaya, was forced to call the Regional Commissioner, Western Province.

We thought that the Regional Commissioner was coming to lessen the burden. Surely, the burden became less but it was not very good. Before he left, he said to us: “I went to Maseno High School. I understand the issues of Maseno very well. Maseno is in Luhyaland. I am a Luo but, because of my job, I must say the truth. Maseno is supposed to comprise of Nyangori; its border follows the road up to Daraja Mbili, and then all the way to Maseno”.

So, when the Regional Commissioner left, we continued to have problems. We wanted to be helped in terms of employment. He spoke about employment but his counterpart did not come to listen to him and try to help us. All the archbishops of the Anglican Church in the country have talked on this issue. They have tried to resolve it but other people have not agreed with them. We are in Kenya but sometimes we forget that we are in Kenya because of the kind of problems we are going through. It is as if there is nobody to help us. We tried to take our memorandum to the former Commission headed by Hon. Ligale, whom we thought would bring change but all was in vain.

Subsequently, we started thinking on our own. We decided to go to our MP. We said to him that we, the ordinary people, were the ones who were suffering. The MP and his friends do not suffer the problems we were suffering. We requested him to carry this load. We organised on how the Government would listen to us. We realised that the only way out was to demonstrate, so that we could be seen throughout the country, and so that leaders at higher levels could appreciate our problems.

When we tried to demonstrate peacefully, the OCS, Maseno, warned us: “I will gun you down. I do not want to see this”. The OCS, Luanda, also said: “Come for discussions”. So, the DO came and promised that we would sit round a table and discuss the issues of Maseno. We went to the DO and then went back to the DC. The DC sent us to another DC in the Western Province, but that DC did not answer anything. He told us: “I do not want to listen to what you are talking about. If you try this, you will get what you are looking for”.

We realised that the Government was the one which was violating our rights. Armed Administration Police (AP) officers would come from Maseno. The DC would very well know of their presence but no action would be taken against them. So, we decided to wait. In the process of waiting, we read about the TJRC. I asked my friend: “What is TJRC?” She told me: “It is about justice being done. So, let us sit down, write our memorandum and take it to them because we have been barred from demonstration”. So, we thought that the TJRC could have our issues listened to.

That was when we sat down and prepared our memorandum. We then decided not to wait for the TJRC to come to Western Province: We took our memorandum to the TJRC offices in Nairobi. We went to Nairobi and submitted our memorandum to the TJRC. We made sure that it was received and then went back home to wait for the feedback. The truth is that we have been forgotten. We do not have any other means of helping ourselves because our MPs are under the Prime Minister. When they try to raise the issue, he removes them from his party totally. They are now confused. They do not want to talk about Maseno. We have gone to the MP. We told him that the TJRC would be in Busia, and that we wanted to come here and give our testimonies. We pleaded with him to facilitate us to reach here. He told us: “Please, get out of my office”; we left.

The leader, the Speaker of the National Assembly, Hon. Marende, also dodged us. Therefore, we selected a few of us to come here and present our case. Our grandparents’ graves are on that land. Someone comes from 20 miles away to work here, yet my own children do not get jobs. They cannot be employed to even slash grass. We are now wondering whether we have been separated from our brothers. Our brothers who were left on the other side of the border are in trouble.

When it comes to distribution of relief food, when you go to the other side, you are told to go to Emuhaya. When you come to Emuhaya, you are told that your name is not on the list of the people of Emuhaya. So, we just go hungry, yet we are Kenyans. We are very disappointed. The TJRC believes in justice, and justice is what we have come to seek. Do not leave us the way other Commissions have left us. We do not have any sponsor on our issues. We do not have anybody to listen to our cries. The bishops have talked. We even have evidence that the bishops have talked.

All of them, including the retired ones and the ones who are currently serving have talked. They have talked about Maseno. If they have been defeated, we do not know where to go. If the Government is also defeated, what does it want us to do? Where do our children go? We do not see why we take our children to school. What annoys us most

are the guards at the university. We do not know how they are trained. It is as if their work is to beat up everyone. Even a visitor will be beaten up. They do not ask where you come from. They just beat you up.

I know very well that the TJRC will help us to be heard in the Government, so that our problems can be appreciated. We no longer get water. Our cattle do not get water. Even chicken do not get water. Even where I make my bricks the Vice-Chancellor comes to make his own bricks. Where shall we get our sustenance from? This is what makes us wonder throughout our lives. We have been discriminated against. We have been rendered powerless.

Whatever I may have forgotten to say, my brother here will help me to say it. Thank you very much.

**Mr. Patrick Njue:** Thank you very much, Mr. Okila, for that presentation. You have expressed concern that you may have left out something, which the gentleman next to you wants to confirm.

**Mr. John Kelly Okila:** The only thing I have forgotten to say is that we, or our children, are arrested while cutting nappier grass. When they are taken to the police station, they are charged with robbery with violence. When we make a follow up, we find that the child has been remanded. They are remanded for up to one year without being taken to court. There is usually no crime that has been committed.

I am thankful. I want to leave it to my colleague to say more.

**Mr. Patrick Njue:** I am seeking the direction of the Presiding Chair whether to get from the next witness what may have been left out, or whether we first ask questions to Mr. Okila, after which his colleague can clarify any forgotten issues.

**The Presiding Chair** (Commissioner Ojienda): The witness has said that there is a specific incident over which his brother wants to speak. I do not know whether there is a statement recorded on this particular incident, or whether he is just going to support what his brother said.

**Mr. Patrick Njue:** There is no specific statement. It is, maybe, just to confirm what it is that Mr. Okila has elucidated on. Perhaps that is what he can confirm to us.

**The Presiding Chair** (Commissioner Ojienda): As long as we do not go through the same story, we can hear what he has to say. He can have five minutes to say what has not been said, and not what has already been said.

**Mr. Patrick Njue:** In that case, do we oath him?

**The Presiding Chair** (Commissioner Ojienda): He is just supporting what his brother said.

**Mr. Patrick Njue:** Sir, kindly, tell us your names before you can give your addition.

**Mr. Daniel Mitila:** My names are Daniel Mitila from Maseno. This is the day we have been waiting for, for a very long time. Just as my neighbour has said, I will not say too much. I want to go through this very briefly. Thank you for giving me this chance.

Kenya gained independence in 1963 but we, the Luhya who live in Maseno, are not yet independent. I am saying this because of the important issue of the boundary. The issue of boundary between Nyanza and Western Provinces has been forgotten for a very long time. It has disturbed us for a very long time. We have written many memoranda, which we have presented before various commissions and Ministers concerned, but they have all been shelved. That is why we have decided, as poor people who have been humiliated for a long time, to come to the TJRC to see how we can benefit, because the boundary that was changed by the “heavyweights” of yester-years has divided the Luhya. Some Luhyas are in Western Province while others are in Nyanza Province.

How would you feel if you were cut off from your brothers? The language that is mainly spoken in Maseno is Dholuo. Even when you go to a *baraza* you are told to speak in Dholuo, You are told: “If you do not want to speak Dholuo, which is a national language, I do not know which Maseno you come from”.

