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Public Hearing Transcripts - Western - Kakamega - RTJRC28.06 (Kakamega County Municipal Hall)

Truth, Justice, and Reconciliation Commission

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION HELD ON TUESDAY, 28TH
JUNE, 2011 AT KAKAMEGA COUNTY MUNICIPAL HALL**

PRESENT

Berhanu Dinka	-	The Presiding Chair, Ethiopia
Ronald Slye	-	Commissioner, USA
Tom Ojienda	-	Commissioner, Kenya
Ahmed Sheikh Farah	-	Commissioner, Kenya
Patrick Njue	-	Leader of Evidence
Emily Kimani	-	Leader of Evidence

(The Commission commenced at 10.05 a.m.)

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

The Presiding Chair (Commissioner Dinka): Ladies and gentlemen, as you all know, the Truth, Justice and Reconciliation Commission provides a forum where everyone can come in dignity and narrate his or her own story of the injustices suffered or suffered by others known to him/her in the past. Such a forum demands that everyone listening or attending the session be tolerant. You may hear something you do not agree with, you may also hear something you do not like but all the same, I appeal to you to be respectful to the witness and be attentive and no disturbances should be allowed in the hall.

People who are taking still photographs in particular should do so from where they are sitting without using flash lights. There should be no unnecessary movement in the hall so that the witness and all of us will not be distracted.

The leader of evidence will ask questions after the witness has testified and once the leader of evidence completes his questioning, the Commissioners will ask some questions to fill the gaps in information so that they will be clear in their minds as to what they have heard. When the witness comes, the clerk of the Commission will administer an oath and it is after the oath that the testimony begins.

Now I would like to call on the leader of evidence to call his first witness and the clerk to administer the oath. Before you swear the witness, please switch off your mobile phones.

(Mr. Samson Fweza Chietonga took the oath)

Mr. Patrick Njue: Good morning Sir. Commissioners, this is witness 10A. Kindly for the record, state your names, where you live and what you do for a living.

Mr. Samson Fweza Chietonga: My name is Samson Fweza and I do not work. I just stay at home in Ishiru.

Mr. Patrick Njue: *Mzee*, you are seated with us this morning following a statement which you recorded with the Commission on matters to do with the Ishiru Settlement Scheme. Is that the case?

Mr. Samson Fweza Chietonga: I want to explain all that I wrote about Ishiru. We were moved from Maragoli to Ishiru and we now live in Ishiru. We were told that we would be given seven acres but we were not given the seven acres. We were told that we would be given two acres if we had sons. We were moved and within minutes, tractors were already destroying our property. We wondered how we would build in a few days yet we needed time to move our property and family to the new place. Most of our property was destroyed. We wondered what we would do but we persevered. We tried to ask for help but we have not received any help. Any time we ask for help, we are told to wait and we have been waiting all this time. We are wondering how long we will wait. If a new Government comes to place, we will be moved to a different place yet we are law abiding citizens who are subjected to a lot of harassment. Most of the old men we migrated with died and I am the only one remaining. Our cows died and it is a problem getting water. If you ever visit where we live and you see the kind of water we use, you will be surprised.

We were told that we would be given title deeds but all this time we have not received them since 1986. We are still persevering and asking for assistance and yet, this assistance never comes through. As I am seated here, I am worried. I am asking the Commission to help us so that we can get title deeds and we will praise God for you if you help us. We are law-abiding and we do not want to argue with the Government. We have written letters and we have not received any help and we are still in problems. All these things are the ones that subject us to a lot of problems. When you want to circumcise your son, you have to take him through the rites of the Tiriki and yet we are Maragoli. We are threatened when we refuse to take our children for the Tiriki circumcision rites. We receive letters telling us that we have to abide by the rules, regulations and rituals of the Tiriki.

Old men have died and cows have also died and I am the only one remaining. When I sit alone, I wonder who to talk to because I am all alone. These young boys cannot talk to me; my age mates have died. A mature person is capable of listening to a person like me and I believe that you can help us and you need to help us. You help us as Christians and as part of Government. We were not properly shown the land that we were given. We just searched for it. We wondered how come we were looking for the land ourselves without being shown by the officers. Getting firewood is a problem and the land is full of stones and rocks. If I take you there, you will see for yourselves. I have children who have wives and yet they have no place to cultivate so as to feed their families. These are the problems that we have.

Mr. Patrick Njue: Mr. Fweza, I will now proceed to ask you some questions just to clarify your testimony after which our Commissioners will proceed to do the same before you step down.

When is it that this directive to move was given or when did you start moving from Maragoli to Ishiru?

Mr. Samson Fweza Chietonga: We moved in 1986. We moved on different dates, some people moved in 1985 and others in 1986. We just followed one another.

Mr. Patrick Njue: Under whose directive were the orders to move given?

Mr. Samson Fweza Chietonga: The people who gave the orders to move were Mr. Dave Mwangi who was the DC and Mr. Otoyo who was the DO.

Mr. Patrick Njue: Did they tell you the reasons for asking you to move or for issuing the directives?

Mr. Samson Fweza Chietonga: They told us that our land was supposed to be surrendered to the Government to put up public utilities. They wanted to bring development and so we were supposed to move from those pieces of land to Ishiru where we were promised seven acres and yet, when we got there, we got into problems.

Mr. Patrick Njue: How many families from Maragoli were affected and how many are presently occupying Ishiru?

Mr. Samson Fweza Chietonga: We were about 28 families that were moved from Mbale to Ishiru and those are the families that live in Ishiru.

Mr. Patrick Njue: You have said that you were subsequently told that you would be given seven acres in your new place.

Mr. Samson Fweza Chietonga: We were told that we would be given seven acres.

Mr. Patrick Njue: What was the size of the land that you were occupying in Maragoli before you moved?

Mr. Samson Fweza Chietonga: My land in Mbale was one acre.

Mr. Patrick Njue: What is the size of the present land?

Mr. Samson Fweza Chietonga: The land I now have in Ishiru is one and a half acres.

Mr. Patrick Njue: What is the situation of the amenities in Ishiru in terms of health facilities and all the other amenities?

Mr. Samson Fweza Chietonga: We do not have any amenities in Ishiru. George Khaniri who is the Member of Parliament is the only one who built a school around there but we do not have a hospital or source of water. If you come to that place, you will run away from there. If you see the water we use, you will take off very fast. The land is small and I have now divided it between my sons because they have their families and they have to take care of them. They have to feed their families and so I have divided the piece of land. We now have very small parcels of land. That is why we are asking the Government to help us so that we can live like other people and we will be very happy.

Mr. Patrick Njue: You also talked of property that was destroyed. What sort of property was destroyed?

Mr. Samson Fweza Chietonga: My trees, coffee, banana plantations and household goods were destroyed. I could not carry the household goods because we left in a hurry. We could not even uproot our coffee and so we simply left our property in Maragoli.

Mr. Patrick Njue: Is it that you were not given time to move? Had you been given any form of notice?

Mr. Samson Fweza Chietonga: We were told that we would be given land that is good and nice, but when we got there the land was not the way we were told it would be. They did not even take us in their vehicles to that place to be shown the land. We were just told, “this is your land, erect a beacon and this is where you should live”. We spent nights in the forest like animals and the people who lived around there wondered what kind of people we were. We were law abiding and did not want to cause problems.

Mr. Patrick Njue: You have also talked of having some sort of assistance. Clarify for the record what assistance you had sought and from whom, towards addressing the problems that you faced at Ishiru.

Mr. Samson Fweza Chietonga: It is the Government that told us that they were moving us to a place where they would provide us with a school, church, cattle dip and land and we agreed. It is the Government that told us that the land that they were giving us was good and that we would be given title deeds without any problems. We said that, that was fine. We have not got anything though we asked the Government, but it did not help us. We do not want to fight and cause problems like the people of the Mara, but we are wondering where we will go if we are moved. What we want is for the Government to help us because it is the Government that moved us from our place to Ishiru. If they tell me to move back to where I came from I will go.

Mr. Patrick Njue: In what Government offices have you asked for assistance?

Mr. Samson Fweza Chietonga: We have gone to the office of the Chief, DO and the DC. We have visited all these offices asking for help because they are the ones who moved us, but they simply take us round and round and we do not know how long we will wait. Those are the people who are making us suffer because they promised that they

would talk to the Ministry of Lands to give us some good land, but they never act. We simply persevere.

Mr. Patrick Njue: In the land that you previously occupied before moving to Ishiru, did you have the title documents to that land?

Mr. Samson Fweza Chietonga: I had a title deed for my land, but they took it and they said that they were going to give us new title deeds for the piece of land that they were going to give us. My title deed is in the hands of the Government.

Mr. Patrick Njue: Reading from your expectations, I have been able to hear you saying that if you were to get title deeds and social amenities that are lacking which basically are schools, health facilities and clean water, then you would be a comfortable man. Would I be right in my assumption?

Mr. Samson Fweza Chietonga: It is better for me to move from Ishiru because it is not a good place. It is not the kind of place I would like to live in. Even if you board a vehicle now to that place, you will see for yourselves what I am talking about.

Mr. Patrick Njue: Thank you for your testimony. I will now hand you over to our Commissioners who may want to clarify a thing or two from you.

The Presiding Chair (Commissioner Dinka): Thank you, Leader of Evidence.

Commissioner Ojienda: Thank you *Mzee* for your testimony. It appears that you have gone through a lot of pain having moved from your previous land to Ishiru where you are settled at the moment. I wanted you to clarify a few points. Your land was acquired for the construction of the Mbale District headquarters, is that right?

Mr. Samson Fweza Chietonga: Yes.

Commissioner Ojienda: Before the land was acquired, were you given notice?

Mr. Samson Fweza Chietonga: They did not give me any notice. They simply told me that I will be moved to another place. They told us to move by force.

Commissioner Ojienda: What was the value of your land at that time?

Mr. Samson Fweza Chietonga: My land was worth about Kshs.500,000.

Commissioner Ojienda: Were you given any compensation?

Mr. Samson Fweza Chietonga: They never gave me anything for my land.

Commissioner Ojienda: You moved to Ishiru without any option for compensation?

Mr. Samson Fweza Chietonga: We moved without anything. We did not even have a vehicle to move from Mbale to that place. We just walked from Mbale to Ishiru.

Commissioner Ojienda: Do you have a title for the land in Ishiru?

Mr. Samson Fweza Chietonga: We have no title deeds though we have been asking and we are still asking for the title deeds.

Commissioner Ojienda: Do you prefer to get the title deed or to get compensation so that you look for land elsewhere?

Mr. Samson Fweza Chietonga: I think that if I am given money to move from Ishiru, I will be happy because we are not living well in Ishiru. You cannot even do business in Ishiru. If you start a business, people ask you what you are doing and that this is not our home. It is better for me to move from that place and buy land elsewhere and if the Government bought a piece of land for me elsewhere, I would go.

Commissioner Ojienda: I see that you also have a problem because the Tirikis want you to live the way they do and you are a Maragoli.

Mr. Samson Fweza Chietonga: Yes.

Commissioner Ojienda: You said that you have many sons that you have divided the one acre to.

Mr. Samson Fweza Chietonga: I have five sons and I have divided that piece of land to them. One of them is still in school, but I have set aside a small piece of land for him. Right now I have nothing. The situation is terrible and the Government should help us. I even do not have anything to say.

Commissioner Ojienda: I share your pain and I know the kind of situation you are going through. We will see to it that we do our best. Thank you very much.

Commissioner Slye: Thank you Samson. You said that you have five sons, do you have any other children?

Mr. Samson Fweza Chietonga: The other children died and only five survived. I had thirteen and I have now buried the others and I am only remaining with five. Four of them were buried in Ishiru and two were still young when they died. It is because of the dirty water and the kind of talk and frustration that they are going through.

Commissioner Slye: The five children that are still with you, they are living on the land with you in Ishiru right now, is that correct?

Mr. Samson Fweza Chietonga: I live with all the five. I have subdivided that piece of land to all of them and each one of them has about 13 to 14 meters of land. They have

wives and children and they do not even have enough space to cultivate so as to feed their children. The Government should help us.

Commissioner Slye: How many people in total are on the one and a half acre of land that you have in Ishiru?

Mr. Samson Fweza Chietonga: One of my sons has five children, another one has four children, another one has two children and another one had two children, but one has died.

Commissioner Slye: So there are twelve children, five sons and each of them has a wife and you. Is your wife still with us or did she pass away?

Mr. Samson Fweza Chietonga: My first wife died and I married another one and the second wife has a child who is in Standard One yet I have nothing to do in order to feed and take my son to school.

Commissioner Slye: If I understand the numbers correctly, you have anywhere from 20 to 25 people who are living on that plot of land. You said that it is difficult for you to provide for your child and there is not enough land for your children to grow crops to provide for their families. How are they able to survive or what do they do to feed their families?

Mr. Samson Fweza Chietonga: They just move from one place to another working for people on casual basis to get half a kilo of flour to feed their families.

Commissioner Slye: You mentioned Mr. Khaniri, is he still your MP?

Mr. Samson Fweza Chietonga: He is no longer our Member of Parliament because he has been in Parliament for about three terms which is about 15 years, but there is nothing he has done for us. The only thing he did was to build a school for us.

Commissioner Slye: He built a school for you, but he was not able to do anything else. Has the current MP been able to do anything to assist you and your community?

Mr. Samson Fweza Chietonga: There is nothing that the MP does and there is nobody to help us.

Mr. Patrick Njue: To clarify what the old man is saying, Mr. Khaniri is still the Member of Parliament, but I think the people believe that he is no longer their MP because he does not help them.

Commissioner Slye: How far away from you is the school that was built?

Mr. Samson Fweza Chietonga: The school is very close to my farm and my farm actually borders the school.

Commissioner Slye: Have all your grandchildren been able to attend that school?

Mr. Samson Fweza Chietonga: Yes, they go to that school.

Commissioner Slye: How far away is the closest medical facility?

Mr. Samson Fweza Chietonga: It is very far from where I live. When you have a patient, the patient will die before you get him or her to hospital.

Commissioner Slye: How long would it take to walk there or how long would it take to get there by whatever form of transportation that is available?

