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(i)

NATIONAL DEPOSITARY  
SERVICE (NDS)

ACC. NO. 2014-272

CLASS NO. K.303.609.6762 KEN

## **ABBREVIATIONS**

ADC	-	Agricultural Development Corporation.
AP	-	Administration Police.
ATSU	-	Anti Stock Theft Unit.
CID	-	Criminal Investigations Department.
CL	-	Commissioner of Lands.
DSI	-	Directorate of Security Intelligence.
DC	-	District Commissioner.
DEO	-	District Education Officer.
DLO	-	District Lands Officer.
DO	-	District Officer.
DSIO	-	District Security Intelligence Officer.
DCIO	-	Divisional Criminal Investigations Officer.
GSU	-	General Service Unit.
MP	-	Member of Parliament.
NGO	-	Non Governmental Organization.
OCS	-	Officer Commanding Station.
OCPD	-	Officer Commanding police Division.
PC	-	Provincial Commissioner.
PCIO	-	Provincial Criminal Investigations Officer.
PPO	-	Provincial Police Officer.
PSIO	-	Provincial Security Intelligence Officer.

JUDICIAL COMMISSION OF INQUIRY  
INTO TRIBAL CLASHES IN KENYA  
COUNTY HALL  
P.O. BOX 49357  
NAIROBI

19<sup>TH</sup> August, 1999.

His Excellency the President,  
Hon. Daniel T. arap Moi C.G.H., M.P.,  
State House,  
NAIROBI.

Your Excellency,

You appointed us by Gazette Notice No.3312 of 1<sup>st</sup> July, 1998, as members of the Judicial Commission of Inquiry to inquire into the tribal clashes that have occurred in various parts of Kenya since 1991.

Our specific terms of reference were:

- (a) To investigate the tribal clashes that have occurred in various parts of Kenya since 1991, with a view of establishing and/or determining-
  - (i) the origin, the probable, the immediate and the underlying causes of such clashes;
  - (ii) the action taken by the police and other law enforcement agencies with respect to any incidents of crime arising out of or committed in the course of the said tribal clashes and where such action was inadequate or insufficient, the reasons therefor;
  - (iii) the level of preparedness and the effectiveness of law enforcement agencies in controlling the said tribal clashes and in preventing the occurrence of such tribal clashes in future;
- (b) To recommend-
  - (i) prosecution or further criminal investigations against any person or persons who may have committed offences related to such tribal clashes;
  - (iii)

- (ii) ways, means and measures that must be taken to prevent, control, or eradicate such clashes in future;
- (iii) to do, inquire into or investigate any other matter that is incidental to or connected with the foregoing,

and to report thereon, to you.

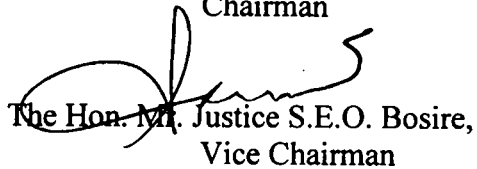
We have carried out and completed our task within the time at our disposal in accordance with the provisions of section 7(1) of the Commissions of Inquiry Act (Cap.102). We now have the honour, Your Excellency, to submit our Report to you and to thank you for the trust that you have bestowed on us.

We are,

Your Excellency's most obedient servants,



The Hon Mr. Justice A.M. Akiwumi,  
Chairman



The Hon. Mr. Justice S.E.O. Bosire,  
Vice Chairman



The Hon. Lady Justice S.C. Ondeyo,  
Member

## ACKNOWLEDGMENTS

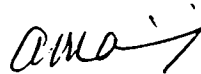
We would like to thank the Attorney-General, Hon. Amos S. Wako, E.B.S., E.G.H., M.P. who appeared as amicus curiae before us and for the valuable assistance that he gave us.

We would also like to record our appreciation to Counsel assisting the Judicial Commission namely, B. Chunga, Esq., J. N. Gacivih, Esq. and Mrs. D. A. Oduor, whose assistance was invaluable in our efforts to ascertain the truth. We cannot also forget those other counsel who deserve our appreciation, and who are mentioned in paragraph 14 of our Report.

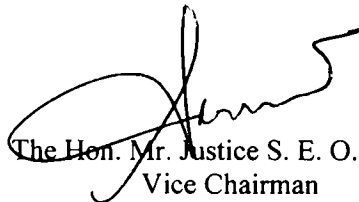
We must express our appreciation for the contribution of the Joint Secretaries to the Judicial Commission, Jacob Letia ole Kipury and Peter Musambi Alubale, in the work of the Judicial Commission. The following deserve our gratitude for their most commendable role in our proceedings; the Parliamentary Hansard team for the preparation of the voluminous verbatim report of our proceedings which we have found extremely useful in the preparation of our Report and Thomas Furaha of the Chief Magistrate's Court, Mombasa, whose expertise as an interpreter was indispensable to our efficient understanding of the evidence of crucial witnesses.

The writing of our Report was indeed, the most difficult and exacting part of our task. This we could not have achieved without the dedicated work of our Personal Secretaries Mrs. Margret Kenda Otolu, Miss. Theresa Miyogo and Mrs. Florence N. Nyaboga, and our Clerk, James Kimari of the Nairobi High Court, Civil Registry.

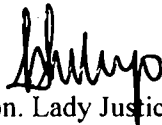
We would finally like to thank the Clerk of the National Assembly who, and the local authorities which, placed at our disposal physical and other facilities for the use of the Judicial Commission.



The Hon. Mr. Justice A. M. Akiwumi,  
Chairman



The Hon. Mr. Justice S. E. O. Bosire,  
Vice Chairman



The Hon. Lady Justice S. C. Ondeyo,  
Member

## INTRODUCTION

1. We, the Hon. Mr. Justice Akilano Molade Akiwumi, the Hon. Mr. Justice Samuel Elkana Onderi Bosire, MBS and the Hon. Lady Justice Sarah Chibai Ondeyo were, in exercise of the powers conferred by section 3 of the Commissions of Inquiry Act, appointed on 1<sup>st</sup> July, 1998, by his His Excellency Daniel Toroitich arap Moi, President and Commander in Chief of the Armed Forces of the Republic of Kenya, to be Commissioners of a Judicial Commission of Inquiry with the Hon. Mr. Justice Akilano Molade Akiwumi as its Chairman and the Hon. Mr. Justice Samuel Elkana Onderi Bosire as its Vice Chairman. The Judicial Commission of Inquiry which in conformity with Commonwealth practice was designated the Akiwumi Commission, was to inquire into tribal clashes which have occurred intermittently in various parts of Kenya since 1991. Our Appointment and Citation which are contained respectively, in Gazette Notices Nos. 3312 and 3313 both dated 1<sup>st</sup> July, 1998, and published in the Special Issue of the Kenya Gazette Vol. C – No. 36, also dated 1<sup>st</sup> July, 1998, are reproduced in Appendices “A” and “B” of this Report. Because of the obvious need for more time to be given to the Judicial Commission if it was to undertake a worthwhile inquiry, the life of the Judicial Commission was extended from 31<sup>st</sup> December, 1998, to 30<sup>th</sup> April, 1999, by Gazette Notice No. 7191 dated 19<sup>th</sup> December, 1998, and published in the Kenya Gazette Vol. C - 74 dated 24<sup>th</sup> December, 1998. This was further extended to 30<sup>th</sup> June, 1999, by Gazette Notice No. 1598 dated 24<sup>th</sup> March, 1999, and published in the Kenya Gazette Vol. C 1-No.16 dated 26<sup>th</sup> March, 1999. Finally, the life of the Judicial Commission was further extended, only for the purpose of writing its Report, to 31<sup>st</sup> July, 1999, by Gazette Notice No. 3930 dated 13<sup>th</sup> July, 1999, and published in Special Issue of the Kenya Gazette Vol. CI-No.39.

2. In exercise of the powers conferred upon the President by section 3 of the Commissions of Inquiry Act, we were particularly, directed in the Citation as our Terms of Reference:

- “(a) To investigate the tribal clashes that have occurred in various parts of Kenya since 1991 with a view of establishing and/or determining –

- (i) the origin, the probable, the immediate and the underlying causes of such clashes;
  - (ii) the action taken by the police and other law enforcement agencies with respect to any incidents of crime arising out of or committed in the course of the said tribal clashes and where such action was inadequate or insufficient, the reasons therefor;
  - (iii) the level of preparedness and the effectiveness of law enforcement agencies in controlling the said tribal clashes and in preventing the occurrence of such tribal clashes in future;
- (b) To recommend –
- (i) prosecution or further criminal investigations against any person or persons who may have committed offences related to such tribal clashes;
  - (ii) ways, means and measures that must be taken to prevent, control or eradicate such clashes in future;
- (c) to inquire into or investigate any other matter that is incidental to or connected with the foregoing.”

3. In the Citation, Jacob Letia ole Kipury and Peter Musambi Muhatia Alubale were appointed joint secretaries to the Judicial Commission. John Nyaga Gacivih and Dorcas Agik Oduor were appointed counsel to assist the Judicial Commission. Subsequently, John Nyaga Gacivih was replaced by Bernard Chunga.

4. Prior to embarking on our duties, and in accordance with section 5 of the Commissions of Inquiry Act, each of us on 14<sup>th</sup> July, 1998, made and subscribed an oath in the prescribed form before the Chief Justice of Kenya. In pursuance of its Citation, the Judicial Commission commenced its proceedings with an Opening Session held at 10.00 a.m. on 14<sup>th</sup> July, 1998, at the Law Courts in Nairobi. Thereafter, save in one instance when evidence was heard in camera, the sessions of the Judicial Commission were held in public at the County Hall, Nairobi, the Municipal Hall, Mombasa, the County Council Hall, Nakuru, the Municipal Hall, Kisumu and the Wareng County Council Hall, Eldoret, until 11<sup>th</sup> June, 1999, when its proceedings were concluded.

5. In his statement during the Opening Session of the Judicial Commission (See Appendix “C” of this Report), its Chairman summarized the fundamental and tremendous issues involved in our work in this way:

"I would, however, like to make some general remarks about the work of this Judicial Commission of Inquiry.

'It has often been said that Kenya is a land of contrasts. This is not only true of the physical, geographical and climatic conditions of the land, but also of the social and cultural characteristics of its people.'

No one can now pretend or regard with complacency, that these unique circumstances which had in the past, engendered national pride, unity in diversity and tribal harmony, have regrettably in recent times, been threatened by tribal clashes. It is the duty of each and every one of us to stop this emerging tendency which will undermine the stability and unity of our country. It is our duty to investigate and identify the causes of these tribal clashes and to propose lasting solutions for tribal harmony that transcends tribal differences. The establishment of the Judicial Commission of Inquiry is therefore, an important and crucial step in this direction.

Not until we learn to live peacefully together as Kenyans will we have a better and brighter future ...".

The following extract from the Statement of the Amicus Curiae to the Judicial Commission, the Attorney General, Hon. Amos S. Wako (See Appendix "D" of this Report), which also summarizes the challenging tasks of the Judicial Commission, deserves to be set out:

"My Lords, the tribal or ethnic clashes that have intermittently bedevilled this nation since 1991 have been a sad chapter in the history of our beloved Republic; they have resulted in considerable loss of lives, injury to persons and destruction of property; they have caused fear, suspicion, mistrust and insecurity among the general population in the Republic; they have inhibited the progress towards social cohesion and the integration of our society; they have been detrimental to public peace, national tranquillity, law and order, human rights and the rule of law which are the cornerstone of economic and social development. Despite efforts including security operations in the past, there has been sadly, evidence of persistence and recurrence of the ethnic or tribal clashes in various parts of the country.

It is with the foregoing in mind that H.E. The President formed the opinion that it is in the public interest to get to the bottom of the matter so that the aspirations of the people of Kenya who wish to see a permanent end to ethnic or tribal clashes can be realised thereby enabling Kenya to move into the next millennium as one nation with one destiny – a united, dynamic vibrant and prosperous nation."

The Opening Statement by the Chairman of the Law Society of Kenya, is contained in Appendix "E" of this Report.

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Kenya, an official handbook, p.8



6. It is significant that the Citation of the Judicial Commission contained no directions to be observed by us with respect to the reception of direct, hearsay or opinion evidence and also any of those affecting the reputation, character or conduct of any person. These issues were therefore left to be regulated by us, and in exercise of the powers conferred upon us by section 9 of the Commissions of Inquiry Act, we prescribed related provisions in Rules 5 and 10 of the Rules and Procedure for the conduct and management of the proceedings of the Judicial Commission. These Rules and Procedure which also designated the Amicus Curiae to the Judicial Commission, are contained in Gazette Notice No. 3477 dated 10<sup>th</sup> July, 1998, and published in the Kenya Gazette Vol.C – No. 38 also dated 10<sup>th</sup> July, 1998, and are reproduced in Appendix “F” of this Report. Rules 5 and 10 of the Rules and Procedure of the Judicial Commission which deal with the reception of adverse evidence against any person are as follows:

“5. Any person who is in any way implicated or concerned in any matter under inquiry shall be entitled to be represented by an advocate.

...  
10. Any person who is in any way implicated or concerned in any matter under inquiry may adduce material evidence in his behalf in connection with the matter under inquiry.”.

7. It is obvious, and natural justice demands, that as far as persons who may be implicated by evidence to be given before the Judicial Commission are concerned, they should be given notice of the general nature of the evidence to be adduced against them so as to enable them to decide whether to be represented by counsel or not. Whether represented or not, it goes without saying, that counsel or the persons themselves, as the case may be, should have the right to cross-examine the witnesses who may give adverse evidence against them. A notice should also inform people who may be implicated in the matter under inquiry, of their right to adduce evidence in rebuttal. We therefore, as a matter of convenience only, adopted the terms of section 3(3) (a), (i) and (ii) of the Commissions of Inquiry Act with respect to the notices to be served on persons who may be implicated. We did not receive any evidence which adversely affected the reputation of any person or which tended to reflect adversely in any way upon the character or conduct of any person, except where all reasonable efforts had been made to give such a person prior notice or where the general nature of the adverse evidence to be given, had

been communicated to him. Furthermore, such a notice did not only, give a person reasonable and practical opportunity to be present either in person or by counsel at the hearing of the evidence, but also, informed him of the right to cross-examine the testifying witnesses and to adduce evidence on his own behalf. In all, notices were given to the persons listed in Appendix "G" of this Report.

8. With respect to hearsay evidence, we decided that it was consistent with the duty of the Judicial Commission to inquire into and ascertain facts concerning the Terms of Reference of the Judicial Commission and matters appertaining thereto, to receive such evidence. The generally accepted principle in inquiries such as the one on which we were embarked, is for hearsay evidence to be received and considered for what it is worth, and as a means of securing further evidence. But if any authority is required to support this principle, we need only refer nearer home, to the celebrated Report of the Judicial Commission Appointed to Inquire into Allegations involving Charles Mugane Njonjo (Former Minister for Constitutional Affairs and Member of Parliament for Kikuyu Constituency), which like the Judicial Commission, was also established under the Commissions of Inquiry Act. In PART I of that Report and under the heading "THE EVIDENCE – OUR APPROACH", appears the following authoritative statement of the law with which we agree and have followed:

"15. An inquiry as this, not being a trial of any individual, may go on what are called 'fishing expeditions' thereby permitting the reception of hearsay evidence, as it may lead to the discovery of matters of great public importance. If it does, the result justifies its admission. If it does not, no injury has resulted. (Hallet's Royal Commissions and Boards of Inquiry 1982 Edition)."

We accepted certain hearsay evidence on the basis explained above and acted upon it only when it became authenticated by other evidence.

9. The enormity, ramifications and repercussions of the tribal clashes which is an appalling blot on the national landscape will not be forgotten so quickly. It is this as

much as anything else, that makes it inevitable and salutary that a public inquiry should be instituted into the tribal clashes. Indeed, such an inquiry may also provide the opportunity for mistakes to be acknowledged, forgiveness granted and the past forgotten. The course of action adopted in this regard, was the appointment as already recounted, by the President, of the Judicial Commission. In order that we should be able to discharge our functions effectively and fully, our Citation also gave us wide powers including the power:

“to receive views from members of the public and receive oral and/or written statements from any person with relevant information, and may:

- (a) use official reports of any previous investigations into the tribal clashes;
- (b) use any investigation report by any institution or organization into such tribal clashes;
- (c) commission reports from experts in any relevant arrears.”

These powers, taking into account the provisions of our Rules and Procedure for the conduct and management of the Judicial Commission, where necessary, we exercised to the full. But it must be emphasised that the time placed at the disposal of the Judicial Commission to complete its work, did not permit an extensive and fully comprehensive investigation into the tribal clashes and in respect of all the places where they occurred.

10. We were also fortified in the discharge of our onerous and exacting task by the provisions of section 7 (1) of the Commissions of Inquiry Act which in setting out our duties, state in part that:

“It shall be the duty of a Commissioner, after making and subscribing the prescribed oath, to make a full, faithful and impartial inquiry into the matter into which he is commissioned to inquire ...”

We have endeavoured to discharge this duty faithfully. A duty which we owe not only, to the President of Kenya who appointed the Judicial Commission but also, to the country at large. We are very conscious of the difficulties involved in the preparation of a report such as this one, which must deal with the wide, deep and fundamental issues involved in the tribal clashes that we have been commissioned to investigate. Yet, if this Report is to have any virtue, it is that it attempts to do just this. Referring to our role in this regard, the Chairman of the Judicial Commission at its Opening Session gave this assurance:

“We would also like to assure every one that in keeping with our well established responsibilities as members of an independent and separate

arm of government, and as members of this Judicial Commission of Inquiry, we shall boldly and without delay, tackle the issues enumerated in, and in accordance with our terms of reference, and, as required by the Commissions of Inquiry Act under which this Judicial Commission of Inquiry has been established, make a full, faithful and impartial inquiry into the matters entrusted into our care.”.

11. The proceedings of the Judicial Commission, owing to its immense national importance, the necessity to investigate conscientiously and fully, every matter which may have a bearing on our inquiry, the very many witnesses that were properly required to give evidence, and the necessity to make a full, faithful and impartial inquiry, and subject to the time at the disposal of the Judicial Commission, lasted for a hundred and ninety four days. Indeed, the very nature, wide-ranging extent and implications of the Terms of Reference the Judicial Commission demanded the utmost patient, painstaking and meticulous inquiry on our part. Three hundred and eighty four exhibits were tendered by counsel assisting the Judicial Commission, by counsel appearing for the Law Society of Kenya and other counsel and by various individuals. A list of these exhibits which includes investigative reports and other documents is reproduced in Appendix “H” of this Report. Altogether, three hundred and thirty one witnesses who are listed in Appendix “I”, testified on oath before the Judicial Commission. Where they were summoned by counsel assisting the Judicial Commission, he examined them in-chief, cross-examined them where appropriate, and where necessary, re-examined them after counsel for the Law Society of Kenya and other counsel, had cross-examined them. Witnesses summoned at the instance of counsel appearing for the Law Society of Kenya and other counsel, testified on oath before the Judicial Commission. After being examined-in-chief, they were cross-examined by counsel assisting the Judicial Commission. Thereafter, they were re-examined by counsel who had called them. We questioned witnesses as we thought necessary. We also received and considered reports by the Police Force, the Director of Intelligence, the Law Society of Kenya, the Standing Committee on Human Rights (KENYA), the Kenya Human Rights Commission, International Federation of Women Lawyers (FIDA) Kenya Chapter, the Parliamentary Select Committee to investigate Ethnic Clashes in Western and other parts of Kenya 1992, Human Rights Watch Africa, National Election Monitoring Unit and United Nations Association (Kenya), the Standing Committee on Human Rights (KENYA), the

National Council of Churches of Kenya (NCCCK), the Symposium Taskforce (composed, inter alia, of representatives of the following political parties the Democratic Party of Kenya, Ford Kenya and KENDA and of the International Commission of Jurists, the Law Society of Kenya Womens' Lobby Group and the NECEP/UNIVERSITIES), Wachu Chachole, Nicholas Kariuki Githuku, Samuel Migui Wachira, Prof. Ezra Kiprono Maritim and Lawrence M. Chemaru. We also took into account statements made by individuals including those who gave evidence before the Judicial Commission.

12. During the early sessions of the Judicial Commission on 30<sup>th</sup> July, 1998, the Law Society of Kenya applied to be represented by counsel in the proceedings of the Judicial Commission on the grounds that it had reports and witnesses relevant to the Terms of Reference of the Judicial Commission. We had no difficulty in ruling that this constituted proper grounds which would entitle counsel representing the Law Society of Kenya to take part in the relevant proceedings of the Judicial Commission, provided that advance copies of the statements of such witnesses, had been served on counsel assisting the Judicial Commission. Some twenty days later after this ruling, a second application was made on behalf of the Law Society of Kenya, this time, for leave for counsel appearing for the Law Society of Kenya to cross-examine a witness whom it was claimed, was a witness of the Law Society of Kenya, after he had been examined in-chief by counsel assisting the Judicial Commission. But no advance copy of this witness's statement to the Law Society of Kenya had been served on Counsel assisting the Judicial Commission. We ruled that to allow cross-examination by counsel for the Law Society of Kenya where such a procedure had not been followed, would permit the Law Society of Kenya to take part willy nilly as it pleases, in the proceedings of the Judicial Commission, which would not do. This, however, was not to be the end of the saga. Upon our refusing on 26<sup>th</sup> August, 1998, to allow counsel for the Law Society of Kenya to participate in our proceedings willy nilly as it pleases, the Law Society of Kenya

applied to the High Court, by way of judicial review, inter alia, for an order of certiorari to quash our ruling which refused the Law Society of Kenya:

“unqualified right of audience before the Respondent, to call witnesses, examine such witnesses and to cross examine such witnesses called by any other party and to make submissions”, and

for an order of mandamus compelling us to allow the Law Society of Kenya:

“an unqualified right of audience ... to call witnesses to examine such witnesses in chief and to cross examine witnesses called by any other party and to make submissions.”.

13. After considering the application of the Law Society of Kenya, the High Court, Hayanga J., concluded in: In the Matter of: AN APPLICATION BY THE LAW SOCIETY OF KENYA (LSK) ACT CAP 18 LAWS OF KENYA and In the Matter of: JUDICIAL COMMISSION OF INQUIRY INTO TRIBAL CLASHES IN KENYA, Misc. Civil Application No. 141 of 1998, thus:

“LSK wants to be given an unqualified audience before the Commission and this as I understand it is simply that they will be allowed to give as a member of the public, as a person concerned with the matter under inquiry to have its own advocate and of course while in there to proceed in line with the Rules of Procedure set by the Commission. That I believe can be enforced by Mandamus as an appropriate remedy for the injury complained of. I think Mandamus should issue to compel the Commission to grant participation in the stated particulars as matters within its statutory duty.

I do not see where the Commission is enjoined to have LSK or any member of the public come into the Commission’s proceedings calling its witnesses and cross examine everybody about without check. Therefore, the right to call and cross examine any witness and to act as an assisting counsel is not ordered and therefore refused.

Does LSK have Locus Standi in all these matters? I have endeavoured to show that it has but I would support this by quotation from R v GLC Ex Parte BLACKBURN [1948] 2 QB 118 when Denning M. R. said:-

‘I agree it is a matter of High Constitutional principle that if there is good ground for supposing that a government department or a local authority (a statutory body) (in brackets mine) is transgressing the law or is about to transgress it then any one of those offended or injured can draw it to the attention of the Courts ... and the Courts in their discretion can grant whatever remedy is appropriate – One remedy which is always open, by leave of the Court is to apply for prerogative writ such as Certiorari, Mandamus, or Prohibition.’

The LSK in those terms has Locus. There will therefore be order for CERTIORARI and of MANDAMUS to issue against the ruling of the Commission of 26<sup>th</sup> August, 1998 and order – commanding it to allow LSK to present its testimony, views, statement and or give oral evidence by its spokesman and be allowed to present and cross examine any witness and be represented by counsel, in conformity with Statute, the Terms of Reference and the Procedure the Commission has laid out for itself. The said decision will be and is hereby cancelled, and the Commission is by mandamus commanded as above.”

14. This Ruling, uncertain in some respects, determined the role of the Law Society of Kenya in the proceedings of the Judicial Commission. There the matter now stands. In our view, it is a novel decision concerning proceedings such as those of an essentially investigative organ as the Judicial Commission. We hope that someday, the issues raised in this Ruling will receive full judicial consideration at the highest level. In conformity with this Ruling, the Law Society of Kenya was represented at various times before the Judicial Commission, by H. Ndubi, Esq., G. Ngibuini Esq., M. Gathenji, Esq., M. Mureithi, Esq., R. Onsongo, Esq., W. Chebukati, Esq., M. Kariuki, Esq., J. Kiplenge, Esq., K. Kiburi, Esq., J. Olago, Esq., L. Muchai, Esq., and M. Khatib, Esq. A. Omutelema, Esq. Appeared for the Kenya Police Force and the Department of Provincial Administration. The following advocates also appeared for various individuals and institutions: N. Amolo, Esq., K. Murungi, Esq., P. Muira, Esq., M. Gathenji, Esq., C. Kihara, Esq., M. Mbaka, Esq., G. Ngombo, Esq., Y. Khanna, Esq., S. Madzayo, Esq., A. Mabeya, Esq., J. Asige, Esq., R. Kipsang, Esq., G. Salim, Esq., M. Warsame, Esq., Major M. Ndungu, Esq., J. Mburu, Esq., J. Omwenga, Esq., R. Sheth, Esq., W. Konosi, Esq., H. Makhecha, Esq., J. Kaguchia, Esq., D. Kimatta, Esq., Mrs. V. Barasa, J. Sergon, Esq., O. Odhiambo, Esq., P. Lilan, Esq., C. Koech, Esq., P. Lumumba, Esq., W. Wagara, Esq., M. Wetangula, Esq., K. Langat, Esq., W. Waweru, Esq., J. Cherutich, Esq., J. Ogeto, Esq., F. Orege, Esq., M. Githiru, Esq., K. Orina, Esq., E. Monari, Esq., K. Kipkenda, Esq., O. Ochieng, Esq., N. Migiro, Esq., K. Nyaundi, Esq., C. Korir, Esq., J. Rono, Esq., F. Tuiyot, Esq., B. Ochieng, Esq., Mrs. M. Kasango, M. Nyaoga, Esq., L. Mwangi, Esq., L. Nyangau, Esq., Mrs. J. Wandera, J. Kiplenge, Esq., M. Eboso, Esq., O. Osiemo, Esq., W. Arusei, Esq., P. Muite, Esq., K. Kipkeei, Esq.

15. Having achieved this eminent standing, the Law Society of Kenya, however, did not entirely discharge its much vaunted and proclaimed role of assisting the Judicial Commission. Some evidence implicating Nicholas Biwott, the Minister for East African and Regional Co-operation, Amos Wako, the Attorney General and Al Haji Omar Masumbuko, were given before the Judicial Commission. In accordance with the Rules and Procedure of the Judicial Commission as already explained, these persons could if they so wished, have cross-examined witnesses or given evidence in rebuttal. Their failure to take advantage of this procedure would be purely a matter for comment. Then there was Police Inspector Peter Muiruri. It was alleged by counsel appearing for the Law Society of Kenya that he had obtained from Omar Masumbuko a confession statement about his role in the tribal clashes that occurred at the Coast Province. We did not, however, insist on Inspector Peter Muiruri being called as a witness before the Judicial Commission as counsel appearing for the Law Society of Kenya did not produce any evidence to establish that any statement of that kind was ever made by Omar Masumbuko, to Inspector Peter Muiruri. It is in the light of the foregoing, and in view of the fact that counsel appearing for the Law Society of Kenya had altogether, either examined in-chief or cross-examined all the three hundred and thirty one witness that gave evidence before the Judicial Commission, that we regard with disappointment and dismay, the following pitiful letter of 18<sup>th</sup> June, 1999, from the Law Society of Kenya to the Joint Secretaries of the Judicial Committee as some manifestation of its insincerity and lack of seriousness in the role and reputation it had sought to establish in its judicial review application to the High Court:

“Dear Sirs

RE: LAW SOCIETY OF KENYA’S FINAL SUBMISSIONS TO THE COMMISSION

You will recall that on Friday 11<sup>th</sup> June 1999 the Commission wound up its business of taking evidence. Their Lordships the Commissioners ordered that the Law Society of Kenya and Assisting Counsel to the Commission do make written submissions to be handed to you on or before 18<sup>th</sup> June 1999.

Counsel for the Law Society of Kenya Mr. Haron Ndubi made an application to the Commission to call Hon. Amos Wako, Attorney General of the Republic of Kenya, to be called to testify before the Commission to explain what he, as a law enforcement agent, did or did not do in regard to matters under the Commission’s enquiry. The Lordships declined.



Further, on various occasions before, counsel for the Law Society of Kenya has sought that summons of attendance to testify be served on various people including: Hon. Nicholas Biwott, Al Haji Omar Masumbuko, one Inspector Peter Muiruri, among others.

These persons were not called and the Law Society knows no reason why they were not called.

It is the view and position of the Law Society of Kenya that in the absence of evidence of those persons, the Commission failed to come in tandem the Terms of Reference conclusively.

In that regard, we are humbly notifying you that the Law Society of Kenya shall not be making any final submissions to the Commission.

Very kindly and humbly inform their Lordships.

Yours faithfully

G.M.KEGORO

**SECRETARY**

c.c. Mr. Haron Ndubi

Advocate

P.O.Box 41778

MOMBASA."

A copy of this letter is to be found in Appendix "J" of this Report.

16. Not unconnected with the foregoing Ruling, are two other Rulings of the High Court that affected the proceedings of the Judicial Commission. In the course of its proceedings a witness, Emmanuel Karisa Maitha, denied that he had made to Inspector of Police, Adiel Mate, two handwritten cautionary incriminating statements concerning his role in the tribal clashes that occurred in the Coast Province, and which statements had been produced and admitted without any objection from Karisa Maitha or his counsel as Exhibit 79 and 84. Also produced without objection by Inspector Adiel Mate and contained in Exhibit 92 and which is in a handwriting similar to those in Exhibits 79 and 84, is a letter dated 28<sup>th</sup> June, 1998, which Karisa Maitha admitted having written to the District Criminal Investigation Officer, Mombasa. Contained in Exhibit 92 are a letter of 14<sup>th</sup> September, 1998, from Karisa Maitha to the District Criminal Investigation Officer, and Karisa Maitha's Notice of Appointment of Advocates to act for him in an Election Petition case, both of which were admittedly signed by Karisa Maitha. Even though we

had Exhibits 79, 84 and 92, we subsequently, and only out of excessive caution, ordered that Maitha should give to the police handwriting expert a specimen of his handwriting and signature for comparison with the two cautionary statements. Karisa Maitha who was then being tried for offences not unconnected with the Terms of Reference of the Judicial Commission, applied to the High Court in: In the Matter of: AN APPLICATION BY HON. EMMANUEL KARISA MAITHA, FOR LEAVE TO APPLY FOR ORDERS OF PROHIBITION AND CERTIORARI and In the Matter of: THE COMMISSION OF INQUIRY ACT, CHAPTER 102 LAWS OF KENYA THE EVIDENCE ACT CHAPTER 80 OF THE LAWS OF KENYA AND THE CONSTITUTION OF THE REPUBLIC OF KENYA – EMMANUEL KARISA MAITHA –APPLICANT v. THE JUDICIAL COMMISSION OF INQUIRY INTO TRIBAL CLASHES IN KENYA – RESPONDENT, MISCELLANEOUS APPLICATION NO. 186 of 1998, by way of judicial review for orders to quash our order and to prohibit us from considering the cautionary statements or hearing expert evidence on their similarity or otherwise, with the handwritten specimen to be provided by Karisa Maitha.

17. Hayanga, J. granted the orders sought. The ratio decidendi of his Ruling as it is, appears herein below:

“In most jurisdictions particularly in Australia, Commissions and Boards of Enquiry can be guilty of contempt. In the case of CLOUGH v. LEAHY, [1905] 2 CLR 136. The question was whether Royal Commission dealt with subject of enquiry which had been adjudicated on by Arbitration Court. It was held per GRIFFITH, C.J. that if persons acting under Commissions of Enquiry were to do acts which if done by private individuals would amount to unlawful interference with the course of justice, such acts would be unlawful and punishable in the ordinary courts as contempt. I have looked at the provisions of Cap. 102 and I do not respectfully see any sections that would entitle the Commission under it to act in any way to interfere with the Courts of Justice, nor that the Commission cannot be guilty of contempt.

It is clear to me that the order to produce cautionary statements in the proceedings of the Commission would be interference with the due course of the administration of justice and any acts which interferes with proceedings in a lower court or any court or in connection with criminal proceedings constitutes contempt. It is of utmost importance that Enquiry bodies need to exercise great care and caution where their enquiry proceeds parallel with litigation or trials already in court over the same facts so that they are not to open themselves for charges of interference with the course of justice.

In Australian case of EX PARTE LEAHY [1905] 2 S.R. (NSW) 44 Owen, J. stated:-

'It is clear therefore that a Royal Commission taking an enquiry of this nature from a duly constituted court deprives the party summoned of a very important safeguard to which he would be entitled in the court. And further it would compel one of the parties to the dispute to disclose his case to the other side.'

I have come to the view that prerogative order should issue, the only question is can CERTIORARI issue. This is an order that issues to quash a decision that is made by a public body for either being unreasonable or for breach of fundamental rules of natural justice or where there has been a material error of law. Chesoni, C.J. in Civil Appeal No. 205 of 1992 DAVID MUGO t/a MANYATTA AUCTIONEERS -v- REPUBLIC, said quoting Lord Parker, C.J. with approval in the English case of R. v. CRIMINAL INJURIES COMPENSATION BOARD, Ex P LAIN 1967 2 QB 804:-

'The exact limit of the ancient remedy by way of certiorari have never been and ought not to be, specifically defined. They have varied from time to time being extended to meet changing conditions ... We have reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially.'

I would grant the prayer for certiorari.

As for prohibition I would follow Court of Appeal's pronouncement in Civil Appeal No. 266 of 1996 KENYA NATIONAL EXAMINATION COUNCIL -v- REPUBLIC. The court said that Order of PROHIBITION:

'is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not however lie to correct the course practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings, See Halsbury's Laws of England, 4<sup>th</sup> Ed. Vol.1, pg.37.'

My humble view is that to disregard the rules of fairtrial, to ignore the rules of fundamental freedom is an act that should be stopped and I grant the order.

US Chief Justice Warren in MIRANDA -v- ARIZONA, 384 US 436: 16 L ed. wnd 694 [1966] said:-

‘We sometimes forget how long it has taken to establish the privilege against self incrimination the sources from which it came and the fervour with which it was defended, its roots go back into ancient times.’

Narrating how John Lilliburn in 1637 refused to take Star Chamber Oath which would have bound him to answer to all questions posed to him on any question he said it was against his fundamental rights to force an answer to questions concerning himself in matters criminal ... the Chief Justice said:-

‘Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachment on individual liberty. They knew that ... illegitimate and unconstitutional practices get their footing ... by silent approaches and slight deviations from legal modes of procedure.’

It would be wrong to waive these Constitutional fundamental rights every time we find it convenient. If we get used to that it means we shall have made inroads into our Constitutional liberties and weakened its protective strength to our future peril. These courts must always resist this.”.

18. Even though the cautionary statements had been tendered in the course of our investigations as set out in our Terms of Reference and had already been accepted as exhibits with no objection from Karisa Maitha or his counsel, yet, Hayanga, J. went on to make in our view, the following inappropriate order:

“The order therefore will be that the order made by the Honourable Commission on requiring Mr. Maitha to produce his cautionary statement and to give to Police handwriting expert a specimen of his handwriting is by this order hereby commanded to be brought before this court and be and is hereby quashed.”.

Secondly, he also ordered, and part of which will be very difficult to enforce, that:

“... the Commission is further and hereby stopped or stayed from acting on the same cautionary statements and from using same handwriting experts.”.

19. Our next encounter with the process of judicial review was the strategy employed to effectively paralyze the work of the Judicial Commission, in preventing it from hearing a potential witness. This occurred when a witness we had summoned to appear and give

evidence before us, refused to do so. Two booklets written by this witness, Alamin Mazrui, on the tribal clashes that occurred at the coastal region of Kenya, had been produced as exhibits by those who had sponsored the writing of the booklets namely, the Kenya Human Rights Commission. When finally, he appeared before us, this witness sought to be excused from giving evidence on the grounds that compelling him to do so, would be contrary to his constitutional right of freedom of conscience. We rejected this application and held that in compliance with the audi alterem partem principle of law, those who had been adversely mentioned in his booklets, should be given the opportunity to cross-examine him, if they so wish.

20. Alamin Mazrui subsequently, applied to the High Court for leave to apply for an order of prohibition to stop us from compelling him to give evidence. In: IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF PROHIBITION AND IN THE MATTER OF THE COMMISSION OF INQUIRY ACT (CAP 102 LAWS OF KENYA) JUDICIAL COMMISSION OF INQUIRY INTO TRIBAL CLASHES IN KENYA BETWEEN PROFESSOR ALAMIN MAZRUI AND THE ATTORNEY GENERAL MISC. APPLICATION NO. 178 OF 1999, Alamin Mazrui was not only, granted leave by Ang'awa, J. to apply for the order of prohibition sought by him, but also, that such leave shall act as stay preventing us from compelling him to give evidence in the manner ruled by us, until the determination of his application for the order of prohibition.

21. We do not wish to comment any further on these two Rulings except to say that they in effect, with respect to the particular issues involved, tied our hands and prevented us from fully carrying out our functions which are essentially that of an investigative nature as opposed to an administrative or judicial role. We think that there is need for these aspects of the role of a Commission of Inquiry to be looked into so as to establish clearly, the parameters of its functions.

22. Our last encounter with the legal process occurred this way. Francis Gitari who sought to give evidence before us, had prior to this, submitted two statements and an

affidavit containing the facts that would form the basis of his evidence. These three documents referred to the same issues of fact except that the affidavit, in addition, referred to an important and novel issue, namely, the recruitment and training of certain persons by named personalities, to carry out tribal clashes. Apart from this novel issue, we had heard evidence from other witnesses on the other issues of facts and so ordered on 7<sup>th</sup> May, 1999, that we would only hear Francis Gitari on the recruitment and training of people to undertake tribal clashes. On 19<sup>th</sup> May, 1999, when Francis Gitari appeared before us to give evidence, his counsel, J. Kiplenge, applied for us to review our earlier order and argued, inter alia, that Francis Gitari represented millions of tribal clash victims who should be compensated for the injuries suffered by them, and that if we would not review our previous order, then, Martin Gitari would rather give no evidence at all. In dismissing Martin Gitari's application, we made the following detailed ruling:

“JUDICIAL COMMISSION OF INQUIRY  
INTO  
TRIBAL CLASHES IN KENYA  
R U L I N G

On the 7<sup>th</sup> May, 1999, we ordered that the evidence to be given by Mr. Gitari should be confined to paragraph 20 of his less than candid affidavit, Exh. 177 which forms part of evidence before us, and in which he has given the names of 16 persons whom he claims were recruited to start and continue the tribal clashes that occurred in the Rift Valley.

When it comes to the hearing of evidence by us, we need not hear the evidence of each and every person who claims he has relevant evidence to give. If we are to do so, willy nilly, we would never finish this Inquiry. It is up to us to decide having regard to existing evidence that we have heard, what further evidence we should hear or consider and in this regard, we may also receive and consider statements, affidavits and reports.

We made the order of 7<sup>th</sup> May, 1999, because whilst we had received a great deal of evidence from very many persons on the causes, incidents and results of the tribal clashes in Rift Valley province and other parts of the country with which the other paragraphs of Exh.177 are concerned, paragraph 20 thereof referred for the first time, to the important issue namely, those who had been recruited and trained to cause the mayhem that came to be known as the tribal clashes.

Mr. Kiplenge appearing for Mr. Gitari and the Catholic Diocese of Nakuru has asked us to review our order so that Mr. Gitari, who he alleges represents over a million clash victims in the tribal clashes that occurred in the parts of the country already referred to, may give evidence on their behalf in connection with the compensation that should be paid to them for the injury that they suffered as the result of these tribal clashes. We must say at once that the functions of this Judicial Commission of Inquiry is not to determine what compensation should be paid to the victims of the tribal

clashes and by whom, but according to our terms of reference as an investigative body, to investigate the causes and incidents of tribal clashes and to make recommendations concerning appropriate action to be taken against those who we find to have been involved in the tribal clashes and such as would avoid future tribal clashes. Mr. Kiplenge has also with some audacity stated that if we do not review our order then Mr. Gitari would rather not give any evidence at all. Apart from the fact that this might constitute contempt of our Judicial Commission, one can not help regarding such an attitude as being one of insincerity and liable to undermine the trustworthiness of the evidence of Mr. Gitari.

Mr. Kiplenge also mischievously stated that this Judicial Commission was making secret investigations into certain actions of the Diocese of Nakuru. Whilst this Judicial Commission can make whatever investigation it thinks desirable, the truth of the matter is that when the representative of the Judicial Commission sought to investigate the contents of a video cassette submitted by the Catholic Diocese as to its relevance and importance to the work of the Judicial Commission, he met with surprising evasiveness on the part of the representatives of the Catholic Diocese that were interviewed.

The other minor submissions made by Mr. Kiplenge are not worth considering in view of their mischievous nature, which in our view are merely calculated to catch the news headlines.

In the result, Mr. Kiplenge's application is hereby dismissed.

Dated at Nairobi this 19<sup>th</sup> day of May, 1999.

A.M. AKIWUMI, J.A.  
CHAIRMAN

S. E. O. BOSIRE, J.A.  
VICE CHAIRMAN

S. C. ONDEYO, J.  
COMMISSIONER."

23. Being dissatisfied with this ruling J. Kiplenge, then successfully obtained leave of the High Court to institute proceedings for judicial review by way of certiorari and mandamus, not in respect of our order made on 19<sup>th</sup> May, 1999, but rather of the earlier one made on 7<sup>th</sup> May, 1999. Not unexpectedly, J. Kiplenge scandalously failed to disclose to the High Court our ruling of 19<sup>th</sup> May, 1999. The application entitled IN THE MATTER OF JUDICIAL COMMISSION OF INQUIRY ACT CAP. 102 OF THE LAWS OF KENYA AND IN THE MATTER OF JUDICIAL COMMISSION OF INQUIRY INTO THE ETHNIC CLASHES IN THE RIFT VALLEY AND OTHER PARTS OF THE REPUBLIC OF KENYA IN 1991/3 AND 1998 AND IN THE MATTER OF AN APPLICATION BY FRANCIS MARTIN KAHINDI GITAARI AND THE CATHOLIC DIOCESE OF NAKURU FOR AN ORDER OF CERTIORARI TO

BRING TO COURT AND TO QUASH THE DECISION OF THE JUDICIAL COMMISSION OF INQUIRY INTO TRIBAL CLASHES DATED 7<sup>TH</sup> DAY OF MAY, 1999 DIRECTING FRANCIS MARTIN KAHINDI GITAARI TO LIMIT HIS ORAL EVIDENCE TO ONLY ONE PARAGRAPH AND FOR AN ORDER OF MANDAMUS TO COMPEL THE SAID COMMISSION TO HEAR ORAL EVIDENCE OF FRANCIS MARTIN GITAARI RESPECT OF ALL THE PARAGRAPHS OF HIS AFFIDAVIT BETWEEN REPUBLIC ... APPLICANT VERSUS THE JUDICIAL COMMISSION OF INQUIRY ... RESPONDENT. MISC. CIVIL APPLICATION NO. 582 OF 1999, came for hearing inter partes before Aluoch J. During the hearing of the application, J. Kiplenge and M. Gathenji who was appearing for the Law Society of Kenya, argued the following grounds:

“The order of 7<sup>th</sup> May, 1999 delivered in Eldoret limiting the evidence of the 1st subject was unlawful and offends the principles and tenets of Natural Justice;

The said order was made “suo moto” by the Respondent without affording the 1st subject an opportunity to be heard;

The ex-parte order is discriminative and unconstitutional on the face of the record;

That the respondent acted ultra vires the terms of reference particularly in refusing to hear all evidence from the 1<sup>st</sup> subject;

That the Respondent cited the lack of time as a reason to shut out the evidence of 1<sup>st</sup> subject which is an irrelevant consideration;

That the 1st subject’s evidence points a finger at the government as the real cause of the clashes and the Respondent is biased in favour of the Government;

The order is meant to cover-up Government senior officers and Cabinet Ministers and politicians who instigated the clashes;

The Commission ought to be independent and should not serve partisan interests.”.

The points that were argued against the application included the following:

that since the life of the Judicial Commission was soon coming to an end, and in order that the High Court might not make an unenforceable order, the appointing authority, namely, the President should have been made a party to the proceedings;

that the Judicial Commission did not act in excess of its jurisdiction or contrary to the Constitution; and

that the applicant was undeserving of the orders sought because of the failure to disclose important information to the High Court.”.

24. In her ruling in which she dismissed the application with costs, Aluoch J, dealt briefly with some of the points raised, namely, that the Judicial Commission acted properly when it made the order of 7<sup>th</sup> May, 1999, that the recent House of Lords decision in In Re

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Pinochet which applied to the administration of justice, was clearly distinguishable from the circumstances of the members of the Judicial Commission and from its essentially investigative function, and that the decision of the Judicial Commission made on 7<sup>th</sup> May, 1999, was in consonance with its mandate. The learned judge then dwelt at length on the issue whether the application was meritorious having regard to the non disclosure to the High Court of the ruling of the Judicial Commission of 19<sup>th</sup> May, 1999. After setting out this ruling in full, the learned judge concluded as follows:

“I am faced with a situation where material facts have been concealed from the court by advocates not only for the purpose of misleading the court but also their clients who have not been given the true and correct picture of what application should be before this court, i.e. is it the one where they are seeking compensation (Review) or where they want to adduce oral evidence. I find this to be the highest degree of professional dishonesty.”

25. But before proceeding any further, it would be desirable at this stage, to sketch in general terms, the factors which shall guide us in the discharge of our functions. In this respect, the Terms of Reference of the Judicial Commission are invaluable. It is not denied that tribal turmoil in the form of tribal clashes between certain tribes took place from 1991 and continued intermittently until October, 1998. These clashes took the form of warlike activities between tribes in which sophisticated as well as primitive weapons were used. This led to the killing of, and the infliction of barbaric injuries on men, women and children; the displacement of thousands from their land and homes; the theft, slaughter and maiming of innumerable, valuable and precious livestock; the burning of thousands of rural homes; and the looting and destruction of billions of shillings worth of property.

26. There are certain aspects of the tribal clashes that cannot but make one at least, speculate about the possibility of some official connivance and political incitement of the tribal slaughter as the justification of preconceived and publicised evil consequences of

multi-party politics. These include the magnitude and well orchestrated nature of some of the tribal attacks and the relatively few connected arrests and successful prosecutions. As the Director of Intelligence was to conclude, as set out by the then Commissioner of Police, Duncan Wachira, in his letter of 1<sup>st</sup> September, 1997, to Noah Arap Too, the then Director of Criminal Investigation Department, Exhibit 202:

“It cannot be gainsaid that the attacks against the up-country people at the Coast was premeditated and professionally executed.”

The impunity, blatant arrogance and daring nature of these attacks including the burning of nothing less than the office of a District Officer and a Police Station as well as the looting of its armoury, and the apparent deliberate ineptitude or inaction on the part of the Provincial Administration officers and members of the security forces, have their own story to tell.

27. We will now deal with a number of issues with the view to setting out the relevant landscape that was in place just before the tribal clashes that began in 1991. Prior to that, however, but which the Judicial Commission is not directly required to deal with, there had existed in some cases, from time immemorial, clashes between various tribes including traditional enemies, in the country and even within clans in a given tribe. These clashes and their causes where relevant, will be taken into account in assessing the causes, objectives and circumstances of the tribal clashes that occurred in the country from 1991 to 1998. The phrase “tribal clashes” within the context of what occurred during the period under consideration, and the political and economic development of Kenya and its advancement in modern civilization, can no longer be limited to the unsophisticated objectives of pre-colonial primitive wars between tribes.

28. In 1963, Kenya attained independence with a complicated federal constitution which locally became known as the Majimbo Constitution and which conceded a great deal of

autonomy to the regions. This state of affairs did not last long for on the first anniversary of Kenya's independence in 1964, the Majimbo Constitution was replaced by one that converted Kenya into a Republic with a central government. The same year also saw the absorption of the Kenya African Democratic Union (KADU) by its rival political party, the Kenya African National Union (KANU). The de facto one party state that this amounted to, was finally converted into a de jure one party state in 1982, when the Constitution of Kenya was appropriately amended by the introduction of a new section 2A which was as follows:

“There shall be in Kenya only one political party, the Kenya African National Union.”.

29. By 1991, Kenya had already been independent for twenty eight years. It was economically, and also because of its large European and Asian population, the most developed and modernized country in Eastern Africa, notwithstanding that for nearly twenty two years before that, it was politically a one party state and which was seen to favour the Kikuyu and then the Kalenjin. The year 1991, witnessed the inexorable struggle for, and the genesis of, a westernized democratic form of government. This led to the amendment of the Constitution of Kenya by the Constitution of Kenya (Amendment) (No.2) Act, 1991, which entered into force on 20<sup>th</sup> December, 1991, and which repealed section 2A of the Constitution. Subsequently, the Constitution was also amended by the Constitution of Kenya (Amendment) Act, 1992 which entered into force on 29<sup>th</sup> August, 1992. This Act provided inter alia, by the replacement of the then existing paragraph (f) of subsection (3) of section 5 of the Constitution, with a new paragraph (f) which is reproduced hereunder, that a successful presidential candidate should in addition to obtaining the majority of votes cast, also obtain not less than twenty five percent of the votes cast in at least five of the eight provinces in the country:

“the candidate for President who is elected as a member of the National Assembly and who receives a greater number of valid votes cast in the presidential election than any other candidate for President and who, in addition, receives a minimum of twenty-five per cent of the valid votes cast in at least five of the eight provinces shall be declared to be elected as President;”.

Because of the past, the then imminent multi-party parliamentary and presidential elections, saw the emergence of opposition political parties based on tribal allegiances. This was also exemplified by the tribal pattern of the results of the democratic

parliamentary and presidential elections held in 1992 and 1997. In this respect, and we must not deceive ourselves, the ordinary mwananchi even now, regards himself, firstly, as a member of his tribe and only secondly, as a national of the country. The onus is clearly therefore on tribal leaders not to take advantage of this dangerous and fragile situation, but rather to preach peaceful co-existence.

30. We turn now to the nature and extent of the tribal clashes; the ostensible and real causes of the clashes; the traumatic and lasting effects of the clashes; and the role of government institutions and politicians in the fostering and execution of the clashes. But before doing so, we must first determine the tribes that were involved in the clashes, and other relevant matters, such as the constitutional and political development of Kenya, the issue of land, and the role of the Provincial Administration and the Police Force, with regard to the tribal clashes.

31. The tribes that were involved in the tribal clashes according to the particular areas affected are as follows:

**RIFT VALLEY**

<b>DISTRICT</b>	<b>AREA</b>	<b>TRIBES</b>
NAKURU	Molo	Kipsigis, Ogiek -vs- Kikuyu and Kisii
	Njoro	Kipsigis, Ogiek -vs- Kikuyu
	Olenguruone	Kipsigis, Ogiek -vs- Kikuyu and Kisii
KERICHO	Londiani	Kipsigis -vs- Kikuyu, Kisii, Luo, Kamba & Luhya
	Fort Tenan	Kipsigis -vs- Kikuyu, Kisii, Luo, Kamba & Luhya

	Kipkelion	Kipsigis -vs- Kikuyu, Kisii, Luo, Kamba & Luhya
	Thessalia	Kipsigis -vs- Luo
	Kunyak	Kipsigis -vs- Luo
	Sondu	Kipsigis -vs- Luo
NAROK	Enoosupukia	Maasai -vs- Kikuyu
LAIKIPIA	Oi Moran	Samburu, Turkana & Pokot -vs- Kikuyu
NANDI	Miteitei	Nandi -vs- Kikuyu, Luhya & Kisii
	Kamasai	Nandi -vs- Luhya
	Owiro	Nandi -vs- Luo
	Songhor	Nandi -vs- Luo
UASIN GISHU	Burnt Forest	Nandi -vs- Kikuyu
	Turbo	Nandi -vs- Luhya
TRANS NZOIA	Saboti	Sabaot -vs- Bukusu
		Pokot -vs- Luhya
TRANS MARA	Nyangusu	Kisii -vs- Maasai

### NYANZA PROVINCE

DISTRICT	AREA	TRIBES
KISUMU	Sondu	Kipsigis -vs- Luo
KISII	Ochodororo	Kisii -vs- Luo
	Nyangusu	Kisii -vs- Maasai

### WESTERN PROVINCE

DISTRICT	AREA	TRIBES
BUNGOMA	Mt. Elgon	Sabaot -vs- Bukusu & Tèso

### COAST PROVINCE

DISTRICT	AREA	TRIBES/CLANS
MOMBASA	Likoni	Digo -vs- Luo, Kikuyu & other upcountry people
	Matuga	Digo -vs- Luo, Kikuyu & other upcountry people
TANA RIVER	Bangale	Dgodia -vs- Orma
	Garsen	Orma -vs- Galjael
	Hola-Garsen	Wardey -vs- Pokomo
	Saka	Ogaden -vs- Munyoyaya
	Nanighi	Degodia -vs- Orma
	Boka	Degodia -vs- Ogaden

### NORTH EASTERN PROVINCE

DISTRICT	AREA	TRIBES/CLANS
GARISSA	Benane	Ogaden -vs- Borana
	Saka	Ogaden -vs- Munyoyaya
	Masalani	Ogaden -vs- Pokomo
WAJIR	Griftu	Degodia -vs- Ajuran
	Hadado	Degodia -vs- Ajuran
	Bute	Degodia -vs- Ajuran
	Bute	Ajuran -vs- Garre
	Habaswein	Degodia -vs- Ogaden

MANDERA	Bagalla	Degodia -vs- Borana & Gabra
	Kotulo	Garre -vs- Degodia
	Korofa Harer	Garre -vs- Degodia
	Mansa	Garre -vs- Degodia

### EASTERN PROVINCE

DISTRICT	AREA	TRIBES/CLANS
ISIOLO	Garbatulla	Borana -vs- Degodia
	Benane	Borana -vs- Ogaden
MOYALE	Budhudha	Borana -vs- Degodia
	Moyale Town	Borana -vs- Degodia
MARSABIT	Archers Post	Borana -vs- Degodia

N.B. The Kipsigis, Ogiek, Nandi and Sabaot are all sub tribes of the Kalenjin tribe; the Bukusu are a sub tribe of the Luhya tribe; the Digo a sub tribe of the Mijikenda tribe; and the Ogaden, Degodia, Ajuran are clans of the Somali tribe.

32. One of the problems that befell the first independent African government was the existing deep rooted tribalism which was there because of the lack of contact between the various tribes promoted in the colonial days. In spite of various attempts to eradicate this fundamental problem, it has continued up to today to hamper the consolidation of Kenya into a united nation and adversely affects the political life of the country. Indeed, the brutal expulsion that seemed to be an important objective of the tribal clashes, supports the conclusion that what occurred can also be described with some justification, as ethnic cleansing.

33. Also inherited from the colonial era, is the system of governance known as the Provincial Administration which had power, authority and influence. This, largely

remains the order of things to date. As a Department in the Office of the President, the Provincial Administration is heavily relied upon for the general control and implementation of Government policies. In addition, the Provincial Administration took over certain important responsibilities of the political party KANU such as the recruitment and registration of its members, the organization of KANU elections, the collection and custody of KANU funds and the issue of permits for public meetings. What is more, District Commissioners conducted all general elections from 1963 until the 1992 multi-party elections, when they relinquished these responsibilities to the Electoral Commission of Kenya. The Provincial Administration has remained ubiquitous in various activities in the country while maintaining a prominent position. Some of the reasons for this are that the Provincial Administration is one of the oldest institutions in the country with entrenched practices and traditions. It consists of a network of officers at all levels with its own distinctive hierarchy. Today, there is a total of eight Provincial Commissioners, sixty eight District Commissioners, six hundred and four District Officers, two thousand one hundred and ninety Chiefs and six thousand and twenty nine Assistant Chiefs country wide. These administration officers are also well placed to provide effective co-ordination of economic and development activities nation wide. Various Acts of Parliament make the District Commissioner in a given District, the Chairman of over fifty statutory boards and administrative committees such as, the District Education Board, the District Tender Board, the District Development Committee, the District Agricultural Committee and the District Land Allocation Committee. The District Commissioner or any other administration officer is in effect, the chief Government executive officer and invariably, carries the greatest responsibility and accountability in the eyes of the Government and the public at large.

34. As the Government's principal public relations officers, an important feature of the day-to-day functions of the provincial administration officers, is the holding of barazas. Through this age-old forum of communication with the public, akin to a round table conference, Government makes known its intentions and seeks to enlist support from the public. It also enables the public to register their views and reactions, including those affecting simmering problems and conflicts within and between communities. But the



ineffectiveness of barazas in time of inter tribal wars, was demonstrated during the tribal clashes. In some cases, members of rival tribes would obediently attend barazas at which peaceful co-existence would be demanded by provincial administration officers, only to go back and continue their tribal clashes as if nothing had happened. Moreover, with time, more and more Kenyans had begun to feel free and not easily intimidated.

35. The role of the Provincial Administration with regard to the internal security is of paramount importance. The Provincial Commissioners are the Chairmen of the Provincial Security Committees and the Provincial Intelligence Committees. At the District level, the District Commissioners are the Chairmen of the District Security Committees and the District Intelligence Committees. The other members of these Committees at the Provincial and District levels are respectively, the provincial heads of the various departments of the Police Force, and the district heads of similar institutions. Sub-District Security Committees chaired by District Officers and also similarly composed, exist at the Divisional level. Representatives of the Army may be co-opted as members of these security committees. The Provincial Administration thus, clearly occupies a position of considerable power indeed, as the political agent of the Executive. Even though the role of the Provincial Administration and that of the Police Force may as far as security matters are concerned, be said to be complementary, the dominance of the former over the latter is the real state of affairs. As recently as June, 1999, and as reported in the KENYA TIMES, THURSDAY, JUNE 24, 1999, the:

“North Eastern Provincial Commissioner, Mr. Maurice Makhanu, has ordered the provincial police boss Mr. Jeremiah Matagaro to institute an immediate investigations into allegations of police brutality in the area following a peaceful demonstration to the effect in Garissa town by the residents.

The PC made the order when he addressed over 1,000 secondary school students who staged a protest march to the provincial administration headquarters and instructed the PPO to investigate the alleged torture of a school teacher, Mr. Yakub Faraah Hassan by police officers who were on night patrol.”

Provincial administration officers would in joint armed security operations, give orders to police officers which were obeyed without any hesitation. From the practical point of view, it must also be noted that throughout the country, there are fewer police stations than administration police posts at Chiefs' or District Officers' centres.

36. It can be seen from the foregoing that the Provincial Administration did not only, constitute a highly centralized and important institution of Government, having ascendancy over other agencies of the Executive, but is also, the political agent of the Executive. This position is best summarised by President Jomo Kenyatta in his closing speech at the meeting of the Ministers and high officials of the ruling KANU party which was also attended by the then seven Provincial Commissioners, four Deputy Provincial Commissioners and forty one District Commissioners, held at Nakuru on 27<sup>th</sup> July, 1968. Referring to the historical significance of that meeting, President Kenyatta said:

“This is how we should co-operate in nation building. I am convinced that no ruling party can effectively exist without the Administration.”<sup>2</sup>/

It would not therefore, be surprising that after its long role as the political agent of the Executive, that the officers of the Provincial Administration would in the early years of multi-party politics still regard it as their duty to sustain the continued ascendancy of the political party in power under which they had thrived, rather than a new opposition party. Such an attitude which is not entirely unexpected, led, as was the case in certain instances, to provincial administration officers without even receiving any directions from the Executive, taking such actions including turning a blind eye on reprehensive acts of KANU leaders and the pursuance of such strategies as they thought would benefit KANU.

37. Without wishing to play down its lack of personnel and facilities, the Police Force including its Special Branch were also not above adopting such an attitude and behaviour. In some cases, the seriousness of the situation was played down, and there was a reluctance to carry out investigations that might adversely affect itself, or leading Government and KANU supporters.

38. The following examples are sufficient at this stage, to illustrate the high-handed and uncomplimentary actions of some members of the Provincial Administration and the Police Force during the tribal clashes:

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<sup>2</sup> / Daily Nation, Monday, July, 29, 1968, p4.

- (a) In 1989, in the days of one party politics, members of the Kuria tribe allegedly, originating from Tanzania, were accused to have illegally settled on Maasai land in Kilgoris in the Trans Mara District of the Rift Valley Province. A meeting of Elders comprising mostly of government officials including members of the Provincial Administration and KANU functionaries and chaired by the then Provincial Commissioner, Mohamed Yusuf Haji, who is now a nominated MP and an Assistant Minister in the Office of the President, was held on 9<sup>th</sup> January, 1989, to consider this problem. This meeting according to its minutes, Exhibit 140, decided that these illegal settlers should be given two weeks to vacate the land occupied by them. Yusuf Haji, who gave evidence before the Judicial Commission, testified that the illegal squatters were informed of this decision at a baraza, and that after they had refused to vacate the land, he ordered their forceful eviction by armed Administration and regular policemen. He said that the Maasai had threatened that they would drive out the Kuria tribesmen "with spears". In such circumstances, and he said this without any contrition, that the action that he took, was the right one, no matter whether it was against the law of the land or not. This illustrates the ethic which the Provincial Administration had over the years adopted; one that makes particularly its senior officials, feel that they are above the law and can flout the law with impunity.
- (b) During the period covered by the tribal clashes, this ethic was also displayed by Timothy Sirma, the then Kericho District Commissioner, who gave notice, when he had no right whatsoever, to do so, to Luo squatters, who as a Co-operative and as required to do, had paid to the very Kericho District Treasury, money to purchase the Thessalia Farm in Kericho District which they were occupying. At this time, which was about the middle of 1993, there is evidence that some Kipsigis who lived nearby, wanted Thessalia Farm because it was located in what they claimed to be their ancestral land. Timothy Sirma, like these Kipsigis, is a Kalenjin. His action in giving the Luo squatters notice to quit, to us, was clearly suspect. He was succeeded as District Commissioner of Kericho District, by another Kalenjin, Nicholas Mberia, who not only, deliberately refused to accept the clear indisputable state of affairs, but also, flouted the law and illegally ordered that the "Luo squatters" be evicted from Thessalia Farm by armed policemen. This was accomplished by two bulldozers

which razed the houses of the “Luo squatters” to the ground whilst the armed policemen stood guard to ensure that the unlawful and brutal eviction was successfully carried out. Incidents like this only encouraged other Kipsigis to lay violent claim to other nearby farms occupied by Luo.

39. On the other hand, there have been cases such as in the Coast Province, where a Chief and Assistant Chiefs who were of the same tribe as the majority indigenous inhabitants, connived with them in the preparation and perpetration of tribal clashes. Ironically, instead of being punished, they have been retained in the provincial administration service as if it were, for a job well done. This regrettable incident occurred after Omar Hussein Gari, Chief of Ngombeni Location in Kwale District, Athuman Zuberi Mwakunyapa, Assistant Chief of Pungu Sub-Location, Ramadhani Mwalimu Mwaonu, Assistant Chief of Kiteje Sub-Location and Nyaume Mohamed, Assistant Chief of Ngombeni Sub-Location, all in Ngombeni Location, had been interdicted by their then District Commissioner, David Jakaiti, for keeping to themselves vital information they had, and which led to tribal clashes in the Coast Province, that Digo youths had taken an illegal oath and were receiving military training to attack the Likoni Police Station. This attack took place with devastating results. In spite of their feeble letters seeking reinstatement, Exhibits 65 (A), 65 (B), 65 (C) and 65 (D), and in spite of the serious implications of the actions of these subordinate provincial administration officers in the catastrophic attacks mounted by their fellow Digos, they were scandalously reinstated for no good reason by the Coast Province Provincial Commissioner, Samuel Kipchumba Limo. His only lame and unacceptable excuse for doing this, was to reconcile the Digos. In other words, to condone what these subordinate provincial administration officers had done. We were most unimpressed by the reason he gave us for behaving like that. Wilfred Kiptum Kimalat, the Permanent Secretary of the Ministry of Education and the former Permanent Secretary in charge of Provincial Administration and Internal Security, when giving evidence before the Judicial Commission, expressed the same opinion though somewhat mildly, that having regard to all the surrounding circumstances, Kipchumba Limo should not have reinstated these subordinate provincial administration

officers. In our view, Kipchumba Limo's action is a disgrace to the Provincial Administration and he should be disciplined for this.

40. Cases where proper corrective actions were taken, but which nonetheless, illustrate the partisan role played by members of the Provincial Administration, also occurred in the tribal clashes along the border between the Trans Mara and Gucha Districts. A Criminal Intelligence Report on the tribal clashes in the Trans Mara and Gucha Districts, and made by Senior Assistant Commissioner of Police, John Namai, Exhibit 204, contained, inter alia, allegations of criminal acts against certain politicians in connection with the tribal clashes; that Chiefs and Assistant Chiefs in the affected areas were partisan; and also that the District Security Intelligence Officers did not pass on relevant information obtained by them to their colleagues on the District Security Committees. This Criminal Intelligence Report was submitted by John Namai to his superior Noah Arap Too, the then Director of Criminal Investigation, and who in turn, passed it on to Duncan Wachira, the then Commissioner of Police as shown in Exhibit 205, with the following unhelpful comment:

"This report is for your information and any necessary action you may consider necessary taking."

41. Adopting the same lukewarm attitude and avoiding to take any steps with respect to investigating the allegations made against the politicians, Duncan Wachira in his letter of 12<sup>th</sup> January, 1998, to Fares Kuindwa, Permanent Secretary, Secretary to the Cabinet and Head of Public Service, Exhibit 206, stated:

"... Though the report is long, I would appreciate if you could study it and please take necessary administrative action to direct appropriate administrative and political action so as to harmonise the close co-operation and co-existence of the tribes living in this area ...

I have these observations and recommendations to make:

- (a) the two DSC in Transmara/Gucha should be changed and fresh officers posted to those two districts. There are glaring indications of indifference and partiality on members of the DSC during the election period particularly as is seen in Transmara. Due to this fact, I had changed the OCPD of the area.

- (b) Political goodwill by the local politicians is very important so as to restore peoples confidence and reassurance.
- (c) Security officers working in this area and who come from the same communities fighting should be transferred out of the two districts.
- (d) The Chiefs and their assistants should be restrained from fuelling tribal animosity.
- (e) The issue of land in this area is very sensitive and the government should address itself to this issue and issue the necessary instructions.”.

42. Fares Kuindwa did not tell Duncan Wachira to investigate the allegations of criminal acts made against the politicians, which would seem to be a matter within the province of Duncan Wachira. On his part, however, all that Fares Kuindwa did, and which was insufficient, was merely to concur with the change of the membership of the District Security Committees and the admonishment of the Chiefs and Assistant Chiefs.

43. About six weeks before the attack on the Likoni Police Station which took place on 13<sup>th</sup> August, 1997, the Provincial Security Intelligence Officer of the Coast Province, Shukri Baramadi, sent to his Director of Intelligence retired army Brigadier, Wilson Boinett, a letter dated 25<sup>th</sup> June, 1997, and headed: CRIMINAL ACTIVITIES OF POSSIBLE SECURITY SIGNIFICANCE/ALLEGED PLANS BY YOUTHS TO PERPETRATE POLITICAL THUGGERY/KWALE. In this letter which forms part of Exhibit 89, Shukri Baramadi passed on the information that he had received, that some youths from Kwale and Likoni who did not support KANU, were taking illegal oaths that would bind them “to cause civil disobedience and other acts of lawlessness during the election period”. In furtherance of this purpose, about seven thousand seven hundred and sixty three men including some eight hundred servicemen and ex-servicemen were to be recruited. Shukri Baramadi went to say that the youths already had two rifles and a pistol which had been stolen from policemen attached to Likoni Police Station. He ended by saying that the matter was being investigated by the relevant District Security Committee. On the same day he sent letters to the District Security Intelligence officers in Kwale,

Mombasa and Kilifi to carry out necessary investigations into the matter he had raised in his letter to the Director of Intelligence.

44. The next letter that Shukri Baramadi wrote to Wilson Boinett which also forms part of Exhibit 89, is dated 28<sup>th</sup> July, 1997, which is some sixteen days before the attack on the Likoni Police Station. In this letter which now has the following different heading MATTERS OF MORALE WITHIN THE KENYA POLICE/O.C.S. LIKONI POLICE STATION ACCUSED OF BEING COMPROMISED BY A POLITICIAN/MOMBASA, Shukri Baramadi diverted attention from the main subject of his letter of 25<sup>th</sup> June, 1997. He now dealt only with the conduct of the Inspector in charge of Likoni Police Station, Peter Kariuki who, it was alleged, having been influenced by Suleiman Rashid Shakombo a KANU parliamentary aspirant, released the latter's supporters who might be in police custody, and arrested those who did not support him on trumped up charges.

45. In our view, this deliberately diversionary tactics on the part of Shukri Baramadi, was intended to give the Directorate of Intelligence which until 1999, was a department of the Police Force, and since then replaced by the independent Directorate of Security Intelligence, the excuse when cornered of saying that it did not get a realistic and proper account of the situation. This is supported by the fact that according to the Special Branch Information Report, Exhibit 42 (F), which was received by Shukri Baramadi, many Mijikenda youths which included some ex-servicemen and unemployed persons, had taken an oath for the purpose of Majimboism, to violently evict from the Coast, the upcountry people. The Special Branch Handler's comment on this report which was highly rated as B/3, was significantly, as follows:

"A similar report was submitted that the MIJIKENDA youths were taking oaths. The youths are claiming regional Government and are prepared to start clashes any time. However, the allegation is still being investigated and a full report will be submitted."

The COMMENTS AND ACTION of the Handler's senior officer who happened to be none other than Peter Wilson, the District Security Intelligence Officer, Mombasa, and which is dated 12<sup>th</sup> August, 1997, is also worth setting out:

“A similar report had been received here from a different source confirming that chances are high that oathing is secretly being conducted. Investigations are underway.”

46. It is in the light of the foregoing circumstances that we have come to the conclusion that not only, Peter Wilson, but also, Shukri Baramadi who must have known that tribal clashes were about to erupt at the Coast Province at anytime, deliberately diverted attention from them and played down the issue. In this respect, we have also taken into account, as testified by Wilson Boinett, that Shukri Baramadi as well as the other Provincial Security Intelligence Officers in the country and he himself, had in 1996, because of tribal clashes that occurred in 1991/1992 and the imminent general elections in 1997, prepared a threat assessment report FLASH-POINTS FOR VIOLENCE 1997 GENERAL ELCTIONS, Exhibit 30, which is dated 3<sup>rd</sup> September, 1996, and distributed to the following: The Head of the Public Service, the Permanent Secretary Provincial Administration and Internal Security, the Chief of General Staff, Department of Defence, the Commissioner of Police, the Permanent Secretary, Ministry of Foreign Affairs and International Co-operation, and the Director of Intelligence.

47. District Security Intelligence Officer, David Kipkorir Siele, was stationed in Nakuru in January, 1998. On 23<sup>rd</sup> January, 1998, Kipkorir Siele received a letter from Kihika Kimani, the opposition Democratic Party of Kenya (DP) MP during the aftermath of the emotional multi-party parliamentary and presidential elections held in December, 1997. In this letter, Kihika Kimani warned of the imminent attack by the Kalenjin who supported the ruling political party KANU, to drive out from the Nakuru and nearby Districts, the Kikuyus living there and who had supported DP in the parliamentary and presidential elections. In this letter, Kihika Kimani also informed Kipkorir Siele that the Kikuyus would defend themselves against Kalenjin aggression. Although Kipkorir Siele was aware of the contents of Kihika Kimani's letter, he did not bring it to the attention of the District Security Committee of which he was a member, and which met on 23<sup>rd</sup> January, 1998, or thereafter. The security situation of the District as described in Min



6/98 of the minutes of the meeting of the District Security Committee, Exhibit 22, was therefore, not unexpectedly, misleadingly, described as "still satisfactory".

48. The next day, 24<sup>th</sup> January, 1998, Kihika Kimani and Kipkorir Siele met. The former briefed the latter fully on the contents of his letter. In spite of the obvious looming tragedy and without bothering to inform the other members of the District Security Committee about Kihika Kimani's letter and his meeting with him, Kipkorir Siele, even though his immediate boss was away, thought it fit to sneak out that evening and in the given circumstances, on the very lame excuse that he had gone to see his mother. What he did as a cover up, was to send on 24<sup>th</sup> January, 1998, a facsimile, Exhibit 37, a report on possible tribal clashes in Nakuru District, to the Headquarters of the Directorate of Intelligence in Nairobi. In his final "Comment" in this facsimile, he played down the seriousness of the situation. He also did not make any mention of his meeting with Kihika Kimani who had warned him of the impending clashes. We find this most suspicious. Wilfred Kimalat, the Permanent Secretary of the Ministry of Education, and the former Permanent Secretary, Provincial Administration and Internal Security, expressed the same view in the course of his evidence before the Judicial Commission.

49. Kipkorir Siele's deliberate act of deception was also repeated in his first statement of 12<sup>th</sup> February, 1998, to the police, and contained in Exhibit 13 (E), where he made no mention whatsoever, of Kihika Kimani's letter or his meeting with him. It was only three days later, and after he had been pressed by police investigators, that he disclosed this in his further statement of 15<sup>th</sup> February, 1998, which is also contained in Exhibit 13 (E).

50. Anyway, the very next evening of 25<sup>th</sup> January, 1998, whilst Kipkorir Siele was still away, the Kalenjin struck. But Kipkorir Siele miraculously, appeared at the scene the next morning and indeed, tried to persuade the police officers who had been there earlier and who had arrested some Kalenjin caught red handed, burning Kikuyu houses, to let one of them go. Kipkorir Siele is a Kalenjin and these irresponsible and suspicious actions on his part, support the view that he well knew what was going to happen and

thought it wise to be away when the attack began, but to be present during the course of it, so as to be able to co-ordinate and keep an eye on what was happening.

51. Wilson Boinett is now since 19<sup>th</sup> January, 1999, the Director General of the new National Intelligence and Security Service, the independent status of which may well make things worse in the future. However, with refreshing candidness which had not been displayed by many of the officers of the Provincial Administration and the Police Force in their evidence before us, he agreed with us that Kipkorir Siele's Facsimile, Exhibit 37, his disappearance from Nakuru on the night of 24<sup>th</sup> January, 1998, his first statement to the police, as contained in Exhibit 13 (E), and his subsequent actions, showed firstly, that Kipkorir Siele's facsimile and first statement not only, lacked candidness but also, deliberately played down the real state of affairs so as to make his disappearance from Nakuru appear not to be irresponsible, and secondly, that he might have connived at the tribal clashes. When his attention was drawn to the fact that this had not prevented Kipkorir Siele from being promoted, Wilson Boinett pleasantly surprised us all by his honest comment that this is the sort of thing that happens in a third world African country like Kenya. But true to his profession as a spy, Wilson Boinett was only selectively frank. For instance, he refrained from telling the whole truth namely, that at the relevant time, senior Special Branch officers like Kipkorir Siele, were promoted by the Public Service Commission upon his recommendation. Duncan Wachira who, as Commissioner of Police, was at the time, Kipkorir Siele's overall superior, told us that he would have disciplined Kipkorir Siele if he had been directly under him.

52. Another interesting aspect of this matter relates to the investigation and Report of the cause of the clashes in Molo which was undertaken by a team of police officers led by then the Deputy Commissioner of Police, Philemon Abongo. He stressed in his evidence before us how it was impossible to obtain any statement or information from the Nakuru Provincial Security Intelligence Officer, Petkay Shen Miriti, who was then, Kipkorir Siele's immediate senior officer. In his Report to the then Commissioner of Police, Exhibit 13, and inspite of having expressed the view to the Judicial Commission that

Kipkorir Siele should have brought to the attention of the meeting of the District Security Committee held on 23<sup>rd</sup> January, 1998, the contents of Kihika Kimani's letter, Philemon Abongo did not castigate Kipkorir Siele who at that time, even though he belonged to the Police Special Branch, was like any other member of that service, subject to the Police Act and under the direction of the Commissioner of Police.

53. This sacred-cow syndrome also seems to have played a role in the Report on Ethnic Clashes in Coast Province and the surrounding Areas, Exhibit 8, of Peter Mbuvi, the Deputy Director of the Criminal Investigation Department, which had been commissioned by the then Director of the Criminal Investigation Department, Noah Arap Too. There was ample evidence that Chief Inspector Omar Raisi of the Police Special Branch and a Digo, had prior information of the taking of illegal oaths of commitment and secrecy by, and the military training of, Digo youths among other things, to attack nothing other than the Likoni Police Station. This information he passed on to his superiors in the Special Branch namely, Peter Wilson and Shukri Baramadi which these senior Security Intelligence Officers never passed on to their colleagues on the Provincial and District Security Committees. Indeed, there was information that Omar Raisi had been seen near the Likoni Police Station shortly before it was attacked. When finally, and after showing a lot of reluctance, Omar Raisi gave a self recorded statement to Edwin Nyaseda, Senior Assistant Commissioner of Police, who was assisting Peter Mbuvi in his investigations, and which is to be found at page 34 of Peter Mbuvi's Report, Exhibit 8. Omar Raisi produced a deliberately shallow and misleading statement which if any thing at all, to our minds, showed not only, that he was concealing important information but also, that he must have condoned or taken part in the outrageous attack on the Likoni Police Station in which, according to Peter Mbuvi's Report, six policemen were killed, twelve policemen injured, over forty firearms and one thousand four hundred rounds of ammunition stolen from the Likoni Police Station and several buildings including the Police Station, burnt. Yet, in his light weight Report, whether provisional as Peter Mbuvi called it, or not, he did not dare point an accusing finger at Omar Raisi or any of his superiors who like him, were all, now, not suprisingly, subsequently rewarded with promotions. All that he dared to recommend was that:

“Once any criminal intelligence report is received by any law enforcement agency the same should be shared, coordinated and acted upon promptly and appropriately.”.

54. Duncan Wachira condemned what can be described as the conspiracy of silence on the part of the Special Branch officers. He recalled that Omar Raisi had to be compelled to even make his unhelpful and uncandid statement contained in Peter Mbuvi's Report. Duncan Wachira also said that having read Shukri Baramadi's letters of 25<sup>th</sup> June, and 28<sup>th</sup> July, 1997, to Wilson Boinett and contained in Exhibit 89, on the recruitment of over seven thousand Digo youths for military training and the alleged embarrassing behaviour of the former Inspector in Charge of the Likoni Police Station, Peter Kariuki, he thought that his attention should have been drawn to the contents of those letters by Wilson Boinett. This conspiracy of silence on the part of the Special Branch officers together with the apparent reluctance to investigate and criticise the actions of Special Branch officers, undermined the work of those members of the law enforcement agencies who had no hidden agenda, and who were prepared to do an honest day's work.

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55. The fact that the Special Branch officers kept the information that they had from their colleagues in the other branches of the Police Force and the Provincial Administration, did not necessarily mean that these colleagues did not also have prior knowledge of some of the tribal clashes that took place. On 28<sup>th</sup> October, 1991, one day before the first of the tribal clashes in the country that occurred between the Nandi and the Kisii at Miteitei farm in the Nandi District, it had become glaring not only, to the Chief Inspector of Police, then of Songhor Police Station, Julius Ndegwa, but also, to the District Officer I, then of Nandi District, Christopher Shitsimi Mwashu, that there was bound to be a terrible commotion between what was disingenuously thought to be merely rival share holders in Miteitei Farmers Co. Ltd. The attack on the Kisii and the burning of their houses by their Nandi neighbours in Miteitei farm, which began in the evening of 29<sup>th</sup> October, 1991, and during which two hundred and fifty houses nearly all of them belonging to the Kisii, were set on fire by the Nandis, two hundred and fifty Kisii grain stores destroyed by the Nandis, and a shop owned by a Kisii also destroyed by the Nandis all within three days, showed that this was nothing of the sort.

56. On 28<sup>th</sup> October, 1991. Christopher Mwashu and Julius Ndegwa had gone to the Miteitei Trading Centre to settle a long simmering dispute, which had been there for over eleven years without any violence erupting, between two rival groups of share holders in Miteitei Farmers Co. Ltd. which owned the Miteitei farm. This time, however, Christopher Mwashu and Julius Ndegwa knew that violence was most likely to flare up. The latter was accompanied by twelve policemen eight of whom, were armed. They also had with them tear gas canisters. Christopher Mwashu was also accompanied by a good number of armed administration policemen. When it became obvious that the meeting would degenerate into chaotic violence, Mwashu cowardly and hurriedly made his exit together with the District Officer as if he knew what was going to happen, and did not want to be part of it. Julius Ndegwa was left behind to deal with the situation. The view that he expressed about this to us, quite rightly, was that he would not have left if he were the District Officer 1. Later that evening, Julius Ndegwa left to go back to his station. He left behind six of his men. Nothing happened that night. The early evening of 29<sup>th</sup> October, 1991, however, saw in this heavily populated farm, the houses of the Kisii being burnt. The obvious reason for this, being to chase the Kisii out of Miteitei farm. Julius Ndegwa who had arrived with about thirteen men, together with those he had left behind at the Miteitei Trading Centre could not do much to stop the burning of the Kisii houses. They fired in the air, a strategy which the police were to employ in many other incidents of tribal clashes but which proved not only, useless but which also, indeed, at times, seemed deliberately calculated to assist those burning houses during the tribal clashes. In this instance, this strategy only succeeded in enabling the Nandi arsonists to run away and to return during the night of 30<sup>th</sup> October, 1991, to burn more Kisii houses. This was in spite of the fact that by then, Julius Ndegwa had received reinforcement of seventy men.

57. This trade mark police intervention was condemned by Duncan Wachira who testified and we agree with him, that the police on such occasions, such as during the violent acts of tribal clashes, should have shot to disable, but which they had obviously, been ordered not to do. It is not surprising that the firing into the air by the police was also ridiculed by those intended to be frightened by it who, well aware that they would not be targeted,

would simply move away and mount another attack elsewhere. This tactics was successfully employed in such tribal clashes as those between the Kikuyu and the Kipsigis at Londiani and between the Luo and the Kisii along the Migori and the South Kisii border. In the latter clashes, as Michael Morris Ayieko, the Assistant Chief of Kanyimach Sub Location in Migori District, was candid enough to tell us, and we have no reason to disbelieve him, the frustrated armed policemen simply left the Luo and the Kisii combatants who were only armed with unsophisticated weapons, saying that they would return when the Luo and the Kisii had finished each other. Across the valley from Roshanali Karmari Pradhan's farm which is 10 km from the Likoni Ferry and where the Digo youths had received military training, the dreaded General Service Unit had a few days after the Likoni Police Station raid, seen the raiding armed Digo youths. The General Service Unit men went to their Commander for permission to attack. According to Karmari Pradham, the Commander refused permission saying that a helicopter which was on its way, should be allowed to track the raiders to their camp. For what! Senior Chief Francis Ayieko Okechi of Getenga Location in Gucha District, was also frank enough to admit that the problem which Chiefs and Assistant Chiefs faced at the grassroots level was that if they arrested or squealed on their own fellow tribesmen, in respect of matters connected with the tribal clashes or the tribal clashes themselves, they would be regarded as traitors, which stigma they were not ready to risk.

58. The lenient attitude of the security organs described above and which contributed to the effrontery of the attackers and to the length of the incidences of the tribal clashes which could have been easily curtailed if the security organs really wanted to do so, is also in sharp contrast to the well known no nonsense attitude of the Flying Squad in the fight against robbery which in all respect, is a lesser crime than the nationwide tremendous destruction of millions and millions worth of property, cold blooded murder, brutal tribal cleansing, callous displacement of persons and the indescribable trauma involved in the tribal clashes. Indeed, if only the security organs had at the beginning of their operations employed any thing near the drastic counter actions of the Flying Squad, we are sure that the initial tribal clashes would have been brought to a speedy conclusion and those contemplating further tribal clashes would have been discouraged from

indulging in it as nonchalantly as they did. In the result, the culture of political violence in the country led to a cycle of violence from one tribal clash to another with frightful and uncanny similarities in the kind of violence, brutality and destruction perpetrated and the guerilla-type pattern of attacks, movements and operations, in an atmosphere of apparent complacency and complicity of the Provincial Administration and security forces, and which all seem to suggest a well orchestrated strategy in the conception and implementation of the tribal clashes.

59. Another example where the police had prior knowledge of an attack but failed to take steps to foil it, was the daring attack on the Likoni Police Station. Karmari Pradham had written two letters dated 4<sup>th</sup> August, 1997, and 27<sup>th</sup> August, 1997, and contained in Exhibit 8, to the Senior Police Officers in Mombasa informing them of the taking of illegal oaths and the training of Digo youths in his farm. Yet no action was taken. It is no wonder that on 17<sup>th</sup> August, 1997, while the Commissioner of Police was in Mombasa after the attack on the Likoni Police Station, and had sought to know from the members of the Provincial Security Committee, composed of the Acting Provincial Commissioner, Hassan Mohamed Haji, the Provincial Security Intelligence Officer, Shukri Baramadi, the Provincial Criminal Investigation Officer, John Namai, and the Provincial Police Officer, Francis Gichuki, why nothing had been done to foil the attack, these officers, according to the evidence of Edwin Nyaseda which we accept, "looked down in shame".

