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THE COMMISSIONS OF INQUIRY ACT

(Cap. 102)

COMMISSION OF INQUIRY

RULES AND PROCEDURES

This Commission of Inquiry has been convened pursuant to its appointment to inquire into all the aspects of the General Election held on the 27th December, 2007 in Kenya, with particular emphasis on the Presidential Election, as stated in *Kenya Gazette* Notice Nos. 1982 and 1983 of March 14, 2008.

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 (Cap. 102).

General

- (a) The Commission shall be known as the Independent Review Commission (hereinafter "IREC" or "the Commission").
- (b) Subject to section 9 of the said Act, the Commission of Inquiry shall conduct its business through—
- (i) meetings of the Commission;
 - (ii) review of documents;
 - (iii) receipt and consideration of oral and written submissions by individuals, political parties, public and private organizations, media, civil society, observers and any other parties or persons in public meetings or otherwise;
 - (iv) investigations;
 - (v) hearings in Nairobi and in such other places as the Commission shall determine;
 - (vi) hearings *in camera*;
 - (vii) research and analysis into relevant aspects of elections, electoral systems and the law;
 - (viii) any other means of gathering information; and
 - (ix) compilation of a report with recommendations for action.
- (c) The Commission shall recommend the person to be appointed the Secretary to the Commission.
- (d) The Commission shall appoint an advocate or advocates to assist the Commission in the inquiry by investigating and reporting information to the Commission and by formally presenting evidence and/or argument to the Commission at hearings by leading the evidence of or cross-examining witnesses before the Commission.
- (e) The Commission shall appoint such other staff as it shall deem fit for the discharge of its mandate.
- (f) The Commission shall meet as often as may be necessary for the dispatch of its business within a period not exceeding six months.
- (g) Meetings of the Commission shall be held on such date and at such time and place as the Commission shall decide.
- (h) The Commission may carry out its work either in plenary or through such committees as it shall determine provided that such committees shall be responsible to the Commission.
- (i) The quorum for the conduct of business at a meeting of the Commission shall be the majority of all the members of the Commission or, in the case of a Committee of the Commission, a majority of the members of the Committee.
- (j) Notwithstanding these rules, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof, or the absence of any member at any meeting or hearing.
- (k) The Chairman shall preside at every meeting of the Commission at which he is present and in the absence of the Chairman at a meeting, the Vice-Chairman shall preside and in the absence of both the Chairman and the Vice-Chairman the members present shall elect one of their number who shall with respect to that meeting and the business transacted thereat, have all the powers of the Chairman.
- (l) Subject to section 8 of the Act, unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members.
- (m) Unless otherwise provided by or under any law, all instruments made by and decisions of the Commission shall be signified under the hand of the Chairman and/or the Secretary.
- (n) The Commission may direct that the public shall not be admitted to all or to any specified part of the proceedings of the inquiry.
- (o) The Commission shall cause minutes of all proceedings of meetings of the Commission to be kept in a book for that purpose.
- (p) Except as provided by the Act, the Commission shall regulate its own proceedings.

Hearings

(q) Save as may otherwise be determined by the Commission, meetings of the Commission for the purposes of conducting hearings shall take place between 9.00 a.m. and 3.00 p.m. from Monday to Friday.

(r) Subject to the Commissions of Inquiry Act, the conduct of and procedure to be followed on the hearing is under the control and discretion of the Commission.

(s) Hearings shall be held in public, but the Commission 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 so to do:

- (i) for the preservation of order;
- (ii) for the due conduct of the inquiry;
- (iii) 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; or
- (iv) for the protection of the Security of the State.

(t) The Commission may, if satisfied that it is desirable for any of the purposes mentioned above, order that no person shall publish the name, address or photograph of any such witness of person or any evidence or photograph identifying such witness or person or any evidence or information.