Mr. Samson Fweza Chietonga: It is about three kilometers. So, if you walk or carry a patient to that hospital, the patient will die before you get to the dispensary. That is the problem we have because roads have not been constructed and you cannot use a vehicle to get to homes in order to get a patient to the hospital. Even if you go with me, you cannot use a vehicle to access any of those homes yet they are telling us that, that is a road.

Commissioner Slye: Have you had situations in the last year where some of your family members have needed medical assistance and were they able to get it?

Mr. Samson Fweza Chietonga: Sometimes back, we did not have hospitals, so we used to rely on herbs but modern hospitals were introduced where you could get medicines and live for some time. For us who do not have this facility, we cannot live for long.

Commissioner Slye: Have you or members of your family ever been able to visit that medical facility that is about three kilometers away?

Mr. Samson Fweza Chietonga: People go to the hospital at Ishiru though you will queue the whole day and when you leave the place, you may die, but we just persevere. We have no peace or harmony and they even inject you with water instead of medicine and when you get home, you simply die.

Commissioner Slye: Thank you very much *Mzee* Samson for coming here and sharing your story with us. It sounds like you have persevered in very difficult circumstances having your home moved without your consent and receiving no compensation for that move; being sent to a place that is not fit for growing crops, that has no water, and is unclean with limited, little or no access to medical facilities and inadequate transportation and infrastructure and yet you have been able to hold your family together. I think that is a tribute to you and your family for being able to do that. I again want to thank you for coming here and for sharing your story with this Commission and becoming part of the history of Kenya as we are compiling it.

The Presiding Chair (Commissioner Dinka): Thank you, Mr. Samson. I would like to join my colleagues in thanking you for coming to talk to us. We now understand your serious problem as a settler in Ishiru Settlement. Yesterday, one of your compatriots Mr. Benjamin Okodi gave us the same story and we thank both of you for deepening our understanding of the situation that you are facing. As my friend said, we thank you for coming and telling the entire Kenyan people through us what you are going through and what your family is going through.

(Ms. Annah Kadenyi took the oath)

Mr. Patrick Njue: *Jambo Mama.* I want to welcome you to this morning session of our hearings and as we begin, I would want you to once again, for the record, state your names, where you live and what you do for a living.

Ms. Annah Kadenyi: My name is Annah Kadenyi, I live in Maturo and I am a farmer.

Mr. Patrick Njue: You are seated with us because you recorded a statement with this Commission precisely detailing the death of your sister-in-law, who was killed in the 1992 tribal clashes, is that the case?

Ms. Annah Kadenyi: Yes. That lady was killed when people attacked her at night while she was asleep. She was eight months pregnant. When she heard the noise of the attackers who were stealing cows from the compound, she opened the door to go out and see what was happening and then they shot her with an arrow. She cried out and then fell down and died instantly. It was at 2 a.m., and the husband was in another house and when he heard the noise, he came out and found that the cattle had been stolen and his wife dead. He immediately went to report the incident at Soi Police Station and the police came to take the body to the mortuary. They removed the foetus from the body and then the body was brought back home for burial and his life became very difficult. He moved with his children to the forest and lived there until he found a person from the Nandi community called Arap Sang who lived in Sirgoit scheme. Simon lived in a place called Jua Kali near Eldoret and they agreed to exchange the piece of land with the person from Nandi and he moved to the side where Arap Sang lived which was in an area where the Luhya lived.

Simon lived there until he suffered shock and stress and then he decided to sell the whole piece of land. He later died from the shock and stress and we buried him. I then noticed that his children were living in misery so I took them into my house and up to now I still live with his children who are ten in number. I live in misery with these children because their father did not leave any property and that is why I am suffering with these children. The children sometimes ask me where they will go if I die. I am very grateful that you allowed me to come before you and that is all that I have to say.

Mr. Patrick Njue: I share in your grief and sorrow. I will ask you a few questions just to clarify your testimony before our Commissioners can do the same. Where did your sister-in-law live prior to her death?

Ms. Annah Kadenyi: She lived in a place called Seregea.

Mr. Patrick Njue: Around which area did she meet her death and can you remember the date and month?

Ms. Annah Kadenyi: She died in March 1992.

Mr. Patrick Njue: And this was during the clashes, according to your statement?

Ms. Annah Kadenyi: Yes it was during the clashes.

Mr. Patrick Njue: Between who and who was the war and who had orchestrated it?

Ms. Annah Kadenyi: It was the people from Nandi community who started it.

Mr. Patrick Njue: What was the situation?

Ms. Annah Kadenyi: They were interested in moving the Luhya from that area so they simply wanted to get rid of the Luhya from that area.

Mr. Patrick Njue: Was your sister-in-law and her family from the Luhya community?

Ms. Annah Kadenyi: Yes, they were Luhyas from Bunyala.

Mr. Patrick Njue: Was she married to your brother?

Ms. Annah Kadenyi: Yes, she was married to my brother who was actually my follower in the family.

Mr. Patrick Njue: How many siblings were you in your family?

Ms. Annah Kadenyi: All my family members died and I am the only one remaining.

Mr. Patrick Njue: Are you certain that the people who attacked and killed her were Nandis?

Ms. Annah Kadenyi: Yes, they were from the Nandi community. I was not there but I was called to go and see exactly what had happened.

Mr. Patrick Njue: Within the proximity I would assume?

Ms. Annah Kadenyi: I live far. You have to pay about Kshs.30 to get to that place from where I live.

Mr. Patrick Njue: Do you have a title to the land you live in at the moment?

Ms. Annah Kadenyi: Yes, we have a title deed to the land where we live.

Mr. Patrick Njue: Are part of these ten children from your brother or do you have your own children? Have you counted your own children among them?

Ms. Annah Kadenyi: The ten children who live with me are actually my brother's children. My own children are six.

Mr. Patrick Njue: So you have a total of 16 children in your homestead?

Ms. Annah Kadenyi: Yes, I have 16 children in my homestead.

Mr. Patrick Njue: You fend for them comfortably? You said you are a farmer. Do they all attend school, for example?

Ms. Annah Kadenyi: Yes, they all go to school but I just suffer, I really suffer and that is why I am very thin. Even if you took me to hospital, you will notice that I have really suffered. I struggle just to fend for them. That is why I am very thin.

Mr. Patrick Njue: The very fact that you are the only one surviving from your family in terms of your siblings, they did not have any option. But, again, for you to accept and take them with open hands and take care of them albeit with difficulties, I must commend you for that. Lastly, I did not hear you say what your expectations would be from this Commission as you sit there today. What would you want this Commission to do for you or your community?

Ms. Annah Kadenyi: I would like the Commission to help me find a solution to the problems of these children. I really would like them to lead a good life. So I would like the Commission to help me find a better way of making these children live a good life.

Mr. Patrick Njue: Can you tell us how exactly you would like this to be done because you have already told us that they are attending school and they are being fed? What exactly would you want the Commission to do to make the lives of these children better?

Ms. Annah Kadenyi: I think if I got a piece of land and recovered the cows that were stolen from that farm of their father, I would actually be in a better position to provide for them.

Mr. Patrick Njue: What is the size of the land that you are living in?

Ms. Annah Kadenyi: I have one acre of land. This is the land that was inherited. It was given to us by my father-in-law.

Mr. Patrick Njue: That is where you do your farming to feed these children?

Ms. Annah Kadenyi: Yes, that is where I do my farming to feed all these children.

Mr. Patrick Njue: And how about your husband, is he working or where is he?

Ms. Annah Kadenyi: My husband does not work. The only thing he does is to help me on the small piece of land in cultivating the crops to feed these children.

Mr. Patrick Njue: Thank you for coming forth and sharing your testimony with the Commission. I end by commending you for taking in these children and not leaving them out there to suffer. Thank you.

The Presiding Chair (Commissioner Dinka): Thank you very much, Leader of Evidence.

Commissioner Ojienda: Thank you very much, *mama*, for the testimony. Of course, I also want to commend you for taking care of 16 children which is not an easy task. I want to find out whether you are aware of the existence of the Constituency Bursary Fund and whether you have made attempts to see if you could be included in the list of beneficiaries from that Fund.

Ms. Annah Kadenyi: I have never received any help from CDF.

Commissioner Ojienda: I said the Constituency Bursary Fund.

Ms. Annah Kadenyi: This year, a number of the children will be going to secondary school. One is in Standard Eight, two are in Standard Seven and three are in Standard Six. I have not received any help from the Bursary Fund this year.

Commissioner Ojienda: Hon. Jirongo is your MP. Is that right?

Ms. Annah Kadenyi: Yes.

Commissioner Ojienda: So have you approached him to discuss the issue of fees from the Fund we have talked about? There is the Bursary Fund and the CDF.

Ms. Annah Kadenyi: I have never approached the MP for help.

Commissioner Ojienda: Maybe just to advise you, there is a possibility that some of these funds, especially the Bursary Fund can go a long way in helping alleviate some of the problems that you have because 16 children are far too many for a single hand. Do you think that your husband helps sufficiently on the farm?

Ms. Annah Kadenyi: He really helps. He plants so many things including onions and maize. He tries his level best.

Commissioner Ojienda: Thank you very much.

Commissioner Slye: Thank you, *Mama Anna*. I want to join the Leader of Evidence and my colleagues in commending you and acknowledging the really difficult task you have undertaken in raising not only your own six children but ten children of your brother. Following my colleague's comments, I want to say that while the Government has not given us the power to offer any sort of assistance at the moment although we can recommend such assistance later; the recommendations we will make will be binding as a matter of law.

With respect to the Constituency Bursary Fund, I think some of our staff, maybe our regional office here could be available to assist you in contacting and to see whether there might be some assistance there for you. We also have relationships with a number of civil society organizations and service providers. We can also put you in touch with some of them. I cannot promise that they will be able to do many things but we can try to assist you in contacting them to see whether they have the ability to assist you with raising those 16 children in particular now that a number of them are about to go to secondary school. We can try to see whether we can assist you with that. Again, I want to thank you for appearing before us and thank you for really being for those children and providing them with the assistance that they need so that in the future, one hopes their life will be good and productive. Thank you.

The Presiding Chair (Commissioner Dinka): Thank you, *Mama Anna*. I would like to take this opportunity to salute you and your husband for taking care of ten children belonging to your brother in addition to your own six and putting them all through school with your very limited resources. This is something really reflecting the strength of the bond of relationship that existed within your family and also basically symbolizes their refusal to be vanquished, the real character of the human spirit. We salute you, and I really hope that what the two Commissioners have mentioned, the Bursary Fund and some of the people we have contacted, some civil society organizations, could be forthcoming quickly and definitely your testimony will form part of our report. As my colleague said, any recommendations that this Commission makes shall be implemented by the Government. So I thank you very much and I salute you again.

Leader of Evidence, you can show the witness a place to sit and call another witness.

(Mr. Henry Makhakha Bifwoli took the oath)

Mr. Patrick Njue: Good morning, Sir. I want to welcome you to this morning session of our hearings. Kindly, I would want you, once again, to state your name, where you live and what it is that you do for a living.

Mr. Henry Makhakha Bifwoli: My name is Henry Makhakha Bifwoli. I am 63 years old. I live in Mahonge Village, Butua Sub-Location.

Mr. Patrick Njue: Mr. Makhakha, you are seated here because you recorded a statement which you wanted to share with this Commission on violation touching on land. Is that the case? You may begin your testimony.

Mr. Henry Makhakha Bifwoli: I was born in Matunda in Uasin Gishu. After that, my mother left me as she went to Nairobi to work for another white man. My uncle took me to Cherangany area. From there, I came back to Eldoret to an area known as Kabiemet and opened a shop there.

In January 2008, when I was just opening my shop, I got a letter instructing me to move from that area. I tried to ignore it but on 7th January, 2008, at almost 9.00 p.m., I saw smoke coming from the main door of my shop. I tried to observe from the outside and I saw more smoke coming from the other direction. Then I took my wife and the children and we moved to the land where my wife had come from. When I arrived there, I found nothing. Even a door was not there. I spent the night in the bush with my children up to morning. That morning, we moved towards where my mother lived. On arrival, I got my wife was there but one child aged three years by name Margaret Nanjala was missing.

So, I asked her what happened and she said she did not understand how our daughter got lost. So, it forced me to go back to the assistant chief and the councillor of that area to ask. It was all in vain because nobody was ready to listen to me. That is the trauma I went through in 2008.

Mr. Patrick Njue: *Mzee* Makhakha, I share in your sorrow on your tribulations in 2008, which story begins on 4th of January like you have rightly put. Confirm for the record that this was the post-election period.

Mr. Henry Makhakha Bifwoli: I beg your pardon?

Mr. Patrick Njue: On 4th of January 2008 when your tribulations begun, confirm for the record that, that was the post-election period.

Mr. Henry Makhakha Bifwoli: It is true. We got the letter---

Mr. Patrick Njue: In the first place, did it have an author? Did you know who the author was?

Mr. Henry Makhakha Bifwoli: There was a young man who used to reside in that area and when I looked at the handwriting, it was like that of John Kurgat who was very close to leaders like councillors. The handwriting resembles his but I never saw him when he delivered the letter.

Mr. Patrick Njue: You are saying you are familiar with his handwriting?

Mr. Henry Makhakha Bifwoli: When I look at that handwriting, I am convinced it was his.

Mr. Patrick Njue: And what was his motivation for writing the letter? Perhaps, you can even tell us what the letter was saying and then from it, you could read his motive.

Mr. Henry Makhakha Bifwoli: It was not only me who received the letter. About six shops received the same letter. So, it was not only myself. The letter had targeted to evacuate Luhyas from that area.

Mr. Patrick Njue: What community was predominant in that area, Kabiemet?

Mr. Henry Makhakha Bifwoli: Majority of the people who lived there were Luhyas.

Mr. Patrick Njue: And yet, it was the Luhyas who were being asked to leave?

Mr. Henry Makhakha Bifwoli: Yes, they were telling the Luhyas to move out of that area.

Mr. Patrick Njue: What communities were asking the Luhyas to move out of that area?

Mr. Henry Makhakha Bifwoli: Those were people from the Nandi community.