60. But Duncan Wachira, had as far back as September, 1996, received a copy, Wilson Boinett's Report on FLASH-POINTS FOR VIOLENCE 1997 GENERAL ELECTIONS, Exhibit 30, which in respect of Mombasa, had warned of possible violence, inter alia, between the "upcountry vs. Coastal residents", and called for the "strengthening of ... especially the security organs, which will be the sole authority to take measures on the looming crisis". Duncan Wachira did not seem to have taken any appropriate measures as a result of this Report. Instead, he seemed to have been more concerned about providing cover for some people that might be affected by the investigation into the clashes that occurred at the Coast Province. He had instructed the then Provincial Criminal Investigation Officer, John Namai, and we accept this, to make sure that

Emmanuel Karisa Maitha at the time, a KANU activist, and who had been charged before the Mombasa Chief Magistrate, Aggrey Muchelule, with offences relating to the tribal clashes at the Coast Province, was released on bail. This had forced John Namai contrary to his wishes, to privately and unsuccessfully, ask the Chief Magistrate to release Karisa Maitha on bail. Another tell tail evidence was adduced when in the cross examination of John Namai, a report made by Edwin Nyaseda to Duncan Wachira, Exhibit 82, was produced. In this report, the guidance of Duncan Wachira was sought concerning the production of confessions in court of persons involved in the tribal clashes at the Coast Province such as Karisa Maitha and Al-Haji Mohamed Omar Masumbuko, which would also implicate important government personalities. In our view, Edwin Nyaseda would not have sought such guidance if Duncan Wachira had not intimated such a procedure to him.

61. Another instance where the police showed a reluctance to investigate matters where important government personalities had been mentioned, occurred, not unconnected with the abortive private prosecution against Ntimama for instigating the tribal clashes in the Rift Valley. This private prosecution (No. 13/95) was instituted by Mbuthi Gathenji, an Advocate of the High Court of Kenya and subsequently discontinued when the Attorney General as he may do, entered a nolle prosequi. Shortly after the institution of this private prosecution, the police, in a manner reminiscent of the inhuman practices of the notorious KGB of the Soviet Union, raided the house of Mbuthi Gathenji between 1 a.m. and 2 a.m. on the night of 17<sup>th</sup> October, 1995, where they conducted a search for seditious documents. Upon finding nothing there, the police proceeded to Mbuthi Gathenji's office where he produced to them some copies of written confession statements allegedly made by some members of the army and two police officers to the effect that certain cabinet ministers and other persons, had recruited and had them trained to commence and continue the tribal clashes. That same night, Mbuthi Gathenji was arrested and kept in police custody for five days when, without any further investigation, and clearly then unsupported by any evidence whatsoever, he was taken to court and charged with twenty four counts of the offence relating to alarming publications.



62. The shameful police action already described, was headed this time, by none other than John Namai, who in the course of his investigations, did not even dare interrogate those adversely mentioned in the confession statements obtained by him during the search of Mbuthi Gathenji's office. What he did on 8<sup>th</sup> November, 1995, nearly a month after Gathenji had been arrested and charged, and to ensure that their case against Gathenji would succeed, was to ask his superior, Noah Arap Too in his report to him, Exhibit 185, to obtain permission for him to interrogate the "leading and key personalities in the country" adversely named in the confession statements. Incidentally, John Namai well knew that only about half of them were such personalities. We were impressed by Noah Arap Too's comment that what he was required to do, was not to seek permission for the "leading and key personalities in the country" to be interrogated by John Namai but rather for him to determine whether he himself, should interrogate these personalities. In the event, of course, he interrogated no one. When the criminal proceedings against Mbuthi Gathenji were brought to the attention of the Attorney General, he had no difficulty in entering a nolle prosequi and thus terminating them. However, the obvious sinister intention of the police to teach Mbuthi Gathenji a lesson, he would never forget, had been achieved.

63. It is under these circumstances that we note with regret from the evidence adduced before us, that the Director of Public Prosecutions, Bernard Chunga had, even though there was not an iota of evidence to support them, given his blessing to the charges brought by the police against Mbuthi Gathenji. With respect to the alleged confession statements of soldiers obtained by the police during their search of Mbuthi Gathenji's office, Exhibits 198 (A) – 198 (X), the police merely contented themselves with the rejection by a records officer in the Department of Defence that there were no soldiers with the identical service number, names, rank and attachment particulars as given as belonging to each of those supposed to have made the confession statements. We are satisfied that even though the particulars of the soldiers may well not be genuine, they are most likely to have been concocted by someone who had some knowledge of such details, such as, a soldier. Although Sammy Kipketer Cheraisi at the time, a Major in the army, but now retired, and Senior Assistant Commissioner of Police, Jeremiah Cheruiyot,

were mentioned for instance, in Exhibits 198(B) and 198(C) as some of those that had recruited soldiers for the tribal clashes, they have strangely up to now, never been interrogated by the police about their alleged role in the tribal clashes. If the police wanted to undertake a bona fide and proper investigation into a matter of such national importance, they should also have sought, which they did not, the assistance of the military police and military intelligence. Wilson Boinett agreed that the starting point of such an investigation would be the Records Office, but as shown in the verbatim report of the proceedings of the Judicial Commission of 29<sup>th</sup> May, 1999, in answer to the question:

“Yes, it may be the starting point should this not have been investigated by the Military Intelligence and the Military Police, having regard to what I have told you; names and numbers?”

he replied:

“My Lords, doing it otherwise, is really to beat about the bush and to waste time.”

64. We are constrained to observe that evasiveness characterised the evidence of both the former Commissioner of Police, Duncan Wachira, and the former Director of Criminal Investigation Department, Noah Arap Too. Duncan Wachira's favourite answers to difficult questions as can be seen from the verbatim reports of the proceedings of the Judicial Commission of 4<sup>th</sup> and 7<sup>th</sup> June, 1999, were “I have no comment on that”, “I am not able to confirm that” or “I take note of that, my Lords”. Duncan Wachira denied that he had in 1992, when he was the Provincial Police Officer in Mombasa, caused to be issued to Rashid Sajjad, then a leading local KANU politician and now a KANU nominated MP, a police pocket phone or walkie talkie. However, we had no difficulty in accepting as true, the evidence that Rashid Sajjad had given, that the police pocket phone which would enable any one operating it to overhear what was being said over the police radio network, had been issued to him on the instructions of Duncan Wachira. Indeed, Rashid Sajjad had been assigned a police call sign “Romeo Siera”.

65. All this evidence had been given in the presence of Senior Superintendent of Police, Peter Mwangi who attended all the sessions of the proceedings of the Judicial Commission as a personal representative of Duncan Wachira. If Duncan Wachira had wanted to challenge any of the evidence given against him, he could have done so, but rather chose not to do so. Noah Arap Too on his part, took the unlikely position that he was merely a conduit pipe in respect of investigations which were undertaken at the request of the Commissioner of Police and the reports of which, he merely passed on to him when he received them.

66. It is interesting to note that even though Exhibit 30 was also copied to the Chief of General Staff, Department of Defence, there was a marked reluctance to use the armed forces in crushing the tribal clashes. Whilst the principal role of the armed forces is to protect the country against external threats to its security, it is well known that the military have been employed on several occasions to deal with internal acts of banditry and other criminal activities, as well as other situations that affect the internal security of the country. Northern Kenya has continued to be affected by serious internal armed incursions because of the instability of our northern neighbours and the resultant influx of illicit arms. The districts affected by this form of insecurity include: Tana River, Lamu (Coast Province), Garissa, Wajir, Mandera (North Eastern Province), Moyale, Isiolo, Marsabit (Eastern Province) and Turkana, West Pokot, Samburu, Marakwet, Keiyo (Rift Valley Province). The armed forces have also, time and again, been called upon to tackle the recurrent problem of cattle rustling between the Pokots and the Turkanas, the Pokots and the Marakwet and the Pokots and the Samburu. In North Eastern Kenya, various ethnic groupings and clans maintain albeit clandestine militia who are heavily armed and intermittently engage in fierce duels over water, pasture or hegemonism. The army has been used to deal with such matters. These include the five year skirmishes between the Ajuran and the Degodia in Wajir District which left scores of people dead, and the Bagalla/Budhudha massacre of the Degodia by the Borana and Gabra of Marsabit and

Moyale which became the subject matter of another Commission of Inquiry. Other incidents where the army has been involved are the armed clashes between the Orma of Tana River District and the Degodia and between the Ogaden Somalis and the riverine peoples of Tana River District the Malokote, Munyoyaya and Pokomo. As Major John Mberia put it, which is contained in the verbatim report of the proceeding of the Judicial Commission of 5<sup>th</sup> October, 1998:

“My Lords, the primary role of the military is to defend this country against external aggression. But in a case of breakdown of law and order, we take up our secondary role, which in our Armed Forces Act, is to aid the civic powers.”.

67. In the conduct of their operations, the army operates jointly with other forces such as, the Kenya Police, including the General Service Unit, the Administration Police and armed members of the Kenya Wildlife Service. Such operations are executed firmly, decisively, with precision and successfully as evidenced by the large cache of weapons and numerous livestock recovered. During these joint operations the army takes charge. Such joint operations would be necessitated by the scale of the problems in terms of its national importance, the weaponry at the disposal of the enemies and their numerical strength, and other logistical considerations such as terrain. The failure to employ the army in crushing the tribal clashes at their inception contributed to the wide ranging and devil-may-care tribal clashes that plagued the country for seven years. As Kipketer Cheraisi told us, the clashes could have been brought to an early and abrupt end if the army had been used right from the beginning. We agree with him. Wilberforce Arap Kisiero, a veteran politician and who had been the KANU member of parliament for Mt. Elgon from 1979 to 1997, also told us that the police force could not cope with the tribal clashes that occurred intermittently for two weeks in the Mt. Elgon area until the army was deployed there. He said, and we agree with him, that the mere presence of the army that was deployed between the rival Saboat and Bukusu tribes, was by itself, sufficient to deter any further tribal clashes or skirmishes.

68. And one last comment. As recently as on 5<sup>th</sup> July, 1999, the British government did not hesitate to employ the army as well as the police, to stop the inciting annual march of

Protestant Orangemen along Garvaghy Road into the Catholic estate of Portadown in Northern Ireland, which in the recent past had sparked off religious tension and violence.

69. As was succinctly set out in Wilson Boinett's rather sketchy Report on FLASH-POINTS FOR VIOLENCE 1997 GENERAL ELECTION, Exhibit 30:

- “1. There will be lawlessness leading to violence in some parts of the country before and during the electioneering period.
2. The most significant catalyst to the factors that may lead to violence is the perception by ... and the opposition, that President Moi and KANU will win the next Genral Election. This belief arises from the frustration of the opposition over their own failure to forge a united front in their avowed intent to dislodge President Moi and KANU from power.”.

With respect to these excerpts from the FLASH-POINTS FOR VIOLENCE 1997 GENERAL ELECTIONS, Exhibit 30, the following extracts from the verbatim report of the proceedings of the Judicial Commission of 28<sup>th</sup> May, 1999, say it all:

“Mr. Chairman: I want to look again at Exhibit No. 30 – the Executive Summary. I think it is very well put: “There would be lawlessness leading to violence in some parts of the country before and during the electioneering period.” You were drawing attention to the fact that this was politically motivated?

Mr. Boinet: Yes, My Lords.

Mr. Chairman: So, politics from your analysis, and I agree with you, was going to be the cause of the lawlessness and violence?

Mr. Boinet: Yes, my Lords.

Mr. Chairman: If you turn to page 3, factors which may be exploited for this political purpose would be ethnicity, land ownership and all things that are listed in “a”?

Mr. Boinet: Yes, my Lords.

Mr. Chairman: So, when some people come here and say the causes of the clashes was land, it is rubbish. It is politics, but they are exploiting all these problems that exist?

Mr. Boinet: My Lords, I think you have put it correctly.”.

70. The foregoing analysis of the situation by Wilson Boinett with which we fully agree, also applied with equal force to the situation in 1991. We also agree with Boinett's enumeration of the various factors that could be exploited to this end such as “Ethnicity and clannism. Land ownership v. polititics, political affiliations, alliances and supremacy. Cattle rustling and illegal arms.” We have no doubt that the tribal clashes

were politically motivated and that existing conducive situations were exploited. Among those instances that were brought to our notice, were the KANU political rallies held during the advent of multi-party politics, at Kapsabet, Kapkatet and Narok. These KANU political rallies had clearly been called by KANU political leaders to counter the unlicensed and disrupted history making SABA SABA political rally which was to have been held at the famous political rallying rendezvous, Kamukunji in Nairobi, on 7<sup>th</sup> August, 1991, by politicians opposed to the then prevailing one party political system. Not unexpectedly, the disruption of the SABA SABA rally erupted into violent civil disturbance in which death and destruction and looting of property, occurred. Nevertheless, this was to usher in multi-party politics in the country. At the KANU political party rallies, and also, not unexpectedly, KANU party leaders decried multi-party politics and urged their tribal followers who supported KANU, to drive out from their midst, the members of the other tribes who supported the emerging opposition political parties, so as to strengthen KANU's dominance in their ancestral lands.

71. The Kapsabet rally held on 7<sup>th</sup> September, 1991, nearly two months before the first of the tribal clashes occurred at Miteitei farm, was attended by several influential KANU leaders from the Rift Valley such as the Nandi KANU branch Chairman Henry Kosgey, two Ministers, ten KANU members of parliament and about fifty Councillors from the Rift Valley. Addressing the large gathering of Kalenjin, Willy Kamuren, the then Baringo North KANU MP, for instance, as was reported in the Daily Nation of 9<sup>th</sup> September, 1991, said that:

“... Kalenjin were not tribalistic but only rejected people bent on causing chaos. He told government critics to move out of Kalenjin land.

‘Let them keep quiet or else we are ready for introduction of Majimboism whereby every person will be required to go back to his motherland.’

Once we introduce Majimbo in Rift Valley, all outsiders who acquired our land will have to move and then leave the same land to our children.”

72. On 21<sup>st</sup> September, 1991, a fortnight after the Kapsabet KANU rally, another one was held at Kapkatet in the same Province. This time, nineteen KANU MPs from the Rift Valley, were present. They included three Cabinet Ministers and four Assistant Ministers. This rally which was for a similar purpose as that of the Kapsabet rally, was

the forum for the condemnation of multi-party politics and its supporters and the promotion of majimboism. Some of the inciting statements made at that rally include as reported in the Daily Nation of 22<sup>nd</sup> September, 1991, the following made by Cabinet Minister Timothy Mibei when he:

“... instructed wananchi in the province to visit beer halls and ‘crush any Government critic and later make reports to the police that they had finished them’ ”.

Paul Chepkok added his voice to this when he:

“... urged the people of the province to arm themselves with rungas, bows and arrows and ‘destroy any FORD member on sight’ ”.

Willy Kamuren is also reported to have said that:

“... the Kalenjin, Maasai, Samburu and West Pokot ... were ready to protect the Government ‘using any weapon at their disposal’ ”,

and declared that:

“... if any FORD member dared to visit any part of the province, they will regret it for the rest of their lives’ ”.

When he gave evidence before us, Willy Kamuren attempted unconvincingly, to exonerate himself, by saying that when he spoke about “weapons” he meant “voting by using the ballot paper”. The less said about this the better. Timothy Mibei, though served with notice that adverse evidence would be given against him, did not deign to appear before us or to instruct counsel to cross examine the Daily Nation reporter who covered the Kapsabet KANU rally. It is no wonder as will be shown, that John Keen, the well known Maasai KANU leader, was to find the statements made at the Kapsabet and Kaptatet KANU rallies most frightening.

73. The Narok rally which was held on 28<sup>th</sup> September, 1991, was attended by several KANU Cabinet Ministers including the Vice President, George Saitoti, and other KANU political leaders. The local MP William Ole Ntimama, then Minister of Local Government, hosted and presided over the mammoth rally, consisting mainly of his fellow Maasai tribesmen. He did not mince his words when he said as reported in the Daily Nation of 29<sup>th</sup> September, 1991, that:

“We have now buried the FORD, multi-party politics and the NDP. All the Ministers and Kanu leaders you see here have resolved to fight together and follow President Moi together ... Majimbo was here at the

time of Independence and was done away with; if Majimbo ended, multi-party politics should end – or else ... We will use rungas if this will be the effective way of ending talk about multi-party. This I have said on this platform and I am repeating it: The violence of saba saba was not a milk drinking party.”

74. William Ole Ntimama, as is to be expected, denied having made such inciting statements. He even denied as reported in the front page headlines of the same issue of the Daily Nation, that two KANU leaders namely John Keen and Nicholas Biwott, who had been present at the Narok rally, had quarrelled over the use of force to displace tribes which, with the advent of multiparty politics, no longer supported KANU. Another reason why we do not accept Ntimama's evidence that he made no inciting statements at the Narok rally is the evidence of John Keen, which we found to be not only, plausible but also, candid. Judging from the violent political language used at the earlier Kapsabet and Kaptatet rallies, he was worried that the employment of similar language at the Narok rally, could incite the Maasai. He felt so strongly about this that even though the rally was tense and explosive, and even though he had been evicted from the front row seats on the dais, he managed to interrupt proceedings to condemn the inciting speeches that William Ole Ntimama and other KANU leaders were making.

75. Another KANU politician and a former Assistant Minister, who was also present at the Narok rally, was Willy Kamuren. Although he tried to put a better face on what was said by William Ole Ntimama, he confessed that not only, did the Narok rally adopt a Declaration that the Rift Valley was a KANU Zone, but also, that things that may be said at a political rally may incite some people to violence.

76. And finally, early in 1993, tribal clashes broke out in Enoosupukia which is in Maasailand, between the Maasai and the Kikuyu.

77. There is no doubt that the three KANU rallies were as usual, attended by police officers who heard all the inciting speeches that were made, but as was now to be



expected, no action was taken against those who made them. In recent times, utterances less inciting than this made by politicians, have not escaped retribution from the police. For instance, the police did not hesitate in January, 1999, to charge David Mwenje an opposition member of parliament with Incitement to Violence with the following particulars as contained in the Charge Sheet, Exhibit 31 (E):

“On diverse dates between 1<sup>st</sup> December and 24<sup>th</sup> December, 1998 at Kayole estate Nairobi within the Nairobi area without lawful authority uttered words namely ‘I will settle landless people on land belonging to other people’ which words implied that he was in a position to settle people an act, which was calculated to lead to violence.”

78. In his letter of 20<sup>th</sup> January, 1998, Exhibit 31 (B) written after the December, 1997, general elections, to the Permanent Secretary, Office of the President and Secretary to the Cabinet, Fares Kuindwa, and copied to the then Commissioner of Police, Duncan Wachira, the Director of Intelligence, Wilson Boinett made the following revealing observations:

“The Likoni issue still lingers on. It has so far caused untold harm both to the local people and the country at large through adverse publicity abroad, ... and displaced upcountry people. The perpetrators are contemplating to renew the raids and would not mind if they embraced the entire Province. One of the key players, Juma Bempa, had the audacity to address the press on 16<sup>th</sup> January, 1998, and issued threats to the upcountry people.”

What was reported about Juma Bempa and what he said as reported in the East African Standard of 18<sup>th</sup> January, 1998, Exhibit 31 (F) is as follows:

“Bempa who we later learnt is an ex-policeman then warned that his men were ready to champion for the independence of the Coast province from the rest of the country if the government ignores their demands. He said they will strike again if the government ignored their demands ...

Bempa denied that a foreign donor or local influential people had sponsored the mayhem which claimed more than 70 lives including 10 policemen.

Bempa admitted police took away some of their weapons. But he said they still have adequate arms to put up a fierce battle against the police.

Bempa, however, declined to say where they live and how they manage to execute their mission.

Coast Deputy PC Hassan Haji, confirmed that Juma Bempa is one of the prime suspects that the police have been looking for.

He denied Bempa’s claims that none of the Likoni raiders has been arrested or killed by the police.”

Needless to say, nothing was done by the police about this. Juma Bempa was a KANU supporter who, in the name of majimboism, had taken part prior to the 1997 general

elections, in the violent eviction of upcountry people from the Coast who were suspected of being supporters of opposition parties. As already noted in Exhibit 42 (F), the Mijikenda youth including ex-servicemen, had taken an oath to violently evict from their midst the upcountry people in support of "regional Government". Wilson Boinett's relevant, and frank assessment of the position during his evidence before us, as shown in the verbatim report of the proceedings of the Judicial Commission of 28<sup>th</sup> May, 1999, also deserves to be set out:

"Mr. Chairman: Why was action not taken against him after making a statement like that?

Mr. Boinet : My Lords, action was taken against him, my Lords.

Mr. Chairman: Thank you.

Justice Bosire: Is it one of the reasons why you wrote this letter?

Mr. Boinett: In the context of that statement, my Lords, yes, but in the total context of what I probably saw, this is one of the many politicians that were going to create animosity and hatred.

Mr. Chairman: In my view, it seems that the attack on the upcountry people was so that they were being suspected that they would support the Opposition. They were being attacked so that they can go away and not vote?

Mr. Boinett: My Lords, if you notice this, my letter was dated 20<sup>th</sup> January, 1998 after the elections. So, it is only here that, I think that reason stands. I guess in my own mind and in the mind of my assessors, given the pattern of voting after the results, that could be the reason.

Mr. Chairman: That is why nobody wanted to arrest and judge Juma Bempa because he had been with those coastal people who had attacked the upcountry people?

Mr. Boinet: Yes, my Lords.

Mr. Chairman: I admire your frankness.

Mr. Boinet: Thank you very much, my Lords."

79. The issue of land in Kenya is often treated with fervent sentimentality and sensitivity and in many ways, considered explosive. Whereas, the Constitution guarantees the right of ownership of property anywhere in the country, the peaceful co-existence of the forty two tribes that live within our national borders, appears to have been profoundly undermined by divers man-made problems that are either directly or indirectly connected to land. Recent developments in the political arena have tended to exacerbate rather than ameliorate the situation and by the same token, have ushered in such problems that have

far-reaching implications to communities living within multi-tribal farm settlements, which we expect will disappear as the violent antagonism that accompanied the introduction of multi-party politics dies down with time. Some of the underlying causes of these conflicts stem from the pre-independence era, while a host of others emanate from the policies and programmes of Government:

80. At the dawn of independence, it was incumbent upon the independent Kenya Government to urgently give out land to the landless and displaced as a true testimony of their hard-won independence. Upon the colonization of Kenya, the colonial administration decided to turn Kenya into a "whiteman's country" like had been done in Canada and Australia. To achieve this, vast tracts of land were alienated and economic policies that would serve the interests of the white settlers pursued. The homelands of the Africans were designated as "Reserves". Those who lost most from the alienation of land for the white settlers were the Maasai, Samburu, Kalenjin, Kikuyu, Kamba and the Mijikenda of the coastal area of Kenya. Thousands and thousands of Africans were rendered landless; others were hemmed in, within Reserves. Complimentary to the alienation of large tracts of land for the white settlers, was the emergence of "squatters" who as African farm labourers of the white settlers, were permitted to live on parts of the white settlers' farms set aside for them.

81. Immediately after independence, the Government established various mechanisms that would enable Africans to buy back white-owned farms through soft loan schemes for squatters and local landless people in a given area, and landless people from any part of the country. Among the various farms purchased and subdivided into small farms, were those bought under the aegis of the Commissioner for Squatters and the Central Agricultural Board as well as by farm-buying companies and by a few people who subsequently, subdivided them into small farms which were sold to various individuals. These farms became the source of serious conflicts between indigenous landless persons of the area where the farms were situated, and the new owners. They were also the same farms that have been notoriously affected by incessant invasions by ex-farm workers and other landless people living in or around the farms but who had been left out when such

farms were being sold out. Many of the indigenous people from say, the Maasai and Kalenjin tribes whose traditional lands had been alienated by the colonial government for the benefit of the white settlers and thus, rendered landless, strongly resented the manner in which members of other tribes had been settled on land that had at one time, belonged to their forebears. Such resentment also stemmed from the fact that whilst the indigenous people were landless and lived in conspicuous poverty, the new owners of the farms almost exclusively, occupied the most fertile arable rain-fed land in the given area and were thus able to enjoy a better standard of living to the chagrin of the indigenous people. Indigenous people by and large, have never accepted that holders of title deeds have a more legitimate right over such farms than they do. Another problem that the unregulated land settlement produced was the conflicting interests of tribes. Whilst for instance, the Maasai as pastoralists valued land for the grazing of livestock, the Kikuyu treasured the same for farming.

82. Up to a point, this order of things was tolerable but with the advent of multi-party politics and the increased population of the new farm owners, the situation became increasingly difficult. Apart from the newcomers asking for Chiefs and Assistant Chiefs from their own tribes, multi-party democracy of one-man one vote, meant that the “foreigners” or as they were to be derogatorily referred to as “madoadoa” in the Rift Valley Province and as “Watu wa Bara” in the Coast Province, could represent the indigenous people in parliament and local authorities. Given the tribal pattern that most major opposition political parties took in the recent general and presidential elections, it was evident that the indigenous people who in many constituencies were economically inferior to the newcomers, found the new concept of democracy disadvantageous. They saw this as a further move to marginalise and dispossess them of land. Indeed, multi-party politics having been strongly influenced by tribal considerations would in turn, make it easier to incite politically based tribal violence. This scenario therefore provided a fertile ground for exploitation for political ends through ethnic cleansing.

83. Whereas the majority of farm buying companies were formed in the Central Province, there were many farms in the Rift Valley Province where the indigenous people who

were able and willing to buy such farms, were denied the opportunity to do so and instead, farm buying companies from the Central Province bought the same. Such acts were seen as unjust by the indigenous communities of the Rift Valley Province. The situation was further aggravated during the advent of multi-party politics when it became evident for instance, that the immigrants from the Central Province, no matter their new places of abode, would in the 1992 and 1997 parliamentary and presidential elections, vote solidly with their kith and kin in firm support of candidates from their tribes.

84. Land ownership also became a central factor in the self-styled party "zones". Although some KANU stalwarts have come under attack over their open and vitriolic declaration of certain areas in the country as "KANU zones", it is evident that other major political parties had their own zones too, regardless of the fact whether they made any public statements or not to that effect. This problem was in addition, compounded by the electoral rule requiring that a successful presidential candidate should garner 25% of the votes cast in at least five out of the eight Provinces in the country. This provision aggravated inter-tribal friction as the indigenous people tended to view the provision as being advantageous to the immigrants whose presence in Provinces other than where they originated from, could help their candidate meet the 25% votes requirement. The indigenous people most affected by this were the Kalenjin, Maasai and the Mijikenda. All this in turn, led to the repeated call by KANU leaders for the revival of the Majimbo government and for the eviction of the immigrants during the run up to the two multi-party general elections.

85. The foregoing account of land administration in Kenya constituted a classical landscape crying out to be exploited, as happened in many cases, for political reasons, in the promotion of tribal clashes.

86. It was suggested to us on several occasions that where multi-party politics had caused tribal clashes, that this was because those who fought or caused destruction and mayhem, did not really understand the implication of multi-party politics. We find this explanation unacceptable. Everyone well knew that with the advent of multi-party politics, the monopolistic status previously enjoyed by KANU in politics in the country, had been brought to an end. It was the resultant possibility that opposition parties which were established on tribal basis, could reduce, indeed, eliminate the leadership role of KANU in national politics, that not unnaturally, led the supporters of KANU to regard the supporters of the new opposition parties as political enemies and the supporters of the opposition parties to also feel the same about the supporters of KANU. This in itself, is not abnormal. What caused the problem was not multi-party politics itself, but the successful exploitation and incitement the first time, in 1991 and intermittently, until 1998, of the tribal allegiance and barbaric instincts of a certain class of people who cannot be said to be ignorant of what multi party politics was all about. Prior to these incidents, the tribes that were affected had, as was repeatedly emphasised, co-existed peacefully, though not without some differences and animosities. Tribal or similar clashes like the ones that traumatized the country stand a good chance of being expunged if influential personalities do not take advantage of tribalism and human failings. The ordinary people who comprise the foot soldiers in tribal clashes should learn not to allow themselves to be used to perpetrate violence of any kind. Civilised behaviour by all is what will really make a difference. Although immemorial fraternal clashes arising from land grazing, livestock theft and animal watering rights, continued to occur among the Somali clans of the North Eastern and Eastern Provinces, politics was to become one of the causes of these fraternal clashes that occurred from 1991 to 1998.

87. We shall now deal with the causes and incidents of tribal clashes as they occurred in particular parts of the country. Those parts of the country that were affected by the tribal

clashes were within:- the Rift Valley Province, Nyanza Province, Western Province, the Coast Province and the North Eastern and Eastern Provinces.

**CHAPTER ONE:**  
**TRIBAL CLASHES IN THE**  
**RIFT VALLEY PROVINCE**

88. The Rift Valley Province, the largest of Kenya's eight provinces and which runs along the Great Rift Valley from the Kenya-Ethiopian border in the North to the Kenya-Tanzania border in the South, was before colonialism, the home of mainly pastoral communities among them, the Kalenjin tribes, the Maasai, the Samburu, the Pokot, and the Turkana. It is presently, a multi-ethnic and cosmopolitan area with a large portion of it under cultivation.

89. Tribal clashes in the Rift Valley Province started on 29<sup>th</sup> October, 1991, at a farm known as Miteitei, situated in the heart of Tinderet Division, in Nandi District, pitting the Nandi, a Kalenjin tribe, against the Kikuyu, the Kamba, the Luhya, the Kisii, and the Luo. The clashes quickly spread to other farms in the area, among them, Owiro farm which was wholly occupied by the Luo; and into Kipkelion Division of Kericho District, which had a multi-ethnic composition of people, among them the Kalenjin, the Kisii and the Kikuyu. Later in early 1992, the clashes spread to Molo, Olenguruone, Londiani, and other parts of Kericho, Trans Nzoia, Uasin Gishu and many other parts of the Rift Valley Province. In 1993, the clashes spread to Enoosupukia, Naivasha and parts of Narok, and the Trans Mara Districts which together then formed the greater Narok before the Trans Mara District was hived out of it, and to Gucha District in Nyanza Province. In these areas, the Kipsigis and the Maasai, were pitted against the Kikuyu, the Kisii, the Kamba and the Luhya, among other tribes. The clashes revived in Laikipia and Njoro in 1998, pitting the Samburu and the Pokot against the Kikuyu in Laikipia, and the Kalenjin mainly against the Kikuyu in Njoro.

90. In each clash area, non-Kalenjin or non-Maasai, as the case may be, were suddenly attacked, their houses set on fire, their properties looted and in certain instances, some of them were either killed or severely injured with traditional weapons like bows and arrows, spears, pangas, swords and clubs. The raiders were well organized and coordinated. Their attacks were generally under the cover of darkness, and where the



attacks were in broad daylight, the raiders would smear their faces with clay to conceal their identities. The attackers targeted mainly the Kikuyu, but also the Kisii, the Luhya, and the Luo; other non-Kalenjin and non-Masai communities were not spared. The attacks were barbaric, callous and calculated to drive out the targeted groups from their farms, to cripple them economically and to psychologically traumatise them. Many of the victims were forced to camp in schools, church compounds and shopping centres. There they lived in makeshift structures of polythene sheets, cardboard and similar materials. They had little food and belongings with them and lived in poor sanitary conditions with their children who could no longer go to school. There was also a general lack of concern by the Provincial Administration and the Police Force for their security and general welfare.

91. In general, the clashes started and ended suddenly, and left a trail of destruction, suffering and disruption of life hitherto unknown in this country. The causes of the clashes have been given as conflict over land, cattle rustling, political differences and ecological reasons among others. As stated elsewhere in this Report, these reasons were proffered to conceal the real motive or reason for the clashes.

92. Before considering District by District, the areas which were mostly affected by the tribal clashes, it is imperative to consider the historical background and other circumstances relevant to the clashes for a fuller appreciation of their origin and their immediate and underlying causes.

93. Prior to colonialism, the Rift Valley Province was the home of scattered pastoral communities the main ones having been the Kalenjin, the Masai, the Turkana, the Samburu, the Pokot and sections of the Luhya, which held land communally. Land was purely held for the sustenance of life and clan rights over land were limited to this use and to the transmission of those rights. Inter-clan and sometimes inter-tribal conflicts

over land were, however, not uncommon among the various communities. The entire clan or tribe as the case may be, had the power to defend their land against external aggressors. The pressure on land was not then as great as it was to become after Europeans settled in many parts of the Rift Valley Province, and in the course of which, various communities were driven out of their ancestral lands into native reserves.

94. The European settlements in the Rift Valley Province were principally confined to the large belt of farmland stretching from near Nairobi to Mount Elgon, and in particular in the Naivasha, Laikipia, Nyandarua, Nakuru, Kericho, Nandi, Uasin Gishu, Trans Nzoia, and Bungoma areas. These areas were part of what became known as the White Highlands or scheduled areas, and were acquired by the European settlers by virtue of and under the Crown Lands Ordinance, of 1902. Under section 30 and 31 of this Ordinance, any land which was unoccupied, whether temporarily or otherwise by Africans, was available for alienation to the European settlers without reference to the Africans. Having lost their communal land which hitherto, they had been using freely as of right, and having now been confined to native reserves where land available for their use was limited, the Africans saw the need to look elsewhere for a living. Thus, some were recruited by the colonial administrators to work as farm labourers on European farms in the scheduled areas. Over time, as the population of the Africans in the European farms increased, some were allowed to live on parts of those farms as squatters. As we shall state later in greater detail, areas like Olenguruone, in Nakuru, were later in or about 1955, set aside for the settlement of the landless squatters. By then, there had been a slight change in government policy on land tenure which allowed Africans limited access to the scheduled areas and at independence, the squatter population in the scheduled areas, who comprised the Kikuyu, the Kalenjin, the Kisii, the Luhya and the Luo among others, had become quite high.

95. The resettlement of Africans in the scheduled areas effectively commenced after 1962, and was effected in three different ways. Firstly, in settlement schemes of which land primarily in the mixed farming areas, was bought by the Government from European owners and transferred to Africans either in high density schemes, in which plots were small, or in low density schemes where larger plots were available. Secondly, in parts of the White Highlands which had never been opened up, the Government embarked on state enterprise, through the management of farms for profit in these parts, by the Agricultural Development Corporation (ADC) either independently, or in joint ventures with private firms. Thirdly, and this is the type we will be primarily concerned with, individual Africans, some sponsored by family groups, co-operatives, or land buying companies, bought large farms with single block titles, with loans from the Land Bank or other sources. The ADC, took over the management of several of such farms among them Nyota, Sirikwa, Ngata, Ndabibi, Tall Trees, all in the Nakuru District and in Kopere in the Nyanza Province, several farms in Uasin Gishu and Trans Nzoia Districts, among others. Most of these farms, have since been sub-divided and sold to alleviate landlessness. The purchasers of the sub divided lands came from different communities. The majority of these farms are situated in a belt bordering the former Kalenjin native reserves all along from Mount Elgon to Molo in the Nakuru District. And as we shall endeavour to demonstrate, the inter-ethnic clashes primarily affected the farms within that belt. The residents in those farms were of a multi-ethnic composition with, the Kikuyu and Kalenjin in the majority.

96. These settlement schemes, were encouraged and in many cases, at least in the initial stages, supported by the Government through the Settlement Fund Trustees, a department within the Ministry of Lands and Settlement which was created to oversee the resettlement programme in the country. It is noteworthy that most of the farms we have alluded to, were bought either by former squatters in former scheduled areas or by groups of people from one or more former native reserves who wanted land to settle on. In almost all cases, those people obtained a block title for their farm and later sub-divided the same into small plots for distribution among their members. In some of these farms, there were outstanding disputes regarding the mode of sub-division, and in other cases,

disputes regarding who among the members were entitled to a share of the farm. Miteitei farm is one such case. In other cases, and these form the majority, the Ministry of Lands and Settlement had not facilitated the issuance of individual titles. In other group farms, the problem was because the group farm leaders, either through ignorance or laxity on their part, had not taken the necessary steps to complete the sub-division of the farms and the consequential issuance of individual titles to the sub-divided farms.

97. In most of the group farms, however, individual farmers had, by 1991, when the tribal clashes first broke out in the country, identified or been shown the extent of their farms which were clearly demarcated or fenced in, and which the farmers have, depending on their economic and social standing, developed by building thereon, permanent, semi-permanent or temporary houses. The farmers also planted and grew on their farms different crops, kept and reared such livestock as they could, and with other farmers, established co-operative societies for the marketing of their farm produce. Because of this, their individual and collective economic status greatly improved.

98. The resettled Kenyans in the settlement areas came from different ethnic backgrounds and were of different social and economic standing. But in due course, they struck what from an outward appearance, was a peaceful and harmonious co-existence as they mutually engaged in economic, educational and social activities. Their children largely went to the same schools in their respective areas; the churchgoers worshipped in the same churches and generally supported each other. People interacted freely and there were several cases of inter-marriage between the different tribes. It was because of this existing harmonious relationship that most of the witnesses from the Rift Valley Province who testified before us, said that the inter-tribal violence came without any obvious prior warning and were a surprise and a shock to them.

99. It is, however, important to appreciate that each of the ethnic communities had a past political history. In the period immediately preceding independence, the Kikuyu were predominantly in KANU and the Kalenjin predominantly in KADU. Also in KANU were the Kisii, the Luhya, and the Luo, among others. KADU supported a system of regional government then known as Majimbo, while KANU supported a unitary strong central government. The two parties and the African Peoples Party (APP), were the only registered parties in the 1963 first parliamentary and civic elections in independent Kenya. KANU won the majority of parliamentary seats and formed the first independence government.

100. Then in 1966, a new opposition party, the Kenya Peoples Union (KPU), was formed under the leadership of the most prominent Luo politician of the day, Jaramogi Oginga Odinga. This development provoked the amendment of the Constitution so that if a member of parliament crossed the floor, his seat automatically became vacant and a by-election would follow. In the resultant by-elections, following the crossing of the floor by Oginga Odinga and several other members of parliament, the majority of the Luo, because of the high regard in which they held their fellow tribesman, Oginga Odinga, shifted their support from KANU to the newly formed KPU which stood for leftist socialism. Among the Kalenjin and the Luhya, the ethnic social standing of the political leaders in their respective areas, as indeed, was the case in certain other minor communities, held sway in determining their various communities' alliance and voting pattern during the by-election. Because of that factor, the Kalenjin voted overwhelmingly in favour of KANU as indeed, their prominent tribal leaders had advised them to do. The multi-party system of government that emerged as a result of the Little General Elections, as the by-elections came to be called, lasted for a brief period of slightly over three years when in 1969, KANU which stood for private enterprise, managed to get KPU proscribed as a political party. The de facto single political party system of government that ensued, lasted until 1982 when the Constitution was amended to make Kenya a de jure single party state. In 1991, as already noted elsewhere in this Report, the Constitution was amended to make Kenya a multi-party state. Following this, the first multi-party elections were held in December, 1992.

101. It is noteworthy that since the Little General Elections of 1966, much ethnic association and loyalties in politics emerged. We heard evidence of certain Districts and Provinces being declared either KANU or opposition zones. The voting patterns in 1992 and 1997, and which did not exist during the era of one party state, in most cases, followed ethnic lines. In the Rift Valley Province, the Kalenjin in 1992 and 1997, largely voted for KANU, while the Kikuyu largely voted for the opposition, and in particular the Democratic Party (DP), while the Luo, largely voted in favour of a party headed by a Luo.

102. The tribal association and loyalties seen among the Luo in the Little General Elections of 1966, were quite prominent in the 1992 and 1997, general elections, and these affected the general political thinking mainly in the Rift Valley Province which as we stated earlier, had a multi-ethnic composition of people. It was not surprising that one witness, a university lecturer, proposed that land settlements should have been planned and effected on tribal lines so that those from the same ethnic community could be together. He also proposed that future settlement schemes should be tribalistic. Similar sentiments were expressed by witnesses particularly, those from the Kalenjin community in the Njoro area. Over the years, the Kalenjin have resented the presence of foreigners in their midst whom the Kalenjin in 1991 and 1992, derogatorily referred to as "madoadoa". For instance, in an Annual Report, Elgeyo-Marakwet, 1957, it is noted that the Elgeyo a sub-tribe of the Kalenjin, resented the presence of non-Elgeyos in their reserve. The report states, in pertinent part, as follows:

"In common with other Kalenjin peoples, however, there is everywhere else dislike of the Kikuyu and a great fear of Kikuyu settlement being established in what is regarded as their district's sphere of influence in the Uasin Gishu."

103. Similarly, in his handing over notes to R. Symes -Thompson the in coming District Commissioner of Nandi District, dated 12<sup>th</sup> May, 1957, the outgoing District Commissioner, P. H. Brown, stated as follows:

"The Forest Department keep on insisting that only Kikuyu will satisfy their desire for an expanding programme, but the ADC have regularly stated that they do not want any Kikuyu and I have supported them, on the

grounds that the Nyanza labour market must be able to meet their requirements, if only they would make the necessary effort.”

This was clear evidence of tribal consciousness which, in our view, should not be encouraged if Kenya is to become a united and tribally integrated nation.

104. Appointments to positions in the Provincial Administration in the new settlements tended to be and is still governed, by ethnic considerations. In some cases, it was the source of conflict, more so where due to this ethnic consciousness, administrators tended to be more inclined to cater for the interests of their ethnic communities in the discharge of their duties. This became increasingly obvious after the re-introduction of plural politics in Kenya, and was more marked in the Rift Valley Province than anywhere else in the country. The result was increased suspicion against the administrators concerned and their ethnic communities in their areas.

105. The Kikuyu on the other hand, unlike other tribes in Kenya, started moving out of their native districts as early as 1950, and by 1952, many of them were settled in various parts of the country, and had established themselves there as a cohesive, identifiable group. They were more developed economically than the other tribes because of the financial aid they initially got from the British. So by the early 1960's, they were much more developed than any other tribal group. Because of their greater economic prosperity and due to ethnic self-consciousness which, prior to independence, had been encouraged by the British government, disparities between tribes, were heightened. This was particularly marked between the Kikuyu, who in addition to being more economically developed, were more politically conscious, than the pastoral peoples. So, wherever the Kikuyu settled, they aroused the suspicion of the resident tribes. In the Annual Report, 1957, for Elgeyo-Marakwet which we referred to earlier, it is stated under the sub-title - Internal Tribal Affairs, in part, as follows:

“The ever growing number of Kikuyu in the forests are causing some slight concern among the Elgeyo who feel that far too great a proportion of the intermediate school places will be filled by their progeny - The general attitude is “the Kikuyu are cleverer than us; we had better watch out.”

The Kalenjin particularly feared being dominated by the Kikuyu and so asserted their claim to the White Highlands bordering their tribal areas. As we shall see later, tribal clashes were mainly confined to these areas. It is no wonder therefore that the Kalenjin have hitherto been increasingly antagonistic towards the Kikuyu.

106. That was not, however, so with the Kisii and the Luo. In a 1957 Annual Report for Kericho under the sub-topic "Inter-tribal relations" appears the following remarks:

"Relations with the Luo and Kisii remained good – it will be known that the Kipsigis employ many of these people on their farms and in their shops, and in times of food shortage the Luo and Kisii purchase large quantities of maize and other food (illegally) from this district. It is therefore unlikely that that good relations would be deliberately disrupted."

107. There were, however, incidents of livestock rustling, which at times, affected the otherwise, good relationship between the two communities. The main culprits as between the Kipsigis and the Luo, were the former. However, as between the Kipsigis and the Kisii, the stock theft incidents were shared about equally between them.

108. The relationship between the Maasai and their neighbours, particularly the Kipsigis, the Kisii and the Luo had, over the years, been turbulent, chequered, and from all outward appearances, insoluble. Armed youths from each of the communities but more particularly, from the Maasai and the Kisii, were and are known to make surprise and sometimes blatant incursions into each other's territories either to steal livestock or to pursue stolen animals. Despite seemingly relentless efforts to solve the cattle rustling menace along the common boundary of these two communities, the vice seems to be culturally rooted and the government seems helpless in the matter.

109. It also appears probable, that the pressure on land experienced in both the South Kisii District which borders Trans Mara, and in the Kericho District, which is the home of the Kipsigis, had tended to find an outlet in the sparsely populated Maasai land and thus, affected the grazing land of the Maasai. A number of the Kisii and the Kipsigis have since colonial times moved into and settled in Maasailand, more particularly in Narok. This had not been well received by some Maasai politicians who in unsavoury



language, often openly spoke against it and in the process incited the Maasai against those other communities.

110. The issue of border conflicts between the communities has been discussed over and over again, in various fora; various approaches have been tried but to no significant avail. In 1964, a joint border meeting between the local district leaders from both Narok and Kisii led by the Regional Presidents of Nyanza and Rift Valley Provinces, Johnson Keragori and Daniel Arap Moi, was held to promote peace after the two communities had clashed, inter alia, because of the unwise utterances by politicians. At this meeting, the making of inciting speeches was not condemned. The leaders preached only peace. Subsequently, on 5<sup>th</sup> April, 1967, the question of unsavoury and inciting utterances was raised in Parliament and in the course of the debate, the Assistant Minister, Vice President's Office and Minister of Home Affairs, Mr Matano, remarked, inter alia, as follows:

“Mr Speaker, on this question of the clashes between the Maasai and the Kipsigis, there have been some incidents, and we do not want to deny it. There have been a few incidents here and there and, I regret to say that with regard to a lot of those instigations and some of the things that have been happening on the boundaries, the blame really lies on some leaders of this country. I would not like to say which leaders because I feel it is irrelevant, but I feel that if we restrain ourselves and try to help our own people to try to understand one another more and more, I am sure, Mr. Speaker, we shall have less of these incidents.”

111. The importance of the foregoing excerpt is the fact that whilst efforts were made to deal with issues like stock theft and border conflict at local and national levels, we received no evidence of efforts made to deal with unsavoury and inflammatory statements by politicians, who according to the evidence that we received, tend to side with their ethnic communities whenever they face a conflicts situation involving them.

112. The re-introduction of multi-partyism, tended to magnify and fuel tribal loyalties and to complicate the resolution of inter-tribal border conflicts not only, along the Trans Mara-South Kisii border but also, along the cutline between the Samburu-Pokot and the Kikuyu in Laikipia among other areas. People in the Rift Valley Province generally tended to follow what their tribal leaders and more particularly, elected leaders, tell them

and would not normally follow any counsel, however wise, it may be, from any other quarter if it conflicted with what their leaders had propounded. This was really the crux of the matter regarding the clashes in the Rift Valley Province.

113. Although we have talked generally in the INTRODUCTION of this Report about the Provincial Administration, we consider it necessary, because of their seemingly partisan role in the clashes in the Rift Valley Province, to say a little bit more about them here.

114. In 1964, by an administrative structural reorganization, the President at the time, Mzee Jomo Kenyatta, transferred the Provincial Administration from the Ministry of Home Affairs to the Office of the President and made it responsible for law and order. District and Provincial Commissioners were also made Chairmen of the Security and Intelligence Committees thus ousting the police from chairing those committees. In effecting these changes, the President wanted to ensure that the party then in power was well cushioned and in effect, said as much in his meeting with Provincial Administrators and KANU branch officials in Nakuru in July 1968. He was reported in the East African Standard and Daily Nation of 29<sup>th</sup> July, 1968, to have told that meeting that no ruling party can effectively exist without the Provincial Administration. In effect therefore, the President was saying that he had effected the changes to ensure that the Provincial Administration effectively implemented the policies of the party in power and generally acted as its agent in the provinces. It is no wonder therefore, that Joseph Ole Kireu, the Chief of Enabelbel Location in Ol Kurto Division of Narok District, testified that during the single party era, he was routinely engaged in the registration of KANU party members.

115. As we have stated elsewhere, in this Report, the Provincial Administration had over the years, increasingly been politicised to the extent that in the advent of multi-

partyism in 1991, they were averse to any remarks made against KANU the party in power, and whatever action they took had to show their loyalty and support for it. Consequently, when the tribal clashes broke out in the Rift Valley Province, for example, they were not sympathetic to those perceived to be opposition supporters and sympathisers. For instance, in the Kericho District, two successive District Commissioners, Timothy Sirma and Nicholas Mberia did not care a whit when Luo residents on the Kericho side of the border between it and Kisumu, were evicted. When Nicholas Mberia was asked where he expected the squatters he caused to be evicted from Thessalia livestock holding ground to go to, his response was that they were expected to return to where they originally came from. He did not at all, endeavour to find out whether they had anywhere to go to before ordering their unlawful eviction. Even when they sought and obtained refuge at a nearby mission and a primary school, he later followed them there and had them forcibly ejected. The only reason which we could discern for his uncaring attitude towards them, was that it was because they were perceived to be Ford Kenya supporters, and also, because they were Luo who were occupying land the Kipsigis who like him, were Kalenjin, considered to be theirs. We also have the case of Christopher Mwashii, the District Officer I of Nandi District, who in October, 1991, was shouted down by a KANU Location Chairman at a meeting in Miteitei farm, because of his apparent sympathy with the non-Nandi who were considered to be supporters of multi-party politics.

116. The District Commissioners and the Provincial Commissioners on the other hand, have over the years since 1964, increasingly taken over the role which we think wholly lies with the police, of directing security operations, arguing that they are directly in charge of the security situations in their areas. This did in a way, hamper the police operations in quelling the clashes as oftentimes, the police had to look up to them for directions as to what action should be taken in that regard. In the process, there was delay in dealing with the raiders who in the meantime, inflicted extensive destruction before police action was taken against them. Moreover, as happened in Thessalia, some District Commissioners, under the guise that they were dealing with threat to security in their areas, engaged in illegal activities which were contrary to law, to achieve purposes

which, to say the least, were not within their docket. In Thessalia, which we will discuss in detail later, Nicholas Mberia, using armed police officers unlawfully and forcibly evicted without the requisite court order, Luo squatters from a piece of land which to his knowledge was not government land but which he argued and asserted was government land, on the pretext that their continued presence there posed a security problem. As we shall also see later, no such problem existed. No evidence was adduced nor was any available to support his assertions. The reason for evicting the squatters which eventually emerged, was a political one namely, to remove the Luo who were perceived to be opposition party supporters, from the area which was regarded as a KANU zone.

## **6 NANDI DISTRICT**

117. The District is predominantly occupied by a sub-tribe of the Kalenjin ethnic community of the same name. Like all other Districts in the country, it is divided into Divisions and Locations, headed by District Officers and Chiefs respectively. Its neighbours include Kakamega, Kericho, Kisumu and Uasin Gishu Districts. Clashes in the country started in the District and more specifically, in the Tinderet Division of the District, and pitted the Nandi against mainly the Kisii, the Luhya and the Kikuyu. The Nandi were driven out of that Division in or about 1905 after their unsuccessful rebellion against European attempts to settle there. The Nandi have over the years claimed that "Tinderet" which according to them comprises Nandi Hills, Fort Ternan, Songhor, Chemelil, Kibigori and Londiani, should be returned to them. In a handing over report of the Nandi District Commissioner, dated 18<sup>th</sup> March, 1957, the following remarks appear:

"You will persistently be asked to support the Nandi in recovering "Tinderet". This name is written on their hearts and comprises Nandi Hills, Fort Ternan, Songhor, Chemelil and Kibigori areas. Some of them would even go as far as Londiani. This is the area from which the Nandi were evicted after the 1905 rebellion..."

118. The Europeans after evicting the Nandi from Tinderet, among other areas in Nandi, settled there. In due course, like happened in all European settlements, they

allowed people from different communities to settle on their farms as squatters and resident labour. The squatters and former labourers were mainly from the Luhya, the Kikuyu, the Kisii, the Luo and the Kamba ethnic communities. Some of these were among the purchasers of the former European farms under the aegis of the office of the Commissioner of Squatters, while others teamed up with other people to raise funds to purchase those farms.

### **TINDERET DIVISION**

119. Most of the European settlements in Nandi District were confined to Tinderet Division.

120. The Government re-settlement programme did not impose any limitations as to which ethnic community would be settled on settlement farm schemes and European settler farms. Among the farms in Tinderet area which were sold to the Government was one previously owned by one D.C Dansey of one thousand nine hundred and thirty four acres. The farm was later sold for Kshs.967,000/= to former squatters on the farm, all non-Kalenjin who in 1976, jointly with other people formed a company known as Miteitei Farmers Co. Ltd. which became the registered owner of the farm. The Nandis later bought shares from some of the squatters. The original number of shareholders of the company was four hundred and fourteen. Later, however, the directors sold shares to several other people and thus increased the number of the shareholders to over six hundred.

121. Miteitei farm, as the farm came to be known, had a block title in the name of Miteitei Farmers Co. Ltd. Prior to its purchase by the four hundred and fourteen shareholders, Nyakinyua Women's group comprising Kikuyu women only, had wanted to buy it and actually took possession of it. The Nandi, however, resisted the acquisition of the land by the group, and through threats, blatantly, forced the group out of the farm

merely because they were non-Kalenjin. The dispute among the shareholders of Miteitei Farmers Co. Ltd, arose when they could not agree on the acreage of the farm which each of them would get. The Nandi insisted that each of them had to get at least five acres per share, while the other shareholders wanted the farm to be subdivided among all shareholders. A committee was established by the then area District Officer, Cosmas Mutai, comprising mainly of the Nandi, under the Chairmanship of the area Chief, Philip Kipserein Karonei, to find a solution to the problem. The committee eventually drew up a list of three hundred and nine names, all except nine who were Kalenjin, and presented them to the area District Commissioner, Mr Paul Yatich, also a Kalenjin, as the genuine shareholders. That fact, and the fact that the Nandi wanted to be given not less than five acres per share, engendered a dispute between the three hundred and nine who were all Nandi, and those whose names were left out, who all happened to be non-Kalenjin and who numbered two hundred and eighty six. The dispute, despite several attempts, remained unsolved. The tension between the rival tribal groups increased with each passing day until October, 1991, when tribal clashes broke out, and which was really an excuse to drive the non-Nandi out of Tinderet Division. Ibrahim Injaga Livanze as the Secretary of the Miteitei Farmers Co. Ltd which owned the farm, described the problem in the farm as shown in the verbatim report of the proceedings of the Judicial Commission of 25<sup>th</sup> February, 1999, thus:

“The problem was tribal land. That the Kalenjin did not want other people to live on their land while they were landless.”.

122. Prior to clashes, security Intelligence reports and other reports on the dispute and the growing tension between the rival tribal groups, had reached the District Commissioner of the area, David Kiilu Mativo, the Chairman of the District Security Committee, who decided to meet the two groups with a view to resolving their dispute. However, on 28<sup>th</sup> October, 1991, he instead, sent his then District Officer I, Christopher Mwashu to the farm to meet the opposing groups with instructions, for the second time, to identify who were the genuine shareholders and who were not. He was also to check on the financial management of the company. But we must emphasise that neither the District Commissioner nor the District Officer I had any right in law to interfere with the affairs of the Miteitei Farmers Co. Ltd, a limited liability company, in which they were not shareholders.

123. When Christopher Mwashu arrived at Miteitei Trading Centre, where he found the rival shareholders separately seated his attempts to get them seated together failed. There was open mutual dislike for each other and at some stage the rival shareholders traded abuses. Because an explosive situation was anticipated several armed policemen under the command of the then Chief Inspector of Police in Charge of Songhor Police Station, Julius Ndegwa, were also present at the meeting to contain any incidents of violence. Although the meeting was one of shareholders of a limited liability company it appeared to have generated a lot of interest among other people who were not shareholders. Three paramount Chiefs had been invited to attend the meeting so also was the KANU Sub-Location chairman who though not a shareholder, rudely presented to Christopher Mwashu in the course of the meeting a list of three hundred and fourteen mainly Kalenjin whom he claimed were the only genuine shareholders of Miteitei Farmers Co. Ltd. The involvement and presence of the KANU Sub-Location Chairman in the meeting of the shareholders showed that there was a political dimension to the dispute. The attempt by Christopher Mwashu to ignore the intervention of the KANU Sub-Location chairman, caused those in the list he presented to become rowdy and abusive. They disrupted the meeting as made it impossible for Mr Christopher to continue. He hurriedly closed the meeting and left with his entourage. The rival group of non-Kalenjin shareholders also dispersed, but the group of mainly Kalenjin shareholders remained behind and held a meeting from about 4 p.m. until after 7 p.m.

124. Ibrahim Livanze in his evidence before us, had told us that he had talked to the Nandi, presumably before the meeting was held, and they had told him that they did not want non-Kalenjin in their midst, and that they would drive them out. Special Branch Officer Potash Anudo Owuo also testified that the Nandi had said they would solve the land dispute "Kipgaa," meaning that they would find a home made solution to the conflict, which was quite consistent with what the Majimbo crusaders were then preaching. It should be recalled that a month or so before the meeting of the shareholders, KANU political rallies were held at Kapsabet in Nandi District, Kapkatet in Kericho District, and Narok town in Narok District, during which as we earlier stated,

several prominent Kalenjin politicians drummed up the idea of driving out non-Kalenjin from the Rift Valley Province if they did not support KANU.

125. As things turned out, about a month after the last one of those KANU political rallies and two days after the Miteitei meeting houses of all the non-Kalenjin, except about nine, and including grain stores on Miteitei farm, were set ablaze and burnt down, an act which in effect forced the affected people to flee Miteitei farm. To this day they have not been allowed back. The only shop premises on the farm which belonged to a Kisii was also burnt down implying that the matter was more than a dispute over shares in a land owning company. We were told that soon thereafter, in or about June, 1992, the farm was surveyed and shared among the so called genuine members and titles were issued to them to the exclusion of those who had been driven away. Those ejected, lost not only, the land but also, the money they had paid to buy shares in the farm. We were told that the Nandi were unwilling to refund any money to those they evicted, arguing that whatever money they had paid for their shares in Miteitei Farmers Co. Ltd. was rent for the farms they had occupied. Ibrahim Livanze stated as follows in as shown in the verbatim report of the proceedings of the Judicial Commission of 25<sup>th</sup> February, 1999, that:

“Mr. Livanze: The problem now was that they had divided themselves. The 314 and 279 had divided themselves. The 279 were non-Kalenjin and 314 were Kalenjin. Now, the 314 wanted to chase the 279; that: ‘You will not get land. What you have paid here, you have earned. You have milked this land for enough time. Now, you must go.’

Justice Bosire: So, the argument was that the money which they had paid was treated as rent for the use of the land?

Livanze: It was taken that way, My Lords. That the money which the 279 had paid was rent for that period and now the rented time was up and they should have gone.”.

126. The above statement is almost in all fours with the following one which was made by a Provincial Administration Officer, P.H. Brown in his handing over notes to his colleague, R Symes-Thompson:

“Recently a European farm at Kaimosi came up for sale and its disposal is still being argued at the time of writing. The Nandi I think would be happy to pay, if necessary by a special rate, for any land but in respect of these two areas ie Sarora and Kaimosi they could claim that it is their land, leased to the Europeans, and that therefore there should not be any necessity for them to purchase it.”.



Owiro farm in Songhor Location, in Tinderet Division, was bought from one European called Evanson, by a group of Luo, with money contributed by them and bridging finance from the Agricultural Finance Corporation. Clashes on this and several nearby farms in Songhor Location, in which the occupants were predominantly Luo, started on 1<sup>st</sup> November, 1991, and were allegedly due to the reaction by the Nandi to the rumour that a Kalenjin, Julius Kipsang, had been killed by a Luo policeman. Julius Kipsang was indeed shot and killed but not by a Luo, but by a Kalenjin police constable Julius Langat. The Nandis attacked and either killed any Luo they came across or looted and burnt their houses. Surprisingly, the looting and arson extended to all the non-Kalenjin implying that the reason for doing so, was not merely the killing of Julius Kipsang. The attacks were vicious, barbaric and traumatising and that forced the non-Kalenjin out of their farms; they camped at Songhor Police Station, Kopere Trading Centre and Chemelil in Nyanza, among other places. Many have not returned to date to their farms. One Angira, who tried to return to Owiro farm to harvest some farm produce was attacked and killed by people suspected to be the Nandi. Such attacks brought fear to the refugees and made many to sell their shares in the farm to the Kalenjin. Some simply abandoned their farms and settled elsewhere. In those farms, unlike Miteitei farm, some of the people whose houses were burnt have settled back on their land.

128. Those who raided and burnt houses in Owiro farm were, in general said to have worn white shorts and green T shirts implying that the attacks were carefully planned and executed. That and the other reasons given elsewhere in this report exclude the possibility that the attacks were provoked by the killing of Julius Kipsang. Kipsang's death was clearly an excuse given to disguise the real reason for the attacks. Besides, Henry Tuwei, a Kalenjin, and the Chief of Songhor Location, testified that he had prior knowledge of impending attacks on Owiro farm, and instead of informing the Officer Commanding Songhor Police Station, who was only a few kilometres from his office, of this, he chose to travel over 50 km to Kapsabet town to inform the District Commissioner of the impending attack. The Chief's conduct was clearly suspect and smacks of a person who knew and approved of the acts of murder, arson and looting of the non-

Kalenjin houses in Owiro. We recommend that he be further investigated with a view to being prosecuted as we think he was an accessory to the clashes.

129. Two reasons were given for the inter-ethnic clashes in Tinderet Division. However, as we have tried to demonstrate the reasons were merely excuses for the violence in the various farms. Tinderet falls within the narrow belt on which European settlements lay and as earlier on stated, it is an area that the Nandi have over the years, nursed an ambition to recover. After hearing various witnesses on the matter and after some research, we have come to the conclusion that the clashes in Tinderet had three basic underlying causes: Firstly, the Nandi have over the years nursed the ambition of recovering what they think they lost when the Europeans forcibly acquired their land in Tinderet among other areas. The Nandi have all along, contended that Kipkelion, Londiani, Fort Tenan, among other areas, are part of Tinderet and therefore part of Nandi District. Matters were made worse when after independence, people whom the Nandi consider as foreigners, though African Kenyans, acquired part of the land. The case of Miteitei farm was a case in point. Genuine shareholders were driven out of what in law was their land which was then subsequently shared among the Nandis on the alleged reason that those driven out were squatting on other people's land. Secondly, the Nandi like all other Kalenjin detest foreigners living in their midst, and worse still, owning land among them. The clashes seem to us to have been aimed at removing the foreigners who as stated elsewhere, were derogatorily referred to as "madoadoa". The third reason for the clashes is politics and ethnic loyalty. In the period immediately before and after political independence in Kenya, the Kalenjin were largely in KADU. When their political leaders decided to dissolve that party to join KANU the Kalenjin almost to a man followed their leaders and joined KANU. They, similarly remained in KANU en bloc when in 1966, some politicians crossed the floor in Parliament from KANU to join the newly formed KPU of Oginga Odinga. The crusade for multi-partyism was viewed by the Kalenjin as a disguised attempt to remove their own as President of Kenya in

favour of a non-Kalenjin. The political rallies of September, 1991, which were held at Kapsabet, in Nandi District, Kapkatet in Kericho District and Narok in Narok District, and addressed by largely Kalenjin political leaders must be looked at against that background. The Kalenjin political leaders who included Henry Kosgey, the then and current KANU Chairman in Nandi, Ezekiel Barngetuny, and John Cheruiyot, all from Nandi and who were and still are KANU stalwarts, advocated and preached "Majimbo" during those rallies. "Majimbo" according to the evidence presented to us was not federalism in the real sense of the word, but an arrangement in which each community would be required to return to its ancestral district or province and if for any reason they would be reluctant or unwilling to do so, they would by all means be forced so to do.

130. The majimbo rallies, which were widely publicised in the print media, and whose proceedings were confirmed by witnesses who were present among them, John Keen and Willy Kamuren, were intended to counter the then on going campaign for the re-introduction of plural politics in Kenya. As we stated earlier, the Kalenjin viewed multi-partyism as a veiled attempt to dislodge from office their own as President of Kenya. The predominance of prominent Kalenjin politicians in those rallies is clear testimony that they felt they would lose a great deal if multi-partyism was re-introduced in Kenya, and hence their unequivocal remarks at those rallies that they would forcibly evict those who supported multi-partyism. It is noteworthy that the Kalenjin tend generally to accept and to follow their leaders in political issues. In his evidence Chief Jonathan Kibaibai Rogony of Kamasian Location, in Kipkelion Division, of Kericho District, stated that he believed that because H.E. the President had crossed from KADU to KANU with all his followers and has since then remained in KANU, the Kalenjin leaders assumed that only KANU would be supported in their areas, and other political parties were unwelcome.

131. The majimbo rallies appeared to be intended to pass a message to the Kalenjin community that the path their leaders had chosen was to stick in KANU and any other political thinking had to be resisted even by use of arms. We do not think that clashes started at Miteitei, in Nandi, by coincidence. We think that like in other parts of the country, they were carefully planned to exploit the existing Nandi ambition to recover

ancestral land and to drive away the “madoadoa” in order to achieve the main political purpose of making Nandi a KANU zone. The attacks were also carefully executed and followed a common pattern.

132. Kamasai is a village in Soymining Sub-Location in Chepterwai Location in Kipkaren Division of Nandi District. This area, unlike Miteitei which was a settlement area, was part of the former Nandi native reserve. Its residents were mainly the Nandi, the Luhya, the Masaai and the Teso. The Nandi were the indigenous community in the area while the other communities settled in the area after purchasing land from the Nandi. We were told that many of those who had bought land there did not have title deeds to their respective farms mainly because the Nandi were reluctant to effect the transfer of title to them. In some few cases, the vendors had migrated to Trans Nzoia and Uasin Gishu Districts and their specific areas of residence there were unknown. They would not therefore be traced to take the necessary steps to effect the transfers.

133. The clashes in the area like many other areas started and ended suddenly, and pitted the Nandi against the Luhya the Teso and the Maasai. The Nandi, in one night, burnt more than twenty four houses belonging mainly to the Luhya but also a few belonging to the other non-Nandi tribes. A warning scream in Kinandi had been heard and which was followed by the widespread burning of those houses. The few non-Nandi houses which were left, were later, in January 1992, burnt by the Nandi.

134. Regarding the causes of the clashes in Kamasai, the Chief of Chepterwai Location, Julius Pekiyei arap Bett, gave what we considered to be a ridiculous reason for the clashes, and which in any event, was unsupported by a witness Samuel Kipkoske Kitur, who was present when the alleged incident took place and who would have been, but was not, aware of that fact. The Chief's account was that one Agola Akumu, a Luhya, along with some Nandi and Luhya, were drinking busaa, a local brew, in the

home of one Rosyline Cheptoo, a Nandi. Also there with them, was Samuel Kipkoske Kitur, a nephew of Rosyline Cheptoo. As they were drinking, a disagreement arose between Agola Akumu and Samuel Kitur which, according to the Chief, was because Agola Akumu wanted to sleep with Rosyline but which he could not do as Samuel Kitur refused to go away. Agola Akumu got annoyed and hit Samuel Kitur with a walking stick injuring him badly. Fearing reprisals, Agola Akumu ran to his house which he set on fire and to divert attention from his action, shouted out that Samuel Kitur was the arsonist. The Luhya responding to his calls then set on fire several Nandi houses in retaliation. This in turn, provoked the Nandi to also burn Luhya houses. The Chief, continuing his ridiculous story, further stated that prior to all this, the Luhya had been in the habit of calling the Nandi stupid people, which upset the Nandi who, when the opportunity presented itself, in late November, 1991, decided to drive out all the Luhyas from the Sub-Location. These were merely excuses for the clashes as the real reason for the clashes was political and which was at the same time, a form of ethnic cleansing. We have explained these in detail in our discussion of the Miteitei clashes and only, wish to add that the timing of the clashes at Kamasai and elsewhere, lend support to the view that they were planned and executed to achieve political ends.

135. With regard to the role of, and action by, the Provincial Administration and the Police Force we were told that both the Provincial Administration Officers and the Police Force were warned of impending trouble at Miteitei farm. The Special Branch Officer, Potash Anudo Owuo, told us that he was aware of rising tension between two rivals groups of shareholders of the Miteitei Farmers Company Ltd, a fact which he immediately passed on to both David Mativo the District Commissioner and Chief Inspector Julius Ndegwa. Yet neither took steps to preempt any violence that was clearly evident. Julius Ndegwa did, however, leave some few policemen behind to deal with any possible violence. The policemen remained at the farm overnight, and were relieved by others the next day. Yet when houses started burning they were unavailable

either to avert or to stop the burning; nor was the said Julius Ndegwa able to explain where they were and why they were unable to prevent the burning of the houses. The evidence we received was to the effect that their presence got known when gunfire was heard from one part of the farm but only after several houses had been burnt down. Among the buildings that were burnt down was the only shop at Miteitei Trading Centre, which was owned and run by Wilfred Basweti, a Kisii, who was also a shareholder in Miteitei Farmers Co. Ltd. It was near that shop that the meeting which aborted was held; and it was there too, that the policemen who were detailed to patrol the area were based.

136. The behaviour of the police in Owiro farm, was not any better. We were told that in each case, they arrived after houses had burnt down, and whenever they saw houses being torched, they did not at all attempt to arrest the arsonists. We were also told that whenever they used their guns they merely fired into the air, a fact which neither stopped nor deterred the burnings. It is our view that the conduct of the police smacked of negligence, cowardice, and callousness. Indeed, whatever they did, was clearly inadequate and bordered on condoning the clashes. It is unthinkable that all non Nandi houses except the negligible few, could be torched and razed down, in more than three locations without any single person being positively identified, arrested and successfully prosecuted for it. A few people who were arrested were merely scape goats, and in any case, many of them were released without charges being preferred against them; and where any charges were preferred the investigation of the cases was conducted in a half hearted manner. For instance, Julius Ndegwa told us that many of the suspects who were arrested for arson were released because the complainants could not be traced. That was a ridiculous statement to make. Those displaced came from somewhere. No effort was made to look for them. This clearly showed that the police were unwilling for whatever reason, to arrest and to charge the arsonists. We were told for instance that a number of people were arrested for various offences but were released on the instructions of the Officer Commanding Police Division Nandi, Mr. Otieno, since deceased. Moreover, those who were arrested were on charges mainly of being in possession of dangerous weapons, to wit bows and arrows which ordinarily are traditionally possessed by the Nandi.

137. The manner in which the police went about their work suggests that they had prior warning of impending clashes but did not want to do anything positive to avert or quell them. The Provincial Administration, like the Police Force were quite insensitive to the security situation, and in most cases they did not care a whit. Even though the area District Commissioner, David Mativo who was also the Chairman of the District Security Committee had been told that the security situation in Miteitei was volatile, he suspiciously, did not consider it important enough to suspend other business so as to deal with the matter himself. He sent his deputy who, to say the least, fuelled an already bad situation and then ran away. By his action in trying to ascertain who were and who were not shareholders, of Miteitei farmers Co. Ltd., something which had earlier been done by his predecessors, he made the shareholders believe we think, that no solution was in sight to their long outstanding dispute. No wonder, the majority group said later that they would resolve the dispute "Kipgaa", the home way.

138. Apart from Christopher Mwashu, the other officers of the Provincial Administration below the District Commissioner were all Kalenjin. The Judicial Commission was told that the area Chief, Philip Karonei, was siding with the Nandi shareholders in the Miteitei dispute. He chaired a committee which the previous area District Officer, Cosmas Mutai, had appointed to determine the genuine shareholders of Miteitei Farmers Co. Ltd and which committee had eliminated the non-Nandis from the list of shareholders. He was clearly partisan and seemingly part of a scheme to evict non-Nandi out of the District. Miteitei Farmers Co. Ltd. having been promoted by the non-Nandi to the exclusion of the Nandi it was illogical to say that even some of those who started the company did not qualify as genuine shareholders. His role in the clashes should be further investigated with a view to charges of being an accessory being preferred against him.

139. The Senior Chief of Songhor Location, Henry Cheruiyot Arap Tuwei likewise should be further investigated. On the night clashes broke out at Owiro farm at about 11 p.m on 1<sup>st</sup> November 1991, he had shortly prior thereto been at the scene where the

burning of Luo houses later started. He had then been in the company of two policemen and they had met one Johnson Odera Omala, whom he told that they were there to provide security. The burning of houses having started soon after he and the policemen had left clearly suggests that his presence there was merely to hoodwink Johnson Omala and his neighbours into believing that all was well. We believe he was one of those behind the clashes in Songhor Location and should be investigated.

140. The Chief of Kamasai, Julius Pekiyei arap Bett, like his counterpart in Miteitei Location, evidently condoned the burning of the non-Nandi houses in his Location, because if that were not so, he would have, but he did not, taken steps to verify the ridiculous story he presented to us on the cause of the clashes in his Location. Moreover, he did little to either stop the clashes or to assist the victims thereof.

141. We also received evidence that the District Officer of Tinderet Division R.K. Kirui, forcibly took away the shareholders register of Miteitei Farmers Co. Ltd. from the Company Secretary, Ibrahim Livanze, a fact which was confirmed to be true. But what right did the District Officer have to seize the register of the limited liability company? This unlawful act points to the fact that both the District Officer, and the Chief of Miteitei Location were partisan in their handling of the affairs of Miteitei, and tacitly approved the burning of the houses belonging to the non-Nandi. It is no wonder, therefore, that as Ibrahim Livanze said, they, the leaders of the company, could not complain to the Provincial Administration as the latter supported the Nandi against them.

## **KERICHO DISTRICT**

142. Kericho, an agriculturally rich District with undulating highlands, generous rainfall, and good soil was originally comprised of the present Kericho, Bommet and Buret Districts. The latter two were carved out recently from the greater Kericho District. The indigenous inhabitants of the greater Kericho District, the Kipsigis, one of the Kalenjin tribes, had by 1991, as their neighbours, the Luo the Kisii, the Nandi and the



Maasai. The District, as it then was, like several other Districts in the Rift Valley Province, was affected by European settlements which covered several areas including Kipkelion and Londiani, Chirchila (Fort Tenan), Thessalia, Sondu and Sotik. For the purposes of this Report we will confine ourselves to a few of those areas which were among those in the country which were affected by the infamous ethnic clashes which rocked our country in 1991 and thereafter, notably Chirchila, Kipkelion and Londian; Thessalia and Sondu. Except Sondu, all the other areas border Tinderet Division of Nandi District, which we discussed earlier. We also have Burnt Forest in Uasin Gishu District and Molo in Nakuru District bordering Londiani Division and both of which Districts formed part of the European settlements which we will discuss later. We propose to deal now with the Chirchila, Kipkelion and Londiani Divisions together and Thessalia and Sondu, separately because of their divergent backgrounds.

143. Chirchila, Kipkelion and Londiani Divisions constitute an area wholly comprised of settlement farms which, except for a few, were occupied by a mixture of ethnic communities, notably, the Kalenjin, who were the majority, the Kikuyu, the Kisii, the Luo, the Kamba and the Luhya. The Kikuyu moved to the area after 1952, to look for work in former European farms, and by 1957, their numbers had grown so immensely that their presence was causing concern to the colonial government with the result that regulations were promulgated to regulate their entry into and stay in Kericho District. In his annual report for 1957, the area District Commissioner remarked, in pertinent part, as follows:

“As has been stated elsewhere in this report the existing Kikuyu pilot schemes were extended this year to the tune of 500 additional families. For security reasons it is not proposed to allow further employment of members of this tribe, until experience of the present scheme indicates that it is safe to do so.”

144. We however, hasten to add that the European settlers regarded the Kikuyu as providing better quality labour than the other tribes and consequently pressed for the relaxation of entry regulations, which was done and two thousand and four hundred

Kikuyu men, women and children were, in 1957 and subsequent years, allowed entry into Nandi Hills in Tinderet, and into Songhor, Chirchila and Lubwa in Kericho District. Of these, except for four hundred who went to Nandi Hills, the rest of the Kikuyu were absorbed in the other areas. The geographical area of Lubwa comprised Kipkelion and Londiani Divisions.

145. The Kikuyus who then settled in parts of Chirchila, Londiani and Kipkelion were, after independence, among the squatters and former European workers who were settled on Mutaragon farm in Kipkelion, under the aegis of the Commissioner For Squatters. Mutaragon farm is one of several farms which comprise Kipkelion and Londiani Divisions. Chirchila formerly Fort Tenam is now a Division on its own. Although the Kipsigis claim the three divisions were part of their ancestral land which was taken over for European settlement, the Nandi too, claim that the two among other Divisions were part of Tinderet, which as stated earlier, the Nandi have over the years sought to reclaim. Be that as it may, whether the areas originally belonged to the Kipsigis or the Nandi is not for consideration here. What is significant, however, is that the two Divisions are now cosmopolitan; the majority of the people resident there have been living there since colonial times; they did not have any overt conflicts among them, and presently own the land they occupy which is duly registered either in their names, or in the name of a co-operative society or land buying company in which they own shares. Unlike Miteitei farm land disputes among shareholders, where they existed were merely confined to boundary disputes which were in any event, quite isolated.

146. Chirchila and Kipkelion Divisions but not Londiani Division, border the former Kipsigis native reserve, and like all other administrative divisions elsewhere in the country the two Divisions were divided into Locations. Those which concern us include Kunyak (Kapkoros), Koguta, Kiptenam, Minihaha in Chirchila; Kamasian and Kipsige in Kipkelion; and Sorget in Londiani. Each of those Locations had several farms most of which were occupied by mixed ethnic communities notably the Kalenjin, the Kikuyu and the Kisii, in varying numbers. But in Chirchila most of the residents are the Kalenjin, the Luo, the Kikuyu and the Kisii. Until 1991, when clashes broke out, the

mixed settlements did not pose any noticeable problems, as the residents had after acquiring their farms, quickly settled down, got their land registered in their names, built schools and churches for their common use, soon elected their parliamentary and civic representatives, and got administrative Locations and Sub-Locations with Chiefs and Assistant Chiefs to handle their day to day problems. Most, if not all the farms, had been acquired by 1971, when the country was a de facto one party state with KANU as the only political party. By 1991, the member of parliament for the area, was William Kikwai, a Kipsigis, and the local councillors who were at least four, were largely Kipsigis. All the Chiefs and Assistant Chiefs were also Kipsigis, a fact which we were told did not auger well with the other ethnic communities who felt that at least, appointments to administrative posts should be evenly shared amongst the ethnic communities. We were told that among the matters which angered the Kipsigis was the fact that some of the Kisii showed a keen interest in elective as well as administrative positions. This issue did not, however, visibly strain the inter-ethnic relationship which, according to the evidence we heard, was good. Witnesses told us that there were cases of inter-tribal marriages, free social interaction and that generally the different communities tolerated each other. Tolerant co-existence prevailed until 1991, when there began in the country, the clamour for multi-party democracy.

147. The campaigns for multi-partyism and majimboism did not actually take place in Chirchila, Kipkelion and Londian but they nevertheless affected the areas before the onset of the tribal clashes. Majimboism was intended to counter the fight for multipartyism. In Chirchila, Kipkelion and Londiani the people there, particularly the Kipsigis, were aware of the both campaigns and the inciting utterances made at the KANU political rallies at Kapsabet and Kapkatet, and as we were told, the Kipsigis warned the other communities to stick to KANU or else they would face dire consequences. The Kipsigis, who like all the Kalenjin communities, supported KANU, would sometimes when drunk openly say that they wanted "majimbo" so that they can

evict the non-Kalenjin from the Rift Valley Province and send them back to their ancestral homes. For example one witness testified that the Assistant Chiefs used to threaten the non-Kalenjin with dire consequences if they supported or talked about multi-partyism.

148. Paul Kipkemei Murei, a Kalenjin himself told us that, in or about November, 1991, he heard that the Luo, the Kisii, and the Kikuyu who were the "madoadoa" because they were perceived to be supporters of multi-partyism or its sympathizers, would be driven away.

7 149. The tribal clashes in Kipkelion broke out on the night of 5<sup>th</sup> November, 1991, pitting the Kipsigis against the Kikuyu, the Kisii the Luo, the Kamba and the Luhya, and were confined mainly to Kamasian and Kipsige Locations. Kamasian Location borders Tinderet Division, in Nandi District, where Miteitei farm is situated and the non-Nandi who were victims of the clashes which began in Miteitei farm on the night of 29<sup>th</sup> October, 1991 fled and sought refuge in neighbouring areas more particularly, Tinderet Tea Estates, Kamasian Location, Chirchila and Londiani Divisions. The majority of the refugees who were the Kisii, crossed mainly into Mutaragon farm in Kamasian Location where there were many Kisii residents. The Chief of Kamasian Location, Jonathan Kibaibai Arap Rogony, told us that as soon as the Kisii from Miteitei settled at Mutaragon farm there was general talk that the Nandi had vowed to pursue them there and drive them away. The refugees from Miteitei farm arrived in Kipkelion and parts of Chirchila Divisions on 3<sup>rd</sup> and 4<sup>th</sup> November, 1991, and a day later the houses of the non-Kipsigis there, began to be burnt.

150. We were told that about two or three weeks before this, a group of Kipsigis councillors toured Kamasian Location. No evidence was given to connect the visit to the clashes but the implication is obvious because it was almost soon after their tour that non-

Kipsigis houses began to be burnt there. Though the individual arsonists could not be identified it was stated that they were Kalenjin youths. About two hundred of them were seen on 6<sup>th</sup> November, 1991, in broad daylight, while armed with bows and arrows and other crude weapons, crossing from Leldet farm into Kashin Trading Centre where they looted and burnt all shops belonging to the non-Kalenjin. There was a similar attack at Nyairobi Shopping Centre. They had smeared their faces with ash, were swift and appeared to have well organized co-ordinated movements; they were ruthless and barbaric and senselessly burnt even grain stores no doubt with a view to traumatising and rendering their victims destitute and thus cause them to move out of the area. One victim Naftali Nyaoma testified, in pertinent part, as contained in the verbatim report of the proceedings of the Judicial Commission of 6<sup>th</sup> April, 1999, as follows:

“ Mr. Chairman: The burning was meant to evict you, why? So, that---.

Mr. Nyaoma: So that they may occupy the farms we had, my Lords.

...

Justice Bosire: Why do you say that?

Mr Nyaoma: Because, when I met some of these people who had taken beer, they used to tell me that some houses which were not burnt, such as mine, were meant to be used by some of them after we had gone.

...

Mr. Nyaoma: They used to complain: “Some of our youths had burnt the houses of Kiisis and Kikuyus, because they were promised to get pieces of land; some were promised jobs, and they never got them”, my Lords.

...

Mrs. Oduor: Did they say who had promised them jobs and land?

Mr. Nyaoma: They did not, my Lords.”

151. The burning of shops at Kashin and Nyairobi Trading Centres took place in broad daylight which clearly shows that the arsonist who acted with impunity and blatantly had some backing from high authority, but how high, we cannot possibly say as no evidence was given in that regard.

152. There were incidents of retaliatory attacks in which the non-Kalenjin burnt several Kalenjin houses. In isolated cases, they attacked and killed some of the Kalenjin for instance, Lord Koech of Londiani. It was suspected that Kalenjin warriors had been training on his farm to cause the clashes. He was attacked in his motor vehicle, a pick up, as he drove from one of his farms to another. His widow testified regarding his

behaviour before he met his fate and in our view it was rather strange. Despite the fact that a Kikuyu neighbour and friend had warned him not to go to Londiani town on the fateful day, he nonetheless did. At the time of his death, a jerrican with some petrol in it was found in his pick up which was suspected was to be for use in burning non-Kalenjin houses.

153. The clashes in Chirchila, Kipkelion and Londiani Divisions started almost without notice and ended abruptly. We were told that the causes were basically the reintroduction of multiparty politics in the country and demonic influences. However a careful examination of the evidence that we received, revealed that the well known Kalenjin aversion to strangers living in their midst particularly on their ancestral land which had in colonial times, been set aside for European settlement, was exploited for political objectives. This took the form of the attacks on, and the destruction of the property and the senseless killing of innocent non-Kalenjin who were perceived as non supporters of KANU so as to drive them away and make the Rift Valley Province overwhelmingly a KANU zone and to make it possible come the December, 1992 general and presidential elections, for the Kalenjin to vote as a bloc for KANU. The Chief of Kamasian Location, Jonathan Kibaibai Rogony unequivocally stated that political leaders in the area declared Kipkelion a KANU zone, because they feared that non-Kipsigis would join the opposition political parties. The local leaders' view appear to have been the same. What Jonathan Rogony said on this issue as contained in the verbatim report of the proceedings of the Judicial Commission of 8<sup>th</sup> April, 1999, is as follows:

“Mr Rogony: My Lords, I think they were saying that, that was a Kanu zone because since time immemorial KANU had gained support in the area because no other political party had gone to campaign there.

Justice Bosire: There used to be KADU in 1962/1963, is that not so?

Mr Rogony: Yes, my Lords.

Justice Bosire: And by that time KANU was there, was it not?

Mr Rogony: My Lords, at that time I was hearing about KADU not KANU.

Justice Bosire: When did KANU come to the area?

Mr Rogony: My Lords, I think it came to the area when H.E. the President and his followers joined it.

Mr. Mureithi: And H.E. has not left KANU since that time, has he?

Mr Rogony: He has not, my Lords.

Mr Mureithi: Was that the reason why Kalenjin leaders assumed that, that area would remain a KANU zone?

Mr Rogony: It might be so, My Lords.

Mr Mureithi: But that was a time when opposition political parties were being formed. Is that true?

Mr Rogony: Yes, my Lords.

Mr Mureithi: Was the 'zoning' of the area meant to keep away opposition

Mr Rogony: My Lords, I think that was the way the leaders were talking."

154. Another witness, Silvanas Ngidi Akeio from Kunyak farm in Chirchila Division, and who was a member of the peace and reconciliation committee in his Location, also stated as follows as appears in the verbatim report of the proceedings of the Judicial Commission of 12<sup>th</sup> April 1999,

"Mr. Akello: My Lords, our neighbours said that the causes were because of political language.

Mrs. Oduor: By saying your neighbours whom are you referring to?

Mr. Akello: My Lords, I am referring to the Kalenjin.

Mrs. Oduor: So, can you tell the Commission what you discussed about politics and how it started that disturbance?

Mr. Akello: My Lords, they said that there was a political party which was formed by the name of FORD and they said that FORD had come to interfere with peace in Kenya and they did not want other parties to be registered which were being registered at that time."

155. Joshua Kamau Macharia, a Kikuyu councillor from the Chepkongoni Ward, Londiani, testified on the same issue as shown in the verbatim report of the proceedings of the Judicial Commission of 16<sup>th</sup> April 1999, as follows:

"Mr. Chairman: How did multi-partyism bring about the clashes?

