



The Kenyan Commission of Inquiry into Post-Election Violence

Background

- The Commission of Inquiry into Post-Election Violence (CIPEV) was the outcome of the Kenya National Dialogue and Reconciliation Accord of February 28, 2008, negotiated by Kofi Annan and the Panel of Eminent African Personalities, and its sister agreement of March 4, 2008, known as Agenda Item 4, which called for the establishment of a number of bodies of inquiry to address justice and accountability and longer-term issues of governance and the rule of law.
- The CIPEV mandate included the following: (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 recommendations as necessary; and (iii) to recommend measures of a legal, political or administrative nature, as appropriate, including measures to bring to justice those persons responsible for criminal acts.
- The CIPEV is often referred to as the “Waki Commission,” after Chairman Judge Philip Waki, of Kenya’s Court of Appeal. Other members of the Commission included two foreigners, Mr. Gavin McFadyen of New Zealand and Mr. Pascal Kambale of the Democratic Republic of Congo. Two Kenyans, Mr. David Majanja and Mr. George Kegoro, were appointed Counsel Assisting the Commission and Commission Secretary, respectively. The Commission worked for a period of four months, including a 30-day extension.

Findings

- The 529-page Report, released October 15, 2008, records 3,561 injuries, 117,216 instances of property destruction, and **1,133 deaths** as a result of the post-election violence.¹
- **405** of the 1,133 recorded deaths were caused by gunshot wounds. The Report suggests that the police were responsible for all of these deaths.
- The Report finds evidence of massive failures by the state security agencies, especially the police, to anticipate and contain the violence.
- The Report names **land grievances** and the **centralization of power in the presidency** as root causes of the violence.

¹ The full report is available at:

http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf

Recommendations

- The Report recommends the **establishment of a Special Tribunal** to seek accountability of persons bearing the greatest responsibility for crimes, particularly crimes against humanity, relating to the 2007 general elections in Kenya.
 - This should include a Trial Chamber and an Appeals Chamber, each composed of two foreign judges and one domestic judge.
 - The prosecutor for the court, like the foreign judges, should be chosen from a list provided by the Panel of Eminent African Personalities.
 - When the Report was released, Judge Waki handed Kofi Annan a sealed list of key persons accused of orchestrating the violence. The Report specified that the list would be forwarded to the International Criminal Court (ICC) if an agreement establishing a Special Tribunal was not signed within 60 days—by December 17, 2008. Now that the agreement has been signed, Parliament has a further 45 days to enact it into law.
- Related recommendations
 - Acceleration of the **International Crimes Bill 2008** for enactment by Parliament to facilitate investigation and prosecution of crimes against humanity.
 - Full utilisation of the **Witness Protection Act 2008** in the protection of all witnesses who will need such protection in the course of investigation, prosecution and adjudication of PEV cases.
 - Immediate enactment of the **Freedom of Information Bill** to enable state and non-state actors to have full access to information which may lead to arrest, detention and prosecution of persons responsible for gross violations.
 - All persons holding public office and public servants charged with post-election-related criminal offences to be suspended from duty until the matter is fully adjudicated.
 - Upon conviction of any person charged with post-election criminal offences of any nature, such persons shall be barred from holding any public office or contesting any electoral position.
- Comprehensive **police reform**, in several steps.
 - The **integration** of the politicized Administration Police into the more independent Kenya Police Force.
 - The creation of an expert, independent **Police Reform Group**, reporting to the Minister of Justice, with a six-month mandate to oversee the reform process.
 - The creation of a permanent **political oversight body** for the police (“Police Service Commission”) and an **investigative/disciplinary body** (“Independent Police Conduct Authority”).