Another thing is that the old boundary starts from Kobos and passes through Ahero, Daraja Mbili, up to places called Opati, Maguar, Ramula and Mundano. Former influential politicians used their power to change the boundary. I would like to request you to visit Maseno. You will find that the boundary that previously defined Vihiga and other places is not definite. If you go there, you will be told that you are in Western Province.

Occasionally, you will be told that you are in Nyanza Province. If you go to Maseno Hospital, you will be told that half of it is in Nyanza Province while the other half is in Western Province. So, the problem is the boundary. Let us not just talk. I know that you have a lot of work but, please, find some time and come to Maseno, and see how this issue has been disturbing us; relate it to before and after independence period. Please, come and help. The Luhya people living there are like slaves. We have suffered for a very long time.

We thought that bringing a university to Maseno would be a blessing but it has turned out to be a tragedy. The language of communication there is Dholuo. Every office is occupied by a Luo. The people employed there, including sweepers and toilet cleaners are only Luos.

They come from Karachuonyo. Someone must come from Bondo, yet we are there. How has the university helped us? We do not get jobs. Even for casual jobs and messengerial jobs someone must come from Bondo. This issue needs to be looked into because universities in every area need to help people.

Also, there is only one river which comes from Maseno to Lake Victoria. All the sewage is poured into the river. So, instead of university giving us jobs, it is giving us human waste. It is sad because we are eating human waste. We are seeking for help. I come from Kisumu Rural, the area that surrounds Maseno. All the people who are in the CDF Committee are those who campaigned for Anyang'-Nyong'o. There is no single Luhya in the CDF. The bursaries are also given discriminatively. If your name does not start with "O" you do not get bursary. Now, I do not know who is going to rescue us. We are grateful to God that the TJRC has come. Let us highlight these things, so the problems of the Luhyas of Maseno are solved.

The land in Maseno has been grabbed. All the trustland has been taken for personal use. For example, the Maseno Club was Government land but it has now become private land. How did that person own that land? Again, when you look at the boundary of Maseno--- In fact, we have rejected the Ligale Commission Report because instead of it helping us, it has even brought more marginalization. We wanted the Luhya community who had been left in Nyanza to be taken back so that they join their brothers in Emuhaya or Vihiga County, but that did not happen.

I also saw that constituencies have been expanded. Instead of putting Luhyas together, now we have been divided further. You will realize that some Luhyas are in Seme and others in Kisumu West Constituency. This is divide and rule. We have been divided further and we would like the TJRC to help us.

My recommendation is that the TJRC should come to the ground and see the boundaries. Who changed the boundaries which previously existed in 1963 to make the Luhyas in Maseno to continue suffering?

Secondly, come and see the level of tribalism that is in Maseno University. At one time, the Minister concerned, William Ruto, came and said that Maseno University is one of the most tribal universities. Sure enough, if you went there, you will see that there are Luhyas who are educated but cannot be employed. This is because the person who is in charge only employs his people. Ten people from one family are employed in one place. So, we do not want such things in Kenya.

Please, also come and see all the important committees in the area, especially in Kisumu West District, Kisumu Rural Constituency. You will realize that all committees have only people whose names start with "O." We wonder who is going to help our people.

Again, the other day, when we were in Kisumu during the Ligale Commission hearings, the people of Seme were crying that they want to be on their own. Kisumu people also wanted to be on their own. If Kisumu and Seme want to be on their own and I am a Luhya, why can the Luhyas in Maseno not also go to Emuhaya to be with their people? We want you people to help us. That is the big problem we have and if you solve this, God will surely bless you. Please, come to Maseno which cannot develop because the boundary was destroyed.

Thank you very much.

**Mr. Patrick Njue:** Thank you very much, Mr. Mitila. Mr. Okila, I want you to have a look at the document that I am just handing over to you, and confirm if that is the memorandum that you presented to our Nairobi offices, like you said in your testimony.

**Mr. John Kelly Okila:** Yes, it is.

**Mr. Patrick Njue:** Do you want to present it to the Commission today in these proceedings?

**Mr. John Kelly Okila:** Yes, I will present it to you.

**Mr. Patrick Njue:** I want to thank you, Mr. Okila and Mr. Mitila for your presentations. Our Commissioners may have a question or two to just clarify your testimony.

**The Presiding Chair (Commissioner Ojienda):** Commissioner Farah!

**Commissioner Farah:** Mr. Okila, you will pardon me because I do not have much knowledge about Maseno apart from what you have said today. What is the Luhya population in Maseno?

**Mr. John Kelly Okila:** They are more than 6,000 people.

**Commissioner Farah:** What is the whole population of Maseno?

**Mr. John Okila:** They are about--- We have the Maragoli and Wanyore. We are about 24,000 people.

**Commissioner Farah:** The Luos are 24,000?

**Mr. John Okila:** Those are Luhyas.

**Commissioner Farah:** So, you are outnumbered. How many are the Luos?

**Mr. John Okila:** The Luos are the minority. They could be about 3,000 people. I do not think they even reach 3,000 because some of their sub-locations consist of Luhyas in Maseno.

**Commissioner Farah:** What is the status of Maseno administratively? Is it a district, location or division?

**Mr. John Okila:** Maseno is a division.

**Commissioner Farah:** Why are you marginalized, yet you are more than the others?

**Mr. John Okila:** We are many but they bring their people from their homes and employ them. They go ahead to buy land from the poor people of Maseno. We are going to lose all our land because they have money. If there is an old lady who is poor, she will take the money. So, their number is increasing because they are coming from their reserves to buy land there.

**Commissioner Farah:** Has there been any Government investigation into the problems of Maseno? Has there been any committee or previous administrative inquiry?

**Mr. John Okila:** Investigation has not been done previously but we have gone ahead to the administration officers to seek for help. Now, the regional commissioner came in and we have been allowed to only harvest our napier grass but no job is offered to us. We only cut grass to go and feed our cattle. That is like employment. So, if my son cuts the grass, he takes it to the market and sells it; that is how he can get dowry. If he does not do that, there is no way he can marry because they will demand cows.

**Commissioner Farah:** Thank you very much. I think we will now take your memorandum which you have presented. We will study it. You have come to the TJRC which is going to investigate about injustices. I know that the majority have their way, but the minority must be protected. Now, we have a new Constitution and you have come to the right place. We will take your memorandum, study it and act on it.

Thank you very much.

**Mr. John Okila:** Thank you.

**Commissioner Dinka:** Thank you very much for your testimony. As a non-Kenyan, I am completely confused. So, I am going to ask you some questions to get clarity for myself. When you talk about pre-independence, what was the change that came after 1963?

**Mr. John Okila:** After 1963, when Mr. Jaramogi Oginga Odinga was declared the first Vice-President of Kenya, he told his people to be hostile so that they can benefit from Maseno. That is when they started beating us. They sent us away from church and we went to our own local church that we had built, yet that church had been built for us by the missionaries. The people who built that church were our grandfathers. They were the workers. They are the ones who knew how to build that church with grass. All the trees that are in Maseno were planted by our grandparents. So, when we see these trees being cut carelessly and taken to homes and prisons, we just wonder because they are cutting trees which they did not plant.