Mr. Macharia: My Lords, I would not say that multi-partyism brought about the clashes. I think that people did not understand multi-partyism. When multi-partyism came, people thought that these were parties on community basis and they did not understand and that is why there were some differences because when we had a single party system, we did not experience such a thing.

Mr. Chairman: What was the misunderstanding about multi-partyism?

Mr. Macharia: My Lords, there was an argument because most of the supporters of the Opposition parties were Kikuyus and the supporters of KANU were Kipsigis.

Mr. Chairman: And so?

Mr. Macharia: My Lords, people did not understand political parties and they took them to be parties on tribal basis. They took DP and FORD (A) to be parties for Kikuyus and KANU for the Kipsigis.

Mr. Chairman: So,---?

...

Mr. Chairman: So, the Kikuyus were to leave?

Mr. Macharia: My Lords, the Kikuyus were supposed to leave because they had shown openly that they were not supporting KANU. And they were the ones who came with the Opposition.

Mr. Chairman: They were supposed to leave, is that what you are saying?

Mr. Macharia: My Lords, they were being told that they were going to leave.

Justice Bosire: If they did not support KANU, or they will leave no matter what?

Mr. Macharia: My Lords, they were supposed to leave if they were not going to support KANU."

156. It should also be noted that according to the Constitution a successful Presidential candidate was required to garner at least 25% of all the votes cast in at least five of the eight provinces in the country, and at the same time have the highest number of votes cast countrywide. The zoning of areas as KANU zones was clearly a move in that direction although it was not so openly expressed. Besides, the Kalenjin leaders made it abundantly clear, at Kapsabet, Kapkatet and Narok KANU political rallies, that they would not tolerate support for political parties other than KANU in the whole of the Rift Valley Province. In this respect it is more than a coincidence that the clashes in Tinderet, Chirchila and Kipkelion Divisions occurred within a month and half after these three KANU political rallies, were held and which means that the Kalenjin responded expeditiously to the calls which were made in these rallies to the effect that those who did not support KANU, would be unwelcome in the Rift Valley Province and would be driven away. From the surrounding circumstances, we conclude that the Kalenjin who attacked, killed or injured the non-Kalenjin and burnt their houses were recruited, and trained and financed by some powerful people to violently evict the non-Kalenjin. The Kalenjin raiders who attacked the non-Kalenjin and destroyed their properties in Chirchila, Kipkelion and Londiani Divisions came in large numbers and in some cases, in broad daylight. They mysteriously disappeared eluding the police, after completing their mission. Only a well trained and organized militia could execute the forays the Kalenjin raiders did.



157. It is also important to state here that the inciting utterances and tribal attitude made and adopted by the Kalenjin politicians in the Kapsabet, Kapkatet and Narok KANU political rallies was clearly an anti-thesis of the declared government policy that Kenya should be a unified, peaceful and non-tribalistic society and one which respects the rule of law. The then member of parliament for Kipkelion, William Kikwai, a Majimbo proponent and the area Councillors, Chumo and Benjamin Ruto, were among the local political leaders, who were said to have intimidated the non-Kalenjin with violence and eviction if they did not support KANU. We think that their roles in the clashes should be further investigated.

158. The clashes did to some degree achieve their intended purposes. Many of the non-Kalenjin left Chirchila, Kipkelion and Londiani Divisions after the clashes and were not there as at the time of the December, 1992, general elections to vote, and others either sold to or exchanged their land with the Kalenjin who owned land in areas like Nyahururu. We were told that over fifty Kikuyu in one farm and others in other farms, had either sold their land to the Kalenjin or exchanged them for land belonging to the Kalenjin.

159. Unlike the clashes in Miteitei farm and those in Thessalia which we will next consider, no reasons other than the political cause, were proffered as that which may have immediately triggered the clashes in the Chirchila, Kipkelion and Londiani Division.

160. Thessalia, otherwise known as Buru Hill or the area with red soil, takes its name from Thessalia Mission of the Free Pentecostal Fellowship of Kenya Church which is situated South-West of Muhoroni Town. The part which concerns us is the land designated L.R. No.3979 which, on or about May, 1924, was alienated to three European settlers by the colonial government for a 99 years lease. In or about 4<sup>th</sup> January, 1951, the leasehold interest was transferred to Margaritis Plantations Limited, which in turn,

transferred one hundred and eighteen acres of it to Arvid Gumerius Bustgaard, on 23<sup>rd</sup> September, 1959. By special resolution Margaritis Plantations Ltd, went into self liquidation and appointed two liquidators on 4<sup>th</sup> September 1967, who transferred to George Evangelos Siragos Margaritis the remaining two thousand three hundred and eleven acres which was designated as L.R. No.3979/2. That land was the subject matter of a management order which was made on or about 24<sup>th</sup> March 1973, by the Minister for Agriculture and Animal Husbandry, pursuant to the provisions of Section 187 of the Agriculture Act, Cap 318, Laws of Kenya, which empowers the Minister, among other things, to occupy and manage any farm, and thereafter if he considers it beneficial, to transfer the whole or part of the farm for valuable consideration, but after serving on the registered owner thereof a fourteen days statutory notice declaring his intention to do so and inviting objections to the intended sale. However without any apparent compliance with that provision with regard to notice, the Minister, on the same day the management order was noted in the land register and the instrument of title to the land, transferred to Kipsitet Farmers Society Ltd, 596.7 hectares or 1954 acres; and on 15<sup>th</sup> August 1975 transferred a further 180.2 hectares to one Joab Henry Onyango Omino, and this left a balance of 392 acres on which lived several Luo squatter families. Those families were to be forcibly evicted from that land on 13<sup>th</sup> December, 1993, by a combined force of regular and administrative policemen under the supervision of the area District Officer, Samson Omweno.

161. We received uncontroverted evidence that the several Luo families evicted from L.R. No.3979/2 were part of a labour force the former European settler owner had on the land and who were resident there. He had set aside part of his land for their occupation, and when the aforementioned management order was made they were still living on the land. Some of the squatters were born and brought up there and knew no other place as home.

162. The farm in question, which we shall now refer to as Buru farm, unlike other former European settler farms, was not purchased by the government for the resettlement of Africans. The Ministry of Agriculture and Animal Husbandry on taking over the

management of the farm, decided to make it a livestock holding ground. The decision was however not implemented because the Luo squatters petitioned the then Vice-President of Kenya, Daniel Arap Moi, to intervene, which he did and directed that the project be abandoned in favour of allowing the squatters to remain on the land. By its letter dated 11<sup>th</sup> February, 1978, the Ministry relinquished its interest in Buru farm and by a subsequent letter dated 17<sup>th</sup> February 1978, asked the Director of Settlement to assist the District Commissioner, of Kericho, in the settlement of the Luo squatters on Buru farm by sub-dividing it and sharing it among them. That letter was duly copied to the District Commissioner, Kericho, but apart from asking the squatters to raise some money amounting to about sixty thousand shillings which they did and deposited the same in the District Treasury, neither he nor his successors took any further steps towards settling the squatters. Subsequently, upon the petition of the squatters, the Commissioner of Lands wrote a letter dated 25<sup>th</sup> September, 1987, to the District Commissioner, Kericho, which in pertinent part read as follows:-

“The Permanent Secretary Ministry of Livestock Development has confirmed that his ministry no longer requires the above mentioned holding ground and has recommended that the said land should be allocated to the squatters living on the farm ... all 392 acres instead of only 200 acres could be used to settle the squatters.”

163. The letter did not elicit any response from the District Commissioner. In the meantime the Kipsigis County Council also wrote a letter dated 11<sup>th</sup> July, 1990, to the District Commissioner, Kericho, informing him that the land in question belonged to it, and copied the letter to the Commissioner of Lands who on receipt of it addressed another letter, dated 28<sup>th</sup> July 1993, to the District Commissioner asking him to comment on the claim over the land by the Kipsigis County Council. This time the District Commissioner responded but in a rather callous, flippant and demeaning manner, in the following manner:

“The fact that the Ministry of Livestock Development at the time had indicated that they did not need the plot any more this nevertheless left the plot as government property which is so up to date. The Government still needs the land for future development.”

164. It should be noted here that in the Civil Service a District Commissioner is far below both a Commissioner of Lands and a Permanent Secretary who at all events, are presumed to know better and in any case are not supposed to be overruled by a

subordinate officer like a District Commissioner. Moreover, who would have known better, assuming the land belonged to the government, what use the land would be put to, a District Commissioner or the Commissioner of Lands whose docket includes looking after government land? Certainly not the DC. Yet in this instance he held himself out as not only, knowing better but also, as being in a position to overrule the Commissioner of Lands and the Permanent Secretary Ministry of Livestock Development. Be that as it may, the District Commissioner copied his letter to the Provincial Commissioner Rift Valley Province, the Permanent Secretary, Ministry of Agriculture and Livestock Development, the Kipsigis County Council and the District Land Registrar, Kericho. Surprisingly neither the Commissioner of Lands nor the Permanent Secretary or any other person intervened to correct or rebuke the District Commissioner. The District Land Registrar, however, must have been dismayed by the turn of events because in his letter to the Commissioner of Lands dated 22<sup>nd</sup> September, 1993, and copied to the District Commissioner, he sought guidance on what should happen to the squatters, in the following terms:-

“Please advise whether the squatters should be resettled on the piece of land (by sub-division); should they continue to squat on the same, or be evicted since their number is increasing with time.”

165. The wording of both the District Commissioner's letter to the Commissioner of Lands and that of the Kipsigis County Council to him, lead to the inevitable conclusion that there were behind the scenes, manouvers by the Provincial Administration at Kericho and the Kipsigis County Council to dispossess the Luo squatters of the land in question not for any other reason but because they were Luo and the land originally belonged to the Kipsigis. Nicholas Mberia, who was the District Commissioner, Kericho, as at the time the Luo squatters were evicted, was categorical that upon eviction the squatters were expected to return to where they originally came from.

166. Besides, we were told that as at the time the Luo squatters were asked to raise money to pay for Buru farm a similar proposal was made to a group of Kipsigis in respect of another piece of land. They, like the Luo squatters, were to raise sixty thousand shillings which they did and deposited at the District Treasury. The Provincial Administration quickly assisted them to have the land transferred to them and which was

eventually sub-divided and shared among them. In view of the foregoing it is quite clear to us that there was extreme reluctance on the part of the Provincial Administration to assist the Luo squatters notwithstanding that the then Vice President, Daniel Arap Moi, had earlier on intervened on their behalf and directed that they be assisted to settle, presumably permanently, on the subject land.

167. It would appear to us that the Government had in principle agreed to sell Buru farm to the Luo squatters because in 1972, the area District Commissioner, Kericho Milton Ole Ncharo, had advised them together with Kipsigis squatters who occupied what came to be known as Chebirir farm, to form separate societies to raise funds to purchase the respective parcels of land that they occupied. The Luo squatters formed the Buru Farmers Society while the Kipsigis formed the Kipsitet Farmers Society and each Society paid what was required to the District Treasury. Unlike the Kipsigis who were quickly assisted to acquire their land, no decisive action was taken by the Provincial Administration to assist the Luo squatters who were later asked to pay a further twenty one thousand one hundred and eighty shillings and ten cents which they paid, on the ground that they had delayed in paying the initial sixty thousand shillings, but that notwithstanding no further action was taken to assist them.

168. Opposition to their getting Buru farm was first realized in or about 1988, when one Noah, a Kipsigis, told a baraza at the farm which had been called by the then District Commissioner, one Onyango, to notify the squatters of plans to sub-divide and share the farm among them, that the Luo would eventually be evicted from the farm because the land belonged to the Kipsigis. In another baraza one Councillor Rotich of the area, remarked that the Luo then living in the District were milking Kipsigis land. These two and several others were expressing a view then commonly held by the Kalenjin, that land within their geographical districts should only be owned by them. We have stated elsewhere in this Report that the Kalenjin were averse to other tribes living in their midst

and that factor, among others, was exploited to evict the Luo from Thessalia and the areas around it.

169. The other factor is the political climate of the time. As we stated earlier, 1991 was the year when the clamour for multi-party politics intensified. The reintroduction of multi-party democracy balkanised the people in Kenya along ethnic lines and heightened tribal loyalty and association with the Luo, the Kikuyu and several other non-Kalenjin tribes being perceived by the Kalenjin as either supporters or sympathisers of opposition parties and could not, therefore, be trusted. In this regard, the evidence of Silvanus Ngidi Akelo a resident of Kunyak (Kapkoros) Location in the neighbouring Division of Chirchila and one who as a member of the Peace and Reconciliation Committee in his Location, had talked to several Kipsigis, is instructive. He reiterated the stand of the Kipsigis that they did not want any other political party other than KANU, in their District, and that the Kalenjin were averse to living with other communities in an area they consider their traditional homeland. This explains how a tribal aversion was exploited for political reasons to evict the Luo squatters from Buru farm.

170. The clashes in Buru farm as indeed, in neighbouring farms occupied by the Luo and the other non-Kalenjin started on the night of 5<sup>th</sup> November, 1991. They had spread from Miteitei farm into Owiro farm in Nandi neighbouring Nyanza Province, and also Southwards and Southwest into Kipkelion, Chirchila and Belgut Divisions. Several Luo houses were set ablaze at night time by people who were believed to be Kalenjin because their houses were untouched. The affected families sought and obtained refuge at the nearby Thessalia Free Pentecostal Fellowship of Kenya Mission. At this time however, only a few houses were affected, among them those belonging to Perez Odoyo and Magdalena Unoka. A few Kipsigis suspects were arrested but were released within three days without any charges being preferred against them.

171. On 16<sup>th</sup> November, 1991, several Kipsigis forcibly entered Buru farm and erected structures at the door steps of the Luo huts. The then District Commissioner, Timothy Sirma, who seems to have been at the centre of tribal clashes in various parts of the

country was informed and half-heartedly stopped further construction of the huts by the Kipsigis there. In our view, the erection of the structures by the Kipsigis, was intended to lay the ground for subsequently, sending security men to evict the Luo from Buru farm. Thereafter there was relative calm until 20<sup>th</sup> December, when Alex Orawo's house was burnt at night, but when the area Chief was notified of it, he is reported to have remarked callously that the Luo had encroached on Kipsigis land and were expected to move out. He did nothing to assist the victims. We think that this incident and the one of 5<sup>th</sup> November, 1991, were intended to warn the Luo to move out, but when they persistently remained in their homes, the Kipsigis, on 7<sup>th</sup> March, 1992, organized themselves, invaded Buru farm and burnt about one hundred and forty four Luo houses and sugarcane and stole several livestock from them. The Luo were thereby rendered homeless and without any security. Joseph Runya, William Kumo and one Joslin were among the people who one Raphael Adero Okwiri identified as the arsonists and stock thieves. Despite the fact that he made a report at Kericho Police Station naming them specifically as among the arsonists, no action was taken by the police against them.

172. The Luo once again sought and got refuge at Thessalia Mission where they camped living in makeshift structures and tents and in a deplorable state. No assistance from both the Provincial Administration and the Police Force was extended to them. Various NGOs, among them Oxfam, National Council of Christian Churches of Kenya (NCCCK), Thessalia Mission, and Red Cross, however, provided relief assistance to them. Their presence there must have embarrassed the Government because on 21<sup>st</sup> March 1992, a Lady District Officer was sent there in company of the area Chief, Musa Koech, who advised the refugees to return to their respective homes in Buru farm. This they did and with the assistance of the aforementioned organizations reconstructed their homes. For at least one year thereafter they lived peacefully. However, in April, 1993, uncertainty and tension among them was heightened when, at a baraza at the farm, the now notorious Timothy Sirma, at the prompting of one Sulumet, gave the Luo squatters a three weeks notice to quit the farm or face dire consequences. Neither he nor the area Chief were willing to discuss the issue. Timothy Sirma, allegedly told the squatters to move either to Thessalia Mission or to Nyanza. It seems to us that Timothy Sirma was

unhappy that the Thessalia Mission had earlier assisted the squatters, otherwise there is no logical explanation as to why he told them to move to Thessalia Mission.

173. Timothy Sirma was, however, transferred before the period of the quit notice expired, and was replaced by another Kalenjin, Nicholas Mberia, as District Commissioner, Kericho. At first when the Luo squatters petitioned him to rescind the notice he appeared sympathetic and caring because he eventually obliged them. He is also alleged to have assured them that having lived on the land for more than ten years the law protected them against eviction. However, two or so months later his attitude changed. By his letter of 28<sup>th</sup> July, 1993, to the Commissioner of Lands he adopted a stand which was diametrically opposed to the interests of the squatters, and in December, 1993, he caused the area District Officer, Samson Omweno and the area Chief, Musa Koech to notify the squatters to leave the area, according to Raphael Adero Okwiri, within 18 hours and that if they failed to move out, they would "see red berrets." They did not move and the notice was repeated by Nicholas Mberia, on Jamhuri day, namely 12<sup>th</sup> December, 1993. But the Chief, Musa Koech, Samson Omweno, and Nicholas Mberia all testified that at that time, there was nobody living on Buru farm, that the Luo squatters had been driven out in the course of the 1992 clashes and that the alleged eviction of Luo squatters was a misnomer for all that happened in their view, was that the several Luo huts which had since 1992 been standing there empty, were demolished because they had become a hideout for criminals. The events preceding 13<sup>th</sup> December, 1993, when a contingent of armed regular and Administration policemen went to Buru farm with two bulldozers and flattened most Luo houses there do not support their lying testimony. It was not disputed that in April, 1993, Timothy Sirma, notified the Luo squatters to move out of Buru farm within three weeks. It was also not disputed that Nicholas Mberia, rescinded that notice, and that on Jamhuri day of that year, he warned the squatters to leave "government land" or else face dire consequences. If indeed, there were no people on the land it would not have been necessary to issue those notices and warnings. Besides the District Security Committee's Minutes dated 24<sup>th</sup> September, 1993, (Exhibit 162) show that the issue of the Luo squatters on Buru farm was discussed. Besides, the then Officer Commanding Police Division during the material time period,



Julius Kiptagat arap Soi, testified that the District Security Committee discussed the eviction of the Luo squatters subsequently after the 1992, clashes, and when Nicholas Mberia gave instructions that the Luo squatters should be evicted. We have no doubt that the Provincial Administration led by Nicholas Mberia, were the ones who planned and carried out the eviction using about twenty nine armed policemen, as resistance was anticipated from the Luo squatters.

174. Nicholas Mberia, in his evidence tried to explain why the issue of the Luo squatters was discussed at the District Security Committee. His explanation, which did not impress us at all, was that the continued presence of the Luo in Buru farm area, was generally causing tension between them and the Kipsigis as the latter did not want them there because they, unlike the Luo who were opposition supporters, were KANU supporters who felt that the Luo were abusing the hospitality they had extended to them as "foreigners." His evidence on this issue which is contained in the verbatim report of the proceedings of the Judicial Commission of 25<sup>th</sup> May, 1999, is partly as follows:

“Mr. Mberia: My Lords, I decided to evict them on security grounds.

Mr. Chunga: On security grounds?

Mr. Mberia: Yes, after we had seen signs that those people were going to fight. Ours was to try and pre-empt the occurrence of clashes as there had been in other parts of the district.

Mr. Chunga: Would it not have been a better option to provide security to avert the clashes while you investigated the history and the dispute over the land?

Mr. Mberia: My Lords, it was not possible to do so at that time. As I have said, we had a problem in our neighbouring districts in Nakuru, and most of our security men had been sent to those parts to assist. So, sending two or three security men to the ground, would also have been endangering their lives, in the event of eruption of fighting. So, we did not see that as an alternative.

Justice Bosire: Yes, but you had sent 30 askaris to evict those people.

Mr. Chairman: And two bulldozers, too.

Mr. Mberia: My Lords, for the operation, we had to borrow askaris do the job and go back to their stations.”

He had earlier stated in the same proceedings that:

“Mr Mberia: After that it came to a time when there was the agitation again around Muhoroni area. The Kipsigis and the Luo were starting to fight at the shops in Muhoroni.

...

Justice Bosire: When was this time you had isolated incidents of fighting at Muhoroni market?

Mr Mberia: I think it was around October/November, my Lords. It is too long ago and I cannot remember.

Mr Chunga: 1991?

Mr Mberia: 1993.

...

Mr Chunga: Continue.

Mr. Mberia: Around the beginning of December the incidents escalated whereby the Kipsigis started burning huts belonging to the Luo and vice versa.

...

Mr. Chunga: How did the political differences come about?

Mr Mberia: It was the general saying at that time that the FORD-K at that time was mainly Luo and KANU was for the Kipsigis. The utterances made the Kipsigis feel that the Luo were now not friendly to them and that they were not supporting them and therefore they should not stay in their land. That is the information which we got.”.

175. The events Nicholas Mberia was describing did not occur in 1993, but in 1991 and early 1992. There had been relative peace in Thessalia for at least a year and besides, the District Security Committee minutes for the relevant period do not support his testimony. Moreover, Julius Kiptugut Arap Soi, testified that no report was made at any of the police stations or posts then under him about the burning of houses at Buru farm.

176. As already indicated the invasion of Buru farm by the Kipsigis in early 1992, was intended to create a ruse for police action against the Luo. The foregoing untruthful evidence of Nicholas Mberia was merely the excuse for employing armed policemen to drive out the Luo from land which the government had decided to settle them on. Nicholas Mberia's behaviour, was a mischievous, blatant and uncaring approach to a non-issue and on a matter he had no business to enter into, one between the squatters, the Ministry of Agriculture and the Lands department. His behaviour as indeed that of his predecessor Timothy Sirma, was that of an accomplice in the clashes.

177. For instance, when Nicholas Mberia wrote the letter dated 16<sup>th</sup> August, 1993, which we reproduced earlier, he was categorical that LR. No.3979/2 was government land, a fact he knew was not so. For in his oral testimony before us, he confessed the truth when he admitted that at the time he wrote that letter, he was aware that the Ministry of Agriculture had relinquished its interest in Buru farm. If he was aware that

the Ministry of Agriculture had relinquished its interest in land which belonged to a private individual, then it could not possibly remain government land.

178. Curiously, however, Nicholas Mberia, on 6<sup>th</sup> November, 1995, about two years after the Luo squatters had been evicted from Buru farm, wrote to the District Lands Officer, inter alia, boasting that “we” had evicted squatters from the subject land, and additionally, seeking to know under which organization the land was registered. This is what he said in the letter:

“R: No.3979/2 KIPSITET KERICHO:

The above quoted piece of land is the famous Thessalia plot where we recently evicted the squatters from it.

I would like as a matter of urgency to know under which organization this land was/is registered for my further action.

Please treat as most urgent.”

The letter was, we think, written with tongue in cheek, because if surely he did not know who was the registered owner he would not have acted the way he did, namely causing the Luo squatters to be evicted. One would have expected that the starting point before any eviction is carried out was to satisfy oneself as to the ownership of the land involved. Otherwise there would be the obvious danger of evicting people from land which belongs to them.

179. The eviction of the Luo from Thessalia on 13<sup>th</sup> December, 1993, was carried out in a cruel and inhuman manner. The people were surprised at daybreak by armed policemen, who woke them up and ordered them to leave immediately. They were not allowed time or opportunity to remove their personal effects. Two bulldozers with government registration marks were used, and all but a few houses were flattened. Families were rendered homeless, and were forced, for the third time, to seek refuge at Thessalia Mission. May be the policemen who effected the eviction were the “red berrets” which the squatters had prophetically been told would remove them from the land.

180. Two factors make the eviction bizarre. The Luo squatters along with the Kipsigis had been told in or about 1970 to raise money to buy the respective parcels of land they

were living on. Each group was to raise sixty thousand shillings notwithstanding that the two pieces of land they were to buy were unequal. The Kipsigis were to buy about 1954 acres, while the Luo were initially to buy 200 acres which later was upped to 392 acres. The two parcels of land were almost abutting each other and one would not possibly argue that their quality differed. Secondly, on completing payment the Kipsigis were quickly assisted to have the land transferred to them, and which was subdivided and shared among themselves without any obstacle. However, with regard to the Luo squatters, notwithstanding that they paid much more money than the Kipsigis for land which was about a fifth of what the latter got, no steps were taken to assist them. The Government to this day is holding their money, its servants kicked them out of Buru farm and many now live in abject poverty, not because they are lazy but because they were uprooted from where they were lawfully eking for themselves a living.

181. Not content with his eviction of the Luo squatters from Buru farm, Nicholas Mberia, the big bully, followed the Luo squatters to Thessalia Mission and primary school where they had camped, and evicted them for the second time, on the pretext that the school was about to reopen and the school grounds were required for this purpose. That may well have been the case. However, the evidence we received was that the Luo squatters were attacked not on the school grounds but at the mission compound where they were encamped and where their presence did not obstruct anyone. In the course of this attack one Luo squatter was killed and several others were injured. The missionaries were threatened, harassed and warned because they had tried to assist the squatters; and properties were either damaged or stolen. After this all the missionaries left, and we were told that the mission and the hospital there had to sadly close down.

182. The case of Buru farm is a clear example in which both the Provincial Administration and the security forces, oblivious of the damage that their action would cause to the image of the Government, acted against innocent citizens of this country for the political reasons, and the economic benefit of a few undisclosed persons.

183. Sondu is a town strategically situated at the border of the Rift Valley and Nyanza Provinces, and the meeting point of three Districts, namely, Kericho, Kisumu and Nyamira in which lives the Kipsigis, the Luo and the Kisii tribes respectively. The built up area is however astride the common border of Rift Valley and Nyanza Provinces. The market place of the town although one, has two sections, one on the Kericho side and the other on the Kisumu side. The Kisumu-Kisii highway passes through the town. The town is also connected to Kericho town by a murrum road which passes through Kiptere and Sosiot which are trading centres.

184. Sondu being strategically situated, its market is generally well attended on market days which fall on, among other days, Fridays. Clashes in the town started on 6<sup>th</sup> March, 1992, a Friday, and pitted the Kipsigis against the Luo, and also affected the Kisii. We were told that the clashes started at the market place, on the Kericho side, when George Manyala, a Luo hawker in a FORD T shirt, refused to pay the market cess to a Kipsigis County Council Market Master one Koske, a Kipsigis, because he would not be given as he wanted a FORK-Kenya cess receipt. As Koske and David Mwendwa Momanyi, one of his two assistants, tried to force George Manyala to pay the cess, it was said that George Manyala drew a knife and stabbed David Momanyi. The incident caused a stampede and commotion and George Manyala was heard in dholuo shouting for help. The Luo at the market rushed to his help. The Kipsigis on seeing the Luo rush to Manyala's aid and thinking mistakenly though, that the Luo had gone to attack Koske, the Market Master, also rushed there to assist him. Fighting ensued leading to several casualties. This story was given by Koske and was to some degree corroborated by his second assistant, Peter Ondieki. Peter Ondieki, was however, categorical that the incident was not the cause of the skirmishes in Sondu.

185. That was one side of the story. There was however, the other side of it which was given by Arthur Ondu Oging a Luo, who told us that on the material day on his way to Sondu he met about twenty Kipsigis, who were strangely dressed in red T shirts and with

red and brown head bands around their heads and armed with bows and arrows, lying down along the side of the road, about a kilometre or two from Sondu but on the Kericho side. On reaching Sondu he found fighting in progress between the Luo who were armed with slings and people similarly dressed and armed as those he had seen lying down by the roadside, on his way to the town. The outnumbered policemen from Sondu Police Station, which is on the Kericho side of the town could not quell the skirmishes and asked for reinforcement. Later a contingent of GSU, regular and Administrative policemen from both Nyanza and Rift Valley Provinces arrived and stopped the fighting. We were told that slings are easy to make and those being used by the Luo must have been made soon after fighting started. Not so, however, for the bows and arrows. They are not such items that can be quickly made. For the Kipsigis to have had and used them on that day means that they must have come with them. Arthur Ondu Oging, in his testimony, as contained in the verbatim report of the proceedings of the Judicial Commission of 1<sup>st</sup> March, 1999, stated inter alia, as follows:

“I think even if Manyala did not put on a t-shirt something would have happened on that day because these people (Kalenjin) were organized before that fight started.”

186. He added that the Kipsigis raiders must have come from outside the general neighbourhood of Sondu as those he saw were strangers to him, and that had they been from the neighbourhood of the town he would have identified them, at least by appearance. It should also be noted that on the day fighting broke out at Sondu it was only a day after clashes had erupted in Thessalia and its neighbouring areas. The clashes at Sondu appear to us to have been purely a political reaction by the Kipsigis at the reintroduction of plural politics, and were an extension of the clashes in neighbouring Thessalia. We also think they were intended to confuse the real reason for the clashes in Thessalia and other neighbouring areas. David Momanyi or Peter Ondieki told us that from his observation, the Kipsigis had a hidden agenda as on the material day they came uniformly dressed in T shirts with head bands and armed with bows and arrows, emerged suddenly, apparently from a hideout, unto the market on hearing the screams pre arranged and well timed of a woman in the market. In Molo South and Njoro, as we shall see later, strange people were seen in those areas before clashes erupted implying that there was a group which was organized as a militia which was being used to start the violence.

187. It is also noteworthy that the raiders at Sondu appeared regimented which meant that the clashes in Sondu were not only, premeditated but were also, well organized and executed. We were told that for this purpose, the raiders were dropped near Sondu by matatus but their owners denied this, implying that if at all, the raiders had been transported to near the market, this was done in the ordinary course of their business as transporters.

188. Several people died as a result of the clashes in Sondu. Three bodies were recovered the next day floating on Sondu-Miriu river which passes through the town, and were identified as two Kipsigis and a Kisii. Other bodies were recovered on the third day, which brought the total of those dead to at least ten. Although the clashes in Sondu town did not last more than one day, they spread to the outskirts of the town and its hinterland. For instance, several houses were burnt at Komolong in Kericho District and several others on 7<sup>th</sup> March, 1992, at Holo in Kisumu District, where there was a clash between armed Kipsigis youth numbering about five hundred and, armed Luo youths numbering at least two hundred. Six Luo, including one Ongus Abila, and an ex-policemen called Mbori Tambo were among the casualties, the latter having been killed in his homestead by Kalenjin youths. Later, four human skeletons believed to have been those of Kipsigis were found on the battle ground. Like happened at Sondu market, the police who were in the neighbourhood did not immediately intervene to stop the fighting because they were greatly outnumbered by the combatants. It was after reinforcement came that the clashes were stopped in the area, and since then they have not been repeated.

189. In our introductory remarks regarding the clashes in the Rift Valley Province, we stated that during the clashes the provincial security forces invariably arrived late at the scenes of the clashes, were generally ineffective and largely looked to and depended on

the Provincial Administration to give them directions on security operations, and that that tended to slow down their action against the raiders. We were told that in Kericho, between November, 1991, and April, 1992, the police were reasonably effective. However, thereafter, although they would be seen in the clash areas they did little, if at all, to quell the clashes. In some cases they stood by watching events unfold, on the ground that their superiors had instructed them not to shoot at the raiders. For instance on 7th March, 1992, at Holo area at the border of Kisumu and Kericho Districts, security personnel watched as the Kipsigis and Luo youths fought. They saw two badly injured persons both of them Luo, one of whom was Mbori Tambo, but did nothing to assist them. They refused to accede to a request made to them to take the two to hospital with the result that the two died, one before reaching hospital, and the other soon after his arrival there. Eliud Opiyo Nyangwe, the then Assistant Chief of South Nyakach Sub-Location, who witnessed the incident, testified that instead of the security men helping to stop the fight, they drove away leaving the youths fighting. More than five people were killed before another team of policemen, which eventually stopped the fighting, arrived.

190. In other instances, the police would arrest people but later release them without preferring any charges against them, or where any charges were preferred, the suspects were released on flimsy excuses. For example, the officer commanding, Sondu Police Station, Johnson Nyagah, told us that during the clashes at Sondu market and neighbouring areas, several people were arrested and charged for various offences. Those charges were however withdrawn because "no complainants came forward". The suspects, whose particulars were entered in the station's occurrence book, were arrested looting various shops and had a motor vehicle Reg. No. KZB 882, in which they planned to carry away the loot. The vehicle was, however, later unconditionally released to its owner. It is quite strange that the police instead of looking for the complainants whose shops were looted, sat back and waited for them to come to the police station to complain. In Miteitei, a similar excuse was given by the Officer Commanding the Songhor Police Station. The police handled the clashes in a half-hearted manner and it seems to us that they had instructions from some quarter against taking any serious action against the raiders. We heard evidence from the officer Commanding the



Londiani Police Station, Peter Ouma Ochola that in or about November, 1991 he, together with forty or so other police officers ambushed over one thousand raiders who crossed from Tinderet Division in Nandi District into Londiani and Burnt Forest areas. At the request of the District Commissioner of Uasin Gishu District, Paul Lagat, the suspects were handed over to Oscar Wakhisi, the Officer Commanding the Tarakwa Police Station in that District. Those raiders were not charged nor is there any record on what happened to them. Peter Ochola was recalled as a witness to clarify the issue. At first, he was categorical that he had made a note in his station's occurrence book and added that on an earlier occasion when he could not be reached to testify, he had checked the occurrence book and saw the note he had made about the handing over of those suspects to the Officer Commanding the Tarakwa Police Station. We gave him time to go back to Londiani Police Station to check all the occurrence books for the relevant period which he did, but he could not find the entry. He was, however, not able to get one occurrence book, for the period August to December, 1991, and it is our view that the entry must have been made in that book. Our conclusion is supported by what his Officer Commanding Police Division, Eliud Langat, said, namely that on his return from Britain, where he had been attending a course, he was briefed about suspects who had been arrested within his police division but were handed over to a police station in another Division to wit Tarakwa Police Station. He could not have been briefed about them if it was just a minor matter or if the incident had not taken place. It is also unthinkable that Peter Ochola, could have on his own volition transferred suspects to a police station in another District and police division without being directed to do so by a superior officer. This is an example of a case in which a provincial administrator gave directions to the police on the handling of criminal suspects and we think the police improperly listened to him. Criminal investigations are matters which the police should have a free hand in handling as only they have the power and personnel to do so. Although the District Commissioner, Paul Langat, denied it in a written statement which was submitted to us, the evidence we have set out above, does show otherwise. We observed the demeanor of Peter Ochola and we think that as a witness he was interfered with after some indication was given for his recall. We also think that somebody must

have obstructed our investigation on the issue as the occurrence book for the relevant period could not be traced.

191. The behaviour of certain Provincial Administration officers and the Police Force, too, suggests that the clashes had their support. We were told that during the clashes at Koguta and Kunyak, in 1991, the area District Commissioner, Timothy Sirma, ordered policemen from Koru Police Station in Nyanza, to return to their station because according to him they had no business crossing the border into Kericho. This was at the height of the clashes in the area. His behaviour was clearly reminiscent of a person who condoned the clashes. His successor, Nicholas Mberia, ruthlessly and inhumanly evicted the Luo squatters on Buru Hill on ethnic and political grounds. These two officers should be investigated regarding their role in the clashes.

192. There was also the conduct of Eliud Langat, a Deputy Commissioner of Police, who in November, 1991, was the Officer Commanding Police Division, Kericho. Jonathan Kibaibai Rogony, Chief of Mutaragon Location in Kipkelion, told us that while in the company of the members of the District Security Committee which included Eliud Langat and the District Commissioner, Joseph Mutemi, and together with some policemen, they visited Kipkelion at the height of the clashes where they saw at Kibinet, a group of about fifty people gathered on Chakoror hill. Eliud Langat, a Kalenjin, then rather strangely quickly left the group and without asking any one for help, quickly ran uphill alone to where the people were. When he was asked about it his unconvincing response as contained in the verbatim report of the proceedings of the Judicial Commission of 31<sup>st</sup> May, 1999 were as follows:

“Langat: My Lords, I had a job to do and I thought that by going after those youths, if I caught up with them then I would have solved a problem in one way or the other.”

193. At least two things may be said about the behaviour of Eliud Lagat. He was the seniormost police officer in Kericho District police Division and was expected to direct police operations there. Behaving as though he was under the command of another officer, he left his junior officers and police constables behind and, in what we think

was pretended heroism, ran up to confront a large gang of people. We think that there was something he did not want others that he was with, to know, possibly that he knew the people on the hill and their motive for being there. His testimony was that he met seven youths who he arrested, but the fact that the youths did not run away on seeing him labouriously running up hill, speaks volumes about his relationship with them. The second point we would like to make about him is that, if his statement that he arrested only seven youths is to be accepted, it is strange why he, a senior police officer, would arrest people he had no evidence against. That the seven were later released, is clear testimony that his pretended arrest of them was merely to fake seriousness on his part in dealing with the clashes. It is noteworthy that those arrested, like him, were Kalenjin and according to Jonathan Rogony they were twenty in number and were armed with assorted weapons and carried match boxes, a fact that Eliud Langat denied in the following manner as shown in the verbatim report of the proceedings of the Judicial Commission of 31<sup>st</sup> May, 1999:

“My Lords, what I may have seen, may not necessarily be what the chief had also seen. He testified on what he had seen, and I am also testifying on what I had seen ... The youths I chased were not in uniform. I persuaded the youths to accompany me down the hill. They accepted.”

194. The two witnesses having been together it is not possible that they would have seen the arrested youths in different dispositions and number. The disparity in the number of the youths as given by both witnesses is quite big which makes us conclude that Eliud Langat withheld the truth from us on that score. He too, should be investigated regarding his role in the clashes in Kericho.

195. The foregoing are only examples of the attitude and behaviour of both the Police Force and Provincial Administration. In view of that, the evidence of some of them who testified that they were hampered in their operations due to lack of information and limited personnel, is not believable. It seems to us that they knew and condoned what was going on, and whatever they did in purported stoppage of the clashes was intended to hoodwink the victims of the clashes and the world in general. That will, we think, explain the suddenness of the clashes, their systematic spread, and abrupt end in each of the areas so far considered.

## **UASIN GISHU DISTRICT**

196. Uasin Gishu has a large population of former squatters and workers on European farms, who were settled there under the aegis of the Commissioner for Squatters. They were more particularly settled on what is now referred to as Kondoo farms, numbered I to IX, which were formerly managed by the Central Agricultural Board. There were also other settlement farms under the aegis of the Settlement Fund Trustees. The various communities settled there between 1963 and 1970. The clashes in the District, which is bordered by Nandi, Kericho, Koibatek, Trans Nzoia and Kakamega Districts, were mainly confined to Ainabkoi Division which is the home of a large population of Kikuyu, among other tribes.

197. Ainabkoi Division is bisected in a North-South direction by the Eldoret-Nairobi road which passes through Burnt Forest town, sometimes referred to as Olare, and Timboroa Shopping Centre. Ainabkoi Division borders both Tinderet Division, where Miteitei farm is, and Londiani Division in Kericho District. For some reason the October/November, 1991 clashes which affected Tinderet and Kipkelion Divisions in Kericho District did not affect Ainabkoi. Chief Inspector of Police, Peter Ochola, who was then the Officer Commanding the Londiani Police Station, it will be recalled, told us that while, in the company of forty other policemen, intercepted a gang of over one thousand armed Kalenjin raiders, in or about November 1991, as they were about to cross into Londiani and Ainabkoi Divisions from Tinderet. That is perhaps why no clashes were experienced in Ainabkoi in 1991.

198. Prior to December, 1992, when clashes first erupted in Ainabkoi, the different communities in the area lived in peace with each other, and although there existed isolated cases of land disputes among some shareholders in some farms, they did not take a tribal angle or the dimension which the dispute at Miteitei farm took. It also appears that the clashes which occurred in neighbouring Tinderet Division and parts of neighbouring Kericho District did not affect the inter-ethnic relationship among the

various communities in Ainabkoi. Otherwise the history of the area prior to 1992, unlike the other areas we have already covered was uneventful and we do not propose to say more on it.

199. The clashes in Burnt Forest area, started on 13<sup>th</sup> December, 1992, two or so weeks before the general elections of that year, and a year after the introduction of multi-partyism in Kenya. Prior to the clashes there had been reports of tension between the Nandi and the Kikuyu which it was claimed was caused by, firstly, increased cases of stock theft of Kikuyu livestock in Rugiri farm by the Kalenjin. Secondly, there were allegedly increased cases of Kalenjin livestock crossing onto Kikuyu farms and destroying their crops, which the Kikuyu regarded as deliberate and intended to annoy them. All this led to mutual accusations that one or the other tribe was planning to attack the other.

200. But the clashes when they came, did not start in either Rugiri or Bayete but at Usalama Shopping Centre where most of the businesses and the business and residential premises, there were owned by the Kikuyu. The raiders who were believed to be the Kalenjin, armed with bows and arrows with their faces painted to conceal their identities, were well organized and came in large numbers. The attack at Usalama was almost simultaneous with another attack by the Kalenjin at Geiti farm, which was also predominantly occupied by the Kikuyu. Two people were killed at Usalama and two at Geiti, and several others were injured in both places. Several Kikuyu houses and shops were looted and then burnt. There was a similar attack at Burnt Forest Town itself, where Tarakwa Police Station was situated, and during which, several business premises and motor vehicles owned by the Kikuyu were burnt. The few policemen at Tarakwa Police Station did not at all attempt to stop the arson allegedly because of their depleted numbers, but we think that that was merely an excuse given for not bothering to take any action at all to stop the violence. The Kikuyu then organized themselves and made retaliatory attacks on the Kalenjin in the town. They burnt several Kalenjin shops and

motor vehicles and a Kalenjin, Samson Busieni, who was a businessman in the town, was beheaded. The other Kalenjin business people fled and sought refuge in Olare Guest House owned by Samuel Ngelel, a Kalenjin. The clashes then spread to several farms with mixed communities. All the non-Kalenjin fled their farms and settled mainly in Burnt Forest, Usalama, and other Trading Centres where they camped in schools and churches. A few Kalenjin whose houses were burnt in the retaliatory attacks, fled and sought refuge in neighbouring farms predominantly occupied by fellow Kalenjin.

201. The clashes, in Uasin Gishu District in December, 1992, coincided with the campaigns for the multi-party general and presidential elections to be held that month. The clashes were eventually stopped before the polling day which was on 29<sup>th</sup>, December. But on 30<sup>th</sup> March, 1993, the clashes erupted again more or less in similar fashion as before. These too were stopped, and there was relative peace until 23<sup>rd</sup> August, 1993, when over forty armed Kalenjin youths attacked and killed five Kikuyu, allegedly because they had stolen their livestock. We were told that some of the Kikuyu used firearms and hand grenades to repulse their attackers and this and a similar alleged incident in Molo South, we think, must have forced the Government to declare Burnt Forest, Londiani and Molo, security operation zones on 2<sup>nd</sup> September 1993.

202. Regarding the action by the Provincial Administration and the Police Force, to stop the clashes, the Officer Commanding Tarakwa Police Station, Oscar Wakhisi, told us that he had mobilized his men just before clashes broke out when he had been told of tension building up between the Kalenjin in Bayete farm and the Kikuyu in Rugiri farm, and that while he was attending to this he saw houses burning at Geiti Usalama/Nyakinyua farms and at Usalama Trading Centre where he arrived too late to stop people being killed and injured, and properties being looted and others destroyed. There was thus, not much he could do to stop the clashes. He stated further that he telephoned his Officer Commanding Police Division, Jama Warsame, and requested for reinforcement but there was delay in getting it, and when it eventually came the harm had already been done more or less beyond repair. Fourteen Kikuyu, eight Kalenjin, one Luo and four unidentified people were reported killed, and several others were injured in the

skirmishes. The security forces arrested sixty five people, all except one who were Kalenjin. Among those arrested were two police officers because it was alleged that they were involved in the incidents of looting and arson. The majority of those arrested were found armed with traditional weapons like bows and arrows.

203. Oscar Wakhisi said that apart from the report of tension between the Kikuyu and the Kalenjin on Rugiri and Bayete farms he did not have any other prior report or knowledge of the impending clashes. The effectiveness of the Special Branch there at the time was doubtful in view of what other witnesses told us that prior to the clashes in December, 1992, the Kalenjin had been talking about evicting the Kikuyu from the area because of their reluctance to support KANU. That Oscar Wakhisi denied having had any prior knowledge of the clashes suggests that there was limited, if any, flow of information among the different security arms, and between the people and those units or that though the Special Branch had prior information, they, as was the case in the Coast Province, and in support of the clashes, kept the information to themselves.

204. There is also the fact that as soon as Oscar Wakhisi got information about tension between the Kalenjin and the Kikuyu he immediately notified the District Officer of the area, Paul Cheruiyot. Oscar Wakhisi's behaviour in this regard, showed that the police considered themselves as an appendage of and subject to, the Provincial Administration. This was so notwithstanding what the former Commissioner of Police, Duncan Wachira, had to say about the relationship between the Provincial Administration and the Police Force which appears in the verbatim report of the proceedings of the Judicial Commission of 4<sup>th</sup> June, 1999, namely that:

"The Provincial Administration have no legal authority to give orders on use of firearms. Their role remains to co-ordinate and to oversee the security operations in their respective areas. The police remain in charge of operations, giving orders and acting when the situation demands. The conflict on the ground is unfortunate."

**205.** But this aside, the security forces did not act decisively to prevent or stop the clashes. We were told, and this was a common feature in almost all the clash areas, that security men instead of firing at the raiders with a view to disabling them so that they can be arrested merely fired in the air. Senior Chief Philip Kiptuk Kiskei told us that in his

Ollainguise Location which borders Miteitei, he witnessed an incident at Kitingia Shopping Centre where Kalenjin youth armed with bows and arrows, engaged Kikuyu youth who were armed with stones. There were three armed Administrative Policemen nearby who instead of firing at the combatants, only fired their guns in the air. The combatants were not moved one bit by the firing and continued fighting during which more than ten people were killed, six Kikuyu and five Kalenjin.

**206.** Prior to the reintroduction of plural politics in Kenya at the end of 1991, the area KANU member of Parliament, was John Tarar. In 1992, however, there was a strong opposition element in Burnt Forest area. Ezekiel Kibii Cheruiyot, the Chief of Olare Location testified that, Tarar would have had a hard time recapturing his seat in the 1992 general elections had his only opponent, who was contesting on an opposition ticket, not withdrawn his candidature at the last minute. This perhaps will explain the timing of the clashes in 1992 and why violence targeted the Kikuyu and other non-Kalenjin communities who were perceived as opposition supporters. It is notable that during the elections Councillor Kirua of Ford Kenya, was elected the area Councillor. The same witness testified that fifteen per cent of the people in his Location did not cast their votes because they had been displaced by the inter-ethnic violence. Only KANU stood to gain if opposition supporters and sympathizers were displaced from voting during the general election of that year.

## **NAKURU DISTRICT**

207. Nakuru District, an expansive, multi-ethnic District with its administrative headquarters at Nakuru and which is also the headquarters of the Rift Valley Province,



was the most hard hit by the inter-tribal clashes of 1991 to 1998. The District is bounded by Narok District to the South, Nyandarua District to the East, Baringo and Koibatek Districts to the North, and Kericho and Bommet Districts to the West. Nakuru District was part of what used to be the White Highlands, but unlike other Districts we have already considered Nakuru District did not in colonial times, have native reserves. Its present residents therefore, moved there under different settlement programmes, some of which were started before independence. By the end of 1961, there were about forty thousand Africans in Nakuru and about one hundred and sixty thousand in the farms in the District which, according to the Annual Report for Nakuru, 1961 more than fifty percent were the Kikuyu. At independence, therefore, there was a very high percentage of the Kikuyu population in Nakuru District, and their presence there, both before and after independence was a constant source of problems not only with the settler population but also, with other tribes who like them were resident in the district for various reasons.

208. Elsewhere in this Report we said that the Rift Valley Province was the ancestral home of pastoral tribes, who were moved out to create room for European settlements. The Kipsigis and the Nandi who were among those tribes, have over the years laid claim to the whole of the Rift Valley Province. They as also the other Kalenjin tribes have always detested control of their ancestral land by outsiders; whether economically or politically. For instance in The 1961 Annual Report for Nakuru contains the following relevant statement:

“Inter-tribal tensions increased markedly as the year wore on. The Kalenjin make no secret of the fact that they are stock-piling native arms against the inevitable day probably after independence, when they will have to fight the Kikuyu and perhaps the Luo for control of their own areas, including the upper and middle Rift. The tribal antipathies are now so great on some farms that the Kalenjin members of the Agricultural Workers’ Union would refuse to take part in a union strike alongside Kikuyu members and would automatically take the opposite line in any controversy.”

The above excerpt looked at with hindsight was prophetic as during the clashes in Nakuru District and elsewhere the Kikuyu and the Luo were the major targets of attack by the Kalenjin. The Kalenjin and the Kikuyu, it now seems to us, had more or less become traditional enemies. Like the Kalenjin, the Maasai in the Mau Narok area were as far

back as the late 1950s against the Kikuyu coming to live in their area. However, unlike the Kalenjin, the Maasai were not so hostile to the Kikuyu.

209. Prior to independence there were no marked tribal differences other than those we have stated above. However, Nakuru District was the most politically conscious District in the whole of the Rift Valley Province, to the extent that by 1962, there were about eleven political and quasi-political registered societies; most which were tribally based. The political situation on the introduction of multi-partyism in Kenya, in 1991, was similar, and it seems to us that Kenyans have changed little, if at all, in their political and general approach to issues. We thus consider the following observation which appears in the 1960 Annual Report, for Nakuru, as an apt comment:

“An African’s first loyalty is to his family and tribe rather than a political party or other non-tribal organization. As general elections approached political loyalty became more and more synonymous with tribal loyalty. The main line-ups were Kikuyu/Luo for KANU and the Kalenjin/Abaluhya for KADU.”

210. In post independence Kenya and more particularly in Nakuru District, opposition politics had been unwelcome. For instance, in 1965, the Nakuru District Ex-freedom fighters had to organize a meeting in addition to raising funds to purchase land, to refute insinuations that they were secretly supporting the opposition. Such insinuations by KANU stalwarts against opponents within KANU have not been uncommon in the print and electronic media. Infact during the KANU majimbo rallies at Kapsatet, Kaptatet and Narok, which we referred to earlier, the virulent attacks by the speakers were directed against those in KANU who had become proponents of plural politics. The late Chepkok, for instance, is reported in the Sunday Nation of 22<sup>nd</sup> September, 1991, to have said the following about multiparty proponents:

“Hit them hard wherever they are.”

And William Ole Ntimama was reported in the Sunday Nation of 29th September, 1991, as having told the Narok rally that:

“We have now buried the FORD, multiparty politics and the NDP. All the Ministers and KANU leaders you see here have resolved to fight together and follow President Moi together... Majimbo was here at the time of independence and was done away with; if majimbo ended, multiparty politics should also end – or else.”

211. Other speakers used words to the same effect including also that violence could be used to resist multiparty politics. The use of such violent and unsavoury language when it comes from leaders and more particularly, political leaders, who generally are regarded as opinion shapers, tend to easily stir up the populace more so where as happened in 1991, issues are presented in a slanted manner with a view to misleading and inciting an unsuspecting and simple people.

212. The majority of the parliamentarians in Nakuru, during the one party era having been Kikuyu, we think that the clamour for multi-party politics raised a feeling of unease and suspicion among the Kalenjin politicians, who as some witnesses said, felt that the position of their own tribesman as President was threatened by the Kikuyu who were in the forefront of the clamour for multi-party democracy. This perhaps would explain why Nakuru District which then had a high non-Kalenjin population was hit hardest by the inter-tribal clashes of 1991 to 1998.

213. We earlier discussed how the various ethnic groups got land in the White Highlands or scheduled areas. The resettlement programme brought together people from different ethnic backgrounds, who, in due time, came to know and relate well with each other and to share common views in social, economic, educational and political matters for a long time before the clashes. However, with the advantage of hindsight it would seem that the different tribes did not accept each other but only tolerated each other as apparently there were deep seated ethnic ambitions and prejudices which were activated by political events preceding the 1992, general election.

214. The new settlements in Nakuru District did not take any particular pattern. In some cases however, the farms were bought by tribally based land buying companies and societies with the result that in those farms one would find occupants wholly from one ethnic community. However, as at the time of the clashes in 1992, the scenario was

gradually changing. We were told that some of the shareholders had sold their shares in some farms to other people either from their own or other tribe and thus promoted tribal integration.

215. We were not told of any land disputes in the settlement farms, which were of the same or greater intensity as that which had existed at Miteitei farm in Nandi District. And so at the onset of the tribal clashes in 1992, most farm owners in Nakuru District were happily settled on their farms and the clashes came as a shock to them. The clashes in Nakuru District were in two phases; the first one which covered the period 1992 to 1993, affected mainly the Molo and Olenguruone Divisions as they then were; while the second phase covered the period 1997 to 1998 and affected mainly Njoro, Mauche and Lare Divisions and to some extent Nakuru town. Under this sub-heading we will only deal with the first phase, and deal with the second phase later under a different sub-heading.

216. The first phase of the clashes in Nakuru started on the night of 14<sup>th</sup> March, 1992, in Molo South. What triggered the violence there was as told by the Kalenjin witnesses firstly, that Kalenjin children selling milk at Kamwaura Shopping Centre had been chased away by some Kikuyu and that their parents in retaliation, had attacked the Kikuyu businessmen at the trading centre. Secondly, that because of the spill over of existing tension arising from the clashes in Miteitei, Kipkelion and Londiani, the Kalenjin, thinking that the Kikuyu who were holding a meeting in the neighbouring Kenya Ngairubi farm, were plotting to attack them, took a preventive step and attacked the Kikuyu. These, two reasons could not possibly be the causes for the clashes in Molo South and we dismissed them. The clashes in Molo South started suddenly. According to eyewitnesses, well organized and co-ordinated, and heavily armed Kalenjin raiders with painted faces, were the ones that attacked the Kikuyu in Molo South. We shall deal with the other reasons for this later.

217. Benjamin Ndegwa Nganga, the then Chief of Nyota Location, in Molo South, where the clashes first broke out, told us that prior to the clashes, handwritten leaflets in red ink had been seen in parts of his Location warning mainly the Kikuyu and the Kisii, to leave the area or else they would be killed. The leaflets were in the Kiswahili language and the authors described themselves as Kalenjin Warriors. The leaflets were handed over to the police at Molo Police Station on or about February 1992, but apart from the barazas which Benjamin Nganga and the area District Officer, Henry Obino, held to warn those distributing the leaflets of dire consequences if they did not stop doing so, nothing else was done to avert the threatened violence against the non-Kalenjin. As it happened about the same time that these leaflets appeared, many of the Kalenjin started moving their livestock and personal effects away into Ndoinet forest, which abutted Nyota Location.

218. The clashes in the area started on the night of 14<sup>th</sup> March, 1992. Benjamin Nganga told us that on 14<sup>th</sup> March, 1992, he saw many strangers at the Kamwaura Shopping, which worried him. Coincidentally he met his Assistant Chief, one Wilson Maritim, and on inquiring from him why there were many strange faces at the Trading Centre the latter answered that because it was a market day they had probably come there to buy livestock. Benjamin Nganga was not too happy with this answer because although it was a market day, it was not one of those market days when livestock was brought to the market for sale. Benjamin Nganga coincidentally also met later that day five Anti Stock Theft Unit police officers at the Trading Centre and was told by one of them, a Kisii, that he had seen a suspiciously large number of people in the nearby Ndoinet forest, a fact which heightened his fears of impending trouble.

219. In Sondu too, strange people were seen in the area before clashes broke out there. However, on the same day at about 10 p.m. Kenya Nguirubi farm was attacked by an armed gang who were suspected to be Kalenjin, who violently attacked several of the Kikuyu there; a few were killed, a few escaped with cut and arrow wounds, many of their houses were burnt and a number of their livestock were stolen. Among those who

died on that night was the brother of David Tom Maari, an advocate of the High Court of Kenya. He told us that he and some policemen in uniform, met the raiders face to face, near his father's farm in the Kamwaura area, armed with bows and arrows clad in red "shukas" and who threatened to kill him along with those he was with at first, oblivious of the fact that some of them were policemen. Their hostile attitude only softened when they realized the presence of the policemen with David Maari. The raiders' explanation for the violence was that because the Kikuyu had shown they would not vote for "Mzee" in the general election which was due later that year they had decided to kill them along with any other person who like them would be unwilling to vote for him; that they were paid five hundred shillings for every male adult non-Kalenjin killed and two hundred shillings for every non-Kalenjin male child killed, and that they had received their training in some forest in Bommet District.

220. On the 15<sup>th</sup> March, 1992, the raids spread to neighbouring farms where similar destruction was caused. The raiders made surprise attacks both at night and during daytime and set ablaze several grass thatched non-Kalenjin houses, stole livestock, looted houses and killed or seriously injured any non-Kalenjin they came across. Among the locations into which the clashes spread were Kapsumbeiwo, Chemaner, Kipsonoi, Nyota and Temoyetta, all in Molo South. There were a few retaliatory attacks against the Kalenjin in which some of their houses were also burnt and, in isolated cases, deaths occurred. Among those who were victims of the retaliatory attacks was a prominent farmer and retired military officer, Capt. Belsoi. However, because the Kalenjin raiders appeared more prepared, organized and the security agents seemingly supported them in view of the several instances in which they should have but did not arrest them, the Kalenjin raiders inflicted heavy casualties on the non-Kalenjin and caused them extensive loss of property.

221. The attacks on the non-Kalenjin caused fear, loss of life and property and a feeling of helplessness and hopelessness on the survivors. Several of them fled their homes with whatever little they were able to salvage and trekked towards Molo Town. This encouraged the Kalenjin raiders to make more daring and blatant attacks sometimes

within the vicinity of the security forces. For instance, on 16<sup>th</sup> March, 1992, while the District Commissioner, John Abduba, was holding a baraza at Boroni Primary School which incidentally was attended by only non-Kalenjin, the Kalenjin started torching houses nearby. They were coming in large numbers from Ndoinet forest and the presence of security men did not deter them. The police managed to arrest a handful of them, but that did not deter the others who continued looting and burning houses belonging to the non-Kalenjin. Although we were told that those arrested were later charged, no further evidence was made available to us in that regard. What is, however, notable is that the Kalenjin raiders, including those arrested then were in some sort of uniform and painted white faces implying that they were a well organized and trained militia which was fully prepared to attack the non-Kalenjin.

222. After 17<sup>th</sup> March 1992, the raids in the Molo South region were sporadic. Most people had left their homes and looters and stock thieves had a field day. Many livestock were stolen and corrugated iron sheets were removed from the roofs of non-Kalenjin houses and carried away. A few Kalenjin houses were also affected more particularly on settlement farms, which were occupied largely by non-Kalenjin. We were told that all the Kalenjin in such farms also fled and trekked towards and into Ndoinet forest to join their brethren in Bommet and Kericho Districts, which were on the opposite side of the forest.

223. After 17<sup>th</sup> March, 1992, there was a short lull, but the clashes resumed in the area and also in the Mau Summit Location on 24<sup>th</sup> April, 1992; and on 25<sup>th</sup> April, 1992, in the Olenguruone Division. Molo South is about 60 km from Olenguruone and about 30 km from Mau Summit Location. That the clashes started in the three areas simultaneously clearly shows that they were organized and controlled from a central position. Besides the reasons which were given for the renewed violence in Molo South, differed from those given for the clashes in Mau Summit and Olenguruone. We were told that on or about 20<sup>th</sup> April, 1992, four Kikuyu Administrative police officers, from Chemaner, in Molo South, while in the company of another Kikuyu went to Kalenjin homes in search of items which had been stolen in the course of the earlier clashes. The

Kalenjin who felt they were being harassed by the Kikuyu raised a war cry and then several Kalenjin armed with bows and arrows attacked the Kikuyu.

224. In Mau Summit area of Molo Division, the clashes first started on Big 15 farm, which was occupied wholly by the Kikuyu and, where several Kikuyu houses were burnt. The fires spread to adjoining farms notably Sinendet A & B which were predominantly occupied by the Kalenjin; Baraka farm, which together with African farm, Jogoo and Kamara farms, among others, were occupied by a mixture of tribes but predominantly by the Kikuyu and the Kalenjin. The burning of houses on these and other farms, affected all communities but mainly the non-Kalenjin who were forced to flee their farms to seek refuge at Mau Summit, Total Shopping Centre and Molo Town. The majority of them have not to date returned to their farms, which presently are used by the Kalenjin as grazing pastures and for their own cultivation. We were told that some of the non-Kalenjin have either sold or leased their farms to the Kalenjin as they fear returning there because of insecurity. The result is that farms which were previously occupied by a mixture of the Kalenjin and the Kikuyu like Sinendet C, are presently only occupied by the Kalenjin. Multi-partyism was given as the main reason for the clashes in Mau Summit area, but all the witnesses who testified from the area did not elaborate.

225. The clashes in Olenguruone Division of Nakuru District were most tragic, well planned and executed as all the Kikuyu and other non-Kalenjin tribes then resident in the area were driven out of their farms where they had lived peacefully with their Kalenjin neighbours for many years. Olenguruone was previously a forest reserve which was inhabited by the Dorobo (Ogiek). In 1939, however, the Europeans settled over four thousand Kikuyu squatters there. The area was originally part of Maasailand, but because of frequent clashes between the Maasai and the Dorobo, the Maasai were pushed further south to obviate further clashes. During the State of Emergency declared in 1952, most of the Kikuyu who had been settled there were rounded up and repatriated



to various places in Central Province. In 1955, Olenguruone was declared a settlement area for the landless squatters who comprised the Kikuyu, the Kipsigis and the Kisii. They were given plots of land ranging from five to twenty five acres. A few Dorobo also got land and settled alongside those other tribes. However, there was no settlement scheme for the Dorobo. After independence other tribes, for example the Kamba the Nandi and other Kalenjin tribes, although they were few, were also given land in the area.

226. The clashes in Olenguruone Division started on 25<sup>th</sup> April, 1992, and pitted the Kalenjin against mainly the Kikuyu, even though the other tribes were not spared. The area Chief Jonathan Musee Mutai and an Acting Assistant Chief, Joseph Kirui, told us that the death of one Kiplangat Arap Kipkilach, a Kalenjin who was allegedly beheaded by the Kikuyu, sparked off the violence. Kiplangat Arap Kipkilach was allegedly beheaded on 24<sup>th</sup> April, 1992 by allegedly known people all Kikuyu. John Kimutai Arap Langat who claimed to be the son of the deceased told us that he lived in the same homestead with the deceased, and that on 24<sup>th</sup> April, 1992, their home was raided by people who he did not identify. He escaped into Segemia in Maasailand where he remained until the next day when he was informed of his father's death. He returned home immediately, and by the roadside near his home he saw a headless body which he said he identified by the clothes and legs as that of his father. He did not say whether there were any special features on the legs which made him particularly identify the body as that of his father. The police allegedly took the body away but no one knows where they took it to or where it was eventually buried. Neither Jonathan Mutai nor the relatives of the said Kiplangat Arap Kipkilach formally reported the beheading to the police. Indeed, no one had gone to the police to claim his body.

227. John Kimutai Arap Langat was looked for when we raised the issue whether indeed, Kiplangat Arap Kipkilach ever existed, and if so where his body was buried. Neither John Kimutai Arap Langat nor any other person was able to tell us what happened to the headless body alleged to be that of Kiplangat Arap Kipkilach. We have a gut feeling and the circumstances seem to support the view that Kiplangat Arap

Kipkilach did not exist, or if he existed and later died, the death had nothing to do with the clashes. The then area District Officer, Paul Cheruiyot, a Kalenjin, denied under cross-examination that the death caused the clashes, but he was sure that it was the culmination of events leading to the clashes in Olenguruone Division.

228. We are of the view that there was a wider scheme to which Paul Cheruiyot and Jonathan Mutai were party, to drive out the non-Kalenjin, and in particular the Kikuyu from the area. Paul Cheruiyot denied having got any prior information about the clashes, but admitted having been told by Njihia Mwaniki that the Kikuyu in Nyambogo and Chepakundi were spending nights in the bush because they feared being attacked and burnt in their houses by the Kalenjin, which report he said he dismissed as being baseless. When the clashes eventually broke out he condoningly instructed the security men to shoot in the air whenever they saw the raiders and not at them.

229. Be that as it may, the death of Kiplangat Kipkilach was one of the reasons given by the Kalenjin, which sparked off the clashes in Olenguruone Division. It was also alleged that the Kikuyu had for several months preceding the clashes been holding night meetings disguised as religious meetings to plan and prepare to attack the Kalenjin. The meetings were held from home to home and in each of those meetings they would beat drums, sing and dance to conceal the simultaneous digging of pits inside those houses, into which they buried their personal effects in readiness for the attack which it was claimed they eventually started. Esther Martha Lavuta, a Kamba, told us that after the Kikuyu had buried their belongings they set their houses on fire to spark off the violence. This was clearly a ridiculous suggestion and has only been stated to be rejected. The other reason given for the clashes is a claim by the Kalenjin that on 24<sup>th</sup> April, 1992, cows belonging to one Arap Kogogen, a Kalenjin, were slashed by people who were believed to be Kikuyu. The incident, coupled with the other incidents we have stated, above, were according to the Kalenjin, the immediate causes of the clashes in the area. However, the area District Officer who was allegedly informed by the Chief about the maiming of the animals denied any knowledge of that incident. In that regard his

testimony is at variance with that of the area Chief. We observe here that the slashing of animals was also given as a reason for the clashes in Ol Moran.

230. The Kikuyu on their part stated that the clashes had been planned and executed by the Kalenjin with a view to driving out of Olenguruone all the non-Kalenjin and more particularly the Kikuyu so that they would thereafter occupy their land.

231. Whatever the reason and motive for the clashes, the people who were driven away were the non-Kalenjin. The Kalenjin who were heavily armed, with painted faces, and wearing some sort of uniform raided non-Kalenjin houses, either killed or wounded any non-Kalenjin they came across, looted and torched their houses, and stole their livestock. They later demolished the non-Kalenjin houses and took away the building materials. This also showed that they were the aggressors and that they did not want the non-Kalenjin in the area. We were told that a group of over three thousand non Kalenjin being led from Chepakundi to Olenguruone town by Pastor Daniel Serebebi Saramiah Kipsigei, a Kalenjin, met a gang of about one hundred and sixty Kalenjin raiders in some sort of uniform, who threatened to kill them, and could have done so had the Pastor not pleaded with the Kalenjin raiders to leave the defenceless non-Kalenjin alone. As all this was happening the security forces were nowhere to be found. Their complacency was conspicuous, and when looked at objectively it bordered on connivance. All non-Kalenjin were driven out of Olenguruone, and to date only a few, non Kikuyu, have returned to their farms. We were also told that when Njuguna Maina, a Kikuyu, attempted to go back to his farm, he was hacked to death. The fact that many people have not returned to their farms for fear of insecurity seems to suggest that, the Police Force and the Provincial Administration connived at the ethnic violence in the area. The roles in the clashes particularly of Paul Cheruiyot and Jonathan Mutai should be further investigated.

232. Clashes in Naivasha Division pitted the Maasai against the Kikuyu, but witnesses could not give an exact date for this. What was clear is that the clashes may have been sparked off by rampant stock thefts in the area with the Kikuyu and not the Maasai, as victims. As a result of such thefts one Maasai who was suspected to be a stock thief was killed. Three people, all Kikuyu, who were suspected as the killers were arrested, arraigned in court for murder, but were eventually acquitted. We were told that the acquittal did not please the Maasai who in retaliation, attacked and killed three Kikuyu in broad daylight, at Kigecha Village, in Maai Mahiu Location; but the killers were not identified and no arrests were therefore made. Three or so days later, without any provocation whatsoever, the Maasai invaded Kigecha village again while armed with sharp weapons, burnt several houses and grain stores belonging to the Kikuyus and killed at least ten people and injured several others, all Kikuyu, before they escaped. In this second raid other neighbouring villages were also affected.

233. The area Chief Lasiit Ole Kipelekenya, and Joseph Chege the Assistant Chief of Maai Mahiu Sub-Location which was mainly affected by clashes, told us that the clashes came as a surprise to them, but were decisively dealt with by the Police Force. The Provincial Administration officers on their part organized barazas to reconcile the warring parties and since then there has not been any recurrence of the clashes. It is noteworthy that although the area was inhabited by other communities like the Kisii and the Luo, they were not affected by the incidents of arson, murder and thefts. Only the Kikuyu were affected and we think that there must have been a political motive for this. The District Criminal Investigations Officer at the time, Dida Golicha, told us that the clashes in the Naivasha Division were a spill over from Enoosupukia, but we did not receive any other evidence to corroborate it. What we think was the underlying cause was the general Kalenjin and Maasai hatred for the Kikuyu on political grounds, and the clashes were meant to destabilize them as they were quite many clustered in an area which was believed to be a KANU zone. The Kikuyu at the time made no secret about their opposition to KANU, which was predominantly supported by the Kalenjin and the Maasai in the Rift Valley Province. The clashes may well have occurred just before the

1992 general elections, otherwise, no other plausible explanation was given for the clashes nor can we discern any.

234. With regard to the causes of the clashes in Nakuru District we earlier set out in general terms what we were told were the causes and motives for the clashes. The evidence before us looked at as a whole discounts those as the possible reasons for the clashes. All the areas apart from Naivasha, within the District that we have considered, fell within Molo Constituency which at the time had as its member of parliament, Njenga Mungai, a Kikuyu. But with the introduction of multi-party in 1992, political parties were based on ethnic loyalties. Enough has been said about this and the strained inter-tribal relations that it caused. We will now only refer to the following evidence of some of the people from Nakuru District namely, Peter Asiago, a Kalenjin primary school teacher, Augustine Kipkemoi Ngerich, another Kalenjin from Baraka farm in Mau Summit, and David Masubuch Malel, Chief of Chemanel Location, and contained respectively in the verbatim reports of the proceedings of the Judicial Commission of 16<sup>th</sup> November, 1998, 20<sup>th</sup> November, 1998, and 2<sup>nd</sup> December, 1998:

“Mr. Asiago: My Lords the kind of discussion was that, ‘You Kisii are “kamama” so you have to support us’...

Chairman: The Kalenjin teachers told the Kisii teachers that they expected your support?

Mr Asiago: Yes, My Lords. ... The Kalenjin said ‘If you do not support us, you will have to move.’”.

“Sometimes, we used to hear that Moi would not win and I think such utterances from politicians could create hatred amongst the communities ...

Kiplenge: And that more specifically they were not happy about these people who came from other tribes and who might have sympathized with the new leaders of opposition who wanted to take the Presidency?

Mr. Ngerich: Yes, my Lords.”.

“Mr. Chairman: Kalenjin did not want Kikuyus to join FORD.

Justice Bosire: What did they fear that such membership would do?

Mr. Malel: My Lords I think they thought that FORD as a party was going to take over the government ...

Mr. Malel: Yes, they thought that Kikuyus were going to take over the leadership

...  
Mr. Malel: I have said that the Kalenjin did not want the Kikuyus to join or support FORD ... They were happy with the party ...

Mr. Chairman: They were happy that there was multipartyism to enable them support FORD a rival political party?

Mr. Malel: Yes, My Lords.”.

235. The pattern the clashes took clearly showed that those who either supported or were sympathetic to the emergent multiparty politics were the ones targeted. Except where we had retaliatory attacks no Kalenjin or Kalenjin houses were affected by the clashes. The Kikuyu and the Luo who were in the forefront in the support of plural politics suffered the most. The other tribes who expressed some limited support of the same, like the Luhya and the Kisii were also affected. The planners and perpetrators of the clashes in Nakuru, more particularly during the 1991 to 1993 clashes cannot have come from the area. John Rono Bor, Chief of Mau Summit Location, as appears in the verbatim report of the proceedings of the Judicial Commission of 4<sup>th</sup> December, 1998, was emphatic on this. He said:

“... I have in mind that the reports that we were hearing about clashes in other places; the Kikuyu community clashing with Kalenjin, reports about casualties arriving in Molo hospital, people with arrows in their heads, corpses with missing parts of the body like private parts, headless corpses and so on, must have developed hatred among the two communities ... So, I believe some people somewhere must have made an arrangement to come and avenge on us. But I wish to exonerate my people; they did not know, even Kikuyus when the torching took place, ... And even most of them had gone to their farms. On the following day on 25<sup>th</sup>, there was a mass exodus. That means that these people did not know the cause of the clashes.”.

He was also emphatic that the motive for the clashes was political. He made us to understand that the Kikuyu were excited about multi-partyism and the Kalenjin thought that they were humiliated by the utterances of the Kikuyu. The clashes in Nakuru District have also to be looked at against the political climate of the time. Before the clashes erupted in the district there had been clashes in Tinderet in Nandi District, and in Kipkelion, Chirchila, Londiani, and Sondu in Kericho District. All these clashes were preceded by political rallies at Kapsabet, Kapkatet and Narok in which prominent Kalenjin leaders preached one message, namely, that all the non-Kalenjin who did not support KANU must leave the Rift Valley Province “or else”, they would be driven out by force. The politicians included senior cabinet ministers in the government of Kenya

including the then Vice-President of the Republic of Kenya George Saitoti. We have no record to show that any action was taken against them for their unsavoury and inflammatory statements which in our view were prima facie, criminal as they were meant to incite the public to violence. Nor do we have any evidence that any of the politicians protested what was attributed to them in the print media. As we stated elsewhere in this Report many communities in Kenya, and more particularly the Kalenjin, follow what their leaders advise. Consequently, considering the timing of the clashes, those leaders became the prime suspects as the perpetrators and planners of the clashes. Otherwise, they owe this country an explanation as to why, as is expected of the Government, its leaders and servants, they did not respect the law.

236. Besides it is too much of a coincidence that the clashes appeared systematic, the raiders were dressed and armed themselves in a similar manner in all the affected areas, and that the same community, the Kalenjin, were the aggressor in all cases, targetting the other ethnic communities which did not agree with them politically. Moreover, the clashes immediately preceded the general elections of 1992, and we believe that they were intended to drive away communities who were likely to vote against the party in power KANU, which the majority of the Kalenjin supported. This political objective was used to stir up and to spur on the traditional Kalenjin antipathy against the Kikuyu and their age long desire to regain the lands which they say they lost during European settlement in Kenya.

237. The 1992 and 1993 clashes in Nakuru affected mainly Molo and Olenguruone Divisions, which have since been sub-divided into several other Divisions. For instance Molo, as it then was, now has Kamara, Kuresoi, Keringet and Molo as divisions. By 1992 there were three District Officers in Molo Sub-Division two of whom were based at Molo and one at Olenguruone. When the clashes first broke out the two District Officers who were based in Molo, Henry Obino and one Wanjohi, acted swiftly, and we think, decisively, as they with the then Officer Commanding the Molo Police Station, Joseph Saoke, mobilized the security men under their command, moved to the scene of the clashes and arrested over one hundred and forty suspects for various offences including

murderer and arson. Their action stopped the clashes in the Kamwaura area within two to three days and as we have come to expect, the three officers were transferred immediately thereafter. Henry Obino was transferred even before he completed his report on the clashes. We have a feeling that whoever effected the transfers must have wanted those officers out of the way so that realization of the purpose of the clashes should no longer be obstructed or hindered.

238. Besides, we heard evidence of events prior to the clashes. There were leaflets circulating in Molo South warning the non-Kalenjin to move out of the Rift Valley or else they would face dire consequences. There was talk among school children of plans to evict the non-Kalenjin, which initially were not taken seriously. Cosmas Onderi Petro, a resident of Cheptagum farm in Molo South, told us that the impending clashes were common talk in his area and also that one Ntimamu, a Kalenjin, who worked for Jonathan Ngeno, then a Cabinet Minister, had told him that there would be war to drive out the Kikuyu from the area. Thereafter, there was a general exodus of the Kalenjin into Ndoinet forest with their livestock and personal effects. The District Officer of Olenguruone Division, Paul Cheruiyot, was told, at least two weeks before clashes broke out there, that the Kalenjin had vowed that they would burn all the Kikuyu houses with a view to driving them out of the Division, but he did nothing about it. Besides on or about 21<sup>st</sup> April, 1992, some Kikuyu families had reported to him that they had heard rumours of impending attacks on the Kikuyu in the area, but he dismissed their information as baseless notwithstanding the information he already had concerning the fact that the Kalenjin had threatened to do so. Neither the Chiefs, nor their Assistants passed these pieces of information to those in authority, and where that was done, no action was taken to preempt the clashes. So in Nakuru District, the events preceding the clashes reveal a general reluctance on the Provincial Administration officers, who knew well that clashes would occur, to take any pre-emptive action. For instance, Assistant Chief Wilson Maritim, disappeared as soon as the clashes broke out within his Sub-Location in Molo South and was nowhere to be seen until after the clashes had been stopped. He did not even attend two barazas, one which was chaired by the District Commissioner and the other by the Provincial Commissioner, both which were held in



his Sub-Location. As it later turned out, he had prior knowledge of the impending clashes and had contact with the raiders, but he withheld that information from those who needed to know it and who would have taken preventive action. He was later retired from the public service because of his involvement in the clashes but we think that mere retirement was not sufficient punishment.

239. A common feature in all the clash areas which we have already described was the late arrival of the Police Force and the Provincial Administration officers at the scenes of the clashes and their deliberate reluctance to shoot to disable and to arrest those caught red handed in taking part in the clashes. That behaviour coupled with what we have stated clearly suggest that those who were supposed to prevent or stop the clashes had prior knowledge they would occur, but did not want to stop them or were under orders not to do so. The raiders must also have either had prior reassurance in this regard or having observed that the police by firing into the air, did not intend to kill or arrest any of them carried on their attacks undeterred. It was no wonder therefore, that in Molo South while the District Commissioner was holding a baraza at Boroni Primary School, the arsonists were busy torching houses within the vicinity of the venue of that baraza.

240. Another common feature in the clash torn areas, Nakuru District included, was the fact that the clash victims were driven out of their homes and farms into camps in towns and trading centres where they lived in make shift structures and in unsanitary conditions, with their children unable to go to school and with little or no food and medicines. Yet, apart from the assistance which NGOs and churches provided, the Police Force and the Provincial Administration officers did not take any or sufficient steps to ensure that the victims were provided with basic needs. Instead, what we were told they did was to order the victims to return to their farms notwithstanding that the security situation was volatile. The victims' houses having been burnt it was mischievous and insincere for the Police Officers and the Provincial Administration officers to require them to return to their farms. For instance in Olenguruone, the then Provincial Commissioner, Mohamed Yusuf Haji, and the late Mr Ishmael Chelanga who was then District Commissioner of Nakuru District, told thousands of victims at Olenguruone on 28<sup>th</sup> April, 1992, to return

to their farms on the ground that security had been improved. This was after the two administrators had flown over the area and seen that most of the houses had been burnt down or were still smouldering. It was illogical to expect the people to return to their farms when they did not have shelters to live in and when the security situation was still volatile. That was conduct which showed extreme callousness on the part of the security forces and the Provincial Administration for the plight of the victims, and possible connivance of the clashes by them.

241. Similarly in many if not all clash torn areas, the Police Officers and Provincial Administrators heavily relied on and over emphasized the importance of "barazas". While we concede that barazas are an important tool for the dissemination of information particularly regarding government policies in times of peace, and also that barazas may be used to promote reconciliation where the matter in dispute is simple and clear, we do not think that having regard to the serious and ethnic nature of the clashes, the barazas could, or indeed, achieved much during the clashes. In some cases we think they were an excuse for not taking decisive action to stop the clashes. The Government to the common man is represented by the Provincial Administration and the Police Force, and if those cannot offer them the protection they need then the basis upon which their faith in the Government is anchored is completely eroded. That is what many of the clash victims who have yet to return to their farms told us, and the blame lies squarely with the Provincial Administration and the Police Force who seem to have abdicated their responsibility of giving equal protection to all people.

242. On 2<sup>nd</sup> September 1993, Molo, along with Burnt Forest and Londiani were declared security operation zones under Section 85 of the Constitution and Part III of the Public Security Act. This was at the time when there was a revival of clashes in those areas.

243. In Molo, renewed violence started with a spate of stock theft of non-Kalenjin, livestock and also when a Mkorino from Kariba farm was killed when he tried to resist the theft of his livestock. It was followed by leaflets advising the non-Kalenjin to leave the Rift Valley Province. Then there followed an attack on 25<sup>th</sup> July, 1993, of one Mongare at Bachuke farm, and on the same night a woman known as Teresa Moraa from Kongoi farm was attacked and robbed in her house. Geoffrey Nganga and George Gachengo of Tebere and Wira respectively in Molo South were also attacked on 26<sup>th</sup> July, 1993, and their livestock were stolen. On 1<sup>st</sup> August, 1993, as the police were investigating these attacks, the families of Sanden, Kiplangat Tuwei, and Daniel Chepkwony, all Kalenjin, were attacked, and one of them, Kipyegon Sanden, was killed. Though the attackers were not identified they were believed to be Kikuyu. The police then raided Morinduko farm, which was occupied mainly by the Kikuyu, and recovered two home made guns, a thunder flash, a quiver containing seven arrows, a hand axe, a Somali sword and three live bullets. About the same period William Ole Ntimama the well known Maasai politician, is reported in The Standard of 5<sup>th</sup> April, 1993, Exhibit 173, to have decried the manufacture of firearms in Molo and Enosupia. We think that this exposure must have been one of the reasons why the Government took prompt action in quelling the clashes in the area then. We were also told that the attack on the three Kalenjin families and the recovery of the weapons sparked off an attack on the Kikuyu and the Kisii at Arimi farm which is occupied by mixed communities, and that Hillam Kamau, a Kikuyu aged seventy five years, was shot with five arrows, which were later found stuck in his body. He later died from the arrow wounds. His workman, Anthony Asiago, a Kisii aged twenty eight years, was also killed. The attackers went to the home of a Mrs Mukuni, a Kikuyu, raped her and escaped with some of her properties. They also attacked the home of one Kabue set his house ablaze, and injured his son Joel. The raiders then moved on to an adjoining farm, Temoyetta 4 where they attacked and killed one Philip Kamau Njuguna and injured a visitor who was in his house. The raiders were believed to be the Kalenjin. We were also told of the killing of a Kalenjin boy at Kamwaura by people suspected to be Kikuyu.

244. In the course of the swift and decisive operation by the police, Ruth Chepkorir w/o Langat, and a Kalenjin, was shot and killed at Temoyetta 4. This death and the other incidents aroused a lot of interest and consternation. Some policemen who were suspected to have shot her were immediately arrested and were soon thereafter arraigned in court for murder. We were told that they were eventually acquitted of the charge for lack of evidence, but the damage had already been done.

245. We have narrated the foregoing incidents which occurred in July and August, 1993, to show that the police action then and the government reaction to the clashes was different. They were swift and decisive. The Government soon thereafter declared the area a security operation zone, even though in comparison, the events of 1991 and 1992 regarding the clashes, were of greater magnitude and caused greater suffering, loss of life, damage and destruction of property. The Government action in July to September 1993, including the declaration of Molo as a Security Zone demonstrated a greater willingness than before to end the clashes. The action and the security operation in Molo Division seemingly brought the clashes to an end as since then no clashes of the same magnitude have been experienced there. There were, however, isolated incidents of stock thefts and incidents of house breaking and burglary, but which are not of major concern to the residents. Of major concern, however, is the fact that neither the ordinary police operation nor the security operation in Molo has facilitated the return of all clash victims to their farms. Many, particularly in Mau Summit and Keringet area are yet to return to their farms. The case of Olenguruone remains a scar in the Government image. We were told that some displaced people from Olenguruone had been given alternative land in Elburgon area, but the beneficiaries clearly seemed uncertain and doubted the sincerity of the government for the gesture which they believe is merely an exercise intended to placate them and later drive them out.

246. The clashes in Nakuru District, apart from taking lives, causing destruction and loss of property, and displacing a large number of people, engendered hatred among communities particularly the Kalenjin and the Kikuyu to the extent that at the height of the clashes no Kalenjin could travel through towns like Elburgon or Molo; and no Kikuyu could move freely in any area predominantly occupied by the Kalenjin. They would be instantly killed. A farm manager of Benjamin Kipkulei, a former Permanent Secretary in the Ministry of Education was stoned as he drove his Toyota pick-up through Molo town and was eventually burnt inside it merely because he was a Kalenjin. We were told that those responsible were the Kikuyu, the Kisii, the Luhya, the Luo and the Kambas who were then resident in the town. Mutual suspicion more particularly between the Kalenjin and the Kikuyu which for sometime had thawed to some degree was heightened. Government officers in those areas also tended to be partisan in favour of their ethnic communities. The late Ishmael Chelanga, the District Commissioner of Nakuru District at the time, and in abuse of his office, withdrew security men from Molo South on the pretext that they had been away for too long from their families; but if that was the real reason, then the logical thing that he should have done was to have sent replacements, which he did not do. His action was questioned by Archbishop Ndingi Mwana Nzeki, who was then the Catholic Bishop in charge of the area, but to no avail. Dida Golicha, the then Divisional Criminal Investigations Officer at Nakuru, testified that a Kalenjin policeman at Tebere farm in Molo South, refused to take action against known Kalenjin who had reportedly killed Daudi Osoro, a Kisii. The security men were also used to further sectoral interests. The Archbishop testified, as in the verbatim report of the proceedings of the Judicial Commission of 23<sup>rd</sup> July, 1998 as follows:

"Archbishop Ndingi: Some of my team went to Molo Police Station. While at Molo Police Station, the PC and DC came there in a helicopter as though they were inspecting what was happening. After that, we drove to Olenguruone Parish and stopped at the DO's Office. There, we found some – whether they were soldiers or police I do not know – but they were dressed in camouflaged uniforms. When we tried to take a picture of the contents inside the car, they refused. We did see military helicopters flying over Olenguruone and asked ourselves, "what are they looking for?" Since people who had been driven from there were there, these helicopters never landed to talk to us or anybody, what was their mission."