Mr. Patrick Njue: On 7th January, 2008, at 9 p.m., when you saw smoke coming from the shop, is it to say that you lived inside the shop with your family?

Mr. Henry Makhakha Bifwoli: I was living in that shop with my young wife.

Mr. Patrick Njue: Subsequently, after you saw the smoke and you took your second wife away with the children and then you went to your elder wife's place and you did not find her? Where was she? Is she the one that you subsequently found in your mother's house?

Mr. Henry Makhakha Bifwoli: When I took my family out of the shop, I went to my first wife's house. I never got anything, even a cow from that compound.

Commissioner Ojienda: Leader of Evidence, it is in the statement.

Mr. Patrick Njue: For the record purposes, again, Mr. Makhakha, when you did not find your wife, where did you subsequently trace her?

Mr. Henry Makhakha Bifwoli: After failing to get my first wife at home, I tried to find a way of reaching where my mother was. I reached there and found that my first wife was there but my three year old daughter, Margaret Nanjala, was missing.

Mr. Patrick Njue: And have you subsequently found your missing daughter?

Mr. Henry Makhakha Bifwoli: I have not got her.

Mr. Patrick Njue: Did you report the case of your missing child to the authorities or what you have gone through; did you report to the authorities for any assistance?

Mr. Henry Makhakha Bifwoli: I am very happy to inform this Commission and those who have undergone through this that, that time was not good time and you could not go through anywhere. Most of the youth were aggressive and they were so cruel to people.

Mr. Patrick Njue: So, ever since, you have never reported this to the authorities? Your have never shared your eviction with any authorities?

Mr. Henry Makhakha Bifwoli: I reported the issue to the sub-chief and the chief. Also, they know all these stories. They also told me there was a child who was found in Nakuru but when I went to Nakuru by Molo Line, they beat me up such that I could not even see. I stayed in hospital for two months without locating my daughter.

Mr. Patrick Njue: Mr. Makhakha, it is now 2011; I wonder what is the present situation in Kabiemet where you left and precisely, where you were occupying, if you would be knowing?

Mr. Henry Makhakha Bifwoli: When I went there, I bought land from the Nandi community who were living there. They never wanted anybody to go back there again.

Mr. Patrick Njue: And lastly from me, seated there today, what is it that you would want to tell this Commission so they can do for you or others who were similarly affected?

Mr. Henry Makhakha Bifwoli: I am only requesting the Commission for anything they can help common *wananchi* with, so that I can also benefit from the Government.

Mr. Patrick Njue: I want to thank you again, Mr. Makhakha, for coming forward and sharing your story with the Commission and encourage you to remain hopeful that, indeed, your daughter, Margaret Nanjala, will one day unite with her family.

The Presiding Chair (Commissioner Dinka): Thank you very much, Leader of Evidence.

Commissioner Ojienda: Mr. Makhakha, I just want to join the Leader of Evidence and my fellow commissioners in sharing your pain, following the tragic loss that you are suffering of Margaret Nanjala. You have said that you can never go back to Kabiemet. I am looking at the objectives for which this Commission was set up, and one of those objectives is the reconciliation of the people of Kenya. Do you think it is possible for you or what would you recommend for the reconciliation of the Nandi community and the Luhya people who were sent away from Kabiemet?

Mr. Henry Makhakha Bifwoli: I personally and the people in that area were in good terms. In fact, there is a time they nominated me to be their councilor. The only problem was that the Nandi people were given instructions by one person who told them to uproot all the weeds from their community. So, every time when it came to the general election, they were told to eliminate all the weeds from their community. Although you are asking me to go back to that area, they will still say: “all the weeds should be uprooted”.

Commissioner Ojienda: It appears you were in a political party. Is that right? Did you run for local elections in 2007? And if so, in what party?

Mr. Henry Makhakha Bifwoli: In 2007, I never vied for any seat.

Commissioner Ojienda: Did you support any candidate during that year?

Mr. Henry Makhakha Bifwoli: I assisted my fellow and he won. After winning the election, he was not satisfied with how people voted. After tallying of votes from the top to lower part, then things were in a mess. Those who did all this were the youth who had been taken from the circumcision ceremonies and those are the people that most of the councillors were using to attack other people, including burning houses.

Commissioner Ojienda: So, Mzee Makhakha, you do not think that you were targeted. You are just part of the Luhya Community that was being pushed out of Kabiemet?

Mr. Henry Makhakha Bifwoli: When I look at it, I was the only Luhya who had a big tract of land because my first wife had 10 acres and the young wife had 4 acres.

Commissioner Ojienda: And you still have title deed to your land?

Mr. Henry Makhakha Bifwoli: I had only had an agreement with the person who sold the land to me.

Commissioner Ojienda: You do not know whether any person is living in your land now?

Mr. Henry Makhakha Bifwoli: The land was subdivided to the sons of the man who had sold it to me.

Commissioner Ojienda: Okay, Mzee Makhakha. I think it is a very sad situation though in your statement, you do not seem to have recorded the details of what you are telling us now. I think your pain is unbearable, having lost land and your daughter. I just want to encourage you that we are open. I think the Commission should be able to look at all the issues that you have and make appropriate recommendation. Do you have those leaflets that were inciting the youth to burn Luhya properties?

Mr. Henry Makhakha Bifwoli: After moving from there, I was really confused. I do not have those letters now.

Commissioner Ojienda: Thank you.

Commissioner Slye: Thank you, Mzee Makhakha. I just have one issue that I wanted to explore with you. You said that the violence that you and your family suffered was in connection with the elections in 2007 and what happened after that in 2008. You described that prior to the election, you lived peacefully or relatively peacefully with other members of the community. But because of the elections, individuals used the election as a pretext to incite other individuals. I am wondering whether you feel that the upcoming election in 2012 will be any different or not.

Mr. Henry Makhakha Bifwoli: Generally, Kenyans are not being told the truth because if the leaders could have gone back to the people down there and they find out the cause of those clashes, especially the Nandi Community, and then the Nandis could be told to reconcile with us--- If that happens, then the elections of 2012 could be free and fair. But in the inner part of people's minds, the Nandi people are just dressed in suits but they are heartless.

Commissioner Slye: Individuals from the Nandi Community may be people you knew when you were living in Kabiemet; do you think they are different from that and might be hoping and willing to work with other individuals to try and prevent this sort of incitement and to try and counsel members of their community not to follow that sort of incitement?

Mr. Henry Makhakha Bifwoli: Let me tell you Commissioners; we have the current MP, for example the Eldoret North MP and the councillors. They should go back to the elders so that they can take the youths who come from circumcision ceremony. Up to now, those youths have not been brought back; some were killed, some were jailed and the elders are still asking for their sons to be brought back. If that MP can go back to the village elders and their sons be brought back, then things will be fine.

Commissioner Slye: So, if I understand your advice correctly, you think if the MPs were able to come back and speak with the members of their constituencies, that might assist in preventing this sort of violence in the future. Is that correct?

Mr. Henry Makhakha Bifwoli: That will be fine. If they can talk to the elders and tell them where their sons are and solve the problem which was there, I believe in 2012, the elections will be fair and fine.

Commissioner Slye: Thank you very much for that very helpful evidence. Again, I want to join my fellow Commissioners in expressing my sorrow at your loss and what you have suffered. It sounds like you had a productive life in Government and it was disrupted. Losing property and a daughter that one hopes, may someday reappear--- We want to acknowledge that loss. I also commend you and express our hope that you will continue to persevere and you clearly have in holding your family together and really working as your last comment suggested, to assist this country in moving forward; as my

fellow Commissioner Ojienda said, to assist us in furthering reconciliation and national healing.

Thank you.

The Presiding Chair (Commissioner Dinka): Mr. Makhakha, I also would like to join my colleagues in thanking you for coming to talk to us about your suffering and loss and to express to you my full empathy with your suffering not only for your loss of properly but in particular, about the disappearance of your daughter Margret. I hope and pray that you will come face to face with her one of these days.

I have just one question; after you left, do you know whatever happened to that man called John Kurgat?

Mr. Henry Makhakha Bifwoli: John Kurgat was killed.

The Presiding Chair (Commissioner Dinka): And the chief, Julius Korir? You petitioned him and reported to him; he did nothing. What is he doing right now?

Mr. Henry Makhakha Bifwoli: He is not working. He is just a farmer.

The Presiding Chair (Commissioner Dinka): I just wanted to know--- Your story is a very devastating story. Sorry, we empathize with you. We hear you and it will be part of the national narrative in the report of the Commission. I can assure you of that.

Thank you very much for coming.

(The witness was stood down)

Mr. Patrick Njue: Commissioners, the next witness is coded 6A.

(Mr. Godfrey Shalsala Wekesa took the oath)

Mr. Patrick Njue: Good morning, Sir. For the record, please tell this Commission your full names, where you live and what you do for a living.

Mr. Godfrey Shalsala Wekesa: My names are Godfrey Shalsala Wekesa. I come from Kakamega County, Kakamega North District, Kabras Division in Chemuche Village. For now, I am a farmer.

Mr. Patrick Njue: You were seated with us this morning. Following your recording of a statement with this Commission and what you termed as an unlawful dismissal from the military--- Is that the position?

Mr. Godfrey Shalsala Wekesa: That is true.

Mr. Patrick Njue: I will want you to begin your testimony and take us through your tribulation.

Mr. Godfrey Shalsala Wekesa: I was employed in 2003 here in Kakamega. I joined Moi Barracks in Eldoret. I graduated in 2004 April. I was posted to Brigade 5 in Gilgil. I worked there for one month. There was another course. We were told that there was training that we were to attend. For those who were supposed to attend, my name was there in the Nairobi list. We were to train as military police.

When the day to travel to Nairobi came, my name was missing from the list. I tried to ask and I was told some people are few in their units and therefore, all of us could not go for the training. I agreed to that. Later, I went to my senior and told him that it was not fair for me to live in the camp. I wanted to look for a house outside the barracks to live in. My senior was a bit reluctant for a month. He later agreed that I could go but when anything happens out there, I should not say it was him who sent me to live outside the barracks. That was in July 2004; I met a very beautiful lady who we became friends and dated each other. That was from August to December. Later, she informed me that she had met somebody who asked her for something. I asked her what he had asked from her. She told me he wanted to befriend her. I asked the lady her decision and she told me that she never gave him a reply. I told the lady that the person she had talked to was my boss. I told her I could not say anything and the decision was on her hands. That was on December 10th.

After telling the lady about the issue, I went back on duty as usual. I was from home. On 15th December, I went with my friend to town to stroll. I came to learn that friends of mine had committed a crime out there. They stabbed one of the soldiers with a knife. When we were with them, police officers came and arrested them. They called me so that I could take their phones and other things. When I went there, the police said I could be one of them. They told me I was also to be arrested so that we could answer some charges. We were arrested and locked at the police station cells for almost seven hours. The issue was reported to the barracks, the military police came and we were taken. They said investigations were to be carried out.

Investigations were carried out. The knife which was used to stab one of the soldiers was found on one of my colleagues I was with. It was said that we should be charged in court. We went to court and the case was mentioned. I was with my two colleagues whom I can mention by names; Theuri and Kimani. One of them was found with a knife and they were jailed for 42 days. From there, they were told to go back home. I and a colleague by the name Baraza, were locked in for 14 days after which we went back to our duties.

When the people came out of jail, they went back to work. When I tried to ask why my colleagues who were to go home after serving their term in jail were here, I was told there was nothing to bother me. I kept quiet.

On 30th December, I left the barrack to town to look for food. When I was coming from town, I was attacked by some people who beat me. They used a bottle. I did not know any of them. I just took it like it was just youths. However, I later came to know that this

could be a plan by my senior who was my rival on the lady. From that day, I went to the hospital where I was stitched. After one week, I was to go to the hospital for un-stitching. I went very early in the morning.

The next day, it was said that people were supposed to go for an attachment in Garissa, North Eastern. By then, I had applied to go home. I asked why they decided to take me to Garissa when I had applied to go home. That was taken to be something bad. I, however never complained. I decided to go to Garissa. I stayed in Garissa in January, February, March and April. I then asked for leave so that I could rest a bit but I was not allowed.

In May, I asked for two or three days to rest a bit but they refused again. I then decided to continue with my duties. When I was in North Eastern, on 2nd of June, I was called by the Sergeant-Major. He told me I was being called by the senior. I followed him and we went to our senior. When we reached there, the first question really shocked me. He asked me: "Have you ever had a girlfriend?" I asked him: "What is the question about?" He told me he was just asking me if I ever had a girlfriend. I told him yes. He then asked me where she was. I told him I have girlfriends at home, a girlfriend in Gilgil and in Garissa.

He then ordered the Sergeant-Major to take me out of the office. When I went back to my house, I could not even put on my uniform. I just sat on the bed and thought about the question. Later, my colleague came and asked me why I was in that situation. I told him I thought I could work peacefully but what I was going through was traumatic to me. He told me to be patient with work.

From there, he went and wrote for me a pass that gave six to seven days rest period. I traveled home and relaxed. On the sixth day, I travelled back. That was in August. We were told to go back to camp because the attachment was finished. We went back to the camp. Those who were supposed to take leave were allowed to go. I was among them but I was not given the chance because it was said there was some training by military personnel from America which we were to attend. I asked myself how come when everything comes up, I should be included. I accepted to go. We took three months in Isiolo.

From there, when I came back, that was in October; I went for leave in November. I went back to work in December. I stayed a bit, then we were informed that there was a course people had to attend. I said I would attend it. I was later informed that the course was not there and so, we were to attend the next one that would be there. I sat down and waited. I left my box in the camp although I was living in town. I used to come to the camp, change into my uniform and go to work. My friend decided to travel home. Because I was living in town, everybody had his key. We never used to look for each other. I decided to take a VCD machine on Sunday 8th January. I took the machine and went with it to my house. I wanted to test some CDs which I had bought. Later in the evening, I took the VCD machine to the house at the camp because I was going back to my duties.

The police said something was missing at the camp. They asked me if I knew what it was. They then told me there was a machine which was lost. I told them that if it was a

machine, I was using it and I had it. I returned the machine to the house then later, I was told to come with the machine. I was again locked in for one day. The next day, I was accused of being a thief. I never understood that because it was on the 8th.

