

## **Annex 3: Terms of Reference for the Independent Review Committee to investigate the General Election of 2007**

### **Kenya National Dialogue and Reconciliation**

#### **INDEPENDENT REVIEW COMMITTEE**

##### **Terms of Reference**

The members of the Panel of Eminent African Personalities (The Panel), together with the Parties to the National Dialogue and Reconciliation:

Recalling the 14 February 2008 agreement by the Parties, witnessed by H.E. Kofi Annan for the Panel of Eminent African Personalities, to establish an *Independent Review Committee*, a non-judicial body, which would be mandated to investigate all aspects of the 2007 Presidential Election and make findings and recommendations to improve the electoral process;

Agreed that the Independent Review Committee (IREC) will be established under the Commissions of Inquiry Act, and will conduct its mandate in accordance with the following Terms of Reference:

##### **Key Activities**

The activities of the IREC shall be:

- a. Analysis of the constitutional and legal framework to establish the basis for the conduct of the 2007 elections and to identify any weaknesses or inconsistencies in the electoral legislation;
- b. Examination of the organizational structure, composition, and management systems of the Electoral Commission of Kenya (ECK) to assess its independence, capacity and functioning during the preparation and conduct of the 2007 elections;
- c. Examination of the public participation in the 2007 electoral process and the electoral environment, including the roles and conduct of the political parties, media, civil society and observers;
- d. Investigation of the organization and conduct of the 2007 electoral operations including: civic and voter education; training; voter registration; logistics and security; polling and counting; vote tabulation and results processing; and dispute resolution;
- e. Investigation into the vote counting and tallying for the entire election with special attention to the presidential elections in order to assess the integrity of the results and make recommendations for improvements, adjustments or overhaul of the system.

- f. Assess the functional efficiency of the ECK and its capacity to discharge its mandate;
- g. Proposal of recommendations on electoral reform including constitutional, legislative, operational and institutional aspects, as well as on accountability mechanisms for ECK Commissioners and staff pertaining to electoral malpractices, in order to improve future electoral processes;
- h. Presentation of its findings on the above activities;
- i. Any other tasks that the IREC may deem necessary in fulfilling its mandate.

### **National Cooperation**

All national authorities whose activities have a substantive relationship to the above activities are requested to extend maximum cooperation to the IREC. The IREC shall be permitted access to all electoral materials

### **Composition**

The IREC will comprise seven members, including a Chair, all of whom having the highest professional standing and personal integrity. The Chair will be an internationally recognized eminent jurist. The other members of the Committee will be experienced electoral experts:

- Four will be Kenyan, two of whom will be nominated by the Government/PNU and two nominated by the ODM.
- The remaining three members will be international experts, nominated by the Panel, following consultation with the Government/PNU and the ODM.

A Support Office will be established to provide substantive and administrative support to the Committee. It will be based in Nairobi and headed by an international electoral expert.

### **Methodology**

In the performance of its functions, the Committee:

- a. Shall hold public hearings in Nairobi and at such other places as it shall deem necessary for the proper discharge of its mandate;
- b. May hold private hearings whenever it becomes necessary to instill confidence in the people appearing before the committee or to allay their fears of adversity or reprisals;
- c. May carry out or cause to be carried out such studies or research as may inform it on its mandate;

- d. May receive written memoranda from individuals and groups on all issues relevant to its mandate;
- e. Shall have access to all the electoral and related documents necessary for the effective discharge of its mandate;
- f. Shall publish its rules of procedure in the Kenya Gazette; and
- g. Subject to the foregoing, the Committee shall develop its own work plan and procedures.

#### **Outputs and Timeline**

The IREC should start its work no later than 15 March, 2008. Within three to six months of the commencement of its work, the IREC will produce a final report of its findings and recommendations that will be submitted to the President, with a copy to the Panel. The report will subsequently be made public, in English and Swahili, within 14 days of submission.

#### **Financing/Logistics**

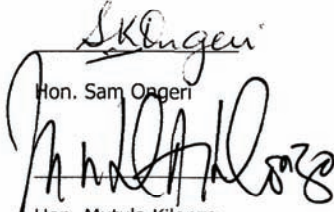
The Committee will be funded by the Kenyan Government and the Trust Fund for National Dialogue and Reconciliation, and with logistic support from the African Union and the United Nations.

Signed on this day, 4 March 2008:

On behalf of Government/PNU:

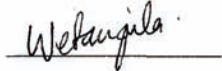


Hon. Martha Karua



Hon. Sam Ogeri

Hon. Mutula Kilonzo



Hon. Moses Wetang'ula

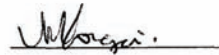
On behalf of ODM:



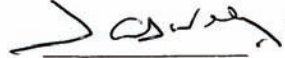
Hon. Musajja Mudavadi



Hon. William Ruto



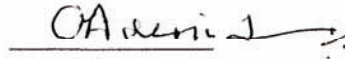
Hon. Sally Kosgei



Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities



H.E. Oluyemi Adeniji

Session Chair