247. It was not the Government's official or declared position that it was supporting the clashes, or the eviction of certain communities. However, it was clearly evident that

certain Government officers, particularly those in the Provincial Administration either acquiesced to or supported the clashes. The clashes, therefore, divided the government servants in Nakuru District as it did the people along tribal lines. Perhaps that will explain why police action was prompt and decisive when a Kalenjin woman was killed because the Provincial Police Officer, Francis Sang, a Kalenjin, personally went to the scene to oversee the investigations into her death. The death of Capt. Belsoi also elicited a similar response.

248. We were also told that because of mutual suspicion, farms with mixed communities have experienced an unprecedented sale of land by the minority groups who move to areas where their people are predominant. All the Kikuyu forced out of Olenguruone cannot return there without risking their lives. We were also told that most of them have sold their land cheaply to some Kalenjin so that they can settle elsewhere. We were told of similar sales in Molo South and Mau Summit areas. That has in a way led to what Prof. Ezra Kiprono Martim recommended should have been done during the settlement exercise, namely, that ethnic communities should have been settled together with a greater bias in favour of the indigenous people. However, the result is being achieved through a process which may be termed as ethnic cleansing, which seemingly had Government tacit approval as some Kikuyu and Kisii victims of the clashes from parts of Chepakundi in Olenguruone Division, have now landed at Elburgon area.

249. Socially, many people have been forced into urban centres where they live in abject poverty; there is an increase in layabouts in urban and shopping centres, and possibly an increased crime rate.

250. Economically, many farms in Molo and Olenguruone Divisions, as they then were, are lying idle and we think that overall food production must have been adversely affected. These and the other factors, we have talked about are a potential source of future conflict.

## **OL MORAN AND NJORO**

251. Clashes in Ol Moran and Njoro Divisions like those in Enoosupukia area of Narok District which we will deal with later, occurred after the general election unlike those in other areas which preceded it. The two areas were part of the former European settlements, and are presently administrative Divisions, the former in Laikipia District and the latter in Nakuru District. After independence the Settlement Fund Trustees took over farms in those areas and later sold them to various land buying companies, among them Mutukanio Co. Ltd and Laikipia West Co. Ltd, which companies together with several other sister companies were associated with Dixon Kihika Kimani, a one time member of parliament for Laikipia West within which Ol Moran falls, and the current member of parliament for the Molo Constituency within which Njoro falls. The shareholders in those several land buying companies the Kihika Kimani helped to form, were from different ethnic communities, including the Kikuyu who were the majority. Those shareholders form the majority of the residents of Ol Moran and Njoro and also other Divisions in other areas where the companies bought land, which include Nakuru North Constituency, which Kihika Kimani one time represented in parliament.

252. In Ol Moran, apart from the Kikuyu, the Kisii, the Somali, the Luhya and a few other people from smaller tribes, who all are agriculturists, we also have the Pokot, the Samburu and the Turkana, all who are pastoral tribes, resident in the area. These pastoral tribes are the indigenous peoples of the area who were driven out by the colonialists to create room for European settlements. The sale of former European farms to other tribes has over the years been a source of disquietude among the pastoralists who feel that they were improperly deprived of their ancestral land and that the presence of these other tribes constitutes an interference with their grazing rights in the area. We

were told that whenever they felt like these pastoral tribes would graze their livestock on the farms of the agriculturists and sometimes even on the crops growing there. This blatant illegal grazing had over the years been a source of conflict between them and the agriculturalist tribes there. Be that as it may, a few of them bought some shares from some shareholders of Mutukanio Co. Ltd and Laikipia West Co. Ltd and settled there among the non-pastoral tribes. Otherwise the majority of the pastoral tribes live in their former reserves in Manyattas. They migrate from time to time in search of pastures for their livestock which are their lifeline. Their attachment to livestock is cultural and sentimental with the result that any interference with them evokes anger and consternation on their part.

253. The pastoral tribes sometimes referred to as Kamatusa (Kalenjin, Maasai, Turkana and Samburu) are also traditional stock thieves. The Judicial Commission was told that because of the high incidence of cattle rustling in the area, mainly against the agricultural tribes, by January, 1998, when clashes broke out in Ol Moran, none of them kept any cattle. However, a few of them kept goats which they locked up indoors at night, a fact which caused the pastoralists to resort to the use of firearms to rob the owners of their goats. Indeed, clashes in the area were said to have been sparked off by such an incident which we propose to deal with later. Previous complaints by the non-pastoral tribes in that regard had not elicited any assistance from the Provincial Administration and Police Force. We were told that out of desperation and frustration the non-pastoral tribes, in 1996, held a protest march in the area while carrying the body of a victim killed by the pastoralists in the course of cattle rustling, to express their anger and frustration at the Government's seemingly lack of concern for their security and welfare. The action spurred the Government to send a contingent of armed security men into the area to evict the pastoralists who then and from time to time used to invade the non-pastoralists land in search of grass, but for some reason the eviction did not materialize, with the result that the problem persisted until the clashes under consideration broke out.

254. Ol Moran, before January, 1998, was a location within Ngarua Division, and was made into a Division on or about 22<sup>nd</sup> January, 1998, when the then Provincial



Commissioner, Nicholas Mberia, visited the area at the height of the clashes. The making of Ol Moran into an administrative Division was one of the measures he instituted to contain the clashes and armed conflict in the area generally. Previously, it was being administered from Ngarua (Kinamba) where the District Officer was based. We heard evidence that the area had a police post and an Anti Stock Theft Unit (ASTU) Camp at Ol Moran as the only security centres, with only a handful of police officers, who lacked essential facilities like transport and communications equipment. When Ol Moran was made a Division, the police post at Ol Moran Trading Centre was also elevated into a police station.

255. That a Location was elevated into an administrative Division clearly indicated how expansive the area was, which the Ngarua District Officer administered. This when considered with the available scarce security centres and their lack of transport and communications equipment, lends some justification to the complaints by the non-pastoral tribes about lack of security. We were also told that the area has a difficult terrain, poor infrastructure, and whenever it rained people could only move from one place to another on foot. These were given as constraining factors to effective administration and security surveillance, but as we shall observe later in detail the greater problem was laxity and complacency by provincial administrators and the security personnel.

256. Politically, Ol Moran falls within Laikipia West Constituency, which until 1992, had G.G. Kariuki, a Kikuyu, as its KANU member of Parliament, but he lost the seat in the 1992 general elections to Dixon Kihika Kimani, also a Kikuyu, who vied for the seat on a DP ticket. The latter did not, however, defend that parliamentary seat in the 1997 general elections, but opted to contest the parliamentary seat for Molo constituency which he easily won on a DP ticket. Chege Mbitiru, also a Kikuyu, won the Laikipia West Parliamentary seat in 1997, on a DP ticket against a Samburu KANU candidate. Laikipia West, like Laikipia East, has a strong DP following and this has been one of the causes of disharmony between the pastoral tribes, who are predominantly KANU

supporters, and the non-pastoral tribes, who are predominantly or perceived to be opposition supporters.

257. Clashes in Ol Moran Location started on the night of 11<sup>th</sup> January, 1998, when a gang suspected to be of the Pokot, armed with among other weapons, firearms, raided the home of Esther Njeri, a Kikuyu widow, and stole fourteen of her goats. She raised an alarm which drew the attention of her predominantly Kikuyu neighbours who pursued the thieves and managed to recover ten of the goats. On the same night, the home of one Lechau Apalungeiya, a Pokot, who lived in the same area, was raided by a gang of people believed to be Kikuyu, who cut and killed about forty of his goats, maimed or killed some of his cattle and allegedly burnt four of his houses there. It is not clear whether those who raided his home were the same people who recovered Esther Njeri's goats, or whether it was another gang. It is also not clear whether any of his houses were burnt because, although Lechau Apalungeiya and other witnesses testified to that effect, the then Ag District Commissioner of Laikipia, Lorna Odero, who visited the home two or so days later, denied she saw any burnt houses there. However, we were told that the killing and maiming of Lechau Apalungeiya's livestock greatly incensed the Pokot who, in a meeting which the area District Officer, Jonathan Soi held on 13<sup>th</sup> January, 1998, insisted that the Kikuyu compensate Lechau Apalungeiya with an equal number of livestock as those killed or maimed before they could discuss peace and reconciliation. A committee of twenty elders was chosen from both sides to discuss peace, but the Pokot adamantly refused to co-operate before their demands were met.

258. On the night of 14<sup>th</sup> January, 1998, the Pokot together with the Samburu raided several Kikuyu homes in the Magadi area, killed two people and looted and burnt several houses. The incident caused fear and panic among the Kikuyu and other non-pastoral tribes who then fled their homes and sought refuge in Ol Moran Catholic Church and other churches in Ol Moran, Sipili and Kinamba. The arson and murder continued on 15<sup>th</sup> and 16<sup>th</sup> January, 1998. Neither Jonathan Soi nor the Officer Commanding, Ngarua Police Station, the late Chief Inspector Jeremiah Ndahi, made any arrangements for the security of the refugees or for the provision of food and other essential requirements for

them. At some stage the Catholic Church moved some of them to places which were considered safer because of a threatened attack on them by the pastoral tribes.

259. We were told that the Kikuyu in Sipili, and other neighbouring areas, who felt that the Government was in a way condoning the attacks, mobilized and armed several Kikuyu youths, numbering about three hundred, with pangas and sticks among other weapons, who were transported in commandeered matatus to Magadi in Ol Moran to avenge the killing of the Kikuyu there and the destruction of their property. We were also told that several Kikuyu women were mobilized and sent to a Training Centre known as Survey where they made meals for the Kikuyu youths. Because the rain had made the road into Magadi area impassible the Kikuyu youths would get off the matatus at Survey and proceeded on foot to Ngosusu area in Magadi. What happened when they reached Ngosusu is a matter of inference. Over forty one bodies, two of which were identified as being that of a Pokot and of a Turkana, were later recovered and were positively identified as those of the Kikuyu youth largely from Sipili. It would seem that the Kikuyu youths were confronted by well armed Pokot and Samburu warriors who butchered them and rendered their revenge mission a disastrous one. The clashes in Ol Moran effectively ended on 18<sup>th</sup> January, 1998, as thereafter, no incidents of tribal clashes were reported.

260. The Judicial Commission was told that the theft of Esther Njeri's goats and the subsequent killing of Lechau Apalungeiya's livestock was reported at Ol Moran Police Post, and later to Jeremiah Ndahi and Jonathan Soi. They in turn, notified their respective superiors, the Officer Commanding the Police Division, Mutinda Ngunguni and Lorna Odero, as indeed, they were supposed to do. Jonathan Soi, gave a detailed account of what he and the Officer Commanding Ngarua Police Station, since deceased, did to contain the violence, but in our view what they did fell far short of expectation. He said that he was first informed of the events of 11<sup>th</sup> and 12<sup>th</sup> January 1998, on the

morning of 13<sup>th</sup> January, 1998, after which he immediately proceeded to the scene which was at a place called Mirigwit. He visited the home of Lechau Apalungeiya, saw his killed and maimed livestock, talked to him and several Pokot people he found there, promised to take appropriate action against the culprits and to consider the possibility of paying compensation to Lechau Apalungeiya, without saying who would pay the compensation. He promised to return the next day, which he did with a District Officer II Special Duties, Kobia, who had been sent by Lorna Odero, to find out what exactly had happened. The two preached peace and reconciliation which as we stated earlier, was rejected by the Pokot unless appropriate compensation was paid. The both Jonathan Soi and Kobia did not sense any impending trouble from the negative stance by the Pokot and so did not take the necessary steps to avert it. They simply drove away to Kinamba, leaving the Pokot disgusted and in a fit of rage. It was not surprising therefore, that on the following night the Pokot and their Samburu allies, attacked the Kikuyu in Magadi Sub-Location, killed two of them and burnt more than twenty five Kikuyu houses. When later the next morning Jonathan Soi was informed about this, he did not make any plans to avert or contain further violence. We were told that the Pokot and Samburu lived in Manyattas or clustered homesteads, which, for any person determined to contain their activities, would have been easy to monitor. Yet neither Jonathan Soi nor Jeremiah Ndahi, considered it appropriate to specifically deploy the few security men they had to monitor the movement of the Pokot and the Samburu.

261. Besides on 16<sup>th</sup> January, 1998, the Jonathan Soi was informed by the Assistant Chief of Sipili Sub-Location, John Kipkoech Kimaiyo, that the Kikuyu there had mobilized several youths to go to Ol Moran to avenge the killing of their people there. Instead of taking immediate steps to stop the planned attack, Jonathan Soi did nothing even in the face of abundant evidence that such attack had been planned. We were told that on the morning of 17<sup>th</sup> January, 1998, he saw and talked to several Kikuyu women at Survey who were cooking a large amount of food, which in view of the prevailing situation there should have warned him that something bad was in the offing. In the Police Report of an Inquiry Into The Circumstances Which Led To Clashes in Ol Moran, Exhibit 12, which was prepared by a team headed by Issac Maitiri Muthuri, Deputy

Commissioner of Police, it is stated that Jonathan Soi Jeremiah Ndahi had met groups of Kikuyu youths, armed with stones, rungs, pangas, bows and arrows and spears marching towards Ngosusu, but they did not stop them. Jonathan Soi in his evidence denied having seen the armed groups of Kikuyu youths, but we did not expect him to admit it in view of what eventually happened to them. Besides, the behaviour of Jonathan Soi and the Jeremiah Ndahi, on the evening of 17<sup>th</sup> January 1998, as testified to by Father Borsa Sandro of the Catholic Church, when he visited them at Kinamba, leaves no doubt in anybody's mind about the blatant indifference and complacency of the two officers to the clashes in Ol Moran.

262. Father Borsa Sandro testified that on the instructions of Bishop Kirima, he visited the two officers at Kinamba to inquire about the plans they had to contain the violence in Ol Moran. Despite the fact that reports from the area indicated that there was widespread arson and other incidents of violence, both of them independently told him not to worry, because, according to them, the situation was under control. That behaviour was not isolated as evidence of similar behaviour by other Provincial Administration officers and the security forces in other clash hit areas was adduced in this Inquiry. The behaviour the next day of both officers was hostile to the catholic priest as among other things, they refused to discuss with him ways to contain the violence in the area, a fact which the Jonathan Soi admitted before us but argued that he did so because he first wanted to see a copy of some memorandum from the Catholic Church which the priest said he had come with before he could agree to talk to him. This behaviour and his subsequent behaviour, was one of indifference and callousness and connivance. In our view Jonathan Soi and Jeremiah Ndahi deserved at least, a severer disciplinary action possibly dismissal, than a mere stern warning which the Muthuri Committee had recommended in Exhibit 12, if not criminal prosecution.

263. The Officer Commanding Police Division, Mutinda Ngunguni, did not fare any better. He was the senior-most police officer in the District and yet he did not take any notable action to stop the clashes or apprehend the raiders. He neither effected any arrest nor assisted in the arrest of any raiders or arsonists. One would have expected that as

the most senior police officer in the District, he would take charge of and lead the security operations but he didn't. His behaviour, like that of Jonathan Soi and Jeremiah Ndahi bordered on that of an aider and abetter of the clashes. The recommendation in the report of the Muthuri Committee, Exhibit 12, that he should be served with a stern warning, is ridiculous. In our view severer action against him, possibly a dismissal is called for, if not criminal prosecution.

264. Lorna Odero, told us that on at least three occasions between 14<sup>th</sup> and 18<sup>th</sup> January, 1998, she petitioned the Provincial Commissioner of the Rift Valley Province who was at the time, none other than the notorious Nicholas Mberia, for security reinforcements, but none was sent until 19<sup>th</sup> January, 1998, after the Pokot and the Samburu, had on their own accord stopped their onslaught on the non-pastoralists. Of course, Nicholas Mberia, did not bother to visit the area until 22<sup>nd</sup> January, 1998, when he held a baraza at Ol Moran, and belatedly instituted measures to end the violence, which measures, in our view, he should have taken immediately he was notified about the existence of clashes in the area. The measures included the establishment of several police posts, the elevation of Ol Moran Police Post into a police station, the elevation of Ol Moran Location into a Division and the posting of another District Officer to the area, and most important of all, but far too late, the deployment of a contingent of GSU men there. The measures were laudable in as far as any future incidents were concerned, but with regard to the clashes at the time, they were only a public relations exercise having come too late after over forty one lives had been lost, several houses had been burnt, loss of valuable property had occurred and many people had been displaced and their normal lives disrupted. Nicholas Mberia, as the District Commissioner in Kericho in 1993, will be remembered for intransigent, partisan and illegal role he played in his handling of the Luo squatters at Buru farm in Thessalia. As we shall later show, he adopted a more or less similar role and attitude in dealing with the Njoro clashes.

265. The behaviour of the Provincial Administration and the Police Force no doubt was reminiscent of people who, directly or otherwise, condoned the clashes. It was, therefore, not surprising that Lorna Odero, was on 16<sup>th</sup> January, 1998, shouted down by

the irate displaced persons who were camped at the Ol Moran Catholic Church, when she tried to tell them that steps were being taken by the Government to reinforce security; and likewise the Kikuyu in Sipili, on the same day, resorted to self-help measures of recruiting their youths to deal with their security problem. We wish to observe here that the behaviour of the Kikuyu was evidence of frustration and desperation. As we stated earlier, in 1996, several people in Ngarua, out of frustration and desperation because of the rampant thefts of their livestock by heavily armed pastoralists, while carrying the dead body of a Kikuyu who had been killed during such theft, marched along public roads in the area to protest the Government's apparent indifference to their plight. In Njoro too, as we shall show later, the area member of parliament, Kihika Kimani, publicly threatened to employ self-help methods to deal with insecurity in Njoro area arguing that the Government had failed to protect him and his constituents.

266. The clashes in Ol Moran appear to have been pre-planned and did not take the Provincial Administration officers, particularly the area Chief Benjamin Kabomet, and Jonathan Soi, by surprise. For instance, prior to the clashes of January, 1998, some unsigned letters were addressed to a few Kikuyu farmers who owned land in the area or occupied some leadership positions there, threatening them with death unless they migrated from the area. These letters were taken to the Jonathan Soi, who dismissed them as having been written by the Kikuyu as a ploy to achieve selfish ends. A month or so later, clashes broke out which led to loss of lives and destruction of property and the displacement of many people, mostly the Kikuyu, some of whom have not to date, returned to their farms. It is the same Jonathan Soi, who as stated earlier, was on 16<sup>th</sup> January, 1998, informed by John Kimaiyo, of a planned attack against the Pokot and the Samburu by Kikuyu youths, but took no action on the report. In each case, Jonathan Soi was complacent suggesting that he either did not care or knew in advance and approved what was in the offing and what it was intended to achieve and therefore did not want to interfere. His behaviour, when he was the District Officer in Enoosupia, which as we stated earlier, we will deal with later, was similar and we cannot help wondering whether it was not with his connivance, that the clashes in the two areas occurred.

267. Njoro is one of the current fifteen Divisions in Nakuru District, and lies to the South and South West of Nakuru. Like Ol Moran, its residents are from different ethnic backgrounds with the Kikuyu as the majority. The majority of the residents were shareholders in Njoro Mutukanio Co Ltd, a land buying company which, in the 1960s and 1970s bought farms in the area through the efforts of Kihika Kimani, for their settlement. Kihika Kimani was one of its promoters as also its sister companies whose only aim was to buy land in the Rift Valley Province for the settlement of landless Kenyans. The shareholders were from different communities. The area we are concerned with is not confined to the administrative division known as Njoro, but includes Mauche and Mau Narok Divisions which in times past, were part of Njoro Division before it was sub-divided to produce the two additional administrative Divisions. Njoro Mutukanio Co. Ltd, bought well over 51,000 acres of land in Njoro area. Each shareholder could buy as many shares in the company as he could afford at the rate of one thousand and fifty seven shillings per share, which would entitle him to 2<sup>1</sup>/<sub>2</sub> acres per share. Kihika Kimani alone got at least 353 acres. The farms abutted Tinnet and Mau forests parts of which, in the early 1980s, were hived out to create settlements for the several Dorobo families who before then, were living in two forests as well as Ndoinet forest in Molo South. We were also told that in 1978 and 1979, some Kikuyu and Kalenjin bought a farm in the area which they eventually sub-divided into several holdings which they shared among themselves and settled on.

268. Njoro is rich agriculturally, and the various ethnic communities who settled there were united by their common desire to earn a living through farming, and for a long time lived in peace and harmony, intermarried and engaged in several joint social and economic activities. However, as stated elsewhere in this Report, the Kikuyu were better off economically having learnt earlier to obtain financial assistance from banks and other money lending institutions to improve their economic welfare. Because of their superior economic position they were able, in addition to farming, to establish businesses in the



new settlements which included, retail shops, bars and restaurants, milling facilities and motor transport businesses. The Kikuyu were also more politically conscious than other communities in the area with the result that over the years since independence they have dominated politics, not only in Njoro but also in other parts of Nakuru District. For instance, in the current parliament, of the six parliamentary constituencies in Nakuru District, three or four are represented by Kikuyus, and the remaining two by the Kalenjin. Political representation in the Rift Valley Province has over the years been a source of conflict or disagreement between the Kikuyu and the Kalenjin. The Kalenjin feel that the Rift Valley Province being traditionally Kalenjin land, 'foreigners', which include the Kikuyu, should not represent them, and where they do, they should be supporters of the party which the Kalenjin support. During the era of one party politics, Molo constituency was represented in Parliament by John Njenga Mungai, a Kikuyu, who, in the 1992 general elections, successfully defended his seat on a Ford Asili ticket after decamping from KANU. He however, lost miserably, to Kihika Kimani of DP, also a Kikuyu when in the 1997 general elections he tried to recapture it on a KANU ticket. In Kenya, political loyalty seems synonymous with tribal loyalty. So because KANU was not the political party the Kikuyu generally preferred, and which also happened to be the party predominantly supported by the Kalenjin, Njenga Mungai stood no chance, of winning the elections in his constituency.

269. The tribal clashes in Njoro and Ol Moran, unlike those in most areas elsewhere erupted immediately after the 1997 general elections. But they were allegedly triggered off by a political brawl in a bar at Ndeffo on 9<sup>th</sup> December, 1997, shortly before the general elections, which resulted in the death of a Kalenjin, David Kibyegon Bii. The Kalenjin in the area who were made to believe that David Bii had been killed by the Kikuyus armed themselves with traditional weapons and invaded Ndeffo Trading Centre where they killed one Robert Waweru Kinuthia, a Kikuyu and injured four others, burnt seven shops, seven small eating places, three butcheries and two motor vehicles, all belonging to the Kikuyu. The police and the Provincial Administration officers acted swiftly and restored calm in the area. Thereafter, although there was general tension

arising from mutual suspicion by the two affected tribes, there were no significant incidents of violence or arson for at least a month.

270. The response of the Provincial Administration and the Police Force to the incident was prompt and appropriate. The violence did not go beyond 9<sup>th</sup> December, 1997, and two days later, namely on 11<sup>th</sup> December, 1997, the then Provincial Commissioner, Mohamed Yusuf Haji, properly held a joint Provincial Security Committee and District Security Committee meeting to discuss the incident and its implications. In the minutes of that meeting, Exhibit 13(B), the following apt statement is recorded:

“The members recalled that the inter-tribal clashes of 1992 erupted in the same way. 1997 being the year for the General Elections it was felt that the problem has to be dealt with decisively and immediately, otherwise some people might not accept the fact that the whole problem started in a bar following heated arguments.”.

271. The above statement and the plan of action the meeting adopted which appear hereunder, clearly show that the joint committees were conscious that the 1992, tribal clashes were politically motivated and any slight excuse could be used to start fresh clashes. The plan of action the adopted was as follows:

- (a) “Security officers should move in quickly whenever an incident has taken place.
- (b) A standby security team should be formed in all districts.
- (c) ASTU officers who have overstayed in various areas to be transported.
- (d) Politicians and other people known to be trouble shooters to be monitored very closely and appropriate action taken where applicable according to the law.
- (e) Intensive patrols to be carried in areas vulnerable to bring problems, more so this time when some politicians are likely to capitalize on some issues.
- (f) The DCs should call all aspiring politicians together for harmonization of peaceful campaigns.”.

Although the plan of action was comprehensive and appropriate, little was done to implement it, if at all. Anyway, the 1997 elections in Njoro were generally uneventful.

272. In the 1997 general elections in Njoro, there were two parliamentary candidates in Molo constituency, John Njenga Mungai, of KANU and Kihika Kimani of DP. There were other candidates who fell by the wayside during party primaries.

273. In his evidence to the Judicial Commission which was supported by the evidence of other witnesses, Kinuthia Mbugua, the then area District Commissioner, said that during the election campaigns there was common talk among the Kikuyu that if DP won in the elections the Kalenjin would not only be driven out of the Rift Valley Province but those of them in important positions would also be removed. Similarly, he said, the Kalenjin said that if KANU won they would drive the Kikuyu out of the Rift Valley Province. Kinuthia Mbugua and those other witnesses also talked about leaflets which were distributed in Molo constituency allegedly authored by Prof. Wangare Mathai, entitled "House of Mumbi", calling upon all the Kikuyu to inter alia, vote for Mwai Kibaki the DP presidential candidate, and that if DP won the elections it would sack all the Kalenjin in key posts. Other witnesses told us that DP supporters were so confident that Mwai Kibaki would win the presidential elections that some of them became arrogant and sometimes abusive. When the elections were finally held, Daniel arap Moi won in the presidential election, but Njenga Mungai of KANU, was defeated by Kihika Kimani of DP in the parliamentary elections. Those results created tension not only in Njoro but in other parts of the country. Kinuthia Mbugua, testified that leaflets were thereafter distributed in Molo constituency calling for the eviction of the Kikuyu from the Rift Valley Province. There was also a report in the Sunday Nation of 18<sup>th</sup> January 1998, and in the Daily Nation of the next day, and contained in Exhibits 36A to 36C, about an alleged declaration at Narok by some KANU stalwarts that if Mwai Kibaki filed an election petition challenging the election of Daniel arap Moi as its elected President, there would be trouble in Kenya. Indeed, when the election petition was filed, there was trouble in Ol Moran and Njoro, both which were and still are DP strongholds, or so we think. There were a few Kikuyu KANU supporters who in their evidence before the Judicial Commission said that they were threatened by their fellow Kikuyu who regarded them as traitors to their tribal political cause. The foregoing was the political scenario before and after the 1997 general elections.

274. The 1998 clashes in Njoro started on the night of 25<sup>th</sup> January, 1998, at Stoo Mbili. when a gang of people who were believed to be Kalenjin, while armed with bows and arrows, attacked some Kikuyus in their homes, set their houses on fire and killed those of them who were not able to flee on time. The attacks quickly spread to Ndeffo and other neighbouring farms. On the next day, the Kikuyu, particularly in Lare Division grouped and organized retaliatory attacks against the Kalenjin and they too killed and injured several of them and burnt many of their houses. The communities in the affected areas fled their farms, the Kikuyus headed towards Njoro and Nakuru towns, while the Kalenjin fled towards Tinet and Mau forests. These movements are telling more particularly when looked at against the events immediately preceding the eruption of the violence on 25<sup>th</sup> January, 1998.

11 275. Neither the Provincial Administration officers nor the Police Force, save the Special Branch, said they had any prior knowledge of the impending clashes. In their respective testimonies before the Judicial Commission they said that the clashes took them by surprise.

276. Petkay Shen Miriti, a Deputy Commissioner of Police, who was then Special Branch Provincial Security Intelligence Officer, told us, and which was supported by Kinuthia Mbugua, and David Kipkorir Siele, the special Branch District Security Intelligence Officer, that from early January, 1998, a large number of people all Kalenjin, had come from Bommet, Kericho and Trans Mara Districts, and camped in Tinet forest which abuts Njoro, allegedly in search of land. About the same time, the farm of Kihika Kimani, and two neighbouring farms, were invaded by people who were said to be the Kalenjin and who were armed with clubs, pangas and spears. Kihika Kimani, who was away from the farm at the time did not become aware of the invasion

until about 22<sup>nd</sup> January, 1998, and when he addressed the press, and as reported in Exhibit 35 as follows:

“The invaders have definitely been sent by their leaders with the intention of creating conflict to pave way for renewed ethnic clashes which some KANU politicians have been plotting.”

277. According to Patkay Miriti, the invasion of Kihika Kimani’s farm had been reported to him by David Siele, a Kalenjin, on 17<sup>th</sup> January, 1998. However, there is no mention of it in the minutes of the District Security Committee meeting held on 23<sup>rd</sup> January, 1998 Exhibit 22, which David Siele attended, and notwithstanding the fact that the invasion was reported in the Daily Nation of that day Exhibit 35. Instead what appears in the minutes, Exhibit 22, under the heading: MINU.6/98 SECURITY SITUATION, is as follows:

“The situation in the District is still satisfactory save for certain after election effects where certain political parties especially the DP which is behaving arrogantly.

This behaviour has created bad relationship and the DSC is monitoring and checking on incidents likely to spark insecurity. An example of that situation is Nakuru town where opposition is using the bus park levy as a reason of (sic) creating misunderstanding at the Municipality. Since the members know the motives are different, we have taken the following measures:

An operation has mounted and 127 touts/hawkers have been arrested and taken to court.

The Town Engineer and the enforcement officer have been directed by the DSC to continue eradicating hawking within the town centre and bus station.

The same officers have been instructed to do away with all unauthorized structures.”

David Siele, withheld the vital security intelligence information regarding the invasion of Kihika Kimani’s farm, from his District Security Committee, which, in line with the directive given to the District Security Committees by the Provincial Security Committee as contained in the minutes of its meeting held on 26<sup>th</sup> August, 1997, Exhibit 32(B) should have enabled his District Security Committee to put in place contingency plans “to counter any threats to security through covert instigation.” In fact, even in an unaddressed and unsigned facsimile message he allegedly sent to the Directorate of Security Intelligence on 24<sup>th</sup> January, 1998, Exhibit 37, he gave the false impression that the invasion had not occurred earlier than 19<sup>th</sup> January 1998. According to Kipkorir Siele

the date of the invasion was given to him by Kihika Kimani when they met on 24<sup>th</sup> January, 1998. Kihika Kimani could not possibly have given him that date because in his statement, Exhibit 13(H), to the Abongo Committee which the Commissioner of Police of the time appointed to investigate the violence at Njoro, made on 8<sup>th</sup> February 1998, Kihika Kimani had stated that the invasion occurred on 13<sup>th</sup> January, 1998, which is in consonance with the testimony of Petkay Miriti, who said that Kipkorir Siele had on 17<sup>th</sup> January, 1998, passed on to him, the information about the invasion of Kihika Kimani's farm. Kipkorir Siele was lying. We must also recall here Kipkorir Siele's deliberate act of deception was also repeated in his first statement of 12<sup>th</sup> February, 1998, to the police, and contained in Exhibit 13 (E), where he made no mention whatsoever, of Kihika Kimani's letter or his meeting with him. It was only three days later, and after he had been pressed by police investigators, that he disclosed this in his further statement of 15<sup>th</sup> February, 1998, which is also contained in Exhibit 13(E).

278. We also received evidence that on 23<sup>rd</sup> January, 1998, David Siele received, through his Deputy, Philemon Opiyo Owino, a letter from Kihika Kimani, Exhibit 13(A), which is as follows:

“

Hon Dixon Kihika Kimani  
Box 13455 Nakuru  
Date 23<sup>rd</sup>/1/1998

The Special Branch Officer  
Nakuru District  
Through their Njoro office

I wish to start by greeting you very much and asking you kindly to meet me privately here at Njoro or my home at Lanet.

I wish to let you know that the situation here is very tense and it is very explosive. We Kikuyus here are on the side of DEFENSIVE side and Kalenjini and Maasai are on the side of offensive side now.

Now I would like to meet you and show you the two SIDED PICTURE. I don't tell lies no and I trust your office very much from 1960 to date.

Now by today I am at Njoro but by tomorrow I will be at Maumanet Laikipia. I will believe (sic-brief) you exactly what we are planning to do (next time) because we were taught a lesson by the 1991- 1993 Ethnic clashes.

Please please let us meet.

I beg to remain Sir with deep respect,

Yours

Sign.  
D.K. Kimani.”.

Kipkorir Siele testified and Kihika Kimani confirmed it, that the two met at noon on 24<sup>th</sup> January, 1998, a Saturday, and the latter explained the frustration and desperation of the Kikuyu in Njoro, and that he had met forty or so Kikuyu elders from various farms in Njoro who had agreed that in the event that the Government did not immediately offer them security to avert an impending attack on them by the Kalenjin, they would recruit and arm Kikuyu youth for purposes of self-defence. The facsimile Kipkorir Siele, said he sent Exhibit 37, was supposed to be a review of their talk, but a closer examination of it clearly shows that Mr Siele presented the facts in an untruthful, slanted and distorted manner: Instead of stating Kihika Kimani's concern that law and order should be maintained to obviate inter-ethnic skirmishes, he painted the picture, which was clearly wrong, that Kihika Kimani had organized the Kikuyu to invade the Kalenjin and thus making him appear to be the aggressor and not the intended victim.

279. Regarding the large number of people who came to Njoro about the time Kihika Kimani's farm was raided they were roundly referred to as land speculators. But Kinuthia Mbugua told the Judicial Commission that at the material time the Government was not allocating any land in the area, and that the alleged land speculators had been brought there by two persons namely John Koske alias Cheragei and another Siele not David Siele. Both the Provincial Administration and the Police Force were aware of their presence in Njoro area, but no attempt was made to drive them away. They were camped in the nearby Tinet forest and we reckon that they were also the ones Kihika Kimani was talking about in Exhibit 35. Their presence in Njoro was realized at the beginning of January, 1998, and it was soon thereafter that Kihika Kimani's farm and two others, were raided. We think that their presence in Tinet forest was not for the stated reason that they were land speculators. In Molo South too, a large number of people were seen within Kamwaura area a day or so before clashes erupted there in March 1992. The joint Provincial Security Committee and District Security Committee meeting we referred to earlier did correctly observe that there were signs which signalled

impending clashes in the area and consequently adopted the plan of action already set out above.

280. The so called land speculators were from one ethnic community, the Kalenjin. Witnesses were specific that they were the Kalenjin from Bommet, Kericho, Narok and Trans Mara Districts. If indeed, they were land speculators one would have expected that people from other communities would also have been there. In his evidence to the Judicial Commission, the Provincial Police Officer of the Rift Valley Province, Philip Cheruiyot, stated that in the 1992 and 1993 clashes, there was a group called Kalenjin Warriors which was involved in the clashes in Molo South. He was then the Officer Commanding, Nakuru Police Division under which both Molo and Njoro Divisions then fell and was therefore in a position to know who were involved in the clashes there at the time. During the 1998 clashes in Njoro, he was the Provincial Police Officer of the Rift Valley Province, and must have been made aware of the presence of the so called land speculators who, according to Petkay Miriti, the Kikuyu believed were the Kalenjin warriors. Petkay Miriti conceded that their presence should have created a security alert. He described the situation during the period immediately preceding the clashes as explosive and could be security rated as "Ready Alert".

281. Evidence was also adduced to the effect that there was tension between the Kikuyu and the Kalenjin which was caused firstly, by the incident of 9<sup>th</sup> December, 1997, at Ndeffo, and, secondly, by the presence in the Tinet forest of many strangers who were believed to be Kalenjin warriors. As a result of the tension, the Kikuyu refused to do business with the Kalenjin which so incensed the Kalenjin who depended largely on the Kikuyu shops, Posho mills and public transport for their day to day operations, attacked the Kikuyu. We are not here concerned with whether or not the decision by the Kikuyu not to do business with the Kalenjin was proper, nor are we concerned with whether or not the reaction by the Kalenjin was justified.



282. Both Petkay Miriti and Kipkorir Siele testified that, from security intelligence reports that they received from their staff attached to the Njoro area, the security situation in the area was explosive. In their evidence to the Judicial Commission each of them testified that he passed the information to his respective Security Committee. However, in Exhibit 22, the minutes of the Kipkorir Siele District Committee which met on 23<sup>rd</sup> January, 1998, the SECURITY SITUATION is given as "still satisfactory", we doubt whether indeed this was done. Besides, both Nicholas Mberia and Philip Cheruiyot denied Petkay Miriti notified them of the explosive security situation in Njoro. They both also denied having been notified of the existence and contents of Kihika Kimani's letter of 23<sup>rd</sup> January, 1998, Exhibit 13(A) to David Siele. Recounting what happened at his meeting with Kipkorir Siele on 24<sup>th</sup> January, 1998, Kihika Kimani told us that he told Kipkorir Siele about the Kalenjin raiders that they were threatening security in the area, and that although the invaders of his farm had been driven away, the threat of clashes was still looming and unless something was done to avert the expected violence, he was prepared to mobilize Kikuyu youths for self defence purposes, and that he had asked forty Kikuyu elders to mobilise Kikuyu youths to defend them if the Kalenjin attacked the Kikuyu. In effect he rehashed what was contained in his letter to Kipkorir Siele.

283. Kipkorir Siele, testified to the same effect and added that after their meeting he notified Petkay Miriti, the members of the District Security Committee and Special Branch Headquarters about what Kihika Kimani had told him without disclosing the source, before he left for Keringet, in Molo South, to attend a family meeting. Considering the fact that the members of both the Provincial Security Committee and the District Security Committee denied receiving such information, and in view of Kipkorir Siele's subsequent conduct, we do not believe that he actually shared the information with those who were supposed to be made aware of it, more particularly Kinuthia Mbugua and the Officer Commanding Police Division, Peter Kilonzo Kavila. Kipkorir Siele testified that a Chief in Njoro called Rono, a Kalenjin, had told him about the people who were camped in Tinet forest, but unlike other witnesses who said that they were land speculators, Rono had described them as people who had come there to

avenge certain unnamed Kalenjin who, according to a rumour, had been killed at Naishi in Lare Division. So, long before Kipkorir Siele met Kihika Kimani, he was also aware of the presence of strange people who were camped in Tinet forest and the reason for their being there. When on 23<sup>rd</sup> January, 1998, he attended the District Security Committee meeting of that day, he did not tell the meeting about the impending Kalenjin revenge mission, the tension between the Kikuyu and the Kalenjin or about Kihika Kimani's letter to him. In his evidence he tried to shift the blame for failure to inform the District Security Committee about the existence of tension between the tribes, unto Peter Kavila by saying that though he had raised the issue at the meeting, Peter Kavila had said that it was not the sort of matter that should be included in the minutes of the meeting. Kinuthia Mbugua who chaired that meeting like Peter Kavila denied that Kipkorir Siele mentioned the matter or anything related to the clashes at that meeting. Indeed, if that had been so the minutes concerning the security situation, should not have stated that the security situation was satisfactory.

284. We turn to the facsimiles Exhibit 37, which Kipkorir Siele sent to the Special Branch Headquarters of the Directorate of Security Intelligence. The following are the relevant parts of that facsimile:

“...DP member of parliament for Molo stated that the situation within Ndeffo farm, Mau Narok and Njoro areas is tense with a possibility of tribal clashes erupting any time.

He claimed that there is a large influx of Kalenjin warriors into the forest areas within Ndeffo, Sigotik, Mau Narok who are preparing to attack the Kikuyu. ...He also revealed that following a meeting which he held in his house at Njoro with about twenty Kikuyu elders on Friday 23<sup>rd</sup> January, 1998, they resolved as follows:- that

- (a) Every location to form Youth Home Guards consisting of 500 youths to protect the villagers from possible attacks.
- (b) That the youths will be armed with bows, arrows, sticks, knives, spears and rungun.
- (c) Possibility to revive GEMA/KAMATUSA talks adding that the problem at hand is a Kalenjin/Kikuyu problem which should be solved by the two communities.

The government should not come in.

COMMENT:

The DSC members who have been handling the illegal occupation of the farms issue have been alerted over the sentiments expressed by KIHKA KIMANI and a public baraza has been organised for Monday 26<sup>th</sup> January,

1998 to educate the area residents on the need to live in peace and maintenance of law and order.”

285. Apart from distorting the content of the discussion he held with Kihika Kimani, Kipkorir Siele trivialized or rather toned down the seriousness of the concern Kihika Kimani had expressed. He did not state anything about the need to send security personnel to the area to avert the looming violence. In his comment, which in effect is his assessment of the situation he highlighted the fact that a baraza had been organized to be held on a designated date, and therefore, there was no urgent need to take any more security precautions.

286. As already referred to, David Siele left to go and attend to personal errands despite the fact that he had been told by Kihika Kimani that the situation was tense and, Chief Rono had told him that the people who were camped at Tinet forest had come to attack the Kikuyu. Other police witnesses who included the former Director of CID, Noah Arap Too and the former Commissioner of Police, Duncan Wachira, regarded Kipkorir Siele's behaviour, to put it mildly as strange. We too regard his behaviour as not only strange but also that of connivance at the clashes. When the clashes eventually broke out on the night of 25<sup>th</sup> January, 1998, he was not present to assist the other members of the District Security Committee to stop them. When he was asked about it, his response was as strange as his behaviour. He told us that after he had notified the Directorate of Security Intelligence and the members of the District Security Committee about what Kihika Kimani had told him, he did not have any more responsibility in the matter. However, his superior officer in the Special Branch, Benson Okemwa, testified to the contrary and on that he was supported by Stanley Mutungi, a retired Deputy Commissioner of Police, who told us what we already knew, that Special Branch Officers were until January, 1999, policemen who were subject to the provisions of the Police Act, Cap 84 of the Laws of Kenya, and were therefore obliged to take part in such operations.

287. We were also told that on the morning of 26<sup>th</sup> January, 1998, Kipkorir Siele suddenly resurfaced and joined the other members of the District Security Committee at

Njoro where they had gone to stop the violence. He found about seven armed suspects had been arrested for torching Kikuyu houses and intervened on behalf of one of them and sought his release on the ground that he knew him and that the suspect had only been found advising the Kalenjin youth to stop torching the Kikuyu houses. Kipkorir Siele was not present at the time the suspects were arrested, unless of course he was watching from a hideout in the bush. He would not therefore know the circumstances under which the suspects were arrested. That behaviour shows that he knew much more regarding the causes of the clashes than he was ready to admit to us.

288. Petkay Miriti too, behaved in a strange manner. He testified that as the Provincial Security Intelligence Officer, he had been informed by among other people, Kipkorir Siele, about the supposed land speculators and the explosive security situation in Njoro. Although he said that he shared all this information with fellow members, of the Provincial Security Council, they all denied the same. The only inferences that can be drawn from the circumstances are that either he did not notify them as he said he did or that if he did, all the members knew not only that clashes were in the offing but also, who were behind them but denied any prior knowledge to protect those people.

289. All in all, we had the feeling that the members of the Provincial Security Committee and the District Security Committee knew much more than they were prepared to tell us.

290. On 9<sup>th</sup> December, 1997, violence erupted at Ndeffo which the joint Provincial Security Committee and the District Security Committee meeting held on 11<sup>th</sup> December, 1997, considered. It will be recalled from the minutes of the joint meeting, Exhibit 13(B), already referred to, that the joint meeting considered the inter tribal violence that erupted at Ndeffo, as a pointer to possible clashes. The Ndeffo incident was quickly followed by the arrival and camping in the Tinet forest of the Kalenjin who told Chief Rono that their mission was to fight the Kikuyu and not to buy land, and which information he passed on to Kipkorir Siele. It will also be recalled that the Kikuyu had refused to do business with the Kalenjin. Although in our view, the refusal to do

business was given merely as a silly excuse for the clashes, the fact that there was talk about it was clear evidence of brewing trouble which should have but did not put Security Committees to be on security alert. Nicholas Mberia, the Provincial Commissioner told us that he had prior information of certain utterances by Kihika Kimani, among them that the clashes in Laikipia would spread to Njoro, and also that some Kalenjin were threatening to evict the Kikuyu from Njoro and other areas; but he did nothing to avert any possible violence in the area. According to Kinuthia Mbugua, he had also told Nicholas Mberia, that Kihika Kimani had said he would recruit some Kikuyu youths to fight in Laikipia in defence of the Kikuyu. As one witness put it, the writing was on the wall for all the members of the Provincial Security Committee and the District Security Committee to see, but their seemingly wholesale indifference and complacency tell us that they knew clashes were coming and who was behind them but they deliberately failed to take the necessary steps to stop them. Each of them should be investigated further regarding their role in those clashes.

291. Ol Moran and Njoro were and are, DP strongholds. Kihika Kimani wields a lot of influence in the two areas, largely because of his past role in assisting the majority of the residents to get land there. He proudly told us that he was a popular leader and that wherever he chose to stand for parliamentary elections, would win. In fact he plans to stand for elections in the next general elections in a different constituency.

292. The 1998 clashes appear to have targeted Kihika Kimani and his supporters because they occurred in areas in which he had successfully stood for elections on a DP ticket. As we have attempted to show, the clashes were masterminded by people outside the areas where the clashes occurred whose organized armed groups would, with the help of local accomplices, start the violence, and then escape from the area leaving the locals fighting each other on the mistaken belief that the fighting was as a result of either existing problems or because of some excuse which the perpetrators of the violence

created. Phillip Cheruiyot, at one time the Provincial Police Officer of the Rift Valley Province expressed the same sentiments as appear in the following excerpt from the verbatim report of the proceedings of the Judicial Commission of 13<sup>th</sup> August, 1998:

“Mr. Gacivih: Now, in the 1992 clashes, who were the raiders?

Mr. Cheruiyot: The raiders were Kalenjin warriors.

Mr. Gacivih: When you say warriors, are these people who are ably employed or did you identify where they were coming from?”

Mr. Cheruiyot: In 1992; they were from the Dorobo side, from the forest.

Mr. Gacivih: By forest you mean Ndoinet?

Mr. Cheruiyot: Yes, Ndoinet Forest, My Lords.”.

When he was asked to compare those and the 1998 clashes, his response was as follows:

“Mr. Cheruiyot: ...Unlike before, when there was information of recruiting and preparation by the attackers, this time we did not get any information to that effect. In fact, even the attackers did not wear the normal warriors clothes. Their clothes were normal, actually, there was nothing about them to indicate that they were raiders.”.

293. In each of the clash areas we have already discussed, an excuse or excuses were given for the clashes. It has been a common feature that clashes were preceded by the wounding or killing of animals, particularly where, in mixed communities, there are no existing inter-ethnic problems. In Olenguruone for instance, apart from the death of the mysterious Kiplangat Arap Kipkilach, we were given the wounding of livestock as one of the causes of the clashes there, in 1992. In Molo South too a similar story was told. Gideon Muoki Mutua who was the Provincial Criminal Investigations Officer of the Rift Valley Province in 1997 and 1998, also told us of an incident in Keringet area where on the night of 24<sup>th</sup> August, 1997, nine heads of cattle belonging to some Kalenjin were maimed, an incident which he said caused tension between the Kalenjin and the Kikuyu. Two Kikuyu and a Kisii were arrested as suspects and charged. The then Rift Valley Provincial Commissioner, Mohamed Yusuf Haji, organized an impromptu harambee which raised one hundred and twenty thousand shillings which was handed over to the complainants as compensation. The compensation diffused the tension and frustrated what we think were planned clashes. In view of our above analysis, of the masterminding of the clashes, it could be that the Kikuyu had no hand in the killing and maiming of the goats and cattle of Lechau Apalungeiya which allegedly started the clashes in Ol Moran. In most, if not all the clash torn areas, in the Rift Valley Province, it is clear that the clashes were preceded either by the presence of strange faces or an incident involving the

maiming, killing or theft of livestock. The incidents clearly seem to have been planned to create or provide an excuse for the violence which thereafter ensued but which were clearly intended to achieve a political purpose.

294. In Ol Moran and Njoro, whoever planned and executed the clashes must have intended to punish and tame Kihika Kimani and his political supporters who we were told exuded confidence and arrogance during the 1997 election campaigns, and to teach them a lesson so that they would not behave like that again. The mastermind of the clashes appears to have enjoyed the support of the Provincial Administration and the Police Force, more particularly the Special Branch Officers whose role, particularly in the clashes at the Coast Province and Njoro seems to us to be, at the very least one of connivance and condonation of the same. We have the example of Omari Raisi, in Mombasa, and Kipkorir Siele, in Nakuru, both officers who appear to have known all along what was happening and most likely, were party to it but withheld intelligence information from the other security arms. We were also told of two Chiefs who were directly involved in the Njoro clashes, notably, the Chief of Balut, a Kalenjin, and the Chief of Likia, a Kikuyu, both of whom were later interdicted and charged, but no one was able to tell us the outcome of their cases. We see no reason why Omari Raisi and David Kipkorir Siele and others, should not face the same fate.

## **NAROK AND GUCHA DISTRICTS**

295. Narok District which lies South of Nakuru District as originally constituted included what is presently known as Trans Mara District. The two Districts with Kajiado are the homes of the Maasai, a pastoral tribe, which largely depends on livestock as their subsistence and economic lifeline. The Kikuyu, the Kipsigis, the Kisii, the Luo and Kuria, are their neighbours in Kenya. For purposes of this Report, we will treat Narok as including Trans Mara except where the context states otherwise. We stated elsewhere in this Report that the relationship between the Maasai and their tribal

neighbours has over the years been turbulent and chequered. It is not uncommon to hear of armed incursions into either side's areas mainly related to livestock thefts. This is particularly so between the Maasai and the Kipsigis, the Maasai and the Kisii, and the Maasai and the Kuria.

296. Because of the demand on, and scarcity of land in their respective areas, the Kipsigis and the Kisii have tended to find an outlet into the sparsely populated Maasailand. Many of the Kipsigis and the Kisii, as well as the Kikuyu bought land from the Maasai and settled there, and embarked on agricultural activities which in a way, interfered with the open grazing practised by the Maasai. A number of the Kisii and the Kipsigis have since colonial times been moving into and settling in Maasailand, more particularly in the greater Narok District. At the time when clashes first broke out in the area in 1992 and 1993, the non- Maasai population was almost exceeding that of the indigenous Maasai. The immigration of the Kipsigis and the Kisii into Maasailand has not been well received particularly by Maasai politicians. In the East African Standard of 1<sup>st</sup> April, 1967, a report was carried of clashes between the Maasai and the Kipsigis in which some people lost their lives and several others were injured. In the same report, the then member of parliament for Narok West, Mr John Ole Konchellah, a Maasai, was reported to have condemned the Kipsigis as the aggressors, expansionists and infiltrators. The issue was, on 5<sup>th</sup> April, 1967, raised in Parliament by way of a motion of adjournment to discuss the clashes. In his contribution, John Ole Konchellah remarked:

“... actually there may be a few Kipsigis, they might be 1,000 who have been accepted to live in Maasailand. At the moment we have about 15,000 of them. Who brought those 15,000 to Maasailand? These people have created more trouble. We have a number of Kipsigis who have settled themselves in a place called Agala Barikoi, Moeta ... There are no Maasai in Kipsigis land, the Maasai have not crossed the border to fight the Kipsigis in the Kipsigis land, but the Kipsigis have been crossing with the intention of scaring the Maasai to leave the border, so that they can settle there.”

297. Despite opposition by the Maasai politicians more and more people from among the Kipsigis, the Kisii, the Kuria, the Luo and the Kikuyu moved into and settled in Narok District more particularly along the border and in effect pushed the Maasai more



inwards. These settlements in a way created a conflict between the Maasai and the other ethnic communities because of their different cultural and economic lifestyles. The Maasai as pastoralists could not co-exist with their agriculturalist neighbours without some measure of mutual antagonism which was often the source of conflict and was eventually one of the reasons which was given for the clashes which affected the area.

298. The other reason for the clashes which was given was cattle rustling. The 1967 incident we have already referred to, arose from stock theft. Inter-ethnic conflicts along the border between the Maasai and the other tribes have been largely caused by incidents of cattle rustling. Armed youths from either community would make incursions into the other community's area, and drive away several livestock. Youths from that community would in turn, arm themselves and pursue the stolen animals, and whenever, they caught up with the raiders, inter-tribal fighting would ensue. Stock theft between the affected tribes and inter-tribal conflicts along the common border, can be said to be traditional.

299. There are, however, certain settlements in Narok in which non-Maasai, particularly the Kikuyu and the Dorobo, settled, and which were unoccupied land more particularly in the forested areas, like Enoosupukia in Mau Division. They had no title to the land they occupied. Movement into those areas started at independence, and those who moved there included former squatters and farm labourers on European farms in Nakuru District. Apart from the occasional border conflicts and isolated cases of stock theft on these particular settlements, the settlers lived peacefully with their Maasai neighbours.

300. The clashes in Narok were mainly confined to Mau, Ol Kurto and parts of Ololunga Divisions, Narok town and Kilgoris Division. Varying reasons were given for the clashes in each of those areas which we propose to now consider under the sub-headings: Enoosupukia, Narok Town and Trans Mara/Gucha

## ENOOSUPUKIA

301. For purposes of this Report we will treat Enosupukia as including Mau, Ololunga and Ol Kurto Divisions. This area which is next to Naivasha Sub-District is geographically hilly, and has some rivers whose sources are up in those hills, which were at one time forested but ceased to be so because of human settlements in the area. Among these rivers are Siabei, Uaso Nyiro South, Mara and Lelongo. Among the people other than the Maasai, who first settled in the area, were Kikuyu and the Dorobo.

302. Enosupukia is within Narok North constituency with William Ole Ntimama, as its member of parliament, a position he has held since 1988, on a KANU ticket. In his evidence before the Judicial Commission, he said that Enosupukia is a water catchment area and that the settlement uphill in the area by the Kikuyu and the Dorobo adversely affected the supply of water in the rivers down stream, where the Maasai lived with their livestock, with the result that they did not have enough of it for both themselves and their livestock. He also said that even upstream which was predominantly occupied by Kikuyu and the Dorobo, the water supply for the rivers was so limited that the residents there were forced to sink shallow wells to supplement the existing supply, but which they were unwilling to share with the Maasai downstream. He narrated an incident in which Ole Nchiraine, an old Maasai, and his son Palmuya Ole Nchiraine, went upstream with their cattle to look for water among the Kikuyu and the old Maasai was attacked and beheaded and his cattle killed and maimed by people Palmuya said were the Kikuyu. The water problem caused so much tension between the Kikuyu and the Maasai that the beheading of Ole Nchiraine and the maiming of his livestock was enough to spark off the clashes in the area. William Ole Ntimama said that in the Maasai culture, the killing of an old Maasai, unlike the killing of a moran, was a serious, painful and provoking issue as also was the maiming of cattle, and that this caused the violent reaction of the Maasai upon the Kikuyu.

303. The main clashes in Enosupukia began on 13<sup>th</sup> October, 1993. Longisa Ole Maloy, told us that the water problem had started in 1980 when the water of river

Lelongo started dwindling downstream. But the area District Officer in 1992 and 1993, again Jonathan Soi, testified that complaints about the dwindling river water in the area were first made to him after the 1992, general elections. But whether or not the water problem, if it existed at all, sparked off the clashes will become apparent as we consider the main events preceding the clashes. Jonathan Soi told us that in February, 1992, he took over as District Officer of, Mau Division from Paul Cheruiyot who at the time was engaged in settling a land dispute in Sentagara area between some Kikuyu and some Maasai which had caused some tension between the two tribes. There was also a shooting incident in the Division in December, 1992, in which Ole Lempaka who was then vying for a parliamentary seat in Narok North constituency on a FORD Asili ticket, shot in self defence in a melee, and injured Anne Chelagat, a supporter of his rival William Ole Ntimama. Ole Lempaka was later arraigned in court on an assault charge but was acquitted for lack of sufficient evidence. At 6 a.m. on 29<sup>th</sup> December, 1992, the polling day for the 1992 general elections, several Kikuyu voters waiting in a queue at Enosupukia Trading Centre to cast their votes, were attacked by armed Maasai morans who killed three of them instantly, allegedly because the Kikuyu had flashed at them the two finger salute of the opposition party. The morans escaped, many people ran away for fear of further attacks, and many did not vote. We were told that the Kikuyu were the majority in the area, who according to Kitishe Ole Kekuta, then a nominated councillor, had declared they would vote for Ole Lempaka who was standing on a FORD Asili ticket against the incumbent, William Ole Ntimama of KANU.

304. Jonathan Soi told us that whenever they had any incident of violence in the area he would hold a baraza to advise the contending parties to live in peace with each other. The practice of holding barazas gained notoriety in the clash hit areas and we think that they were a ruse some Provincial Administration officers employed in order to avoid taking more effective action to prevent or stop the clashes. Jonathan Soi told us that the complaint regarding the dwindling river water supply downstream and the depletion of the water resources of the Enosukupia water catchment area by the diversionary actions of the Kikuyu upstream, were made to him for the first time, by councillor Kitishe Ole Kekuta and the area Chief after the 1992 general elections and according to him, the two

wanted his assistance in getting the Narok County Council to supply the Maasai living downstream with water by water tankers, which he said he did.

305. Prior to the 1992 general elections, the area incumbent member of parliament, William Ole Ntimama, was said to have barred non-Maasai from registering in his constituency as voters, a fact which he denied as was reported in the Kenya Times and the East African Standard of 13<sup>th</sup> July, 1992. However, he was reported in the Sunday Standard of the 15<sup>th</sup> November, 1992, Exhibit 169, to have made the following statement on the 13<sup>th</sup> November, 1992, when he had presented his nomination papers on a KANU parliamentary candidate:

“Mr Ntimama warned that if the alien communities did not respect the wishes of the Maasai who are their hosts; then the community (Maasai) will have to think twice about continuing to host other tribes in the district after the General Elections ...

Mr Ntimama has been nominated as the sole KANU candidate for the Narok North Parliamentary seat. He urged people who had settled in the constituency not to provoke the Maasai ‘or else they would have themselves to blame for whatever happens’.”

2 306. The occasion in which these remarks were made clearly suggests that William Ole Ntimama wanted the so called aliens to vote for him and KANU or else they would regret it. It must not be forgotten that William Ole Ntimama was the chief host and most vociferous Majimbo crusader at the Narok rally in September, 1991, when he had made similar remarks about the non-Kalenjin and the non-Maasai then resident in the Rift Valley Province. The remarks on both occasions were of such a nature that the police should have, but did not take any action against him. Although he denied having made the remarks attributed to him by the press, as we said elsewhere in this report, his denials are but red herring. In his evidence before us he admitted the substance of what we have reproduced above, which then means that even before the time of the clashes in Enosupukia, he had entertained the idea of evicting non-Maasai from Enosupukia Location. In the East African Standard of 21<sup>st</sup> August, 1993, as also in the Daily Nation and Kenya Times of the same day, William Ole Ntimama is reported to have told the non-Maasais that they would be evicted from Enosupukia to preserve the area as a water catchment area as in his view their rights were subordinate to those of the indigenous people. William Ole Ntimama was then as now a Cabinet Minister in the Government

and because no action of whatever form, was taken against him, it showed the Government's tacit approval of what he said.

307. The clashes as we have already stated, now broke out on 13<sup>th</sup> October, 1993. All the non-Maasai resident in Enoosupukia Location and several others in neighbouring Locations and Divisions were attacked in their homes, their houses were burnt and a few of them were killed. The security forces and the Provincial Administration officers there did not intervene to prevent or stop the eviction. Among the causes of the clashes that were given, were the beheading of Ole Nchiraine and the maiming and killing of his animals; the killing of a another Maasai, Ole Kiswa, and his two sons near the border of Mau Division and Nakuru District; and a rumoured killing of Ole Sululu of Entian, among other reasons. In view of the events we have described above, these causes are merely excuses for the violence which in our view, were planned and executed with the connivance of the area member of parliament, William Ole Ntimama. He made no secret about this and his hate of the Kikuyu in particular when in his speech in Parliament on 19<sup>th</sup> October, 1993, recorded in the record of Parliamentary Debates of 19<sup>th</sup> October, 1993 (Exhibit 159), he stated, inter alia, as follows:

"Mr Deputy Speaker, Sir, what happened is simple. Who control the publications in this land? I am sure 90 per cent of the publications are controlled by one ethnic group. We tried to raise the whole question of the plight of the people 'downstream' that they were dying, their livelihood was in danger, their cattle were dying and their economy was in jeopardy, and nothing was put down for that. And this is the trouble; the whole environment was eroded, there were no rivers, there were no dams. Mr Deputy Speaker, how come everybody else and all these publications here were supporting the right of the Kikuyu to stay there and making sure that we all die, down-stream? That is a situation that we, definitely, cannot tolerate, and if necessary, we have to defend (sic)our rights and we will continue to defend them!

We were provoked beyond any reasonable doubt; and our cattle were mutilated. Mr Deputy Speaker, Sir, I am tabling six pictures

here to prove that anybody can see what really happened. I am saying that we have lived with these people, but we can no longer be suppressed! We can no longer be looted! We can no longer be milked! And I am saying, Mr Deputy Speaker, Sir, considering the situation as it is, I am saying this one very clearly, if people want us to live together, they must not think that we are 'second-class citizens' in this country ... The British suppressed us, and we cannot have the Kikuyu suppressing us again!"

308. William Ole Ntimama had long before 13<sup>th</sup> October, 1993, known that the Kikuyu had settled in Enoosupukia area and the adverse effect it had on the environment and did nothing about it. When he subsequently began to cry over the issue, he did so with tongue in cheek as he was looking for an excuse to drive out the Kikuyu who had declared their support and sympathy for the opposition FORD Asili political party. He had earlier as we have seen from Exhibit 169, declared that after the 1992 general election, the Maasai community would think twice "about continuing to host other tribes in the district." Indeed the clashes in Enoosupukia erupted after the 1992, general elections as he had proclaimed.

309. Evidence was also adduced that before the alleged beheading of Ole Nchiraine and the maiming of his livestock, a large number of people dressed like Maasai morans were seen assembled close to Enoosupukia Trading Centre whose number was estimated to be over three thousand. The population of the Maasai in the area, according to both the area District Officer, Jonathan Soi, and the District Commissioner of Narok District, Calistus Anthony Akelo was not that high. It then means that quite a large number of Maasai outsiders must have come or been brought to the area ahead of the clashes. This is reminiscent of what happened in Molo South, Mau Summit, Njoro, Sondu and to some degree Londiani, where we were told of strangers coming in those places ahead of the clashes there. Besides, if indeed the clashes in Enoosupukia erupted because of the beheading of Ole Nchiraine, and the maiming of his animals, there is no justification for the attack and killing of the Kikuyu in neighbouring Locations and outside Mau Division as happened. And could it really be said that this was the natural reaction of the Maasai to the alleged killing of Ole Nchiraine, and the killing and maiming of his cattle when his son Palmuyu Ole Nchiraine, who allegedly had been with his father when he was

headed had not even reported this dreadful incident to the police. We would say, No! Like the case of Kiplangat Ole Kipkilach in Olenguruone, the alleged beheading is suspect, and if at all it happened, then it was in circumstances different from those we were given.

310. It is also significant that William Ole Ntimama's letter of 5<sup>th</sup> March, 1993, some seven months before the clashes, Exhibit 167(A), to John Sambu at the time, the Minister for Environment and Nature Resources, had annexed to it what was described as minutes of the Special Leaders Meeting which was allegedly held in Enoosupukia on 22<sup>nd</sup> September, 1991. Both the letter and the minutes, Exhibit 166, appear to us to have been aimed at making a case for the eviction of the Kikuyu from Enoosupukia. The minutes include the following:

"The same upperside of the location some area already land demarcation taken place for individual plots. Such demarcation must be nalfly (sic) and contince (sic) with the area cannot affect forestation and water sources."

William Ole Ntimama having earlier vowed to deal with the aliens in Enoosupukia, whatever reason that was later given for either the clashes or for the eviction of the non-Maasai from Enoosupukia and its neighbouring areas, can only be an excuse to conceal the real reason for the clashes which was political. We were not impressed by his attempt, as shown in verbatim report of the proceedings of the Judicial Commission of 14<sup>th</sup> April 1999, to give his veiled threat against the non-Maasai a different meaning.

"Exhibit 169 (5) does not contain a denial – Avoiding bloodshed. The wishes of the Maasai were that we are not looked down upon. We needed to be respected. I am correctly reported; yes – I meant using language which tended to slight the Maasai. I did not mean failure to support KANU. There can be an inference that we wanted outsiders to vote KANU, which was the wish of the majority of the electorate who happened to be Maasai."

## NAROK TOWN

311. The clashes in Narok town which also falls within William Ole Ntimama's Narok North constituency, occurred on two occasions. The first one was on 20th December, 1992, when William Ole Ntimama's political supporters attacked those of his political rival Ole Lempaka, outside the latter's bakery with a view to driving them out of Narok Town. In the process one of Hon. Ntimama's supporters was killed. For some strange reason when the police came to the scene, instead of driving away the aggressors who were Hon Ntimama's supporters, they rather attacked and drove away Ole Lempaka's supporters who had gone to his bakery for some bread for lunch, on the suspicious grounds that they were fewer and therefore easier to handle.

312. The second incident occurred on 13<sup>th</sup> April, 1993, at Majengo Estate in Narok Town where FORD Asili had its office, when a gang of people who were dressed like Maasai morans emerged from Meleleshwa forest which abuts the town, armed with bows and arrows, swords and rungas invaded the estate in which mixed communities of non-Maasai lived, and violently attacked and fatally wounded six people and injured several others. The gang escaped back into the forest before the police arrived. Thirty two people were later arrested on suspicion of having been part of the gang, but only four were taken to court, the remaining twenty eight having been released for lack of evidence. Even the four who were charged were later discharged when the charges against them were withdrawn for lack of evidence.

313. The two incidents, and the one which occurred at Ol Joro, on 22<sup>nd</sup> December, 1992, when there was a clash between the supporters of political rivals, William Ole Ntimama and Ole Lempaka, clearly show that the clashes in Narok North Constituency, were political and the William Ole Ntimama was directly connected with them. He should be investigated further with a view to being charged with being an accessory to the clashes.



314. The clashes in William Ole Ntimama's Narok North constituency, did not just happen. They were planned and executed for a political motive which as we stated earlier was declared by none other than William Ole Ntimama himself, long before the clashes erupted. We earlier stated that he had threatened that all the non-Maasai would be evicted from his constituency after the general elections of 1992, if they did not vote for him and his party, KANU. The Judicial Commission was told that in Enosupukia location which was worst hit by the clashes in the area, there were over two thousand Kikuyu who alone outnumbered all the Maasai in the area. At the time a large number of Kikuyu and other non-Maasai tribes supported two opposition candidates: FORD Asili with Ole Lempaka as the FORD Asili candidate, with Ole Tiampati of DP vying for the same seat. This made William Ole Ntimama uncomfortable and hence his threats against them.

315. During the incidents of violence which we have recounted, the Provincial Administration and the Police Force exhibited such indifference, complacency and callousness as to make one conclude that they must have known the clashes were in the offing and determined directly or otherwise, to let them take their intended course. For instance at Ol Joro, it was the supporters of William Ole Ntimama who had violently confronted Ole Lempaka and his supporters, and one would have expected that the security forces would go for the attackers. Instead they arrested Ole Lempaka who happened to be one of the targets of the attack and charged him in court with assault. He was later discharged. But we think that he was handled that way because he was an opposition candidate. Also when Ole Lempaka's supporters were attacked in Narok Town by those of his political rival, William Ole Ntimama, the police instead of dealing with the attackers decided rather to pursue the victims of the attack. It is also strange that three people were hacked to death with impunity, just outside the Enosupukia polling station where there must have been security men, because they flashed the opposition two finger salute, and yet none of the assailants was identified or arrested for this politically motivated Maasai attack. The police did not bother to investigate the matter.

316. The events in Enoosupukia and the manner the Provincial Administration officers handled the same was most insensitive and worrying. When Jonathan Soi, was informed about the violence at Enoosupukia, he immediately proceeded there with some Administrative Police officers, toured the area, and returned to his headquarters which was at Nairagie Enkare, about 30 Kms from the area, and without any proper investigation irresponsibly blamed the Kikuyu for the slaying of the three potential opposition voters, simply because it was suspected that the Kikuyu had beheaded Ole Nchiraine and slaughtered his cattle, an incident which, as we have already stated, we even doubt had occurred. Apart from the fact that Ole Nchiraine's own son never reported his father's killing to the police, Chief Inspector Petterson Maelo who was the Officer Commanding the Narok Police Station at the time, never heard of the beheading of Ole Nchiraine. This makes the allegation of Ole Nchiraine's murder rather suspicious. A similar thing occurred when Peterson Maelo was told of the beheading of another Maasai, Ole Karia, but who was later found alive.

317. On 13<sup>th</sup> October, 1993, Ole Punyua, shot a Maasai and killed three Kikuyu who were among some Kikuyu who were involved in a retaliatory attack against the Maasai. Unlike the way the police behaved during Ole Lempaka's shooting incident at Ol Joro, when the police arrested and charged him, this time, the police did not bother to seriously look for Ole Punyua. This display of double standards by the police is reminiscent of people who knew the motive for the violence and tacitly approved of the same. This was also exemplified by their behaviour on 15<sup>th</sup> October, 1993, when the now notorious Jonathan Soi and Inspector of Police Mulinka, a Maasai, saw a large group of Maasai armed with bows and arrows and other weapons which had gathered to attack the Kikuyu, who had fled their farm and were taking refuge at Enoosupukia Trading Centre. These two did nothing significant to stop the Maasai. Inspector Mulinka testified that his men fired in the air, as indeed they had been instructed to do, in order to scare off the Maasai, but they were unmoved, and stayed put. This shooting in the air syndrome was displayed in several other clash torn areas and it would appear that instructions not to shoot, disable and arrest the raiders emanated from a common source. The farcical and terrible situation that arose, was that instead of Inspector Mulinka and Jonathan Soi

taking effective steps to stop the impending attack by the Maasai. they went away leaving the Kikuyu at the mercy of the Maasai. Jonathan Soi's lame and stupid explanation for leaving was that he returned to his office which was some 30 km away, to telephone Calistus Akelo for reinforcements, when with his more than twenty armed men. Inspector Mulinka could have easily driven away the Maasai who were only armed with traditional weapons.

318. According to Inspector Mulinka, the Maasai warriors then went away only to yell a war cry from behind a hill. Inspector Mulinka fell for this diversional tactics and his officers went rushing towards the hill. This then allowed the Maasai who were hiding nearby, to attack the Kikuyu who had taken refuge at Enoosukupia Trading Centre and at the nearby Catholic Church. Thirteen Kikuyu were killed and several wounded.

319. The Kikuyu survivors were thus forced to flee Enoosupukia and trekked to Maela, where they camped for some time before the Government transplanted them, some to Ndabibi, a former ADC farm where they were given 2<sup>1</sup>/<sub>2</sub> acre plots each to settle on, and others were taken in Government trucks and were dumped at Kirigiti stadium in Kiambu, and other places in Central Province.

320. Calistus Akelo, Emmanuel Mwachiti, the Officer Commanding Police Division, and the Provincial Commissioner, Ishmael Chelanga, were slow to send reinforcements. Calistus Akelo had previously on 14<sup>th</sup> October, 1993, been to Enoosukupia and knew that reinforcements, would be required, yet upon his return to Narok he did nothing about it. As for Emmanuel Mwachiti, he did not even go to Enoosukupia let alone send reinforcements there. GSU personnel were not sent until 17<sup>th</sup> October, 1993, almost two days after several people had lost their lives, several others had been injured and there had been destruction and loss of property through burning and theft. The irresponsible and conniving behaviour that Jonathan Soi displayed in Enoosupukia, is exactly the same as that which he was to display later in Ol Moran. A day before the incident of 15<sup>th</sup> October, 1993, in Enoosupukia Jonathan Soi was instructed by Calistus Akelo to return to Enoosupukia to oversee the security situation there, but Jonathan Soi ignored that

directive. What is more, although he denied it, he is alleged to have ordered some policemen from Kongoni Police Station in Nakuru District who had crossed over into Narok to help in stopping the clashes, go back to their station as they were not required. Timothy Sirma, did the same in Kericho, showing a consistent pattern by the Provincial Administration officers in the manner in which they handled the clashes. Again, Jonathan Soi was said to have ordered the withdrawal of policemen who were guarding the displaced Kikuyu who were camped at the Enoosupukia Trading Centre. He denied that too but we have evidence on record that on 15<sup>th</sup> October, 1993, when he left the armed Maasai warriors at Enoosupukia allegedly to go and telephone Calistus Akelo to send police reinforcements, he had the temerity to take with him four of the armed Administration Policemen that Inspector Mulinka had with him a fact which he admitted. If indeed, he wanted police reinforcements to quell the clashes, then it is incomprehensible why he decided to take with him the four armed Administrative policemen. However, considering his behaviour generally, we think that it was a calculated manouver to remove them from the scene of the clashes and thereby expose the Kikuyus to attack. His behaviour calls for criminal investigation. Similarly, the District Commissioner, Calistus Akelo and the then Officer Commanding Police Division, Emmanuel Mwachiti, should be investigated further regarding their role in the clashes in the area as we think they deliberately omitted to send security reinforcements to Enoosupukia to stop the clashes there.

#### **TRANS MARA AND GUCHA**

321. Trans Mara, now a District, was carved out of the large Narok District, to facilitate closer administration. The clashes in Trans Mara District have over the years been mainly confined to Kilgoris Division which borders Gucha (South Kisii) District and more particularly, Kenyena Division of that District, and appear to have become part of the lifestyle of the main warring tribes, the Maasai and the Kisii in the two Divisions. There were other communities resident in Kiligoris area, notably the Kuria,

the Kikuyu and the Luo, but we think that because of their small numbers, their involvement in the tribal conflicts was minimal.

322. The armed conflicts between the Maasai and the Kisii dates back to colonial times, and despite incessant efforts by the Government through the Provincial Administration and the Police Force to resolve the problem, the conflicts have persisted with notorious regularity. Initially, conflicts were triggered either by cattle rustling by both sides, or alleged grabbing of Maasai land by the Kisii. However, more recently, two other causes have been added, namely, alleged illegal grazing on Maasai land by the Kisii and the illegal harvesting of maize from farms the Kisii had leased in Maasailand, by the Maasai.

323. The Maasai who, are pastoralists keep a lot of livestock and the more livestock a Maasai has, the higher his social standing. This has been a motivation for livestock theft across the common border of the two Divisions. We were told by William Ndiwa, who between June, 1997, and December, 1998, was the District Officer of Kenyena Division in Gucha District, that by and large, there were more cases of livestock theft by the Maasai with the assistance of Kisii accomplices, than there were by the Kisii. William Ndiwa also testified that stock theft was more on the increase now than in the past because in his view, with which we agree, the motive for stealing livestock was now commercial as opposed to increasing one's herd of livestock. Similarly, there were more conflicts now than before and we think that the reason is because the people are more sensitive to sectoral and tribal interests. Pressure on land was also a relevant factor arising from increased population mainly on the Gucha side, and greater consciousness by the Maasai of the need for individual land ownership. For many years even after independence, the Maasai owned and used land communally, but ever since the process of land registration started in Kilgoris area, and a large number of the agriculturalist Kisii moved into the area, a large number of the Maasai have become involved in mixed farming which requires individual land ownership. For instance, James Lemayian Waigesa, a modern Maasai who appeared before the Judicial Commission is not only a pastoralist but also an agriculturalist and businessman. Agriculturalists tend to fence in

their land to keep away ravaging animals from destroying their crops. This is what the Kisii who have leased land in Kilgoris have done and which has interfered with the free and open grazing of the Maasai, livestock.

324. William Ndiwa, also testified that the majority of the Kisii save those who live along the border with the Maasai, because of the small size of their land, sometimes drive their livestock across the border to graze in the open Maasailand. That has over the recent years been a source of conflict. In some instances, the Maasai would steal and drive away livestock, and either sell them to other Maasai or to the Kuria who in turn would drive them across the border into Tanzania. The Kisii resorted to group grazing in Maasailand with armed Kisii youths as herdsmen and when confronted by armed Maasai morans would sometimes lead to armed conflict.

325. During colonial times more particularly in 1950s, several steps were taken to control the armed border conflict which were largely caused whenever either side was tracking stolen livestock. Border committees on either side of the border were formed who, whenever there was an incident of stock theft, would accompany the security forces to track the animals across the border. It was realized that it was in the course of communal tracking down of animals across the border that clashes were sparked off and hence the establishment of those border committees. A procedure was established on how they would behave after crossing the border. We were told that such committees still exist but sometimes because of the desire to assist their fellow tribesmen, one or the other community members would refuse to co-operate with the animal trackers from the opposite side.

326. The clashes in Kilgoris and Gucha have recently taken a different dimension. Previously, the clashes were confined to the border area and did not extend beyond the battlefield. Besides, incidents of arson and murder were quite few. Tracking procedures

of stolen animals were strictly followed and whenever there was departure it was viewed seriously by all concerned. Presently, conflicts are known to extend even to urban centres, such as the clashes which occurred in Kilgoris Town on 20<sup>th</sup> November, 1997, when two Kisii were killed, a Maasai was shot dead by the police, several commercial and residential premises owned by the Kisii were burnt. and several people, mainly the Kisii were injured and many fled the District to avoid death or injury. There were also the clashes at Nyangusu on 14<sup>th</sup> October, 1997, when an armed band believed to be of the Kisii attacked people in the market and injured several of them. Furthermore the trend since 1992, has been that whenever there is a clash along the border, it is followed by the burning of houses and retaliatory killing or injuring of people from the opposite community wherever they would be found. There is now lack of mutual tolerance and respect.

327. The reasons for the change, we think, include firstly, the general influx of people into Maasailand from neighbouring Districts. Population pressure in Districts occupied by the Kipsigis and the Kisii, particularly, forced some people to move into Maasailand which was then and even now relatively sparsely populated. There was a system of passes which regulated the movement of people across inter-tribal borders. Many of the Kipsigis, Kisii, and Kuria got passes into Maasailand where they were accepted, and obtained land and settled there. They were generally referred to as "Acceptees", and they enjoyed all rights of the Maasai. Just before and soon after independence, however, the movement restrictions were relaxed, with the result that many Kisii, Kuria and Kipsigis in particular, crossed over, made friends with some of the Maasais, and got land from them either by way of purchase or as a gift. In other cases, however, the people settled on Maasailand which they found unoccupied. The population of non-Maasai, therefore, increased tremendously. Enlightened Maasai and political leaders considered the influx of non-Maasai into their territory as undesirable. Senior Chief Delamiah, is reported as contained in the Annual Report for Kisii for 1964, of an inter-District leaders meeting held on 12<sup>th</sup> April, 1964, to have made the following comment:

"He pointed out theft was the main worry and to stamp it out co-operation was essential. He suggested that the cause for the trouble

was that the Kisii wanted Maasai land. This could be discussed amicably but grabbing of land would not be tolerated.”

328. A large number of the Kuria also settled in Maasailand and their numbers allegedly caused concern among the Maasai who, at a meeting held on 9<sup>th</sup> November, 1988, at the Deputy Provincial Commissioner’s office Nakuru and chaired by him, and also attended by Hon. Sompisha, then an Assistant Minister of Health and the area MP and Lerenua Mengish the then Vice-Chairman Narok County Council and several Maasai elders, called on the Government as shown in Exhibit 140(A), the Minutes of that meeting, to firstly evict the Kuria or else they, the Maasai, would do this themselves and evict them, secondly, to organize a public baraza in Trans Mara to deal with the problem. The complaint against the Kuria was that they had come from Tanzania and without anybody’s consent, settled in Trans Mara and occupying land where the Maasai were supposed to graze their animals, and that some of them came with firearms which they often used in cattle rustling.

329. The second reason for the change was politics. Prior to 1997, the area people predominantly supported KANU. However, in 1997, the political scenario in the area changed, when opposition politics gained ground there. Although we were not given accurate figures of registered voters in the area, the unofficial figures show that in 1997, there were about forty six thousand registered voters in the area out of which about twenty thousand were the Kipsigis, and ten thousand the Kisii, thus leaving about sixteen thousand which by inference would include the Maasai and the other non-Maasai tribes. From the figures one could easily tell the voting pattern in the 1997 general elections, more so because the Kisii like the other non Maasai or non-Kalenjin tribes were regarded as opposition supporters or sympathisers. Evidence we received indicate that the Maasai and the Kipsigis were generally KANU supporters, and were likely to vote for a KANU candidate or in mixed communities, for a person from their own ethnic communities or one associated with their communities or ethnic clans.

330. In the 1997, KANU primaries, there were several Maasais who desired to be nominated to contest the area parliamentary seat. There was the incumbent, Julius Ole



Sunkuli, from the Muitanik clan; Gideon Sitelu Ole Konchellah, from the Uasin Gishu clan; and Peter Ole Sapalan from the Siria clan. There was also one Kiptunene who, from the name could be Kalenjin. The non-Maasai population was high, and would greatly influence the outcome of the elections in the area generally. The intense clashes, which preceded the general elections of 1992 and 1997, were, we have no doubt, politically motivated to drive out the non-Maasai, particularly those who were neither Kalenjin nor Maasai, who as we said earlier, were perceived to be opposition supporters or sympathizers, so that they could not vote. This may perhaps explain the clashes particularly in Kilgoris town which targeted mainly the Kisii.

331. Prior to 1992, the clashes along the Gucha/Trans Mara border were intermittent and were by and large, sparked off by cattle rustling. The introduction of plural politics in 1991 ushered in parochialism in all sectors including the security forces. John Keen, a one time Assistant Minister in the Office of the President, in charge of Provincial Administration and Internal Security, told the Judicial Commission that since the end of 1991, the Police Force has been inefficient, partisan in favour of their political inclinations and only acted on instructions from their superiors. Another witness, Josiah Oundi Onyancha, testified that because the police in the area were not responding to the people's security problems a special band of volunteer fighters who were popularly referred to as "Chinkororo" was formed in Gucha District to counter the frequent Maasai moran raids in the District. The group was properly trained, was fierce and effective. Its formation was a vigilante self-help measure to deal with the security problems, in the area which arise whenever the people are frustrated and desperate. We were told that the group was eventually disbanded in or about 1992 or 1993, because its activities went beyond self-defence and included acts of thuggery against people across the board, using both traditional and sophisticated modern weapons.

332. The 1992 clashes in Trans Mara targeted mainly the Kisii. We were told that several of them had to flee Trans Mara because of increased cases of livestock theft, personal attacks and arson although it was not as widespread as was the case in 1997. Earlier, in 1989, the then Provincial Commissioner, ordered the eviction of the Kuria but it was not limited to the Kuria only; other non-Maasai tribes except the Kipsigis, were also affected. A contingent of over two hundred Administration policemen was used to evict not only the Kuria, but all the non-Maasai except the Kipsigis, in the area. However, the then area Officer Commanding Police Division, Joseph Kobia, told us that the people moved away voluntarily. If that had been so, there would have been no need of employing such a large number of policemen to oversee the movement. A scorched earth approach so to speak was employed and Mohamed Yusuf Haji was not afraid to admit this. Houses were set on fire in order to drive away the people affected. Furthermore, considering the number of policemen who were used against unarmed citizenry, the number of people who were moved must have been high. Stephen Nyahiri Mwita, told the Judicial Commission that there were over eight thousand Kuria, over eighteen thousand Kalenjin and a large number of Kisii in Lolgorian Division, and that during the baraza that he held on 9<sup>th</sup> January, 1989, Mohamed Yusuf Haji, had threatened that any non-Maasai who did not move out within fourteen days, would be forced out and his house burnt. Indeed, during the execution of the eviction order on 23<sup>rd</sup> February, 1989, all houses belonging to the non-Maasais, were burnt. Gideon Muli, who was then the Officer Commanding Narok Police Division in 1989, before Trans Mara was carved out of that Division, confirmed that fact, and added that the areas where these people had lived were left desolate.

333. The eviction was indiscriminately undertaken except where one would produce a letter of acceptance in which case, he could be moved to another area. We wish to state here that whether or not the people who were evicted were squatters, illegal or otherwise, the eviction was unlawful as no court order was obtained prior to that. The law in Kenya, as indeed in most common law jurisdictions, is that an eviction is only lawfully done where it has been sanctioned by a court of law. The law binds the citizen as well as the government and its servants. It is therefore with dismay that we heard Mohamed Yusuf

Haji, say with pride that with or without a court order, as Provincial Commissioner, he could evict anybody if in his discretion the move was essential for the sake of security. Such an attitude is not uncommon among the Provincial Administrators. Nicholas Mberia, like, Mohamed Yusuf Haji, evicted Luo squatters from Buru farm, without caring a whit about the law and on the pretext that they were a security risk. The evictions in Trans Mara in 1989, and even subsequently were clearly politically motivated and were intended to weed out those who were perceived not to be politically correct.

334. Between early 1993 and 1996, there were only intermittent border conflicts, basically related to cattle rustling. However, in 1997, we had a spate of violent incidents most of which occurred between October and December of that year. We were told of an alleged theft of Maasai livestock by the Kisii on 8<sup>th</sup> October, 1997; the robbing of Maasai women at Nyangusu on 10<sup>th</sup> October 1997; the burning of Kingarro Ole Mukire's house on 13<sup>th</sup> October, 1997, by people suspected to be Kisii; a raid on 14<sup>th</sup> October 1997, by the Kisii who were allegedly blowing horns as they moved along to invite fellow compatriots to war against the Maasai; and the fight at Nyangusu on 20<sup>th</sup> October, 1997, in which a Maasai school boy, James Lemashan Ole Passa alias Mumula, was beheaded by the Kisii, among other incidents. All these incidents were narrated by Maasai witnesses who, in our view, sought to portray the Kisii as the aggressors. The two Kisii from Gucha District who testified, Joshua Maroko Onkoba and Josiah Oundi Onyanha, in effect, gave what we considered to be a balanced account of the clashes. They both conceded that up to and including 1992, during the time of the "Chinkororo", armed conflict at the common border was blameable on both sides, but subsequently, after the "Chinkororo" gang was disbanded, the Maasai have in effect been having an upper hand as they receive support from the security forces. Indeed, in one incident some Kisii youths, angry about the partisan role of the police in the area, attacked and killed three GSU officers in Nyabitunwa, a border trading centre, after five people, all Kisii, had been killed by the Maasai on 31<sup>st</sup> October, 1997. These deaths were confirmed by the DOs of both sides. We note that a Criminal Intelligence Report, Exhibit 204, by a team of CID officers headed by John Namai who were sent to the area to collect and collate

criminal intelligence, does support the contention that security personnel were favouring the Maasai. That Report also states that some two Administration policemen were seen overseeing the illegal harvesting of beans by the Maasai from a farm in Maasailand leased by some Kisii. In our own assessment, the series of border skirmishes in October and November, 1997, were intended by whoever was behind them to create an excuse for the eviction of the Kisii from Trans Mara which eventually was effected on 20<sup>th</sup> November, 1997. The fact that official government transport was used to move some of them, away, to their ancestral homes instead of the Provincial Administration officers and the Police providing security to the non-Maasai victims, can only mean that the non-Maasai were not wanted to vote in the area on polling day of the 1997 general elections.