After 9 days, on 17th, they came to mention my case. They told me there was a day I was found to have stolen a VCD machine from my colleague; do I agree or not? I told them that I never stole it but I took it because I wanted to use it. However, I told them that if they were taking it that I stole it, there was no problem. They told me I was going to be jailed for 42 days and then I would continue with job. I was imprisoned for 42 days. My term elapsed on 7th March. From there, I worked for a week and a half. On the 27th, I was called by Sergeant-Major that there was a letter coming from Nairobi saying I was going home. It was very painful for me. I told him he could have told me earlier if that was the plan. They told me they had just received the letter. The question I asked was: If a person has been jailed for 42 days, there is no way after he finishes the jail term, he can be sent away again. I told them what they had done was not fair.

From there, I was given a clearance form from the military. I moved in all the departments clearing. When I reached the paying office they told me; “My friend we cannot clear you here because you have a debt for Kshs3, 000”. I told them I do not have that debt because when I was recruited Kshs3, 000 was deducted from us for the truck suites. They did not clear me and so, I left the clearance form there and travelled home. I stayed home for three months and then I wrote a redress.

I wrote the first redress on 13th December 2006 and sent it. The answer I received was that they had received my letter but according to the rules of the military, they could not agree with me. They told me to write to the Chief of General Staff or the General, Kenya Army. I wrote the letter and up to now, I have not received any response. I do not know if the letter was received or not. However, I am still waiting.

I have been in the military for five years but the military have retained my ID. I do not know why. I am a farmer and it is a must that I must have an ID. I have to use my mother’s ID to be paid by sugar companies because I do sugar cane farming. I am the main breadwinner and have a lot of burden to carry.

That is all I can say.

Mr. Patrick Njue: Mr. Wekesa, I will ask you a couple of questions before I can hand you over to the Commissioners. The letter that you have that you wrote to the Army Commander and the reply that subsequently came from the said commanding officer where they were advising that you write directly to the CGS or the Commander, Kenya Army; did you do that?

Mr. Godfrey Shalsala Wekesa: Yes, I wrote the letter. The first letter I wrote was copied to the Army Commander. I have a copy here. This other one I wrote to the department and this is the answer that I received from them.

Mr. Patrick Njue: Would you want to give these documents to this Commission to accompany your testimony?

Mr. Godfrey Shalsala Wekesa: Yes, I want to produce them to the Commission as evidence.

Mr. Patrick Njue: Mr. Presiding Chair, Sir, if the said documents can be admitted as part of the record of this Commission---

The Presiding Chair (Commissioner Dinka): They are so admitted.

Mr. Patrick Njue: Taking you back to your testimony once again, how old are you now?

Mr. Godfrey Shalsala Wekesa: I am 25 years old.

Mr. Patrick Njue: Before you joined the military, what were you doing?

Mr. Godfrey Shalsala Wekesa: I was a student in Lugusi Secondary School. Even my parents never knew how I was recruited. I just heard that the military are recruiting. I only looked for the fare to travel to Kakamega. I came with my KCPE certificate. I used to play football and was also an athlete. After they took my ID, we were instructed to go round the stadium 24 times. I was then recruited.

Mr. Patrick Njue: In your testimony, you severally kept referring to your senior. Who is this senior? Does he have a name?

Mr. Godfrey Shalsala Wekesa: He was the commanding officer by the name Lt.Col. Warioba.

Mr. Patrick Njue: This is the same senior that apparently your girlfriend talked about?

Mr. Godfrey Shalsala Wekesa: Yes, he is the one who met my girlfriend.

Mr. Patrick Njue: On the last incident that led to your dismissal, you were accused of having stolen a radio. In your words, you said you had taken it from your friend's room. I am wondering; did you have his permission to take it?

Mr. Godfrey Shalsala Wekesa: We were sharing the house. Everyone had his own key. My bed was up there and we used to share everything. I was only not spending the night there. However, I used to come and change there and go. Our things were in the house.

Mr. Patrick Njue: So, you took his VCD player without his permission?

Mr. Godfrey Shalsala Wekesa: He was not there. He had travelled home. I just thought that during that time when he was not there, I could take it, use it and return.

Mr. Patrick Njue: So, you took it out of your room and went to town with it?

Mr. Godfrey Shalsala Wekesa: Yes.

Mr. Patrick Njue: Did you inform him that you had taken it?

Mr. Godfrey Shalsala Wekesa: No. I never informed him. However, the day he came from home is the day I returned the machine.

Mr. Patrick Njue: So, you want to say he found it in the room already or he got there before you had returned it?

Mr. Godfrey Shalsala Wekesa: He came before I returned the machine.

Mr. Patrick Njue: Did you know whether he had reported that his machine was missing?

Mr. Godfrey Shalsala Wekesa: Sincerely speaking, he is the one who reported. According to me, when we were living together, I had never thought that we were misunderstanding each other.

Mr. Patrick Njue: Looking at it all, from what I gather from you, you say that your dismissal or termination was wrong. I would like to ask you a very simple question; what is the procedure that you think should have been used in those circumstances?

Mr. Godfrey Shalsala Wekesa: This is not according to me, but according to the laws which govern the military. After something happens in the military, we have intelligence officers.

There is no way I could have been charged without any statement. The intelligence had not investigated anything. They never came and found out where the machine was and what really happened. They did not establish whether the door was broken or not. That is why I am saying that it was unlawful.

Mr. Patrick Njue: Lastly, once again, a recap of your expectations; what are your key expectations from this Commission?

Mr. Godfrey Shalsala Wekesa: At this age, I am still very young. Maybe, I can say that I do not know what will happen tomorrow. If military officers can hear my cry through this Commission, which is here, I can get help. I want to be reinstated back to my duties.

Mr. Patrick Njue: Okay, Mr. Wekesa; I wish you the best. Indeed, you are a young man and there is certainly a lot you can do with your age.

The Presiding Chair (Commissioner Dinka): Thank you very much leader of evidence; let me ask my colleagues if they have questions---

Commissioner Farah: You left the military in 2006; is that correct?

Mr. Godfrey Shalsala Wekesa: Yes.

Commissioner Farah: Between 2006 and now, did you take your case to a lawyer.

Mr. Godfrey Shalsala Wekesa: I have not gone anywhere.

Commissioner Farah: At the time when you were in the military or at the time when your case was going on, did you consult one of the lawyers in the military whose job was, not only to assist the command, but also the soldiers in the legal execution of the law?

Mr. Godfrey Shalsala Wekesa: I never approached anybody and I did not want to be represented by anybody.

Commissioner Farah: The action they took was legal. They used the armed forces Act, which is Chapter 99, of the Laws of Kenya. I know the Constitution is more superior and protects everybody, but there are laws within the Constitution. I know military is a disciplined service. According to that letter which you sought redress, it came from the army headquarters, Army Commander's Office, where they told you that you were actually dismissed from the military in accordance with the law. Therefore, you could appeal to the Chief of General Staff (CGS) who is higher than the Army Commander. Did you do so? Is that true or false?

Mr. Godfrey Shalsala Wekesa: According to the letter that was sent to me, I should address the CGS. But due to my capacity, I could not because I had nowhere to go. I just hoped that they could accept me back to the service. However, since they have not accepted me back to the service, I asked them to give me back my identity card, but they have refused. I have gone there three years three times, but they advised me to look for a new identity card. I gave up and said there was no need for me to follow up all these matters.

Commissioner Farah: Okay; I will hand over to the other Commissioners, but I have one advice. It is very difficult for the Commission to form any opinion unless we have a complete record of your conduct in the military to follow up the reasons why they dismissed you. Do you get my point? If your record was clean and then you were dismissed, that would be an anomaly. So, I think what we shall do is that this requires further investigation. The Commission will take up the matter with the army headquarters to establish what happened.

Commissioner Ojienda: Mr. Wekesa, just a small piece of advice; you have spent just a small fraction of your life in this world. You spent four years in the army. You are only 25 years, going to 26. You are a young man by all standards. You are strong and in high spirits.

The little girl friend's tragedy that ended your first employment should not cloud your future. I think it is good you came to this Commission. I think you start recounting your steps, look into the future and make sense of your life. The army is not the only employer in this country. I have heard your story. I am a lawyer. I would only advise you that you retake your steps and make sense of your life.

Thank you.

The Presiding Chair (Commissioner Dinka): Mr. Wekesa, thank you very much for coming and talking to us. You can see there is only one person who is familiar with military rules. As he has said, the Commission will try to get to the bottom of this matter. Right now, I join my colleagues to wish you good luck in your future. As my colleague, Mr. Ojienda said, the military is not the only employer. You have a life ahead of you. I just wish you good luck.

Thank you.

(Mr. Sale Timothy Mukoshi took the oath)

Mr. Patrick Njue: Once again, state your name and what you do for a living.

Mr. Sale Timothy Mukoshi: I am 38 years old. I come from Sherere Sub-location, Bukungu Location, Municipality Division, Kakamega Central District.

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

Mr. Sale Timothy Mukoshi: I am a peasant farmer and also an active gold miner.

Mr. Patrick Njue: On what is generalized as labour right, particularly to do with gold mining in Kakamega? Do you confirm that to be the position?

Mr. Sale Timothy Mukoshi: Yes, I do.

Mr. Patrick Njue: Kindly, take us through your testimony?

Mr. Sale Timothy Mukoshi: I have been in gold trade for about 18 years. What made me engage in the mining was that after school, I was hopping from office to office without getting any employment. In mid 1990s, I met a friend, Eli Omondi. We discussed the activity that we would be involved in to better our lives.

From there, we started mining actively and prospecting gold in all western parts of Kenya. But now, we came to rely at Rostaman Old Mining Stations. We used to use the traditional methods of mining until 2004, April, when we had our first accident. It is sad that four of our members perished in the mining. The accident was caused by heavy rains that weakened the walls of the hall. From there, we consulted the administration, Assistant Chief, Chief and the DO. They told us to form groups. I was the first one to

form a group by the name Bukungu Gold Prospecting Group. We started to use modern technologies, for example, building sharks and timbers. As per the history, here in Kakamega, a four storey building because of the mining activities that has ever been done--- After the accident, we attended seminars organised by geological department. Mr. Moses Mosebe educated us on mining techniques.

However, in 13th April this year, we had another accident. Three of our members lost their lives in that accident. My brother Cosmas Muteshu was among them, Omondi, my friend, and Maxwell Wanyonyi.

When we had the first accident, many Government officials visited the area. It was a pity that they did not do anything for us. We did not receive any assistance from them. People just sit and toil in the fields without any assistance from the Government officials. They only warned us against going on with the activity. In fact, they told us to stop the activities. They warned us of dangers of continuing with the activities. However, it is not possible for us to stop this activity because we do not have any other means of earning our livelihood. If we stop it, we will starve to death. The purpose to organize this mining field is because of the youth that come out of schools, disadvantaged and they have no source of income. This is why youth are engaged in mining activities. We face administrative challenges.

We work hand in hand with the geological department but the administration such as Assistant Chief, Chief and the police arrest anybody they get on site without any consultation. In 2006, the police arrested 20 of us. I went to the police station and asked the OCS why they arrested those young people who were trying to earn their decent living. I was told that they were mining illegally. I asked the procedures for people to mine legally. He told me that he did it by authority. Licensing the mining field cannot be detected whether it is legal or illegal. You have three stages to go. You have to get a licence from social services, the Mining and Geology Department, then NEMA and you come to the landlord who is presently the Municipal Council. You find it an uphill task to acquire all these documents because if one of them rejects, then it cannot go ahead. People in the field are not working freely. They cannot lead good life because of being faced with a lot of things from administration or Government. It is just fortunately on 16th and 17th June this year, when I was invited at a conference at Silver Springs Hotel, Nairobi, under the international conference of Great Lakes Region and we got some light on mining activities. The representation brought forth from the Assistant Minister, Prof. Kamar, Mr. Mutiso, and Mr. Moses Njeru actually gave light to small addition or minus.

Before this was brought to light, the Government had nothing to tell people on what it was doing to help small scale miners. For the whole time I have been in the mining sector, we have been prospecting different types of minerals. We have indentified gold, silver, copper, and diamond. When you ask the Government existence of any mineral in the country, it does not know because it does not have a database. You find that if the country can engage itself actively in the mining sector, whatever people cry about lack of jobs, the mining sector can employ millions of youth.

Our country is poor because it does not invest in the natural resources. We have funding bodies such as CDF, LATF, and DDC and so on. There are also other funds that are exploited, such as *Kazi kwa Vijana* Programme. If you employ a youth and employ and pay him Kshs2,500, then that is exploitation. What can Kshs2,500 do for a youth who is 22 years old? The Government should come up with ways and means to uplift Kenyans through the mining sector. This would enable our country to be self sufficient.

Mr. Patrick Njue: I want to thank you, Mr. Mukoshi, for your evidence which provides a new dimension on what we have been hearing since we started our hearings.

Once again, thank you for coming forth on behalf of your gold miners. We, as a country, have challenges. We have all the resources, but they go unutilized. Continue doing what you do. I have also noted your expectations from the Government. We expect that the authorities who are here can have something to take with them.

The Presiding Chair (Commissioner Dinka): Any more questions, Commissioners?

Commissioner Farah: Saleh, have you gone deeper into the laws of mining in this country? There are laws that govern mining.

Mr. Sale Timothy Mukoshi: Yes, there are mining rights, Cap.306, which I have gone through it. But it was enacted during the colonial period. This was when Britons prospected for gold in Kenya; that is from 1930-1933. They started mining actively from 1933 to 1952. The regulations in this Act are colonial rules. They prohibit small scale miners to mine. These laws are meant for large scale miners.

Commissioner Farah: Before the Commission was formed did you have a meeting with your Member of Parliament with a view to enabling him to convince other Members of Parliament to amend this colonial law? What were your expectations? What did you want to be included in the new law?

Mr. Sale Timothy Mukoshi: As you know in Kenya, the politicians we have are noise makers. You will just hear them saying we shall do and this, but immediately they enter Parliament, they do nothing.

It is after the promulgation of the new Constitution, the small scale miners were included as stakeholders. So, in the new Bill is where our concerns will be heard. I have discussed that and I think it will be tabled in Parliament in July.

