

Kenyan National Dialogue and Reconciliation

COMMISSION OF INQUIRY ON POST-ELECTION VIOLENCE

Background

Recalling that the Parties have previously agreed to:

Identify and agree on the modalities of implementation of immediate measures aimed at:

- Ensuring the impartial, effective and expeditious investigation of gross and systematic violations of human rights and that those found guilty are brought to justice.

And have expressed a commitment to:

- Identification and prosecution of perpetrators of violence, including State security agents
- Addressing issues of accountability and transparency

The Parties to the National Dialogue and Reconciliation, together with the Panel of Eminent African Personalities (The Panel), agree to the establishment of a *Commission of Inquiry on Post-Election Violence* (Commission of Inquiry).

This Commission of Inquiry will be a non-judicial body mandated (i) to investigate the facts and surrounding circumstances related to acts of violence that followed the 2007 Presidential Election, (ii) investigate the actions or omissions of State security agencies during the course of the violence, and make recommendation as necessary, and (iii) to recommend measures of a legal, political or administrative nature, as appropriate, including measures with regard to bringing to justice those persons responsible for criminal acts. The Commission of Inquiry aims to prevent any repetition of similar deeds and, in general, to eradicate impunity and promote national reconciliation in Kenya.

Key Activities

The activities of the Commission shall be:

To investigate the facts and circumstances related to the violence following the 2007 Presidential election, between December 28, 2007 and February 28, 2008.

- To prepare and submit a final report containing its findings and recommendations for redress, any legal action that should be taken, and measures for future prevention.
- To prepare and submit a final report containing its findings and recommendations for redress, any legal action that should be taken, and measures for future prevention.
- To make recommendations, as it deems appropriate, to the Truth, Justice, and Reconciliation Commission.

National Cooperation

Kenyan authorities, institutions, parties, and others shall fully cooperate with the Commission of Inquiry in the accomplishment of its mandate, in response to requests for information, security, assistance or access in pursuing investigations, including:

- Adoption by the Government of Kenya of any measures needed for the Commission and its personnel to carry out their functions throughout the national territory with full freedom, independence and security;
- Provision by the Government of Kenya and all Kenyan State institutions of all information in its possession which the commission requests or is otherwise needed to carry out its mandate, with free access provided for the Commission and its staff to any archives related to its mandate;
- Freedom for the Commission to obtain any information it considers relevant and to use all sources of information which it considers useful and reliable;
- Freedom for the Commission to interview, in private, any persons it judges necessary;
- Freedom for the Commission to visit any establishment or place at any time; and
- Guarantee by the Government of Kenya of full respect for the integrity, security and freedom of witnesses, experts and any other persons who help in its work;

The Parties call upon States, relevant UN and AU bodies and, as appropriate, national and international humanitarian or other nongovernmental organizations to provide information to the Commission of Inquiry related to post-election violence, to make such information available as soon as possible and to provide appropriate assistance to the Commission.

Composition

The Commission of Inquiry will be composed of three impartial, experienced, and internationally respected jurists, or experts in addressing communal conflict or ethnic violence. Two of these shall be international, and one shall be Kenyan. They shall be selected by the Panel following consultation with the Government/PNU and the ODM, and appointed by the President.

A Support Office, based in Nairobi and with adequate expert staff, will be established to provide support to the members of the Commission.

Methodology

The Commission of Inquiry shall develop its own work plan and procedures. These will be guided in all respects by principles of fairness, impartiality, transparency, and good faith.

Outputs and Timeline

The Commission of Inquiry will start its work within 30 days following the appointment of its members. It will operate for three months, with an additional month if required. At the conclusion of its work it will submit a final report of its findings and recommendations to the President of Kenya, with a copy to the Panel. Main findings of the report will be made public within 14 days of submission, although certain aspects of the report or annexes may be kept confidential in order to protect the identity of witnesses or persons accused.

Financing/Logistics

The Commission of Inquiry will be funded by the Kenyan Government and the Trust Fund for National Dialogue and Reconciliation, including support from donor states or foundations. It will receive logistical support from the AU and the UN.