335. On 20<sup>th</sup> November, 1997, the clashes were not at the common border as before but at Kilgoris Town. A band of armed Maasai raided the town market area, after a woman was heard screaming. They attacked and killed two Kisii men and wounded several others, looted and burnt several small shops and houses of the Kisii, and who were then and forced to seek refuge at the District Commissioner's office. By the time the police intervened it was too late. One Maasai was accidentally shot dead, and ironically the Administration policeman who shot him was quickly arrested, but no single raider was arrested. Jonathan Silisili Ole Sialo, the Chief of Ololechany Location, within whose area the incident took place, told us that, that incident marked the end of the clashes in his Location that year, presumably because their purpose had been served. Had the Kisii been the aggressors, one would have expected that the incident at Kilgoris would have triggered reprisals from the Maasai, but it did not because the attack was one sided.

336. The then Commissioner of Police Duncan K. Wachira, in or about early December, 1997, sent a team of policemen headed by John Namai, to proceed to Trans Mara and Gucha Districts to collect and collate criminal intelligence as to the causes of the clashes there, on the grounds as stated in his letter of 12<sup>th</sup> January, 1998, to the then head of the Civil Service Fares Kuindwa, Exhibit 206, that reports reaching him from the two Districts about the clashes there were ambiguous. Exhibit 204 which we referred to earlier was thereafter, submitted to him in paraphrased form on or about 11<sup>th</sup> December,

1997, (exhibit 205), wholly based on exhibit 204, above mentioned. Among other things, the report which John Namai submitted to Noah Arap Too, Exhibit 204, reveals that those who were starting the skirmishes were strangers in the area who after starting the clashes would disappear from the scene. As will be recalled we got a similar story in other areas we have already covered in this Report notably Sondu, Londiani, Enoosupukia, Molo South and Njoro.

337. The clashes in Trans Mara and Gucha Districts have a long history and they appear to have become part of the peoples' lifestyle. They also appear at times, to be encouraged and supported by some Provincial Administrators, some members of the Police Force and politicians. The militia called "Chinkororo" and the Maasai morans who were generally involved in the border wars, live among the people and yet the Provincial Administration officers who include Chiefs, did not report them to the police for necessary action. It is no wonder that John Namai's team found that the Chiefs and other public servants in the Trans Mara and Gucha Districts sided with their fellow tribesmen and either condoned their activities or were directly or otherwise part and parcel of their operations. Heavy fighting along the border started in early October, 1997, at Kiango, a border trading centre which together with Nyangusu, Nyabitunwa, Ramasha, among others, are known to be prone to border conflicts. We were told that a Kisii school boy was killed by the Maasai in the course of armed conflict between the two communities arising from stock theft. The Kisii were incensed by this and in turn, attacked the Maasai. Thereafter, there were sporadic incidents along the border culminating in the incident of 20<sup>th</sup> October, 1997, when in the course of the fighting at Nyangusu, a Maasai boy was beheaded, his abdomen cut open his kidneys removed. His genitals were cut off and taken away, and his head was later stuck on a stick which was then planted on a hill some distance from his body. This incident enraged the Maasai who armed themselves and attacked the Kisii on among other days, 20<sup>th</sup> November 1997.

338. The fighting according to Joshua Maroko Onkoba, William Ndiwa and Arthur Bunde, the District Officer of Kilgoris, lasted slightly over three months. Many lives were lost, about eighteen in all of which fourteen were the Kisii and four the Maasai. Several people were wounded, many livestock were stolen, several small business shops and residential houses were burnt and the business and social life of the people was disrupted. Yet little was done by the Provincial Administration and the Police Force to prevent or promptly terminate the violence. We were told that there were several police posts and bases and both as well as a GSU and ASTU Camps along the common border, but incidents of cattle rustling continued unabated. From the evidence that we heard we have no hesitation in concluding that the partisan approach to the security issues in the area by the Provincial Administration and the Police Force was responsible for the continued violence in the area. In this regard, it will be remembered that during the violence in Kilgoris Town, no arrests were ever made of those who perpetrated the violence. However, when an Administration policeman accidentally shot and killed a Maasai, he was quickly arrested. Security men were present when the fighting broke out at Kilgoris Town, but they did not stop it until after lives had been lost. The Provincial Administration officers and the Police Force instead of dealing firmly with the perpetrators of the violence, applied the suspicious and conniving strategy of repatriating the victims of the violence and allowed the aggressors to go free, pleased with themselves. A somewhat similar behaviour was shown in Narok Town in respect of the violent confrontation between the supporters of the local rival politicians William Ole Ntimama and Ole Lempaka. We think that the behaviour which the Provincial Administration and the Police Force displayed at Kilgoris on 20<sup>th</sup> November, 1997, was a blatant and mischievous attempt to achieve a political purpose.

339. Trans Mara as a District is also a parliamentary constituency, and the large non-Maasai population's vote was considered crucial in determining who, among the several parliamentary candidates in the constituency would win the election. The report by John Namai's team, Exhibit 204, which Duncan Wachira accepted and praised, gives what we think were the underlying causes for the clashes in Trans Mara in both 1992 and 1997. In Duncan Wachira's letter to Fares Kuindwa, Exht 206, which he copied also to Noah Arap

Too who was then the Director of CID, Duncan Wachira made some observations which we consider pertinent, more so considering the opening sentence in the letter which we had earlier referred to and which reads as follows:

“Due to the ambiguous nature of reports reaching us from the Districts of Trans Mara and Gucha, I assigned the Director of CID to dispatch a special team to go and verify the security information on the ground.”

340. From the above excerpt it is clear that Duncan Wachira was sure that he was previously not being fully and frankly briefed as to what was going on in the Trans Mara and Gucha Districts regarding the clashes. He therefore decided that more independent and dependable persons be dispatched to verify the facts. From the report he received he was able to discern, as we also do, that the District Security Committees of Trans Mara and Gucha Districts were indifferent and partisan during the 1997 general election period. He decided to transfer the Officer Commanding Trans Mara Police Division, Joseph Kobia. But we think that a mere transfer was insufficient in the circumstances in view of the many lives that were lost, the several people who were injured, the properties which were destroyed or damaged, and the displacement of hundreds of people. Duncan Wachira, seems to have written to Fares Kuindwa, more particularly because of his other observations, which we will revert to shortly, which concerned issues which he felt he was incompetent to deal with. He wrote in pertinent part as follows:

“... I have these observation and recommendations to make:-

- (a) The two DSCs in Trans Mara/Gucha should be changed and fresh officers posted to those two districts. There are glaring indications of indifferences (sic) and partiality on members of the DSC during the election period particularly as is seen in Trans Mara. Due to this fact, I had changed the OCPD of the area.
- (b) Political goodwill by the local politicians is very important so as to restore people's confidence and reassurance.
- (c) Security officers working in this area and who come the same communities fighting should be transferred out of the two districts.
- (d) The Chiefs and their assistants should be restrained from fuelling tribal animosity.
- (e) The issue of land in this area is very sensitive and the government should address itself to this issue and issue the necessary instructions.”

341. In our view, by writing his letter, Duncan Wachira's mind was put to rest regarding the causes of the clashes and who was behind them, and he had no doubt in his mind that the observations in the report of John Namai's team were correct. We think that Duncan Wachira found that this report really corroborated other previous reports

which he had received. Fares Kuindwa too, accepted the report and the recommendations which he acted on, although in our view the action which he said was taken against the Chiefs and Assistant Chiefs who were reported to have fuelled the clashes was clearly congratulatory rather than penal. They deserved not just a warning but dismissal.

342. Now back to Duncan Wachira's observations. Apart from blaming the District Security Committees, the Chiefs and their assistants, Duncan Wachira also blamed the politicians as having been partly responsible for the clashes, but his observations fell short of identifying any crime or crimes any of the people he blamed may have committed. When he was asked why he did not mention to Fares Kuindwa any possible criminal offences that the report may have disclosed, he became evasive as made us believe that by writing to Mr Kuindwa he was in effect avoiding a duty which squarely lay on the police department which he headed, of arresting and prosecuting the possible offenders, who may be politicians. Duncan Wachira's answer in effect was that it was the responsibility of the Director of CID to investigate crimes and to prosecute possible offenders. If that were so, one wonders why he, in the first place took the trouble to instruct the Director of CID to facilitate the collection of criminal intelligence.

343. Be that as it may, what emerged from the report of John Namai's team, is that personnel on the ground, more particularly in Trans Mara, were in a way involved in the clashes. That explains why in certain areas action was not taken against the perpetrators of the violence whoever they were. Infact one witness, Nyahiri Mwita, testified that the District Commissioner, Wilson Litole, was seen at the battle ground at Kilgoris Town on 20<sup>th</sup> November, 1997, but took no action to direct the security personnel to stop the violence. We were also told by another witness that some security personnel were at the market area before the clashes erupted, but all they did was to fire in the air, and watched as some people were killed, others injured, shops looted, and business premises, and houses, belonging to the Kisii were burnt. Not a single raider was arrested!

344. The report of John Namai's team also blames two politicians, Julius Ole Sunkuli and Ferdinard Obure, the then members of parliament for Kilgoris and Machoge



constituencies, respectively. The latter is alleged to have made inciting statements calling upon his Kisii tribesmen to arm themselves to fight the Maasai. The former too while attending an election campaign meeting at Ilkarian Primary School, at Lolgorian Trading Centre, allegedly asked the Siria clan elders and the youths to cause chaos and chase away non-Maasai from Lolgorian Location, but they declined. He is also alleged to have signalled raiders at Kilgoris town to attack the non-Maasai, particularly the Kisii and to then later drive them out of Trans Mara District. Although Julius Sunkuli denied it through his advocate, Mr Monari, the report of John Namai's team makes it abundantly clear that Julius Sunkuli is not blameless. We were told that Wilson Litole, and the District Security Intelligence Officer, Chirchir were generally known to support him a fact which according to John Namai compromised their role in crushing the clashes in Trans Mara. It is noteworthy that during the clashes in Trans Mara Julius Sunkuli was an Assistant Minister in the Office of the President under which the Provincial Administration officers and the Police Force fell, and the concerned officers in Trans Mara must have feared taking a position in the clashes which would have displeased him. It is no wonder therefore that the report of John Namai's team blames him for interfering with the police action against criminal suspects. It was alleged that his official car GK Y456 a Peugeot 504 was sent to Kisii Police Station to collect a murder suspect in a clash related offence whom he wanted released. Besides, Duncan Wachira in his letter to Fares Kuindwa, may have had him in mind when he proposed that steps be taken, in effect, to tame the politicians in Trans Mara and Gucha Districts. In doing so we think, he felt incompetent or afraid to deal with Julius Sunkuli. Fares Kuindwa, like Duncan Wachira, did not consider that it was within his docket to deal decisively with political issues even if they had a direct bearing on the clashes. His evidence as appears in the verbatim report of the proceeding of the Judicial Commission of 7<sup>th</sup> June, 1999, are as follows:

**“Mr. Lumumba:** My last question: would you agree with me that during that period, politics played a very fundamental role in the decision making?

**Mr. Kuindwa:** My, Lords, I do not know whether I feel competent to offer a personal interpretation of that. If I restricted myself to this report, it did mention cattle rustling, land and political issues as causes of those clashes. I do know at that particular time it was

during electioneering time. Indeed, the report itself does say that similar things happened in 1992 prior to another election. God forbid that it happens also in the year 2002 when we have some more political activities. But I do not think I am competent enough to offer a personal opinion on whether there was politics to do with what we are doing today.”.

345. Clearly Fares Kuindwa was avoiding the issue, yet throughout our inquiry politics has featured as the main cause of the clashes. It would appear to us that public servants who included the Provincial Administration officers, the Police Force, and even Permanent Secretaries feared to take decisions however laudable, which were likely to displease certain political personalities for fear of victimization. Also the Provincial Administration officers the police officers who testified before us regarding the KANU political rally which was held at Narok in September, 1991, gave oblique answers to questions that were put to them regarding what politicians who spoke at the rally said, for fear that they would displease the politicians who participated in it. We think that in Trans Mara too, the public servants there did not want to do their jobs as expected of them for fear that they would displease Julius Sunkuli. In the result, they omitted to take decisive action to prevent the inter-ethnic clashes there and in the event, some people were killed, several others were injured, a lot of property was destroyed and many people were displaced. It is our view, and we so recommend, that all the members of the District Security Committee then based in Trans Mara in particular should be investigated further to establish their specific roles in the clashes with a view to necessary disciplinary criminal action being taken against them. Likewise all the Chiefs and Assistant Chiefs in Trans Mara who were implicated should be dealt with in similar manner.

346. As regards Julius Sunkuli and Ferdinard Obure, serious allegations were made against them. They were duly served with statutory notices to appear before the Judicial Commission. Julius Sunkuli but not Ferdinard Obure, appeared by counsel, Mr Monari, who cross-examined witnesses on the allegations against him. He did not, however, choose to testify to give his side of the story as we think he should have done. Having not done so the serious allegations remain uncontroverted, and so are the serious allegations against Mr Ferdinard Obure. In view of the foregoing, we would recommend

that the two politicians, too, be further investigated regarding their respective specific roles in the clashes in the Trans Mara and Gucha Districts.

1. The first group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya Defence Forces (KDF) who were deployed to the area in 1991. They were the first to be involved in the clashes and were responsible for the deaths of several people. The KDF was also responsible for the destruction of property and the displacement of many people.

2. The second group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Defence Force (KNDF) who were deployed to the area in 1992. They were also responsible for the deaths of several people and the destruction of property. The KNDF was also responsible for the displacement of many people.

3. The third group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Police (KNP) who were deployed to the area in 1993. They were also responsible for the deaths of several people and the destruction of property. The KNP was also responsible for the displacement of many people.

4. The fourth group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Security Council (KNSEC) who were deployed to the area in 1994. They were also responsible for the deaths of several people and the destruction of property. The KNSEC was also responsible for the displacement of many people.

5. The fifth group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Intelligence Service (KNIS) who were deployed to the area in 1995. They were also responsible for the deaths of several people and the destruction of property. The KNIS was also responsible for the displacement of many people.

6. The sixth group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Human Rights Commission (KNHRC) who were deployed to the area in 1996. They were also responsible for the deaths of several people and the destruction of property. The KNHRC was also responsible for the displacement of many people.

7. The seventh group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Commission on Human Rights (KNCHR) who were deployed to the area in 1997. They were also responsible for the deaths of several people and the destruction of property. The KNCHR was also responsible for the displacement of many people.

8. The eighth group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Commission on the Environment and Natural Resources (KNENR) who were deployed to the area in 1998. They were also responsible for the deaths of several people and the destruction of property. The KNENR was also responsible for the displacement of many people.

9. The ninth group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Commission on the Status of Women (KNCSW) who were deployed to the area in 1999. They were also responsible for the deaths of several people and the destruction of property. The KNCSW was also responsible for the displacement of many people.

10. The tenth group of people who were involved in the clashes in the Trans Mara District were the members of the Kenya National Commission on the Status of Children (KNCSCh) who were deployed to the area in 2000. They were also responsible for the deaths of several people and the destruction of property. The KNCSCh was also responsible for the displacement of many people.

**CHAPTER TWO:  
CLASHES IN NYANZA AND  
WESTERN PROVINCES**

346. The clashes in Western Province occurred in the old Bungoma District and to a very small extent in the old Kakamega District, along the boundary between Kakamega and Nandi Districts.

347. At the time when the clashes erupted in December, 1991, Bungoma was the largest District in Western Province until the creation of Mt. Elgon District which is made up of Cheptais, Kopsiro and Kapsokwony Divisions. The Mt. Elgon region is densely populated except for the upper slopes of the mountain. At the time of the clashes, eighty percent of the population were the Bukusu who belong to the Luhya tribe, ten percent consisted mostly of the Sabaot and a few Ndorobo who are sub tribes of the Kalenjin, five percent were the Teso and the rest of the population were mostly the Kikuyu and the Luo. Except for Tongareni Division which was part of Trans Nzoia District during colonial times, this area was not previously associated with White settlement or farms, hence the settlement pattern such as that which existed in the Rift Valley Province, was not found in this District.

348. Bungoma District was surrounded by Trans Nzoia District in the Rift Valley Province, Kakamega and Busia Districts both in Western Province, and Uganda. It had a number of administrative Divisions at the time, namely, Cheptais, Kapsokwony, Sirisia, Kimilili, Webuye, Tongareni and Kanduyi Divisions.

349. Both Kapsokwony and Cheptais Divisions were inhabited by the Sabaot who were the majority, and a few of the Bukusu and the Teso. There were a few Kikuyu as well. Kimilili and Sirisia Divisions were occupied by the Bukusu who were the majority, and a few of the Teso and the Sabaot. Webuye Division was inhabited by the Tachoni and the Bukusu. Tongareni Division was originally part of the White Highlands and a cosmopolitan settlement area where the Sabaot were the majority in Mt. Elgon Sub-

District. In Kanduyi Division, a few Sabaot lived amongst the majority Bukusu. Kapsokwony, Cheptais, Sirisia and Kimilili Divisions were all affected by tribal clashes, which were a spill over from Trans Nzoia District in the Rift Valley Province.

350. Prior to the introduction of multi-party politics, all these communities lived reasonably peacefully. However, and not unlike the case of the Rift Valley Province, there were long standing problems like cattle rustling by the Sabaot. Land was also an issue which had remained unresolved for a long time. The Sabaot, being the indigenous inhabitants of the mountainous region, wanted to live alone and did not particularly enjoy the presence of strangers in their midst whom they had all along, accused of settling on their prime land while many Sabaot remained landless. They also disliked the fact that they lived among many of the Bukusu in Bungoma District in Western Province while the rest of their Kalenjin brothers, lived in Trans Nzoia District in the Rift Valley Province. Fearing that they would be further marginalised and completely forgotten, with the introduction of multi-party politics, they intensified their demand for a Sabaot District to be hived out of Bungoma District and which District, they further demanded, should be administered from Trans Nzoia in the Rift Valley Province where most of the Kalenjin lived. The Sabaot were unhappy that the Government had ignored them for so long and they accused it of settling strangers rather than the landless Sabaot on ADC farms in Trans Nzoia District. Although all these problems existed prior to the introduction of multi-party politics, they did not at any one time, lead to the kind of fighting that was experienced during the tribal clashes, neither did they ever lead to the eviction of the non-Sabaot from the area. The demand for a Sabaot District was finally, granted after the clashes in 1994, when the present Mt. Elgon District was hived out of the old Bungoma District. This new District, however, falls under Western Province with its headquarters at Kakamega, a fact which the Sabaot are unhappy about. In evicting the non-Sabaot from Mt. Elgon Sub-District and from Trans Nzoia District, the Sabaot saw this as a step

in the right direction for the recovery of their ancestral lands, which they had lost to the white settlers.

351. However, upon the introduction of multi-party politics in the country, these existing problems were exploited by the Sabaot and politicians to start tribal clashes in Bungoma, Mt. Elgon and Trans Nzoia. Although the Sabaot were to say that the clashes were caused by the Devil or “pepo mbaya” that suddenly blew into the area, we have no doubt that they were politically instigated to drive away from the region, the non-Sabaot who were perceived to be supporters of the opposition parties, and also derogatorily referred to as “madoadoa”, so that during the 1992 multi-party general elections, the Sabaot who would be left behind, would all vote for KANU.

352. The clashes in the old Bungoma District started on the night of 24<sup>th</sup> December, 1991, with the burning of houses of the non-Sabaot in Kapsokwony Division. This was a spill over from next door Trans Nzoia District where the clashes were already on, and houses of the non-Sabaot had been set on fire. By April, 1992, the clashes had spread over a wide area into Cheptais, Sirisia as well as Kimilili Divisions. Kopsiro Location, which is in Cheptais Division, had four Sub-Locations namely, Kapkateny, Teremi, Chelebei and Chepyuk. All these Sub-Locations which have since then, been elevated to the status of Locations in the new Kopsiro Division, were affected by the clashes.

353. The aggressors who were the Sabaot, were armed with bows and arrows, spears and at times, guns. They wore red T-shirts and red shorts or black T-shirts and shorts. If they attacked during the day, they smeared their faces and bodies with clay to conceal their identities. The clash victims, mainly the non-Sabaot, were attacked in their homes or on their way home, brutally killed or maimed and their houses set on fire by the Sabaot. A Bukusu victim, Ronald Simiyu, living on Sabaot Co-operative farm, in Trans Nzoia was killed and his body set on fire inside the house where he had sought refuge.

Those Bukusu who were lucky to survive, fled their homes and farms and sought refuge with relatives and friends, at Sirisia. Some of the victims together with their cattle and what ever personal effects they could carry, camped at trading centres such as Kapkateny, Kimilili, Sirisia and Kimalewa.

354. Before we consider the clashes as they affected particular places in Western and Nyanza Provinces, it is important to examine the issue of land which was exploited at the introduction of multi-party politics, to evict the non-Sabaot from the area for political gain.

355. The Elgony as the Sabaot were then known, were, under the colonial Crown Lands Ordinance of 1902, removed from their communal lands in Kitale and Trans Nzoia Districts into Mt. Elgon forest and North Kavirondo native reserves, to pave way for white settlement within the Rift Valley Province. Their pastoral way of life was considered a harassment to the white settlers as well as the colonial Government, hence the need to confine them in reserves. Many of them were also pushed into Uganda with their cattle where they lived among the Sebei of Uganda. And up to today, the Sabaot have many close relatives in Uganda where they are known as the Sebei, and who in turn, have close relatives in Trans Nzoia and Mt. Elgon District, the Sabaot.

356. Life in the Mt. Elgon forest reserve which comprised only 40,000 acres, was difficult for the pastoral Sabaot. As their numbers and that of their cattle quickly multiplied, the reserve became too small for them and their cattle. Not unexpectedly, the Sabaot started demanding for more land, particularly the whole of Mt. Elgon region including the lands which had become white settler farms and from which, they had been removed into the reserves, as well as all the areas they claimed to have occupied prior to 1895. And so when the Sabaot headman, Arap Kasis, appeared before the Kenya Land

Commission of 1932, which became known as the Carter Commission, sitting at Kitale on the 8<sup>th</sup> October, 1932, he is reported to have quite plainly told the Commission that:

“The top of Mt. Elgon is not sufficient land for us. We do not like the cold. It is our country. You are in a position to grant us land. We want a country where we can make our shambas and grow our food. This country is very small ...”.

357. In response to their request for more land, the Provincial Administration had recommended that some 80,000 acres on the slopes of Mt. Elgon behind and above the forest reserve, which the Elgony occupied, be granted to them. But, the Carter Commission recommended that the moorland area measuring only 40,000 acres in addition to the area already occupied by the Sabaot, be set aside for them. That brought the total area to be set aside for the exclusive occupation and use by the Sabaot to 80,000 acres. This recommendation marked the beginning of the Sabaot land problem, which persists to date and which was exploited by politicians and the Sabaot community at the introduction of multi-party politics in Kenya. According to the Sabaot, the recommendation of the Carter Commission was never considered when the Government finally acquired and turned certain former white settler farms in Trans Nzoia District, into settlement schemes open to all Kenyans to purchase. The Sabaot even today, view the farms in Trans Nzoia as part of the 80,000 acres which the Carter Commission had proposed should be set aside for their exclusive use and occupation, in compensation for the land they lost to the white settlers in Trans Nzoia. The Sabaot still resent the presence of the non-Sabaot who have purchased land in the area, and whom they accuse of having taken their ancestral land leaving many of them either landless or confined to the mountainous area.

358. Prior to the introduction of multi-party politics, the Bukusu and the Sabaot in Mt. Elgon region appear to have been united in the choice of their member of parliament. Wilberforce Kisiero who was the member of parliament for Mt. Elgon Constituency for along time, is a Sabaot. He told us that most of his supporters were the Bukusu and indeed, the Bukusu witnesses who appeared before us, told us that they usually voted for



him during parliamentary elections. This was clear evidence that ethnicity was not a serious issue prior to the introduction of multi-party politics. However, upon the introduction of multi-party politics, things changed, with the different ethnic communities supporting political parties along ethnic lines. The Sabaot already remained in the ruling party KANU. According to Wilberforce Kisiero and the Bukusu witnesses, some of the Bukusu still voted for him in the 1992 multi-party general elections inspite of the clashes that occurred in 1991 and 1992.

359. The late Masinde Muliro, a respected Bukusu elder and politician, was one of the founders of the opposition FORD political party which subsequently, split into the Ford-Kenya and Ford Asili opposition political parties. Most of the Bukusu and especially those in Trans Nzoia, where Masinde Muliro lived, identified themselves with Ford-Kenya. The Teso also did the same while the Kikuyu identified themselves with either Ford-Asili or the Democratic Party of Kenya, both of which were headed respectively, by the Kikuyu Kenneth Matiba and Mwai Kibaki.

360. The Sabaot being Kalenjin, considered themselves members of the ruling tribe and saw the introduction of multi-party politics as a threat to the presidency, which had to be resisted at all costs. They threatened all the non-Sabaot living in the area, with eviction, should they not support KANU. The Sabaot brutally attacked the Bukusu, the Teso and the Kikuyu, set their houses on fire, killed or maimed them and drove away their cattle. The purpose of all this was to drive them out of Mt. Elgon Sub-District in order to facilitate the creation of an exclusive Sabaot District so that come the 1992, general elections, the Sabaot could vote as a bloc for KANU.

361. As mentioned earlier, the creation of an exclusive Sabaot District is a desire the Sabaot had held as far back as 1932. In paragraph 1081 of the report of the Carter Commission, appears the following confirming observation:

“The Elgony desire a country of their own, but it is hardly possible to consider these claims to a vast area of country for the exclusive use of a small and possibly dying tribe.”

362. But finally, the Sabaot partly, realised their dream in 1994 when the new Mt. Elgon District was hived out of Bungoma District.

363. We shall now proceed to examine the clashes that took place in the Divisions of Western and Nyanza Provinces.

### **KAPSOKWONY DIVISION**

364. Kapsokwony Division which is next to Trans Nzoia District in the Rift Valley Province is inhabited by the Sabaot, the Teso and a few Kikuyu traders. Prior to the outbreak of clashes in this Division, tension was high and the Sabaot were hostile towards the non-Sabaot for their support of the opposition political parties. The Sabaot were reported to have threatened to drive away the Bukusu from the area, stretching from Chwele Location, then in Sirisia Division of Bungoma District, to Saboti Division in Trans Nzoia District. The Bukusu in response, threatened to drive away the Sabaot to Uganda where their brothers the Sebei, lived, should Masinde Muliro become President. This increased the Sabaot fear of being further marginalised and they intensified their demand for a new District of their own, in which they hoped to live without the other tribes. Barazas addressed by the local District Commissioner did not ease the tension and the situation remained explosive. The Sabaot on removing the supporters of multi-party politics removed from the area so that during the 1992 elections, they could all vote as a bloc for KANU, then exploited the already existing disagreements to start the clashes.

365. On the night of 25<sup>th</sup> December, 1991, the clashes which had already started in neighbouring Trans Nzoia District erupted in Kapsokwony Division. The Sabaot, who were the majority there, armed themselves with bows and arrows, spears and other crude weapons and attacked the Bukusu and the Teso living in Chesito and Kaboyuo, burnt and

looted their houses and stole their cattle. The Bukusu and Teso fled to Kimilili trading centre where about five hundred Bukusu families camped.

366. The then Officer Commanding the Kimilili Police Station, Chief Inspector David Rono, who has since retired, and who appeared before the Judicial Commission, told us that he received information of the attack at 8 p.m. and left for Kapsokwony at 10 p.m. with fifteen men and that because of the bad road, it took them two hours to reach their destination which was only 30 km away. He, however, did not explain why it took them two hours to leave the police station. We got the impression that either his police station was not on the alert to attend to such an emergency, or being a Kalenjin like the Sabaot, he did not care about what happened to the non-Sabaot and that is why they took so long to leave the police station.

367. When they finally arrived at Kapsokwony, they found that the non-Sabaot had already fled. David Rono would not tell us whose houses had been burnt, lying that they belonged to both the Sabaot and the Bukusu because both tribes lived there. He further lied when he told us that he did not find anybody there whom he could ask what had happened and who could tell him whose houses had been burnt down. Such information could easily have been obtained from the Chief, Assistant-Chief or village elders of the area but David Rono unbelievably said that he did not look for them. The fact that it was the non-Sabaot and not the Sabaot who had fled, is sufficient evidence that it was their houses, which had been burnt down by the Sabaot, a fact that David Rono knew but did not want to admit.

368. On 28<sup>th</sup> December, 1991, ten houses were burnt at Kaptamaa village, in Kaptamaa Sub-Location of Kaptamaa Location which is at the border with Trans Nzoia District where houses were also burning. Once again, David Rono did not bother to investigate who had burnt down these houses and told us that since both the Sabaot and the Bukusu lived in that area, the houses that were burnt must have belonged to people from both tribes. He had no evidence whatsoever to support that finding which again cannot be true because it was his evidence that it was the Bukusu and Teso who had fled, and which

obviously meant that they were the ones who had been attacked. At 7.30 p.m. the same evening of 28<sup>th</sup> December, 1991, a Sabaot, Martin Chesebe, was found dead and the Sabaot suspecting that he had been killed by the Bukusu in revenge, burnt more Bukusu houses in Kapromo in Kaptamaa Sub-Location for quite a while.

369. By the end of December, 1991, one week after the clashes began, in Kapsokwony Division, David Rono and his men arrested a total of eighty eight people; seventy two of them were Sabaot which was a clear indication that the sabaot were the aggressors. Since all these people were too many to be held at Kimilili Police Station, David Rono handed them over to the Officer Commanding the Police Division at the larger Bungoma Police Station where they were to be held. It did not come as a surprise to us when David Rono told us that neither himself, nor any of his men, made any statements concerning the arrest of these eighty eight people. This deliberate failure to make any statement or entries of the arrests, made it possible for all those arrested nearly all of whom were the Sabaot. be set free without being charged. We were also at the close of his testimony, left in no doubt that David Rono had more useful information which he deliberately withheld from us. There is no doubt that he appeared before the Judicial Commission to protect the Sabaot who, like him, are Kalenjin. He was also clearly partisan during the clashes and his role should be investigated with a view to his being charged with aiding and abetting the clashes.

370. By January, 1992, the clashes in Kimilili Location had subsided but even now, many clash victims are too afraid to go back to their farms; they also need money to help them resettle on their farms. We would like to suggest that the Government should help them financially, to resettle on their farms and to evict the Sabaot who are now illegally occupying them.

## **CHEPTAIS DIVISION**

371. Prior to the outbreak of clashes, the present Kopsiro Division was one of the Locations in Cheptais Division with the following Sub-Locations Kapkateny, Chelebei, Teremi and Chepyuk/Chepkurkur Sub-Locations. With the elevation of Kopsiro Location to a Division after the clashes, Kapkateny, Chelebei and Teremi Sub-Locations became Locations. The tribal clashes of 1992 affected the whole of Cheptais Division.

372. The inhabitants of Cheptais Division were mainly the Sabaot who considered themselves the original inhabitants of the Division, and the Bukusu and the Teso. The clashes in this Division were between the Sabaot and the Bukusu together with other non-Sabaot tribes. But before we deal with the clashes themselves it is important that we examine the existing land problems in the Division prior to the outbreak of the clashes in 1992, because as was the case in the other places that we have dealt with, it was one of the existing problems which upon the introduction of multi-party politics in the country, was exploited to start the clashes in this Division.

373. As at 1991, when clashes broke out, many of the non-Sabaot held individual titles to land purchased by them. Those who had not obtained their title deeds held some documents to show the number of the land they owned. The Kikuyu on the other hand, who were mainly small businessmen, were to be found at Trading Centres in the Division. Some of them though, rented farms from the Sabaot for specified periods. But like other tribes which lost land to the white settlers, the Sabaot had all along, wished to recover whatever land they lost to the white settlers in areas like Trans Nzoia District, and so complained that such land has been unfairly, given out to the non-Sabaot whom they referred to as outsiders, without giving them the first option. The Sabaot felt that the constitutional provision which allowed any Kenyan to own land in any part of the

country, did not favour them because it enabled outsiders who were richer than them, to purchase their prime land and to live amongst them. That notwithstanding, these tribes prior to the clashes co-existed peacefully and neither were the non-Sabaot evicted from the area nor their houses burnt.

374. In 1991, things changed with the clamour for multi-party politics and the accompanying inflammatory utterances by politicians, which incited the Sabaot to violence. Initially, the Bukusu and the Teso in Cheptais Division appear to have continued their support for KANU, however, as proponents of multi-party politics from the neighbouring Trans Nzoia District preached their gospel in Cheptais, the Sabaot could no longer trust the Bukusu at Cheptais to support KANU. This brought about tension between the Sabaot and the non-Sabaot living in the area. The fact that the Bukusu had also fenced in their pieces of land angered the Sabaot who accused the Bukusu of denying them grazing rights on their ancestral land. The Sabaot made many bows and arrows and attacked any Bukusu they met. The rustling of Bukusu cattle by the Sabaot became the order of the day.

375. In addition to all this, there were some landless Sabaot living in forest reserves on Mt. Elgon. Other Sabaot who had sold their land had moved into the same forest reserves in the hope of being settled by the Government on some of the ADC farms in Trans Nzoia District. Then sometime in 1991, when the Government ordered them out of Chebyuk and Kiborwa forest reserves or risk eviction, the Sabaot threatened that should they be evicted from these forest reserves, they would drive out the non-Sabaot from their farms and settle on them. This, and the news coming in, in the latter part of December, 1991, of tribal clashes in Trans Nzoia District and Kapsokwony Division, created a lot of tension in Cheptais. During the month of February, 1992, about ten thousand Sabaot were evicted from Kiborwa and Chebyuk forest reserves and word went round that all the non-Sabaot must leave to make room for the landless Sabaot who had been evicted

from the forest reserves.' The rustling of the Bukusu and the Teso cattle became more prevalent. The early part of 1992, also witnessed isolated burning of houses belonging to the Bukusu in Chesikaki Location of Cheptais Division. This burning of houses and cattle rustling continued up to the month of April, 1992, when the situation became explosive. In response to the lawlessness that then prevailed, all the District Officer in the Division did, was to hold several useless barazas at which he asked the warring communities to live in peace.

376. On 5<sup>th</sup> April, 1992, the clashes began in earnest when groups of Sabaot warriors descended from the mountain and attacked non-Sabaot living in the entire Mountain region. On 7<sup>th</sup> April, 1992, in retaliation, a group of the Bukusu invaded the homestead of Robert Saima, a Sabaot, whom they had suspected of masterminding the Sabaot raids on them, and stole his cattle. On 11<sup>th</sup> April, 1992, the Sabaot, in revenge, and armed with bows and arrows, spears and guns descended at 4 a.m. on the homestead of Joash Kibaba, a Bukusu, living at Kimabole village, where they shot him dead and stole his cattle, and as they went away, attacked, killed or maimed any Bukusu that they came across, and burnt down their houses. The Bukusu on their part, did not take this lying down. The next day, 12<sup>th</sup> April, 1992, a group of the Bukusu from Kimabole and armed with bows and arrows and homemade guns, raided the home of Psongoiwo, a Sabaot, and killed Kitelie Psongoiwo, a member of his family. During this encounter, a Bukusu, Franco Nicola, was also killed. The inflamed Sabaot continued burning the houses of the Bukusu in the whole Division and stealing their cattle and the Bukusu, fearing for their lives, fled to, and camped at Sirisia Trading Centre in the nearby Sirisia Division.

377. While the Bukusu were away, the Sabaot looted their abandoned houses set them on fire and stole their livestock. The response of the Provincial Administration was to call more and more futile barazas and stress the importance of living peacefully. Although the Provincial Administration asked the Bukusu to return to their farms, the Provincial Administration made no effort, to assist the Bukusu in resettling back on their farms or to provide security for them. Some of them who tried to go back to their farms were attacked. It took some two weeks for some of the Bukusu to return to their farms

and some two years for others. Some have not gone back. Although there is a Police Post in Chesikaki, no arrests were ever made. An example of a Bukusu who found herself in this predicament was Susan Nakhumicha Wamalabe who had bought a piece of land from Clay Masai, a Sabaot, and which was even registered in her name. She was driven away from the land during the clashes and is now camping at Kapkateny Trading Centre. Mulwa Benjamin Clay Masai, the son of the vendor, has illegally settled on her land and has threatened to kill her if she tried to return to that land. Susan Wamabale is a living example of what many more non-Sabaot clash victims went through in the whole of Mt. Elgon and Trans Nzoia region. We have no reason to disbelieve what Susan Wamalabe told us and are of the view that Mulwa Benjamin Clay Masai must have taken part in, or at least, taken advantage of the clashes and is at the moment in illegal occupation of Susan Wamabale's land. He should be investigated for this.

378. Chelebei was one of the Sub-Locations in the old Kopsiro Location of the old Cheptais Division. Chelebei is now a Location in the new Kopsiro Division. At the time of the clashes, Chelebei Sub-Location was inhabited by the Sabaot who were in the majority and by the Bukusu and the Teso. As was the case in Cheptais Division, at the introduction of multi-party politics, the Sabaot were angered by the fact that the Bukusu did not support KANU. They felt that the Bukusu lived on what they considered Sabaot land, and therefore should support KANU. They were easily irritated whenever the non-Sabaot flashed at them the two finger opposition salute and claimed that Bukusu were doing so to provoke them. They wanted the Bukusu out of Mt. Elgon, which was then a Sub-District of Bungoma District and which they had declared to be a KANU zone.

379. At Chelebei village in Chelebei Sub-Location too, the clashes started on 5<sup>th</sup> April, 1992, with the false rumour, which may or may not have been deliberate, that either, the Assistant Chief of Chelebei Sub-Location, Simon Kimutai, a Sabaot, or his brother, Robert Chenge, had been killed by the Bukusu at Chelebei to avenge the death of the



many Bukusu alleged to have been killed by the Sabaot in Trans Nzoia District in the clashes which had started there in November and December 1991. In fact, it was another brother of the Assistant Chief, Oponyo Chenge, who had been killed by unknown persons in Chelebei village, after a drinking party in a certain homestead. However, the false rumour which had started at Chelebei village, moved like bush fire throughout the Location and indeed, the whole Division, and increased the anxiety and tension which had been created by the introduction of multi-party politics in the area.

380. In the same afternoon, after the burial of Oponyo Chenge in Chelebei Sub-Location, the Sabaot youths in the Sub-Location, to avenge the murder of Oponyo Chenge, armed themselves with bows and arrows and spears, and attacked the Bukusu in the Sub-Location and set their houses on fire. One of the witnesses who appeared before us, Nathan Bwomnji Kirui, a retired Sabaot Chief, who was in office at the time, met the armed Sabaot youths on their way to attack the Bukusu but did not stop them from going to attack and burn the houses of the Bukusu, or arrest any of them or report the matter to the police. He was a Sabaot, and he must have approved of the intended actions of the armed Sabaot youths. He must be investigated to establish his role in the clashes with a view to dealing with him according to law. In the evening, the Sabaot in Kapkateny Sub-Location of Cheptais Division attacked the non Sabaot at Toywandet and set the house of one Alwala, a Luhya, on fire. The non-Sabaot, who were mainly Bukusu, fled the area and Alwala, though a Luhya, but not a Bukusu, also fled never to return. Tension remained very high in both Chelebei and Kapkateny Sub-Locations of Cheptais Division.

381. The burning of Bukusu houses went on for one week despite the presence of security officers from the Kimilili and Bungoma Police Stations and the Kopsiro Police Post. We received evidence to the effect that whenever the security forces saw the Sabaot youths burning Bukusu houses, they would only shoot in the air which did not deter them from burning the houses. The burning of houses only stopped when the General Service Unit personnel were sent to the area and even then, they too, were very restrained and only fired shots in the air. Nobody was arrested, but the burning somehow subsided. During this violence, some of the Bukusu fled and camped at Chelebei

Trading Centre and others fled to Namwela and Kikai Sub-Locations down the mountain where other Bukusu lived. After the Bukusu ran away, their houses were looted and those still intact, were set on fire. Any cattle left behind were taken away. After the burning of houses had stopped, another Sabaot, Arap Kitesheni, was found lying dead in Chelebei Sub-Location. Those who killed him were not known, but because of the between the Bukusu and the Sabaot in the area, the Sabaot accused the Bukusu who were camping at Chelebei Trading Centre of killing Arap Kitesheni. This led to the burning of more houses in the Location and by this time, the clashes had already spread into the neighbouring Kapkateny Location.

382. The inhabitants of Kapkateny Location and Sub-Location were the Sabaot, the Bukusu, the Teso and the Kikuyu. Apart from the prevailing tension, in the Mt. Elgon region due to the introduction of multi-party politics, the clashes in Chelebei Sub-Location affected those who lived in Kapkateny Location. The Sabaot accused the Bukusu who they said did not even belong to the Mt. Elgon region, of having taken over their land after the white settlers left and by doing so, had confined the Sabaot to the upper realms of the mountain. The Sabaot also told the non-Sabaot that since they supported the opposition political parties, they would soon have to leave and go away. Under these circumstances, fighting between the Sabaot and the Bukusu together with the Teso and the Kikuyu, erupted quite easily.

383. Again on 5<sup>th</sup> April, 1992, at night, a group of Sabaot warriors came down the mountain and set on fire houses belonging to the non-Sabaot. Some of the arsonists went to the home of Leonard Ochokolo Olekete, a Teso, who recognised amongst them, his neighbours Kwako Kisimani, Kwarati Kisimani, Chambu Mustuni, Chebure Shongoi and Chirono Mustuni. These arsonists went round burning houses of the Bukusu. Some of the Bukusu and the Teso fled and camped for a week, at Chesikaki in Bungoma District which was 10km away; about two hundred non-Sabaot families with their livestock,

camped at Chebich Market in Kapkateny Sub-Location and were later joined by some of those who had fled to Bungoma. Cattle rustling remained very high as the burning of houses continued despite the presence of security personnel in the area who did not appear interested in apprehending anybody.

384. One night towards the end of April, 1992, a group of Sabaot men armed with bows and arrows, spears and guns, attacked the homestead of a Teso, Otwani, killed his wife and drove away his cattle. A group of non-Sabaot armed with pangas and clubs, pursued the Sabaot raiders. In the course of this, Richard Otwani, a Teso, whose mother had just been killed, was also shot and killed by the Sabaot raiders. The non-Sabaot realising that the Sabaot raiders were heavily armed retreated and at about 5 a.m. reported the incident to the GSU at their Camp at Kapketeny which was 5 km away. The response of the GSU officers who were well aware of the on going clashes, was most suspicious. Instead of immediately going after Sabaot raiders they did nothing until 11 a.m. the following day by which time, the Sabaot had had enough time to escape. No arrests were made and no cattle recovered. But one of the non-Sabaot, Leonard Ochokolo Olekete, told us that as they pursued the Sabaot raiders up hill that night, he heard the voice of Joseph Chemutai, a Sabaot home guard, among the raiders. Though Joseph Chemutai was later arrested in connection with the raid and the death of Otwani's wife and son, he was later released.

385. We received evidence that the regular and the Administration policemen together with the GSU men, did not do anything seriously to stop the clashes and cattle rustling or to recover guns which were illegally in the hands of the Sabaot or which the Sabaot home-guards used in terrorising the non-Sabaot. It was not until the army came to the area and went up the mountain and recovered many guns from the Sabaot, that the clashes in Kapkateny Location was brought to an end. If only the army had been deployed in the area immediately the clashes began, the clashes would have been brought to a rapid conclusion.

## **SIRISIA DIVISION**

386. The clashes in Sirisia Division took place in Chwele Location which has since then, been elevated to a Division. At the time of the clashes the Bukusu lived on the slopes of Mt. Elgon together with a few Sabaot while the majority of the Sabaot lived up the mountain as well as in the forest up the mountain. A few Teso lived on land bought from either the Bukusu or the Sabaot. Like in Cheptais, most of the Bukusu and the Teso identified themselves with Ford-Kenya while the Sabaot were in KANU. By early January, 1992, tension had already built up between the Sabaot and the non-Sabaot in Chwele Location because of the clashes that had taken place in Trans Nzoia District and in Kapsokwony and Cheptais Divisions and from where the non-Sabaot had been driven away. During the month of February, 1992, the District Commissioner of Bungoma District, Changole, and a Kalenjin to boot, addressed several barazas warning people against joining Ford-Kenya political party without first finding out what it was all about. He was clearly warning them against joining Ford-Kenya and by the same token giving a broad hint that those who attacked the supporters of Ford-Kenya, would have his support. This, but not surprising act, having regard to the fact that Changole was not only, a Kalenjin but also, a senior member of the Provincial Administration, helped to build up tension between the Sabaot and the non-Sabaot. If Changole is still in the Provincial Administration then he should be investigated with a view to being disciplined.

387. On 5<sup>th</sup> April, 1992, which seems to be the date chosen by the Sabaot to launch their attacks on the non-Sabaot in Western Province, the Bukusu who lived together with the Sabaot up the mountain and who were accused of supporting Ford Kenya, were attacked by the Sabaot, who burnt their houses, stole their cattle and drove them down the mountain to where the other Bukusu lived. They were told to go back to Bungoma if they did not want to support KANU. The Bukusu who lived downhill, in revenge, attacked the Sabaot who lived amongst them there, and burnt their houses. The Sabaot fled and joined the Sabaot up the mountain. The clashes in Sirisia Division had began.

388. In the evening of the same day, at about 7 p.m. the Sabaot came down the mountain and attacked the Bukusu who lived in Lukhome village in Mukuyuni Sub-Location. During this attack, the Sabaot drove away a herd of twenty cattle belonging to Ainea Mumiukha, a Bukusu. The following day, some thirty four Bukusu and four policemen went up the Mountain in an attempt to recover the cattle stolen the previous night. On the way, they met other policemen from Kipsiro Police Station, who had recovered some other cattle which they were asked to escort to Kipsiro Police Station. On the way to the police station, they were attacked by the Sabaot who shot and injured a Bukusu in their group. This happened at noon in broad daylight and all that the four police men who were with the Bukusu did, was to shoot in the air, a clear indication that they were not interested in arresting the Sabaot. Bukusu houses were burnt in each incident of cattle rustling and the Bukusu retaliated by burning houses of the Sabaot living amongst them.

389. On 14<sup>th</sup> April, 1992, a large group of the Sabaot, with about ten of them armed with guns and the rest armed with bows and arrows and spears, again attacked Lukhome village, stole another herd of twenty cattle and burnt Bukusu houses as they went away. This time, ten policemen accompanied the Bukusu in tracking the stolen cattle. Surprisingly, the policemen told the Bukusu to lead the way as they followed at a safe distance. Later when they saw the armed Sabaot with the cattle going up the mountain, the policemen after shooting in the air, called off the pursuit saying that the Sabaot were armed with better weapons than they had. That day, the Sabaot also killed a Teso at Lukhome market, looted all the shops there and burnt more houses as they went away. Isolated cases of cattle thefts by the Sabaot continued for the rest of the month of April 1992.

390. During the month of May, 1992, the Sabaot again attacked Lukhome village killing a Teso woman and her son. They also killed at Lukhome market, a Teso mechanic, George Olekete, who had gone there to repair a posho mill belonging to a Bukusu. In retaliation, the Bukusu burnt the houses of the Sabaot in the area and who fled up the mountain to join the Sabaot there. These attacks continued on and off, until

August, 1992, when about a hundred Sabaot men, armed with bows and arrows, attacked Lukhome village once more and stole many cattle belonging to one Kituyi Mukhisa. This time round, the policemen who had been deployed in the area attacked and killed one Sabaot but made no arrests in this encounter which left six Bukusu injured.

391. After this incident, more policemen were deployed in the area and there was no more trouble. However, the Bukusu who had been driven from their farms up the mountain, felt too insecure to ever go back there. Some of them sold their farms to the Sabaot at throw away prices while the farms of those who did not find buyers have been taken over by the Sabaot who now live and work on them. Although this is common knowledge, the Provincial Administration in conjunction with the police, have made no effort to assist the clash victims to resettle on their farms and no such trespassers have been arrested and prosecuted. In the meantime, the Bukusu remain landless with some of them still living in camps and at trading centres. The Provincial Administration and the police should now take appropriate steps to prosecute those who have committed criminal trespass.

### **ENDEBESS DIVISION**

392. The tribal clashes in Trans Nzoia District affected Kwanza, Endebess, Cherangani and Saboti Divisions which was a settlement area and part of the former White Highlands. The original inhabitants prior to colonial intervention, were the Ndorobo, the Sabaot, and the Suk who were subsequently, as a result of the Crown Lands Ordinance of 1915, and in order to make room for white settlement in Trans Nzoia District, moved into Mt. Elgon forest reserve and the North and South Kitosh Locations in North Kavirondo reserve. Due to economic pressure and overcrowding conditions in the reserves, some of the Bukusu, the Teso, and even the Luo from the North Kavirondo and the Central Kavirondo reserves, migrated into Trans Nzoia District where they provided cheap labour on European farms and lived on portions of such farms set aside for them as squatters. At

independence, and as was done in other parts of the country, the Government purchased some of these farms through state corporations like the Agricultural Development Corporation and Settlement Fund Trustee, some of which they sold to individuals who were not necessarily resident in the area but who could afford to buy them, and some to co-operative societies, most of which were formed by the squatters who were not necessarily all from the same tribe. This is how the Bukusu, the Teso, the Turkana, the Kikuyu and other non-Sabaot came to be settled in Trans Nzoia District among the Sabaot who were in the majority.

393. Whilst individual purchasers of farms had their individual title deeds, the co-operative societies held block titles to the purchased land and in some cases, although surveys of individual plots had taken place, individual titles had not been issued. That notwithstanding, every member of a co-operative society held some document to show which land he owned. At the time of the clashes, Trans Nzoia was the home of the Sabaot and non-Sabaot communities already enumerated, who had all purchased land in the area.

394. Endebess Division had many farms among them, Sabaot Co-operative farm otherwise known as John Power farm, which was inhabited by the Sabaot, the Bukusu, the Teso and a few Kikuyus; Mango farm otherwise known as River Bank farm which was inhabited by the Sabaot, the Bukusu and the Teso and Matumbei; farm otherwise known as Bunyala farm which was inhabited by the Sabaot, the Bukusu and the Teso. A fourth farm, Basala farm, was exclusively inhabited by the Bukusu. These four farms, among many others in the Division were affected by the tribal clashes of 1991 and 1992 which were between the Sabaot on one side and the Bukusu and other non-Sabaot tribes on the other.

395. Up to 1991, the different tribes living in Endeless Division had no serious problems that could not be amicably resolved. Like in Mt. Elgon Sub-District, cattle rustling by the Sebei of Uganda in conjunction with the Sabaot had always existed with the Bukusu and the Teso as the victims. But even though this at times, led to inter-tribal fighting, it never at any one time, led to the eviction of the non-Sabaot. Indeed, the various tribes co-existed and interacted reasonably well and there were cases of inter-tribal marriages. But the introduction of multi-party politics marked a turning point in the lives of these people who had otherwise, lived here relatively, peacefully.

396. The Sabaot, like other Kalenjin elsewhere, were opposed to the introduction of multi-party politics in the country and particularly in Trans Nzoia District. They saw it as a threat to the presidency and this, they had to resist at all costs. The declarations made at the Kapkatet and Kapsabet KANU rallies, held on 7<sup>th</sup> and 21<sup>st</sup> September, 1991, respectively, by KANU leaders from the Rift Valley Province, that the Rift Valley Province belonged to the Kalenjin, and that the other tribes living there should go away immediately placed the future of the non-Sabaot living in Trans Nzoia, in jeopardy. They were also seen as political enemies of the Sabaot who warned them to either support KANU or risk eviction from the area.

397. Masinde Muliro, lived in a farm in Trans Nzoia and the Bukusu there supported him politically and joined the opposition party which he had helped to establish. This angered the Sabaot who felt strongly, that all the non-Sabaot who lived in Trans Nzoia which was the ancestral land of the Sabaot, like them, should support KANU and no other party. In order to achieve this, the Sabaot exploited their long time desire to drive out the non-Sabaot from Trans Nzoia and the Mt. Elgon region as a whole, and to reclaim the land they had lost to the white settlers.

398. Politicians, played a big role in inciting the Sabaot against the other tribes in the area. KANU political rallies like the Kapsabet and the Kaptatet rallies were convened and at which politicians made inflammatory speeches, which served to increase the tension that was already building up between the different communities in the area.



Kalenjin Cabinet Ministers at these rallies, and other Rift Valley politicians resolved to support the re-introduction of the majimbo system of government to counter the demand for multi-party politics. They also said that when the majimbo system of Government was introduced, every non-Kalenjin would be required to move out of the Rift Valley Province back to their places of origin. It was further declared at these rallies that the Rift Valley Province was a KANU zone and any supporter of multi-party politics, if seen in the Rift Valley Province should be beaten up and driven away. Masinde Muliro was ordered out of Trans Nzoia District to Bungoma where most of the Bukusu lived. At the Kapkatet rally Christopher Lomada, then Assistant Minister for Culture and Social Services, menacingly, warned Masinde Muliro, that if he did not change heart and support KANU and dared to set foot in any part of Trans Nzoia, the Pokot would deal with him. The late Chepkok, at the same meeting, urged the people of the Rift Valley Province to arm themselves with bows and arrows and clubs and to destroy any Ford party member on sight. The leaders accused all the non Kalenjin living in the Rift Valley Province of having taken land which belonged to the Kalenjin and ordered them to leave the Province and return to their own Districts. The pronouncements made at these KANU rallies, were widely reported in the electronic and print media and, considering what followed thereafter, on the various farms in the Trans Nzoia District, they must have been taken seriously by those who heard and read them including the Sabaot.

399. The clashes broke out on the night of 16<sup>th</sup> December, 1991, on Sabaot Co-operative farm and spread to Mango and Pole farms in Endebess Division. By 25<sup>th</sup> December, 1991, the clashes had spread to Cherangani and Saboti Divisions and spilled over next door, into Kapsokwony Division of Mt. Elgon District, but which then was a Division of Bungoma District in Western Province. During the months of March and April, 1992, Kwanza Division and the remaining farms in Saboti Division experienced the clashes.

400. Sabaot Co-operative farm is in Endebess Division. Because of the financial difficulties of its owner, the ADC repossessed the farm in 1984 and sold it to the Sabaot Farmers Co-operative Society which consisted mostly of the Sabaot, some Bukusu and Teso and one Kikuyu who had all lived on the farm since 1974. The different tribes lived and worked without any crucial problems on their respective sub-divided farms until the end of 1991, when tension began building up between the Sabaot and the non-Sabaot in the whole of Mt. Elgon region. The Sabaot claimed that since they were the indigenous inhabitants of the Mt. Elgon region, all the non-Sabaot living in there, and who favoured the introduction of multi-party politics, should leave and go. According to William Omuse Osuru, a Teso, who gave evidence before the Judicial Commission, the inflammatory utterances made by the KANU politicians at the KANU majimbo rallies declaring the Rift Valley Province a KANU zone, were constantly repeated by the Sabaot who had been incited into believing that they had sold their land cheaply to people who would not even reciprocate by supporting KANU. The non-Sabaot therefore had to be driven out of the area without further delay. The electoral rule which required that a successful presidential candidate should garner twenty five percent of all the votes cast in at least five provinces in the country, compounded the problem as the Sabaot felt that this favoured the non-Sabaot in the area who were in the opposition and who would not vote for the KANU presidential candidate. All these factors were exploited so that the non-Sabaot could be evicted from the Endebess Division before the 1992 general elections so as to enable the Sabaot to vote as a bloc for KANU.

401. The period preceding the clashes, that is 1990 and 1991, saw an increase in cattle rustling on the farm by the Sebei from Uganda and the Sabaot and which made it unprofitable for the Bukusu and the other non-Sabaot to keep any cattle. This period also saw an influx of the Sebei who Wilberforce Kisiero said were the descendants of those who had been pushed into Uganda by the colonialists to make room for the white settlers, into Mt. Elgon Sub-District to live with their relatives. Other Sebei bought land in Trans Nzoia District. It is believed that these Sebei returnees from Uganda smuggled in firearms which the Sabaot used during the clashes to drive out the Bukusu and the other non-Sabaot from Trans Nzoia and the Mt. Elgon region. William Omuse Osuru further

told us that apart from Wilbeforce Kisiero, the other Sabaot who also preached that the non-Sabaot who were unwanted blemishes like "madoadoa", should be kicked out of Endebess Location, were Councillor William Chebus Tumwet, John Ngeiywo and Dismas Chemwolin. William Omuse Osuru also told us that several days before the outbreak of fire in Sabaot Coperative farm, a Sabaot, Dismas Chemwolin, who must have known about the intended attack, had warned him to leave the farm as the non-Sabaot would be driven away and their houses burnt.

402. Then at night, on 16<sup>th</sup> December, 1991, a group of the Sabaot armed with bows and arrows and guns attacked the non-Sabaot on the farm, set their houses on fire and drove their cattle away. During the attack, a Bukusu, Ronald Simiyu Wapang'ala, was shot dead with arrows and his body burnt in the home of his Sabaot neighbour, Benson Chilia, where he had gone to seek refuge. William Chebus Tumwet then repossessed the farm which he had sold to Ronald Wapangala, and sold it to someone else. William Chebus Tumwet conceded before the Judicial Commission that after repossessing the farm, he had refunded the purchase price to the sons of Ronald Wapangala. The sons of Ronald Wapangala did not appear before us, but what is clear to us is that William Chebus repossessed the farm in order to ensure that the sons of Ronald Wapangala, who, like their father were Bukusu, did not resettle on the farm. The circumstances under which William Chebus repossessed the farm land should be investigated.

403. Following the violence that was unleashed upon them on 16<sup>th</sup> December, 1991, the non-Sabaot fled the Sabaot Co-operative farm to Endebess Trading Centre where they camped for several weeks until they were forcibly dispersed by the Provincial Administration who wanted them to go back to their farms, without putting in place any security arrangements to ensure their safety. Most of them therefore, moved to Halwenge farm in the same Location where they purchased farms on which they live up to now. Some of them moved out of the Location completely to live with relatives and friends in Bungoma District and other places.

404. The clashes continued into the early part of 1992, during which, all houses on the farm belonging to the non-Sabaot were burnt and their cattle forcibly taken away by the Sabaot. All the non-Sabaot fled the farm never to return. The Sabaot then moved in and occupied those farms, having achieved what they wanted, that is, to rid the farm of all the non-Sabaot so that there would be no supporters of opposition political parties there come the 1992, general elections. Some of the non-Sabaot were forced to sell their farms to the Sabaot at throw away prices. The farms of the others who were unable to sell them, have either been settled on by the Sabaot or are being used for the grazing of the livestock of the Sabaot.

15 405. Mango farm which was also known as River Bank farm, and which belonged to Mwangi Kabure, a Kikuyu, was next to Sabaot Co-operative farm. There lived on part of Mango farm as squatters, the Sabaot, the Bukusu, the Teso, the Kikuyu and a few Turkana who when they learnt that Mwangi Kabure was planning to sell the farm, formed a Co-operative Society known as Namutokholo Farmers Co-operative Society with a view to buying the farm. Some other people who were all Bukusu but who were not squatters on the farm, formed the rival Mango Farmers Co-operative Society and moved into the farm. This obviously, caused tension between the members of the two Co-operative Societies which was intensified with the introduction of multi-party politics as the Bukusu were seen to be anti KANU.

406. Because of this, the houses of some of the Bukusu were burnt on 12<sup>th</sup> November, 1991, and on the night of 16<sup>th</sup> December, 1991, the burning of houses which had started on the neighbouring Sabaot Farm spread to Mango farm where many more houses belonging to the Bukusu and the other non-Sabaot were burnt. On 24<sup>th</sup> December, 1991, the Sabaot, armed with bows and arrows, spears and guns, invaded the farm and burnt all the remaining houses belonging to the non Sabaot and drove them out of the farm.

407. The Sabaot, being the only ones then alone on the farm, formed the Mosop Farmers' Co-operative Society and purchased the farm, which has now been renamed Mosop Farm.

408. A group of the Sabaot and the Bukusu formed a Co-operative Society which purchased forty acres of land from Francis Malova which they named, Pole Farm and which was next door to Mango farm. Prior to the outbreak of clashes on this farm, leaflets had been circulating, warning the non-Sabaot that they would be attacked before 25<sup>th</sup> December, 1991, because they did not support KANU. John Wekesa Nandasaba reported these threats to Frederick Kalombo, the Officer Commanding the Endebess Police Station who promised to take action, but did nothing to prevent the attack. The burning of the houses of the non-Sabaot on Mango farm on the night of 16<sup>th</sup> December, 1991, spread to Pole farm and on 17<sup>th</sup> December, 1991, at 7 a.m., four groups of organised Sabaot youths armed with bows and arrows and guns, in red or black shorts, with head bands around their heads, and their faces and bodies smeared with clay to conceal their identifies, crossed into Pole farm, burnt down houses of the non-Sabaot and stole their cattle. The non-Sabaot victims fled to Endebess town where they joined other clash victims who were camping there.

409. On 27<sup>th</sup> December, 1991, there was yet another attack on Pole farm and many more houses of the non-Sabaot were burnt. The remaining non-Sabaot then fled and joined those who were camped at Endebess town. The original owner of the farm, Francis Malova, has since sold a portion of the same Pole farm to some Sabaot leaving only ten acres on which the non-Sabaot clash victims who returned to the farm, are now living. The victims have since filed a complaint with the District Officer Endebess Division which has yet to be resolved.

410. In 1991, there were farm labourers who were all non-Sabaot, and who worked and lived on Chorlin ADC Farm. Sometime between 26<sup>th</sup> December, 1991, and the early part of 1992 at 9 p.m., Sabaot warriors armed with bows and arrows and guns invaded the farm, attacked the farm labourers there and demolished their houses. During the ensuing gunfire, the Sabaot shot a Bukusu and by mistake, shot and killed one of their own. Upon this happening, the attack ended abruptly. This incident was reported at the Endebess Police Station which was only 3 ½ km away, but the police did not come to the farm until the next day, when they recorded statements and left. The Officer Commanding Police Division at Kitale and the District Commissioner of Trans Nzoia brought a lorry full of policemen who patrolled the area, but surprisingly, no arrests were made.

411. The clashes continued to spread within the Division and the Bukusu fought back. And so by the early part of 1992, houses of both the Bukusu and the Sabaot had been burnt on Koibei, Kaboyuo, Chemkengen, Matumbei and Quintin farms which were predominantly occupied by the Sabaot, and on Salama, Basale, Nalulingo, Gatatha and Namwichule farms which were predominantly settled by the Bukusu community. However, the Judicial Commission did not hear any detailed evidence regarding the clashes on these farms except that on each of them, it was the non-Sabaot, mainly the Bukusu, that were attacked and killed or maimed, and driven out of their houses which were thereafter, looted and set on fire, and their cattle stolen.

#### **CHERANGANI DIVISION**

412. Cherangani Division was inhabited by the Bukusu and the Sabaot. On 24<sup>th</sup> December, 1991, clashes broke out on Kelchinet and Kelemai farms, which were both,

occupied by the Bukusu and the Sabaot. The fighting continued until 31<sup>st</sup> December, 1991, by which time, all the Bukusu had fled the two farms.

### **SABOTI DIVISION**

413. The clashes in Sabot Division began on 6<sup>th</sup> December, 1991, on Saboti farm which was mostly occupied by the Bukusu. A group of Sabaot warriors armed with bows and arrows, hand grenades and guns descended on the farm, attacked the Bukusu killing and injuring some of them and set their houses on fire.

414. The attack by the Sabaot on Mango farm on 24<sup>th</sup> December, 1991, was followed by an attack on 26<sup>th</sup> December, 1991, by the Sabaot on Gitwamba farm which was exclusively occupied by the Kikuyu who were driven out of their farms. Attacks on the non-Sabaot were intensified and between 24<sup>th</sup> and 31<sup>st</sup> December, 1991, the clashes had spread to Mango, Mukuha and Mwitha farms all exclusively occupied by the Bukusu. They continued into the new year and violence escalated. Schools did not re-open in January 1992 as the non-Sabaot teachers were threatened with death if they reported to work. Fighting continued into the month of February, 1992, with another attack on the Kikuyu in Gitwamba farm on 10<sup>th</sup> February, 1992, and into March, 1993, when it spread to Chemichemi and Chepkoilel farms, both predominantly occupied by the Bukusu. The Bukusu fought back and in revenge, invaded Kapretua and Machewa farms in March, 1992, burning down the Sabaot houses on those farms. The whole Division was affected by serious fighting which went on for most of 1993.

## KWANZA DIVISION

415. The clashes reached Kwanza Division in March 1992. The Division was occupied by the Bukusu, the Sabaot and the Pokot, and some members of the three tribes lived together on Keiyo farm. On 13<sup>th</sup> March, 1992, the Sabaot and Pokot attacked the Bukusu on the farm, and on 14<sup>th</sup> March, and 17<sup>th</sup> April, 1992, the violence spread to the neighbouring Kolongolo farm which was occupied by the Bukusu, the Sabaot, a few Luo and Kisii. On each of these farms, the Sabaot aggressors drove the non-Sabaot out from the farm, killed or injured them, stole their cattle and set their houses on fire.

416. Cattle rustling and attacks of the non-Sabaot in the Division continued on and off, into the early part of 1993, when there were perhaps, no more Sabaot houses left to be burnt or cattle to steal. Up to now, it has been very difficult for the clash victims to resettle on their farms due to uncertainty of their security. Their farms have been taken over by the Sabaot who are illegally farming and grazing on them. No security has been put in place to facilitate resettlement of the clash victims on their farms.

417. Some Bukusu, having nowhere else to go to, attempted to go back to their farms, having been assured by the Provincial Administration officers, that sufficient security was in place. The story of Petronilla Nasambu, then a mother of three, which was highlighted in the Daily Nation of 8<sup>th</sup> May, 1993, is a living testimony of the orgy of violence and ruthlessness of the Sabaot warriors. A Sabaot raider's bullet scraped her forehead and scalp, narrowly missing her brains during an attack on her farm near Endebess on the night of 27<sup>th</sup> March, 1993. This attack by the Sabaot was to evict her and her family from her farm less than one day after they had attempted to resettle there, and after having been assured by a Provincial Administration officer that security had been restored. During the attack, the Sabaot raiders fired many bullets into the house through the door and fled without entering or stealing anything, leaving her for dead. This frightening incident is just one of the many attacks on the non-Sabaot who upon the false assurances by the Provincial Administration that it was safe for them to do so, had gone back to their farms.



418. In his report which the then Provincial Police Officer, of the Rift Valley Province, Jarma Warsame, presented to the Judicial Commission, Exhibit 4, it is stated that by the end of the clashes in Trans Nzoia District, which cover the period between 1991 and 1998, only fifty eight persons had been killed, sixteen injured and thirty two houses burnt. The report does not state the number of people arrested, neither does it give a breakdown of the ethnicity of those killed or injured. It does not also give a breakdown of the owners of the thirty two houses burnt. We must state here that, whilst we were not able to verify the accuracy of these figures, it cannot be true, from the evidence we received, to say that in the entire Trans Nzoia District, only thirty two houses were burnt even if we were to consider the period between 1991-1993 alone. The figures must be much higher than as presented by Jarma Warsame.

419. The attitude of the Provincial Administration and Police Force in respect of, and their response to, the clashes was wanting and in some cases, downright suspicious. We will now reiterate some of them.

420. A good example concerns the outbreak of clashes on Sabaot Co-operative farm where though the burning of houses on the farm had been reported to the Endebess Police Station that same night and which was only 3 ½ km away from the farm, the police, though they had a Land Rover, had by 10.30 a.m. the next day, not even bothered to go to the farm. This conniving attitude enabled the Sabaot raiders to escape and not to be pursued. All the police managed to do, was to carry away the residue of the burnt body of Ronald Simiyu Wapangala. The baraza which the District Officer of Endebess Division held on 18<sup>th</sup> December, 1991, urging the the Bukusu to return to their farms and live peacefully was not only hypocritical but also, worthless particularly when, and the District Officer well knew this, that in the absence of the Bukusu who had been chased away only the aggressive Sabaot would and indeed, attended the baraza. In view of the existing and well known tension raging in the area and that there were leaflets circulating

particularly in Pole farm warning the non-Sabaot that they would be attacked before Christmas Day, 1991, the police should have taken steps to prevent the clashes from taking place, or to rapidly put down the clashes. From the evidence that we had, the Officer Commanding Endebess Police Station was told by John Wekesa Nandasaba about the leaflets circulating in Pole farm but did absolutely nothing though the clashes had already begun in neighbouring places and the attack did take place in the Division. He must be investigated with a view to his being charged with aiding and abetting the clashes at Pole farm.

421. In the old Bungoma District, police response before and after the clashes was not any better. The clashes first broke out on 6<sup>th</sup> December, 1991, on Saboti farm in neighbouring Trans Nzoia District in the same mountain region. This was sufficient notice to the police and the Provincial Administration that they should take steps to ensure that the violence did not spread to the present Bungoma and Mt. Elgon Districts.

422. Elijah Lumwamu, the District Security Intelligence Officer of Bungoma District at the time of the clashes in Mt. Elgon and Kimilili Divisions, told us that between August and December, 1991, intelligence reports had been received that in pursuance of their desire to have an exclusive Sabaot District, the Sabaot in Mt. Elgon Division were planning to attack and evict the Bukusu and the Teso from Mt. Elgon Sub-District, by stealing their livestock and burning their houses. This information was discussed by the District Security Committee, which decided instead, to hold barazas to preach peaceful co-existence. Since Mt. Elgon Sub-District bordered Trans Nzoia District where the Sabaot and the Bukusu also lived, the intelligence report was also passed on to the Trans Nzoia District Security Committee. The barazas, which had by this time, become a mere excuse for the Provincial Administration avoiding to take firm and proper action which the prevailing circumstances clearly demanded, were therefore, not unexpectedly, a waste of time. True to the intelligence report that had been received, cattle rustling increased and the Bukusu and the other non-Sabaot were attacked and their houses burnt. All this also as expected, occurred in Trans Nzoia District. With all the information and the intelligence reports at their disposal, and the fact that tribal clashes had much earlier, in

October, 1991, taken place at Miteitei and other farms in Nandi District and from where the non-Kalenjin had been driven away, the Provincial Administration and security personnel in Mt. Elgon area and Trans Nzoia should have taken steps to ensure that the clashes did not take place in these areas or if it did start at all, that they were crushed rapidly. We are afraid that the Provincial Administration and the Police Force cannot

423. escape blame with regard to the inception of the clashes and their prolonged continuance.

424. Once the clashes broke out, the security personnel behaved most suspiciously. We have already referred to the disgraceful and well calculated conduct of David Rono of the Kimilili Police Station, which enabled about eighty eight arsonists whom he and his team had arrested, to go scot free. His explanation that he and his men were too busy in the field dealing clashes, to write down any statements is unacceptable. Why did they then bother at all, to take the arrested arsonist to the Bungoma Police Station. And for that matter, a statement from one officer alone, was all that would have been required. The obvious explanation for David Rono's misbehaviour is that, being a Kalenjin like the Sabaot, he wanted those arrested most of whom were Sabaot, released, and he succeeded in doing that. David Rono, abetted the arsonists and as we have already recommended, he should be investigated with a view to his being charged with aiding and abetting the clashes.

425. It will be recalled that whilst some policemen and the Bukusu were pursuing the Sabaot who had stolen from Lukhome village, the chase had been given up because the Sabaot had more sophisticated weapons probably smuggled into the country from Uganda by the Sebei, than the policemen, and that one of the Sabaot cattle rustlers, Joseph Chemutai, was a Sabaot home-guard. We do not find it surprising therefore when Wilson Boinett in his subsequent Report on FLASH-POINTS FOR VIOLENCE 1997 GENERAL ELECTIONS, Exhibit 30, observed that many home-guards in cattle rustling areas, had illegally acquired more sophisticated weapons than those issued to them by the

Government, and that the role of such home-guards should be reviewed. We agree with Wilson Boinett's proposal for the review of the role of home-guards.

426. We have discussed the role that land played in the tribal clashes that occurred in the two Provinces. In addition to this, is the fact that this was exacerbated by the Kapsabet and Kapkatet KANU rallies already referred to. During 1991 and 1992, when the clashes broke out, the Chief of Endebess Location, Jonathan Wafula Mutende, was a Bukusu, and was succeeded by another Bukusu, Apondi. The Sabaot were not happy about this. Prior to the clashes, the Sabaot had demanded in vain, that Sabaot Chiefs be appointed. They had also demanded the appointment of the Sabaot to hold senior government positions and complained that only the Bukusu got elected to parliament. When the Parliamentary Select Committee to investigate Ethnic Clashes in Western and other parts of Kenya 1992, the Kiliku Committee, visited Trans Nzoia District after the clashes in 1992, it was told that in order to avoid any more conflicts in the area, parliamentary seats in Saboti and Kwanza constituencies should be set aside for the Sabaot.

427. Apart from the Kalenjin in the Rift Valley Province, the Sabaot in Mt. Elgon, Bungoma and Trans Nzoia must also have heard or read about these KANU rallies and the inciting utterances made by the Kalenjin politicians. These utterances, bearing in mind that politicians particularly in the rural areas, are highly respected by their rural electorate who take what they say seriously, must have greatly fortified the conviction of the Sabaot that the non-Sabaot who did not support KANU and who had taken over their communal lands must leave and go back to their ancestral lands. Such fertile ground was begging to be exploited for political purposes. And as sometimes happens, ironic situations arise. Elina Naswa Simiyu, was caught in one such ironically ethnic situation. Though she was the Chairman of the KANU Endebess Location Sub-branch, her house was on 26<sup>th</sup> December, 1991, attacked and burnt by the Sabaot raiders because being a

Bukusu, she was regarded as a potential supporter of Ford-Kenya, who had to be evicted from the area. And as the Sabaot jubilantly burnt her house, they kept yelling "KANU JUU! Choma Huyo Mama KANU". Just as the attacks on the non-Sabaot was one means of achieving the political objective of throwing out opposition supporters, so was cattle rustling by the Sabaot another means of achieving the same objective.

428. As we have already noted, the Sabaot demand for an exclusive Sabaot District as it were, was granted in 1994. This, however, did not completely satisfy the Sabaot. Councillor Masangi Masabwa, while addressing a public rally in Mt. Elgon District gave the non-Sabaot eleven days' notice to pack up and leave the District. At the installation of Isaac Ngoyoni as the first District Commissioner of Mt. Elgon District at Kapsokwony, the then Assistant Minister for Tourism and Wildlife, Wilberforce Kisiero, was widely reported in the daily newspapers, to have declared that the Sabaot community would not allow other tribes to buy land in the new Mt. Elgon District. Inciting statements such as these, which had been made by Wilberforce Kisiero, John Ngeiywo, Masangi Masabwa, Dismas Chemwolin and William Chebus Temwet, prior to the 1992, general elections, played a role in inciting the Sabaot to attack the non-Sabaot in the Mt. Elgon area. Because of this, we recommend that these five men be investigated with a view to their being charged with inciting the clashes that took place in Mt. Elgon region between the Sabaot and the non-Sabaot.

#### **GUCHA and MIGGORI DISTRICTS**

429. Migori District borders Kuria District on the Southern side and Trans Mara District on the Northern side while Rongo Division of Migori District borders Gucha District on the Eastern side. The border runs from Kitunja, Ochodororo all through to Kamagambo. The inhabitants of Gucha District are the Kisii. There are a few Luo mainly to be found along the boundary of Gucha and Migori Districts while majority of the Luo inhabit Migori District. Rongo Division of Migori District shares a boundary

with Gucha District on the Eastern side. Due to the scarcity of land on the Kisii side, some Kisii purchased land in Migori District and have settled there. As is the case along the boundary between Trans Mara and Gucha, cattle rustling is a constant source of trouble and fighting along the boundary between Gucha and Migori Districts.

430. The clashes along the Gucha and Migori boundary took place in 1992, 1993 and 1997. However, prior to 1992, and since time immemorial, there had been cattle rustling of Luo cattle by the Kisii through their organized militia the "Chinkororo" who attacked the Luo in Migori District. This led to inter tribal fighting along the common boundary. Upon the introduction of multi-party politics, the Luo supported Ford while the Kisii mainly supported KANU. Politics introduced a new dimension to the already existing problems between the two tribes and these were exploited to the maximum by each of them to rid their area of those who did not support their party so that during the general and presidential elections of 1992 and 1997, the Luo and the Kisii in their respective areas, would each be able to vote as a bloc for the political party they supported.

431. Sometime during the later part of 1992, a group of Kisii crossed the boundary at Ochodororo market and burnt three acres of sugarcane belonging to Akello Angeto, a Luo, who lives at the boundary. Being on the boundary, the fire spread to the Kisii side and destroyed sugarcane belonging to a Kisii family which they accused the Luo of burning. The Kisii then attacked the Luo living around Ochodororo market, killed one of them and burnt houses and sugarcane belonging to the Luo. As to be expected, fighting ensued between the Kisii and the Luo which lasted on and off, for two months before the few policemen who were there managed to stop it. The fighting went on this long, because the policemen, instead of arresting or disabling those causing destruction and damage, would only, shoot in the air which none of the combatants took seriously. Indeed, the Kisii arsonists who knew what the police were doing, shouted "Buree!!" meaning, "useless" when they fired their guns. To that extent, we find that the policemen abetted this violence.

432. In January, 1996, the District Commissioner of Gucha District, accompanied by security men and elders, came to settle a long-standing boundary dispute between Akello Angeto and Nyandiga, a Kisii. During the course of this exercise, Peter Omwando, a relative of Nyandiga who had briefly left the group, was found dead. It was alleged that he had been killed by Camlus Akello Angeto, a relative of Akello Angeto. Camlus Akello Angeto was charged with murder but the case was subsequently withdrawn because of lack of evidence. This angered the Kisii and created tension between the Luo and the Kisii which erupted into the clashes between the two tribes.

433. On 16<sup>th</sup> October, 1997, a group of Kisii went to Akello Angeto's farm where they burnt down a house and some sugarcane and also cut down the maize and bananas on the farm. On 20<sup>th</sup> October, 1997, another group of Kisii crossed the boundary into Migori District where they burnt down the house of a Luo. Fighting then started at Ochodororo market between the Luo and the Kisii which went on intermittently, for three months with the Luo and the Kisii burning down each others houses along their common boundary. During the fighting on 20<sup>th</sup> October, 1997, which quickly spread to Maroo, Ayora and Riosiri, stock theft increased and two Luo men, George Odhiambo Oluko and Gilbert Odalo Mbwaya, were killed. On one occasion, the few policemen from Kamagambo Police Station who were patrolling the area and who could not stop the fighting because they only shot in the air, left the fighting Luo and Kisii, saying they would return after the combatants had finished each other.

434. On 21<sup>st</sup> October, 1997, the Kisii who had heard of the fighting at Ochodororo market, raided and looted Luo shops at Ranen market. During this incident, the police again merely shot in the air and the armed combatants ran into sugarcane farms with none of them being arrested. Fighting broke out at Rongo town where Kisii shopkeepers were chased away and their shops looted. The Kisii beat up the Luo in Kisii town and looted their houses in Gucha District. At Kitele, a Kisii who had just got down from a motor

vehicle was killed. Towards the end of October, 1997, the Kisii who supported KANU and who lived at Cham gi Wadua which in Luo language means “eat with your brothers”, were driven away with their personal belongings across the border to the Kisii side by the Luo, who supported the opposition National Democratic Party (NDP) of Raila Odinga an aspiring presidential candidate. The Kisii then armed themselves and re-crossed the border to Ochodororo where the two tribes fought. Two people were killed and houses and sugarcane farms of the Luo and the Kisii were burnt on both sides of the border. The fighting then spread to Awendo town and on 12<sup>th</sup> November, 1997, Luo youths armed with bows and arrows, slings and stones, attacked Kisii shopkeepers and looted five shops belonging to them. In retaliation, Kisii youths armed with bows and arrows and spears, crossed the border at Ochodororo market and attacked the Luo. Fierce fighting, during which, houses and sugarcane farms on both sides of the border were burnt, began and went on for several days until it was brought to an end by the security forces in the area.

435. The 1997 general elections were just round the corner and the fact that the Luo and the Kisii supported rival political parties, was the cause of the clashes which started in October, 1997, to drive out the Luo living in Gucha District so that they did not vote there for the National Democratic Party and to drive out the Kisii from Migori District so that they too, did not vote there for KANU. For this purpose, each of the two tribes exploited existing disputes and problems.

436. As was the case in the other areas where tribal clashes took place, the security personnel did nothing to prevent the clashes from taking place in this region. Once the clashes broke out, the security personnel, in most cases, displayed an “I don’t care” attitude. Whenever they encountered arsonists, instead of using their firearms against them or to arrest them, they merely shot in the air which did not frighten anybody. They were not interested in apprehending the arsonists. As a result of reluctance by the



security forces to use their firearms to disable and apprehend the arsonists, the clashes took much longer than they should have.

437. As was also the case in all areas where clashes took place, the security forces always came to the scene after the attacks had already taken place and so, the arsonists and cattle rustlers were always ahead of the security forces. Even where the security forces were already on the ground, the attackers, monitored their movements, so well that they could launch their attacks in places where there was no deployment of security forces. In Gucha District for example, where the Kisii and the Luo fought along their common boundary, the security forces were outwitted by the Kisii arsonists who successfully kept the security forces under surveillance and struck as they wished and avoided being arrested. On the other hand, the security forces may well have been willing, or may have been directed, to play such a role, which we do not think under the circumstances, to be too far fetched.

438. In all the areas where tribal clashes were experienced, there was inability on the part of the security forces to prevent or rapidly bring to an end, the tribal clashes. There were always delays in police deployment. Both these were due to what were referred to as, operational difficulties such as shortages of men, transport and other equipment; and few police stations or posts in the affected areas.

439. These rehearsed excuses were to be advanced ad nauseam by most of the senior regular and Administration police officers and those of the Provincial Administration, who appeared before the Judicial Commission. In our view these constitute a transparent and unacceptable cover up. If the security forces and the Provincial Administration had wanted to stop the clashes, they could easily have done so and if they could not, they could easily and rapidly have stopped them if only they had taken effective armed intervention which would also have discouraged those planning other tribal clashes.

440. The work of the security forces was also hampered by the actions of some in their number who took sides with their tribesmen who were taking part in the clashes.

Perhaps, this partly, explains their reluctance to arrest those who took part in the clashes. It was not until all the Kisii and the Luo police officers were transferred from the area that the security personnel made some progress. We do not agree that transferring police officers who were partisan was the solution to the problem. They should have been sacked and or prosecuted. Since it is possible to identify the police officers who worked at the various police stations in all these places, we recommend that investigations be carried out to identify the officers who took sides with members of their ethnic community as well as those who neglected their duties during the clashes, with a view to charging them with aiding and abetting the tribal clashes. We make the same recommendation with regard to the Chiefs and the Assistant Chiefs too.

#### **KURIA and MIGORI DISTRICTS**

441. Before the creation of Kuria and Migori Districts, the Kuria and the Luo both lived in harmony in Migori District. The only problem that existed was stock theft and cattle rustling by the Kuria community. In 1993, when Kuria District was hived from Migori District, the Migori River was fixed as the boundary between the two Districts. The river runs along Upper Suna Location of Migori District separating it from Kehancha Division in Kuria District. This had left some Luo families from Migori District, in Kuria District and some Kuria of Kehancha Division, in Migori District. With time, as the river meandered and changed course, it left more Luo families or parts of their farms, in Kuria District and more Kuria families or parts of their farms, in Migori District. The creation in 1993, of Kuria and Migori Districts, brought a new dimension to the already existing problem of stock theft and cattle rustling, with the Kuria now claiming land 2 km more inland from the river towards Migori town. The problem at the time of the 1997, clashes, and even today, is the exact location of the District boundary between the two Districts.

442. Sometime in 1996, some Kuria crossed the border into the Migori side of the river and with a view of frightening the Luo away from there which they claimed was part of Kuria District, attacked and maimed three Luo. However, the tribal clashes which began in March, 1997, affected Remo, Mikiria, Wasweta, Agor and Alara villages in Migori District, and in all of which, lived only the Luo.

443. On 28<sup>th</sup> March, 1997, at 8 a.m. a group of Kuria youths about three hundred strong, and armed with bows and arrows and spears crossed Migori river into Mikiria village in Upper Suna Location and attacked a Luo woman, Lucia Akinyi Ouma, who was working in her farm which was the subject of a land dispute between Charles Elias Osongo, a Luo, and Mwitanga Ngati, a Kuria. Upon shouting for help, some Luo rushed to her aid and a fierce fight took place between the Luo and the Kuria. The Luo were defeated and ran away, a Luo was killed and three injured, and thirteen houses and sugarcane farms burnt. During the fight the Luo burnt seven houses belonging to the Kuria living on the Luo side of the border.

444. Policemen from Kehancha Police Station on the Kuria side of the border, as well as Anti Stock Theft Unit men came to the scene during the fighting, and like in the other areas where tribal clashes had taken place, they were not interested in arresting or disabling the combatants so as to put an end to the clashes. They merely fired in the air so that the combatants could live to fight another day. And as it happened, the Kuria kept attacking the Luo on and off, burning their houses and stealing their cattle and which resulted in inter-tribal skirmishes.