Commissioner Farah: You have already taken some steps, but what are your expectations? What did you want the TJRC to do; and do you have documents?

Mr. Sale Timothy Mukoshi: When I presented my first testimony, we had not come to the Government and the Government had not given us an opportunity--- That is why I came to the TJRC. Currently, we are dealing with Prof. Kamar and all the stakeholders in the mining sector to improve the mining condition in the country.

Commissioner Farah: I am saying that with the new Constitution and with the politicians having an ear for you, particularly the Assistant Minister you mentioned, outside of that, what did you expect this Commission to do?

Mr. Sale Timothy Mukoshi: I expect the Commission to ensure that the proposed Bill is enacted and implemented. The mining industry should be promoted to create employment for Kenyans.

Commissioner Farah: Do you have any document that you want to submit to the Commission to that effect?

Mr. Sale Timothy Mukoshi: No. We shall get them soon from the Ministry of Foreign officials. For now, I do not have any document.

Commissioner Farah: Thank you very much, I hand you over to the Commissioners.

Commissioner Ojienda: Mr. Sale, I just want to empathise with the death of Elly Omondi and your brother Mukoshi that you lost in 2011.

That is a tragedy of mining. I just want to ask a few sharp and short questions. How much do you make from mining on a daily basis?

Mr. Sale Timothy Mukoshi: It depends. There is a day one can mine around 20 grammes or even the minimal of 0.5.

Commissioner Ojienda: How much does a gramme of virgin gold fetch?

Mr. Sale Timothy Mukoshi: Raw gold is sold at Kshs2,500 locally.

Commissioner Ojienda: What kind of people will mine 20 grammes per day?

Mr. Sale Timothy Mukoshi: As I told you earlier, it depends on how rich the river rift is. If it is so rich you can mine around 10 people or even five people can get 20 grammes of gold.

Commissioner Ojienda: But, Mr. Sale, you are destroying land. I am concerned about whether there is any policy about restoration of the land you destroy as you look for 20 grammes. What is the value of the land that you destroy and whose land is it that you keep destroying on a daily basis to look for 20 grammes and 2 grammes?

Mr. Sale Timothy Mukoshi: We have regulations in the Mining Act. Before you start mining you must observe them. After exhaustion of that place, you have to rehabilitate it. For the first two feet, the top soil must be put aside. As we continue digging deeper until to the final end, we put the soil separately. When you want to rehabilitate the place, you

start with the soil in the deeper end to the surface. You can improve the soil using farm yard manure and animal manure to make the soil useful for agricultural production.

Commissioner Ojienda: I am looking at the first time gold was mined in Kakamega, why has the Government not taken an interest? The reason, probably, is deposits are not commercially viable and that is why the British Government left mining. Do you consider the lives that have been lost in these mines, equivalent to the deposits you get out of those mines?

Mr. Sale Timothy Mukoshi: It is not true to say the British left because of the mining being commercially unviable. In history, the Britons use to mine around 10 tonnes of gold in Rosterman. It was due to the State of Emergency that came in 1952, that the mining stopped. Britons stopped mining because they could not adhere to the Government regulations. The Government tax was too high.

With regard to the accidents that occur in the mining field, I can say that the mining field has the minimal accidents compared to those caused by roads, air and others. In Rosterman, for example, in 2004, we only lost four lives. If you take the rate at which people perish on the roads, it is around 5,000 people per year. But the mining sector lost only four people. In 2011, if you compare the deaths that have occurred on the road and the deaths that occurred in the mining sector, you will find that the mining sector has only lost three people. So, I do not think we can stop this activity because of accidents. Accidents are everywhere and people live by God's grace.

Commissioner Ojienda: How many grammes did you mine in those years?

Mr. Sale Timothy Mukoshi: Yes, I can give the grammes I mined, but the data from 2009 to April this year, is approximately 5.6 kilogrammes.

Commissioner Ojienda: In two years, you mine 5 kilogrammes. Just like my colleague said, if there is sufficient data that you can supply to the Commission, then it will form a basis for recommending formal support as you said through the Ministry to see if the possibility that this sector can be streamlined as you have said. But I would have expected more kilogrammes. It appears you are doing 5 kilogrammes in two years. That works to how much money, Mr. Saleh?

Mr. Sale Timothy Mukoshi: For two years, we have received around Kshs15 million.

Commissioner Ojienda: How many people are in the sector?

Mr. Sale Timothy Mukoshi: 315 people.

Commissioner Ojienda: So, do you share that equitably or do you pocket most of it?

Mr. Sale Timothy Mukoshi: We share it equitably.

Commissioner Slye: Are the 315 people involved in the mining under you or they are independent?

Mr. Sale Timothy Mukoshi: The 315 people are under me. They were working under my supervision and that of Mr. Elly Omondi, who is now deceased. We are 3,350 active miners in the Municipality Division.

Commissioner Slye: Are the 3,350 in Kakamega District?

Mr. Sale Timothy Mukoshi: Not Kakamega District as a whole, but Municipality Division alone.

Commissioner Slye: Under your supervision, you have 315 miners. It sounds like you have developed a series of policies in terms of safety and rehabilitations of your mining. Do other miners also have similar policies or they are unique to you and your group?

Mr. Sale Timothy Mukoshi: In the mining sector and through the Provincial Geologist Officer, we as the stakeholders or the leaders of the mining groups, are entitled to go round to the other mining areas to make sure that whatever policies that are laid down are followed.

Commissioner Slye: Do you have a sense of how well those policies are followed? That is, are people generally complying with those policies or are there some that are not?

Mr. Sale Timothy Mukoshi: The miners do comply, but where we have a problem from the brokers or those people who come buying gold from the miners. That is where the problem is now because we cannot actually tell the exact price of gold.

Commissioner Slye: Yes. I noted in the written statement that was submitted to us that one of the things that you mentioned is the lack of information about price, which I gather to mean that you and your fellow miners are disadvantaged when selling the gold. So, is it primarily the brokers that set the price and you have little say in that?

Mr. Sale Timothy Mukoshi: On the brokers, during the last meeting we held at Silver Springs Hotel, we got the real price of gold, which is Kshs4,000 per gramme of raw gold while pure gold went for Kshs5,500 per gramme. If you went to the ground, you will get a broker buying the raw gold at Kshs2,500 while the pure gold goes for Kshs2,800.

Commissioner Slye: May be, this is too soon to tell, but given that new information that you received at the conference at Silver Springs Hotel, have you been able to increase the prices that miners get on the ground from the brokers?

Mr. Sale Timothy Mukoshi: After the meeting, I went to the ground, called the brokers and we discussed about the price. To date, they have agreed to give Kshs3,500 per gramme of raw gold and Kshs4,500 for pure gold.

Commissioner Slye: Lastly, you mentioned that your Ministry is now preparing a new Bill that will be submitted to Parliament. Have you and your colleagues been able to give input to the drafting of that Bill?

Mr. Sale Timothy Mukoshi: Yes. We were four of us from Western Province. We actually contributed to the Bill as far as the landlords and the associations that are to be formed are concerned. We also talked about the safety precautions and how the Government has to help regarding the issue of licensing, export and the price bargain. I think the Ministry or the presenter on the Floor will take it to Parliament.

Commissioner Slye: Thank you, Mr. Sale. It sounds like you and your colleagues have been able to organize yourselves to engage in economic activities in a way that is responsible and is growing. From what you are saying it could, may be, employ many more individuals. So, I just want to acknowledge that and commend you for really moving forward with this in a way that is responsible.

Thank you.

Mr. Sale Timothy Mukoshi: Thank you too.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Sale. I have just one or two questions for you. Is it now legal in Kenya for artisanal workers to mine gold?

Mr. Sale Timothy Mukoshi: As from July, this year, it will be legal because we will not be given the prospecting rights---

The Presiding Chair (Commissioner Dinka): Right now?

Mr. Sale Timothy Mukoshi: It is not yet, until July.

The Presiding Chair (Commissioner Dinka): Okay. Then, given that it is going to be legal in July, does the new law take that into account and in order to help the miners from the exploitative relations with the middle men, would it allow you to directly sell it to the Central Bank of Kenya (CBK) at a better price?

Mr. Sale Timothy Mukoshi: Okay.

The Presiding Chair (Commissioner Dinka): Then you will gain and the Republic of Kenya will also gain in terms of gold deposits.

Mr. Sale Timothy Mukoshi: Okay. When the mining will become legal, the Government has said twice that it will assist the small-scale miners with tools. It will also give money to small-scale miners to buy gold as the way they do collect maize to take to the National Cereals and Produce Board (NCPB). The groups will take this gold to Madini House in Nairobi, where they will be given a better price that will be

recommended by the Government. When it comes to the export sector, they will also be allowed to take their gold to the world market that is in New York, America. The Government has accepted to work with the miners hand in hand.

The Presiding Chair (Commissioner Dinka): That is good. Then, you are going to organize yourselves into better union of miners that will be able not only to produce, but also sell both internally and externally.

Mr. Sale Timothy Mukoshi: Yes, we shall organize that. Our groups are already organized to sell their proceeds just to the nation and also export.

The Presiding Chair (Commissioner Dinka): I think if you have been consulted and you are getting that kind of law that will be very helpful to the artisanal miners. You have to push that law through Parliament and try to get it into the books. I am sure that will be very, very helpful. Otherwise, if we continue to depend on the intermediation of the middle men, you will continue to be ripped off. That is my only advice. I have no questions for you.

Mr. Sale Timothy Mukoshi: I thank you very much.

The Presiding Chair (Commissioner Dinka): The Leader of Evidence we will finish now, go for lunch and come back at 2.30 p.m. to hear the other witnesses.

Mr. Patrick Njue: Yes, Mr. Presiding Chair, Sir.

(Mr. Sale Timothy Mukoshi was stood down)

The Presiding Chair (Commissioner Dinka): Because today is the last day of hearings in Kakamega, we will have our closing session or closing ceremony in the afternoon after we have listened to the remaining witnesses.

Thank you.

[The Commission adjourned temporarily)

[The Commission resumed at 2.40 p.m.]

The Presiding Chair (Commissioner Dinka): Leader of Evidence, you may call your next witness.

Ms. Emily Kimani: Thank you, Mr. Presiding Chair, Sir. Our first witness this afternoon is Witness Code No.13 as per the Cause list.

(Mr. Daniel Joel Mukabi took the oath)

How are you this afternoon?

Mr. Daniel Joel Mukabi: I am fine.

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

Mr. Daniel Joel Mukabi: I am Daniel Joel Mukabi.

Ms. Emily Kimani: What is your occupation, if any?

Mr. Daniel Joel Mukabi: I am a student and I live in Kakamega Central.

Ms. Emily Kimani: You have appeared before us today because you did write a statement with us. I would wish that you confirm the same as true.

Mr. Daniel Joel Mukabi: It is true, I wrote my statement.

Ms. Emily Kimani: Please, take us through what it is that you recorded with us?

Mr. Daniel Joel Mukabi: It was on 31st December, 2007, at around 10.00 a.m. when I saw strange things. At that time, there was violence in Kakamega Town because where I live is not very far from the road. People were being chased away from the road by the policemen; they were being beaten, others were running to the places where we are living and the policemen were following and shooting them. While I was standing at the gate of our home and looking towards the road to see what was happening, in a short while, I saw a young man coming through our gate running very fast. He passed me, the police followed and shot him. In the process, I ran and hid in the house. When my sister looked at me she saw blood oozing from my feet. After a short while, the other boy came, pushed me into the house and I started crying. My mother came, looked at me and saw that I was bleeding. She started screaming for help and called my father. While my father was looking for the bicycle in the House someone we play with came. So, my father looked for two bicycles; one to carry me and him and another one for the other boy. When we reached the road, we found policemen who had red berets and we were told that they were GSU officers. They asked us where we were going and we told them that we were going to the hospital because we have been shot. They did not want to know why we were shot and they attacked us again. They beat me, my mother and my father. The bicycle that my father was using to carry the other man was pushed down the road before they released us to go to hospital. When we reached the dispensary, we were told that they were not able to handle our case so they told us to find ways to go to Kakamega General Hospital. On the way, we got a good Samaritan who told us that we could not go to the General Hospital. He instead, told us to go to Mukumu Hospital. After five days, I was sent to Kakamega because Mukumu Hospital had very many patients who had been hurt. So, I was told to create space and I could not go to the theatre. So, I was brought to Kakamega General Hospital where I stayed. I was told at the hospital that my leg where the bullet had gone through could not be attended to because it was badly damaged. Therefore, my foot was amputated.

I stayed at the hospital for about three weeks before I was discharged. I stayed at home for a few weeks before I went back to school to continue with my education because at that time I was in Form I. So, in 2008, I was supposed to join Form II. I have been disabled since then and I used crutches up to last year when I sat for my Form IV examinations. I still use crutches up to today. This is my report.

Ms. Emily Kimani: Thank you for your statement. I wish to ask you a few questions as a clarification of what you have just testified before us. You did tell us in your testimony that you were attacked again by GSU officers. Did they give you reasons as to why they were beating you up?

Mr. Daniel Joel Mukabi: No, they did not give us any reason. They just said that if they found someone, they would just beat him up. So, when walking down the road, you would find many bodies lying on the road with various injuries.

Ms. Emily Kimani: There was a young man who came running to your home. Do you know the reason why those people were being chased by the policemen?

Mr. Daniel Joel Mukabi: I did not know the reason because people were just running away and nobody was answering any question. People were just running away for their security and, so, there was no time for explanations.

Ms. Emily Kimani: Do you have any medical records as evidence of your treatment?

Mr. Daniel Joel Mukabi: Yes, I have.

Ms. Emily Kimani: Do you wish to submit the same as evidence in support of your testimony?

Mr. Daniel Joel Mukabi: Yes.

Ms. Emily Kimani: Through the Chair, this witness is adducing medical summary from the Provincial General Hospital, Kakamega, and requests that the same be admitted as evidence.

The Presiding Chair (Commissioner Dinka): It is so admitted.

Ms. Emily Kimani: Thank you, Mr. Presiding Chair, Sir.

You told us about the young man who came running to your home. Did you know who he was?