**Commissioner Dinka:** Was there no boundary change?

**Mr. John Okila:** Houses were burnt.

**Commissioner Dinka:** I am asking if there has been a boundary demarcation between Nyanza and another province that has changed. Has there been a change?

**Mr. John Okila:** We would have had changes in the boundary when the late Mudavadi got into leadership and saw that justice should be done. He brought water supply in Maseno. The main source comes from the Luhya people, but the service benefits Nyanza

people. So, even people from Western do not have water, but the changes came through Moses Mudamba Mudavadi.

**Commissioner Dinka:** Please, do not confuse me further because I am already confused. Can you just simply tell me if there has been a change in the boundary between Western and Nyanza since 1963? Secondly, where was Maseno located before the change if there has been change? Your colleague says that he wants, as part of his recommendation, a return to the pre-1963 border. That is what I want to find out.

**Mr. John Okila:** The boundary has not changed in any way. Maybe, it can be changed through the Commission. It is still where the colonial Government left it. Maseno University was not there. We had the Government Training Institute in Maseno where we participated as the local people. But after Independence, we the local people, were sent away from there.

**Commissioner Dinka:** So, from my understanding, there is no issue of returning to pre-1963 border because the border has not changed. The issue is that your people, who happen to be Luhyas, living in Nyanza are not treated as equal citizens in Nyanza. Is that the only problem?

**Mr. John Okila:** Yes.

**Commissioner Dinka:** Thank you very much. That is what I wanted to clear.

**Commissioner Shava:** *Mzee* Okila and Mr. Mitila, I would just like to thank you very much for coming today and presenting a memorandum which we have with us now and are going to study very carefully. I do not have any questions for you. I have noted that you have raised some very important issues with regard to the environment which is regulated by law. Some of the things that you have said indicate that the law has not been followed. It is actually preventing people from going about their business and gaining their livelihood.

You have also raised a very important issue of discrimination based on ethnic identity, which is a very serious problem in Kenya today. This is because wherever the boundary is within the country, a Kenyan is supposed to be treated equally with other Kenyans. So, I think that the concerns you have raised are very important. You have told us about exclusion based on language, apart from employment opportunities. This is actually contrary to the law. There is a Commission called the National Cohesion and Integration Commission with whom we work very closely. These are the kinds of issues that they look into and we are, definitely, going to pass this information onto them, even as we work on the issue.

You have also raised the issue of landgrabbing which is a problem that is just continuing in Kenyan and has caused us a lot of problems. I just want to assure you that the issues you raised are important. Thank you for taking all the trouble to follow the Commission all the way from Nairobi, through Kakamega up to Busia, because you found it so

important to present your issues to us. I just want to assure you that we find them important and will deal with them as they deserve.

**The Presiding Chair** (Commissioner Ojienda): Mzee Okila, I just want to join you in appreciating the unfairness that accompanies the practice in Maseno University as an institution. You have alluded to nepotism and the exclusion of the Luhya community from job opportunities that they can perform. You have said that, instead, people from Bondo and Karachuonyo are brought to perform tasks that should be offered to the residents of Maseno. That is unacceptable. Nepotism is, indeed, an act of corruption under the Anti-corruption and Economic Crimes Act. I would urge that if there is any specific act of corruption that you see, you have the option to immediately communicate to the Kenya Anti-Corruption Commission that deals with the issues.

Those will be investigated specifically.

One of the roles of this Commission is to investigate acts that lead to loss of identity of communities and the displacement of populations, specifically. That is why my brother was asking you about boundaries. I note from the presentation of Daniel Mitira that he speaks with a heavy Luo accent. Clearly, one would not tell whether he is from Western or Nyanza. I think he speaks Luo as well, from his accent. He has a problem with “S” and “SH”; a clear evidence that he has been affected. I feel for you and know that we will ensure that your issues are part of our report because those injustices eventually lead to loss of identity. You have been separated from your people. You need your identity and we appreciate that.

Mr. Mitira, I just want to find out. You were charged with an offence of incitement to violence. Is that case over?

**Mr. Daniel Mitila:** That case is going on. It was a case where business people in Maseno were being discriminated against. I work with NTA as a social monitor and I am also a social worker. I have fought issues on corruption. So, when I see the poor person sent away and his property destroyed--- I told them that instead of violating or talking much, we can go to the town clerk’s office so that we could solve the problem. But the council thought that I was trying to incite traders. I told them that I was not a trader but people had identified me as the only person who could help them. I told them to give people their right. By helping them, they said that I was inciting them. The case is still going on and ably, I will go to court and the truth shall prevail.

**The Presiding Chair** (Commissioner Ojienda): I think you have a duty to help your people and I thank you for that.

Mzee and Mr. Mitira, thank you very much for finding time to come. As you return to Maseno, I am sure your people have heard you. You have spoken for them and I thank you very much.

Leader of Evidence, next witness!

**Mr. Patrick Njue:** The next witness is Number 2 on the course list.

*(Mr. Frederick Wandera Oseno took the oath)*

**Mr. Patrick Njue:** Good afternoon, Sir. Please, state your full names, where you live and what you do for a living.

**Mr. Frederick Wandera Oseno:** My name is Frederick Wandera Oseno. I live in Samia.

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

**Mr. Frederick Wandera Oseno:** I am a farmer.

**Mr. Patrick Njue:** You are seated with us this afternoon for the very reason that you wanted to make a presentation on a memorandum that you will be submitting before this Commission on the plight of the Samia Community. Could you confirm this to be the case?

**Mr. Frederick Wandera Oseno:** Yes, that is the case.

**Mr. Patrick Njue:** In brief terms, please, if you are ready, you may begin with the presentation.

**Mr. Frederick Wandera Oseno:** First of all, I would like to clarify where I come from. When I talk about Samia, Samia at the moment is a district, Location No.7, Sub-location No.27. On the lower part, there is a river and the other part borders Uganda. So, we are next to the border.

I would like to talk about fishing. For sure, we are very few and fish was our industry where we got all our resources. But there was a problem when we got Independence in 1963. We used to get fish from Lake Victoria and the processing industry was in Thika. We were denied our economic right. If the industry had been built near the lake, people would have benefited. They would have got job opportunities and shops would be running. It could have helped the people of Busia County as a whole. I was brought up and educated through fishing. But somebody made a wrong plan, because if fish is transported from Lake Victoria to Thika, some will arrive when rotten. I thank God because at the moment, Parliament has implemented a Motion that will be beneficial in very many ways. At the moment, fish is being processed at Thika. I would like to congratulate the current MP because he knows how to take care of fish which is there in plenty. The Government should build fish processing industries near the Lake and fishermen, so that it can benefit the people of Busia and Samia as a whole.