(u) Any person who is in any way implicated or concerned in any matter under inquiry shall be entitled –

- (i) before being called as a witness to be informed of any allegations which are made against him/her and the substance of the evidence in support of such allegations;
- (ii) to an adequate opportunity to prepare his/her response and to obtain legal representation;
- (iii) to be legally represented at the inquiry at his/her own expense;
- (iv) to have his/her evidence led by his/her legal representative;

(v) to cross-examine or have his/her legal representative test by cross-examination the evidence of any witness who implicates him/her.

(w) The Commission may call for any further evidence on any point relating to any matter before them and may recall any witness for further examination.

(x) The Commission may summon any person or persons to testify on oath and may call for the production of books, plans, materials and documents that the Commissioners may require.

(y) All government entities, agencies and officials and all witnesses shall cooperate fully with the Commission and shall make available all documents and witnesses relevant to the mandate of the Commission.

(z) Witnesses who testify will give their evidence at a hearing under oath or upon affirmation unless otherwise ordered by the Commission in its discretion.

(aa) The Commission may issue or serve a hearing notice or summons upon each witness before he/she testifies and witnesses may be called more than once.

(ab) A person may be granted full or partial standing as a party by the Commission if the Commission is satisfied that the person is directly and substantially affected by the subject matter of the hearing at the earliest possible opportunity.

(ac) A person may be granted standing as an intervenor by the Commission if the Commission is satisfied that the person represents clearly ascertainable interests and perspectives essential to the Commission's mandate, which the Commission considers ought to be separately represented before the hearing, in which event the intervenor may participate in a manner to be determined by the Commission.

(ad) Any person wishing to be granted standing must apply in writing and include the following information –

- (i) name, address, telephone and fax numbers, and e-mail addresses (if any) of the person;

(ii) whether the person seeks standing as a party or as an intervenor for all or a portion of the mandate of the hearing;

(iii) the areas and issues whether the person is directly and substantially affected or where the person has a clearly ascertainable interest or perspective which would enhance the work of the Commission and the reason in support thereof;

(iv) the names of the lawyers, if any representing the person, together with the lawyer's address, telephone number, e-mail address (if any) and fax number.

(ae) The Commission will determine any special conditions under which a person may participate and those parts of the hearing in which a person granted standing may participate.

(af) The Commission may direct that a number of applications share in a single grant of standing.

(ag) Parties and intervenors shall advise the Commission of the names, addresses and telephone numbers of all witnesses they wish to have called and to provide summaries of the information the witnesses have.

(ah) The Commission may receive any evidence or information which it considers to be helpful in fulfilling its mandate whether or not such evidence or information would be admissible in court.

(ai) In the ordinary course of its proceedings, the Commission will call and cause to be questioned witnesses who testify at the hearing. Counsel for a party may apply to the Commission to lead a particular witness' evidence in chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commission.

(aj) Parties may be afforded an opportunity to cross-examine the witness to the extent of their interests. The order of cross-examination will be determined by the Commission.

(ak) After cross-examination, counsel for a witness may then re-examine the witness.

(al) The Commission may refuse to call any witness if it is satisfied that the evidence of such a witness will be of insufficient relevance to the Commission's mandate.

(am) The Commission shall deal with a breach of these rules as it deems fit including, but not restricted to, revoking the standing of a party, and imposing restrictions on the further participation in or attendance at (including exclusion from) the hearings by any party, intervenor, counsel, individual or member of the media.

(an) Any person who contravenes an order given in accordance with these rules shall without prejudice to section 121 of the Penal Code, be guilty of an offence and liable to a fine not exceeding fifty thousand shillings.

(ao) Upon completion of the report of the Commission it shall be transmitted under the hand of the Chairman of the Commission to the President of the Republic of Kenya and the Panel of Eminent African Personalities without undue delay and at any rate not more than 2 days after such completion and cause to be published a notice of such transmission without undue delay.

(ap) The Commission will on transmittal of its report seek the mandate of the President of the Republic of Kenya and the Chairman of the Panel of Eminent African Personalities to deposit all its preparatory materials with the Kenya National Archives.

(aq) The Commission may, at any time, amend these rules.

Dated the 11th day of April, 2008.

JOHANN KRIEGLER,
Judge/Chairman,
Independent Review Commission.