Mr. Daniel Joel Mukabi: Yes, I knew him before that. There was a woman where we lived who had employed the boy as a helper in the home but had stopped. He was working elsewhere and lived on his own.

Ms. Emily Kimani: Okay. You told us that it took some time before your leg was treated after the shooting. In your opinion, do you believe that if the medical attention would have come in handy, the amputation would not have resulted?

Mr. Daniel Joel Mukabi: I cannot understand clearly because it is the doctors who knew how to handle my case. They are the ones who knew the extent of the damage because I was shown the X-Ray picture. I was told that the bullet had gone through my joints. So, I do not know if my leg had been attended to earlier it would have survived and not be amputated.

Ms. Emily Kimani: Okay. From all the transgressions that you have gone through, what are your expectations from the Government?

Mr. Daniel Joel Mukabi: I just request the Government to see how my life can continue because there are many things that I did when I was still normal. I played, danced and at my age and it is very shameful for me to depend on my parents. So, it would have been very good if I was able to support myself in one way or another. Now, I cannot do so because there is no heavy work that I can do. Most of the jobs I can do, I can only do them while seated. So, I request the Government to help me.

Ms. Emily Kimani: I want to thank you very much. I salute you for being brave enough to share with us your story. I empathize with what happened to you and I encourage you to keep on working. Do not give up in life yet. I have no further questions for you, but the Commissioners, through the Chair, have questions for you.

Thank you once again.

The Presiding Chair (Commissioner Dinka): Thank you, Leader of Evidence. Ask the witness questions, Commissioners.

Commissioner Ojienda: Daniel, I just want to commend you for your testimony, for recording a statement with us and for finding time to come here today to share with us the pain that you went through during the post election violence. I just want to find out whether you are still undergoing medical treatment.

Mr. Daniel Joel Mukabi: I do not go for any medical treatment because the doctor has told me that I am okay.

Commissioner Ojienda: And you said that you finished Form IV. What grade did you attain? Are you doing anything now? Are you continuing with your studies?

Mr. Daniel Joel Mukabi: I attained a Mean Grade C (Plain) and I am not continuing with my studies.

Commissioner Ojienda: Okay. Do you remember the officer who shot you?

Mr. Daniel Joel Mukabi: No, I cannot identify him because in that state, there was no time to even look at the person who was running after you because you were running for your safety.

Commissioner Ojienda: What about the GSU officers who stopped you and made you clear the road? Can you remember them? Will you identify them if you saw them?

Mr. Daniel Joel Mukabi: No, I cannot remember or identify them because in that state, a very big thing had happened to me. It is very difficult to recall some of these things.

Commissioner Slye: Thank you, Daniel. The injury you suffered was during the violence related to the 2007 elections. Kenya is coming up to another election in 2012 and I wonder what your thoughts are about that, given what you experienced during the last elections.

Mr. Daniel Joel Mukabi: My thoughts are, one, I want to emphasize to this Commission that through its truth and its efforts we should sustain peace in this country. May be, it is through what will be done by this Commission that will help this country to have peaceful elections or not. But I really request you to continue working hard through so that this country can be a secure State.

Commissioner Slye: Do you think there will be peaceful elections in 2012?

Mr. Daniel Joel Mukabi: I cannot say for sure now because the way things are and the way the country is going, we are just leaving it to God for it is only God who will decide on how it will go.

Commissioner Slye: And then, Daniel, you have mentioned that one of the things you wanted from the Government was help. Given your injuries and I am wondering whether you have given any thought into what sort of training or skills you would like to acquire. Do you have any dreams or plans for the future and, therefore, what the Government could do to help facilitate that?

Mr. Daniel Joel Mukabi: Now that I am disabled, I request the Government to help my parents so that I can continue with my education so that I can get a job that I can do although I am disabled. This is because I cannot do strenuous work or work that requires me to stand for long. So, it will help if I can continue with my education and get light jobs that I can do in my state.

Commissioner Slye: In the time that you have been thinking about this, are there particular jobs that are of interest to you?

Mr. Daniel Joel Mukabi: Yes. The job that I would wish to do and which I have loved since I was young is being a broadcaster. This is because there is a saying that you go for what is good for you.

Commissioner Slye: That is very good. In the statement you gave us you ended by saying that you wished the police would use their weapons more wisely. I wonder if today you were standing in front of new police recruits what you will tell them.

Mr. Daniel Joel Mukabi: I will tell them that they are armed to take care of the security of the people and not to harm them and they ought to be keen when using their arms. The arms are dangerous and can be used kill or maim people the way it happened to me. When people are in problems, the security of those people is in their arms and so they should not use the arms to turn against the people they should protect.

Commissioner Slye: Thank you, Daniel. Those are wise words. I wish you luck in your pursuit of a career in media and broadcasting. I expect one day you may be interviewing one of us here for some future news story.

The Presiding Chair (Commissioner Dinka): Thank you, Daniel for coming and sharing with us your story, your suffering and your pain. I join my colleagues to express how we empathize with you and wish you luck and success in your future pursuit. I have no further question for you. Good luck.

Ms. Emily Kimani: Commissioners, our next witness is Witness No.10B.

(Mr. Mbwana Ashikoe Abdalla took the oath)

Ms. Emily Kimani: Please tell us your full names and where you live for record purposes.

Mr. Mbwana Ashikoe Abdalla: My names are Mbwana Ashikoe Abdalla. I live in Amalemba.

Ms. Emily Kimani: You spoke with us sometime back about land issues. Is that the case?

Mr. Mbwana Ashikoe Abdalla: Yes, that is the case.

Ms. Emily Kimani: Explain to us what you had written in your statement.

Mr. Mbwana Ashikoe Abdalla: I live at Amalemba slums. I was born in 1955 at Amalemba. My grandfather and my people moved to Kambi Somali in the 18th Century. They settled at a place called “Murram” and then moved to Amalemba. That is where I was born. I have lived there up to date. I married there and I had children there.

In 1991 something scaring happened. The Government sent a tractor to come and destroy our houses although our forefathers paid for that place during the colonial period. We even have receipts showing that they were paying rent for the place. There are receipts for Kshs2 and Kshs3. The houses were destroyed and the place was given to other

people. We complained as residents of the area and we even held demonstrations. We were blocked from demonstrating and told that the place belonged to the Government. We gave them the history of the place and asked them where they wanted us to go.

The DC came and we showed him our documents but he told us that we will have a meeting and discuss how the matter would be handled. They had a meeting in 1993 with our councilor, Mr. Dishon Murebe. They looked at the matter, visited the place and realized that we were more than 200 people. The council said that we should be allocated all the 177 plots and I have the minutes of the council. However, when they distributed the plots, they did not allocate all of us the 177 plots as it had been agreed. Most people had their houses burnt and they could not rebuild them. They had to go and live with their relatives.

In 2002 we were given allotment letters, but we have not been shown our individual plots although I know where my plot is. After that we were told by the Municipal Council that we start paying for money that would pay the surveyors. We paid and I have the documents with me. We paid the money to the DC. We were told to pay Kshs3,200, but no surveyor came. We were allocated 125 plots and so 52 plots remain unaccounted for. There is no assurance that we will get back the plots. We formed a group in 1994 to demand the plots back and we were told that the plots would be allocated to us to make a total of 177 plots.

After another demonstration they arrested our secretary and we followed him up to the police station. The Municipal Council followed up on the matter and stated that, indeed, we had been allocated those plots. We lamented that the council had promised to come and construct access roads, but they did not want to come and show us our plots. We have been living in fear. When you want to build a house you are told not to build because you are not sure where your plot is. Nobody knows his or her plot number. That is our cry.

We want to know why we are charged rates when the Municipal Council has not shown us our plots. We do not have roads and security lights and we live in darkness just like during the colonial period.

I would like this Commission to follow up on our issues. How will we get back the remaining plots? I am now living with my parents on a 50 by 50 feet plot. We were born and bred there and we do not know how to plan for our children now. I am crying to this Commission to follow up the matter with the Municipal Council so that it allocates us the remaining 52 plots. I am here to get assistance from you.

Ms. Emily Kimani: Thank you for your testimony which has not only focused on your plight but that of others too. Where is the exact location of this land?

Mr. Mbwana Ashikoe Abdalla: Near Amalemba Primary School along the Kakamega-Kisumu Road.

Ms. Emily Kimani: You held demonstrations after which the DC came and at least something seems to have been done. What other course of action have you taken in pursuit of the title to this land?

Mr. Mbwana Ashikoe Abdalla: We have been demonstrating to the DO and the DC. We just use demonstrations.

Ms. Emily Kimani: Have you taken this matter to court?

Mr. Mbwana Ashikoe Abdalla: No, we have not gone to court.

Ms. Emily Kimani: Which municipal council are you talking about?

Mr. Mbwana Ashikoe Abdalla: The Kakamega Municipal Council.

Ms. Emily Kimani: Do you have the documents you mentioned with you here?

Mr. Mbwana Ashikoe Abdalla: I do not have the minutes for the council of elders, but I have the minutes of the municipal council and the DC.

Ms. Emily Kimani: Do you wish to produce the same as evidence before this Commission in support of your case?

Mr. Mbwana Ashikoe Abdalla: Yes, I would like to submit them because I have them. There is also a friend of mine who will boost my evidence because he was the Secretary of that Committee.

Ms. Emily Kimani: You said that the Government sent tractors in 1991 to demolish your structures. Which specific arm of the Government did that?

Mr. Mbwana Ashikoe Abdalla: It gave people tractors to come and demolish our houses. There are goons there---

Ms. Emily Kimani: Was there any notice given?

Mr. Mbwana Ashikoe Abdalla: No, there was none.

Ms. Emily Kimani: I have no further questions for you. I will now hand you over to the Commissioners.

Commissioner Ojienda: Mr. Abdalla, do you come from the Nubi Tribe?

Mr. Mbwana Ashikoe Abdalla: I come from the Luhya Community.

Commissioner Ojienda: Your claim is based on an injustice to 52 families.

Mr. Mbwana Ashikoe Abdalla: I am claiming on behalf of the whole slum and not for the 52 families. I am claiming for all the slum dwellers at Amalemba slum.

Commissioner Ojienda: Have you applied for letters of allotment for the plots you occupy?

Mr. Mbwana Ashikoe Abdalla: We were given the letters. We are supposed to pay Kshs8,800.

Commissioner Ojienda: Have you paid the money?

Mr. Mbwana Ashikoe Abdalla: No, we have not paid.

Commissioner Ojienda: Are you aware that if you have not paid--- Do you have the letter here?

Mr. Mbwana Ashikoe Abdalla: Yes, I have the letter here. I have all the documents.

Commissioner Ojienda: At the second page of that letter, does it state the time within which you are required to pay that money?

Mr. Mbwana Ashikoe Abdalla: Yes, but I am supposed to be shown the place I am supposed to stay and then I go open a file at the municipal council so that it can show the road and my plot which I should be paying for. At the moment I have been given a certificate of the plot. I have not been shown the exact plot that belongs to me.

Commissioner Ojienda: Have you paid the showing fee at the municipal council?

Mr. Mbwana Ashikoe Abdalla: We have not had that idea because when people got the certificates, they kept quiet. The DO came and promised us that we will be shown the plots. So, we kept quiet and we have been waiting. We are now tired.

Commissioner Ojienda: You have the power in your hands. You have the allotment letter and the instruments. Seek legal advice to compel the clerk to perform his job. This is a matter that may seem small yet the new clerk is willing to assist you. You need to mobilize the members of your community and in a civil manner, go and see the clerk. If your problems cannot be resolved, then you have the option of going to court to compel him to issue the document and ensure that you are shown the plot. This is because you have an allotment letter already and all the original documents.

Mr. Mbwana Ashikoe Abdalla: I wanted to bring it to your attention because it is now a cat and mouse game. We are not resisting paying. We agreed on 177 plots, but we were allocated 125 plots. We want to be allocated all the plots so that we can start the Government process. People are suffering.

Commissioner Slye: Mr. Abdalla, you have lived in Amalemba your entire life. Is that right?

Mr. Mbwana Ashikoe Abdalla: I was born there in 1953 and I still live there.

Commissioner Slye: Can you describe to us the changes you have seen in that community from when you were young to today in terms of quality of life people were able to live there?

Mr. Mbwana Ashikoe Abdalla: We are called the *jua kali* people, that is, people who do small jobs. I am not educated because I went to school up to Standard III because my parents were not able to educate me. The houses at Amalemba are the way they were since the days of our grandfathers. They have not changed in any way. They are mud houses and there are no roads. They have remained the same since 1953.

Commissioner Slye: Is there anything that has changed?

Mr. Mbwana Ashikoe Abdalla: With regard to infrastructure, they are just the same roads. There are no access roads. Those who took our land are the only ones who have managed to build a few new houses.

Commissioner Slye: How many families share the circumstances similar to yours?

Mr. Mbwana Ashikoe Abdalla: At the moment, we are more than 200 people.

Commissioner Slye: How large is the plot the 200 people are on?

Mr. Mbwana Ashikoe Abdalla: It is an area that can accommodate 200 people. It is just that the airstrip has taken part of the land.

Commissioner Slye: Do you have access to schools, medical facilities, electricity, water and so on?

Mr. Mbwana Ashikoe Abdalla: We have a good school here. Hon. Musalia Mudavadi has built us a very good primary school. The problem is water. We do not have good roads. There is no sewerage system. We live like we are in the colonial times.

Commissioner Slye: What is the source of the water?

Mr. Mbwana Ashikoe Abdalla: There is a river called Mwikulu where we get our water.

Commissioner Slye: What about medical facilities?

Mr. Mbwana Ashikoe Abdalla: We are near the General Hospital. It is a walking distance of 20 minutes away.

Commissioner Slye: The hospital is sufficient to serve the needs of the community?

Mr. Mbwana Ashikoe Abdalla: Yes, it is.

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

The Presiding Chair (Commissioner Dinka): Mr. Mbwana Abdalla, I have two questions. Do you pay rates?

Mr. Mbwana Ashikoe Abdalla: Yes.

The Presiding Chair (Commissioner Dinka): When you pay rates, you have the measurement of the land. How many acres or square metres are you charged rates?