I will now move to cotton farming. Samia and Busia are known well for cotton farming. It has helped us in education. But cotton farming is done in Busia County and there is an

industry in Eldoret. The second industry is being taken to Kisumu. That deteriorated cotton farming. There were low prices and no markets for the cotton. When farmers saw all those violations, some could not continue with cotton farming. I cannot blame the past Government. If there was somebody to ensure that there is ready market and good prices of cotton, we would not be having many deaths and poverty in Samia and Busia County.

I will now go to matters pertaining education. The Samia people are educated. There are very many professors from Samia, including Prof. Ojiambo. Our main problem is that we do not have tertiary institutions and that is why, at the moment, if we want to employ 20 nurses, for example, you can get seven. There are many students with a mean grade of C Plus and above, but because of lack of money, they are just at home. When they stay at home, they become idlers. It is high time we got a tertiary college around, that can accommodate them. The teachers and lecturers to those institutions should ensure that the students who have got C plus and above get sponsorship and training. Whenever we look for nurses, they are not there because of lack of finances to take them to colleges.

We are near the lake and there are issues concerning compensation. I have witnessed eight people being attacked by the crocodiles but, up to date, there is no compensation. It affects people living near River Sio and Lake Victoria. People should get some compensation for all the deaths that have happened.

There are a lot of details in the statement which is on the record. You can look at it. But cotton farming should be revived. Also, there is need to have industries which can bring a lot of income. Also, the students who have C and C Plus should be taken to colleges and universities, so that we do not have scarcity of people who can develop our country.

I would like to add just one thing. There are very many issues, for example, tapping of the current resources. Samia was known for iron ore at Ginga Hills. Samia is very hilly and we can get the raw materials for starting a cement industry. This can also contribute to the income of the people of this particular area. If that can be set up, then we will not have a lot of problems.

Lastly, the Government should spell out Government policies which can go to the ground. If the normal citizens cannot feel those policies, they will not feel the chain of command. There is no awareness by the stakeholders so that they can be keen to see that whatever that reaches the people concerned is utilized well to help the normal citizens.

**Mr. Patrick Njue:** Thank you, Mr. Wandera for that presentation. Did you have any accompanying persons whom you would want this Commission to take cognizance of?

**Mr. Frederick Wandera Oseno:** Yes, she was around but she was feeling unwell. I do not know whether she has arrived. There was also an elder. If there is anybody from Samia who has anything to add, he is also free to do so.

**Mr. Patrick Njue:** Thank you very much for your presentation. Indeed, you came out clear on matters that affect that particular community. I am sure, wherever they may be

seated here or out there today listening to us, clearly they feel represented. Do you have any memorandum or documentation that you wanted to share formerly with us?

**Mr. Frederick Wandera Oseno:** I think what I had written is in the file.

**Mr. Patrick Njue:** Very well! Indeed, we have a statement in the file but is there no memorandum *per se*, that you would like to present.

**Mr. Frederick Wandera Oseno:** If I could get a little bit of time, I can prepare it and give it to the people concerned as long as you are here.

**Mr. Patrick Njue:** We will appreciate that. Our Commissioners may now want to ask a question or two to clarify your testimony.

**The Presiding Chair** (Commissioner Ojiambo): Thank you very much. You have spoken well about the Samia Community and the issues on agriculture, fish processing and what should be done to improve the general welfare of the people. I just want to say that we have received what you have said. I want to just ask the Commissioners if they have any questions.

**Commissioner Farah:** Fredrick, I thank you very much for coming forward to state clearly, the past marginalization that has been meted out to the Samia people. We will take note of that. We will take your memorandum and study it.

With enactment of the new Constitution, there is some light at the end of the tunnel. We shall have a devolved Government. So, in the future, although we shall take into account the evidence and ensure that, that kind of thing does not happen again--- I can see that you are educated and you are articulating yourself very well. I think the issue of the fee should be overcome because that will now be for the County of Busia to ensure that the money given for the devolved governance is utilized well. For marginalized areas, there is extra consideration. However, we have noted what you have said, particularly on the side of education and lack of any tertiary institution to absorb school leavers.

I have no other question to clarify anything. I can see Samia is a very hilly and productive area. If the resources are utilized well, there is a future for educated people like you.

Thank you.

**The Presiding Chair** (Commissioner Ojienda): Thank you, again for that testimony. I just want to assure you that, indeed, there are many Samia professors. We have senior Samia lawyers. We have Samia CEOs. Even our boss in the Commission is, indeed, a Samia. Thank you. Leader of evidence, please, call in the next witness.

**Mr. Patrick Njue:** The next witness is number six on the list.

*(Mr. Peterkins James Ogola took the oath)*

**Mr. Patrick Njue:** For record purposes, once again, do state your name, where you live and what you do for a living.

**Mr. Peterkins James Ogola:** I am Pastor Peterkins James Ogola. I hail from Busia. I was born in Budalangi but I am now settled here in Busia Municipality. I am a retired veterinary doctor. I am also a retired manager with Standard Chartered. Right now, I am a pastor at a church here in Busia called Busia Gospel Centre.

**Mr. Patrick Njue:** You confirm having recorded a statement with this Commission on what you generalized as an extra-judicial killing and a lapse in the administration of justice following the shooting of your nephew? Do you confirm that to be the case?

**Mr. Peterkins James Ogola:** Yes, I do.

**Mr. Patrick Njue:** Kindly begin your testimony, giving us the details of that very sad incident.

**Mr. Peterkins James Ogola:** It is quite a good opportunity that I have been given to stand before this honorable Commission and before the public at large. I am also standing on behalf of my family. I am sorry that a few minutes ago, my eldest brother who is a retired professor, has just left because of his state of health. He is the father of the deceased. The widow to the deceased will be joining us shortly. I do not know whether she has arrived because she was travelling all the way from Kapsabet.

However, I am concerned because the deceased was my neighbour in the municipality. This is my late nephew by the name Nicholas Wandera Ogola who was a teacher at Bulanda Primary School. He was waiting to join the Kenya School of Law because he had graduated with his LLB degree from Maisor University in India. Since he was still waiting for some finances to join the Kenya School of Law, I advised him to go back to the TSC, so that he could continue with his profession of teaching.

While doing the teaching, he got married to the young lady, Naomi and he was blessed with one son before his death. Just before that fatal day on Saturday, he came to visit me and asked me: “*Baba*, I want you to help me draw the plan for my newly bought farm.” We did that. We were all together in the house of the lay Canon Naphtali Onyango. We had a beautiful lunch there. He was very cheerful and I escorted him past my home and he went back. We had an agreement that we would meet the next day and go to his farm. But it could not be as we had planned, simply because at around 3.00 a.m. in the night, I received a telephone call from my daughter in Nairobi. She was wailing and crying on the telephone. I told her: “Mama, calm down. What is wrong?” I was with my wife in the bedroom. She also woke up and listened to the conversation. The little girl in Nairobi told me: “Baba, I have received information that my brother has been burnt in his house.” She was referring to Nicholas Wandera Ogola. Since she was wailing, I could not get the story very well. Immediately, I woke up my son Benjamin whom I instructed to rush very quickly to see what was happening with his brother. I did that because my home is about one and a half kilometres from where the deceased was staying. The deceased was staying near Bulanda Primary School in Otiato Estate. That is where he had rented a

house. While my son Benjamin was going, I decided to call Lay canon Naphtali Onyango to get me his car, so that I would also rush there. He obliged and he was kind enough to release his car with his wife and his son who was driving. So, we joined them with my wife. Just before we left, Benjamin arrived with a report that it was true that his brother Nicholas' house was set ablaze, but he could not get Nicholas. So, we drove up to the residence of Nicholas. We found a state of confusion. The neighbours there were all in confusion.