445. On 11<sup>th</sup> April, 1997, the District Officers of Migori and Kehancha Divisions visited the common border and confirmed Migori river as the District boundary. Because the river had changed its course, this left some Luo living in Mikiria and Remo villages of Upper Suna Location, in the Kuria side of the boundary. Some Kuria then crossed over and settled on land in Mikiria village saying that the Luo had no business living there. This led to more fighting along the border, lasting most of the month of April, 1997. On 28<sup>th</sup> April, 1997, the Kuria once again, crossed the boundary into Remo village

in Migori. attacked the Luo. burnt their houses and told them to leave the area and go away to Migori District. As the Luo fought back, the police from Ugwedhi Police Station came to the scene and upon the Kuria seeing them, they fled back across the border into Kuria District. And the policemen though armed, made no effort to arrest the Kuria who they saw running away. In revenge, the Luo burnt down the houses of some Kuria who had settled in Migori. Though this fight lasted only one day, cattle rustling continued leading to fighting whenever it took place. Fresh fighting broke out during the month of October 1997 when on 1<sup>st</sup> October, 1997, a group of armed Kuria youths, crossed the border and killed two Luo on the Migori side which led to fighting between the two communities. In the course of this, the Kuria rustled cattle belonging to the Luo across the border into Kuria District which were later recovered. The next day, the Kuria crossed over the common boundary and burnt down three Luo houses. This sparked off fierce fighting between the two communities which lasted for several days before police put an end to it without any arrests being made.

16 446. The boundary dispute between the Luo and the Kuria has been in existence since Kuria District was hived from South Nyanza District, and although it had always led to fighting, it had never led to the kind of violence that was experienced in 1992 and 1997. The fact that the clashes took place prior to the general elections of 1992, and also 1997, is clear evidence that politics played a major role in these clashes. The burning of Luo and Kuria houses on both sides of the boundary was aimed at driving out the Kuria, who were KANU supporters, from Migori District which was a Ford Kenya zone, and the Luo who were Ford Kenya supporters, from the Kuria side of the border.

447. We received evidence in all the areas where clashes took place along the common Kuria and Migori Districts border, that during the clashes, whenever the security officers encountered raiders or arsonists, they only shot in the air to scare them away. This of course, did not stop them from coming back to continue their violent attacks. The Security forces, should have shot at the raiders and arsonists not only, to deter them and others from burning the houses and stealing the cattle of the Luo but also, to disable them so that they can be arrested. This would also have successfully, brought the clashes and

cattle rustling along the common border to a rapid conclusion and less property would have been destroyed.

**CHAPTER THREE:**  
**CLASHES IN THE COAST PROVINCE**

448. The indigenous people of the Coast Province can be divided into two broad communities: The Mijikenda and the non-Mijikenda. The latter category includes, the Taita and Taveta of Taita-Taveta District; the Orma, Pokomo, Munyoyaya and Malokote of Tana River District; the Bajuni of Lamu District and who are also resident in various urban centres along the coast line; and the Swahili and peoples of Arab decent who are mainly to be found in the coastal towns.

449. The Mijikenda comprises the following sub-tribes that are culturally and linguistically inter-related: the Rabai, Ribe Chonyi, Giriama, Mjibana, Kauma and Kambe of Kilifi/Malindi Districts; and the Digo and Duruma of Kwale District. Of the Mijikenda community, all except the Digo, are predominantly Christian. The Digo not unnaturally and as to be expected, therefore, tend to work in close association and inter marry with the people of Arab origin who also are Muslims. The Digo, nearly all of whom for purposes of education, content themselves with only attending Muslim madarassa classes or are school dropouts, thus suffer widespread illiteracy and have strong belief in, and profound fear of, witchcraft, sorcery and other related superstitious practices.

450. The areas most affected by the tribal clashes at the Coast Province were the Likoni Division of Mombasa and the adjacent Kwale District. The Divisions of Kwale District include those of Kubo, Kinango, Matuga and Msambweni. Likoni, however, is for all practical purposes, an extension of Kwale District with a combined population of about half a million people. Out of these, only about fifty percent are employed. About eighty percent of the half million residents are of the Digo and Duruma tribes with the Digo constituting a very large majority. The remaining residents who are upcountry people and predominantly Christians, are the Kamba, Luo, Kikuyu and the Luhya. The Kamba, some of whose forebears had settled at the Coast even before the colonial era, are farmers in the Shimba Hills of Kwale District. Many have moved to Ukunda to work in the holiday beach hotels. The Kikuyu who are mainly business men are more scattered

with some owning land in Ukunda, Kwale Town, Mkongani and Likoni. The Luo are concentrated in the quarries and stone-cutting industries; many of them are also employed in the island of Mombasa. Over time, many of these upcountry people became long-term migrant settlers at the Likoni-Kwale area though many own land in their places of origin.

451. Even though Likoni-Kwale is ethnically heterogeneous, it can be described as dichotomous in terms of the regional and religious background of its inhabitants. The inhabitants are split between the predominantly Muslim coastal majority and the predominantly Christian upcountry minority. Because of their comparative illiteracy, the Muslim coastal majority constitute most of the unemployed in the Coast including the Likoni-Kwale area, whilst the Christian upcountry minority form the more economically developed inhabitants and who in turn, prefer to employ their own ethnic compatriots rather than the coastal people who are regarded as lazy and undisciplined. The Digo youth were on the whole, unemployed, idle and hungry. This constituted a fertile ground which was waiting to be exploited to wreak vengeance upon the perceived upcountry oppressors. Disparities also exist in the ownership of land in Likoni-Kwale. Large and profitable beach plots it is claimed, have been allocated to upcountry and other non-coastal people at the expense of the coastal inhabitants. But this is not quite true. Indeed, in many cases, it is the very coastal people who upon being allocated land, have in turn, sold it to the upcountry people. And in any case, and demonstrating that land was not the real cause of the tribal clashes at the Coast, the ordinary upcountry people who were the victims of the tribal clashes, were not the allottees of valuable beach plots. The actual beneficiaries of such plots and the buildings and hotels thereon, were not attacked. In general though, the coastal inhabitants of Likoni-Kwale have an inferior status in the land of their forebears. Most small scale and large scale businesses are in the hands of the non-coastal people. It is reckoned that the coastal people control less than twenty percent of the commercial and business sector and that only a little of the wealth generated by the lucrative tourist industry in the area is ever used to uplift the social and economic standing and activities of the local population. All these factors had led to the desire for

Majimboism, the desire for the Digo and the coastal people in general, to have greater control in their region, over their own socio-economic and political destiny.

452. The introduction of multi-party politics in 1991, gave the coastal people a chance to express themselves politically and the result of this, was a serious set back for the ruling KANU party. Politics had by then become polarized along tribal lines and of all the four coastal parliamentary seats in the Mombasa District, KANU only managed in the first multi-party general elections held in 1992, to win one seat which was in Mombasa island. The other seats were won by the emergent opposition parties which had been established on tribal lines namely, Ford Kenya which was supported mainly by the Luo and the Democratic Party of Kenya (DP) which was supported mainly by the Kikuyu. This meant that come the next presidential and general elections which were to be held at the end of 1997. KANU would have to take appropriate steps to ensure that this time around, it did much better in the general elections and secured the twenty five percent Coast Province vote in favour of President Moi. In the Likoni-Kwale area, the only strategy that in the given circumstances of tribally polarised politics, would yield favourable results for KANU, would be to ensure that the upcountry people namely, the Luo, Kikuyu and Luhya who were seen as supporters of the opposition parties, did not vote for the these parties. And how best to achieve this than to exploit the existing and latent animosity which the coastal people might have, against the upcountry inhabitants which had hitherto, not led to any violence, so that the former can intimidate or drive away the latter from voting for the opposition parties. After the raid on the Likoni Police Station, the members of the Standing Committee of Human Rights went to Mombasa to investigate the raid. In his evidence before us, the Chairman of the Committee, the well respected academician and jurist, Professor Onesmus Mutungi, told us that during a meeting which was held at the Board Room of the Provincial Commissioner, the veteran and outspoken Mombasa KANU politician Shariff Nassir, had said concerning the raid, and as set out in the verbatim report of the proceedings of the Judicial Commission of 13<sup>th</sup> October, 1998, that:

“This matter was political and it will not end until the elections were over.”.



453. Indeed, Wilson Boinett's Report on FLASH-POINTS FOR VIOLENCE 1997 GENERAL ELECTIONS, Exhibit 30, as already shown, correctly predicted that violence at the Coast would be politically motivated. But, he must have deliberately, wrongly attributed the cause of the violence as appeared in his Report, to the perception by the opposition that President Moi and KANU will win the next general election and that this belief:

“... arises from the frustration of the opposition over their own failure to forge a united front in their avowed intent to dislodge President Moi and KANU from power.”

454. This in our view, cannot be an honest assessment of the position at the Coast. The opposition parties were already in possession of three-quarters of the Mombasa parliamentary seats and it would be rather KANU, which should be fighting to regain these seats which it had lost during the first multi-party general elections in 1992. This intentional misrepresentation of the facts could only have been intended to divert attention from what steps KANU might take in the predicted political violence at the Coast and at the same time, give support to the complacency and connivance of the security forces in the tribal clashes. It is therefore not at all surprising, that Shukri Baramadi who had taken part in the preparation of Wilson Boinett's Report, FLASH-POINTS FOR VIOLENCE 1997 GENERAL ELECTIONS, Exhibit 30, had in his letter dated 25<sup>th</sup> June, 1997, to Wilson Boinett, headed CRIMINAL ACTIVITIES OF POSSIBLE SECURITY SIGNIFICANCE/ALLEGED PLANS BY YOUTHS TO PERPETRATE POLITICAL THUGGERY/KWALE, and which is contained in Exhibit 89, talked rather about anti KANU youths from Kwale and Likoni taking illegal oaths that would bind them:

“... to cause civil disobedience and others acts of lawlessness during the election period.”

455. About a month later on 28<sup>th</sup> July, 1997, Shukri Baramadi again wrote to Wilson Boinett a letter headed MATTERS OF MORALE WITHIN THE KENYA POLICE/O.C.S. LIKONI POLICE STATION ACCUSED OF BEING COMPROMISED BY A POLITICIAN/MOMBASA, and which is also contained in Exhibit 89, in which, he maintained the stance that anti KANU youths have threatened to burn the Likoni Police Station. This time, the reason was that Inspector Peter Kariuki who was then the Officer Commanding Likoni Police Station, had been influenced by Rashid Shakombo, a

KANU activist and at the time, a KANU aspirant for the Likoni parliamentary seat, to release his supporters who may be arrested and that:

“... youths who don’t support SHAKOMBO allege that they are being unnecessarily harassed by Police who sometimes arrest them on framed charges. This has provoked them and they have threatened to set Likoni Police Station on fire in the near future if the situation remained unchecked.”.

456. This report is supported by the following COMMENTS grammatically faulty in parts, of Shukri Baramadi, which appears in the same letter to Wilson Boinett:

“Allegedly, KARIUKI is known to be corrupt and has been releasing suspects arrested by his subordinates after being bribed. Similarly there is no surprise that he has been compromised by SHAKOMBO which has angered the local youths who claim they are arrested on flimsy charges which are aimed extorting bribes. Moreless it is for the same, some youths have threaten to burn Likoni Police Station.”.

457. But whilst this charade was going on and prior to these correspondence between Shukri Baramadi and Wilson Boinett, there had been other Special Branch reports about possible clashes at the Coast. On 20<sup>th</sup> May, 1997, a Special Branch Handler, Acting Inspector Joab Ating’a, acting upon information that he had received on 16<sup>th</sup> May, 1997, made his INFORMATION REPORT, Exhibit 42(A), forebodingly, headed: SECURITY ASPECTS OF POLITICAL ACTIVITY/POLITICAL ACTIVISTS IN LIKONI URGING THE YOUTHS TO RAID POLICE STATION/MOMBASA. In his report which he gave the high rating of B/2, he passed on, inter alia, information that Digo youths had planned, but which did not take place, a raid on the Likoni Police Station, and that Rashid Shakombo had not only, called upon a villager to continue practicing witchcraft but had also, told the Digo youths to beat up the District Officer who had banned such practices. In his COMMENTS, Joab Ating’a had said that the threatened raid against the Likoni Police Station was intended to stop the policemen from that Police Station from curbing the increasing rate of crime in the area. We find this comment rather strange. Anyway, Joab Ating’a went on to remark frighteningly, that in the past three months, three guns had been snatched, one in broad day light, from policemen from the Likoni Police Station who were on duty in the town. The Senior Officer who was Omar Raisi, and who was acting on behalf of the District Security Intelligence Officer, played the report down, saying in his COMMENTS AND ACTION that it should:

“... be down graded to B/6. Efforts are being made to come up with a comprehensive report on the alleged political thuggery.”

458. The District Security Intelligence Officer himself, Peter Wilson, said in his evidence before us, and we agree with him, that Omar Raisi should not have down graded Joab Ating'a's report.

459. On the same day, 20<sup>th</sup> May, 1997, another Special Branch Handler, Priscilla Kibwia, acting upon information that she had received on 16<sup>th</sup> May, 1997, and after having made a verbal report thereon, on the same day to Omar Raisi, gave him her INFORMATION REPORT, Exhibit 42(B), headed: CRIMINAL ACTIVITIES OF POSSIBLE SECURITY SIGNIFICANCE/ DIGO YOUTHS TO BURN UPCOUNTRY HOUSES-LIKONI/ MOMBASA. In her report which she gave the rating of B/3, she passed on information similar to that contained in Joab Ating'a's report, Exhibit 42(A), that the Digo youths had because of harassment by the police, planned, but which did not take place, to attack the Likoni Police Station. They had also planned to burn houses of upcountry people. In her COMMENTS, Priscilla Kibwia stated:

“This is a sensitive report which should not be taken lightly.”

460. The Senior Officer, whose name is given as Mohamed Hamisi, stated in his COMMENTS AND ACTION, on behalf of the District Security Intelligence Officer, that although those planning to attack the Likoni Police Station had not been identified:

“... there was general fear among the locals who have heard of the plan. At the moment the situation is normal and its being monitored, the security arms have been briefed.”

461. Was this comment a cover up? Priscilla Kibwia in her unchallenged evidence before us, and we agree with her, said that her written report which she had submitted to Omar Raisi, should not have been dismissed the way it was done under COMMENTS AND ACTION BY SENIOR OFFICER, and further, that the comment that there was general fear rather among the locals, the Digo, that the upcountry people, and that all was normal, was clearly misleading. The situation in her view, was sensitive as life was at stake. Apart from the evidence of Priscilla Kibwia, which also tends to suggest that even if Mohamed Hamisi, another Digo, was the real author of the COMMENTS AND ACTION, then this had been contrived so that Omar Raisi would not be seen as the only

one who played down the alleged threat to security. What we also heard from other members of the security forces, seems to suggest that Mohamed Hamisi's comment was not only a cover up but one that also, cleverly, sought to diffuse suspicion of Omar Raisi's connivance with the training of the Digo youths to attack the Likoni Police Station and upcountry people. Indeed, the fact that it was only after a lot of resistance on his part, had been overcome, that Omar Raisi finally made his suspicious statement which is contained in Peter Mbuvi's Report, Exhibit 8, confirmed Edwin Nyaseda's intuition that Omar Raisi had a role to play in the tribal clashes that took place at the Coast Province.

462. On 21<sup>st</sup> May, 1997, it was Omar Raisi's turn, to write his INFORMATION REPORT, Exhibit 42 (C), which was based on information which he had received on 18<sup>th</sup> May, 1997. In this report which was headed: CRIMINAL ACTIVITIES OF POSSIBLE SECURITY SIGNIFICANCE/ YOUTHS PREPARE FOR POLITICAL THUGGERY/MOMBASA, and which Omar Raisi gave a not so high rating of B/6, he drew attention to the following information that he had received: namely, that an oath was being administered to youths from Kwale at Kiteje sub/location in Ngombeni location in Kwale District to bind them to cause havoc during the electioneering period prior to the December, 1997, multi-party presidential and parliamentary general elections; that six thousand nine hundred and sixty three youths from Likoni and Kwale were to be recruited and given military training by eight hundred service and ex servicemen to be recruited; that in addition to the two rifles and a pistol which had already been stolen from policemen from the Likoni Police Station, the Kijipwa Police Station would be attacked to get more firearms; and that those planning these criminal activities were advocates of Majimboism and did not support KANU parliamentary aspirants. In his COMMENTS, Omar Raisi expressing the now familiar sentiments as contained in Exhibits 42 (A) and 42 (B) said that:

“Efforts are being made to establish the truth of this report and recover the firearms. Once their leaders are known then it may be easy to dismantle the group.”.

But Omar Raisi's Senior Officer, R. M. Ademba, in his COMMENTS AND ACTION and acting on behalf of the District Security Intelligence Officer, stated not surprisingly, since what were involved were warlike activities as opposed to thuggery, as follows:

"This is a very serious development which should quickly be countered. The D.S.C. Kwale and Mombasa are aware of the development and plans are afoot to arrest the culprits."

Needless to say, notwithstanding these encouraging and optimistic assertions, no one was arrested.

463. There was then Omar Raisi's INFORMATION REPORT, Exhibit 42 (E), of 26<sup>th</sup> May, 1997, based on information received by him on 24<sup>th</sup> May, 1997. This report which he gave a rating of B/3, is headed: ACTIVITIES BY GROUPS SOCIETIES PROFESSIONAL ORGANIZATIONS ARE OR MAY BECOME A THREAT TO SECURITY/ YOUTHS TAKING OATH/MOMBASA. In it, Omar Raisi again reported that an oath was being administered to Digo youths from Likoni and Kwale at a place called Ziwani Miembe Saba every Wednesday at Ngombeni Location, to bind them to cause civil disobedience during the electioneering period prior to the December, 1997, multi-party presidential and parliamentary general elections, and to support Majimboism; that six rifles and four pistols had now been stolen from policemen; that similar activities had taken place in parts of Kwale and Mombasa after the 1992 multi-party general elections; and that his report should be read in conjunction with his earlier INFORMATION REPORT of 21<sup>st</sup> May, 1997, Exhibit 42 (C). The COMMENTS AND ACTION of Omar Raisi's Senior Officer, this time, again R. M. Ademba, acting on behalf of the District Security Intelligence Officer, was simply that:

"As already pointed out in this office LR 1359/97 dated 27<sup>th</sup> May, 1997, efforts have been stepped up to identify and arrest those behind the oathing. Any thing coming to light in this respect will be communicated."

464. One would have thought that having obtained more particulars about the place and time of the oath taking ceremonies, the Special Branch would have infiltrated these ceremonies, but, as we were to hear from Omar Raisi, they did not even bother to do so. This, however, is in contrast, with what Peter Wilson told us namely, that Omar Raisi had personally but unsuccessfully tried to infiltrate the oath taking youths who cunningly, kept moving from one place to another. It is also worth noting that the Copy No. 1 of each of the INFORMATION REPORTS of Joab Ating'a, Priscilla Kibwia and Omar

Raisi namely, Exhibits, 42(A), 42(B), 42(C) and 42(E), were forwarded by Peter Wilson himself, to Shukri Baramadi who on his part, never briefed his colleagues on the Provincial Security Committee or the Provincial Intelligence Committee about them.

465. Apart from the INFORMATION REPORTS that were produced during the proceedings of the Judicial Commission, we also heard evidence concerning the prior information that the Special Branch officers had. Omar Raisi admitted that his father was a friend of the notorious Swaleh bin Alifan, who had been charged in court with administering the oath to the Digo youths at Kiteje and who indeed, because of this, was to be used by the Provincial Security Committee which sought and obtained his release on bail from prison custody, to release the militant Digo youths from the oath taken by them, which will also facilitate the surrender of their weapons. But more of this later.

466. The following excerpts of his evidence from the verbatim report of the proceedings of the Judicial Commission of 31<sup>st</sup> August, 1998, show that even though he incriminated others, Omar Raisi who also falsely suggested that he was the Chief Inspector of Police in charge of intelligence gathering in Likoni, was himself, guilty of conniving at the attack on the Likoni Police Station:

“Mr. Ngibuini: I am putting it to you that Hon. Shakombo gave you that name.

Mr. Raisi: No, my Lords.

Mr. Chairman: What did he tell you?

Mr. Raisi: My Lords, he gave me the information that some youths were at Kiteje area where they were doing some sort of military training with a view of causing disturbances.

Mr. Ngibuini: What kind of disturbances? To burn a Police Station.

Mr. Raisi: Yes, my Lords.

...

Mr. Ngibuini: What else do you know?

Mr. Raisi: I know that the youths were preparing to raid the police station, which eventually they raided, my Lords.

...

Mr. Ngibuini: I am putting it to you that because you knew of the very senior personalities involved, you have been covering up for them?

Mr. Raisi: No, my Lords.

...

Mr. Ngombo: You see. You knew as way back as in May, 1997, that, on the 13<sup>th</sup> of August, the police station is going to be burnt down. Didn't you?

Mr. Raisi: No, my Lords. At that time, the dates of the attack had not been mentioned.

Mr. Ngombo: Okay, but nevertheless you knew that there was an attack that was going to be carried out against the police station where there are members of staff there; that is, the police officers and they live in the same line and they have got civilian wives and children. You knew this?

Mr. Raisi: Yes, Lords.

Mr. Ngombo: And you say that the best that you could do is to tell Mr. Peter Wilson who was your superior?

Mr. Raisi: Yes, my Lords.

Mr. Ngombo: Now, Chief Inspector, you know you said here on Friday and today when you were continuing that, you had information through your covert and overt sources that some youths were being trained to come and attack; that is, they were receiving military training on how to come and attack the Likoni Police Station and some other places. Is that right?

Mr. Raisi: Yes, my Lords.

Lady Justice Ondeyo: Is there any time you came to learn of the exact date the raid would take place?

Mr. Raisi: My Lords, the last piece of information, which I came across, was on Sunday, four days before the attack.

Justice S. C. Ondeyo: Four days before the attack?

Mr. Raisi: Yes, my Lords.

Justice S. C. Ondeyo: And what was the information?

Mr. Raisi: The information was that the youths had now gathered and they were doing their final touches and they could carry out the raid at any time, my Lords.

Justice S. C. Ondeyo: And what did you do, after receiving that information that the raid was going to take place at any time?

Mr. Chairman: He said the group had what? Finished their training? I did not get that one quite clearly.

Justice S. C. Ondeyo: Could you repeat what you said?

Mr. Raisi: I got the last information about four days before the attack on Likoni Police Station. I came to learn that the youths were now prepared to carry out the attack at any time.

Justice S. C. Ondeyo: What did you do now that they would attack any time?

Mr. Raisi: I just came to learn about that information as the Officer in charge of the area but it was passed direct to the DSIO by another officer, my Lords.

Mr. Chairman: You did not pass it to the DSIO?

Mr. Raisi: No, my Lords.

Mr. Chairman: Who passed it to him?

Mr. Raisi: The person who passed it is Inspector Juma Salim Toza.

Justice S. C. Ondeyo: This is the man who told you or this is the man who passed the information to the DSIO?

Mr. Raisi: He is the officer who passed the information directly to the DSIO.

Justice Bosire: How did you yourself come to know about it?

Mr. Raisi: Could you come up again?

Justice Bosire: How did you come to know about that information?

Mr. Raisi: I came to know about it as the Officer in charge of the area because whatever concerns your area, you are briefed by the ---

...

Justice S. C. Ondeyo: Who briefed you?

Justice Bosire: Why are you going round and round? Somebody must have told you. And it is the name of that person that we want. Who gave you the information that Inspector Juma Salim Toza has informed the DSIO?

Mr. Raisi: I came to learn about it because when he was informing, it was in a meeting---

Justice S. C. Ondeyo: Why do you not say the name of the person? You like telling many stories. The answer would be the name of a person.

Mr. Raisi: I came to learn about it as Inspector Juma Salim was telling the DSIO.

...

Mr. Chairman: When?

Mr. Raisi: That was in August, my Lords.

Mr. Chairman: Four days before the Likoni attack?

Mr. Raisi: The intended attack, my Lords.

Justice S. C. Ondeyo: So, simply put, what you are saying is that when Inspector Juma was telling the DSIO, you were present? That is what you are saying?

Mr. Raisi: Yes, my Lords.

...

Mr. Ngombo: So, between early June, 1997 and when you came back, you did not have much information. Did you?

Mr. Raisi: No, my Lords.

Mr. Ngombo: But you knew inside yourself that there were some people, whose location you never bothered to check, somewhere at the boundary, who were undertaking military training with the aim of attacking Likoni Police Station on an unknown date?

Mr. Raisi: Yes, my Lords.

Mr. Ngombo: You never bothered to find out how many they were, what they were doing, who was financing them, how they were feeding themselves and so on?

Mr. Raisi: I did that but I could not get all the details, my Lords.

...

Mr. Chairman: Thank you. Mr. Raisi, on the 9<sup>th</sup>, when you had your routine meeting and Inspector Toza told you what you have just told us, what did the DSIO decide to do?

Mr. Raisi: He said that he would handle the matter with his fellow members of the District Security Committee.

Mr. Chairman: The DSIO said he would handle the matter?

Mr. Raisi: Yes, my Lords.

Mr. Chairman: As things turned out, he did not handle the matter, otherwise Likoni Police Station would not have been burned down.

Mr. Raisi: My Lords, I do not know what he did.

Mr. Chairman: But whatever he did was not effective?

Mr. Raisi: Yes, my Lords.



Mr. Chairman: On the 9<sup>th</sup>, you had been told that these people were ready and would attack at any time. Were you surprised at the attack on the police station on 13.8.97?

Mr. Raisi: Yes, my Lords.

Mr. Chairman: Why? Four days before you had a warning of the attack!

Mr. Raisi: I was surprised because after giving information to the DSIO the attack still took place.

Mr. Chairman: You were surprised that the attack took place because the DSIO had been warned of it several times?

Mr. Raisi: Yes, my Lords.”.

467. Peter Wilson said in his evidence as if he had expected Omar Raisi to be at the scene, that during the night of the attack on the Likoni Police Station, he did not see Omar Raisi anywhere. The next day when he asked, Omar Raisi said he had been at home in Likoni. Senior Superintendent Jonathan Koskei was also to criticize Omar Raisi. Omar Raisi in his cross examination of Corporal Wasike Murumba had tried as the following passage from the verbatim report of the proceedings of the Judicial Commission of 3<sup>rd</sup> September, 1998, shows, to establish that even though he had been seen near the Likoni Police Station shortly before it was attacked, he had a good official reason for being there:

“Mr. Raisi: As the Chief Inspector of Police in charge of intelligence collection in Likoni, had I any limitation of time to be in Likoni?

Mr. Wasike: No, my Lords.

Mr. Raisi: Corporal Wasike are you conversant with our mode of operation in the DSI?

Mr. Wasike: No, my Lords.

Mr. Raisi: No more questions, my Lords. Thank you very much for giving me this opportunity.”.

468. The foregoing passage on the face of it, is redolent with bona fides until it is remembered as Jonathan Koskei asserted, and indeed, as Omar Raisi himself, only indirectly, admitted in his untruthful statement to Edwin Nyaseda, that at the material time, he was no longer in charge of Likoni having then been assigned to be Chief Inspector in charge of Mvita. Omar Raisi’s clever attempt to give a credible reason for his being near the Likoni Police Station at the time he was seen there, was thus exposed.

469. But more direct incriminating evidence against Omar Raisi was given by Police Corporal Wasike Murumba who was at the material time, attached to the Likoni Police Station. He said that early in the evening of 13<sup>th</sup> August, 1997, at about 6 – 6.30 p.m., on

his way to the Police Station, along a short cut, he saw Omar Raisi who was in a brown safari suit, talking to a woman who was dressed like a Swahili woman, with a yellow lessa wrapped round her waist and another one round her neck. Omar Raisi and this woman were about one hundred metres away from the Likoni Police Station and he was about twenty to twenty five metres away from them. When Omar Raisi saw him coming, he behaved suspiciously and hurriedly left the woman as if he did not want to be seen by Wasike Murumba. Wasike Murumba, who knew Omar Raisi well as he often came to the Likoni Police Station, heard the woman ask Omar Raisi whether he would come back and he answered that he would. It was about an hour and a half later, that the Likoni Police station was raided and burnt down by the Digo. Wasike Murumba managed to shoot his way out and to call for help over the police radio network. Upon learning that Omar Raisi had been seen near the Likoni Police Station an hour or so, before it was raided, Edwin Nyaseda arranged to have him brought before him for questioning. He was reluctant to tell all that he knew and would not sign anything that was written without clearance from Shukri Baramadi. When this clearance came, then Omar Raisi wrote his fraudulent statement which is contained in Peter Mbuvi's Report, Exhibit 8. Edwin Nyaseda, like we do, suspected that Omar Raisi had played a part in the Likoni raid but was unceremoniously transferred before he could get further statements from Omar Raisi. What struck Edwin Nyaseda as most odd, was that Omar Raisi had before he went on his course in July, 1997, known to have prior information about a possible attack on the Likoni Police Station, yet upon his return from his course he was transferred to Mvita rather than having him continue with the investigations that he had started. What is more, Shukri Baramadi when shown Omar Raisi's statement refused to comment on it, contenting himself, with merely saying that the truth will be known.

470. But what about Peter Wilson? He was content to rely on his role as a conduit pipe for the transmission of whatever information he might have obtained from his subordinates to his superior and vice versa. He himself did not play any active role whatsoever. He was content to blame the success of the raiders on their either being clever and outwitting the police including the Special Branch, or on links between the raiders and members of the Special Branch which we think could include a Digo like

Omar Raisi. We were not impressed by the "smooth" performance of Peter Wilson. To our mind, this behaviour showed that he had a lot to hide from us and should be investigated. How could a senior officer like Peter Wilson pretend that all he did was merely to play a passive role when because life was at stake. Priscilla Kibwia had in her report which Peter Wilson must have read, described it:

"... a sensitive report which should not be taken lightly."

and also, when he told us that Omar Raisi should not have downgraded as he did. Joab Atinga's report, Exhibit 42 (A).

471. Another aspect of Peter Wilson's evidence which raises suspicion was his assertion that although the prior information about the attack on the Likoni Police Station which was to our mind, a very, very serious matter, had been discussed at a meeting of the District Security Committee of which Peter Wilson was a member, no minutes of this was taken down by the Secretary of the District Security Committee, who at the time was Senior Superintendent of Police Joseph Wamae, the Officer Commanding Police Division (Urban) in Mombasa, because he had said that he would take the necessary preventive measures. The failure to include the threatened attack on the Likoni Police Station in the minutes of the District Security Committee meeting, if true, would also mean that since copies of such minutes are sent to the Provincial Security Committee, the latter would not know through the District Security Committee, what prior information it had about the preparation and threat to attack the Likoni Police Station and the upcountry people. Paul Olando who was the District Commissioner of Mombasa from August, 1996, and was still holding that office on 1<sup>st</sup> October, 1998, gave scathing evidence before us, against Peter Wilson. Paul Olando stated that as Chairman of both the Mombasa District Security Committee and the more secretive District Intelligence Committee, and this was unchallenged, that Peter Wilson who was a member of both Committees, at no time, informed him or the Committees of his prior information about the attack on the Likoni Police Station and the upcountry people. Indeed, even after the attack on the Likoni Police Station, Peter Wilson had told him that he had had no relevant prior knowledge. But this was also a blatant lie. Exhibit 42(F) which was the INFORMATION REPORT of Special Branch Handler, Acting Inspector Juma Toza,

inter alia, that one thousand Mijikenda youths were taking an oath to violently drive away the upcountry people, was on 12<sup>th</sup> August, 1997, seen by Peter Wilson who on that date, made his COMMENTS thereon, that:

“A similar report had been received here from a different source confirming that chances are high that oathing is secretly being conducted. Investigation are under way.”.

17 472. This clearly showed that even prior to 12<sup>th</sup> August, 1997, Peter Wilson had prior knowledge of the impending attack by the Digo youths. Another incriminating act according to Paul Olando, was that a copy of Shukri Baramadi's letter of 25<sup>th</sup> June, 1997, Exhibit 42(G), to the District Security Intelligence Officers of Mombasa who was Peter Wilson, and of Kwale and Kilifi, concerning alleged administration of an oath to, and military training of, Digo youths to attack police stations, which should have been sent to him, as was done for instance, in a similar letter dated 30<sup>th</sup> September, 1997, and contained in Exhibit 72 (C), from Peter Wilson to the District Security Intelligence Officer of Kwale, was this time, not sent to him. Jonathan Koskei who took over from Joseph Wamae, was very firm in his evidence that Peter Wilson did not tell him or the members of the District Security Committee of the prior information that he had about the impending attack on the Likoni Police Station. If Peter Wilson had passed on this important information to the District Security Committee, it would certainly have been included in the minutes of the District Security Committee. Jonathan Koskei said he examined the minutes of the District Security Committee going as far back as December, 1996, and found no mention of Peter Wilson's prior information in any of them. Among these minutes were those of the meetings of the District Security Committee held on 23<sup>rd</sup> and 25<sup>th</sup> July, and 21<sup>st</sup> August, 1997, Exhibits 52 (A), 52 (B) and 52 (E), respectively. In Exhibit 52 (E) which dealt with things that happened after the attack on the Likoni Police Station, the minutes, deliberately, avoiding to make an honest reference to what had really happened, referred to the terrible destruction and murders that took place at the Likoni Police Station only as mere “thuggerism”, even when in the same minutes, tribal cleansing is referred to in this way:

“leaflets are still being circulated around urging the upcountry people to pack and leave for their homes of origin.”.

473. Not only that. The minutes of the meetings of the Provincial Security Committee of 29<sup>th</sup> April, 30<sup>th</sup> May, 10<sup>th</sup> June, 26<sup>th</sup> June and 29<sup>th</sup> July, 1997, and contained in Exhibit

58, are eerily silent about the administration of oath to, and the military training of, Digo youths to cause mayhem.

474. Jonathan Koskei did not only, and in our view, not unreasonably, express the conviction that the INFORMATION REPORTS namely, Exhibits 42(A), 42(B), 42(C), 42(D), 42(E) and 42(F) were fake reports which had been prepared after the event, but also, that the Special Branch officers did not tell the Judicial Commission the truth. In our view, Jonathan Koskei's theory about the ex post facto preparation of the INFORMATION REPORTS is the most reasonable one under the given circumstances. This is so because if the prior information was not shared with the members of the Provincial Security Committee, they were bound to be presented to the Provincial Intelligence Committee of which Shukri Baramadi was Secretary, and if this had been done, Shukri Baramadi would have been the first to produce, or refer to the relevant minutes of the Provincial Intelligence Committee, which he did not do. Jonathan Koskei further said, and this was not challenged, that Peter Wilson lied when he said that he had on 9<sup>th</sup> August, 1997, telephoned him about the prior information he had of the impending attack, as on that day, Peter Wilson was not at Mombasa, having gone home to bury his father. Like the Provincial Intelligence Committee, if the prior information about the impending clashes had been discussed by the District Intelligence Committee, Peter Wilson who was its Secretary, would also have been the first to draw attention to the relevant minutes which he did not do.

475. Much has already been said about Shukri Baramadi's deliberate omission to inform the Provincial Security Committee and the Provincial Intelligence Committee of his prior information about the possible clashes at the Coast and we need only refer briefly to particular corroborative evidence of some members of the Provincial Security Committee and the Provincial Intelligence Committee. Timothy Kipkemboi Sirma who was the Chairman of both Committees, said that he was shocked by the contents of the INFORMATION REPORTS of the SPECIAL BRANCH Handlers, Exhibits 42(A), 42(B), 42(C), 42(D), 42(E) and 42(F) and Shukri Baramadi's letter to the District Security Intelligence officers of Mombasa, Kwale and Kilifi. He confirmed that Shukri

Baramadi never brought to his attention or to that of the two Committees, the prior information that he had about the impending clashes. Subsequently, after the attack on the Likoni Police Station, when he complained about Shukri Baramadi's behaviour, at a meeting of the Provincial Security Committee, Shukri Baramadi said he would brief him afterwards which, in spite of his asking him several times, Shukri Baramadi did not do. John Namai who was a member of the Provincial Security Committee also stated that Shukri Baramadi did not tell him or the Committee about the prior information he had about the training and preparation of the Digo youths to attack the Likoni Police Station and the upcountry people and which are contained in Exhibit 42(A) to 42(G). Apart from these documents, Shukri Baramadi on 25<sup>th</sup> June, and 28<sup>th</sup> July, 1997, wrote the somewhat diversionary letters already referred to, and which are contained in Exhibit 89, to Wilson Boinett. It is not by a strange co-incidence that in the Operation Order "TAFUTA MNAZI OPERATION" to counter the Digo raids dated 17<sup>th</sup> September, 1997, drawn up by the Provincial Police Headquarters and contained in Exhibit 6, Shukri Baramadi, is given the communications call sign "Sungura", a cunning rabbit.

476. Though Shukri Baramadi had claimed, which was denied, that he had in their morning telephone call-ups, briefed the members of the Provincial Security Committee, and at the same time, also that the Provincial Security Committee only dealt with criminal matters, he admitted in the course of his evasive evidence given on 8<sup>th</sup> October, 1998, that the prior information he had was never discussed by either the Provincial Intelligence Committee or the District Intelligence Committee. This is the way he put it:

"Mr. Gacivih: Mr. Shukri, before the Commission rose this afternoon, you had told the Commission that everybody knew about those incidences of oathing, threats to the police station and military training. You had said that everyone knew of that. Was this matter ever discussed in the PIC or the DIC?"

Mr. Shukri: The contents of the reports were known to individual officers in different capacities because the reports were only not confined to oathing.

Mr. Gacivih: Was it ever discussed in the PIC?

Mr. Shukri: No, my Lords.

Mr. Gacivih: Was it ever discussed in the DIC?

Mr. Shukri: My lords, we have not seen any report from the district confirming that.

Mr. Gacivih: the oathing, the military training and the threat to the police station. All that was never discussed in the DIC or the PIC. And you agree that, in view of the gravity of the matter, this is a matter which should have been discussed in the PIC or the DIC?

Mr. Shukri: My Lords, it should have been discussed initially in the DIC. I agree with you.

Mr. Gacivih: But it has never been discussed?

Mr. Shukri: No, my Lords.

Mr. Chairman: Not even in the PIC?

Mr. Gacivih: Yes, my Lords, neither of the two. And you agree that, in the view of the gravity of the matter, in it affected the whole national security, this is a matter that should have been discussed?

Mr. Shukri: Yes, my Lords.

Mr. Gacivih: But it was never done?

Mr. Shukri: No, my Lords.”

477. Of course, if the matter had been discussed by the District Security Committee, it would be contained in its minutes, copies of which, automatically go to the Provincial Security Committee. It is our view that Omar Raisi, Peter Wilson and Shukri Baramadi were well aware of the illegal oath taking and military training of the Digo youths not only, to attack the Likoni Police Station but also, the upcountry people and condoned this by not reporting the matter to their appropriate Security Committees or to the criminal investigation branch of the Police Force so that appropriate action could be taken against the Digo youths. Not only that, these three Special Branch officers in keeping their prior information of the intended heinous crimes to themselves, aided and abetted their commission. The theory that they all endeavoured to advance that being Special Branch officers, they did not have any obligation to report any suspected crime being committed until they themselves, were satisfied that it had been committed, is rubbish. They as any one else, had and they knew this, a duty, on being made aware of a crime being committed or about to be committed, to make a report to the members of the “active” Police Force as opposed to the Provincial, District or sub District Security or Intelligence Committees. To hold otherwise, would mean that a member of the Special Branch can arrogate to himself, the role of deciding when criminal investigations into an alleged criminal offence should be undertaken and thus be in a position to condone the commission of the criminal offence. There appears to be sufficient evidence to support Omar Raisi, Peter Wilson and Shukri Baramadi being charged under section 20 of the Penal Code, Cap. 63, of being at the relevant time and when they were not then members of the National Intelligence and Security Service, accessories before the fact in respect of

the administration of an unlawful oath, unlawful military training, malicious damage and murder.

478. But what is more disturbing, is the suspicion that their behaviour had some sort of official blessing. In this regard, and remembering the omnipotent role of the Provincial Administration officers's in security matters, we cannot help but come to the conclusion that in spite of the absence in the minutes of the meetings of the Provincial and District Security Committees of any reference to prior knowledge of the pending clashes at the Coast and the absence of any minutes at all, of the Provincial and District Intelligence Committees, the Assistant Chiefs, Chiefs, District Officers, District Commissioners of the affected parts of the Coast, the Deputy Provincial Commissioner and the Provincial Commissioner of the Coast Province at the relevant time, should on this basis alone, be investigated with the view to charging them with being accessories as proposed for the Special Branch officers. However, in a summary of his evidence contained in the verbatim report of the proceedings of the Judicial Commission of 13<sup>th</sup> October, 1998, Onesmus Mutungi told us, and we have no reason to disbelieve him, that at the meeting of his Committee members with Paul Olando, the District Officers, Chiefs and Assistant Chiefs, Paul Olando had told them that the District Security Committee had at a meeting held some time before 13<sup>th</sup> August, 1997, discussed the oath taking by the Digo youths, though the minutes of that meeting had not then been prepared, and that even though they had the prior information, they could not infiltrate the Digo youths. But they certainly could have told the police so that appropriate action could be taken. Paul Olando also went on to say that though he was not a member of the Provincial Security Committee, the Committee had prior information on the taking of the oath, which it had discussed and that he had been so briefed by the Committee. This evidence fortifies the proposal that the members of the Provincial Administration referred to above, should be investigated with a view to their being prosecuted.

479. In the particular cases of Athumani Zuberi Mwakunyapa the Assistant Chief of Pungu Sub-location in Ngobeni Location and Ramadhani Mwalimu Mwaonu the Assistant Chief of Kiteje Sub-location also in Ngobeni Location, there is ample evidence



that they were accessories before the fact. In his evidence before us, and which was not challenged on this issue, David Opala who was the District Officer of Matuga at the material time, stated that these two Assistant Chiefs had confessed to him that they knew about the oathing and the military training of the Digo youths but had kept quiet about it because they feared for their lives. He had reported this to his District Commissioner, David Jakaiti, whom, instead of reporting the matter to the police, had them only interdicted. As already noted, these two Assistant Chiefs were ridiculously reinstated later by the Provincial Commissioner, Samuel Limo. Patrick Menza the Inspector of Police of the Special Branch at Kwale, also told us that on 19<sup>th</sup> July, 1997, when he had gone to investigate the oathing and military training of the Digo youths at Ngombeni Location, it was Athumani Mwakunyapa who had taken him, his Senior Sergeant and driver to the place where the oath taking and training had taken place. Saidi Sudi Ahmadi who worked on Karmari Pradhan's farm, was another witness who told us that his Sub-chief Ramadhani Mwalimu Mwaonu knew of the oath taking which took place under a boabab tree near Karmari Pradhan's farm. Saidi Ahmadi himself, had on two occasions, in July, 1997, seen about thirty Digo youths with red head bands seated under the boabab tree and taking the oath which it was later explained to him, would make the Digo youths bullet proof. One of those he saw taking the oath was Juma Hamisi Mwamsele alias Gocco who had also tried to recruit him. And now a touch of irony, Saidi Ahmadi was arrested for his failure to tell the police about the information that he had about the administration of the oath to, and military training of, the Digo youths. Juma Hamisi Mwamsele who has scars on his back like those caused in the administration of oaths, should, if this has not been done, be charged with taking part in the administration of an illegal oath and undergoing military training to cause violence.

480. The terrifying activities going on near Karmari Pradhan's farm, did not go unnoticed by him, and whilst others remained silent about it, he complained to the authorities. In early July, 1997, he made his first report to the Assistant Chief of the sub-location who did nothing. He then on 4<sup>th</sup> August, 1997, wrote to the Officer Commanding Police Station, the Likoni Police Station that fifteen to twenty armed men had made their base at the bottom of his farm from where they were harassing the public and robbing the neighborhood of food and livestock. Karmari Pradhan sent copies of this

letter about the dangerous security situation on his farm, to the Provincial Criminal Investigation Officer of Coast Province, the Officer Commanding Police Station, Diani Police Station, the District Officer of Matuga Division, the District Commissioner of Kwale District, the Chief of Ngobeni Location and the Provincial Commissioner. This letter a copy of which is contained in Peter Mbuvi's Report, Exhibit 8, provoked no response from the Police Force or the Provincial Administration. As Edwin Nyaseda was to tell us, he showed a copy, of this letter on 16<sup>th</sup> August, 1997, to the members of the Provincial Security Committee which consisted of Francis Gichuki, the Provincial Police Officer, Hassan Mohamed Haji, the Acting Provincial Commissioner, Shukri Baramadi and John Namai, none of whom said anything. The next day when the matter was raised, this time at a meeting with Duncan Wachira, the members of the Provincial Security Committee looked down in shame. But was this really out of negligence or guilt. We would think the latter. On the morning of 13<sup>th</sup> August, 1997, Karmari Pradhan wrote a note to Inspector Peter Johnson Kariuki, the Officer Commanding the Likoni Police Station, complaining about insecurity on his farm, but nothing was done. It was that very evening that the Likoni Police Station was attacked and when this happened, Peter Kariuki was at home as he was feeling ill. He was subsequently dismissed from the Police Force for being negligent in that his failure to make proper protective security arrangement at the Likoni Police Station, had contributed to its destruction on the night of 13<sup>th</sup> August, 1997. It is also strongly suspected that he had prior information that his police station would be attacked that night and that, that is why he pretended to be ill and went home. We feel that this issue should be further investigated with a view of charging him with aiding and abetting the attack on the Likoni Police Station. Karmari Pradhan's farm was attacked and looted on 14<sup>th</sup> August, 1997 and again on 18<sup>th</sup> and 19<sup>th</sup> August, 1997. On one of the walls of his house in the farm, the Digo raiders had written the tell-tale phrase "upcountry people go away."

481. The tribal clashes which occurred at the Coast in 1997, unlike those that took place in other parts of the country where tribes or clans fought each other were purely, a one way affair where the Digo youths attacked, killed and destroyed the property of upcountry people. This was supposed to discourage the upcountry people who supported the then opposition parties from voting for them. Similar incidents occurred at Mtondia in the Kilifi District. The clashes that occurred in 1997, were, however, not only, of a greater magnitude and devastation but were also, the work of people who had undergone some military training including the use of sophisticated weapons.

482. The evidence that we were given in connection with the clashes that took place prior to the 1997, tribal clashes, is contained in the self written confession statement of Karisa Maitha, Exhibit 79, dated 22<sup>nd</sup> August, 1997. In this statement, he confessed that in 1991-1992 he had been involved, upon being asked to do so by Joshua Kulei the Personal Assistant to the President, and Rashid Sajjaad a KANU nominated Member of Parliament, together with Mohamed Masumbuko in training African Muslim youths from Kwale District and parts of Mombasa, under the name of the United Muslim Association (UMA) who successfully, violently silenced the Arab Muslims who were then supporting the opposition Islamic Party of Kenya (IPK) in Mombasa. In 1993, and just before the December parliamentary by-election at Kisauni, Karisa Maitha stated that he was again, called upon by Joshua Kulei and Rashid Sajjad to employ his UMA youths, but which name he had then changed to the Coast Protective Group (CPG), to this time, violently attack and disrupt the leaders and rallies of the then opposition parties which were supported mainly by upcountry people. Karisa Maitha went on to say that his actions were supported by Government officials at Mombasa such as the District Commissioner, the Provincial Police Officer and the Provincial Criminal Investigation Officer. Both the District and Provincial Security Committees which he said, sanctioned his actions and indeed, provided necessary funds for them, would often call on him for information that they may require. It was because of this close relationship that he had with the Provincial and District Administration officials, that Paul Olando had called him at his hotel in Nairobi at 6 a.m. on 14<sup>th</sup> August, 1997, the morning after the Likoni Police Station had

been destroyed and people killed, to ask if he could get him any information that would help in arresting the raiders.

483. Just as this seems in the circumstances, a natural thing for Paul Olando to do, so in the given circumstances at the time, Karisa Maitha was not at all worried about making the revelations that he did. But things had not stood still. In August, 1997, when he made his confession, he was a KANU parliamentary aspirant for the Kisauni seat, but he later defected to Ford Kenya and by the time of the December, 1997, parliamentary election, had defected again to the Democratic Party of Kenya and as such, had won the Kisauni parliamentary seat. And so, when he gave evidence before us on 12<sup>th</sup> October, 1998, it did not come as a surprise when he denied having made the confession statement, Exhibit 84. He did, however, admit that his signature appears on a letter dated 28<sup>th</sup> June, 1998, which he wrote to the Mombasa District Criminal Investigation Officer, on another letter dated 14<sup>th</sup> September, 1998, again, to the same officer, and on a Notice of Appointment of Advocates dated 10<sup>th</sup> February, 1998, addressed to the Registrar of the High Court of Kenya at Nairobi and which are all contained in Exhibit 92. We are not professional handwriting experts, but in our view, these signatures are the same as that of the person that signed the confession statement, Exhibit 92. And if this is so, then Karisa Maitha has himself, confessed to having organised tribal clashes in Mombasa during 1991 and 1993. In addition, there is also the following evidence of the Catholic Archbishop John Njenga which we accept. He recalled that during the period preceding the 1992 multiparty general elections, many upcountry people, mainly the Luo, took refuge at the Catholic church in Likoni. They had sought refuge there because they were being attacked and harassed by the coastal people who wanted them to leave Likoni and go back to their tribal homeland so that they could not vote for the then opposition Ford party. According to the Archbishop, it was during this time that he heard Karisa Maitha, who was then standing for election in the area as a KANU party candidate, publicly incite the coastal people that the upcountry people must go back to their tribal homes. This matter should be investigated with a view to charging him with the relevant offences. To complete the investigation, statements should also be taken from Rashid Sajjad and Joshua Kulei.

484. According to the police report Exhibit 6, there were altogether between 1993 and 1995, seven sporadic incidents of tribal clashes. There were two incidents in Mombasa Division where three upcountry persons were seriously injured and seventeen houses of upcountry people burnt, twenty three incidents in Kwale Division where Digo youths stabbed one Kikuyu to death, injured four upcountry persons and burnt thirty one houses belonging to upcountry people; and two incidents in Kilifi Division where Mijikenda youths killed seven and injured fifteen upcountry people, and burnt thirty four houses belonging to upcountry people.

485. Finally, the traumatic and well organized tribal clashes at the Coast began on the night of 13<sup>th</sup> August, 1997, when the Likoni Police Station was attacked by about twenty Digo youths. The damage and destruction they caused was horrendous. The police station was ransacked and burnt to the ground together with all things within it, furniture as well as records and documents. The prisoners being held at the police station were all released. A VHF radio set and pocket phone were stolen, the armory was broken into and forty three G3 rifles, one revolver, one thousand four hundred and seventy five 7.62 mm and 9 mm rounds of ammunition looted. Four rooms of the Likoni Police residential lines, the offices of the Chief and District Officer of Likoni, the Waa Chief's Camp, the Ngombeni Administration Police Camp and the booth of the Tourist Police Unit at the Likoni side of the Likoni channel were also destroyed. Private property including forty three houses, five hundred and twenty kiosks, thirteen shops, seventeen bars and restaurants, ten butcheries and several vehicles were badly damaged. Two churches were also damaged. The crowd that attacked the Likoni Police Station were Digo youths and were armed with bows and arrows. One of them had a pistol. During the attack, Wasike Murumba managed to shoot his way out, but the raiders killed five police officers one of whom was a woman, and at least three of whom including the woman, had their throats slit. Having looted the armory, the Digo raiders set houses on fire and shot into the air.

They then began their violent attacks on people, government buildings, and private property. They also took over the ferry service from and to Mombasa Island and it was in the course of retaking it, that General Service Unit Inspector, Solomon Waweru, was shot dead. Apart from the police officers who had died, ten civilians were killed, twelve police officers injured during the raid and many, many more civilians were also injured. The enormity, nature and objective of this orgy of devastation, can only support the view that it was to obtain arms to be used to terrorise and drive away the upcountry people so that they do not vote for the opposition parties in the forthcoming parliamentary and presidential elections. The other issues that have been suggested as the motives behind this raid, and which in our view, was merely expounded to divert attention from the real cause of the tribal clashes namely, the alleged harassment of the Digo youths by the Likoni policemen, the unemployment of the Digo youths and the ownership of land by the upcountry people, have only to be mentioned, to be dismissed as the real motive of this and other raids.

486. Wasike Murumba who first raised the official alarm of the raid over the police communications network (999) told us that he had spoken to Solomon Waweru over the network who had told him that they could not come over to Likoni as the raiders had taken over the ferry. The Provincial Police Officer, Francis Gichuki, and Shukri Baramadi spoke to him wanting to know what the situation was on the ground, but did not offer him any help. He also overheard John Namai tell the Controller of the police communications network to ask the Kenya Navy for help. The naval base was only 2 ½ km away on the same side of the coast as the Likoni Police Station and from where, the many shots that the raiders were firing in the direction of the naval base, could easily be heard. The Kenya Navy, however, never came to help. This is rather strange considering that a copy of Wilson Boinett's Report on FLASH-POINTS FOR VIOLENCE 1997 GENERAL ELECTIONS, Exhibit 30, was sent to the Chief of General Staff, Department of Defence, who in turn, must have at least conveyed its contents to the Navy Commander. The next morning at 8 a.m. whom did Wasike Murumba see come to the burnt down remains of the Likoni Police Station, but the Navy Commander, Major

General Kibwana in the company of none other than Omar Raisi still in the same brown safari suit he had been seen wearing the evening before.

487. It followed naturally, having regard to the motive which we have discerned as the cause of the raid at Likon, that this raid was not the end, but rather, the beginning of the clashes.

488. On 14<sup>th</sup> August, 1997, the raiders descended on Karmari Pradhan's farm, stole livestock and looted his house. His foreman, a Mukamba, was killed. There were other subsequent attacks on the farm and on one occasion, 15<sup>th</sup> August, 1997, when Karmari Pradhan took some armed policemen to his farm, they found already there, about twenty armed General Service Unit men. Across the valley some 130 meters away, armed Digo youths could be seen moving behind trees and when the General Service Unit men asked permission to attack them, their Commander refused, saying that he would rather they were tracked to their hideout by a helicopter which he had sent for. The helicopter did come later only to fly around and then go away. There were intermittent attacks by the raiders who operated in the neighborhood until the end of August, 1997.

489. On 14<sup>th</sup> August, 1997, the then District Officer of Matuga, David Opala took part in a reconnaissance operation in the Kaya Bombo forest, where the raiders were said to be hiding. He went with fifteen regular and Administration policemen. According to David Opala, the members of the District Security Committee namely, the District Commissioner, Joseph Jakaiti, the Officer Commanding the Police Division, David Joseph Kyalo, and the District Security Intelligence Officer, Francis Maina Njuguna, did not condescend to join them. Another disturbing evidence this time, of Major John Mberia who was a co-opted member of the District Security Committee, and implying official connivance, is contained in the following passage of the verbatim report of the proceedings of the Judicial Commission of 5<sup>th</sup> October, 1998:

“Mr. Chairman: Why was Kaya Bombo chosen?

Mr. Mberia: My Lords, during the DSC meeting, it transpired that Kaya Bombo was one area that was avoided by the security men because there were rumors that there is a Kaya where some witchcraft goes on. So, the policemen were scared of getting into that forest.

...  
Mr. Mberia: My Lords, I cannot find an appropriate word for that, but the activities that were happening around there were related to witchcraft.

...  
Mr. Mberia: My Lords, in that DSC meeting what transpired, after the contributions from various members pointed to us that Kaya Bombo as having some activities.

Mr. Chairman: Who was the one who said that the police feared to go there, and that was why they wanted you and the army to go there?

Mr. Mberia: My Lords, it was the DO, Matuga.

...  
Mr. Chairman: Did you get the impression that this was prior information that they had before the attack on the police station?

Mr. Mberia: My Lords, what I could observe about the whole operation was---

Mr. Chairman: Because this is the 14<sup>th</sup> August, 1997 you are talking about?

Mr. Mberia: My Lords, it raised eyebrows why there was an element of secrecy. Nobody was willing to divulge the necessary intelligence to assist us in the operations.

Mr. Chairman: The members of the DSC were not being frank?

Mr. Mberia: My Lords, I would say that they looked surprised, as if this was something new that nobody had information about.

Justice Bosire: Did they appear to be concealing something, not to coming out clearly on this issue?

Mr. Mberia: My Lords, from my own thinking, I felt that there are some things that cannot happen in an area without at least some information reaching the local administration.

...  
Mr. Chairman: In which case they knew that something was happening there, but the police had been too frightened to go there?

Mr. Mberia: My Lords, I could say that.”

490. Apart from David Opala's men, there was also an army platoon of thirty five soldiers under John Mberia who was in charge of the operation. The operation was unsuccessful because though they were able to arrest four suspected raiders, they were outnumbered and outmanoeuvred by over three hundred raiders who emerged from the Kaya Bombo forest firing sophisticated weapons. Upon retreating, and having lost three policemen, they found all their vehicles had disappeared and that the Administration Police Sergeant, Mohamed Juma Kutsola, a coastal, who had been with them, had ordered the driver of David Opala's land rover, to drive him and the four arrested suspected raiders, away. David Opala, John Mberia and their men had no choice but to walk some 8-10km back to Matuga. Mohamed Kutsola it was later discovered, took only two of the four arrested suspected raiders to Kwale Police Station where, taking



advantage of the confusion then prevailing at the police station, he left them without giving any satisfactory details at all about them. He said, and which we found to be a lie, that he had sprained his right knee and was in a hurry to get medical assistance. Mohamed Kutsola as seems to be the custom, instead of being disciplined and dismissed, was promoted to the rank of an Inspector. In our view, it is not too late to take disciplinary action against him. The evidence of David Opala, his driver Ali Mohammed Bakari and Police Constable Reuben Sumuni of Kwale Police Station and the relevant entries in the Occurrence Book, constitute prima facie evidence of the offence committed by Mohamed Kutsola.

491. The next day, 15<sup>th</sup> August, 1997, after the retreat from the Kaya Bombo forest, a bigger contingent of policemen and soldiers under the command of Lt. Col. Nicolas Ndono who was also a member of the Provincial Security Committee, went to the forest and this time, arrested Swaleh bin Alfani and four other persons. Even though the attacks by the Digo youths continued unabated, suddenly, on 18<sup>th</sup> August, 1997, and without prior consultation with Nicolas Ndono, a radio message was received from the Provincial Security Committee, ordering the soldiers to return to barracks. Francis Gichuki was to tell us that the order came from none other than Wilfred Kimalat after Hassan Haji had complained about the dominant role of the soldiers. But Nicolas Ndono did not only, think that this was a terrible mistake but was also, convinced that the initial attack at Likoni must have been known to the Police Force and the Provincial Administration who decided to do nothing about it. What Nicolas Ndono also found shocking, was that the Provincial Police Officer at the time, Francis Gichuki, and who in the absence of the substantive Provincial Commissioner, was the Chairman of the Provincial Security Committee, never once showed his face during the operations that were mounted. This deliberately unco-operative action and attitude of Francis Gichuki was confirmed by John Namai and Hassan Haji the Acting Provincial Commissioner, who told us that he reported Francis Gichuki's misconduct on several occasions to the Permanent Secretary, Provincial Administration and Internal Security, Wilfred Kimalat. Jonathan Koskei also told us that Francis Gichuki often quarreled with the other members of the Provincial Security Committee and that on one occasion, Francis Gichuki told him that the whole

business was political and did not want to become involved in it. Francis Gichuki's conduct must be investigated to determine if his actions amounted to the connivance of criminal offences or a mere dereliction of duty, and dealt with appropriately. But in this respect, it must not be forgotten that Major General George Agoi who was then in charge of Eastern Command, and who was made the operations commander with Francis Gichuki as his deputy, did not give evidence before the Judicial Commission. His evidence would be useful in any future investigations into the conduct of Francis Gichuki. Evidence concerning political interference with the work of Francis Gichuki which is related herein after, will also be relevant.

492. It is not surprising that after the withdrawal of the soldiers from operations against the raiders, and because of the lackadaisical and conniving attitude of the members of the Provincial and District Security Committees, the raids that could otherwise, easily have been brought to an end within a few days, continued unabated for nearly a whole year. The upcountry people were the main targets of the direct raids as well as the insecurity, which these raids engendered. According to a police report, Exhibit 6, there were altogether, between 15<sup>th</sup> August, 1997, and 30<sup>th</sup> June, 1998, twenty five separate violent raids and attacks. These somewhat inaccurate as to specific dates, and as set out in Exhibits 6 are as follows:

"1. On 15.8.97 at about 10.00 p.m. a watchman Josephat Mutisya who was guarding Kaunda Bar in Likoni was attacked by a group of ten men armed with rifles. He was shot dead.

On 16.8.97 at about 10.30 p.m. at Mtopanga there was an exchange of fire between police officers and raiders as a result one G.3 rifle No. 006936 with 20 rounds was stolen from No. 55168 PC(D) Bernard Okello.

On 17.8.97 at about 7.00 p.m. unknown number of raiders set on fire Itoleka Bar which is within Likoni. The bar was completely burnt down.

On 19.8.97 at Kijipwa in Kilifi District there was a fierce exchange of fire between the raiders and the security men. One police rifle a G3 No. 6740333 got lost and one of the raiders by the name Hussein Mokuti was shot dead.

On 22.8.97 at about 7.00 a.m. about 40 armed men raided the Catholic Church where people had taken refuge. An exchange of fire between the raiders and policemen ensued. Two people were killed from the church. None of the Security men was injured.

On 24.8.97 at about 8.00 p.m. at Safari Bar and Restaurant 20 men armed with G3 rifles attacked and killed the proprietor Samuel Kariuki and seriously injured two others.

On 5.9.97 a group of about 100 raiders raided Sharlon Bar in Likoni. They were armed with rifles, bows and arrows. They killed two (2) people and seriously injured 10 others.

On 11.9.97 at about 4.20 p.m. about (60) sixty raiders armed with assorted types of rifles invaded Diani Shopping Centre with intention of attacking Diani Police Station. Security personnel who were very alert engaged the raiders on a heavy exchange of fire, which resulted to three (3) raiders being shot dead and two (2) G.3 rifles recovered. 76 premises were set ablaze by the raiders on this day at Diani Shopping Centre.

On 12.9.97 at about 11.00 a.m. a contingent of combined forces of G.S.U. and Flying Squad personnel got in contact with some raiders numbering between 30 to 40 at Ng'ombeni area of Kwale District. Exchange of fire ensued and one the raiders was shot dead with no recovery made.

On 26.10.97 at Buda Forest in Matuga area of Kwale District while acting on information security men proceeded to Buda Forest and found a raiders camp with two sentries. On sighting the security personnel the sentries alerted the raiders who fled away into the forest but managed to shoot one dead and arrested the two sentries.

On 31.10.97 a contingent of combined patrols of officers from the G.S.U and regular police on hot pursuit of the raiders who had committed robbery at Diani encountered with the raiders at Ng'ombeni area. There was a fierce exchange of fire and two raiders were shot dead and two G.3 rifles recovered.

On 5.11.97 at 2.00 p.m. a contingent of G.S.U. personnel and regular policemen attacked raiders camp at Kaya Kambe in Kwale and shot dead two raiders and arrested one namely Mohammed Kitenje for interrogation. From the said camp the following items were recovered:- 12 cups, 15 plates, 4 pairs of shoes, 4 bales of maize flour and 3 packets of salt.

On 1.11.97 at 5.00 p.m. at Makondeni Forest Matuga area of Kwale District a contingent of 40 men from the G.S.U. and A.S.T.U. confronted a group of armed raiders who engaged them on exchange of heavy firing. Three raiders were shot dead, three G.S. rifles recovered plus one .38 revolver with 74 rounds of ammunitions. One black uniform, one red flag and one register containing names of sponsors and some bows and arrows were also recovered.

On 2.11.97 at Kaya Kambe in Kwale District there was an exchange of fire between security men and the raiders. As a result 4 raiders were shot dead, 4 black 'T' shirts and red/white stripes, pangas, bows and arrows were recovered. One jungle hat, 2 flags with white and red stripes and green raincoat were also recovered.

On 7.11.97 at 2.00 p.m. at Ambuko Sokoke Forest in Kilifi District, Police Officers acting on an information proceeded to the said forest and encountered with a group of about 100 raiders armed with bows and arrows. The raiders charged at the Police Officers who opened fire and shot dead two of the raiders. The following items were recovered, two shirts, 13 pairs of shoes, two pangas, one axe, four knives and four jackets.

On 1.11.97 a contingent of G.S.U. men together with regular policemen attacked SIMILANI Caves in Kwale and recovered one G.3 rifle, one SMG patched, one pocket phone battery, one senior officers (GSU) tent, seven SMG magazines and 52 rounds of 9mm ammunitions. No death reported but it was believed that several raiders escaped with injuries. One

suspect, who was shot, was later arrested and charged before court. He confessed at length about their illegal activities.

On 23.1.98 nine men armed with rungas, pangas and iron bars attacked businessmen at Mariakani Town. They were confronted by Police Officers on patrol and one of the gangsters was shot and died later at Coast General Hospital while undergoing treatment.

On 5.3.98 at about 9.30 p.m. three men posing as reportees went to Mariakini Police Station and attacked one of the Station guards No. 37090 P.C. Jactopus Chibo by cutting him seriously with a sword on his head and robbed him his G.3 rifle No. 6740384.

On 15.4.98 at about 10.30 p.m. a gang of about six men armed with G.3 rifles stormed into Third World Night Club Likoni and robbed off the owner an unknown amount of money. They also robbed customers unknown amount of money and shot dead the Bar Manager William Mubutu before fleeing away to unknown destination. No recovery or arrest made.

On 19.4.98 a group of about six armed men raided Harambee Night Club Likoni and robbed off customers some unknown amount of money. Several people were seriously injured and taken to Coast General Hospital, treated and discharged.

On 29.4.98 at about 7.45 p.m. at Mazeras Market in Kaloleni area of Kilifi District a group of about 30 men armed with G.3 rifles attacked businessmen and robbed them of unknown amount of money, shop goods and escaped on foot towards Kaloleni area before setting on fire several makuti kiosks. Several people were injured and were treated and discharged at Coast General Hospital. Police Officers from Mariakani and Kilifi acting on information proceeded to Kaya Bomu Forest where they encountered with the raiders numbering 25-30. A heavy exchange of fire ensued and one of the raiders was shot dead and 10 G.3 rifles recovered. Recovered also were some the shop goods stolen at Mazeras Market.

On 25.5.98 Changamwe Police Station in Urban Division Mombasa District was attacked at 5.45 a.m. by a 6-7 men armed with G.3 rifles. They injured two police officers, freed all 42 prisoners who were in cells and made away with one Bren Gun and a G.3 rifle which were with the station guards outside.

After the Changamwe Police Station attack the raiders were believed to have headed to Kaloleni area within Kilifi District. On 27.5.98 at about 12.30 a.m. they terrorised members of public within the areas of Mwamba ya Nyando in Kaloleni. A contingent of combined patrols of GSU personnel and regular policemen mounted a major operation in this area.

On the same day of 27.5.98 the security officers on operation received information that the same gangsters were robbing businessmen at Kaloleni Trading Centre. They proceeded there and encountered with the raiders in action. A fierce exchange of fire ensued and three (3) raiders were shot dead and one seriously injured. Some assorted shop goods, clothings and cash Shs.3,520/= were recovered.

On 30.6.98 at 7.45 p.m. at Diani Chief's Office about 9 raiders armed with bows, swords and knives attacked the Aps quarters by throwing arrows to the AP quarters through the window. The Aps replied by shooting at the raiders and as a result two raiders were shot dead. Others ran and disappeared into different directions. One I/D card No. 20039762 bearing

the name of Mohamed Said Jao C/O Mtaa Wa Pwani Village Likoni was recovered at the scene. Two swords and two arrows were also recovered.”

493. Edwin Nyaseda was also to add his voice to the general criticism that there was deliberate conniving in action on the part of the Provincial and District Security Committees both before and during the clashes. There were occasions when he would pass on through John Namai, to the Provincial Security Committee information on where the raiders were hiding and their arms hidden, and nothing would happen. On one occasion, he obtained from newly arrested suspects information that the Digo raiders were hiding in caves in Similani hills in Kwale District. He passed this information on to the Provincial Security Committee on 18<sup>th</sup> August, 1997, but nothing was done about it until nearly three months after, on 1<sup>st</sup> November, 1997, when as shown hereinbefore in Exhibit 6, the police attacked the Similani caves and recovered arms and ammunition and a military tent, and shot and arrested a raider who pleaded guilty to appropriate charges in court. On other occasions, he would advise that the police be sent in a particular direction only to find that they would be sent in the opposite direction. In general, he found the Provincial Security Committee to be unco-operative in that they would not give him any prior information that they had about the Likoni raid. His attempt to obtain statements from Hassan Haji, Shukri Baramadi, Francis Gichuki, David Opala, Joseph Jakaiti, Hammerton Mbogho Mwavisa, and Paul Olando were unsuccessful as they suspiciously refused to give him any. They should now be made to make their statements about what they knew and did about the clashes at the Coast.

494. The only acceptable reason for the sudden and illogical transfer of Edwin Nyaseda in the middle of his work on 25<sup>th</sup> September, 1997, from Mombasa where he had on 15<sup>th</sup> August, 1997 been specially sent to investigate the Likoni raid and related matters, and before he had concluded his assignment, is that, he was getting too close to discovering the conniving role of the KANU politicians at the Coast, the Police Force and the Provincial Administration in the Digo raids, and had to be stopped. In other words, the Police Force through its very Commissioner, was playing an insincere and dirty game. The Commissioner of Police should make a statement explaining why he ordered the sudden, illogical and suspicious transfer of Edwin Nyaseda the way he did, in order to

show that he deserved his honourable discharge from the Police Force. But apart from Edwin Nyaseda, several other policemen, who were not Special Branch officers, and who were actively involved in the investigation of the raids at the Coast, were likewise, suddenly and irrationally, transferred. These were Francis Gichuki, John Namai, Hammerton Mwavisa, Jonathan Koskei, Jacob Katana the Divisional Criminal Investigations Officer (Kwale), and Joseph Chai the Divisional Criminal Investigations Officer (Urban). By now, it would not be surprising, that at the material time, none of the Special Branch police officers that have already been mentioned in this Report, were transferred.

495. As a result of the killing of upcountry people, the burning of their houses and looting of their property, three thousand five hundred of them took refuge within the sacred precinct of the Catholic Church at Likoni. But this did not deter the Digo youths who on the night of 19<sup>th</sup> August, 1997, attacked the church, but were repulsed by the police on guard duty. On 22<sup>nd</sup> August, 1997, the church was again attacked and two refugees were shot dead. According to Jonathan Koskei, he had ordered the arrest of the prime suspect of this attack namely, Mwalimu Masudi Mwahima, a Shika Adabu Councilor, from whose house the raiders had shot into the church compound, for questioning. To his great surprise, Mwalimu Mwahima was released the next day 24<sup>th</sup> August, 1997, from the Port Police Station where he had been kept, and what is more, under the false entry in the police station Occurrence Book, Exhibit 51(B), that he Jonathan Koskei, had ordered the release of Mwalimu Mwahima. Not surprisingly, the then Officer Commanding the Port Police Station, Chief Inspector Musoso, had in his written comment alongside this entry, complained that those who had come to take Mwalimu Mwahima away, had not, as they should have, identified themselves in the entry. Another suspect, Hisham Mwidau who like Mwalimu Mwahima, had also been arrested on 23<sup>rd</sup> August, 1997, by members of Edwin Nyaseda's CID team from Nairobi, and taken to the Port Police Station for questioning the next day, was also under

suspicious circumstances, released on that day by Sgt. Oboi and Sgt. Nyagah. This tactics prevented these two KANU politician suspects from being interrogated by Edwin Nyaseda before he was unceremoniously recalled from Mombasa. Not unnaturally, Edwin Nyaseda was upset at these irregular and untimely releases and complained about them to John Namai. This is what was said:

“Mr. Nyaseda: Yes, my Lords, and I asked him the position of the suspect. He was not willing to tell me much. He just told me that a decision, which he never disclosed to me, had been made.

Justice Bosire: Did he tell you the person who had made the decision?

Mr. Nyaseda: He did not tell me, my Lords.

...

Mr. Ngombo: Now, it was rumoured that another person by the name of Mr. Mwahima was arrested at the same time when Mr. Isham Mwidau was also arrested. And that he was also released under similar suspicious circumstances. Was that so?

Mr. Nyaseda: My Lords, that was true.

...

Mr. Nyaseda: He was arrested by orders from the OCPD, Urban, Mr. Koskei.

...

Mr. Nyaseda: Yes, my Lords. In fact, Isham Mwidau had followed to find out why Cllr. Mwahima had been arrested. When I was carrying out my preliminary interrogation of Mr. Mwidau, I found he was not telling me the truth. There was something he knew which I wanted to dig deeper. So, I placed him in the cell, awaiting further interrogation.

Justice Bosire: You had started interrogating, Mr. Mwidau?

Mr. Nyaseda: Yes, my Lords.”

But in his evidence, John Namai clarified matters by admitting that he had ordered Hisham Mwidau’s release on the instructions of Duncan Wachira. As regards Mwalimu Mwahima, Francis Gichuki told us that Shariff Nassir was the one who pressurized him, John Namai and Shukri Baramdi to release Hisham Mwidau and they could not because of this pressure, arrest him even though the shots that killed upcountry people taking refuge in the Likoni Catholic Church compound, had been fired from his house and even though it had also been reported that his vehicle had been used to transport Digo raiders. Francis Gichuki said that it was well known that police officers could be transferred for not co-operating with a Minister and that this frightened officers and stopped them from being adamant. These incidents also demonstrate how the Commissioner of Police himself, was preventing the proper investigation of crime. As regards Sharrif Nassir, this was not to be his last interference with the course of justice.

496. Francis Gichuki, it appears was under a lot of political pressure. Among this was the fact the Rashid Sajjad came to his office at least once a week. Other KANU political leaders like Shariff Nassir, Boy Juma Boy and Kassim Mwamzandi as can be seen from the following extract from the verbatim report of the proceedings of the Judicial Commission of 14<sup>th</sup> October, 1998, did not leave him alone:

“Mr. Gichuki: As far as this operation is concerned, we had a lot of interference from many quarters.

Mrs. Oduor: Can you give examples?

Mr. Gichuki: Immediately after this attack, I remember telling the PCIO, that it was political. And I still maintain up to now that this thing was political.

...

Mr. Gichuki: There were politicians who wanted the people who had been arrested released.

...

Mr. Gichuki: Hon. Nassir intervened on behalf of Councillor Mwahima.

...

Mr. Gichuki: There were allegations that there was a vehicle that had been seen carrying the raiders and it was suspected to belong to Councillor Mwahima, but he belongs to Hon. Nassir's camp. So, Hon. Nassir had to intervene.

...

Mr. Gichuki: He was suspected to have transported the raiders.

Mrs. Oduor: That is why you arrested him?

Mr. Guchuki: Yes, my Lords.

Mrs. Oduor: Hon. Nassir came to negotiate with you to release him?

Mr. Gichuki: There were negotiations.

...

Mrs. Oduor: And what exactly did he ask you and what did you tell him?

...

Mr. Chairman: What happened?

Mr. Gichuki: After consultation, we agreed that the councillor be released while the investigations would go on.

...

Mr. Chairman: What was the pressure he put on you?

Mr. Gichuki: He approached us and as a Cabinet Minister when he approaches we have got to give him a reasoning--

...

Mr. Gichuki: As a matter of public relations, I think we had to---



Mrs. Oduor: You are also saying that without making any investigations or doing any investigations, somebody approached you and you released him.

...

Mr. Gichuki: My Lords, it was not proper.

...

Mr. Chairman: You mean what you did was not proper in succumbing to pressure?

Mr. Gichuki: My Lords, it was not proper and I remember also that from Kwale, during the operations, the Members of Parliament in Kwale, that is Juma Boy Juma and Hon. Mwamzandi used to come to my office because they thought their people were being harassed during the operations. It was very serious because they were raising it even in public barazas. So, that is why I said that there was also that political interference.

...

Mr. Gichuki: With the kind of situation that we had, people being killed and houses being burnt during the night, I did not agree with them, my Lords.

Mrs. Oduor: Did you suspect them in any way?

Mr. Gichuki: My Lords, I suspected that they knew more than they were just telling me. I suspected them also, my Lords.

Mrs. Oduor: So, what did you do about that suspicion?

Mr. Gichuki: My Lords, because I did not want to hide anything, I think Hon. Mwamzandi was a Government Assistant Minister and we were very cautious when we were approaching these people. Mr. Boy Juma Boy was also in the Government. He was an MP and a Chief Whip of KANU and these people were politicians up to the top.

Mr. Chairman: Mr. Gichuki, are you telling the Commission that although you had suspected these people and you had your reasons, you feared them?

...

Mr. Gichuki: My Lords, I did not fear them. But I was only cautious.

...

Mr. Gichuki: I was cautious because people like Hon. Nassir and Hon. Mwamzandi were Assistant Ministers and they were in the Government. Looking at another angle, maybe, arresting them would have been seen as if I interfering. I did not want to burn my fingers.

...

Mr. Gichuki: My Lords, in a political Government, we have got to be cautious. This is a political government.”.

497. The following revealing extract from Francis Gichuki’s evidence as contained in the verbatim report of the proceedings of the Judicial Commission of 15<sup>th</sup> October, 1998, also shows that Mombasa KANU politicians who were prime suspects in the Digo raids were protected by the Commissioner of Police himself, who failed to give the required authority for their arrest and interrogation:

“Mr. Namai: Now, what would you say were the cause of not arresting the prime suspects? What would you say was the contributing factor?

...

Mr. Gichuki: My Lords, as I said earlier, we had people who were being mentioned here and there. I do not know which people he is referring to because they were many.

Mr. Namai: Those who were implicated in the clashes?

Mr. Chairman: What do you mean by "prime suspects"?

Mr. Namai: Like Mr. Shakombo, Boy Juma Boy, Mwamzandi and the like?

Mr. Gichuki: My Lords, I said earlier that some of them were Government Ministers and some were Hon. MPs in the ruling party KANU. Definitely, we would not have arrested them without making consultations, or getting instructions from other persons.

Mr. Chairman: From who?

Mr. Gichuki: My Lords, I am saying that we would not have arrested those people without getting instructions from the Police Headquarters.

Mr. Namai: Would you therefore, say that the PSC or either of its members protected any of the suspects?

Mr. Gichuki: My Lords, the PSC did not protect the suspects.

Mr. Chairman: Yes, but were instructions sought from the headquarters about what to do with them?

Mr. Gichuki: My Lords, we were consulting and those people were known. Even in the reports, they were being reported to the Commissioner of Police, so he knew who was involved. So, it was just a matter of getting instructions that we arrest them. I can remember that some of those arrests we made, were made with instructions from the Police Headquarters.

Mr. Chairman: Which ones?

Mr. Gichuki: Like Hon. Maitha and Masumbuko. We received instructions that they be put in for further investigation, my Lords."

498. The view that the Digo youths underwent military training to attack the upcountry people and to make life insecure for them, is fortified by the discovery of incriminating evidence in one of their training caverns. The extent of this evidence also goes to show that the Police Force and the Provincial Administration must have known of what was going on. In this regard, we are reminded of what Onesmus Mutungi said concerning the taking of oath, which we think, also applies to military training. He said and this is contained in the following passage of the verbatim report of the proceedings of the Judicial Commission of 13<sup>th</sup> October, 1998:

"... Therefore, given the way the security system is supposed to operate, it is not possible that a group of more than ten people can meet anywhere in

this country, and not once, but for a period of time, and discuss or take the oath or whatever without somebody in the security system knowing.”.

499. However, according to Exhibit 6, which contains a list of the series of attacks by the Digo raiders and police operations that took place after the attack on the Likoni Police Station, until the end of June, 1998, the operations that were mounted by the security forces against the camps of the raiders, did not begin until more than two months after the raid on the Likoni Police Station. The first such operation was on 20<sup>th</sup> October, 1997, at Buda Forest in Matuga in Kwale District. As already narrated, the Similani caves were raided on 1<sup>st</sup> November, 1997. On the same day, the security forces also attacked the raiders at their camp in Makondeni Forest in Matuga in Kwale District. Three raiders were killed and three G.3 rifles, a revolver and seventy four rounds of ammunition recovered. But apart from these, there were also recovered one black kanzu-like uniform with red and white diagonal stripes, a white star and crescent and arabic writing on the back, a red flag, some bows and arrows, and more importantly, two hard cover exercise books. These hard cover exercise books, Exhibits 66(A) and 66(B), contain information which leaves no doubt that a well organized expensive military training over some period, of hundreds of Digo youths, was taking place at the Similani caves. These exercise books contained in military style, the names and service numbers of the raiders undergoing military training, their attendance at the training courses, the length of training, movement of arms including those stolen from the Likoni Police Station, promotions, demotions, court martial proceedings, and the amounts of money spent on the purchase of food and medical bills. Strangely though, whilst all the other things that were recovered were entered in the Occurrence Book of the Diani Police Station, for the 31<sup>st</sup> October, and 2<sup>nd</sup> November, 1997, Exhibit 66(C), no entries were made concerning the two exercise books as should have been done. They were also not entered in the Exhibits Books of the police station. And at a press conference held on 2<sup>nd</sup> November, 1997, by the Provincial Commissioner, Timothy Sirma, and the then Provincial Police Officer, Japheth Mwanja, the black kanzu-like uniform was displayed and the press told about the arms, ammunition, medicines etc recovered; However, no mention at all, was ever made of the two hard cover exercise books. These books we were told by Chief Inspector Flora Tsonzaka, had, on the instructions of Japheth Mwanja, been kept under lock and key. All this was rather peculiar. Anyway, the whole point of this is, why did it

take the security forces such a long time before launching their attacks on the hideouts of the Digo raiders. It would seem that this delay was deliberate. The well organized and complicated procedures involved in the camping and military training of hundreds of Digo youths, as evidenced by the contents of the two hard cover exercise books, could not have escaped the notice of the Police Force and Provincial Administration for such a long time.

500. Another example of conniving behaviour of the Police Force and the Provincial Administration, concerns the arrests and releases of Swaleh bin Alfán, the notorious witch-doctor. Swaleh bin Alfán was first arrested on 15<sup>th</sup> August, 1997, by Nicolas Ndono with his men at Kaya Bombo. He made a statement, Exhibit 78, in which he admitted administering an oath to the Digo youths who were receiving military training and which was being financed by Rashid Sajjad and Rashid Shakombo. On 28<sup>th</sup> August, 1997, after his arrest, the following coastal KANU politicians Kassim Mwamzandi then an MP, Boy Juma Boy another MP, Rashid Shakombo, Salim Mwadendo a councillor, and Ali Mindo went to see John Namai at his office. They were joined by Shukri Baramadi. They claimed that they were in touch with the raiders who were willing to surrender their weapons on condition that Swaleh bin Alfán who was in police custody be released. Even though Shukri Baramadi agreed with them, Swaleh bin Alfán was not released. He was charged with administering an illegal oath, arson and robbery with violence, taken to court and remanded in prison custody. There after several local leaders like Boy Juma Boy, Rashid Sajjad, Katana Ngala, Sharif Nassir, Mathias Keah, Karisa Maitha, Rashid Shakombo, and Kassim Mwamzandi appealed at a meeting with the Provincial Security Committee on 22<sup>nd</sup> September, 1997, for his release so that he could persuade the raiders to stop their attacks. The Provincial Security Committee having agreed to this, arranged to have the last two charges against him withdrawn. Bail was granted on 25<sup>th</sup> September, 1997, in respect of the first minor charge, and one of those who stood surety for Swaleh bin Alfán, was Boy Juma Boy. In the existing circumstances, the ridiculous and biased reason for this which at the same time, confirms the influence of Swaleh bin Alfán amongst the Digo, was, as contained in MIN 65/97 of

the minutes of the meeting of the Provincial Security Committee 22<sup>nd</sup> September, 1997, in Exhibit 58, as follows:

“The PSC revisited the issue of releasing Swaleh bin Alfa who was charged with robbery with violence and administering unlawful oath. To restore trust and cement the relationship between the local leaders and the security.”.

501. After his release on bail, there was an informal meeting of the Provincial Security Committee at the house of its Chairman, Timothy Sirma which was attended by Swaleh bin Alfa accompanied by Suleiman Kamolle and Rashid Shakombo. Boy Juma Boy was also present. At this meeting Swaleh bin Alfa admitted having administered the oath to the Digo raiders and promised to release them from the oath so that they can surrender their arms and stop the raids. As Sharif Nassir was to say on 21<sup>st</sup> October, 1998, before the Judicial Commission, this was outrageous when the attacks by the Digo raiders could easily have been stopped and crushed for good. And so, here we had the Provincial Security Committee aiding and abetting the commission of the offence of the illegal administration of an oath, which in turn, was what instilled confidence in the raiders and inspired them to commit the heinous crimes that they did, for the absolutely nonsensical reason that this would stop further raids. But what about the terrible crimes against humanity that the Digo raiders had committed. They were now to go scot-free after all the evil that they had accomplished, and at the same time, taking pride in a job well done. This unforgivable action will only encourage the unleashing of further blatant violence against the upcountry people, and not as the Provincial Security Committee would like us to believe, that it would bring peace.