Mr. Mbwana Ashikoe Abdalla: In terms of metres, it is 19 by 19 m. In the minutes, we are supposed to be allocated 50 by 50 feet plot but they reduced it.

The Presiding Chair (Commissioner Dinka): You pay rates for 19 by 19m and yet the letter of allotment says 50 by 50 feet. Is that so?

Mr. Mbwana Ashikoe Abdalla: The letter says that the plots are in two parts. There is one they have written 0.3 ha and another one is written 0.2 ha.

The Presiding Chair (Commissioner Dinka): So are you paying for half an hectare?

Mr. Mbwana Ashikoe Abdalla: For the plot of 0.2 ha, we are supposed to be paying Kshs2,100 per year. The rates are the same even for the 0.3 ha.

The Presiding Chair (Commissioner Dinka): You said that the council is now selling to people part of your allotment. Is it part of the 0.3 ha or the 0.2 ha? Which one are you talking about?

Mr. Mbwana Ashikoe Abdalla: There is no land that has been sold to the school. It is just the slum. During President Moi's regime, there was a club. We went to the council and we sought to build a primary school there instead of the club. It started in 1980 and it is still there.

The Presiding Chair (Commissioner Dinka): From my understanding, you are not losing your land. What you want are beacons to identify your plots because you do not know as yet which plots belongs to whom. I think I would go along by the suggestion given by Commissioner Ojienda that you go to the clerk of the municipality and check with them and see whether the plots could be identified for each family. If that becomes difficult, you should be talking to a lawyer.

Mr. Mbwana Ashikoe Abdalla: If we go to the council, we will not get anybody who will help us because the Government has powers. The councilor has already run away from us and he does not want to address our plight. The council has not even brought the surveyors so that we know our individual plots and yet we pay taxes.

The Presiding Chair (Commissioner Dinka): Do you know the name of the councilor?

Mr. Mbwana Ashikoe Abdalla: He is called Majimbo Lumumba from a place called Shitao.

The Presiding Chair (Commissioner Dinka): What about the clerk?

Mr. Mbwana Ashikoe Abdalla: No, I do not know him.

The Presiding Chair (Commissioner Dinka): I think you should go and see the clerk, but we will see what can be done from our end.

Ms. Emily Kimani: Commissioners, before I stand down the witness, he wishes to adduce the documentary evidence. With me are minutes of the Council meeting held on 24th September, 1993; several correspondences regarding the matter; newspaper articles from the *People Daily*, *East African Standard* and the *Nation*; receipts from the Colonial Government; a rating book; the witness' copy of the allotment letter and the demand notice from the Municipal Council of Kakamega.

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

Ms. Emily Kimani: Our next witness is Witness Code No.11A.

(Mr. Bernad Vuhasho Chasaya took the oath)

Ms. Emily Kimani: Please, tell us your full names and where you come from and what you do for a living.

Mr. Bernad Vuhasho Chasaya: My names are Bernad Vuhasho Chasaya from Bukhaya Sub-Location, Vihiga District.

Ms. Emily Kimani: You are here because you recorded a statement with us touching on what happened to you during the post-election violence. Is that the case?

Mr. Bernad Vuhasho Chasaya: Yes. It was on 31st, December, 2007 around noon when I was going to Mbale Market to buy food for my family. Before reaching town I was shot by some policemen and left in pain.

I just tried my best to turn and there were three policemen behind me; two men and one policewoman. They were wearing full uniform of the Kenya Police. Then there were other two young men who came from the other side and they are ones who helped me.

They carried me to Vihiga District Hospital. That is where I was attended to after having been admitted for two days. On the third day, I was discharged and I went home. I was told to be going there for wound-dressing and I did that every day for two months.

Ms. Emily Kimani: *(Inaudible)*

Mr. Bernard Vuhasho Chasaya: Yes.

Ms. Emily Kimani: Thank you, Bernard, for your testimony. I know what happened to you is very traumatizing and I empathize with you. I wish to ask you a few questions. You have told us that you were walking when you were shot. Did you know these policemen before this particular incident? Did they tell you the reason for shooting at you?

Mr. Bernard Vuhasho Chasaya: No, I was not told the reason. I was just walking only to be shot from behind.

Ms. Emily Kimani: Were there nobody even in the surrounding area when this happened? Were you the only person? Was there no witness who saw what happened to you?

Mr. Bernard Vuhasho Chasaya: I was just walking alone on the road.

Ms. Emily Kimani: They just approached you and shot you without giving reasons?

Mr. Bernard Vuhasho Chasaya: No, they did not give me any reason. I was just walking when I was shot from behind.

Ms. Emily Kimani: Do you have a current medical condition from the shooting that occurred to you at that time?

Mr. Bernard Vuhasho Chasaya: Since that day, my health is not all that good. I am not all that strong as before. I am a bit--- I do not have strength---

Ms. Emily Kimani: Do you have any medical records, after you were taken to the Vihiga District Hospital that you wish to adduce as evidence before us today?

Mr. Bernard Vuhasho Chasaya: Yes. I have the documents here with me.

Ms. Emily Kimani: Have you tried to go to court or record a statement about what happened to you after this particular incident?

Mr. Bernard Vuhasho Chasaya: Yes, I went to court and the matter is before court.

Ms. Emily Kimani: Could you tell us the case number and the court where the matter is filed?

Mr. Bernard Vuhasho Chasaya: It is at Vihiga High Court and it is still pending.

Ms. Emily Kimani: When was the last time the matter was heard?

Mr. Bernard Vuhasho Chasaya: Last year.

Ms. Emily Kimani: From what happened to you, what are your expectations from the Government so that you can feel that justice has been done to you?

Mr. Bernard Vuhasho Chasaya: I was just a person who was doing small jobs and that was my work; the Jua Kali job, in the town. That is what I was doing to feed my family. Since I was shot; there is nobody who has helped me go back to town to do my small jobs. I would like the Government to help me because I am not strong enough to do my work.

Ms. Emily Kimani: If you could be a bit more specific in terms of the assistance you would require from the Government.

Mr. Bernard Vuhasho Chasaya: From the side of the Government, if I get financial assistance; I can keep up my life and my children would get education and be fed well because at the moment, it is very difficult.

Ms. Emily Kimani: From your area, I know you have clarified to us that when you were shot at and you were alone at that particular point, have you heard of other instances where the police in that area where you reside have been attacked; or have you heard of similar stories?

Mr. Bernard Vuhasho Chasaya: No. I have never heard of similar incidences.

Ms. Emily Kimani: Thank you for your testimony and appearing before us today to share with us your sad story. I have no further questions. I now hand you over to the commissioners through the Chair.

The Presiding Chair (Commissioner Dinka): Thank you very much, Leader of Evidence. It is your time, Commissioner Farah.

Commissioner Farah: Mr. Chasaya, when you were shot at, were you alone or you were with a group of people?

Mr. Bernard Vuhasho Chasaya: I was alone.

Commissioner Farah: What were you doing alone in the street?

Mr. Bernard Vuhasho Chasaya: I was coming from home going to the market to look for food for my children. That is when I was shot.

Commissioner Farah: When you were walking, did you not see other people running? Did you not see that there was chaos going on?

Mr. Bernard Vuhasho Chasaya: No, there were no chaos of any nature and there was nobody running anywhere.

Commissioner Farah: You were not aware of what was going on?

Mr. Bernard Vuhasho Chasaya: No, at that particular moment, the environment was cool and people were not running here or there.

Commissioner Farah: So, it was the beginning of the problem?

Mr. Bernard Vuhasho Chasaya: Probably, yes.

Commissioner Farah: I have no further questions.

Commissioner Ojienda: Mr. Chasaya, I have no question for you, but I just want to encourage you and to share with you the fact that many Kenyans suffered out of the violence that took place following the elections of December, 2007, and you are one of them. I just want to note that that was a dark phase of the history of this country and we hope that we do not get there again. If I asked you; what would be your recommendations to the Government on the question of peaceful elections?

Mr. Bernard Vuhasho Chasaya: I would like the coming elections to be peaceful.

Commissioner Ojienda: Okay. Thank you very much.

Commissioner Slye: Thank you, Mr. Chasaya. I just have a few questions for you. Firstly, before this incident, had you had any interactions with the police before?

Mr. Bernard Vuhasho Chasaya: No!

Commissioner Slye: Then since the incident, have you had any interactions with the police?

Mr. Bernard Vuhasho Chasaya: No!

Commissioner Slye: So, your only experience with police officers was during this incident when you were shot?

Mr. Bernard Vuhasho Chasaya: Although I did not meet them from the front; they did not confront me but they were from behind. I was the one moving in front of them but they came from behind.

Commissioner Slye: Before you were shot by them and before that day, what was your general impression of the police? Did you have a favourable, negative or no impression or opinion of them?

Mr. Bernard Vuhasho Chasaya: No, I did not have any thoughts about the police. My only aim was moving to go and look for food. Anything about the police was not in my mind.

Commissioner Slye: What I am trying to understand is whether this incident has affected your view of the police in Kenya. Has your opinion about the police now changed? You did not have an opinion of them before and now you have an opinion of them in terms of their role in society or whether they are helpful or not helpful. Have you given much thought to that?

Mr. Bernard Vuhasho Chasaya: On the side of police, I do not have any negative attitude towards them, perhaps, they speak well, but on the other side when they start their work, it becomes different. And when you are together, you can just speak with them and you have good conversations.

Commissioner Slye: Is my understanding correct that you have generally a favourable view of the police? Is that right?

Mr. Bernard Vuhasho Chasaya: No.

Commissioner Slye: So your negative view about the police was indifferent?

Mr. Bernard Vuhasho Chasaya: The police should do their work properly, not just to harass the innocent people. The police are not bad, but when they are at work, they just go to extremes that are unnecessary.

Commissioner Slye: Thank you. That is helpful. Then I want to ask you about the medical treatment that you received. In your written statement that was given to us, which was through an interview by one of our investigators, you said that you could not afford to come for the cleaning of your wound every day since you did not have the money. I thought I heard you say - although, maybe, it was the interpretation - that, at least, for the first two months, you did go every day to get your wound cleaned. Were you able to go everyday as it was required to get the wound cleaned?

Mr. Bernard Vuhasho Chasaya: Yes. I was going everyday for the two months because I was told it was a must.

Commissioner Slye: Did they want you to go there for a longer period, but you were unable to go for the entire period that the doctors said you should go?

Mr. Bernard Vuhasho Chasaya: Yes. I went for the period that the doctor had told me.

Commissioner Slye: You also said that you continued to suffer because of problems from the shooting, you were tired--- Again, in your written statement you said something about needing medication which you were unable to get. Is that correct? Is the medication that would have helped you that you were not able to get?

Mr. Bernard Vuhasho Chasaya: At the moment, the way I am feeling, even if I continued with the medication--- I think the only assistance I can get is to help me keep up with life, but I do not know whether it can help me in terms of health. So, as the years go by, even the body becomes different from what it was when one was young. At moment, I am 35 years old; I do not know whether the health services can help me much.

Commissioner Slye: When was the last time you saw a doctor or a medical professional?

Mr. Bernard Vuhasho Chasaya: It was in year 2008; around one month after the shooting. That is when I was told to report to the doctor.

Commissioner Slye: Since then, you have not seen anyone with respect to the effects of the shooting that you may still have? Is that right?

Mr. Bernard Vuhasho Chasaya: No! Not yet.

Commissioner Slye: Is that something that you would like to be helped do and you have not been helped or you feel that, given your current situation, the medication that you get is sufficient?

Mr. Bernard Vuhasho Chasaya: On the side of medication, at the moment, I do not think whether it would be so important because I am already affected. When I walk so fast, I feel pain. When I do heavy jobs, I still feel pain. I do not know whether the medication can help a lot.

Commissioner Slye: Thank you. Lastly, what sort of jobs are you able to do now to help you feed your family?

Mr. Bernard Vuhasho Chasaya: I was doing small jobs in town. But in terms of business, it is not successful. It is a difficult job for my health. Doing business can be better for me.

Commissioner Slye: So, you are engaged in business that at the moment has allowed you to provide for your family or are you saying that business needs to be better?

Mr. Bernard Vuhasho Chasaya: I have not started doing business as such; it is just a small business. But if I get finances, I can advance my business.

Commissioner Slye: Thank you very much. Again, on behalf of the Commission, I want to thank you for coming here and sharing your story with us. We very much appreciate your coming.

The Presiding Chair (Commissioner Dinka): Thank you very much, Mr. Chasaya, for coming and sharing with us your story. I have just a few questions for you. You said that when you were going to town from house, you were shot from behind. Is it that there was no problem; there was no looting and there were no people fighting each other? Was there total peace and there was neither problem nor disturbances?

Mr. Bernard Vuhasho Chasaya: There were no chaos, the situation was calm.

The Presiding Chair (Commissioner Dinka): Why was it then that the police were roaming around with arms?

Mr. Bernard Vuhasho Chasaya: That is what I also wonder. Why did they come to the villages because they are usually found in town? Others were staying in town but there were others who were walking in the villages.

The Presiding Chair (Commissioner Dinka): Do you know any of the policemen that attacked you?

Mr. Bernard Vuhasho Chasaya: No, I cannot know them.

The Presiding Chair (Commissioner Dinka): Before they shot at you, had you heard anything like: “Stop, or put your hands up”, something like that; the usual police commands? Was there anything like that, or they just started shooting at you?

Mr. Bernard Vuhasho Chasaya: No, they did not tell me anything. They just shot at me.

The Presiding Chair (Commissioner Dinka): Okay. Lastly, in your written statement, you said that you know other people who were innocent but they were killed by the policemen. Can you tell us the names of those people, where they are or which villages they resided in at the time of their death?

Mr. Bernard Vuhasho Chasaya: I was just told that there were two young men; one from Yaduiwa Location, Yaduiwa sub-location, Vihiga Location. Another one was coming from Nzulu Location, Vihiga. One was called Enzuri and the other was called Kanzuri; the one from Yaduiwa Location was called Ogonda.

The Presiding Chair (Commissioner Dinka): Were they killed at the same time as you were shot or at different times?