The house of Nicholas was full of ashes inside. There were debris of things that had got burnt. There was also a lot of water poured inside which was an indication that the neighbours were struggling to put off the fire. We could not inquire so much, but the neighbour who is the landlord, Mr. John Otiato briefly informed us what had happened. So, we decided to rush to Busia District Hospital because we had been given information that Nicholas was rushed to Busia District Hospital. We reached Busia District Hospital. We entered into Room No.4, that is the Examination Room only to find my son lying on the examination bed, but he was no more. What caused his death was that we were informed; Nicholas' whole estate was robbed at night by some robbers. They locked the door of Nicholas from outside. They also tried to do the same with the other neighbours but Nicholas was unable to open his door. Instead, they decided to break the sitting room window, poured some flammable liquid inside the sitting room and ignited the room. In this struggle, Nicholas realized that he was going to burn. Being a strong young man, in his bedroom he decided to escape through the ceiling board. He struggled, hit the iron sheet and escaped through the roof. That was sheer luck. While he was doing that, the police had already received the alarm and the cry of the neighbours. So, the police arrived and found Nicholas still on top of his roof. The neighbours informed us that they heard Nicholas identifying himself, crying that: "Please, do not shoot me because I am the owner of the house and I am a teacher at Bulanda Primary School." I believe he did that because he had already noted that the police officers were the ones who were staying at the Bulanda AP Patrol base. He knew them and that is why I believe, he was identifying himself. While he was doing that, crying on top of the roof, the neighbours heard a bullet shot. That gun shot hit my son in the left leg, disabling him and he fell from the roof. But he was still pleading with the police saying: "Please, do not kill me." Instead, the police went ahead and shot him right in the pelvis. By that time, the police vehicle had also arrived and they carried the young man to the hospital while he was still speaking. I am told he was still asking them; "why have you killed me?" When they reached the hospital, he was pronounced dead. All we could do was to carry the young man's body to the morgue at Busia District Hospital. It was now a police case.

We, as a family, were at pains. I was at pains on how I would inform my young daughter-in-law who had only been married to my son for about two or three years. She was still a young girl of about 32 years. Nicholas was only 37 years. However, we gathered the strength. I called my daughter-in-law and she traveled from Kapsabet where she was working as a nurse.

She came all the way from Kapsabet, but we had not broken the news to her. We only asked her to come. She was met at the bus stop. She was brought to the mortuary. She was in pain when she saw the husband. However, we started making arrangements on

what we could do. I had to hire the services of a pathologist. I sought the services of the then provincial pathologist, Nyanza and Western, Dr. Margaret Oduor. She did the post mortem. The post mortem report revealed that he died due to the rupture of the big arteries in the body as a result of gunshots. It revealed heavy hemorrhage with an indication that, however, much we would have tried to save him, he would not have lived.

At this juncture, I want to state that we were called at the police station after the burial session. My daughter-in-law and I recorded a statement with the police. It had taken a bit of time for police to record a statement with us. An inquest file was done. The administration police officer that did all this was found to have a case to answer. However, it is now saddening to us, as a family, that after the inquest and after one session of appearing on trial of this AP, we were told that the file was taken back to the Attorney-General's office; an indication that possibly there is no case. We have tried to follow up, but any time I go to the courts, any time I am seen at the courts by the former prosecution officer, I am aggravated by being asked: "*Mzee umetembea namna gani?*" So, I wonder: "Here I have lost a son instead of this officer empathizing with me he is tormenting me by asking me: "*Mzee, umetembea namna gani?*"

That is an indication that he wants me to give him something. As a pastor, I am above bribery. That is why I decided that this case should come to this hon. Commission, so that as the saying goes, "Let the truth come out." Let the truth be told to the family so that we know the fate of this AP that did this. While the family is languishing in poverty; my daughter-in-law is now having two little children. How will these two young boys be taken care of? The old man is now a blind man. How will he be taken care of because he is a widower and Nicholas was the only breadwinner in that home? So, it becomes very disheartening to see that where I would be able to get the truth, we are not being assisted to get the truth. Where we can get justice, we do not get it. We all know justice delayed is justice denied. The family has been denied justice. We have waited for more than three and half years. This is a long time to wait for justice. No solution has been found and now the family is being taken for a ride. That is why it is now our prayer that if there is reconciliation, let it be genuine. We, as a Christian family, know it is not bad to reconcile with the arbitrators. This was a Government officer. It is a pity that the same Government is now trying to cover up for its officer. So, if we have to reconcile then let the Government apologize to the family and also compensate the family for this loss. It is not enough just to compensate because a life is already gone. But it is worthwhile just to say *pole* and wipe the tears of this young widow.

This is one study case. However, I would like to say that it is not only Ogola's family that is experiencing this kind of situation. Most Kenyans are experiencing this kind of situation because of trigger-happy police officers.

I want to respect the role that the police officers play. I appreciate them so much, but I do not understand why a police officer should just shoot to kill innocent Kenyans. I want to agree with the lady who was here first, it is true a young man in Malava was shot. He is dead! He died yesterday. He was shot by a police officer. The statement recorded states that he died "by bad luck". How can it be bad luck and this is a trained police officer who

went to college? Was he trained to commit such a silly mistake? I believe that police officers should be trained on how to handle a gun wisely.

I must state at this juncture that at times I get perplexed because when I was young I used to see a police man not walking alone, particularly when he was carrying a firearm. I used to see two or three police officers accompanying each other. But in our present Kenya, you will find a police officer carrying a firearm and walking all alone. This is how this kind of situation occurs.

So, in short, this is the loss that we experienced and to curb such a situation in the country, it is my prayer that this Commission should be able to recommend to the Government that let it retrain its officers, particularly on the manner of handling the firearms. They should not misuse their firearms. It is also my prayer that let this Commission try to intervene and ask on behalf of the Ogola's family, the Government to tell us the truth of what actually happened. The officer that did this is called Cyrus Njogu who was an administration police officer. I am told he has now been transferred out of this place. He is enjoying his bread with his family while we are agonizing because of that kind of careless loss.

We are ready to forgive Njogu, but let there be an instrument to bring us together. Let also Njogu with his employer come to the family and say *pole*. That is all I can state. Thank you and may God bless you.

**Mr. Patrick Njue:** Mr. Ogola, I empathize with you and your entire family for the tragic loss of Nicholas. The Commissioners will ask you questions.

**The Presiding Chair** (Commissioner Ojienda): Mr. Ogola, I want to thank you for your testimony. From the depth of my heart, we share in the pain that your family went through. I know it is, especially difficult for the widow and the two children who were left without a father and husband.