502. And what happened after Swaleh bin Alfa was released on bail? Instead of releasing the Digo raiders from the oath that bound them, he went on administering the illegal oath to more Digo youths. He also, and this he said himself, and was not contradicted, that he addressed several KANU election campaign rallies where he called on the Digo to vote for KANU and during which, he gave out a total of three hundred thousand shillings and some KANU T shirts, footballs and lessos. These, as well as four hundred thousand shillings for himself and the Digo raiders in the forest and two cars to be used for the KANU election campaign rallies, were given to him by the KANU chief

election co-ordinator at Mombasa, Rashid Sajjad, in his office where he had been taken by Suleiman Kamolle, then a KANU parliamentary aspirant. His release on bail was clearly engineered so that he could rally support for KANU in the impending general and presidential elections. The Provincial Criminal Investigations Officer at the time, Isaac Eliud Ndweyi Okoth, a member of the Provincial Security Committee, recalled that at their meeting with Swaleh bin Alfani, Boy Juma Boy in support for Swaleh bin Alfani's release, said that even politicians standing for elections sought the blessing of witch-doctors. Obviously then, Swaleh bin Alfani would be most useful to KANU in the coming elections. When it is considered as Timothy Sirma told us, that the proposal to release Swaleh bin Alfani was approved by the high level Kenya Security Council composed of Wilfred Kimalat, Duncan Wachira and Wilson Boinett, then these top officials also connived at Digo raids. But it must not be forgotten that earlier on, and as shown in Chapter One of this Report which deals with the Tribal Clashes in the Rift Valley Province, that Timothy Sirma as a District Commissioner, and a Kalenjin, had shown sympathy for the tribal warriors that attacked the tribes that supported the opposition parties.

503. But worse was still to come. On 13<sup>th</sup> November, 1997, whilst still on bail, and while the clashes were still continuing, it was reported to Joseph Jakaiti that Swaleh bin Alfani was administering an oath to Digo youths at his home. Joseph Jakaiti then instructed David Opala and the Officer Commanding the Diani Police Station, Chief Inspector John Ndungu to go and arrest Swaleh bin Alfani and those taking the oath. Inspector Peter Mwalali Kiema also went with them. When they and their team got to the house of the wife of Swaleh bin Alfani, they found him administering an oath to several Digo youths who were only in shorts. Some of them escaped, but Swaleh bin Alfani and about nine of the youths were arrested and taken to Diani Police Station together with typical paraphernalia involved in the administration of oaths namely, charms, assorted herbs, pots full of red liquid, slaughtered chicken and razor blades. It was then that an outrageous thing happened. No sooner had they been taken to the Diani Police Station than the Provincial Police Officer, Japheth Mwanja, ordered the release of Swaleh bin Alfani who had been caught again administering an oath which would perpetuate the

clashes, and the Digo youths arrested with him. They were then returned in style, together with the oath paraphernalia, in a police landrover, to where they had been arrested. The reason given for this by Japheth Mwanja according to David Opala, was that other policemen were following another lead and that Swaleh bin Alfani could be arrested later. David Opala and Inspector Peter Kiema were both disgusted by this. David Opala feared for his life as he thought that he might have trodden on the toes of some important and senior people. He told Joseph Jakaiti about his fears who rather suspiciously, kept his comments to himself.

504. Although Timothy Sirma left Mombasa for medical treatment on 12<sup>th</sup> August, 1997, Swaleh bin Alfani told us that before then he was taken by Suleiman Kamolle to Timothy Sirma's office where they met him and his deputy, Hassan Haji. Timothy Sirma, whom he said, must have known about the military training of the Digo youths, then asked him to help Rashid Shakombo and Rashid Sajjad in their work. Not unexpectedly, and because of this, Swaleh bin Alfani was not arrested again until after the December, 1997, general and presidential elections.

505. We cannot help but come to the conclusion from the evidence that we had, that the seniormost members of the Police Force and the Provincial Administration aided and abetted the clashes at the Coast. Apart from those already named, these are in particular, Francis Gichuki, Hassan Haji, Timothy Sirma, Joseph Jakaiti, Japheth Mwanja, Wilfred Kimalat, Wilson Boinett and Duncan Wawhira. In the light of the foregoing, they should be asked to make statements on the role they played in connection with the clashes at the Coast so that it can be determined whether criminal charges should be brought against them or not.

506. The politicians at the Coast were also involved in the attacks against the upcountry people and should be investigated. We have already dealt with Hisham

Mwidau and Mwalimu Mwahima. The others are Rashid Sajjad, Rashid Shakombo, Boy Juma Boy, Suleiman Kamolle and Kassim Mwamzandi.

507. The most important evidence about them is that of Swaleh bin Alfani. We have already dealt with the large sums of money that Rashid Sajjad gave him in the presence of Suleiman Kamolle for the raiders in the forest and to help in the KANU election campaign. What we must now refer to, is Swaleh bin Alfani's evidence that he knew Rashid Shakombo well and who had told him that they had people secretly undergoing military training in the forest. Indeed, on one occasion when Rashid Shakombo came to his home, three of the Digo military leaders, came down from Kaya Bombo to see Rashid Shakombo who gave them three thousand shillings. Suleiman Kamolle, according to Swaleh bin Alfani, knew of the Digo raiders who were hiding in the forest. In fact, it was Suleiman Kamolle who brought some of their parents to him so that he could talk them into stopping their boys from raiding and attacking the upcountry people. Boy Juma Boy was one of the KANU politicians who came to him several times to ask him to get the people in his area to vote for KANU. The KANU politicians, Swaleh bin Alfani said, came to him because, though he was not a witch-doctor, he was well known as a herbalist and also as one who when he prayed to God or jinn for things to happen, they did happen. Swaleh bin Alfani concluded that Boy Juma Boy who had stood surety for his bail, like Rashid Shakombo, gave food to the raiders and that their leader, was Rashid Sajjad.

508. Apart from the statement which Swaleh bin Alfani gave to the police Exhibit 41, there is the statement under inquiry of Mohamed Mdogo, Exhibit 67, which he made to Chief Inspector Flora Tsonzaka when she was the Divisional Criminal Investigations Officer at the Diani Police Station. In this detailed statement, where Mohamed Mdogo was suspected of having taken part in the raid on, and the burning down of, the Likoni Police Station, the burning down of shops and houses of upcountry people at Ukunda, and the armed robbery and murder of two upcountry people, he named Boy Juma Boy, Rashid Shakombo and Kassim Mwamzandi as those who sponsored and financed the military training of the Digo youths to attack and drive away the upcountry people to their tribal homelands so that the coastals could govern themselves.



509. On 15<sup>th</sup> August, 1997, Rashid Sajjad brought Karisa Maitha to see Francis Gichuki. Francis Gichuki called in the other members of the Provincial Security Committee and Karisa Maitha told them that the Likoni Police Station had been attacked not because the Digo youths wanted to drive away the upcountry people but because of the harassment of some navy men and Likoni people by the Likoni Policemen. Rashid Sajjad seemed to agree with this, though the members of the Provincial Security Committee thought that this was just a gimmick for them to stop the offensive of the security forces against the Digo youths.

510. On 24<sup>th</sup> August, 1997, a progress report by Edwin Nyaseda on the investigations into the raid and destruction of the Likoni Police Station and the Likoni Tourist Police booth and the murder and injuries committed and caused on the night of 13<sup>th</sup> August, 1997, and on the extension of the raids to the Kilifi District and Malindi, was sent to the Commissioner of Police. This report which is Exhibit 82, lists five politicians and the reasons why, they have been arrested for questioning in connection with the crimes enumerated above. They are said Ali Chizondo, the Chairman of the then unregistered National Democratic Union, Karisa Maitha, Mohamed Omar Masumbuko, Hisham Mwidau and Mwalimu Mwahima.

511. On or about 26<sup>th</sup> August, 1997, Shukri Baramadi informed John Namai that he had information that Rashid Shakombo and Boy Juma Boy were in contact with the raiders. Those whom Rashid Shakombo was in contact with, were willing to surrender their rifles but feared that if they did so, this might be used as evidence against them if charged in court. On the other hand, those that Boy Juma Boy was in contact with, and this re-affirms the important role of Swaleh bin Alfani with respect to the administration of the oath to the raiders, would only surrender their weapons if Swaleh bin Alfani was released. Though some eight guns were surrendered through Rashid Shakombo, this did not stop the raids by the Digo youths, which continued unabated. The police still felt that even though Rashid Shakombo had brought back these guns, he knew much more than he

was prepared to say. As for Boy Juma Boy, John Namai felt that he too knew more than he was prepared to say about the Digo raids.

512. As regards Rashid Sajjad, it appears that in addition to what Swaleh bin Alfa said about him there is other evidence, which implicates him in the clashes at the Coast. There is no doubt that he was the chief co-ordinator and a substantial financier of the KANU 1997 election campaign at Mombasa. It behoved him that this time, KANU succeeded fully in the forthcoming general and presidential elections. One way of achieving this, was by displacing through violence, the rightly perceived opposition upcountry people so as to ensure that as few of them as possible, voted against KANU. The fact that Rashid Sajjad, and we have no doubt about this, had been specially issued with a police pocket phone by Duncan Wachira in 1992, when he was then the Provincial Police Officer at the Coast Province, would enable him to eavesdrop on the police communications network and to know what actions the police were planning to take against the Digo raiders. With such information, the Digo youths could elude as often happened, planned police offensives.

513. No statements whatsoever, have been taken from any of the politicians mentioned above that is to say, Radhid Sajjad, Boy Juma Boy, Rashid Shakombo, Suleiman Kamolle, Kassim Mwamzandi, Hisham Mwidau and Mwalimu Mahima. This should have been done but no doubt, the police were too frightened to do so. As shown above, evidence implicating them in the clashes at the Coast exist and statements must now be made by all of them in order that their involvement or otherwise, in the tribal clashes, may be determined.

514. According to the police report, Exhibit 6, the total number of the persons arrested over the clashes, all coastals, were seven hundred and five. Five hundred and five of them were taken to court out of which, two hundred and eighty five were convicted. These figures show that though, for the reasons that we have already identified, the police failed miserably to prevent or to rapidly stop the clashes, they were able to arrest a large number of people and to charge a substantial number of them in court. But the sad

thing, however, is that only very few of the leading political personalities who sponsored and incited the unemployed and superstitious Digo youths to cause mayhem, ever faced the law. The conniving senior officers of the Police Force and the Provincial Administration, were also not touched. If this Report as we are convinced, is taken seriously, then we expect that the actions proposed in this Chapter of this Report, will be taken against the politicians, the members of the Police Force including those who were serving in its Special Branch at the time, and the members of the Provincial Administration who have been adversely implicated in this Chapter. They must not be allowed to get away with murder, otherwise, they will only live to do the same again tomorrow.

**CHAPTER FOUR:**  
**TRIBAL CLASHES IN**  
**NORTH EASTERN AND EASTERN PROVINCE**

515. Because of the insufficient time at the disposal of the Judicial Commission, we were unable to go to the North Eastern and the Eastern Provinces to hear evidence about the tribal or clan clashes that took place in these parts of the country from 1991 to July, 1998, when the Judicial Commission was established. We were, however, able to hear at Nairobi, the evidence of two witnesses about the clashes in these Provinces. One was a businessman, Wachu Chachole from Moyale, and Jeremiah Matagaro, the Provincial Police Officer of North Eastern Province.

516. Geographically, economically and socially, it can be said that these Provinces are a neglected region with no roads, only a few schools, ill equipped hospitals and of little economic significance. The main economic activity in the region is livestock rearing. The pastoralist communities that live in the region keep large herds of cattle, goats, camels and some donkeys. However, livestock industry, because of draught and high levels of banditry, is becoming less dependable as a means of livelihood. This has allowed, the miraa trade to flourish.

517. Cattle rustling in the region has been a cultural practice since time immemorial, but is no more a sign of bravery or an essential part of the initiation of boys to manhood. The seemingly unstoppable influx of firearms and ammunition into the region from neighbouring Ethiopia and unruly Somalia, had not only, revolutionized violent procedures, but had also, made banditry a common place occurrence. All this in turn, has also made the inhabitants in the region trigger happy and far from peaceful

518. Northern Kenya and the contiguous region is well known for its insecurity and endemic cattle rustling and inter tribal and clan clashes. These clashes encompass the

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three districts in North Eastern Province namely: Garissa, Wajir and Mandera; the three districts in Eastern Province namely: Moyale, Isiolo and Marsabit; and Tana River District in Coast Province. Tribal clashes in the totality of this region of the country where in nearly all cases, the combatants use firearms, involve fighting between Somali clans, and between Somali clans and the Borana tribe and their cousins such as the Orma, the Burji and the Garre. In a number of cases, support is enlisted by the tribes or clans in Kenya from their kith and kin in both Somalia and Ethiopia. These skirmishes are precipitated and perpetuated by a number of factors amongst them:

- (a) Frequent droughts and resultant inadequacy of water and grass. These recurrent draughts, cause the drying up of dams, pans, springs and rivers leaving only a few that endure the severity of such vagaries of weather. Depending on the location of the water point or grazing areas, the indigenous communities more often than not, give very difficult conditions, which include, cash payments or payments in form of animals for water or grass. This often generates into violent hostilities which can only be dealt with by the survival of the fittest and hence the skirmishes.
- (b) Cattle rustling is one of the mother causes of tribal and clan animosity and fighting as the victimized group engages in revenge missions which not only, leads to theft of large herds of cattle and other livestock, but in addition, leads to loss of human life and multiple injuries to many people.
- (c) Proliferation of firearms from the two neighbouring countries. The easy access to firearms from Somalia and Ethiopia has enabled tribes and clans in the region to establish formidable clandestine "militia" which makes fighting almost a hobby.
- (d) Fervent support of territorial hegemonism for the purpose of securing water and grazing land and of late, political representation in parliament and local councils. This is enhanced by ignorance and parochialism which also lead to the distrust of neighbouring communities.

519. The conflicts that these factors give rise to, are often resolved through arbitration by Provincial Administration officers and local elders. In some cases, as a short-term measure, security personnel are deployed to quell the ensuing clashes. In recent years, clashes for water and grazing areas pitted the following clans/tribes against each other:

- In Isiolo District - the Borana versus a Somali clan, the Degodia;
- In Wajir District - the Degodia versus the Ajuran;
- In Mandera and Wajir District - the Garre versus the Degodia;
- In Moyale District – the Borana versus the Degodia which led to the Bagalla and Budhudha massacre on 4<sup>th</sup> October, 1998, and which left scores dead and injured:
- In Tana River District – the Degodia versus the Orma, and in the same District, the Ogaden versus the riverine bantu tribes of the Munyoyaya, Pokomo and Malokote; and
- In Tana River District also the Galjael who are recent immigrants from Somali versus the Orma and the Sanye.

520. The principal causes of these inter-communal conflicts namely, disputes over water and grazing rights, territorial aggrandizement and hegemonism, have through the desire for political representation, acquired a complicated and serious political dimension. For instance, the recent skirmishes between the Borana of Isiolo who are indigenous to the area and the Degodia immigrants from Wajir, stem from competitive politics. In the 1970s and 1980s, the Borana invited the Degodia to help them ward off incessant attacks from the Ogaden Somali clan of Garissa. For sometime, it worked. However, come the 1990s the population of the Degodia had increased so much that in many localities they enjoyed numerical superiority over the Borana and wanted to propose their own candidates for parliamentary and civic seats. At this point, the Borana asked them to leave, which inevitably led to bloody armed skirmishes. Similarly, the Degodia were invited by the Orma in Tana River District to help them fight against the Ogaden of Garissa District. But thereafter, the immigrant Degodia did not only, out number the indigenous Orma, but also, dominated them socially and economically. The Degodia for instance, occupied key water points and the best grazing areas in the District and even

sought to nominate candidates for parliamentary and civic elections which incensed the Orma who demanded that the Degodia should go back home to Wajir. The Degodia refused to do so. This naturally, led to fierce tribal skirmishes which left many dead and injured.

521. The five year Degodia and Ajuran skirmishes in Wajir District which began in 1991, during the run up to the 1992 general elections was intensified by the Degodia winning the two, and the only parliamentary seats in the District. The Ajuran then took the Government to court for neglecting them and which led to the creation of a third constituency in Wajir which was seen as an attempt to appease the Ajuran.

522. Because of the peculiar conditions of the region, we would recommend as follows:

- (a) The communities in North Eastern and Eastern provinces regard themselves as a neglected and forgotten people, which in a way has inspired and also fostered the general lawlessness in the region. One way to combat this state of affairs, is for Government to take deliberate steps to open up the region for economic and social development so that the communities in the region are not only, developed economically and socially, but also, made to feel wanted.
- (b) Deliberate efforts should be made by Government to invest in water resources in the region so as to ensure availability of adequate water supply to residents and their livestock in order to minimize undue competition for scarce water during prolonged droughts. It is also imperative that the location of water resources should ensure the fair distribution of water so that each community in the region has access to water in their localities. In the past, certain clans enjoyed better access to water which compelled other clans to flock the areas of the former in search of water.

- (c) Government should improve communication especially road and telecommunication in this vast region in order to facilitate patrols and also to enable security personnel to rapidly quell and contain tribal clashes and banditry. Most areas such as Bagalla and Budhudha, the recent scenes of bloody skirmishes, are almost inaccessible by road and perpetrators of tribal clashes take advantage of such remoteness to unleash terror on their victims.
- (d) Improvement of marketing outlets for livestock from the region will reduce overstocking and minimize the pressure on grazing areas and discourage the migration of people with their livestock from place to place, and thereby reduce resultant conflicts.
- (e) Government should improve the level and extent of education by establishing adult education classes and more primary and secondary schools in order to enhance literacy and modernity among the communities. Currently, the level of illiteracy among the communities of the region, is much higher than that which prevails in the rest of the country and which tends to encourage medieval parochialism and to perpetuate local inter-communal animosities.
- (f) Steps should be taken to stamp out banditry, which also leads to tribal animosity, by keeping as much as possible, the Northern Kenya border under regular surveillance, and by the employment of more trained indigenous people who know the terrain and the communities in the region well, in the security services.



## CHAPTER FIVE: RECOMMENDATIONS

523. In our view, it is not the lack of adequate security personnel and equipment or preparedness that contributed to the tribal clashes. The Police Force and the Provincial Administration were well aware of the impending tribal clashes and if any thing, connived at it. Human nature being what it is, it was not easy for the members of the Police Force and the Provincial Administration after the long time one party political system which was the only regime under which they had grown up, operate, prospered and flourished, to now adjust to, let alone, completely and with wide open arms, welcome the introduction of a political system that was in principle, not only contrary to what they had enjoyed, but also, one which on the face of it, might adversely affect their status quo. They were, to put it realistically, an intrinsic part of the one party system. As Francis Gichuki honestly put it when asked why he allowed senior KANU politicians to pressurize him in the discharge of his duties, into taking certain courses of actions:

“My Lords, in a political Government, we have to be cautious. This is a political Government.”.

524. The circumstances that initiated and fanned the tribal clashes, were not so much logistical, as the negligence and unwillingness on the part of the Police Force and the Provincial Administration to take firm and drastic action which would surely, have prevented the clashes from erupting and even if they erupted, would have brought the initial clashes to a speedy conclusion and discouraged further clashes. Furthermore, tribal leaders and politicians should not be allowed to get away with actions that will pit one tribe against another. Even in other countries which are considered more civilized than our country, racial, tribal, ethnic or even religious clashes are not unknown. It is therefore, most important that in our country where tribalism is still manifested and widespread, where tribal clashes had only recently occurred, where rampant violent cattle rustling is still a traditional way of life, and where particularly, in the North Eastern Province, the land is flooded with illegal firearms and ammunition and the customary inter-clan battles continue to rage with impunity, that strong and firm measures must be taken to stamp out the prevalent warlike instincts of the lower classes of the society. In this regard, then incitement and abettment of tribal or inter-clan clashes by social and political leaders as well as by the members of the security, police and administrative

services, should no longer be tolerated. And to show that Government takes this seriously, those who have been shown to have in one way or another taken part in or aided and abetted the tribal clashes, should as happened in the past, not be spared. Appropriate action as recommended hereunder must be taken against them. This will also deter those thinking of fanning tribal animosities and taking part in resultant violent clashes from doing so. Because human nature is what it is, one can not expect a perfect world, but with time, and more education, things are bound to change.

525. It is with this backdrop and the facts which the evidence given before us, have established, that we make the following recommendations:

The general recommendations that we wish to make are as follows:

1. Tribal loyalty and association seen in the 1992 and 1997 general elections has its roots in pre-independence Kenya. It was promoted and encouraged by the colonial administration with a view to dividing the indigenous people. Independent Kenya stands for unity among all ethnic communities which unity should be nurtured and fostered. Consequently we recommend that any person who, directly or otherwise whips any tribal sentiments should be arrested and charged with appropriate criminal charges as a deterrent against repetition by him or any other person.
2. Land ownership and use in the various clash areas was given as one of the causes of conflict and tribal clashes. In view of that Government should embark on an ambitious programme to issue title documents to all people who were either allocated land there by Government or who bought the same from previous owners but have not got title, in order to minimize land disputes and conflicts in the areas. At the same time Government should respect and protect private rights over land.
3. To inspire confidence in the Government, all those who were displaced from their farms during the tribal clashes should be identified and be assisted to resettle back on their farms and appropriate security arrangements made for their peaceful stay thereon.
4. Tribally based settlements should be discontinued.
5. All residents of the places where the tribal clashes occurred should be educated through public barazas and other fora regarding legal land rights as enshrined in the Constitution and the need and importance of respecting them.
6. Inter-ethnic stock theft and cattle rustling was cited as one of the causes of conflict among the various communities. In some areas, like the Trans Mara

and Gucha border, and in Laikipia, this kind of activity is traditional. One of the problems cited which have hampered the fight against the vice is poor communication and poor roads network. Commercialization of the activity has complicated matters. In view of the fact that past efforts through barazas to discourage the people against the vice had not borne significant results, we recommend that the infrastructure in those areas, particularly road network and communication be improved for easier mobility and communication in tracking down stolen livestock.

We also recommend that the role of home-guards, particularly in areas where cattle rustling is prevalent like Mt. Elgon and Trans Nzoia Districts, should be reviewed. This is in view of the fact that in these two Districts and also in Olmoran, there is evidence that they took part in the clashes, and used guns to rustle the cattle of the non-Sabaot.

8. Inciting and irresponsible utterances by all, but more particularly the political leaders, should be dealt with firmly and swiftly.
9. In view of the partisan role of the Provincial Administration officers in the clashes and having regard to the fact that they generally interfered with security operations during the clashes, we recommend that the Police force should be wholly delinked from the Provincial Administration and be made an independent unit headed by the Commissioner of Police. Likewise the Provincial Administration should be divorced wholly from the activities of all political parties.
10. We will now make recommendations in relation to the following particular areas and in connection with the tribal clashes that took place there.

#### THE RIFT VALLEY PROVINCE

526. The following people should be investigated regarding their role in the tribal clashes as recommended in this Report:

##### NANDI DISTRICT

- (a) Willy Kamuren, former MP Baringo North.
- (b) Kimnai Soi, former MP Chapalungu.
- (c) Jackson Kibor, former KANU Chairman Uasin Gishu.
- (d) Chief Philip Kipserem Karoney, Miteitei Location.
- (e) R. K. Kirui, Former DO, Tinderet Division.
- (f) Senior Chief, Henry arap Tuwei, Songhor Location.
- (g) Julius Ndegwa, OCS, Songhor Police Station.

##### KERICHO DISTRICT

- (a) Timothy Sirmá, former DC, Kericho District.

- (b) Nicholas Mberia, for DC, Kericho District.
- (c) Eliud Langat, Deputy Commissioner of Police and for OCPD Kericho District.
- (d) William Kikwai, former MP, Kipkelion Constituency.
- (e) Councillors, Chumo and Benjamin Ruto from Kipkelion Division.
- (f) Nicholas Biwott, former Minister of Energy.
- (g) Timothy Mibei, former Minister of Public Works.
- (h) Christopher Lomada, former Assistant Minister of Culture and Social Services.
- (i) Willy Kamuren, MP Baringo North.

#### NAKURU

- (a) Paul Cheruiyot, former DO Olenguruone Division
- (b) Jonathan Mutai, Chief of Amalo Location, Olenguruone Division
- (c) Wilson Maritim, former Assistant Chief, Molo South
- (d) David Kipkorir Siele, former DSIO Nakuru District
- (e) Shem Petkay Miriti, former PSIO Rift Valley Province
- (f) All other PSC, Rift Valley Province and all DSC members, Nakuru District, during the 1998, Njoro clashes.

#### NAROK DISTRICT

- (a) Jonathan Kiprop Soi, former DO Mau Division
- (b) William Ole Ntimama, MP Narok North Constituency
- (c) Mwachiti, former OCPD Narok District
- (d) Calistus Akelo, former DC Narok District
- (e) Burudi Nabwera, former Minister of State.
- (f) Maalim Mohammed, former Minister of State.
- (g) Dr. Njoroge Mungai.

#### OL MORAN DIVISION

- (a) Jonathan Kiprop Soi, former DO Ngarua Division
- (b) Mutinda Nduguni, former OCPD Laikipia

#### TRANS MARA AND GUCHA DISTRICTS

- (a) All DSC members in Trans Mara District during the 1997 clashes there.
- (b) Julius Sunkuli, MP Kilgoris Constituency
- (c) Ferdinand Obure, former MP Machoge Constituency.

#### WESTERN AND NYANZA PROVINCES

527. The people mentioned in this part should be investigated regarding their role in the tribal clashes as recommended hereunder:

1. The following persons were adversely mentioned by witnesses from Bungoma, Mt. Elgon and Trans Nzoia Districts as having been in the forefront of calling for the expulsion of non-Sabaot from the area as long as they refused to support KANU: Wilberforce Kisiero, Councillor William Chebus Tumwet, John Ngeiywo and Dismas Chemwoli. They addressed political rallies where they warned the non-Sabaot,

whom they derogatorily referred to as "madoadoa", to either support KANU or leave the area. They should each be investigated with a view to prosecution.

2. When the clashes were over, and the new Mt. Elgon District had been created, as demanded by the Sabaot, Wilberforce Kisiero continued making inciting statements as is reported in a newspaper, which was produced as part of Exhibit 200, in which he warned that the Sabaot would not allow strangers to buy land in the new District. In the period preceding the outbreak of the clashes, he supported the influx of Sebeis from Uganda into Trans Nzoia and Mt. Elgon Sub-District saying they were coming back home when in fact these people are Ugandans, who brought in firearms which were used to fight the non-Sabaot. His role in the clashes should be investigated with a view to prosecution.
3. We further recommend that Councillor Masangi Masabwa of Mt. Elgon District who was reported in a newspaper report produced as part of Exhibit 200, as having addressed a political rally, giving the non-Sabaot in Mt. Elgon District, eleven days to leave, or face eviction, should be investigated with a view to establishing his role in the clashes.
4. As for William Chebus Tumwet, apart from his calling for the expulsion of the "madoadoa" from Trans Nzoia, the circumstances under which he took over, occupied and finally sold a piece of land which he had previously sold to the late Ronald Simiyu, a Bukusu clash victim, should be investigated. This appears to support the allegation that he took part in the clashes and in driving the non-Sabaot out of the area.
5. Mulwa Benjamin Masai Clay of Kapkateny Location, Mt. Elgon District, is currently but illegally occupying Susana Nakhumicha's land. He has threatened her with death should she dare set foot on that land. She gave evidence to that effect. The area Chief has been of no assistance to her. Investigations should be carried out against the said illegal trespasser, with a view to prosecution.
6. Chief Inspector David Rono, who was the Officer Commanding Kimilili Police Station knew more than he chose to tell the Judicial Commission. His unwillingness to record statements and forward them to Bungoma Police Station where eighty suspects from Kimilili Police Station were held, led to the release of these suspects, without being charged. This goes to show his connivance in the clashes and he should be investigated with a view to prosecution.
7. The Officer Commanding Endebess Police Station at the time of the clashes, Frederick Kalombo now retired, knew of an impending attack on the non-Sabaot in Endebess area. John Wekesa Nandasaba, a Bukusu living on Pole Farm, had brought to his attention, leaflets circulating in the area, warning the non-Sabaot that they would be attacked before 25<sup>th</sup> of December, 1991, yet he took no action to prevent the attacks from taking place. He also received a report of the burning of houses on Sabaot Co-operative farm. The report reached him at 5 o'clock in the morning and by 10 o'clock the same morning, he had not left the police station for the farm. This

unwillingness to take prompt action by not going quickly to the farm, which was only 3½ km away, is evidence of his connivance in the actions of the Sabaot. His role in the clashes should be investigated.

8. Nathan Bwomnji Kirui, a retired Chief of Chongeywo Location, in Mt. Elgon District came across a group of Sabaot warriors, armed and ready for war. They were on their way to Chelebei Sub-Location to avenge the killing of Oponyo Chenge. He took no steps to prevent the attack from taking place. Kwarati Kisimani, Chambu Mustuni, Chirono Mustuni and Chebure Shongoi were mentioned by a witness who saw them burning houses in Kapkateny Location in Mt. Elgon District. All these people, as well as Nathan Bwomnji Kirui should be investigated with a view to prosecution.
9. We heard evidence to the effect that Sabaot home-guards had acquired firearms illegally, which they used to fight the non-Sabaot during the clashes. It was also said that they used these firearms to engage in cattle rustling. The Sebei of Uganda crossed the border into the mountain region, armed with sophisticated weapons and took part in the clashes in support of the Sabaot. The Sebei have been known to do this for a long time and to engage in cattle rustling. Security forces should be vigilant at the said border to prevent the Sebeis from crossing into Kenya.
10. The role, in the tribal clashes of the Sebeis, now living in Mt. Elgon and Trans Nzoia Districts, should be investigated with a view to prosecuting them for offences they may have committed. The government should also take steps to repatriate back to Uganda, all alien Sebeis now living in Mt. Elgon and Trans Nzoia Districts. This will reduce cases of cattle rustling. One Sabaot home-guard, Joseph Chemtai, is alleged to have murdered Richard Otwani, a Teso, living in Kapkateny Location in Mt. Elgon District. He was arrested and later released. That allegation must be investigated.
11. The Sabaot land issue is a long standing problem. Although it was not the cause of clashes in this region, it provided a good opportunity which was exploited, upon the introduction of multi-party politics, to start the clashes. Government should address this problem as soon as possible so that, the same is not exploited again in the year 2002, when the next general and presidential elections are due. We recommend that some land be found to settle all the genuine Sabaot landless.
12. With respect to Kuria and Migori Districts, we recommend that the security forces deal firmly with people found stealing cattle or engaging in cattle rustling. Those Kuria who are in the habit of trespassing upon the land of the Luo in Migori should be arrested and prosecuted. This will discourage any further acts of trespass and cattle rustling. We make the same recommendation for the area along the Gucha/Migori border.
13. Police officers who were partisan, made it difficult for the clashes to come to a speedy conclusion. In the case of Migori/Gucha clashes, such officers were later transferred from the area. Since it is possible to identify which officers were

stationed in the clash areas at the time, investigations should be carried out with a view to prosecuting all those officers who were partisan during the clashes. We make the same recommendations in respect of locational Chiefs and their Assistant Chiefs.

## THE COAST PROVINCE

528. The following people should be investigated regarding their role in the tribal clashes as recommended in this Report:

### PROVINCIAL ADMINISTRATION

- (a) Omar Hussain Gari, Chief of Ngobeni Location, Kwale District.
- (b) Athuman Zuberi Mwakunyapa, Assistant Chief of Pungu Sub-Location, Kwale District.
- (c) Ramadhani Mwalimu Mwaonu, Assistant Chief of Kiteje Sub-Location, Kwale District.
- (d) Nyaume Mohamed, Assistant Chief of Ngombeni Sub-Location, Kwale District.
- (e) Samuel Kipchumba Limo, Provincial Commissioner of Coast Province.
- (f) AP Inspector Mohamed Juma Kutsola, former Sergeant attached to DC Kwale District.
- (g) Mohamed Hassan Haji, former Deputy PC Coast Province.
- (h) David Opala, former DO Matuga Division, Kwale District.
- (i) Joseph Jakaiti, former DC Kwale District.
- (j) Paul Olando, former DC Mombasa.
- (k) Wilfred Kimalat, former Permanent Secretary, Provincial Administration and Internal Security.
- (l) Timothy Sirma, former PC Coast Province.

### SECURITY INTELLIGENCE OFFICERS

- (a) Omar Raisi, former Chief Inspector of Police, Mombasa.
- (b) Peter Wilson, former DSIO Mombasa.
- (c) Shukri Baramadi, former PSIO Mombasa.
- (d) Wilson Boinett, former Director of the Directorate of Security Intelligence.

### POLICE OFFICERS

- (a) Francis Gichuki, former PPO Coast Province.
- (b) Duncan Wachira, former Commissioner of Police.
- (c) Noah arap Too, former Director of CID.
- (d) Hammerton Mbogo Mwavisa, former OCPD Kwale District.

### POLITICIANS

- (a) Karisa Maitha.
- (b) Rashid Sajjad.
- (c) Rashid Shakombo.
- (d) Suleiman Kamolle.
- (e) Kassim Mwamzandi.

## OTHERS

- (a) Juma Hamisi Mwansele.
- (b) Mwalimu Masudi Mwachima.
- (c) Hisham Mwidau.
- (d) Swaleh bin Alfani.
- (e) Mohamed Mdogo.
- (f) Omar Masumbuko.

## NORTH EASTERN AND EASTERN PROVINCES

529. We have the following recommendations concerning these Provinces:

1. The communities in North Eastern and Eastern provinces regard themselves as a neglected and forgotten people, which in a way has inspired and also fostered the general lawlessness in the region. One way to combat this state of affairs, is for Government to take deliberate steps to open up the region for economic and social development so that the communities in the region are not only, developed economically and socially, but also, made to feel wanted.
2. Deliberate efforts should be made by Government to invest in water resources in the region so as to ensure availability of adequate water supply to residents and their livestock in order to minimize undue competition for scarce water during prolonged droughts. It is also imperative that the location of water resources should ensure the fair distribution of water so that each community in the region has access to water in their localities. In the past, certain clans enjoyed better access to water which compelled other clans to flock the areas of the former in search of water.
3. Government should improve communication especially road and telecommunication in this vast region in order to facilitate patrols and also to enable security personnel to rapidly quell and contain tribal clashes and banditry. Most areas such as Bagalla and Budhudha, the recent scenes of bloody skirmishes, are almost inaccessible by road and perpetrators of tribal clashes take advantage of such remoteness to unleash terror on their victims.
4. Improvement of marketing outlets for livestock from the region will reduce overstocking and minimize the pressure on grazing areas and discourage the migration of people with their livestock from place to place, and thereby reduce resultant conflicts.
5. Government should improve the level and extent of education by establishing adult education classes and more primary and secondary schools in order to enhance literacy and modernity among the communities. Currently, the level of illiteracy among the communities of the region, is much higher than that which prevails in the rest of the country and which tends to encourage medieval parochialism and to perpetuate local inter-communal animosities.
6. Steps should be taken to stamp out banditry, which also leads to tribal animosity, by keeping as much as possible, the Northern Kenya border under regular surveillance, and by the employment of more trained indigenous people who know the terrain and the communities in the region well, in the security services.



GAZETTE NOTICE NO.3312

THE COMMISSIONS OF INQUIRY ACT  
(Cap.102)

APPOINTMENT OF JUDICIAL COMMISSION OF INQUIRY

IN EXERCISE of the powers conferred by section 3 of the Commissions of Inquiry Act, I, Daniel Toroitich arap Moi, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, being of the opinion that it is in the public interest, do appoint a commission of inquiry to inquire into the tribal clashes which have occurred in various parts of Kenya since 1991, to be headed by Hon. Mr. Justice Akilano Molade Akiwumi as the chairman, and

Hon. Mr. Justice Elkana Onderi Bosire,  
Hon. Lady Justice Sara Chibai Ondeyo,

as the commissioners, and

Hon. Mr. Justice Elkana Onderi Bosire,

As the vice-chairman, and

Jacob Leita ole Kipury,  
Peter Musembi Muhati Alubale,

to be the joint secretaries of the commission, and

John Nyaga Gacivih,  
Dorcas Agik Oduor,

to be counsel to assist the commission.

Dated the 1<sup>st</sup> July, 1998.

D.T. ARAP MOI,  
President.

GAZETTE NOTICE NO.3313

THE COMMISSIONS OF INQUIRY ACT  
(Cap.102)

## JUDICIAL COMMISSION OF INQUIRY

## Citation

A JUDICIAL COMMISSION to inquire into tribal clashes in Kenya.

Now, therefore, in exercise of the powers conferred upon the President by section 3 of the Commissions of Inquiry Act, I, Daniel Toroitich arap Moi, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, do direct the commissioners to hold an inquiry at Nairobi with immediate effect. The terms of reference shall be:

- (a) To investigate the tribal clashes that have occurred in various parts of Kenya since 1991, with a view of establishing and/or determining-
- (i) the origin, the probable, the immediate and the underlying causes of such clashes;
  - (ii) the action taken by the police and other law enforcement agencies with respect to any incidents of crime arising out of or committed in the course of the said tribal clashes and where such action was inadequate or insufficient, the reasons therefor;
  - (iii) the level of preparedness and the effectiveness of law enforcement agencies in controlling the said tribal clashes and in preventing the occurrence of such tribal clashes in future;
- (b) To recommend-
- (i) prosecution or further criminal investigations against any person or persons who may have committed offences related to such tribal clashes;
  - (ii) ways, means and measures that must be taken to prevent, control, or eradicate such clashes in future;
  - (iii) to do, inquire into or investigate any other matter that is incidental to or connected with the foregoing,

and in accordance with section 7 (1) of the said Act, to report thereon as soon as reasonably practicable, but not later than the 31<sup>st</sup> December, 1998.

And I do direct that-

Hon. Mr. Justice Akilano Molade Akiwumi, a judge of the Court of Appeal,  
Hon. Mr. Justice Elkana Onderi Bosire, a judge of the Court of Appeal, and  
Hon. Lady Justice Sarah Chibai Ondeyo, a judge of the High Court of Kenya,

Shall be the commissioners and that Hon. Mr. Justice Akilano Molade Akiwumi, shall be the chairman of the said commission and Hon. Mr. Justice Elkana Onderi Bosire shall be the vice-chairman.

And I do appoint-

Jacob Leita ole Kipury, and  
Peter Musembi Muhati Alubale,

to be the joint secretaries to the commission;

and further. I do appoint-

John Nyaga Gacivih, and  
Dorcas Agik Oduor,

to be counsel to assist the said commission.

And I do, direct that, in the performance of its task, the commission shall receive views from members of the public and receive oral and/or written statements from any person with relevant information, and may-

- (a) use of official reports of any previous investigations into the tribal clashes;
- (b) use any investigation report by any institution or organization into such tribal clashes;
- (c) commission reports from experts in any relevant areas.

And I do direct that the commission may co-opt not more than five (5) persons who, in the view of the commission, could facilitate effective execution of its functions on specific issues spelt out in the terms of reference.

And I do direct that in accordance with the provisions of section 10 (1) of the said Act, the commissioners shall summon any person or persons concerned to testify on oath and to produce any books, plans and documents that the commissioners may require.

And I do direct that after its commencement, the said inquiry may be held at such times and in such places as the said commissioners may, from time to time, determine and shall be held in public or in private as the said commissioners may, from time to time, determine.

And I do direct that the said commissioners shall execute the said inquiry with all diligence and speed and make their report without undue delay.

And I do command all other persons whom it may concern to take due notice hereof and to give their obedience accordingly.

Dated the 1<sup>st</sup> July, 1998.

D.T. ARAP MOI,  
President.

**Opening Statement by the Chairman of the Judicial Commission:**

As Chairman, and on behalf of the other members of the Judicial Commission of Inquiry, appointed by His Excellency the President of the Republic of Kenya to enquire into Tribal Clashes in Kenya, I would like to assure His Excellency that we shall discharge to the best of our ability this most important, sensitive and daunting task which he has entrusted to us.

I do not wish to set out the full text of the terms of reference of this Judicial Commission of Inquiry which has already been given wide publicity both in the Official Gazette and by the print and electronic media nationally as well as internationally. I would, however, like to make some general remarks about the work of this Judicial Commission of Inquiry.

"It has often been said that Kenya is a land of contrasts . This is not only true of the physical, geographical and climatic conditions of the land, but also of the social and cultural characteristics of its people."<sup>1</sup>/

No one can now pretend or regard with complacency, that these unique circumstances which had in the past, engendered national pride, unity in diversity and tribal harmony, have regrettably in recent times, been threatened by tribal clashes. It is the duty of each and every one of us to stop this emerging tendency which will undermine the stability and unity of our country. It is our duty to investigate and identify the causes of these tribal clashes and to propose lasting solutions for tribal harmony that transcends tribal differences. The establishment of this Judicial Commission of Inquiry is therefore, an important and crucial step in this direction.

We would also like to assure every one that in keeping with our well established responsibilities as members of an independent and separate arm of government, and as members of this Judicial Commission of Inquiry, we shall boldly and without delay, tackle the issues enumerated in, and in accordance with, our terms of reference, and, as required by the Commission of Inquiry Act under which this Judicial Commission of

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<sup>1</sup> / Kenya an official handbook p.8.

Inquiry has been established, "make a full, faithful and impartial inquiry" into the matters entrusted into our care.

Not until we learn to live peacefully together as Kenyans will we have a better and brighter future. I would therefore like to repeat my call to all those who have useful, substantial and pertinent information concerning our work, not to hesitate in bringing this to the attention of Counsel assisting this Judicial Commission of Inquiry or to its Joint Secretaries. I would like to assure the general public that any information given will be treated with confidence and where necessary, be heard in camera. At the same time, I would like to warn that it will be in contempt of this Judicial Commission of Inquiry for anyone to make public statements that may affect, prejudice or compromise its proceedings.

I would call upon the Hon. the Attorney General, A. S. Wako Esq., who appears as *amicus curiae*, to address this this Judicial Commission of Inquiry.

**Statement by the Hon. the Attorney General as Amicus Curiae to Judicial Commission:**

My Lord Commissioners,

It is my greatest pleasure, privilege and honour to appear before you as **AMICUS CURIAE** in this Judicial Commission of Inquiry established by His Excellency the President in the exercise of the powers conferred on him by s.3 of the Commissions of Inquiry Act, Chapter 102 of the Laws of Kenya. I do so, My Lords, in accordance with Rule (a) of the Rules of procedure made by yourselves for the conduct and management of the proceedings which were duly published vide Gazette Notice Number 3477 of 10<sup>th</sup> July, 1998.

My Lords, the tribal or ethnic clashes that have intermittently bedevilled this nation since 1991 have been a sad chapter in the history of our beloved Republic; they have resulted in considerable loss of lives, injury to persons and destruction of property; they have caused fear, suspicion, mistrust and insecurity among the general population in the Republic; they have inhibited the progress towards social cohesion and the integration of our society; they have been detrimental to public peace, national tranquillity, law and order, human rights and the rule of law which are the cornerstone of economic and social development. Despite efforts including security operations in the past, there has been sadly, evidence of persistence and recurrence of the ethnic or tribal clashes in various parts of the country.

It is with the foregoing in mind that H.E. The President formed the opinion that it is in the public interest to get to the bottom of the matter so that the aspirations of the people of Kenya who wish to see a permanent end to ethnic or tribal clashes can be realised thereby enabling Kenya to move into the next millennium as one nation with one destiny – a united, dynamic, vibrant and prosperous nation. To do that, he has issued this Commission to you, My Lords. By issuing the Commission to you, My Lords, the President has reposed great confidence and trust in the independence, the integrity and the industry of each one of you. I personally share the President's trust and confidence in

you, My Lords, and hasten to sincerely congratulate you, your Joint Secretaries, the Assisting Counsels for your respective appointments to serve this nation by getting to the bottom of those episodes of shame and sorrow. Hoping and trusting that your Lords do accept my congratulations, it is now my honour and pleasure to submit to you the Legal Instruments constituting your Commission. I have with me the Instruments of Issuance and Appointment of the Commission and the Instrument of Citation which goes along with it. I lay them both before your Lords table for the record.

The Terms of Reference of the Commission have been set out in the Instrument of Appointment and, to demonstrate the onerous nature of the task ahead of you, please allow me, your Lordships, to recapitulate them. They are:-

- (a) To investigate the Tribal clashes that have occurred in various parts of Kenya since 1991, with a view of establishing and/or determining:-
  - i. The origin, the probable, the immediate and the underlying causes of such clashes;
  - ii. The action taken by the police and other law enforcement agencies with respect to any incidents of crime arising out of or committed in the course of the said Tribal clashes and where such action was inadequate or insufficient, the reasons therefore;
  - iii. The level of preparedness and the effectiveness of law enforcement agencies in controlling the said tribal clashes and in preventing the occurrence of such tribal clashes in future;
- (b) To Recommend:-
  - i. Prosecution or further criminal investigations against any person or persons who may have committed offences related to such Tribal clashes;
  - ii. Way, means and measures that must be taken to prevent, control or eradicate such clashes in future;
- (c) To do, Inquire into or investigate any other matter that is incidental to Or connected with the foregoing, and in accordance with section 7(1) of the said Act, to report thereon as soon as reasonably practicable, but not later than the 31<sup>st</sup> December, 1998.

In the Discharge of your onerous task as evidenced by the Terms of Reference, Your Lordships will be carrying out a search for truth, a search for Justice and a search for a solution to a problem that has caused anxiety and grave concern to Kenyans. As you are aware, the subject matter of your Inquiry – The Tribal clashes – has been subjected to a number of investigations by the Law enforcement agencies, by Parliament and by various institutions and organisations. As the instrument of citation recognises you may make use of these reports to initiate your investigations. You are also aware that there have also been many accusations and counter-accusations, numerous allegations and inferences as to who the perpetrators are. There are also many questions that cry out for answers such as: Could the incidents have been anticipated? Were the necessary actions in response taken immediately or timeously and if not why? Why were insufficient criminal investigations undertaken with the consequence that this affected prosecutions? If a trivial incident led to a major Tribal clash, why did this happen?

Your Terms of Reference are wide enough to cover All the for foregoing. One of your main Terms of Reference is to "Investigate". All the foregoing must be looked into and investigated thoroughly, fairly, objectively and diligently with a view to unravelling the truth in Terms of your Mandate.

My Lords, having outlined your mandate, as I have done, it would be improper of me to say any more on the subject of your Inquiry lest I be seen as trespassing into the very matter which you must place under Microscopic Judicial Scrutiny. I content myself by wishing you Gods blessings as you formally assume your responsibilities under the President's Commission which I have had the honour to deliver to you. Your Lordships know that Kenyans look upon you to enter into your duties with Judicial impartiality and objectivity and deliver a comprehensive Report in accordance with your Terms of Reference.

My Lords, permit me to urge all Kenyans and their leaders in all fields of endeavour, particularly those in the political sphere, to be tolerant and give your Commission a fair chance to discharge its mandate in an atmosphere devoid of cynicism and scepticism. Your task should not be made harder by prejudicial pronouncements from any quarter. In that regard, I especially urge the media to report your proceedings



fairly and accurately. Undue sensationalism and/or distortion of your proceedings will be a disservice to the people of Kenya.

The Inquiry is open, according to its Terms of Reference, to all cadres of the people of Kenya with useful information which will assist the Commission in achieving the objectives set out in the Terms of Reference. My appeal, therefore, to everyone is to co-operate with the Commission, to give it all the information it requires and to give it a chance to accomplish its onerous task. Let me take this opportunity to give the assurance that nobody will be victimised for giving relevant information to the Commission. In the same breadth nobody should use the Commission as a platform for character assassination and to peddle lies. We all should assist the commission to effectively discharge its mandate with credibility.

My Lords Commissioners, permit me to give the Government's Assurance that your Commission will be assisted and facilitated in every respect. The Government will ensure that you are not in any way handicapped in the discharge of your duties.

Last, but not least my Lords, let me express my wish for this Commission to be known in the Public Domain as **The Akiwumi Commission** . In the recent past my Lords, I have watched with dismay the Kenyan media and the Kenyan public referring to Judicial Commissions of Inquiry by the name of the subject matter, or even worse, by the names of the persons whose conduct or misfortune has been the subject of the Inquiry. I would want Kenyans to know that in Commonwealth practice, and we are a member of the Commonwealth, Commissions of Inquiry derive their name from the name of the Chairman. I pray my Lord Commissioner that you order that it should be so here and now and in future.

My Lords Commissioners, to conclude, may I, on my own behalf, thank you most sincerely for allowing me to appear before you as Amicus Curiae. My Lords, as Amicus Curiae, as a friend of this Judicial Commission, this Commission is at liberty to call upon me at any time to assist it in any manner in which it may require assistance. In that capacity, I am at Your Lordship's disposal to render to the Commission the support that is required to enable your Lordships to effectively discharge your duties in accordance with the Terms of Reference of this Commission.

I am most obliged to your Lordships for your patient hearing and may I now crave your leave to withdraw from the chamber.

**Statement by Mr. Nzamba Kitonga, Chairman of the Law Society of Kenya:**

1. The Hon. Mr. Justice of Appeal Akilano Akiwumi
2. The Hon. Mr. Justice of Appeal S.E.O. Bosire
3. The Lady Justice Sarah Ondeyo

My Lords, my learned friend the Hon. The Attorney General, My Learned colleagues, the Assisting Counsel and the joint secretaries to the Commission.

I appear in these Commission proceedings for the Law Society of Kenya. The Law Society of Kenya as your Lordships doubtlessly know, has a wide statutory mandate under the Law Society of Kenya Act in matters germane to the rule of law, maintenance of law and order, the administrations of justice and the protection of human rights. It is mandated to advise institutions of government and the public on all matters relating to law.

In the execution of this statutory mandate, we have for a long time followed the sad incidence of genocidal attacks which have ravaged parts of the country from 1991 to date. We will in the course of these proceedings share our findings with your Lordships.

For now I am content with giving your lordships assurances of our full cooperation to facilitate the somewhat insurmountable task that lies ahead of you. You will perhaps have read that we have expressed serious misgivings with regard to public confidence in this Commission.

Let me assure your lordships that those misgivings are not directed at your lordships or at all these officers under you. We have worked with all of you for a long time and we know that you have the capacity to do justice when left free of obstacles.

This Commission represents an important milestone in our national history in that no matter what becomes of your report, the Commission will in our humble submission assist in the following way:-

- (a) The public exposition of the originals, nature, and the history of The genocidal attacks.

- (b) The public exposition of the merchants of this wanton violence, their objectives and their modus operandi.
- (c) The summarization of the national impact of the attacks on our social, political and economic life.
- (d) In the taking of stock in the catastrophe in terms of our collective and individual losses in human life, limb and property.
- (e) In the articulation of the real or perceived grievances by the authors or the attack no matter how misguided and painful their actions have been.
- (f) In the consolidation of the various existing reports by various organizations into one unit for use in future as a national faithful testimony of this trauma.

If your report is acted upon it may also lead to the redressing of injustices through the prosecution of those found to be involved and the rehabilitation of the victims of the attacks. But this is outside your province.

My Lords, genocidal attacks and all crimes against humanity constitute serious offenses both under international law and our municipal law. For this reason, it is important that your investigations be as thorough as possible.

However, we know that the victims of these crimes who constitute the majority of potential witnesses are poor and displaced. Most of them cannot afford legal services.

In this realization the Law Society of Kenya is setting up a pro bono legal aid scheme to assist the victims in accessing the services of counsel during these proceedings. In this regard the Council has appointed Messrs Kathurima M'Inoti, John Olago-Aluoch, Luta Kasmani, C. N. Kihara and Harun Ndubi among others.

Secondly, as I earlier said we shall avail our own report through our investigation committee for your lordships evaluation.

Finally, any research materials, authorities, etc. in our possession, will be availed to assist your lordships.

Let me conclude by echoing the famous words of Benjamin B. Ferenz the former Nuremberg prosecutor to wit:-

“There can be no peace without justice, no justice without law and no meaningful law without a court to decide what is just and lawful under any given circumstances”.



The challenge that is before your lordships is a familiar one – To do justice.

I thank you for this leave to address you.

GAZETTE NOTICE NO.3477

THE COMMISSIONS OF INQUIRY ACT

(CAP 102)

JUDICIAL COMMISSION OF INQUIRY

RULES AND PROCEDURE

THIS Commission of Inquiry has been convened pursuant to its appointment to inquire into tribal clashes in Kenya, as stated in Gazette Notice No. 3312, published on 1<sup>st</sup> July, 1998, and Gazette Notice No. 3313 published on 1<sup>st</sup> July, 1998.

The commissioners make the following rules for the conduct and management of the proceedings of the inquiry under section 9 of the Commissions of Inquiry Act.

- (a) The Attorney-General appears as *amicus curiae*
- (b) subject to section 9 of the said Act, the Commission of Inquiry shall sit daily, at 9 a.m. from Monday to Friday.
- (c) The Commissioners may direct that the public shall not be admitted to all or to any specified part of the proceedings of the inquiry, and subject to any such direction, the inquiry shall be held in public, but the commissioners may exclude any person or class of persons from all or any part of the proceedings of the inquiry if satisfied that it is desirable to so to do for the preservation of order, for the due conduct of the inquiry, or for the protection of the person, property or reputation of any witness in the inquiry or any person referred to in the course of the proceedings thereof, and may, if satisfied that it is desirable for any of the purposes aforesaid so to do, order that no person shall publish the name, address or photograph of any such witness or person or any evidence or information whereby he would be likely to be identified and any person who contravenes such an order shall without prejudice to section 121 of the Penal Code, be guilty of an offence and liable to a fine not exceeding five thousand shillings.
- (d) Without the leave of the commissioners, no evidence shall be adduced in public to the inquiry concerning or relating to any matter prejudicial to the security of the State or the Head of State.
- (e) Any person who is in any way implicated or concerned in any matter under inquiry shall be entitled to be represented by an advocate.
- (f) Any other person who desires to be so represented may, by leave of the commission, be so represented.
- (g) The counsel assisting the inquiry will present evidence relating to the inquiry referred to in the terms of reference of the inquiry.
- (h) The counsel assisting the inquiry will warn witnesses that after examination-in-chief they may also be cross-examined by him.
- (i) The commissioners may summon any person or persons to testify on oath and may call for the production of books, plans and documents that the commissioners may require.

- (j) Any person who is in any way implicated or concerned in any matter under inquiry may adduce material evidence on his behalf in connection with the matter under inquiry.
- (k) The commissioners may call for any further evidence on any point relating to any matter before them and may recall any witness for further examination.
- (l) Evidence shall be adduced by question and answer method.

Dated the 10<sup>th</sup> July, 1998.

A.M. AKIWUMI,  
Judge of Appeal,  
Chairman, Commission of Inquiry.



**LIST OF PERSONS ADVERSELY MENTIONED AND NOTIFIED.**

1.	Mr. Kimunai Soi	Ex M.P., Ndanai
2.	Senior Sergeant Opicho	Central Bank, Eldoret
3.	Mr. Francis Mutwol	Ex M.P.
4.	Mr. Robert Kipkorir	Ex M.P.
5.	Mr. Solomon Magut	Ex Councillor
6.	Mr. Jackson Kibor	Ex Chairman, Wareng County Council
7.	Mr. William M. Saina	Ex M.P., Mogotio
8.	Mr. Reuben Chesire	Ex. M.P., Eldoret North
9.	Mr. Eric Bomett	Ex M.P. Rongai
10.	Mr. Lawi Kiplagat	Ex M.P., Baringo South
11.	Mr. John Cheruiyot	Ex M.P., Tindiret
12.	Mr. Timothy Mibei	Ex M.P., Bureti
13.	Hon. Christopher Lomada	M.P. East Pokot, Sigor
14.	Hon. Kipkalya Kones	M.P., Bomet
15.	Mr. Willy Kamuren	Ex M.P., Baringo North
16.	Mr. David Mativo	Ex D.C., Nandi
17.	Mr. Raphael Ndara Ndiwa	Kenya Police College, Kiganjo
18.	Mr. Wilberforce Kisiero	Ex M.P., Mt. Elgon
19.	Dr. Noah Wekesa	Ex M.P., Kwanza
20.	Mr. William Kasisi	Asst. Chief, Kiborowa
21.	Mr. John Ndiema Choto	Elder Sabaot/Mt. Elgon
22.	Mr. Michael Kitiyo	Chambers of Commerce & Industry
23.	Mr. Wafula Wabuge	Deceased
24.	Mr. Ben Jipcho	Businessman, Kitale
25.	Councillor P. Opindi	Trans Nzoia County Council
26.	Councillor J. Toili	Trans Nzoia County Council
27.	Mr. Charles Cheptais	KANU Chairman, Timboroa
28.	Mr. Samwel K. Moiben	Ex nominate M.P.
29.	Mr. Geoffrey Kipkut	Chief Endebess Location
30.	Mr. Solomon Kirui	Asst. Chief, Saboti – Trans Nzoia
31.	Mr. Joseph Cherogony	Asst. Chief, Saboti, Trans Nzoia
32.	Hon. William ole Ntimama	M.P., Narok
33.	Mr. Kibiego M. Korir	Nandi
34.	Mr. Benjamin Kositany	Ex M.P. Mosop
35.	Mr. Philip Cheruiyot	D.O. 1 – Nandi
36.	Mr. Simon Too	Asst. Chief, Chagaiya, Uasin Gishu
37.	Mr. Samson ole Tuya	Ex M.P.
38.	Mr. Samwel Chelule	Ex. Cllr., Nandi
39.	Mr. Philip Karonei	Rtd. Chief Mitetei
40.	Mr. David Rono	KANU Youth Secretary, Nandi
41.	Mr. Ezekiel Barngetuny	Ex Nominate M.P.
42.	Mr. Henry Koech	You' Chairman Chepsaita
43.	Mr. Moses ole Sarun	Ex Councillor
44.	Mr. Moses ole Naimadu	Resident Kilgoris
45.	Mr. Ole Saino	Teacher, Kilgoris Sec. School
46.	Mr. Ole Nasa	Asst. Chief
47.	Mr. Joash Wamangoli	Ex M.P., Webuye
48.	Mr. William Changole	Ex. D.C., Bungoma

49.	Mr. Elijah Mwangale	Ex M.P. Kimilili
50.	Hon. Mark Too	Nominated M.P.
51.	Mr. Henry Tuwei	Chief, Songhor
52.	Mr. Andrew Muneria	Trans Nzoia
53.	Mr. Burudi Nabwera	Ex M.P.
54.	Mr. Richard C. Mibei	Businessman, Sotik
55.	Mr. Zephania Anyieni	Ex M.P.
56.	Hon. Hussein M. Mohamed	M.P.
57.	Mr. Philip J.W. Masinde	Ex M.P., Nambale
58.	Hon. Chris Obure	M.P.
59.	Hon. Joseph Kamotho	Nominated M.P.
60.	Hon. Joseph Ngutu	M.P.
61.	Mr. Philip Leakey	Ex M.P.
62.	Hon. Prof.G. Saitoti	M.P.
63.	Mr. Njoroge Mungai	Ex M.P., Dagoretti
64.	Mr. Moses N. Nyangao	Chebilat, Sotik
65.	Mr. K. Ongaro	Chief
66.	Mr. Peter Ondimu	Kilgoris
67.	Mr. William Kikwai	Ex M.P., Kipkelyon
68.	Mr. John Terer	Ex M.P.
69.	Rev. Samwel Kobia	Ex Secretary General, N.C.C.K.
70.	Rt. Rev. Dr. G. Wanjau	Ex Moderator, P.C.E.A.
71.	Dr. Maria Nzomo	Lecturer, University of Nairobi
72.	Mr. Samson Omweno	D.O., Lugari
73.	Ndegwa Wakirira	Kinamba
74.	Charles Ndungu	Kinamba
75.	Wairiuko Simon	Kinamba
76.	Albert Waigwa	Kinamba
77.	John Gathenge	Kinamba
78.	Gachoka Evans	Kinamba
79.	Waite Njeru	Kinamba
80.	John Muregi	Sipili
81.	Ndungu Evans	Ex. Councillor, Kinamba
82.	Herman Wariuko	Sipili
83.	Simon K. Chibebe	Asst. Chief
84.	Clr. William Lasoi	Rongai
85.	Clr. Wilson Leitich	Nakuru C/Council
86.	Mr. Paddy Onyango	KANU Activist
87.	Rev. Mutava Musyimi	Secretary General, NCKK
88.	Hon. Henry Koskey	M.P., Tindiret
89.	Hon. Nicolas Biwott	M.P.,
90.	Mr. Richard N.A. Tanui	Chief, Kunyak
91.	Mr. Paul Wamae	Ex Chairman, L.S.K.
92.	Councillor K. Mibei	(Molo) Nakuru County Council
93.	Hon. Kipngeno A. Ngeny	M.P.
94.	Mr. Timothy Sirma	Ex P.C. Coast
95.	Mr. Nicolas Mberia	P.C. Eastern
96.	Mr. K. Kirior	Ex M.P. Belgut
97.	C.I. Julius Ndegwa	OCS Ngong
98.	Mr. Potas Onundo Owuor	Nyati House
99.	Mr. Clement Kiteme	DOI Baringo
100.	Mr. Omar Raisi	Security Intelligence Officer, Likoni
101.	Dr. Joseph Micoi	Ex MP. Eldoret South

102.	Mr. Sephania Cheboi	Rtd. Chief, Olenguruone
103.	Mr. K. Langat	Kamwaura Farm
104.	Mr. Kipyegon arap Korir	Meteitei Farm
105.	Mr. Musa Koech	Chief, Soliat Location
106.	Councillor Moses K. Rono	Kericho County Council
107.	Mr. Richard Bett	Businessman, Sondu
108.	Mr. Tarus Terekech	Village Elder, Kamwaura
109.	Mr. James Bett	C/o Sondu Market
110.	Councillor Sammy K. Ngelel	Wareng County Council
111.	Mr. Josphat K. Barno	Burnt Forest
112.	Mr. Wilson B. Mutai	Burnt Forest
113.	Mr. J. K. Chepkwony	Burnt Forest
114.	Mr. Wilson K. Kirui	Sondu
115.	Councillor J. arap Too Bidii	Chairman/Nakuru County Council
116.	Mr. John Njuguna	Ngecha Stores/ Elburgon
117.	Cllr. Masai Masaranja	Kapsokwony
118.	Councillor Maiywa Francis	Molo/Nakuru County Council
119.	Cllr. Andrew Chemaiyek	Nambale Synod
120.	Mr. Ayub Chepkwony	Ex M.P. Belgut
121.	Mr. Peter Nangole	Ex M.P.
122.	Mr. Jonathan K. Soi	Ex D.O. Ngarua
123.	Mr. George M. Tandui	Burnt Forest
124.	Mr. Wilson B. Tandui	Burnt Forest
125.	Mr. Kitili arap Nduti	Burnt Forest
126.	Mr. Reuben Sabet	Asst. Chief, Kibuk
127.	Mr. Njenga Mungai	Ex M.P., Molo
128.	Cllr. Reuben S. Ndara	Kapsokwony
129.	Mr. Richard Kamunge	Elburgon
130.	Mr. Joseph Kigo	Elburgon
131.	Father Moses Mahuho	St. Kizito Larmudiak
132.	Mr. Christopher K. Saikwa	Trans Nzoia
133.	Mr. Julius Soi	Ex OCPD Kitale
134.	Mr. Aden Noor Aden	Ex D.C. Lugari
135.	Hon. Yusuf Haji	Ex P.C. Rift Valley
136.	Dr. Daniel Punyua	Narok
137.	Hon. ole Sunkuli	M.P.
138.	Mr. Kiplangat arap Cherubo	Bochege Ndoinet
139.	Mr. Aramisi Kinga	Kimondo Location Endebes
140.	Mr. Jeremiah Kimutai Cheruiyot	D/PPO Nyanza
141.	Mr. Joseph O. ole Sesio	Ex. D.O., Cheptais
142.	Mr. Geoffrey K.K. Kinoti	Rtd.DCP
143.	Hon. Sharriff Nassir	M.P. Mvita
144.	Mr. Ole Ngeto	Senior Chief Migwana
145.	Mr. Boy Juma Boy	Ex. M.P. Matuga
146.	Mr. Omar Masumbuko	Politician
147.	Hon. Rashid Sajjad	Nominated M.P.
148.	Hon. Suleiman Shakombo	M.P. Likoni
149.	Mr. Swaleh Alfani	Witchdoctor, Kwale
150.	Mr. Kassim Mwamzandi	Ex M.P.
151.	Hon. Emmanuel Karisa Maitha	M.P., Kisauni
152.	Mr. David Siele	Ex DSIO Nakuru
153.	Mr. Jonathan Mutai	Chief Amalo, Olenguruone
154.	Mr. Simon Boinet	Chief, Timboroa

155.	Mr. W.K. Maritim	Asst. Chief Kuresoi
156.	Mr. Benjamin Ndegwa	Ex Senior Chief Molo
157.	Mr. Wycliff Soi	Chief, Kamara
158.	Mr. Samuel K. Limo	P.C., Coast
159.	Mr. Barmadi Shukri	PSIO, Coast
160.	Mr. David Jakait	D.C., Bomet
161.	Mr. P. Shen Miriti	Ex PSIO, Rift Valley
162.	Mr. Benson M. Okemwa	Ex PSIO, Rift Valley
163.	Mr. Kipkes arap Too	Kamasai
164.	Mr. Cleophas Kiptara	Kamasai
165.	Mr. Ernest Karorei	Kamasai
166.	Mr. Gabriel Kerorei	Kamasai
167.	Mr. Barnaba K. Luka	Kamasai Pr./School
168.	Mr. Peter Ndemo	Ex D.C., Narok
169.	Cpl. Martin Wanga	C.I.D., Buru Buru
170.	Major Francis Weru	D.O.D.
171.	Mr. Dalmas Otieno	Ex M.P., Rongo
172.	Hon. Mwai Kibaki	M.P. Othaya
173.	Mr. Gedieon S. Konchellah	Rtd. Col.
174.	Mr. Wilson Litole	D.C. Mwingi
175.	Mr. Mutunga ole Milili	Apc. Chiefs Camp
176.	Mr. Reuben Oyondi	Ex M.P.
177.	Mr. Chirchir	DSIO Trans Mara
178.	Mr. Ferdinard Obure	Ex M.P. Gucha
179.	Mr. John C. Namai	Ex PCIO Coast
180.	Mr. Joseph Kobia	Ex OCPD Trans Mara
181.	Mr. Richard Rono	Teacher, Kiptambut Pr. School
182.	Councillor Solomon Magut	Wareng County Council
183.	Mr. Musa Talam	Ex D.O., Endebes
184.	Mr. Simon Too	Asst. Chief, Chagaiya
185.	Mr. Benard Rono	Kamasai
186.	Mr. William Chemwolin	Saboti Farm, Endebes
187.	Mr. Ngengi Muigai	Politician
188.	Mr. Mohamed O. Hassan	Ex D.O., Naivasha
189.	Mr. Mbuthi Gathenji	Advocate

## LIST OF EXHIBITS

EXHIBIT NO.	PRODUCER	SUBJECT
EXH 1	Hon. Mr. S. Amos Wako, A.G.	The Citation. The Judicial Commission of Inquiry
EXH 2 (A)	Mr. Modeda Lumumba 1 <sup>st</sup> Witness	Ours by Right. Theirs by Might. A Study on land clashes by Kenya Human Rights Commission – Report 1996
EXH 2 (B)	Mr. Modeda Lumumba 1 <sup>st</sup> Witness	Kayas of Deprivation, Kaya's of blood violence, ethnicity and the state in Coastal Kenya by Kenya human Rights Commission – 1997
EXH 2 (C)	Mr. Modeda Lumumba 1 <sup>st</sup> Witness	Kaya's Revisited: A post election balance sheet by Kenya Human Rights Commission - 1998
EXH 3	Mr. Nzamba Kitonga, Chairman, L.S.K. 2 <sup>nd</sup> Witness	A report of the massacre/violence in Coast Province – October 1997 by Law Society of Kenya
EXH 4	Mr. Jamal Dalal Warsame Deputy Commissioner of Police – 3 <sup>rd</sup> Witness	Report on Tribal Clashes in Rift Valley Province from 1991 – 1998 by Jamal Dalal Warsame, P.P.O., Rift Valley
EXH 5 (A)	Prof. Onesmus Mutungi, Chairman – Committee on Human Rights of Kenya 4 <sup>th</sup> Witness	First report to His Excellency the President of the Republic of Kenya subject matter: Recent disturbances at the Coast Province 13 <sup>th</sup> August, 1997 to date by Standing Committee on Human Rights (Kenya)
EXH 5 (B)	Prof. Onesmus Mutungi, Chairman – Committee on Human Rights of Kenya. 4 <sup>th</sup> Witness	First Report to His Excellency the President: Investigation on clashes at Nakuru dated October – December 1996 by Standing Committee on Human Rights (Kenya)
EXH 5 (C)	Prof. Onesmus Mutungi, Chairman – Committee on Human Rights of Kenya. 4 <sup>th</sup> Witness	Formal Report to His Excellency the President over clashes by Standing Committee of Human Rights (Kenya)
EXH 5 (D)	Prof. Onesmus Mutungi, Chairman – Committee on Human Rights of Kenya. 4 <sup>th</sup> Witness	Second Report to His Excellency the President of the Republic of Kenya of October – December, 1996 by Standing Committee on Human Rights Kenya
EXH 5 (E)	Prof. Onesmus Mutungi, Chairman – Committee on Human Rights of Kenya. 4 <sup>th</sup> Witness	The Third Report to His Excellency the President of the Republic of Kenya of January – March 1997 by Standing Committee on Human Rights (Kenya)
EXH 5 (F)	Prof. Onesmus Mutungi, Chairman – Committee on Human Rights of Kenya. 4 <sup>th</sup> Witness	The 4 <sup>th</sup> Report to His Excellency the President of the Republic of Kenya of April – June 1997 by Standing Committee on Human Rights (Kenya)
EXH 6	Mr. Japheth Mwanja, Deputy Commissioner of Police 5 <sup>th</sup> Witness	Briefs on Tribal Clashes – Coast Province 1991 – 1995, 1997 to 30 <sup>th</sup> June, 1998 by A Waweru Miare – SO(OPS) Coast
EXH 7	Ms. Jean Njeri Kamau,	Legal Status of Displaced Women by Christine Mpaka

	Executive Director, FIDA 6 <sup>th</sup> Witness	of United Nations Development Fund for women (UNIFEM)
EXH 8	Mr. P.M. Mbuvi, OGW, HSC, DCP, Deputy Director C.I.D. Headquarters 8 <sup>th</sup> Witness	Ethnic clashes in Coast Province – Likoni and the surrounding areas by Mr. P.M. Mbuvi, Deputy Director, C.I.D.
EXH 8 (A)	Mr. P.M. Mbuvi, OGW, HSC, DCP, Deputy Director, C.I.D. Headquarters	Covering letter Ref.CIA/SEC/2/2/12/10/Vol.II/128. Subject: Ethnic clashes in Coastal Province, Likoni and surrounding areas by Mr. P.M. Mbuvi, Deputy Director, C.I.D.
EXH 8 (B)	Mr. P.M. Mbuvi, Deputy Director, C.I.D. Headquarters 8 <sup>th</sup> Witness	Handing/Taking over Certificates provincial C.I.D. office by Mr. P.M. Mbuvi, Deputy Director, C.I.D.
EXH 9	Mr. Peter Mwendwa Mbuvi, Deputy Director, C.I.D. Headquarters 8 <sup>th</sup> Witness	Letter: Requesting Peter Mwendwa Mbuvi, Deputy Director, C.I.D. Headquarters to carry out investigation at Likoni and the surrounding areas
EXH 10 (A)	Arch-Bishop Ndingi Mwana Nzeki 7 <sup>th</sup> Witness	Courting Disaster! A Report on the continuing terror, violence and destruction in the Rift Valley, Nyanza and Western Provinces of Kenya by National Election Monitoring Unit (NEMU) Council of Elders – 29 <sup>th</sup> April, 1993
EXH 10 (B)	Arch-Bishop Ndingi Mwana Nzeki 7 <sup>th</sup> Witness	Catholic Diocese of Nakuru Report on present situation in Clash affected areas in Molo and Olenguruone – April to September, 1993 by E.K. Murimi, Executive Secretary, Justice and Peace Commission – Catholic Diocese of Nakuru
EXH 10 (C)	Arch-Bishop Ndingi Mwana Nzeki 7 <sup>th</sup> Witness	Catholic Diocese of Nakuru Report on Health/Medical Needs Assessment of Olenguruone Parish – April 1996 by Francis Lelo, Egerton University, Njoro
EXH 10 (D)	Arch-Bishop Raphael Ndingi Mwana Nzeki 7 <sup>th</sup> Witness	Task Force appointed by Symposium to make finding and report on their terms of reference composed inter alia of representatives of political parties, International Commission of Jurist, (ICJ) Law Society of Kenya, Women's Lobby Group and NECEP/Universities Representative
EXH 11	Josphat Machuna Mukweli 10 <sup>th</sup> Witness	Outspoken causes of tribal clashes in Nakuru, Molo, Keringet Division, Keringet Sub-Location by Josphat Machuna Mukweli
EXH 12	Mr. Isaac Maitiri Muthuri, Deputy Commissioner of Police 11 <sup>th</sup> Witness	Kenya Police Report on Inquiry into the circumstances which led to ethnic clashes at Ol Moran in Laikipia District between 12 <sup>th</sup> January and 17 <sup>th</sup> January, 1998 by Mr. I.N. Muthuri, DSM, S/A, J.N. Nyarienga, ACP; William Barasa, OGW, ACP
EXH 13	Mr. P.F. Abongo, Deputy Commissioner of Police 12 <sup>th</sup> Witness	The Kenya Police Report of an Inquiry into the circumstances which led to ethnic clashes in Njoro Division, Nakuru District between 25 <sup>th</sup> January and 30 <sup>th</sup> January, 1990 P.F. Abongo, MBC, DCP; S.M. Kilemi, DSM, S/ACP; Rudisi Musimi, HSC, ACP,

		Jarred Kobunga, ACP
EXH 13 (A)	Mr. P.F. Abongo, Deputy Commissioner of Police – 12 <sup>th</sup> Witness	Letter written by Hon. Dixon Kihika Kimani on 23 <sup>rd</sup> January, 1998 addressed to The Special Branch Officer, Nakuru District
EXH 13 (B)	Mr. P.F. Abongo, Deputy Commissioner of Police – 12 <sup>th</sup> Witness	Minutes of Joint Security Committee between Rift Valley Province Security Committee and the District Security Committee on 11 <sup>th</sup> December, 1997
EXH 13 (C)	Mr. P.F. Abongo, Deputy Commissioner of Police – 12 <sup>th</sup> Witness	Police Statement of one Sergeant Francis Omweri, Police officer in Nakuru dated 7.2.98
EXH 13 (D)	Mr. P.F. Abongo, Deputy Commissioner of Police – 12 <sup>th</sup> Witness	Statement by David Mutavi Wambua, former Officer-in-Charge of station, Njoro dated 9.2.98
EXH 13 (E)	Mr. P.F. Abongo, Deputy Commissioner of Police – 12 <sup>th</sup> Witness	Statement by District Security Intelligence officer, Nakuru District, David Kipkorir Siele dated 13.2.98
EXH 13 (F)	Mr. P.F. Abongo, Deputy Commissioner of Police – 12 <sup>th</sup> Witness	Statement by Mr. Phillemon Opiyo AG, SP, D.S.I., Nakuru dated 13.2.98
EXH 13 (G)	Mr. P.F. Abongo, Deputy Commissioner of Police – 12 <sup>th</sup> Witness	Statement by the Senior District Commissioner - Mr Kinuthia Mbugua of Nakuru dated 8.2.98
EXH 13 (H)	Mr. P.F. Abongo, Deputy Commissioner of Police – 12 <sup>th</sup> Witness	Statement by the Hon. Dixon Kihika Kimani, M.P., Molo Constituency dated 8.2.98
EXH 13 (I)	Mr. P.F. Abongo, Deputy Commissioner of Police	Statement by Mr. Philip K. Cheruiyot, Assistant Commissioner of Police, Anti Stock Theft Unit dated 15.2.98
EXH 14	Mr. Wachu Chachole 13 <sup>th</sup> Witness	The Judicial Commission into Tribal Clashes Report by Wachu Chachole, Northern (Moyale) – 21.7.98
EXH 14 (A)	Mr. Wachu Chachole 13 <sup>th</sup> Witness	The forgotten people Report (Book). Human Rights violation in Moyale and Marsabit District. A Kenyan Human Rights Commission Report
EXH 14 (B)	Mr Wachu Chachole 13 <sup>th</sup> Witness	Synopsis & possible solutions to the clashes in Northern Kenya
EXH 15	Mr. Johnson Mungai 14 <sup>th</sup> Witness	Kenya's future by J.M. Chege
EXH 15A	Mr. Johnson Mungai 14 <sup>th</sup> Witness	Correspondence with Rift Valley Provincial Commissioner by J.M. Chege
EXH 15B	Mr. Johnson Mungai 14 <sup>th</sup> Witness	Correspondence to the Attorney-General by J.M. Chege
EXH 15C	Mr. Johnson Mungai 14 <sup>th</sup> Witness	Correspondence to His Excellency the President by J.M. Chege
EXH 16	Leslie Betawa Mwachiro, First Deputy Chairman, Shirikisho Party of Kenya 15 <sup>th</sup> witness	General correspondence addressed to: The Judicial Commission inquiring into clashes and related activities in Kenya 1992 – 1998
EXH 17	Nicholas Kariuki Githuku, Student, University of Nairobi	Paper on Tribal Clashes in Kenya headed: Chs.112: Tutorial QN.NO.10. What is or are the Root causes of

	16th witness	tribalism – Tribal Clashes in Kenya dated 24.6.98
EXH 18	Samuel Migui Wachira 17 <sup>th</sup> witness	Petition to the Judicial Inquiry on Tribal Clashes dated 27.7.98 by Samuel Migui Wachira
EXH 19	Hon. Kennedy Kiliku 19 <sup>th</sup> witness	Report of the Parliamentary Select Committee to investigate Ethnic clashes in Western & other parts of Kenya, 1992. Chaired by Hon. Joseph Kennedy Kiliku
EXH 19A	Hon. Kennedy Kiliku	4 Spent cartridges
EXH 19 (B)	Hon. Kennedy Kiliku	4 Head arrows
EXH 19 (C)	Hon. Kennedy Kiliku	13 Photos taken in various places in Rift Valley where clashes occurred
EXH 19 (D)	Hon. Kennedy Kiliku	3 Photos taken in Kamwaura, Nakuru
EXH 20	Hon. Kennedy Kiliku	19 Statements of witness who appeared before the Parliamentary Select Committee
EXH 21	Mr. John Litunda, District Commissioner, Nakuru 20 <sup>th</sup> Witness	Minutes of Nakuru District Security Committee of 18 <sup>th</sup> December, 1997
EXH 22	Mr. John Litunda, District Commissioner, Nakuru	Minutes of Nakuru District Security Committee of 23 <sup>rd</sup> January, 1998
EXH 23	Mr. Jeremiah Matagaro, Deputy Commissioner of Police 21 <sup>st</sup> Witness	Reports on Banditry & Tribal Clashes in North Eastern Province by Jeremiah Matagaro, MBS, PPO, North Eastern Province
EXH 24	Prof. Ezra Kiprono Maritim, Lecturer, Kenyatta University 22 <sup>nd</sup> witness	Reports on the Judicial Commission of Inquiry into Tribal Clashes in Kenya - the case of Molo South by Prof. Ezra K. Maritim, Kenyatta University
EXH 25	Mr. Peter Obara Ondato, Chairman, U.N.A.(K) 23 <sup>rd</sup> Witness	Reports authored by U.N.A. (K) United Nations Associations on Land Issue/Ethnic Clashes
EXH 26	Mr. Philips Kipsang Cheruiyot, Senior Assistant Commissioner of Police 26 <sup>th</sup> Witness	Minutes of the Provincial Security Committee meeting held on 27 <sup>th</sup> January, 1998
EXH 27	Mr. Philip Kipsang Cheruiyot, Senior Assistant Commissioner of Police 26 <sup>th</sup> Witness	Minutes of the Provincial Security Committee meeting held on 31 <sup>st</sup> December, 1997
EXH 28	Mr. Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Minutes of the Provincial Security Committee (P.S.C.) meeting of 9 <sup>th</sup> February, 1998
EXH 29	Mr. Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Minutes of the Provincial Security Committee meeting of 16 <sup>th</sup> February, 1998
EXH 30	Mr Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Flash points for violence 1997 General Elections by Director of Security Intelligence (DSI)
EXH 31 (A)	Mr. Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Report on Flash points for violence in 1997 General Election dated 3 <sup>rd</sup> September 1996
EXH 31 (B)	Mr. Petkay Shen Miriti,	Letter to Mr Fares Kuindwa, E.B.S., Permanent



	Deputy Commissioner of Police (D.S.I. HQ)	Secretary/Secretary to the Cabinet & Head of Public Service by BRIG., (RTD) W.A.C. Boinet headed Laikipia, Nakuru, Likoni Clashes dated 20 <sup>th</sup> January 1998
EXH 31 (C)	Mr. Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Letter addressed to Mr. Z.K.A. Cheruiyot, Permanent Secretary, Administration/Internal Security by BRIG. (RTD) W.A.C. Boinet on Laikipia, Nakuru clashes dated 26.1.98
EXH 31 (D)	Mr. Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Letter addressed to Z.K.A. Cheruiyot, Permanent Secretary/Administration & Internal Security by BRIG.(RTD) W.A.C. Boinet headed ' <i>Looming Ethnic Clashes</i> ' in Rift Valley dated March 1998.
EXH 31 (E)		A charge sheet charging David Mwenje with incitement to violence contrary to section 96 of the penal code before SPM's Court Makadara on 13/1/99 and reference to court file no. 577/99
EXH 31 (F)		Newspaper Cutting of Sunday Standard of January 18, 1998 headed, "Coast 'Raiders' Make Demands"
EXH 32 (A)	Mr. Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Minutes of Provincial Security Committee of 14 <sup>th</sup> August, 1997
EXH 32 (B)	Mr. Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Minutes of Provincial Security Committee of 26 <sup>th</sup> August, 1997
EXH 33	Mr. Petkay Shen Miriti, Deputy Commissioner of Police (D.S.I. HQ)	Cutting of Daily Nation dated 25 <sup>th</sup> January, 1998 titled Kihika Kimani warns of new raids
EXB 34	Police statement by Mr. Gedion M. Mutua (P.C.I.O.)	Police statement by Mr. Gedion M. Mutua (P.C.I.O.) dated 6 <sup>th</sup> February, 1998
EXH 35	Mr Musyimi Mbaka – Advocate of the High Court	Cutting of Daily Nation of 23/1/98 headed MPS Farm invaded
EXH 36	John Gacivih – Senior Principal State Counsel	Cutting of Daily Nation
EXH 36 (A)	John Gacivih – Senior Principal State Counsel	Cutting of Daily Nation
EXH 36 (B)	John Gacivih – Senior Principal State Counsel	Cutting of Daily Nation
EXH 36 (C)	John Gacivih – Senior Principal State Counsel	Cutting of Daily Nation
EXH 37	David Kipkorir Siele - Senior Superintendent of Police 30 <sup>th</sup> Witness	Report headed: Nakuru District Political Activity of 24/1/98
EXH 38	R.K. Pradhan 31 <sup>st</sup> Witness	Report to the Judicial Commission of Inquiry into Tribal Clashes – Ziwani Farm – Kiteje, Kwale Ng'ombeni by Roshanali Karmali Pradhan
EXH 39	Joseph O. Onyiego 32 <sup>nd</sup> Witness	Sworn statement of Joseph Ochwangi Onyiego dated 16/9/97 a Resident of Likoni - Manyatta
EXH 40	Omar Hussein 34 <sup>th</sup> Witness	Sworn statement of Omar Hussein Gari dated 28/8/98, Chief Ngombeni Location, Matuga Division, Kwale District

EXH 41	Swaleh Salim bin Alifan 35 <sup>th</sup> Witness	Sworn statement of Swaleh Salim Bin Alifan dated 22/8/98 at Shimo Latewa Prison
EXH 42 (A)	Shukri Baramadi PSIO 36 <sup>th</sup> Witness	Information report headed secret/confidential dated Tuesday 20/5/97 Heading: Political activities in Likoni urging Youths to raid Police Station Mombasa
EXH 42 (B)	Shukri Baramadi	Information report headed secret/confidential dated Tuesday 20/5/97 under the subject : Criminal activities of possible Security Significance /Digo Youths to Burn Upcountry Houses Likoni/Mombasa
EXH 42 (C)	Shukri Baramadi PSIO MBS	Information report headed secret/confidential dated 21/5/97 under the subject: Criminal Activities of Possible Security Significance/youths prepare for political thuggery/MBS .
EXH 42 (D)	Shukri Baramadi PSIO MBS	Information report headed Secret/Confidential dated 22/7/97: Subject Matters of Morale within the Kenya Police complain by the OCS against politicians/Mombasa
EXH 42 (E)	Shukri Baramadi PSIO MBS	Information report headed: Secret Confidential dated 26/5/97 Subject: Activities by Groups Societies / Profession Organisations which are or may become a threat to security youth taking oath/Mombasa.
EXH 42 (F)	Shukri Baramadi PSIO MBS	Information report headed: Secret/Confidential dated 11/8/97 subject: Activities by Groups or Societies which are or may become a threat to Security Mijikenda Youths take Oath / Mombasa
EXH 42 (G)	Shukri Baramadi PSIO MBS	Letter from the District Security Intelligence Officers – Mombasa, Kilifi and Kwale dated 25/6/97 headed Criminal activities of possible security significance alleged plans by Youths to perpetrate political thuggery/Ngombeni – Kwale to the P.S.I.O., S. Baramadi, Coast Province
EXH 43	CPL Wasike Walekhwa Murumba Witness No.37	Statement of CPL Wasike Walekhwa Murumba Likoni Police Station dated 17/8/98 at Mombasa
EXH 44	Peter Wilson Ag. D.S.IO:	Sworn statement of Mr Peter Wilson