Mr. Bernard Vuhasho Chasaya: I cannot remember when they were killed, but I just heard that they were also killed. I did not see them being shot, I was just told.

The Presiding Chair (Commissioner Dinka): Was it during the elections?

Mr. Bernard Vuhasho Chasaya: Yes, it was during the elections.

The Presiding Chair (Commissioner Dinka): There are no further questions for you, Mr. Chasaya. Thank you very much. I would like also to join my colleagues to express to you how sad we are and we would like to empathize with your suffering and we wish you good luck and success in your business and your future pursues.

Thank you.

Ms. Emily Kimani: Commissioners, through the Chair, this witness wishes to adduce as evidence in support of his testimony; two medical receipts, a discharge summary from Vihiga District Hospital and a hearing notice dated 9th February, 2010.

The Presiding Chair (Commissioner Dinka): So admitted.

Ms. Emily Kimani: Thank you, Chair.

The Presiding Chair (Commissioner Dinka): Hearing Clerk, would you see the witness back to his seat and call the next one?

(The Witness was stood down)

(Mr. Godfrey Likabo took the oath)

Ms. Emily Kimani: How are you Godfrey?

Mr. Godfrey Likabo: I am fine.

Ms. Emily Kimani: For record purposes, tell us your names, where you reside and what you do for a living.

Mr. Godfrey Likabo: My name is Godfrey Likabo. I live at Sitoshila Sub-Location, Shibakala area Khayega Market. I was ---

Ms. Emily Kimani: This happened to you after the 2007 General Elections. Is that true? Please take us through what you recorded with us.

Mr. Godfrey Likabo: One day on 30th, while I was working at the butchery; as I was seated there, I heard something like noise. I could not see because people were very many, I struggled to close down the butchery but the incident--- As I was struggling to close the butchery, they shot me on my right hand - I cannot remember the exact time, but I found myself admitted at Mukumo Hospital. I was surprised when I looked at my hand. I saw maybe, there was a problem because I felt that my hand had been broken as it was still bleeding. It was at around 3.00 a.m., when I gained my consciousness at the hospital. I stayed in hospital for one month and three days and the hospital bill was high. I was supposed to pay Kshs48, 000 to be discharged but there was nobody to help me pay

the bill. So, it forced me to look for other ways of moving out of hospital so that I could pay the bill in installments. I was forced to sell some of my properties; I sold some of my cattle in order to pay some money to be discharged. So, I was discharged from hospital though I had not recovered properly.

I was travelling to and from hospital using Kshs50.00 every day for further review and treatment. I had my younger brother who helped me with fare.

It reached a time when my hand was not able to handle anything or do any work. It was a pity for me and that is how my life changed. I had neither mother nor father so I was only depending on myself. I did casual jobs to enable me support my family. It was a bit hard for me after passing through such experiences. I saw very many people die in hospital, so I was not very much amused and it was not something good to talk about.

I tried to use traditional herbs to treat my hands but it was a bit hard because it was my right hand which I used to do work. So, I could not survive using one hand. I am still in such a condition while I have a wife and a child who is still very young. My parents passed on and it is only my brother, Kennedy Sikolia, whom I am left with. At that time, he was not at home, but he started helping me from there; but this has brought some quarrels in his house because his wife is against him helping me. I have nowhere to go and I feel my life is not going on well as the hand which I was depending on was shot and got broken. I came to this Commission because I do not have anybody to help me. I only depend on God. May be God can help me to continue with my life. That is all I have to say.

Ms. Emily Kimani: Thank you, Godfrey, for that testimony. I have a few questions for you so that we can be able to understand the statement you recorded with us, and also what you have told us here overly. You told us that you used to operate butchery. Where was it located?

Mr. Godfrey Likabo: It was in Khayega, opposite a chemist.

Ms. Emily Kimani: In Kakamega?

Mr. Godfrey Likabo: Yes, it is in Kakamega.

Ms. Emily Kimani: You also told us that you were shot at and after that, you lost consciousness. When you came back to your normal senses, you found yourself in hospital. I know you recorded a statement that you were told what happened and you have even talked about an administration police man. Did you get to know who he was after you had been told what happened to you?

Mr. Godfrey Likabo: I was with some people who took me to hospital, these were well wishers. One of them is known as Emilio. He told me that, an administration police officer in Khayega AP Camp was the one who shot me without reason. Later he was transferred. There was also a time when an administration police officer shot a child of a

chief, and the child died on his way to hospital. It was a bit hard to know why he was shooting at us while we lived together.

Ms. Emily Kimani: Did you have an encounter with this particular police prior to this incident? Do you know which station he was transferred to?

Mr. Godfrey Likabo: I have really tried to find out where he was transferred to but we have not got the report where he was taken to. Even the chief tried to find out where he was transferred to, but he said---

Ms. Emily Kimani: You have said that you had not dealt with him prior to this particular incident; was he a complete stranger to you?

Mr. Godfrey Likabo: He was just a stranger to me. He never stayed at---

Ms. Emily Kimani: I wish maybe for purposes of clarity - I know your statement indicates that you were taken to Mukumu Hospital. Is it Bukumu or Mukumu Hospital?

Mr. Godfrey Likabo: It was in Mukumu Hospital.

Ms. Emily Kimani: Do you have medical records for that?

Mr. Godfrey Likabo: I gave all of them.

Ms. Emily Kimani: You gave them to us?

Mr. Godfrey Likabo: I gave them to the people who were concerned.

Ms. Emily Kimani: After this particular incident happened to you, what action did you take? Much as you have told us that you tried to find out where this particular officer went to in vain, did you take the matter to court? Have you attempted anything in that direction?

Mr. Godfrey Likabo: No. I have not tried anything like that because I was unable to do so.

Ms. Emily Kimani: Okay. Thank you once again. I salute you for sharing your story with us. I have no further questions for you. I now hand you over to the commissioners through the Chair.

The Presiding Chair (Commissioner Dinka): Thank you, Leader of Evidence. Mr. Godfrey, you said that when you were being shot at, there were two witnesses who saw the administration police officer shooting you. Did you give their names?

Mr. Godfrey Likabo: One of them was known as Emilio and the other one Stady. They were the ones who helped and took me to Mukumu Hospital and then they told me

exactly what happened after gaining my consciousness. They told me the name of the police who shot me.

The Presiding Chair (Commissioner Dinka): Later on after the wound was plastered, did you report to any police station?

Mr. Godfrey Likabo: I never went to the police station because I had nobody to help me.

The Presiding Chair (Commissioner Dinka): You did not report them matter to the police station because you feared as the police were the ones who shot at you. Was it because you were not having enough energy to go to the police station or you feared?

Mr. Godfrey Likabo: I never believed in police officers again because it reached a time that I hate policemen now.

The Presiding Chair (Commissioner Dinka): Thank you. I do not have any other question for you.

Commissioner Ojienda: Godfrey, I am sure you were part of a group of innocent Kenyans who were shot when this country was going through some conflict following disputed elections. I just want to ask whether you have anything to say. If I asked you about the police reforms, what kind of views do you have?

Mr. Godfrey Likabo: If that police officer who shot me is found, he should first be prosecuted. I had nothing to do with him, but he destroyed my life and up to now, even my family is going through difficulties to earn basic needs because of him.

Commissioner Ojienda: Are you currently having any form of treatment or you have completely healed?

Mr. Godfrey Likabo: I finished treatment this month. Sometimes my hands tremble and when I try to work hard, I feel pain at my hands.

Commissioner Ojienda: Which one particular thing, Godfrey, would you want the Commission to do for you or to recommend in respect to your specific situation?

Mr. Godfrey Likabo: I would like the Commission to help me so that I go back to my normal working condition. I can do business of selling livestock as I used to do. That is the type of business I can do because right now that is the only thing I can ask the Commission to help me.

Commissioner Ojienda: Thank you. I just want to give you reassurance that what we have heard from Kakamega that is from you and from the previous witnesses is a detail of pain and suffering as a consequence of the elections. This is a clear evidence of the level of brutality that was meted against the people as soon as the violence commenced. We

have also heard that all those who have testified here are keen to forget the pain that they went through and the dark moment when this happened. We will make appropriate recommendations in that regard.

Thank you very much.

The Presiding Chair (Commissioner Dinka): Thank you very much, Godfrey. Your experience is a very traumatizing one and you have gone through pain and suffering, which had a very negative impact on your livelihood. As you said in your statement, you had to sell all your belongings; everything you had to pay the hospital bill for the 32 days you stayed in hospital. We empathize with you. I would like also to assure you that this will be fully reflected in our report and appropriate recommendations and conclusions will be drawn from that report.

Thank you very much for coming to share with us your experiences.

(The Witness was stood down)

Ms. Emily Kimani: Hon. Commissioners, our last witness for the day is Mr. Mofat Lumiti Lwikato.

(Mr. Mofat Lumiti Lwikato took the oath)

Ms. Emily Kimani: Could you, please, state your full names to us, what you do and where you live?

Mr. Mofat Lumiti Lwikato: My name is Mr. Mofat Lumiti Lwikato and I live in Rostaman. At this time I am just at home and I do not do any work.

Ms. Emily Kimani: Could you confirm to us that you wrote a statement about the death of your nephew after the 2007 elections?

Mr. Mofat Lumiti Lwikato: That is true. There was a group of people going home and one of them died on the spot but my nephew died in the hospital. He was taken to the hospital after being shot until all the intestines were out. Some boys who were injured were carried on a wheelbarrow to hospital.

Ms. Emily Kimani: Is that what you wrote in the statement?

Mr. Mofat Lumiti Lwikato: Yes. That is what I was telling you because those were my brother's sons and my brother is also dead. So, it is only me who is struggling to fend for them. Those boys were not rioting or demonstrating. They were just going home after a day's work but they were shot by the administration police officers.

The other issue that I wanted to tell you is that one of them was a shoe shiner and all his items were looted.

Ms. Emily Kimani: Thank you, *mzee*, for your testimony. I know it is not easy to talk about what you are telling us. It is a very painful episode. I wish to ask you a few questions so that we could understand what you recorded and what you have told us now.

Mr. Mofat Lumiti Lwikato: I would also like to say that other than the loss of property, I also have sorrow.

Ms. Emily Kimani: How old was your nephew when he passed on?

Mr. Mofat Lumiti Lwikato: His name was Cheben Namuyanga. He was my sister's son. He was about 30 years old and he left three children behind.

Ms. Emily Kimani: Were you present at the scene of shooting or you were informed by a witness? If so, could you give us the name of the witness who informed you?

Mr. Mofat Lumiti Lwikato: The person who witnessed the shooting is known as Saumu. She is a lady who lived in the neighbourhood. She saw everything. She can be called at any time to give more information.

Ms. Emily Kimani: Tell us more so that we can have a clear record.

Mr. Mofat Lumiti Lwikato: What I can say is that when he was shot, it was reported to the police and they recommended that he should be taken to hospital. I also understand that the policeman who shot him was arrested.

Ms. Emily Kimani: As a family, would you like to go to court and pursue justice?

Mr. Mofat Lumiti Lwikato: At that time, many people were being killed and people could not go to court but when we heard that this Commission is going round collecting views on the injustices that took place, we decided to come and present our views before it.

Ms. Emily Kimani: What kind of recommendations would you like this Commission to make to the Government so that what happened to your family does not happen again in the upcoming elections?

Mr. Mofat Lumiti Lwikato: I am really sad about what happened. If a person died, he is supposed to be compensated. People who were killed by police officers should be compensated because they left their families behind and in all the cases, they were the breadwinners. The Government should try to compensate the family members who were left behind for us to forget the sorrow. When elections come up again, I would advice young people not to get involved in politics. They are just being used by politicians. The Government should carry out civic education so that people can understand how to handle politics.

Ms. Emily Kimani: Thank you, Mr. Lumiti, for sharing your story with us. I do not have further questions for you. I now hand you over to the commissioners for more questions if they have any.

The Presiding Chair (Commissioner Dinka): Thank you very much. I do not have any question to ask you but I empathize with you. We now know that quite a number of people were shot dead in Kakamega area. I think your nephew was among those many who were shot dead. We have heard your case and we empathize with you.

Commissioner Ojienda: I also want to thank you for your testimony. It is good to see an 85 year old man speak so strongly and yet he endured so much pain on the loss of his grandchildren and their father. I just want to salute you and to let you know that we have heard your story and that it shall form part of our report.

Mr. Mofat Lumiti Lwikato: Thank you very much for empathizing with me.

Commissioner Slye: Mr. Lumiti, you have lived through and seen the development of Kenya's history. You were alive during the colonial period and during the struggle for independence. You witnessed the independence of Kenya and four successive governments. I wonder if you could be willing to take a moment to share with us your impression of where you think Kenya is heading. Is Kenya moving in a positive or negative direction?

Mr. Mofat Lumiti Lwikato: When people were being taken to the World Ward, I was here. When Kenyans were fighting for independence, I was here. I moved to Uganda and came back when Kenya was independent. It would be good when people live in peace. We should live in peace and violence should not come back to us again.

Commissioner Slye: *Mzee*, if you were to sit down with politicians who run this country today, and they asked for your advice on how to make Kenya a more peaceful and united country, what would you say to them?

Mr. Mofat Lumiti Lwikato: First, I am not a politician and I am poor in politics. Politics is something hard to deal with. I would only like to ask politicians to think about the people. Today, people do not think about others but themselves only.

Commissioner Slye: *Mzee*, it is people like you who have words of wisdom than the words of many politicians. I want to thank you for sharing your views with us. I want to join my fellow commissioners in expressing my sorrow at the loss of loved ones during the last elections. I also want to salute you for having persevered and survived for as long as you have and for having seen as much as you have seen and for acquiring the wisdom that you have.

Mr. Mofat Lumiti Lwikato: I also want to thank the Commission for coming here to listen to us.

The Presiding Chair (Commissioner Dinka): Thank you, *mzee*. I want to tell you that we feel deeply for your pain and loss. We value very much your presence with us and the story of your suffering. At the age of 85 years, you look like you are 60 years old. I would like to thank you on behalf of the Commission and on my own behalf.

I believe that we are going to have our closing ceremony. I want to call upon the master of ceremony to tell us the next step.

(The Commission adjourned at 4.40 p.m.)