I want to also just note that you have offered a lot of information on reform issues touching on the police department and we find that very useful. I just want to ask my fellow commissioners to ask you questions for clarification.

**Commissioner Farah:** Mr. Ogola, I have no questions because your evidence was very clear. This was really an extra-judicial killing. For the period that this Commission has been investigating, it has come across many cases like this, but yours was actually worse than the others because in October, 2007 was not immediately after elections. It was well before the elections. Worse still, what is disheartening is that there is a person on top of a roof pleading for mercy. He is not only shot at once, but twice. So, we empathize with you. Rest assured that this case will go into our recommendations. Thank you.

**Commissioner Dinka:** Mr. Ogola, I have no questions also. I just want to take this opportunity to express to you my empathy and the fact that all of us here share in your pain and sense of loss. I would like also at the same time to salute you for your readiness to forgive. If an apology was offered you are ready to take that apology. What you are looking for is some assistance for the widow and the children. I thank you very much. As

my colleague said, the discussion we have had with you this morning will certainly be part of our report and recommendations. Thank you very much.

**Commissioner Shava:** Mr. Ogola, I would like to recognize and salute your fortitude in coming here today. I can see that this is not easy for you to discuss and yet you have led us through the story in a way that we can all understand what happened and how it has affected each family member. This young man was obviously very close to you. Your statement says that he was your nephew, but consistently you refer to him as your son. So, we can see the kind pain that you feel.

I echo the sentiments of my fellow Commissioner in saying that you are an example to us all in Kenya because the end result of our work, is we hope, reconciliation amongst Kenyans. It is not easy, but clearly you live what you preach. We recognize that reconciliation cannot come about before we face the cold hard facts and before justice is done and that is the route. So, we just thank you. In coming here today, you have demonstrated what it is that our work is all about and we wish you and your family courage and fortitude to go on and, indeed, we will be making strong recommendations about your case and about the issues that you raised. Thank you.

**Mr. Peterkins James Ogola:** Allow me to state one thing that it is important as a family to team up with the TJRC in forgiving and in reconciling with the perpetrator. It is not the wish that the perpetrator should pass through the pain that we have passed through. So, let Mr. Njogu and his employer know very well that the family's heart is open to forgive. We are ready to sit and reconcile because you never know what life has in store for him and for us. You never know the son of Njogu might become a DC or a prominent person in this place and we will meet with him. This is the main purpose of reconciliation. Friendship comes from out of the pain. So, let the family of Njogu be encouraged. If they are ready to receive this token and the employer which is the Government of Kenya and come out and face our family we are very ready. Please, give that information to the parties concerned. God bless you.

**The Presiding Chair** (Commissioner Ojienda): Before we finish, I want to tell you that the TJRC exists for a number of things.

The report that shall be written at the end of the work of this Commission will recommend, *inter alia*, further investigations in certain matters that are not here. Two, prosecution of those matters that are clear. Three, we can recommend some forms of reparations but we, of course, exist to ensure that we bring together the people of this country, so that reconciliation is key to the functions that we perform. I want to assure you that this is a case that requires further information from the court file following an inquest that was done and the finding by the magistrate. I do not know if you recall before which court the inquest was and which magistrate was involved.

**Mr. Peterkins Ogola:** It was in Court No.3 but the inquest was in the Chambers.

**The Presiding Chair** (Commissioner Ojienda): Do you have the case file number, that is either the police file number or the court file number?

**Mr. Peterkins Ogola:** My efforts to get them have been thwarted; any time I go to the court, I am asked how I have gone there. However, we are not losing heart and I will still make efforts. At the same time I must also mention that at no time was I ever given a court summons in writing other than receiving only telephone calls from the investigating officer.

**The Presiding Chair** (Commissioner Ojienda): What is the name of the investigating officer and is he still at the station?

**Mr. Peterkins Ogola:** We had Mr. Morris Chemasis who was later transferred to Kisumu and then he left it to a Mr. Luvembe who was quite kind and helpful. Later on when it went for trial, that was after the inquest, no further information was forthcoming. That was the stage at which I was being asked: “*Mzee umetembea hapa namna gani?*”

**The Presiding Chair** (Commissioner Ojienda): Where was Cyrus Njogu transferred to?

**Mr. Peterkins Ogola:** I am not aware. The employer should be able to give that information.

**The Presiding Chair** (Commissioner Ojienda): You said he was just an Administration Policeman (AP) at Busia police station in 2007 October?

**Mr. Peterkins Ogola:** Yes. He was an AP in Bulanda Patrol Base.

**The Presiding Chair** (Commissioner Ojienda): Thank you. We will be able to find the records. I want to thank you, Peterkins, for your testimony and I am getting leads to further investigations, so that we can get all the information necessary to trace Cyrus Njogu. Would you want to meet with Cyrus Njogu?

**Mr. Peterkins Ogola:** Of course. I would like even to see how he looks like, even shake his hand and even say something in his language, but it will also take the hand of God for me to bring him together with the young little widow and my eldest brother, who is the father. It is going to be a process but I will be very glad if you make that effort to bring us together. Let also the employer come out and tell us why he is hiding Njogu. Thank you.

**The Presiding Chair** (Commissioner Ojienda): Thank you very much. I am sure you, as a pastor, have the hand of God and I am sure you will be able to bring them together. Yes, Leader of Evidence.

**Mr. Patrick Njue:** Our next witness, hon. Commissioners, is No.6 on the list and he is the last witness we have lined up for the day.

*(Mr. William Ojiambo took the oath)*

**Mr. Patrick Njue:** Good afternoon, Sir.

**Mr. William Ojiambo:** I am fine.

**Mr. Patrick Njue:** Please, state your full names, where you live and what you are doing at the moment for a living.

**Mr. William Ojiambo:** I cannot hear properly. My names are William Ojiambo Hanori Ading’o. I live in Busia Town; I am a resident of Kenya. I have lived here. My grandfather lived here. He was the founder of the market behind there. It was s a land of our great grandfathers. I was born here in 1936. My parents and my great grandparents are buried here. They all died here. We are supposed to have a district in the area and my main aim of coming here is because of the promise of having a district in this area. Before we had a district called Elgon Nyanza. We used to walk to the headquarters and it was a bit hard. We also had a good interaction with the Banyalas. We should have the district headquarters near us. I was a very good farmer because my father was a prominent businessman and our family was an average one. It was an extended family. We had our land. After the Government resolved that we would be given our own district called Busia, they took our land. It was for us and our neighbours. Before that, we had two tribes here, that was the Tesos and the Bakhayos. Though we made this place to become a district in conjunction with the Teso and Bakhayo, the land that belonged to them was taken to be used as Busia District. At the time they came to take our land, we were resettled. They said that if we gave them a good place, they could start with constructing the county council. It was also built here and so all the offices took our land. At that time we had some elders who were told to move away and they would be compensated, but I never saw any payment. The leaders from Bungoma came here; also the ones who came to construct the county council came from the same area.