EXH 45	Mr. Gikandi Ngibuini Witness No.40	Cutting of Daily Nation dated 15/10/97 under the headline LIKONI: POLICE STORIES CONFLICT
EXH 46	Edwin Nyasenda – Senior Assistant Commissioner of Police Witness No.41	Sworn statement of Edwin Nyasenda PCIO Western Province dated 3/9/98
EXH 47	Edwin Nyasenda – Senior Assistant Commissioner of Police	Letter dated 29/8/97 addressed to PPO Coast Province MBS Ref: Attacks on Palm Duck Ltd (Ziwani Farm Kiteje Ziwani Ngombeni) Kwale written by J.C. Namai PCIO Coast Province
EXH 48	Edwin Nyasenda – Senior Assistant Commissioner of Police	Record of Orderly Room proceedings Defaulter sheet for Peter Johnson Kariuki No.211134 Rank IP dated 13.8.1997 Place Likoni
EXH 49	Edwin Nyasenda – Senior Assistant Commissioner of Police	Sworn statement of Inquiry of Peter Kariuki Ngugi sworn on 16/8/97
EXH 50 (A)	Edwin Nyasenda – Senior Assistant Commissioner of Police	Sworn statement of Senior Sergeant John P. Oboi dated 24/8/98
EXH 50 (B)	Edwin Nyasenda – Senior Assistant Commission of Police	Sworn statement of Sergeant JAMES NYAGA dated 24/8/98
EXH 50 (C)	Edwin Nyasenda – Senior Assistant Commissioner of Police	Sworn statement by Mr. Andrew M. Mutuku – SSP, Prov. C.I.D. Headquarters, Coast dated 2.9.98
EXH 51(A)	Edwin Nyasenda – Senior Assistant Commissioner of Police	Occurrence book (O.B) of 23/8/97 from Ports Police
EXH 51 (B)	Edwin Nyasenda – Senior Assistant Commissioner of Police	Occurrence book (O.B) of 24/8/97 from Ports Police
EXH 52 (A)	Jonathan K. Koskei SSP Witness No.43	Minutes of MBS special D.S.C. of 23/7/97, Mombasa
EXH 52 (B)	Jonathan K. Koskei SSP	Minutes of MBS DSC of 25/7/97, Mombasa
EXH 52 (C)	SSP Jonathan K. Koskei OCPD Manderu N.E.	Signal from Division Urban to VIG-OPS NBI ( R ) PROV, POL COAST ( R ) PROV SEC COAST ( R ) DV CRIME URBAN ( R ) DIVSEE UBRAN date 14/8/97 Subject: INCIDENT REPORT
EXH 52 (D)	Produced by SSP Jonathan K. Koskei OCPD Manderu N.E.	Special Joint PSC meeting with DSCS MBS. Kwale Kilifi Malindi at the PC's board room on 15/9/97
EXH 52 (E)		Minutes of MBS DSC meeting held on 21.8.97 at the DC's office Mombasa
EXH 53	Edwin Nyasenda Snr. Ass. Comm. of Police	Letter addressed to Divisional police headquarters Mombasa headed: Security Alertness written by J.M. Wamae O.C.P.D Urban
EXH 54		Letter headed Security alertness and a list bearing the names and head of all P.P.O's and security Agent all over the Republic written by the former Commissioner of Police Shadrack Kiruki, CBS dated 16/3/95

EXH 55	Snr. Ass. Comm. of Police Mr Edwin Nyaseda	Orderly Room proceeding against No. 21134 Peter Kariuki Ngugi written to Commissioner of police by G.S. Murithi ..... for P.P.O. dated 19/9/97 together with Notice Removal Notice dated 22/11/97
EXH 56	Rev. John Njenga Witness No.44	Submission made to Commission of Inquiry on Ethnic Clashes by His Grace , Most Rev. John Njenga on 10/9/98 headed: Dates, Facts and Figures
EXH 57	Athumani Zuberi Witness No.45	Statement of Assistant Chief Athumani Zuberi Mwakunyapa Pungu sub location Mwembeni Location – Matuga sworn on 4/9/98
EXH 58	Hassan Mohammed Haji Witness No.46	Minutes of the PSC meeting held on 29/4/97 at the PC's Office, Mombasa
EXH 59	Ass. Chief Ramadhan Mwalimu Witness No.47	Sworn statement of Ramadhan Mwalimu Mwaono. Assistant Chief Kiteje, dated 1.9.98
EXH 60	Jacob Kenneth Katana Witness No.48	Sworn statement of Jacob Kenneth Katana retired DCIO Kwale dated 7.9.97
EXH 60 (A)	Rtd. DCIO Kwale Jacob Kenneth Katana	P.C.I.O. Coast Weekly Intelligence Report from Divisional CID Headquarters Voi dated 18.7.97
EXH 60 (B)	Rtd. DCIO Kwale Jacob Kenneth Katana	Letter headed Land Acquisition – Plot Diani 345 from Divisional CID Headquarters to the PCIO Coast
EXH 60 (C)	Rtd. DCIO Kwale Jacob Kenneth Katana	Judgment of District Magistrate Court at Kwale CR Case No. 736 1978 MBS
EXH 60 (D)	Rtd. DCIO Kwale Jacob Kenneth Katana	O.B Occurrence Book Extract from Port Police Station dated 17/8/97 No. 29 at 11.20 a.m.
EXH 61	Rophin Mwakio Ndau Witness No.49	Sworn statement of Mr. Rophin Mwakio Ndau a resident of Likoni dated 11 <sup>th</sup> September, 1999
EXH 62	David Jakaiti D.C. Trans-Nzoia Witness No.50	Sworn statement of David Jakaiti dated 8/9/98, D.C. – Trans – Nzoia District
EXH 62 (A)	David Jakaiti D.C. Trans-Nzoia	Minutes of Special District Security Committee meeting held on 28/2/97 held at DC's office.
EXH 62 (B)	David Jakaiti D.C. Trans-Nzoia	Minutes of the Kwale Special District Security Committee meeting held on 2/5/97 at DC's Office Kwale
EXH 62 (C)	David Jakaiti D.C. Trans-Nzoia	Minutes of the Kwale District Security Committee meeting held on 22/7/97 at DC's office Kwale
EXH 62 (D)	David Jakaiti D.C. Trans-Nzoia	Minutes of the Kwale District Security Committee Meeting held on 22/8/97 at DC's Office Kwale
EXH 62 (E)	David Jakaiti D.C. Trans-Nzoia	Minutes of the Kwale District Security Committee meeting held on 23 <sup>rd</sup> September 1997 at DC's Office Kwale
EXH 62 (F)	David Jakaiti D.C. Trans-Nzoia	Minutes of Joint District Security Committee Meeting between MBS DSC and Kwale DSC held on 29/1/1998 at the D.C's Office Kwale
EXH 63 (A)	David Jakaiti D.C. Trans-Nzoia	Letter to the PC Coast Province RE: Dismissal from service of Chief Omar Hussein Gari
EXH 63 (B)		Letter to the PC Coast Province RE: Dismissal from service of Assistant Chief Athuman Zuberi Mwakun Yapa/Sub-chief Pungu sub-location

EXH 63(C)	David Jakaiti D.C. Trans-Nzoia	Letter to the PC Coast Province RE: Dismissal from service of Ramadhan Mwalimu Assistant Chief Kiteje Sub-location
EXH 63 (D)		Letter to the PC Coast Province RE: Dismissal from service of Nyaume Mohamed Assistant Chief Ngombeni Sub-Location
EXH 64 (A)	David Jakaiti D.C. Trans-Nzoia	Letter from Provincial Headquarters Coast Province reinstating Mr Omar H. Gari, Chief Ngombeni Location dated 23/6/98 through the District Commissioner Kwale
EXH 64 (B)	David Jakaiti D.C. Trans-Nzoia	Letter from Provincial Headquarters Coast Province reinstating Mr Athuman Mwakunyapa sub-chief Pungu sub-Loc. Through D.C. Kwale dated 23/6/98
EXH 64 (C)	David Jakaiti D.C. Trans-Nzoia	Letter from Provincial Headquarters Coast Province reinstating sub-Chief Mr Ramadhan Mwalimu Assistant Chief Kiteje sub-Location through D.C. Kwale dated 23/6/98
EXH 64 (D)	David Jakaiti D.C. Trans-Nzoia	Letter from Provincial Headquarters Coast Province reinstating Mr Nyaume M Mohammed Assistant Chief Ngombeni sub-Loc.
EXH 65 (A)	David Jakaiti D.C. Trans-Nzoia	Letter Ref. RE: INTERDICTION written by Omar Hussein Gari Chief Ngombeni to the District Commissioner through D.O. Matuga Division
EXH 65 (B)	David Jakaiti D.C. Trans-Nzoia	Letter Ref: INTERDICTION by Athuman Zuberi Mwakunyapa Assistant Chief Pungu sub-Loc.
EXH 65 (C)	David Jakaiti D.C. Trans-Nzoia	Letter RE: INTERDICTION by Mr Ramadhani Mwalimu Kiteje to the D.C. Kwale through D.O. Matuga dated 10/11/97
EXH 65 (D)	David Jakaiti D.C. Trans-Nzoia	Letter RE: CAUSE OF NOT TO BE DISMISSED FROM SERVICE by Mr Mohammed M. Nyaume sub-Chief Ngombeni to The D.C. Kwale through D.O. Matuga Division
EXH 66 (A)	C.I. Flora Tsonzaka DCIO Kilifi Witness No.53	Register of attendance of the 278 Raiders at their hideout in Kaya Similani Caves
EXH 66 (B)	C.I. Flora Tsonzaka DCIO Kilifi	Record of Expenditure Correspondence, Ranks forces number, attendance of the raiders days of sickness, and commodities required and supplied
EXH 66 (C)	C.I. Flora Tsonzaka DCIO Kilifi	O.B. Extract of 31/10/97 and 2/11/97 from Ndiani Police Station
EXH 66 (D)	C.I. Flora Tsonzaka DCIO Kilifi	Uniform worn by raiders made from cheap black clothing with crossed stripes of red and white at the back, the uniform features a crescent and a star
EXH 67	C.I. Flora Tsonzaka DCIO Kilifi	Sworn statement of Mohamed Mdogo at Ndiani CID. Hqs. on 6/11/97 at 10.30 a.m.
EXH 68 (A)	C.I. Flora Tsonzaka DCIO Kilifi	Daily Nation cutting of 3 <sup>rd</sup> Nov. 1997 headed "6 more Kwale Raiders Killed."
EXH 68 (B)	C.I. Flora Tsonzaka DCIO Kilifi	Extract from Exhibit Registrar from Ndiani Police Station
EXH 68 (C)	Lawyer Gikandi Ngibuini	Newspaper cutting of 2/11/97 headed LEADERS

		<b>WARN FOREIGNERS – sub heading --“Respect Local People or Leave – MPS”</b>
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EXH 68 (D)	Lawyer Gikandi Ngibuini	Taifa Leo cutting of 7/11/94 headed "Wabunge Wanachochea"
EXH 68 (E)	Counsel Dorcas Agik Counsel assisting the Commission	Daily Nation cutting of 2/11/97 back page headed "RAIDERS EVICTED FROM CAVE"
EXH 69	David Opala DO Witness No.55	Sworn statement of D.O. Opala formerly D.O. Matuga currently DO Kamwaura dated 3.9.98
EXH 70	Mohammed Juma Kutsola, Inspector of A.P Witness No.56	Extract from O.B. Kwale Police Station
EXH 71	Francis Maina Njuguna Witness No.61	Information Report: No 227/97 dated 14 <sup>th</sup> March, 1997 subject heading: Criminal Activities of possible security signifance/alleged Guerrilla training at Bongwe Forest Diani Location/Kwale
EXH 72 (A)	Paul Olando D.C. Mombasa Witness No.65	Minutes of Mombasa District Intelligence Committee D.I.C. No.7/97 dated between 22 <sup>nd</sup> June & 22/7/97
EXH 72 (B)	Paul Olando D.C. Mombasa	Minutes of Mombasa District Security Intelligence Committee (D.S.I.C) No. 8/97 dated between 21 <sup>st</sup> & 20 <sup>th</sup> August 1997
EXH 72 (C)	Paul Olando D.C. MBS	Letter from Office of the President D.S.I.O. MBS to DSIO Kwale headed CRIMINAL ACTIVITY OF POSSIBLE SECURITY SIGNIFICANCE /MOVEMENT OF ARMED THUGS dated 30/9/97
EXH 73	Peter Kariuki former OCS Witness No.67	A sworn statement of Peter Johnson Kariuki dated 7/9/98 former OCS Likoni
EXH 74	Hassan Mohammed Haji Witness No.72	Letter from G.K. Mutanga Divisional C.I.D. officer URBAN MBS to The Deputy Provincial Commissioner Coast Attention to Mr M. Haji Re: Motor Reg.No.KAG 511 C Toyota Corolla
EXH 75	Major John Mberia Witness No.72	A sketch plan (MAP) of Area of operation KAYA BOMBO
EXH 76	John Namai – Snr. Assistant Commissioner of Police Witness No.74	Sworn statement of former PCIO Coast Province dated 28/8/98 of John C. Namai
EXH 77	Snr. Assistant Commissioner of Police	A note from D/PCIO notifying PCIO of arrest of Mr Hisham Mwidau & Mwalimu Mwahima dated 23/8/97
EXH 78	Snr. Assistant Commissioner of Police John Namai	Statement under Inquiry of Swaleh Salim Bin Alfan taken by Peter Ndune an Inspector of Police dated 18/8/97
EXH 79	Snr. Assistant Commissioner of Police John Namai	Cautionary statement under Inquiry of Emmanuel Karisa Maitha taken by Adiel Mate an inspector of police dated 22/8/97
EXH 80	Snr. Assistant Commissioner of Police John Namai	Statement under Inquiry of Suleman Rashid Shakombo taken by Snr. SP Sammy Mathenge dated 28 <sup>th</sup> February, 1998
EXH 81	Snr. Assistant Counsel Dorcas Oduor	O.B. extract from Kwale Police Station dated 15.8.97 Entry No.8
EXH 82	E.J. Nyaseda Co-ordinator Investigation Team	Report headed Re: OPERATION TAFUTA MNAZI Ref: C/CID/SEC/414/7/VOL XIV (165) to the Commissioner of Police, police headquarters written by E.J. Nyaseda, Co-ordinator Investigation Team

EXH 83	PCIO MBS Snr. Ass. Commissioner of Police Shukri Barmadi	Sworn statement of John Ben Kadzaa dated 2/9/98
EXH 84	Snr. Ass. Commissioner of Police	Statement under Inquiry of Emmanuel Karisa Maitha taken by Adiel Mate an Inspector of Police attached to CID Urban
EXH 85	A.H. Dossaji Witness No.78	Report on the effects of Tribal clashes on Tourism in Aid around Malindi by A.H. Dossaji, Chairman – Mombasa and Coast Tourism Association
EXH 86	Severinus Mzungu Jembe Witness No.80	A brief report headed: The Sacred Kaya Forests of Coast Province
EXH 87	D.N. Waweru Witness No.82	Sworn statement of Dionsious Ndegwa Waweru O.C.P.D. Kilifi dated 6/10/98
EXH 88 (A)	Shukri Barmadi	A sketch plan of South Coast areas affected by clashes and where most activities took place, from Kiteje, Mtongwe Denyenye, Ngombeni, Kona Mbaya to Tourist Police Post
EXH 88 (B)	Shukri Barmadi	A sketch plan of South Coast area headed BANDITARY ACTIVITIES showing areas of operation by the raiders
EXH 89	Snr. Ass. Commissioner of Police Shukri Baramadi	A report written to the Director of Intelligence Nairobi, headed: Criminal activities of possible security significance/alleged plans by youth to perpetrate political thuggery dated 25/6/97 by PSIO MBS
EXH 90	P.S.I.O.	A sworn statement of Shukri Baramadi P.S.I.O. – Coast MBS dated 7/10/98
EXH 91	Lawyer Stewart Madzayo	Ruling of CM's Court CR. Case No.2535/97 dated and delivered on 28/8/97 between Republic .vs. Emmanuel Karisa Maitha
EXH 92	Inspector Adiel Mate	Bundle of documents bearing Hon. Emmanuel Karisa Maitha signatures a copy of a letter dated 28/6/98 written to The Criminal Investigation Officer, MBS, headed REF: SAMMY BAYA GIGIRI – ID No. 5468500/68. Letter dated 14/9/98 to The D.C.I.O. MBS headed RE: EDNA MARQUART a copy of Notice of Appointment of Adovate to the Registrar High Court signed by Emmanuel Karisa Maitha and a Bond and Bail Bond!
EXH 93	Inspector Adiel Mate	18 cuttings of Daily Nation all bearing heading covering Hon. EMMANUAL K. MAITHA remarks /utterances and appearances over meeting at Coast Province
EXH 94	P.N. Mubia Witness No.90	A sworn statement of one Phillip Nahashon Mubia, storeman Provincial Police Headquarters Workshop dated 14.10.98
EXH 95	P.N.Mubia	Counter Requisition and Issue voucher, Form S11 Ministry Office of the President Police Issuance of KENWOOD POCKETPHONE TYPE TK 360 N to Mr. Sajjad and Issued by P.N. Mubia on 13/1/98



EXH 96 (A)	Mohammed Omar Said Witness No.91	Master Register of All patient between 12 <sup>th</sup> December, 97 to 15 <sup>th</sup> December, 97 at Galana Hospital, Malindi
EXH 96 (B)	Mohammed Omar Said	In patient record of 12 <sup>th</sup> December, 97 to 15 <sup>th</sup> December, 97 at Galana Hospital Malindi
EXH 97	Shukri Baramadi	O.B. Extract from Malindi Police Station dated 10 <sup>th</sup> August, 1997
EXH 97 (B)	Shukri Baramadi	O.B. Extract from Malindi Police Station dated 14 <sup>th</sup> August, 1997 entry No. 64 at 5.00 p.m.
EXH 98	Shukri Baramadi	CONFIDENTIAL Report headed: OPERATION ORDERS "OPERATION TAFUTA MNAZI" In Mombasa, Kwale, Kilifi and Malind Districts
EXH 99	Inspector Adiel Mate	REVOLVER, (Starter Gun) belonging to Hon. Maitha and now held by Central Police Station.
EXH 99 (A)	Inspector Adiel Mate	Five (5) Blanks (Bullets) for the Revolver
EXH 100 (A - G)	Snr. State Council John Gacivih	(7) Seven Photographs taken on suspected raiders of Mombasa
EXH 101	Binaifer Nowrojee, Legal Counsel for H.R.W.A. Witness No.98	A Book by Human Rights Watch/Africa Watch headed: DIVIDE AND RULE, sub heading State sponsored Ethnic violence in Kenya
EXH101 (A)	Binaifer Nowrojee, Legal Counsel for H.R.W.A.	Report by Human Rights Watch Africa dated July, 94 headed: MULTIPARYISM BETRAYED IN KENYA sub heading continiuning Rural violence and Restriction on Freedom of Speech and Assembly
EXH 101 (B)	Binaifer Nowrojee, Legal Counsel for Human Rights Watch Africa	Report by Human Rights Watch Africa dated July, 1995 headed: KENYA OLD HABITS DIE HARD sub title Rights Abuses Follow Renewed Foreign Aid Commitments
EXH 101 (C)	Binaifer Nowrojee, Legal Counsel for Human Rights Watch Africa	A Book by Human Rights Watch headed: FAILING THE INTERNALLY DISPLACED sub-title The UNDP Displaced Persons Program in Kenya
EXH 102 (A)	Hon. Suleiman Shakombo Witness No.110	A Document/Report headed FEDERAL SYSTEM OF GOVERNMENT dated March 12 <sup>th</sup> , 1998
EXH 103 (A)	Muthui Mwai	Newspaper cutting of Daily Nation dated September 29 <sup>th</sup> , 1991 headed BIWOTT, KEEN DIFFER AT NAROK MEETING and subheading Moi declared life President, Mungai to expel FORD members
EXH 103 (B)	Muthui Mwai	Newspaper cutting of Daily Nation dated September 9 <sup>th</sup> , 1991, headed RIFT VALLEY PLOTS "MAJIMBO" SYSTEM sub-title Leader ban Muite from province
EXH 103 (C)	Muthui Mwai	Newspaper cutting of September 22 <sup>nd</sup> , 1991 headed MUIE, ODINGA, OTHERS BANNED FROM RIFT VALLEY
EXH 103 (D)	Mbugua Mureithi, Lawyer for L.S.K.	Newspaper Cutting of 20 <sup>th</sup> February 1991, DAILY NATION headed: SHUT UP WHEN WE SPEAK NTIMAMA
EXH 103 (E)	Kagucia, Lawyer for Daily Nation	Newspaper Cutting of KENYA TIMES dated 1/3/91 and headed: NTIMAMA: ADVOCATES FILES "HATRED" SUIT and filed by Julia Gichuhi

EXH 103 (F)	Kagucia, Lawyer for Daily Nation	Weekly Review Cutting headed: KENYA: Land Politics MAASAI HAWK and sub-title local government minister, Mr. William O. Ntimama calls for Kikuyu settlers in Narok to lie low or else be evicted
EXH 104		Letter dated 12 <sup>th</sup> August 1997 written by Provincial Commissioner Coast PC T.K. SIRMA to MR. Hassan M. Haji Deputy PC Coast RE: LEAVE and copied to Mr. W.K.K. Kimalat PS Provincial Administration OP
EXH 105		11 bundles of letters addressed to the Commissioner of Lands Nairobi bearing the recommendations of P.A.C. between 12 <sup>th</sup> May 1997 to headed 7 <sup>th</sup> June, 1997 RE: MOMBASA MUNICIPALITY RESIDENTIAL PLOTS and signed by A.K. MASINDE Provincial Physical Planning Officer Coast
EXH 106		Newspaper cutting Of Sunday September 29, 1991 Headline Banner, BIWOTT, KEEN CLASH AT RALLY by Ngumo wa Kuria
EXH 107		A sworn statement of Wilson Kiptarus Langat driver to Hon. Sajjad sworn on 20/10/98
EXH 108	Mutava Musyimi Witness No.118	Part A: preliminary Matters: Submitted to the Akiwumi Commission of Inquiry into Ethnic Clashes in Kenya by the National Council of Churches of Kenya (NCKK) by The Rev. Mutava Musyimi, Secretary General dated 4.11.98
EXH 108 (A)	Mutava Musyimi	The Cursed Arrow: A report on organized violence against Democracy in Kenya by NCKK
EXH 108 (B)	Mutava Musyimi	A Report by The task force headed SYMPOSIUM TASK FORCE REPORT dated 11/6/1992 NAIROBI
EXH 108 (C)	Mutava Musyimi	A report headed, "NCKK Coast Region Report November 1997 Mombasa and Olmoron Clashes – Fact Finding Mission reports – 5 <sup>th</sup> and 30 <sup>th</sup> March, 1998, Nyeri by Rev. Julius K. Kal, Coast Regional Chairman; Rev. George M. Chipa, Region Co-ordinator Coast; Mr. William Wanyoike – Regional Co-ordinator, Central; Rev. Daniel K. Nguyo, Regional Chairman
EXH 108 (D)		Confidential Letter from office of the President addressed to Dr. Agnes Chepkwony Nyaluom, Chairperson – Nyabuom Symposium II working acknowledging receipt of a Report from the Symposium Task force and the same forwarded to the Commissioner of Police for necessary action signed by Prof. Mbithi
EXH 109	R.K.Sugut Witness No.117	A sworn statement of Police Constable (PC) Robert Kimedi Sugut sworn on 20/10/98

EXH 110		A pocketphone and a charger alleged to have been issued to Hon. Sajjad vide requisition voucher 027512 exhibited as No. 95
EXH 111	Wilson Gacaja Commissioner of Lands Witness No.122	Letter and Names of Allottee headed Settlement Plot Approval minutes dated 19/4/96 of THE NG'OMBENI/MAWENI SQUATTER SETTLEMENT SCHEME at Kwale District
EXH 111 (A)	Wilson Gacaja Commissioner of Lands	A Sketch Map of NG'OMBENI-MAWENI SETTLEMENT SCHEME
EXH 112	Wilson Gacaja	Letter to The Director of Land Adjudication settlement. Titled PLOT ALLOCATION and approved list of Allottee dated 4/2/92 and signed by Ali B. Korane D.C. Kwale
EXH 112 (A)	Wilson Gacaja Commissioner of Lands	A Sketch Map of part of DIANI BEACH DEVELOPMENT
EXH 112 (B)	Wilson Gacaja Commissioner of Lands	A sketch map of DIANI COMPLEX SCHEME
EXH 113	Wilson Gacaja Commissioner of Lands	A sketch map covering the Leisure Lodge area
EXH 113 (A)	Wilson Gacaja Commissioner of Lands	A sketch map Zeroing the Area of Leisure Lodge, 36.28 HA, 980 5.6 HA, 978 6.93 HA
EXH 113 (B)	Wilson Gacaja Commissioner of Lands	Letter applying for Re-Allocation of Plot No. KWALE/DIANI BEACH 978 FOR GOLF COURSE COMPLETION on a letter headed LEISURE LODGE and dated 1 <sup>st</sup> June, 95
EXH 114		Minutes of Mombasa District Plot allocation Committee held on 29.4.97 at P.Cs. Office at 2.30 p.m. chaired by T.K. Sirma, Chairman
EXH 115	Kipkorir Siele	Minutes of District Intelligence Committee DIC summary No. 10/97 for the period between 19 <sup>th</sup> September and 21 <sup>st</sup> October
EXH 116		4 Letters copied to The Permanent Secretary/Administration office of the President Nairobi dated 15 <sup>th</sup> October, 1997 and bearing the names of officers to be promoted and signed by J.S.POLONG Secretary P.S.C. of Kenya
EXH 117		Letter by Leisure Lodge to the District Commissioner Kwale (DC) dated 6 <sup>th</sup> January, 1994 RE: DIANI PLOT NO 860 explaining the position of Golf Course
EXH 118	Lawyer Ndubi	21 copies of Letters showing The Plot allocation at North Coast Mtwapa, Majaoni to the Coastal MPs and 8 for the Outsiders
EXH 119		Letter to Mr. Hassan M. Haji, PA/PCI MOMBASA RE: LEAVE, for him to assume duties while the PC T.K.SIRMA is on leave dated 8 <sup>th</sup> April, 97.
EXH 120	Mr. Wetangula	A note written to Mr. Masinde Dep. P.P.O. attaching Application for plots – MOMBASA and a map bearing plots A,B,C.
EXH 121		A publication or Warning Note headed THE TIME IS NOW showing how the Kikuyu are treated but now

		they have refused, by NYUMBA YA MUMBI
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EXH 122	John Abduba DC Kilifi	Minutes of Nakuru D.I.C. meeting summary No. 3/92 of between 26 <sup>th</sup> February and 24 <sup>th</sup> March, 1992
EXH 123	John Abduba DC Kilifi Witness No.126	Report to The Provincial Commissioner Rift Valley province headed INCIDENCES OF ETHNIC CLASHES IN NAKURU DISTRICT dated 21 <sup>st</sup> March, 1992 by JOHN A. ABDUBA D.C. NAKURU
EXH 124		O.B. Occurrence Book Extracts from Molo Police Station, reflecting the arrest of suspected RAIDERS and booked in the O.B. Molo police station dated 15/3/92.
EXH 125	Agi Swaleh - Physical Planning Officer, Coast Witness No.133	Minutes of The Kwale District Plot Allocation Committee Meeting Held on 19 <sup>th</sup> June, 1986 at D.C.'s Office
EXH 126	Michael G. Mathai Witness No.136	An order by the Chief BAGARIA LOCATION summoning Michael Gichohi Mathai, Milimani village to appear before him on 3/4/98 dated 2/4/98
EXH 126 (A)		Reply by Michael Gichohi Mathai to the earlier Chiefs Order explaining why he failed to obey his orders letter dated 5/4/98
EXH 126 (B)		Bond to attend Court Michael Gichohi on 11 <sup>th</sup> June, 98 charged with incitement to violence against Sammy Kinani Kibute dated 25 <sup>th</sup> February, 98 and hearing to take place on 2/10/98 in NAKURU
EXH 127	Pastor Daniel Seribebi Witness No.163	A sworn statement of Pastor Daniel Seribebi Salamia alias Sigei sworn on 2/11/98
EXH 128	Juma Kiplenge (Lawyer)	Letter RE: WARNING LETTER dated 15/02/97 case between Francis Ng'ang'a Kamau and Paul Kihumba and signed by both accused and complainant together with 3 witnesses
EXH 128 (A)	Juma Kiplenge	Letter by the Chief of Lare location to THE LAND REGISTRAR NAKURU RE: OBJECTION TO THE ISSUANCE OF TITLE DEED NO. 381 and dated 27/2/97
EXH 128 (B)	Juma Kiplenge	Letter from the District Officer (D.O.) 3/7/98 to the District. Land Registrar Re: Title Deed Pwani Mutukanio Kihingo/ Likia/ Bloc 2/38 explaining the position why the Title Deed should be issued and signed by D.O. F.E.Otwani/Lare
EXH 129	Severinus Nyaga Witness No.178	(3) Photographs (picture) of stone house on fire belonging to Severinus Nyaga witness No. 178 Resident of Kihingo area
EXH 130	Mr. Makhecha Lawyer for Hon. Saitoti	A cutting from The Daily Nation dated 15/6/92 headed FARM EMPLOYEES DEFEND V.P.
EXH 131	Mr. B. Chunga, D.P.P.	Newspaper cutting of Daily Nation dated 29/9/93 headed D.C. issues quit order in Narok
EXH 132 (A)	Father Kaiser Witness No.203	A letter dated 22/8/94 written to the attention of Late PC Mr. Chelanga over Maela camp for the Displaced and written by members of the Maela local coordination committee
EXH 132 (B)	Father Kaiser	Hand written letter to The PC Rift Valley Mr.

		Chelanga from Maela camp dated November 15 <sup>th</sup> , 1994 written by John Kaiser
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EXH 132 (C)		A Handwritten letter headed RE: REGISTRATION OF THE ENOOSUPUKIA DISPLACED PERSONS BY THE DISTRICT OFFICER NAIVASHA and dated 24/11/94 and authored by 10 members
EXH 133		Notice dated 15/12/94 headed GENERAL NOTICE TO DISPLACED PEOPLE IN MALELA written by Patrick Karanja Chairman for and on behalf of NGATI FARMERS SOCIETY
EXH 134		Letter head NGATI FARMERS CO-OPERATIVE SOCIETY LTD written on 20/7/94 to the Director U.N.D.P. attention of Dr. Kilian headed REMOVAL OF DISPLACED FROM MAELA NGATI FARM and written by Joseph F.W. Mwaniki Secretary
EXH 135	Muriithi Mbugua, Lawyer	Newspaper cutting headed FRESH KILLINGS IN NJORO AREA dated Tuesday January 27/98
EXH 136	Father Barso Sandro Witness No.209	A memorandum dated 19/1/98 For CEASEFIRE AT OL MORAN AND PART OF SIPILI LOCATIONS
EXH 137	Father Barso Sandro	A photograph of people suspected to samburu moran on move and armed
EXH 138	Benjamin Tuitoek Kabomet Witness No.210	A sworn statement of RTD Chief BENJAMIN TUITOEK KABOMET a Kalenjii of Olmoran area sworn on 22/1/99 at Nakuru at around 2.30p.m.
EXH 139		Travel ticket issued by NG'ARUA LINE SACCO LTD P. O. Box 191, KINAMBA TEL. 38 Ng'arua on 8/2/99 from Olmoran to Nakuru bus KZJ 774 and charges 300/=
EXH 140	Lawyer Sheth	Minutes of leaders meeting held at Lolgorian on 9 <sup>th</sup> January, 1987 and chaired by Mr. M. Y. Haji and attended by 63 members and signed by M.. Y. Haji Former P.C. Rift Valley
EXH 140 (A)	Yusuf Haji	Letter headed: MEETING OF ELDERS FROM KILGORIS LOLGORIAN DIVISION led by HON. SOMPISHA ASS. MINISTER OF HEALTH and chaired by P.C. on 9 <sup>th</sup> November, 1988 the problem facing Masai due to influx of people at Lologorian
EXH 141		Letter headed: THE TRANS MARA IN SOUTH WESTERN KENYA written by Father John Kaiser
EXH 142	Stephen Nyahiri Witness No.213	A sworn statement of Stephen Nyahiri Mwita sworn on 11/2/99
EXH 143	Stephen Nyhiri	Letter by the District Officer Lolgorian Division to Stephen Nyahiri Mwita indicating he is an acceptee among the Masaai within Moyoi land in Machangwa sub-location and dated 14/10/85
EXH 144		Sale agreement of Land Plot No. 8 Moyoi Adjudication in Lolgorian Division in Narok District belonging to Mr. John P. Toronikel and signed by 4 witness and 3 buyers
EXH 145	Chrisantus Oanga Oyugi Witness No.218	Newspaper cutting of The People Newspaper dated the 9 <sup>th</sup> February, 1999 headed: SUNKULI, DC TURN PREACHERS AT RALLY

EXH 146	D.O. Soi	A copy of note dated 10/1/98 bearing 4 names of people suspected to be inciters and handed over by the Chief to the D.O.
EXH 146 (A)	Ibrahim Injaga Livanze Witness No.223	A LETTER OF SURRENDER OF METEITEI FARMERS CO. DOCUMENTS Dated 8/8/1990 BY IBRAHIM INJAGA LIVANZE
EXH 147	Johnstone Nyaga Witness No.231	O.B. extract from Sondu Police Station dated 6/3/92 and 9/3/92, showing incidents which took place and arrests made
EXH 148	Raphael Adero Okwiri	A Kenya Times Newspaper Cutting dated April 29 <sup>th</sup> , 1993, headed Kericho D.C. Issues notice to squatters
EXH 149	Raphael Adero Okwiri Witness No.236	A Nation Newspaper Cutting dated January 6 <sup>th</sup> 1995 headed CLASH VICTIMS HURT IN RAID
EXH 150	Raphael Adero Okwiri Witness No.250	A Nation Newspaper Cutting dated December 14 <sup>th</sup> , 1993, headed POLICE DEMOLISH SQUATTER HOUSES
EXH 150 (A)	George Kiaye	Newspaper cutting of DAILY NATION dated 6/12/93 headed: 200 FLEE FARM AFTER INVASION report filed by George Kiaye
EXH 151	James Ojuok Adhore	A Bundle of 34 Receipts issued to Members of Buru Farmers Co-op. Society Ltd as Purchase Deposit of the Land and dated between 1973 January to 1977 January
EXH152 (A-M)	James Ojuok Adhore Witness No.237	Exchange of correspondences between The Commissioner of Lands & Ministry of Livistock Development and Ministry of Lands & Settlement and also The D.C. and The Land Registrar Kericho plus Memorandums written by People living in Thesalia Holding Ground marked as (A-M)
EXH 153	Lawyer Makhecha	Letter dated 26/6/92 addressed to Hon. Prof. George Saitoti by RT. Rev. Bernard Muindi Moderator, 13 <sup>th</sup> General Assembly headed: RE: PUBLICATION OF REPORT BY THE N.C.C.K.
EXH 154		Permit issued with Intention of Holding Public Meeting Procession at Kinamba Trading Centre to operate from 19 <sup>th</sup> to 24 <sup>th</sup> /1/98 between 6.00 a.m. and 6.00 p.m. and issued to Peter Mwangi Macharia
EXH 155	Wachira Waruru, M.D. E.A. Std. Witness No.248	Newspaper cutting of THE STANDARD NEWSPAPER headed MOI OUT OR CIVIL WAR, SAYS MUIITE and subheading Race for state House Begins dated 14 <sup>th</sup> December, 1992
EXH 156	Stephen O. Mukombe Witness No.249	Register of Titles No. LR 646 to Harry Edward Watts John Thomas Riplaw both of Lumewa in the said colony settler (Kenya) & Algurnon John Price of Nakuru together with 4 attachment therein and approved by Registrar of Title
EXH 156 (A)	Wilson Gacaja	A sketch map representing Nyanza Province and Kericho District and the disputed Buru Thesalia Farm land No. 3979/2/1
EXH 156 (B)	Wilson Gachanja	A Gazette Notice No. 3306 headed THE



	Witness No.122	REGISTRATION OF TITLES ACTS CAP 281 allowing George Evagelos Syragos Magaritis as the registered proprietor of L.R. 3979/4 measuring (180.2) hectares
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EXH 157	Rajni Sheth, Lawyer	Hansard Report on Parliamentary Debates dated 14/10/1992 touching on motion of Select Committee Report on Ethnic clashes The KILIKU Report
EXH 157 (A)	Rajni Sheth	Newspaper Cutting: Daily Nation of Thursday 15 <sup>th</sup> October, 1992 headed: Sub heading A resounding NO from Parliament as ... 3 IN KILIKU Team DISOWN Report filed by David Rogoncho
EXH 157 (B)	Rajni Sheth	A verbatim report of Parliament proceeding dated 29/9/92 touching on the KILIKU Report debated in Parliament
EXH 158	Rajni Sheth	Newspaper Cutting: Kenya Times, Thursday: September 28, 1993 headed: KODIPO THE TEA PICKER sub heading Times Investigations reveal the truth about Valentine Uhuru Kodipo
EXH 158 (A)	Rajni Sheth	Newspaper Cutting DAILY NATION dated 22/4/97 under – the headline WARA NOW DISMISSES KODIPO, Report filed by Maguta Kimemia
EXH 158 (B)		A verbatim Report dated 6 <sup>th</sup> October, 1992 and headed ASSIMBLY DEBATES touching on Parliamentary Debate
EXH 158 (C)		A verbatim Report on Parliamentary Debate dated 1 <sup>st</sup> October, 1992 touching on KILIKU Report of Ethnic clashes
EXH 159	P. L. Lumumba, Lawyer	Verbatim Report on Parliament Debate date 19 <sup>th</sup> October, 1993
EXH 160	Aphidelo Alfred Ouma – OCPD Witness No.254	O.B. extract of 13.12.93 from Kericho Police Station, showing officers dispatched and duties, allocated to them during the demolition at Thesalia Holding Ground
EXH 161 (A)	DPP	List of 32 adversely mentioned people as the Instigators and perpetrators of tribal clashes of 1991 and the same to avail themselves to cross-examine on 25/3/99
EXH 161 (B)	DPP	List of 20 distinguished people alleged to have instigated and perpetrated clashes of 1991 Through Inflammatory statements to cross-examine on 26/3/99
EXH 162	SSP Aphidelsi Alfred Ouma	Minutes of Kericho D.S.C. meeting held on 24/9/93 at The District Commissioners office at 9.00 a.m.
EXH 163		O.B. extract from Kericho police station dated 5/3/92 showing The Security team sent to Thessalia for demolishing exercise
EXH 164	Hon. Dickson Kihika Kimani Witness No.272	A sworn statement of Hon. DICKSON KIHKA KIMANI M.P. for Molo and sworn on 17/11/98 at Nakuru
EXH 165	Chief James Kipkoech Koskei	Leaflet showing that Kalenjin must vacate Londiani by 25/4/93 and that the Chiefs head will be beheaded
EXH 166	Hon. William O. Ntimama Witness No.273	Minutes of special Leaders meeting held at Enoosupukia Location on 22/9/91 and the Agenda was FORESTATION AND WATER SOURCES and attended by 27 KANU members from Narok

EXH 167 (A)	Hon. Ntimama	Correspondence dated 5 <sup>th</sup> March, 1993 and addressed to Hon. John Sambu, Minister for Environment and Natural Resources with HON. W.R.OLE NTIMAMA letter head
EXH 167 (B)	Hon. Ntimama	Letter written to Hon. John Sambu Minister for Environment and Natural Resources dated 14 <sup>th</sup> September, 1993 depicting the action County Council of Narok is anxious to do and the back-up and professional assistant required and written by Hon. Ntimama
EXH 167 (C)	Hon. Ntimama	A letter headed RE: ENOOSUPUKIA FOREST from the desk of Hon. John K. Sambu, M.P. Minister of Environment and Natural Resources and dated 15 <sup>th</sup> September, 1993 showing that they will gazette the area and it will be afforested.
EXH 167 (D)	Hon. Ntimama	Letter from the desk of Hon. W. R. Ole Ntimama, M.P. to Mr. D.K. Andere, P.S. Ministry for Information and Broadcasting dated 14 <sup>th</sup> September, 1993 headed RE: TELEVISION CREW TO VISIT ENOOSUPUKIA and signed by Hon. Ntimama
EXH 168 (A)	Hon. Ntimama	Newspaper Cutting from The Nation Newspaper dated 30/10/93 report on Parliament report under the heading A PARLIAMENT WRITING ITS OWN HISTORY OF INFAMY and reported by EMMAN OMARI
EXH 168 (B)	Hon. Ntimama	Newspaper cutting of 20/10/93 and headed It's a war for our rights – Ntimama and sub-heading Narok Clashes: Uproar in House
EXH 168 (C)	Hon. Ntimama	FINANCE MAGAZINE under the Headline How To Rob Banks Without violence MAGUGU'S BILLIONS and a sub-title lets Reject The Despots and Tyrants NTIMAMA'S CHALLENGE TO 'PRESIDENT and dated 6/12/98
EXH 168 (D)	Hon. Ntimama	Newspaper Cutting of THE PEOPLE DIALY dated 13 <sup>th</sup> January, 1999 under the headline: KIKUYUS AND MAASAIS CLASHED OVER WATER and reported by Peter leftie
EXH169 (1-11)	Hon. Ntimama	11 Copies of Newspaper cutting 4 from the Nation and 9 from the Std and top most headed: NTIMAMA DENIES HE ORGANISED TRIBAL CLASHES and dated 24/2/92
EXH 171 (A)		Minutes of the Full Council meeting held on 7 <sup>th</sup> May, 1993 headed MIN. 18/93 ENOOSUPUKIA WATER CATCHMENT AREA and Narok County Council
EXH 171 (B)		Letter to The Commissioner of Lands through P.S. Ministry of Local Government headed: REF: GAZETTMENT OF ENOOSUPUKIA WATER CATCHMENT AREA AS A FOREST BY NAROK COUNTY COUNCIL and dated 27 <sup>th</sup> September, 1993 and Narok County Council

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities related to the business.

2. It also emphasizes the need for regular audits and reviews to ensure compliance with applicable laws and regulations.

3. Furthermore, the document highlights the significance of proper documentation and record-keeping for tax purposes.

4. In addition, it discusses the importance of maintaining accurate financial statements and reports.

5. The document also addresses the need for proper inventory management and control.

6. Furthermore, it discusses the importance of maintaining accurate records of all employees and their activities.

7. In addition, it discusses the importance of maintaining accurate records of all contracts and agreements.

8. The document also addresses the need for proper record-keeping for legal and regulatory purposes.

9. Furthermore, it discusses the importance of maintaining accurate records of all financial transactions.

10. In addition, it discusses the importance of maintaining accurate records of all assets and liabilities.

11. The document also addresses the need for proper record-keeping for tax and accounting purposes.

12. Furthermore, it discusses the importance of maintaining accurate records of all business operations.

13. In addition, it discusses the importance of maintaining accurate records of all business activities.

14. The document also addresses the need for proper record-keeping for legal and regulatory purposes.

15. Furthermore, it discusses the importance of maintaining accurate records of all business transactions.

16. In addition, it discusses the importance of maintaining accurate records of all business operations.

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36. Furthermore, it discusses the importance of maintaining accurate records of all business activities.

37. In addition, it discusses the importance of maintaining accurate records of all business transactions.

38. The document also addresses the need for proper record-keeping for legal and regulatory purposes.

39. Furthermore, it discusses the importance of maintaining accurate records of all business operations.

40. In addition, it discusses the importance of maintaining accurate records of all business activities.

EXH 172	Hon. Ntimama	Newspaper Cutting showing mutilated Cows by Kikuyu belonging to Maasais under the heading ENOOSUPUKIA: 10 KILLED IN RAID
EXH 173	Lawyer, Mureithi Mbugua of LSK	Newspaper cutting from THE STD Newspaper dated 5/4/93 title: I have the evidence, says Ntimama also bearing his photo Ntimama's and also Kajiado South M.P. Mr. Phillip Singaru
EXH 174	Rioba Chacha Kerario Witness No.286	A sworn statement of Mr. Rioba Chacha Kerario Resident of Bukira East location dated 14/2/99 and signed by him.
EXH 175		
EXH 176	Martin Wanga Witness No.296	An alleged sworn statement of CPL MARTIN WANGA (C.I.D. NAKURU) stating the part he played in 1991, 1992 clashes
EXH 177	Haron Ndubi for L.S.K.	A sworn Affidavit of FRANCIS KAHINDI GITARI of Nakuru stating on Oath the personalities who confessed to him as having taken part in the tribal clashes of 1992 in Rift Valley from The Armed forces
EXH 178	Cpl. Martin Wanga	Three (3) specimen signatures of CPL MARTIN WANGA OF CID NAKURU
EXH 179	Cpl. Martin Wanga	A sworn statement of CPL MARTIN WANGA F.NO.33839 DIV. C.I.D. Buruburu dated 16/4/99
EXH 180	Major Ndirangu Wahome Witness No.299	Letter of Appointment of STANLEY ABUOVA MUKELE P.C. NO. 48351 dated 9/2/85 terms on probation basis and other annexures.
EXH 181	Noah Kiptoo	A sworn statement of CPL Noah Kiptoo 48331 G.S.U. Molo Camp
EXH 182	Prince chamungu Maliyamungu Witness No.306	A form application for change of particulars in ID/ Cards – applicant being JIMMY ROGERS PSARACH to MUSEBEI CHAMUNGU MALIYAMUNGU of Mt. Elgon District KAPSOKWONY and dated 28/2/97
EXH 183	ACP Nyakundi Witness No.313	A Sworn statement of JEREMIAH NDANI OCS NGARUA POLICE STATION, KINAMBA dated 10/2/98
EXH 184	SNR. ACP John Christopher Namai	Statement of inquiry taken from NGENGI MUIGAI dated 19 <sup>th</sup> October, 1995 at CID HQRs under allegations that he was in possession of writing of Seditious materials and publication
EXH 185	SACP J. C. Namai	A letter to The Director of C.I.D. dated 8/11/95 and received on 10/11/95 Ref: CENTRAL 111/2421/95 ALARMING PUBLICATIONS ACCUSED: MBUTHI GATHENJI and written and signed by J.C.Namai
EXH 186	J. C. Namai	Confidential Internal Memo from Director of C.I. to J.C. Namai, ACP. dated 14/11/95 Ref: CID/SEC/2/11/2/ VOL/1/383 subject CENTRAL 111/2421/95 – ALARMING PUBLICATION ACCUSED – MBUTHI GATHENJI Requesting Namai to make an appointment with D.C.I. Mr. N. N.

		arap Too
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EXH 187	SACP J. C. Namai	A letter from the A.G.s Chambers dated 11/12/95 to Mr. Noah arap Too CBS, DCI, CID Hqs. RE: ACCUSED MR. MBUTHI GATHENJI asking the file to be forwarded to the AG and signed by the D.P.P. Mr. Chunga
EXH 187 (A)	Mr. Noah Arap Too	Letter dated 28 <sup>th</sup> February, 1996 to D.C.I. Hqs. Headed POLICE FILE NO. 111/2/21/94 NAIROBI C.M.CR.CASE NO. 3713/95 REPUBLIC VS. MBUTHI GATHENJI asking the File to be closed and returning the same
EXH 188	SACP J.C. Namai	Statement under Inquiry of Mbuthi Gathenji dated 19/10/95 and taken by Raphael Njuguna Muchembi C.I.P. at C.I.D. HQRS. Stating that he was found in possession of statements recorded various officers alleged to have taken part in Rift Valley tribal clashes incriminating the Government.
EXH 189		A Charge Sheet, charging MBUTHI GATHENJI a male of Kikuyu origin from Kajiado District with Alarming Publication, contrary to section 66(1) of the penal code CAP 63, Laws of Kenya read together with section 36
EXH 190	SACP J. C. Namai	News Report from IBA HUMAN RIGHTS letters Protests from various countries in Africa Continental and showing The IBA president letter to the A.G. Kenya Amos Wako
EXH 191		Summons requiring attendance of Hon. William Ole Ntimama Minister For Local Government through the Commissioner of Police on charges of incitement to violence and disobedience of law dated 17/5/95 and signed by the Chief Magistrate (U.P. Kidula)
EXH 192		A ruling of Chief Magistrate Court at Nairobi Private Prosecution No. 13/95 REPUBLIC VS. JOSEPH KAIRU MBUGUA, FRANCIS MARTIN KAHINDI GITARI, NGENGI MUIGA showing the Nolle Prosqui entered by A.G. and signed by Chief Magistrate U. P. Kidula and dated 17/5/93
EXH 193	SACP J.C. Namai	Notice of the day of Delivery of Ruling of Criminal Rev Case No. 23/1995 from the High Court of Kenya at Nairobi between REPUBLIC THRO' JOSEPH MBUGUA & 2 OTHERS – PROSECUTOR VS. HON. WILLIAM RONGURWA OLE NTIMAMA – ACCUSED attention of Mr. B. Chunga to be delivered on 13/5/95 at 10.30 A.M. in Chambers 48 and signed by P.DY.R. High Court
EXH.194	SACP J.C. Namai	A search warrant from C.M.'s court Nairobi to search Mbuthi Gathenji of Gathenji Advocates in his office and house on seditious publication and dated 18 <sup>th</sup> October, 1995 and signed by P. Magistrate Nairobi
EXH 195		An Affidavit sworn by JOHN CHRISTOPHER NAMAI ACP attached to C.I.D. Hqs. Requesting the

		<b>Court to issue him with search warrant to search MBUTHI GATHENJI RESIDENCE AND OFFICE signed by Police Officer and Magistrate on 18<sup>th</sup> October, 1995</b>
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EXH 196 (A)	SACP J.C. Namai	Statement under Inquiry of David Kipkoske Rono sworn on 28/11/95 at 9.40 a.m. C.I.D. Hqs.
EXH 196 (B)	SACP J.C. Namai	Statement under Inquiry of John Kipkosgei Cheron sworn on 30/10/95 at C.I.D. Hqs
EXH 197	SACP J. C. Namai	Statement of Major Ndirangu Wahome, Department of Defence Personnel Branch
EXH198 (A-T)	SACP J.C. Namai	22 Sworn Statements allegedly taken from person said to have been working in the armed forces and alleged to have taken part in the tribal clashes Rift Valley and also bearing forces numbers
EXH 199	Wilson Gacaja Commissioner of Lands	A Sketch Map representing Narok District and various Divisions and Locations
EXH 200	Wilberforce Kisiero Witness No.322	Bundles of Newspaper Cuttings of various Newspaper and dates touching on issues arising from Mt. Elgon District
EXH 201	Inspector Peter Ocholla	O.B. Occurrence Book entry No.50 of Tarakwa Police Station dated 7/11/ showing that 6 suspects were booked in as suspected arsonists.
EXH 202	Noah Arap Too Witness No.326	Confidential Letter dated 1/9/97 written by Mr. N.N. Arap Too Director of Criminal Investigation Ref: SEC.POL.2/2/12/6 VOL.111/22 headed ETHNIC CLASHES IN COAST PROVINCE and written by DUNCAN K. WACHIRA
EXH 203	Mr.N.N.Arap Too	Letter from The Commissioner of Police dated 15, October, 97 Ref: CID/SEC/4/4/7/VOL.VI/331 and typed in a paper headed OFFICE OF THE PRESIDENT Director Criminal Investigations Department under the heading PRELIMINARY REPORT ON ATTACK ON LIKONI POLICE STATION and written to Director of Criminal Investigations.
EXH 204	Mr. N. N. Arap Too	Criminal Investigation Department Report dated 2 <sup>nd</sup> Dec. 1997 Ref: CID/SEC/2/2/212/10 VOL.11/(133) written by Mr. John Namai and headed TRIBAL CLASHES IN TRANSMARA GUCH Districts a ten page report compiled by J.C. NAMAI staff officer.
EXH 205	N. N. Arap Too	A verbatim Report by Mr. Noah Arap Too D.C.I. dated 11 Dec, 1997 Ref: CID SEC/2/2/12/10 VOL.11/(134) and written to Mr. Duncan Wachira MBS HSC Commissioner of Police headed: TRIBAL CLASHES IN TRANSMARA/ GUCHA DISTRICT edited from the earlier report of Mr. Namai Exh. 204
EXH 206		Letter to PS/ Secretary to the Cabinet and Head of Public Service Mr. Fares Kuindwa dated 12 <sup>th</sup> January, 1998 Ref: SEC.POL.2/2/12/10 VOL.111/35 under the heading: TRIBAL CLASHES IN TRANSMARA/GUCHA DISTRICT appraising him and asking him to take the necessary steps
EXH 207	Mr. N. N. arap Too	Confidential letter to PCIO Coast Province dated 16/9/97 Ref: CID/ SEC/4/4/13/53 and headed DCIO

		<b>KWALE MISUSING MOTOR VEHICLES by (N.N. arap Too) CBS DIC asking the DCIO Mr. Katana to be investigated and attached is the findings of the investigations</b>
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EXH 208	Duncan Wachira	A signal from VIG.OPS.NRI to All Provincial (P) Formation Commanders Ref: SEC.POL.2/11/VOL.11/122, ordering them the steps to take to Guard vital Installations and signed by G. M. MUTHEE
EXH 209	Mr. Wachira	A Report by the Kenya police headed GUIDELINES ON THE CONTINGENCY PLAN FOR THE GENERAL ELECTIONS 1997 compiled by Mr. Duncan K. Wachira MBS, HSC Commissioner of Police
EXH 210		
EXH 211	Mr. Wachira	A letter from The Director of CID Mr. N. N. Arap Too dated 13 <sup>th</sup> July, 1998 Ref: CID/SEC/2/2/12/ VOL.111/13 to Hon. Amos Wako, A.G. and headed RE: TRIBAL CLASHES IN COAST PROVINCE – AUGUST, 97 updating him on the progress made in the investigations.
EXH 212 (A)	H. A. Silaha	A Report to The Director C.I.I. attention N. N. Arap Too and headed PRELIMINARY REPORT undertaken by H.A. Silaha undercover agent together intelligence why violence erupted in Mombasa
EXH 212 (B)	H. A. Silaha	A Follow Up Report to the Director of C.I. on what was the probable Causes of violence in Coast Province
EXH 213	J. C. Namai	A Report by J. C. Namai P.C.I. Coast Province to Mr. Noah N. Arap Too D.C.I. headed: A BRIEF ON THE ALLEGATIONS OF INVOLVEMENT OF EMMANUEL KARISA MAITHA & OMAR MASUMBUKO IN THE ON GOING VIOLENT ACTIVITIES WITHIN COAST PROVINCE dated 20/8/97
EXH 214	Geoffrey Kinoti	DAILY NATION Newspaper Cuttings of Sunday, July 8 1990 headed: City Rioters Burnt Buses. Monday, July 9, 1990 headed Three killed in Fresh City riots: Tuesday, July, 10, 1990 headed: Six more die as violence spreads: Wednesday July 11, 1990 headed Riots leave 15 dead, 63 injured and Friday July 13, 1990 headed: What we must do to provide calm
EXH 215	Geoffrey Kinoti	A Report to The Commissioner of Police Ref: SEC.POL.2/11/(36) headed: POST MORTEM ON CIVIL DISTURBANCE and compiled by (J.M. MULAVU) OGIN. On behalf of P.P.O. Nairobi
EXH 216	Lawrence M. Chemarun Witness No.331	A Report headed: THE SABAOT LAND, HUMAN AND CULTURAL RIGHTS and addresed to The Kenya Judicial Clashes Inquiry 1998/99

LIST OF WITNESSES

<u>NO.</u>	<u>NAME</u>	<u>OCCUPATION</u>
1.	Modeda Lumumba.....	Program Officer, Kenyan Human Rights Commission.
2.	Nzamba Kitonga.....	Chairman, Law Society of Kenya.
3.	Jamal Dalal Warsame.....	Deputy Commissioner of Police/ Now P.P.O. Rift Valley.
4.	Prof. Onesmus Mutungi.....	Lecturer, Nairobi University; Advocate of the High Court of Kenya; Chairman Committee of Human Rights in Kenya.
5.	Japheth Mwanja.....	Deputy Commissioner of Police/P.P.O. Coast Province.
6.	Jean Njeri Kamau.....	Advocate/ Executive Director of FIDA (K) Chapter.
7.	Arch Bishop Ndingi Mwana Nzeki...	Catholic Arch. Bishop of Nairobi Diocese.
8.	Peter Mwendwa Mbuvi.....	Deputy Commissioner of Police/Deputy Director, Criminal Investigations Department, CID Headquarters, Nairobi.
9.	David Tom Maari.....	Advocate of High Court of Kenya.
10.	Josphat Machuma Mokweli.....	(Intern) Student of USIU pursuing Degree in Librarianship.
11.	Isaac Maitiri Muthuri.....	Deputy Commissioner of Police/P.P.O. Nairobi.
12.	Philemon Abongo.....	Deputy Commissioner of Police/ Commandant Traffic Department, Kenya Police.
13.	Wachu Chachole.....	Businessman.
14.	Johnson Mungai Chege.....	Preacher.
15.	Leslie Betawa Mwashiro.....	1 <sup>st</sup> Deputy Chairman of Shirikisho Party of Kenya.
16.	Nicholas Kariuki Githuku.....	Student, Nairobi University.
17.	Samwel Migui Wachira.....	Development & Management Consultant; A Sociologist.
18.	Nancy Baraza.....	Advocate of the High Court of Kenya; Chairperson FIDA (K) Chapter.
19.	Joseph Kennedy Kiliku.....	Ex M.P. Changamwe/Chairman – Parliamentary Select Committee to investigate ethnic Clashes in Western & other parts of Kenya 1992.

20. John Litunda..... D.C. Nakuru.
21. Jeremiah Matagaro..... Deputy Commissioner of Police/ P.P.O. North Eastern Province.
22. Prof. Ezra Kiprono Maritim..... Deputy Vice-Chancellor, Kenyatta University.
23. Pius W. Obara..... National Chairman of United Nation Association of Kenya.
24. Stephen Timbiti Chiteka..... Deputy O.C.S., Njoro Police Station, Nakuru District.
25. Nicholas Mberia..... P.C., Eastern Province; Ex D.C. Nakuru.
26. Philip K. Cheruiyot..... Senior Assistant Commissioner of Police/ Commandant Anti-Stock Theft Unit (Gilgil) Former O.C.P.D. Nakuru.
27. Petkay Shen Miriti..... Deputy Commissioner of Police/Directorate of Security Intelligence, Headquarters, Nairobi.
28. Gedion Muoki Mutua..... Senior Assistant Commissioner of Police/ P.C.I.O. – Rift Valley Province.
29. Kinuthia Mbugua..... D.C. Maragua. Former D.C. Nakuru.
30. David Kipkorir Siele..... Senior Superintendent of Police/ DSIO Uasin Gishu District.
31. Roshanali Karmari Pradhan..... Businessman/ Kizingo area in Mombasa.
32. Joseph Ochieng Onyiego..... Victim/ Businessman/ Likoni Division/ Mombasa District.
33. Omar Raisi..... Divisional Security Intelligence Officer/Chief Inspector.
34. Omar Hussein Gari..... Chief Ngombeni Village/ Likoni Division/ Mombasa District.
35. Swaleh Salim Bin Alifan..... Witchdoctor.
36. Shukri Baramadi..... Provincial Security Intelligent Officer Coast.
37. Wasike Walekhwa Murumba..... Cpl. Police Central Police Station (Mombasa).
38. Joab Ating'a..... Ag. Inspector of Police – Likoni Police Station (Security Intelligence Officer).
39. Priscilla Kibwia..... Sergeant, Likoni Police Station – Security Intelligence Officer.
40. Peter K. Wilson..... D.S.I.O. Mombasa/ Ag. Assistant Commissioner of Police.
41. Edwin Nyaseda..... Snr. Ass. Commissioner of Police/P.C.I.O. Western Province.

42. David I. Lokemer..... Police Constable, Likoni Police Station – Security Intelligence Officer.
43. Jonathan Kipkrui Koskei..... OCPD Mandera, North Eastern Province; Former OCS Uban Police Station, Mombasa.
44. John Njenga..... Catholic Archbishop Mombasa Diocese.
45. Athumani Zuberi Mwakunyapa..... Asst. Chief, Pungu Sub-Location, Matuga.
46. Hassan Mohammed Haji..... Commandant - A.P. College Embakasi, Nairobi; Former Deputy P.C. Mombasa.
47. Ramadhani Mwalimu Mwaonu..... Ass. Chief Kitenje Sub-location/ Likoni Division/ Mombasa District.
48. Jacob Kenneth Katana..... Rtd.Chief Inspector of Police.  
Former D.C.I.O. Kwale.
49. Rophin Mwakio Ndau..... Returning officer Electoral Commission of Kenya.
50. David Jakaiti..... Trans Nzoia DC.
51. Saidi Sudi Ahmadi..... Unemployed.
52. Christopher Opondo..... Superintendent of Police/ Investigator in the Commission.
53. Flora Tsonzaka..... D.C.I.O. Kilifi/Chief Inspector of Police.
54. Kassim Swale..... Watchman/Likoni.
55. David Opala..... D.O. Kamwaura Division, Nakuru District.
56. Mohamed Juma Kutsola..... Inspector – Administration Police.
57. Ali Mohamed Mbakari..... D.O.'s Driver Matuga.
58. Khelef Abdulrahman Khalifa ..... Businessman.
59. Hammerton Mbogho Mwavisa..... Currently attached to Police Headquarters, Nairobi; Former OCPD Kwale Division.
60. Reuben Sumuni..... Police constable Kwale Police Station.
61. Francis Maina Njuguna..... D.S.I.O. Kisumu District/Formerly D.S.I.O. Kwale.
62. Patrick Lewa Menza..... Inspector of Police(Kwale).
63. David Joseph Kyalo..... O.C.P.D. (Kwale)/SSP.
64. Khator Mohamed Khator..... Under Secretary Office of the President (Cabinet Department).
65. Paul Olando..... D.C. Mombasa.
66. Ramadhani Mohammed Nwauno..... Former Councillor /Digo elder.
67. Peter Johnson Kariuki..... Former O.C.S. Likoni (retired).
68. Aggrey Otsula Muchelule..... Chief Magistrate Mombasa Law Courts.
69. Gedion Muoki Kimilu..... Prosecutor, Chief Magistrate's Court, Mombasa)/Superintendent of Police.

70.	George Kingi .....	Inspector of Police.
71.	Juma Hamisi Mwamsele Alias Gocco	Unemployed.
72.	John Mberia.....	Army major, Nyali Barracks, Mombasa.
73.	Nicholas Ndono.....	Former Lt. Colonel of Army, Nyali Barracks. Currently attached to D.O.D, Nairobi.
74.	John Christopher Namai.....	Former PCIO Coast/S.A.C.P at C.I.D. HQS Nairobi.
75.	David M. Mule .....	Deputy Secretary (Cabinet).
76.	Samuel Kipchumba Limo.....	P.C. Coast.
77.	Morris Situma.....	Police Sergeant.
78.	A.H. Dossaji.....	Chairman Mombasa & Coast Tourist Association (Malindi Branch).
79.	Samson Munyao.....	Chief Inspector of Police – Kijibwa Police Station – Malindi.
80.	Severinus Musungu Njembe.....	Project Officer/ (Kaya Conservation) National Museum of Kenya (Kilifi).
81.	Mwamba Mwanyoka Msumbo.....	Counsel Elder of Rabai Kaya/ Malindi District.
82.	Dionsious Ndegwa Waweru.....	O.C.P.D. Kilifi/Superintendent of Police.
83.	Jactophus Chibo.....	Police Constable, Mariakani Police Station.
84.	Malaki Olewa.....	Chief Inspector Mariakani Police Station/ Malindi.
85.	Adiel Mate.....	Inspector of Police Urban Police Station.
86.	Sammy Mathenge.....	Staff Officer P.C.I.O. Office/Mombasa/ SSP.
87.	Emmanuel Karisa Maitha.....	M.P. for Kisauni Constituency.
88.	John Muthuita Ndaiga.....	Inspector-in-Charge - 999 Control Room, Mombasa.
89.	Francis Gichuki .....	Former PPO Coast (Retired).
90.	Philip Nahashon Mubia.....	Storeman Provincial Police Workshop (Mombasa).
91.	Omar Mohammed Said.....	In-charge of Galana Hospital Malindi.
92.	Iha Luwali.....	Receptionist Galana Hospital Malindi.
93.	Milka Mumbi Kinyanjui.....	Storekeeper, Provincial Police Workshop, Mombasa.
94.	Isaac Eliud Ndweyi Okoth.....	P.C.I.O – Coast Province.
95.	Peter Kilonzo Kavila.....	Former OCPD Nakuru/SSP.
96.	David Wambua.....	OCS Njoro/Chief Inspector of Police.
97.	Sajjad Mohammed Ali Rashid.....	Nominated MP/Businessman.
98.	Binaifer Nowrojee.....	Legal counsel for Human Rights watch.
99.	Hisham Abdulah Ndovu Mwindau....	Businessman Mombasa.
100.	Boy Juma Boy.....	Former M.P. Matuga.
101.	Hon. Shariff Nassir Abdullah Taib...	M.P. for Mvita Minister for Culture and Social Services, Home Affairs and National Heritage.

102. Philemon Apili Owino..... Deputy D.S.I.O., Nakuru District.
103. Geoffrey Muriu Njoroge..... Businessman.
104. Gitau Kanina Daudi..... Watchman.
105. Willy Rotich Kamuren..... Businessman.
106. John Mwangi Nduati..... Businessman.
107. Timothy Kipkemboi Sirma..... Former P.C. – Coast Province.  
Currently at O.P. Nairobi.
108. Wycliff Soi..... Chief of Kamara Location/ Molo Division/ Nakuru District.
109. Peter Kingola..... D.O. Njoro Division/ Nakuru District.
110. Suleiman Rashid Shakombo..... M.P. for Likoni (Shirikisho Party of Kenya).
111. Stephen Kamau Chege..... Headmaster Ingure Primary School in Molo.
112. Henry Obino..... D.O. Miwani Division; Ex D.O. Molo Division.
113. Muthui Mwai..... Nation Newspaper Chief Bureau (Nyeri).
114. Benjamin Ndegwa..... Rtd. Chief, Nyota Location in Molo Division.
115. Tom Matoke..... Nation Newspaper Reporter (Kisii Bureau).
116. John Kariuki..... Ag. Provincial Signals Officer (Coast)/IP.
117. Robert Kimeli Sugut..... Hon. Sajjad's bodyguard/PC.
118. Rev. Mutava Musyimi..... Secretary General NCCK.
119. Suleiman Mwaronga Kamolle..... Matuga M.P.
120. John Keen..... Businessman. Former M.P. Kajiado North.
121. Wilson Kiptarus Langat..... Hon. Sajjad's driver.
122. Wilson Gacaja..... Commissioner of Lands.
123. Augustine Khaemba Masinde..... Deputy Planning Officer Coast; Currently at Ardhi House Nairobi.
124. Fredrick Mutisya Kavyu..... Former Provincial Signals Officer Coast (retired).
125. Benson Matangi Okemwa..... Former P.S.I.O. Rift Valley/Deputy Commissioner of Police; Currently at Headquarter, Nairobi.
126. John Abduba..... Former D.C., Nakuru; Currently D.C., Kilifi District.
127. Grace Chepkoskie Lasima..... Farmer.
128. Henry Muchoki..... D.C.I.O. Nakuru/Currently attached at Anti-Burglary Unit Nairobi (Gigiri).
129. Joel Njoroge Mwatha..... Farmer.
130. Selina Chepkoskei Kipruto..... Farmer.
131. Benjamin Opondo..... Farmer.
132. Peter Agochi Asiago..... Teacher.
133. Agii Swaleh..... Provincial Physical Planning Officer, Coast.



134. Priscilla Lelatic..... Farmer.
135. James Njau Biden..... Farmer.
136. Michael Gichohi Mathai..... Businessman.
137. Kipkemoi Langat..... Ex-Councillor of Lare Location/ Molo Division/  
Nakuru District.
138. Johnstone Kamau..... Sub/Chief of Elburgone Location/ Molo Division/  
Nakuru District.
139. John Makato Kisio..... Farmer.
140. Susan Tunoi..... Farmer.
141. Augustine Kipkemoi Ngelich..... Farmer.
142. John Muma..... Teacher.
143. Paul Kagiri Kuria..... Farmer.
144. Esther Martha Lavuta..... Farmer.
145. Daniel Kipkemoi Kirui..... Senior Chief Kipsumbeiwo Location/ Keringet  
Division/ Nakuru District.
146. James Muchangi Githinji..... Farmer.
147. Stanley Mutungi..... Rtd. P.P.O. Rift Valley/ Deputy Commissioner of  
Police.
148. Richard Kipkemoi Kirui..... Chief Nyota Location Keringet Division/ Nakuru  
District.
149. Joseph Ngechu Chege..... Asst. Chief Maai Mahiu Sub-Location/ Longonot  
Location/ Naivasha Division/ Nakuru District.
150. Michael K. Langat..... Ass. Chief Sinedet sub-Location/Lare Location/  
Nakuru District.
151. Njihia Mwaniki Mukora..... Farmer.
152. Joseph Rotich Kipkones..... Chief Nessuit Sub-Location/ Sigotik Location/ Njoro  
Division/ Nakuru District.
153. Silvester Korir..... Ass. Chief Kamara Sub-Location/ Kamara Division/  
Nakuru District.
154. Joseph Kirui..... Rtd. A.P., Acting Ass. Chief Chepakundi Sub-  
Location/ Olenguruone Division/ Nakuru District.
155. David Masubugi Malel..... Asst. Chief Kebinget Sub-Location, Nakuru District.
156. Wilson Kipyegon Maritim..... Rtd. Asst. Chief, Ikumbi Sub-Location/ Molo  
Division, Nakuru District.
157. Stephen Kariuki Njoroge..... Asst. Chief, Mukungugu Sub-Location/ Njoro  
Division/ Nakuru District.
158. John Rono..... Chief Mau Samit Location, Nakuru District.

159.	Oscar Wakhisi.....	O.C.S. Lodwar/Chief Inspector of Police; Former O.C.S. – Nakuru.
160.	Simon Peter Gitahi.....	Farmer; Rtd. Inspector of Police/Deputy OCS, Molo Division, Nakuru District.
161.	Solomon Gichara Michuki.....	Businessman.
162.	Mary Chebet Lasima .....	Unemployed.
163.	Daniel Serebei Salamia alias Kipsigei	Pastor Full Gospel church.
164.	Joseph Njoroge Macharia.....	Catechist of Catholic Church.
165.	Kiplangat Kowogen.....	Farmer.
166.	Joseph Matikwa Chesire.....	Farmer.
167.	Francis Ng'ang'a Kariuki.....	Unemployed.
168.	Cosmas Onderi Petro.....	Farmer.
169.	Evans Njau Kariuki.....	Former M.P. Nakuru West/Farmer.
170.	Jonathan Maritim Ngeno.....	Farmer.
171.	John Gachie Karigia.....	Rtd. Teacher.
172.	Stanley Kiplangat Maritim.....	Farmer.
173.	Patrick Macharia Ng'ang'a.....	Businessman.
174.	Lasiti Ole Kebelekenya.....	Chief Longonot Location/ Naivasha Division/ Nakuru District.
175.	Wilson Kiplangat Rono.....	Farmer.
176.	Joseph Kimani Mboi.....	Farmer.
177.	Peter Kirumba Kinyanjui.....	Farmer.
178.	Severinus Nyaga Gisindano.....	Rtd. Teacher.
179.	Christine Chelangat.....	Farmer.
180.	David Kiplangat Chirchir.....	Acting Chief, Naishi - Molo Division/ Nakuru District.
181.	Simon Kipkania.....	Former O.C.P.D. Molo Division; currently SSP - Kilimani Nairobi.
182.	Jonathan Muse Mutai.....	Chief Olenguruone Location, Nakuru District.
183.	Dida Golicha.....	Former D.C.I.O. Nakuru, currently D.C.I.O. Kilindini – Mombasa.
184.	Longisa Ole Maloy.....	Farmer.
185.	John Kirtella Karia.....	Farmer.
186.	Palmuya Ole Nchiroine.....	Farmer.
187.	Kolian Ole Njuko.....	Farmer.
188.	Kitishe Ole Kekuta.....	Farmer.
189.	Florence Muthoni Kariuki.....	Farmer.

190. Samuel Pemba Waichuhi..... Farmer
191. Francis Kariuki Miringu..... Farmer.
192. Moses K. Barkutwo..... Former D.O. Olekurto Division/ Narok District.
193. Joseph Ole Kireu..... Chief Anabelbel Location, Narok District.
194. Lankisa Ole Tika..... Chief Entiani location/ Olokurto Division/ Narok District.
195. Joel Ntoika Kotini..... Chief of Merelo/ Ololunga Division/ Narok District.
196. Jonathan Kiprop Soi..... Former D.O., Mau Narok/Olmoran Division; currently at P.S.C. – Nairobi.
197. Peterson Maelo..... Chief Inspector of Police/OCS Olmoran Police Station – Laikipia District; Former OCS Narok Police Station.
198. Paul K. Cheruiyot..... D.O. I – Nandi District; former D.O. Mau Narok.
199. Peter Molinka..... Inspector of Police/OCS Nanyuki Police Station; former OCS Narok Police Station.
200. Calistus Anthony Akelo..... D.C. Taita Taveta District; former D.C. Narok.
201. Mohamed Osman Hassan..... D.O. Naivasha Division in Nakuru District.
202. Esther Njeri Mburu..... Farmer.
203. John Anthony Kaiser..... Catholic Priest.
204. Lochau Apalunginya..... Farmer.
205. Peter Ndigara Kahero..... Farmer.
206. Lamarias Lomuna..... Chairlady of KANU, Olmoran Location/ Laikipia District.
207. Fatuma Daudi..... Businessl-Lady.
208. Robert Ikonya Kamau..... Farmer.
209. Father Borsa Sandro..... Catholic Priest.
210. Benjamin T. Kabomet..... Rtd. Senior Chief, Supili Location - Ngarua Division, Laikipia District.
211. David Kingori Gichinga..... Councilor of Olmoran Ward/ Laikipia District.
212. John Kipkoech Kimaiyo..... Ass. Chief, Dimcon Sub-Location, Laikipia District.
213. Stephen Nyahiri Mwita..... Farmer.
214. Francis Kantai..... Student/ Catechist.
215. Kipkech Silali Kamuto..... Unemployed.
216. Wilson Lemoi Lule..... Chief Olmoran Location, Laikipia District.
217. Mutinda Ngunguni..... SSP at Nakuru Hq., former O.C.P.D. Laikipia District.
218. Chrisantus Oanga Oyugi..... The People Newspaper Daily Reporter.

219. Gedion Muli..... SSP/Trainer Kiganjo Police Training College; former OCPD Narok District.
220. Philip Kipserem Karonei..... Chief Meteitei Location, Nandi District.
221. Isach Ndege Chumo..... Farmer.
222. Wilfred Manyara Basweti..... Farmer.
223. Ibrahim Injaga Livanze..... Former Secretary of Meteitei Farm Company, Nandi District.
224. Christopher Shitsimi Mwashu..... Personal Secretary to the P.C. Central; formerly D.O.I - Nandi District.
225. Joseph Chepkwony Koskei..... Market Master of Kipsigis County Council (Sundu Market).
226. Arthur Ondu Going..... Chief Sigoti Location, Nyando District.
227. Peter Ondieki Obwori..... Watchman.
228. Mahamed Tache..... Police Corporal attached to Sundu Police Station, Nyanza.
229. David Mwendwa Momanyi..... Former Revenue collector Kipsigis County Council (Sundu Market).
230. Eliud Opiyo Nyangwe..... Ex-chief of Sigoti location/ Upper Nyakach Division/ Nyando District (Nyanza).
231. Johnstone Nyaga..... Chief Inspector of Police, Marakwet Police Station; formerly OCS Sundu Police Station.
232. Joseph Kipchumba Bett..... Chief, Kaplelatet Location, Kericho District.
233. Clement Nzomo Kiteme..... D.O.I Baringo District formerly Upper Nyakach Division.
234. Johnson Odera Omalla..... Farmer.
235. Henry Cheruiyot Arap Tuwei..... Senior Chief Songoh Location, Nandi District.
236. Raphael Adero Okwiri..... Farmer.
237. James Ojuok Ndore..... Former Chairman - Buru Hill Co-operative Farmers Society.
238. David Okech Onyango..... Pastor of Pentecostal Church of E.A.
239. Rachel Chepngetich Chesengeny..... Farmer.
240. Atieno Oindo..... Farmer.
241. Silvenus Ngindi Okello..... Farmer.
242. John Ngetich Chebochok..... Farmer.
243. Paul Matheri Wamai..... Advocate of the High Court of Kenya; former L.S.K. Chairman.
244. Patrick Ouma Onyango (Paddy)..... Former Secretary General KENDA Party.

245. Julius Ndegwa..... Formerly O.C.S. Songoh Police Station, currently at Urban Police Division – Mombasa.
246. John Kimtai Arap Langat..... Farmer.
247. M/s Lorna Akoth Otero..... D.O.I - Laikipia District.
248. Wachira Waruru..... Group Managing Editor – East Africa Standard Newspaper.
249. Stephen Onyino Mukombe..... District Land Officer, Kericho/ Bomet/ Buret Districts.
250. George Kiaye..... Daily Nation Newspaper Reporter (Kisumu Bureau).
251. Joseph Juma Gakure..... Senior Chief Kinamba Location, Laikipia District.
252. Joseph Kimaru Chumo..... Former D.C.I.O.- Narok District;current D.C.I.O. Gigiri Nairobi/ S.P.
253. David Kiilu Mativo..... Former D.C. Nandi;current D.C. Meru North.
254. Aphidelsi Alfred Ouma..... SSP/OCPD – Kericho.
255. Julius Kiplangat Arap Soi..... Rtd. O.C.P.D. Kericho.
256. Potash Oundo Owuor..... Security Intelligence Officer – Songhor, Kericho District.
257. Musa Kiptoo Arap Koech..... Chief Soliat Location, Kericho District.
258. Michael Mwangi..... O.C.P.P. - Ramasha Police Post; formerly at Koru Police Station.
259. Naomi Gacheri Nkanatha..... Police Corporal/Intelligence Officer, Ng’arua Police Division/ Laikipia District.
260. Samson Omweno..... D.O. Lugari Division; former D.O. Soin Division, Kericho District.
261. Joseph Juma Kimengwa..... Rtd. Chief Inspector of Police; formerly OCS Kabarnet and Kericho Police Stations.
262. Patrick Osare..... D.C. Nandi; former D.O. Kipkelion Division, Kericho District.
263. Johana Kipterer Arap Bet..... Farmer.
264. Naftali Odicho Nyaoma..... Chairman Kasin Farmers Co-operative Society, Kericho District.
265. Edith Wanjiru Mwangi..... Farmer.
266. Paul Kipkemei Murei..... Teacher.
267. Ibrahim Kibe Kihara..... Farmer.
268. Jonathan Kibaibai Rogoyi..... Chief Kamasia Location, Kericho District.
269. Rhoda cherotich Koech ..... Farmer.
270. Joyce Waithira Ndungu..... Farmer.

271. James Kipkoech Koske..... Chief, Sorget Location, Kericho District.
272. Kihika Kimani..... M.P.- Molo Constituency.
273. William Ole Ntimama..... M.P.- Narok North, Minister for Transport and Communication.
274. Joshua Kamau Macharia..... Councillor – Chepkongoni Ward, Kericho District.
275. Peter Ouma Ocholla..... Former O.C.S. Londiani Police Station; currently attached to Lamu Police HQs/ Inspector of Police.
276. John Marasha Ole Soit..... Student – High School.
277. John Lekakeny Mumora..... Unemployed.
278. James Lemayian Waigesaa..... Farmer.
279. Tomoka Kurao..... Chief, Osinoni Location - Trans Mara District.
280. Joshua Maroko Onkoba..... Farmer.
281. Josiah Bodi Onyancha..... Chief South Mogirango Location, Southern Kisii District.
282. Arthur Bude..... D.O. Cheparema Division, West Pokot District,; former D.O. Kilgoris Division/ Trans Mara District.
283. Jonathan Silisili Ole Sialo..... Chief Ololochari Location, Trans Mara District.
284. William Ndiwa..... D.O. Ogembo Division; former D.O. Kenyena Division, Gucha District.
285. William Mwortiny Litole..... D.C. Mwingi; former D.C. Trans Mara District.
286. Reoba Chacha Kerario..... Farmer.
287. Stephen Rono Arap Kipkurui..... District Education Officer, Kericho.
288. Benson Miginjo Akoko..... Farmer.
289. Johnnes Nyamboha Marwa..... Ass. Chief Kurutianga Sub-Location, Kuria District.
290. Simon Matara Ochoi..... Chief Inspector, Maseno Police Station; former OCS, Kamagambo Police Station, Migori.
291. Michael Morris Ayeko..... Ass. Chief Kanyimach Sub-Location, Migori District.
292. Francis Ayego Okechi..... Senior Chief Getenga Location, Gucha District.
293. Ezekiel Kibii Cheruiyot..... Chief Olare location, Uasin Gishu District.
294. John Muiruri..... Farmer.
295. Philip Kibutuk Koskei..... Senior Chief, Ololainguise Location, Uasin Gishu District.
296. Martin Wanga..... Police Corporal attached to C.I.D. Buruburu Nairobi; formerly at Nakuru Division Police Station.
297. Thomas Chigamba Gwama..... SSP attached to G.S.U. Ruaraka in Nairobi.
298. Francis Kahindi Gitari..... Chairman Internally Displaced Victims ExDO Narok

299. Ndirangu Wahome..... Army Major - Embakasi Garisson, Nairobi.
300. Susan Nakhumicha Wamalabe..... Farmer.
301. Joshua Wekesa Kiptege..... Farmer.
302. Stanley Abuova Mukenya..... Police Constable/ Driver at Teso Police station.
303. Daniel Rono..... Rtd. Chief Inspector of Police; formerly O.C.S. Kimilili Police Station.
304. Jonathan Bomnji Kirui..... Rtd. Chief, Kapsiro Location, Mt. Elgon District.
305. Leonard Ochokolo Olekete..... Unemployed.
306. Prince Chammungu Mali ya Mungu.. Unemployed.
307. Jamin Cheminingwa Chemos..... Asst. Chief, Chesikaki Sub-Location, Mt. Elgon District.
308. Joseph Barasa Nabiswa..... Farmer.
309. Peter Ndiwa Chemaswet..... Farmer.
310. Sammy Kipketer Cheraiisi..... Rtd. Army Major; former Instructor of Infantry School – Isiolo.
311. Francis Weru Kanja..... Army Major – 5 K.R. - Company Commander.
312. Julius Pekiyei Arap Bett..... Rtd. Chief, Cheptelwai Location, Nandi District.
313. James Nyakundi..... Deputy P.C.I.O. Nairobi Area/ Assistant. Commissioner of Police.
314. William Omusee Osuru..... Farmer.
315. William Chebusi Tumweq..... Councillor Endebes Ward, Trans Nzoia District.
316. Samuel K. Kitur alias Kimibei..... Farmer.
317. Zakayo Amugongo Musila..... Farmer.
318. Michael Sang Tallam..... D.O. Nyamarambe Division, Gucha District; former D.O. Kwana Division, Trans-Nzoia District.
319. Wilfred Kiptum Kitur Kimalat..... P.S. Ministry of Education; former P.S. Provincial Administration.
320. Mohamed Yusuf Haji..... Nominated MP., Asst. Minister, Office of the President; former PC Rift Valley.
321. Jeremiah Cheruiyot..... Senior Ass. Commissioner of Police; former Deputy Provincial Police Officer, Nyanza Province.
322. Wilberfoce Arap Kisiero..... Former M.P. Mt. Elgon.
323. Wilson Ayaboi Boinet..... Director of Security Intelligence - National Security Intelligence Services.
324. Simeon Bundotich Boinet..... Chief Timboroa Location, Uasin Gishu District.
325. Eliud Lagat..... Deputy Commissioner of Police - Nairobi; former O.C.P.D. Kericho.

326. Noah Arap Too..... Former Director of Criminal Investigation Department.
327. Duncan Kabethi Wachira..... Former Commissioner of Police.
328. Fares Michael Kuindwa..... Permanent Secretary/ Head of Civil Service and Secretary to the Cabinet.
329. Hassan abdula Silaha..... SACP - Nairobi Police Headquarters.
330. Geoffrey Kang'oria Kibaji Kinoti..... Rtd. P.P.O. Nairobi Area / Deputy Commissioner of Police.
331. Lawrence Michael Chemarum..... Rtd. Security Manager - KP&TC, Trans- Nzoia District.





# Law Society of Kenya

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Our Ref: \_\_\_\_\_

Your Ref: \_\_\_\_\_

Date: 18/06/99

Dear Sirs

RE: LAW SOCIETY OF KENYA'S FINAL SUBMISSIONS TO THE COMMISSION

You will recall that on Friday 11th June 1999 the Commission wound up its business of taking evidence. Their Lordships the Commissioners ordered that the Law Society of Kenya and Assisting Counsel to the Commission do make written submissions to be handed to you on or before 18th June 1999.

Counsel for the Law Society of Kenya Mr. Haron Ndubi made an application to the Commission to call Hon. Amos Wako, Attorney General of the Republic of Kenya, to be called to testify before the Commission to explain what he, as a law enforcement agent, did or did not do in regard to matters under the Commission's enquiry. Their Lordships declined.

Further, on various occasions before, counsel for the Law Society of Kenya has sought that summons of attendance to testify be served on various people including; Hon. Nicholas Biwott, Al Haji Omar Masumbuko, one Inspector Muiuri, among others.

These persons were not called and the Law Society knows no reason why they were not called.

It is the view and position of the Law Society of Kenya that in the absence of evidence of those persons, the Commission failed to come in tandem the Terms of Reference conclusively.

In that regard, we are humbly notifying you that the Law Society of Kenya shall not be making any final submissions to the Commission.

Very kindly and humbly inform their Lordships.

Yours faithfully

  
G.M. KEGORO  
SECRETARY

c.c. Mr. Harun Ndubi  
Advocate  
P.O.Box 41778  
MOMBASA