

Kenyan National Dialogue and Reconciliation

TRUTH, JUSTICE AND RECONCILIATION COMMISSION

Background

Recalling the 14 February 2008 agreement by the Parties for a Truth, Justice and Reconciliation Commission, and in a spirit of reconciliation and national healing;

The Parties to the Kenyan National Dialogue and Reconciliation agree to the following general parameters and principles for the establishment of such a commission:

General Parameters

A Truth, Justice, and Reconciliation Commission (“the Commission”) will be created through an Act of Parliament, which will be adopted by the legislature within the next four weeks.

The Commission will inquire into human rights violations, including those committed by the state, groups, or individuals. This includes but is not limited to politically motivated violence, assassinations, community displacements, settlements, and evictions. The Commission will also inquire into major economic crimes, in particular grand corruption, historical land injustices, and the illegal or irregular acquisition of land, especially as these relate to conflict or violence. Other historical injustices shall also be investigated.

The Commission will inquire into such events which took place between December 12, 1963 and February 28, 2008. However, it will as necessary look at antecedents to this date in order to understand the nature, root causes, or context that led to such violations, violence, or crimes.

The Commission shall receive statements from victims, witnesses, communities, interest groups, persons directly or indirectly involved in events, or any other group or individual; undertake investigations and research; hold hearings; and engage in activities as it determines to advance national or community reconciliation. The Commission may offer confidentiality to persons upon request, in order to protect individual privacy or security, or for other reasons. The Commission shall solely determine whether its hearings shall be held in public or in camera.

No blanket amnesty will be provided for past crimes. Individual amnesty may be recommended by the Commission in exchange for the full truth, provided that serious international crimes (crimes against humanity, war crimes, or genocide) are not amnestied, nor persons who bear the greatest responsibility for crimes covered by the Commission.

The Commission will complete its work and submit a final report within two years. The final report shall state its findings and recommendations, which will be submitted to the President and will be made public in fourteen days and tabled in Parliament.

Guiding Principles

The Commission will reflect the following principles and guidelines, taking into account international standards and best practices:

Independence: The Commission shall operate free from political or other influence. It shall determine its own specific working methodologies and work plan, including for investigation and reporting, and will set out its own budget and staff plan.

Fair and balanced inquiry: In all of its work, the Commission shall ensure that it seeks the truth without influence from other factors. In representations to the public through hearings, statements, or its final report, the Commission shall ensure that a fair representation of the truth is provided.

Appropriate powers: The Commission shall be given powers of investigation, including the right to call persons to speak with the Commission, and powers to make recommendations that shall be considered and implemented by the government or others. These recommendations may include measures to advance community or national reconciliation; institutional or other reforms, or whether any persons should be held to account for past acts.

Full cooperation: Government and other State offices shall provide information to the Commission on request, and provide access to archives or other sources of information. It is urged that other Kenyan and international individuals and organizations also provide full cooperation and information to the Commission on request.

Financial support: The Parties encourage strong financial support to the Commission. It is expected that the Government of Kenya will provide a significant portion of the Commission's budget. Other funding may be obtained by the Commission from donors, foundations, or other independent sources.

Selection and Composition

The Commission will consist of seven members, with gender balance taken into account. Three of the members shall be international. The members shall be persons of high moral integrity, well regarded by the Kenyan population, and shall include a range of skills, backgrounds, and professional expertise. As a whole, the Commission shall be perceived as impartial in its collectivity, and no member should be seen to represent a specific political group. At least two but no more than five of the seven commissioners should be lawyers.

In keeping with international best practices, and to ensure broad public trust in and ownership of the process of seeking the truth, the national members of the Commission shall be chosen through a consultative process. The Commissioners shall be named no more than eight weeks after the passage of the Act that establishes the Commission.

The three international members shall be selected by the Panel of Eminent African Personalities, taking into account public input.