The county council was to cater for the payment to these elders. Some people were given Kshs20 or Kshs50 or anything that you could accept. This district came here in 1963 April and we moved. In 1969, they pushed us again and we never knew how they were to compensate us. Around two or three people were called to Okwaro’s and Maja’s office and the decision was taken. They could come with Kshs50 or Kshs100. That money had no value. The payments were meager, but we were in need then. In 1967 they pushed us again from where the Customs and Immigration office is and we moved. They also said that they would pay us. My mum, Maria Odingi, was always going to them to get money, and she was always promised that she would be paid. It reached a time when my parents died and then I came out to ask for compensation. Before they died, we were displaced to another area called “the anonymous land” on the boundary between Kenya and Uganda. The mode of resettlement was bad since we were not given any notice. We were just told that on that day we would move from there. That action hurt me and my family very much since we were an extended family. So, we went to different places; some went to Marachi and others to Sofia.

The third time, all of the people in Marachi were pushed away. It came to be known as “no man’s land”. We suffered a lot. Later people came from different areas and took our land in this town, which was 53 acres. There is a letter which I wrote and which I have here. I can show it to you and you will see how we were being cheated at that time by the then government. Personally, I was affected since I could not educate my children. I could also not educate my brother, who was in secondary school. This led to children engaging in business across the border in order to earn a living; our land had been taken by the government. My young brother was shot dead. He was carrying a packet of salt. I went to court, but the magistrate did not hear the case; later it was dropped from the list of pending cases. I have all the documentation to that effect.

What amused us most was when these people chased us out of this place. There is a piece of land behind here, which runs up to the river which is called “no man’s land”. Sometimes we people who do not know English ask about the meaning of “no man’s land”. We were told that, that was land which has got no owner, yet it was for William Ojiambo. How come then it was known as “no man’s Land”? That is something which amused me very much.

I have tried for many years to resolve this issue. I was called to the Attorney-General’s office and they have the records from 1999. I heard about the TJRC and I had to look for you, and due to God’s grace I found you; I think you can help me. The majority of us who have such problems have now come to you. This is because the Government cannot help us. How can you accuse the Government? They will finish you. That is our fear until today. That is why I am bringing my grievances to you. It is more than 20 years since these injustices happened. Many of my family members have been killed. I have tried to cover up these things so that I get a piece of land and we progress in life. We can engage in cultivation of food. There are many issues. I wrote them down but I cannot read them. I have some reading glasses here but they cannot work for me. I have so many things that I can say which are written here, but I do not know if you can give me time.

**The Presiding Chair** (Commissioner Ojienda): If you wrote the memorandum, you can present it to us and then we will look at it.

**Mr. William Ojiambo:** I have it here. It is something very big. They took land from us as if we are not human beings. There was a time the DC, Mr. Chacha, had a magazine. I used to work in his office and he told me that all people should move. He had a chain of bullets which he wore. He had so many soldiers who prevented us from going. So, there was no way we could move. He told us to move because he had a gun. We moved yet we did not know where we were going. I had wives and children. Where could I have taken them? Nowhere. Where was I to spend the nights? Everybody was to fend for his family first and then other issues were to come later. For all those years we really suffered. I do not know why this was happening.

After five years we were called to the DC’s office. Everybody was called alone and told that he would be given some money. Before you were given Kshs5,000 you had to bring a title deed. Sometimes they would lend me some money. They gave me Kshs5,000 and then reduced it. Our children remained there. We started suffering in 1987 when I was a big person. As you can see, I am really sick and most of my family members have died. It is very bad for you to displace somebody from his land. You should agree on a willing seller and buyer basis, then pay the person and tell him to move away. That is what happened here.

I was born here. I am 75 years old today. I was chased away from here; where will I and my family go? Is that how the Government works? They just go somewhere and do their own things. I never went to school. I had so many daughters and most of them are married, and they can educate their siblings. Sometimes some of them cannot complete their university education due to lack of money. I request you to assist me. I have one son at the University of Nairobi, but my sons-in-law are about to give up. They tell me that if I want them to pay for him then they are tired of my daughters. We have really suffered.

At one time I was in the Opposition. We should be compensated for our land, lives that were lost and also our property. If they took our land, they should pay us good money. They should carry out surveys to know the cost of our land. We have suffered a lot. As I have told you, my brother was shot in town here because he was carrying a packet of salt, which retailed at Kshs2 at that time. So, please help us. I have a letter here which I want to give you.

**Mr. Patrick Njue:** Thank you, Mzee Ojiambo for sharing with us your testimony. I notice that there is a gentleman on your right. Perhaps, you can introduce him to us.

**Mr. William Ojiambo:** I can introduce him. Though I cannot see well, he is my grandson. He is also one of those who were displaced. He can say what he has if you allow him. He is Pascal Wandera Pade. He used to own Land No.1810 and he is from Bukhayo Mundika.

**Mr. Pascal Wandera:** Thank you very much, Commissioners. I want to put some two or three things across. The old man talked about so many things. We have really suffered. First, he started with the land that was taken from us after Kenya gained Independence in 1963. Sincerely speaking, it was the Government which took our land. There was something fishy which was happening because they never involved the families of the people living there. They never brought people together, so that the people could know how much land they were taking. Some of us were quite young and since our parents were illiterate, those people exploited them. So, our parents moved away. As the old man said, some people were given money by the Government, but we did not see it.

We want to know if the Government can tell us why our land was taken. You can help us to investigate why our land was taken, and if there was any compensation. Secondly, there was the issue of the “no man’s land”, as the old man has said. When there were clashes between Kenya and Uganda because of a boundary dispute, there was tension in the area that is called the “no man’s land”. So, some people were told that Sofia and Marachi would be taken. At the time the land was being taken, we did not see the order and they did not offer us an alternative place. They told us to move away because they were creating a “no man’s land”. They did that and we are now suffering.

As you have been told by the old man, DC Chacha gave an order that everybody had to move away from this place due to an emergency. So, we had to move. They told us that they were taking our land, and we would be compensated. We settled somewhere, and after five years people were called to offices secretly to receive an amount of money. When there, you did not ask how much the money was, or the value of your land. You were given what was there and then you left. That was what showed that it was compensation. We are not satisfied with this mode of compensation because we had not ascertained the value of our properties. That issue has made us suffer a lot, and most of our children have not gone to school. We are really suffering and trying to eke out a living.

Something that may be amusing is that we had a huge tract of land of 8.2 hectares, but we were given compensation for the equivalent of 0.2 hectares. We were not paid for 6 hectares. Somebody who had 3.6 hectares was given only Kshs30,000, and another one

with a quarter of an acre was given Kshs200,000 to Kshs400,000. What criteria did they use for compensating us? There was something fishy which was happening in that office; I think they paid the literate ones better than the illiterate ones. That is what I am asking you, as the TJRC, to help us. Also, I am requesting you to help the people of Sofia and Marachi.

**Mr. William Ojiambo:** I have something to say. Since we are talking of land, we had our rental houses on this land. We have not mentioned the houses and other properties. We had rental houses here in town because I was a businessperson. The pain that we underwent was because they brought other people to cultivate our land. So, everything that was used to build Busia Town, like bricks, sand and trees, came from that land. I feel bad when I pass through this place. Tell the Government to stop the people who are working on the “no man’s land”. I am really suffering and the Government should stop that activity; one day people will use machetes to cut each other. Thank you very much.

