

## **SPECIAL ISSUE**



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### **THE COMMISSIONS OF INQUIRY ACT**

(Cap. 102)

#### **COMMISSION OF INQUIRY**

WHEREAS it appears that lands vested in the Republic or dedicated or reserved for public purposes may have been allocated, by corrupt or fraudulent practices or other unlawful or irregular means, to private persons, and that such lands continue to be occupied contrary to the good title of the Republic or in a manner inconsistent with the purposes for which such lands were respectively dedicated or reserved.

NOW THEREFORE, in exercise of the powers conferred on the President by section 3 of the Commissions of Inquiry Act, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, being of the opinion that it is in the public interest to do so, appoint a Commission of Inquiry, to be held forthwith in Nairobi by the following persons who shall be the commissioners—

Paul Njoroge Ndungu, who shall be the Chairman of the Commission; and  
Michael Aronson, who shall be the Vice-Chairman; and  
Abdallah Ahmed Abdallah;  
Davinder Lamba;  
Ann Kirima (Ms.);  
Ishan Kapila;  
Odenda Lumumba;  
Winston O. Ayoki;  
Nancy Wanjiru Mukunya (Ms.);  
Peter Koech;  
Permanent Secretary in the Office of the President responsible for Governance and Ethics or his designated representative;  
Permanent Secretary, Ministry of Lands and Settlement or his designated representative;  
Permanent Secretary, Ministry of Environment, Natural Resources and Wildlife or his designated representative;  
Permanent Secretary, Ministry of Roads, Public Works and Housing or his designated representative;  
Permanent Secretary, Ministry of Local Government or his designated representative; and

Thuita Mwangi and Smokin Wanjala, who shall be the joint secretaries of the Commission; and

Raychelle Awuor Omano; and  
Wanyiri Kihoro,

who shall be counsel to assist the Commission.

AND I SPECIFY, as terms of reference for the inquiry, the following—

- (a) to inquire generally into the allocation of lands, and in particular—
  - (i) to inquire into the allocation, to private individuals or corporations, of public lands or lands dedicated or reserved for a public purpose;
  - (ii) to collect and collate all evidence and information available, whether from ministry-based committees or from any other source, relating to the nature and extent of unlawful or irregular allocations of such lands; and
  - (iii) to prepare a list of all lands unlawfully or irregularly allocated, specifying particulars of the lands and of the persons to whom they were allocated, the date of allocation, particulars of all subsequent dealings in the lands concerned and their current ownership and development status;
- (b) to inquire into and ascertain—
  - (i) the identity of any persons, whether individuals or bodies corporate, to whom any such lands were allocated by unlawful or irregular means; and
  - (ii) the identity of any public officials involved in such allocations;
- (c) to carry out such other investigations into any matters incidental to the foregoing as, in the opinion of the commissioners, will be beneficial to a better and fuller discharge of their commission;
- (d) to carry out such other investigations as may be directed by the President or the Minister for Lands and Settlement;
- (f) to recommend—
  - (i) legal and administrative measures for the restoration of such lands to their proper title or purpose, having due regard to the rights of any private person having any *bona fide* entitlement to or claim of right over the lands concerned;
  - (ii) legal and administrative measures to be taken in the event that such lands are for any reason unable to be restored to their proper title or purpose;
  - (iii) criminal investigation or prosecution of, and any other measures to be taken against, persons involved in the unlawful or irregular allocation of such lands; and

- (iv) legal and administrative measures for the prevention of unlawful or irregular allocations of such land in the future; and
- (g) to report, in accordance with section 7 of the said Act, their findings and any such recommendations within a period of one hundred and eighty (180) days commencing on the day next following the day on which the last of the commissioners to take his oath of office, in accordance with section 5 of the said Act, shall have done so; and
- (h) to make monthly progress reports to the Minister for Lands and Settlement.

AND I DIRECT the commissioners, in the execution of the commission given and issued, to conform with the following instructions (except in so far as the commissioners consider it essential, for ascertaining the truth of any matter into which they are commissioned to inquire, to depart from them)—

- (i) that evidence adversely affecting the regulation of any person, or tending to reflect in any way upon the character or conduct any person, shall not be received unless the commissioners are satisfied it is relevant to the inquiry, and that all reasonable efforts have been made to give that person prior warning of the general nature of the evidence, and that, where no such warning has been given, the general nature of the evidence has been communicated to that person;

- (ii) that the person shall be given such opportunity as is reasonable and practicable to be present, either in person or by his advocate, at the hearing of the evidence, to cross-examine any witness testifying thereto, and to adduce without unreasonable delay material evidence, in his own behalf in refutation or otherwise in relation to the evidence;
- (iii) that heresy evidence which adversely affects the reputation of any person or tends to reflect in any way upon the character or conduct of any person, shall not be received;
- (iv) that no expression of opinion shall be received in evidence of the character, conduct or motives of any person.

AND I FURTHER DIRECT the commissioners that, in the event of any departure from the foregoing instructions, they shall record their reasons therefor in the record of the inquiry, and shall report thereon, with their reasons therefor, in their report of the inquiry.

Dated the 30th June, 2003.

MWAI KIBAKI,  
*President.*