**Mr. Pascal Wandera:** The old man has reminded me of something about what happened in the “no man’s land”; as we are talking right now powerful people are building there, yet that is a “no man’s land. How come that we were pushed out of that land and others were brought in? Thank you very much.

**Mr. Patrick Njue:** Mr. Ojiambo, you have referred to a document or a memorandum that you have with you. Do you want to share your documents with this Commission?

**Mr. William Ojiambo:** I want to give these ones to the Commission to add onto what I said. This documents show the properties that were taken and their value. I want to give you the green light to know what happened, but I want the Government to stop the people who are misusing our land. If the Government wanted it to remain a “no man’s land”, then let it remain vacant. Other people should not be on this land, yet we were chased away from there.

**Mr. Patrick Njue:** Mr. Ojiambo has presented a set of documents, a memorandum detailing his presentation on the forceful eviction and accompanying documents to support the memorandum. Could the same be admitted as part of the records of this Commission?

**The Presiding Chair** (Commissioner Ojienda): Thank you. They are so admitted.

**Mr. Patrick Njue:** Mr. Ojiambo, I would just say that it is your wish that this Commission will take care of your plight. I want to say in Swahili, “*Umegonga ndi*”. Thank you for coming.

**The Presiding Chair** (Commissioner Ojienda): Thank you, Leader of Evidence. Commissioners, do you have any questions?

**Commissioner Farah:** Mr. Ojiambo, on the piece of land that was taken by the Government, your share was 53 acres. Is that right?

**Mr. William Ojiambo:** In total, before I distributed it to my children, it was 53 acres.

**Commissioner Farah:** What was the reason for the Government taking your land apart from you being close to a porous border?

**Mr. William Ojiambo:** We were not given the reason, but at that time the boundary was fixed. We were born and brought up there; since I was born we had never fought with anybody from Uganda. Also people from Uganda could cultivate our land.

**Commissioner Farah:** You have also said that five years later, the Government valued your land at Kshs136,850. Is that correct?

**Mr. William Ojiambo:** Yes.

**Commissioner Farah:** If you divide 53 acres by Kshs136,850, that comes to Kshs2,582 per acre. What was the value of your land at that time per acre?

**Mr. William Ojiambo:** What we are saying is that the Kshs166,000 was not for all the land. In the town center, you cannot get an acre for Kshs100; it is more than Kshs2,000 per plot. Leave alone an acre, a plot now is Kshs200,000. An acre now can cost Kshs1.5 million.

**Commissioner Farah:** How much was an acre then?

**Mr. William Ojiambo:** At that time, an acre was selling between Kshs120,000 and Kshs150,000 in the rural part but in town, we were selling an acre for Kshs200,000.

**Commissioner Farah:** In your statement, you said that you were paid a little amount of money by the Government twice. How much was it?

**Mr. William Ojiambo:** We have some forms here which I had brought as evidence. I had the papers. But there was a time some of them got lost. There was a time I was carrying some documents to the Anti-Corruption Commission and some people attacked me. They ran away with all the documents that I had in 2003.

**Commissioner Farah:** You said in your statement that the Government paid you a little bit of money. Surely you can remember how much you were paid.

**Mr. William Ojiambo:** I cannot remember how much it was but they gave me some money. I cannot remember how much money they gave me because it was a long time ago.

**Commissioner Farah:** Were you paid the balance later?

**Mr. William Ojiambo:** No.

**Commissioner Farah:** Still, it is a murky case so I empathize with you. We have received your memorandum and we will study it. Thank you very much.

**Mr. William Ojiambo:** That was not payment. If you are selling your property, can somebody pay you after five years? Is that what you call payment?

**The Presiding Chair** (Commissioner Ojienda): I am in a very interesting position because I have been the Chair of the Land Acquisition Compensation Tribunal. Usually when notices are given to individuals for acquisition like the notice I have seen in the documents you have given us, those whose land is intended to be acquired are required to file objections and to come to the tribunal that I chair then we make an assessment of the value of the land based on a valuation by that person. I think that is why my colleague is asking you the value of the land. Your acquisition occurred before I became the Chair for clarity's sake and I do not know whether you objected. I can see a letter from Mwanari & Company Advocates that was seeking payment dated 30<sup>th</sup> November, 1990. Maybe, you can find out from the advocate and follow in detail what was paid per acre during that time because there is a claim. If the claim has not been paid, you can follow up and get that payment. I think it is a valid case.

It is unfortunate that other people have acquired land. When Government acquires land under the Land Acquisition Act, it is not allowed in law to have that land allocated to someone else because it is acquired for use as provided for in the Gazette notice. The land gazetted to be acquired for Sofia and Warachi estates was for Government and not for private allocation. So, there, again, you have a case. No person can get a title to that land. I am sure your lawyer should be able to deal with this or I hope he knows that, that is the way to go.

I want to thank you once again and assure you that we have noted this. We will take the documents and we will make appropriate recommendations on this account. I am sure he has all these copies. Is that right?

**Mr. William Ojiambo:** No I have not given him anything because I do not have any money to hire a lawyer. It is painful to take my *shamba* and give it to some other people while I am struggling with no place to farm. Why did they take my *shamba*? The *shamba* should be given back to us because it is there and we have been with the people of Uganda and we have no conflict with them. I do not know why we were removed from that place.

**The Presiding Chair** (Commissioner Ojienda): We will do further investigations and make appropriate recommendations.

We have come to the end of today's proceedings. Before I recognize those who testified, I want to note that many witnesses would have wanted to have been heard today but because of the other engagements of the Commission for the afternoon, our sessions will proceed on Monday and Tuesday. We will hear all those who would want to testify before the Commission because we understand that this is the only opportunity that the residents of Busia have to speak to the Commission, be part of the history of this country and to be part of the report in which we shall make specific recommendations.

I want to recognize a group known as the Busia Township Community and we know that they want to make a presentation. I know the role they play in this town and I just want them to stand up so that they can be seen. You can see them at the front and at the back. I want to reassure you that we will hear you. You will present your memorandum on Monday and we will hear all of you because we know how important your issues are.

I want to recognize the witnesses who have testified today. Oduya Oprong who still lives with a bullet in his head, Mary Emadawo who struck a blow for women and children, a leader, John Keli Okila who comes from Emuhaya and who has been marginalized in their community of Maseno; Fredrick Wandera, Pastor Peter James Ogolla and William Ojiambo who is still seated.

We have come to the end of the session and I want to thank all of you who found time to come to this session.

**Mr. Patrick Njue:** Presiding Chair, with your indulgence there are additional documents we have received on behalf of the third witness today who presented a memo surrounding the Maseno issue and the Luhyia community. Could the same be admitted for purposes of record?

**The Presiding Chair** (Commissioner Ojienda): It is so ordered.

*(The Commission adjourned at 2.00 p.m.)*