

Annex 1

Confidential *ex parte*

Registry only

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TRIAL CHAMBER V (A)

Before: Judge Chile Eboe-Osuji, Presiding
Judge Ogla Herrera Carbuccion
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF
THE PROSECUTOR V. WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG

Public

Request for leave to submit *amicus curiae* submissions by

Ms. Moraa Gesicho

Source: Ms. Moraa Gesicho

I. Introduction

1. The importance of research cannot be gainsaid. Historically research has been used to solve both complex and even everyday matters. In our quest for new knowledge, it is research we turn to. The truth may only be known when one scratches beneath the surface in order to unravel that truth. This must have been what prompted the Prosecutor to turn to research to back her pursuit in prosecuting Uhuru Muigai Kenyatta, William Samoei Ruto and Joshua arap Sang, who were summoned to appear on 8 March 2011¹, and whose charges were confirmed on 23 January 2012.² Towards this, the Prosecutor has solicited research expertise from Prof. Hervé Maupeu to assist the Chamber to contextualize and properly assess the evidence about what happened during the PEV.³ In particular, Prof. Hervé Maupeu will be expected to explain (i) the source of the tension between the various ethnic groups during the 2007 election campaign (ii) the reasons why political affiliations were largely dictated by ethnicity and (iii) which parties drew their support from which segments of society and why. Prof. Hervé Maupeu will also explain the situation in the Rift Valley, which is necessary to understand why the province became the principal fault line during the PEV. It is therefore heartwarming to note that the Prosecutor has acknowledged the role research is going to play in the case facing Uhuru Muigai Kenyatta, William Samoei Ruto and Mr. Joshua arap Sang.
2. It cannot be overemphasized the neutrality Prof. Hervé Maupeu must come with into the task he has been asked to perform. Prof. Hervé Maupeu has published regarding the Kenyan society and elections in Kenya and his publications are among the many publications regarding the post-2007 general elections. One such publication is from a Commission of Inquiry into Post Election Violence which was appointed by the President of the Republic of Kenya to investigate into the 2007 election violence. This Commission, also known as the Waki Commission, published its findings in a report known as *The Report of the Commission of Inquiry into Post Election Violence (CIPEV)*.⁴ In the report, the Commission has detailed the facts and surroundings circumstances

¹ ICC-01/09-01/11-01; ICC-01/09-02/11-01

² ICC-01/09-01/11-373; ICC-01/09-02/11-382

³ ICC-01/09-01/11-492

⁴ http://www.knchr.org/Portals/0/Reports/Waki_Report.pdf.

related to the violence and in particular, violence in Rift Valley Province. The Commission starts by examining the roots of the post-2007 election where it chronicles the use of political violence; personalization of presidential power; deliberate weakening of public institutions and youth unemployment. The Commission proceed to give an account of the violence in Rift Valley Province starting with the North Rift region where it recounts what it calls the pre-election period and the legacy of the 1990s State sponsored violence; the build up to the tension; nature and extent of the violence; impact of the violence; whether violence was planned or sponsored; advance warning of violence; incitement to violence and the organization of violence. The Commission then moves on to describe the violence in Central Rift Valley and starts with Molo district and provides a history of ethnic conflict; the pre-election violence and the post-election violence in the district. In Nakuru district, the Commission gives an account of what it calls organized attacks and counter-attacks; planning of the violence and the nature and extent of the violence. In Naivasha district, the Commission describes what it calls planned criminal attacks by Mungiki and Kikuyu politicians and the eruption of violence. The Commission completes a description of the violence in Rift Valley with a description of the violence in the South Rift and Kisii region where it gives an account of what it calls the build up towards violence at the Sotik/Borabu Border and execution of the violence.

3. It can therefore be seen that the CIPEV report has a head start in explaining the source of the tension between the various ethnic groups during the 2007 election campaign. The report has also a head start in explaining the situation in the Rift Valley Province necessary to understand why the province became the principal fault line during the PEV. Hence, this report can help the Chamber contextualize and properly assess the evidence about what happened during the post-2007 election violence. For this reason, the Chamber should consider the CIPEV report as a source of evidence that ought to be interrogated for better understanding of the violence that followed the 2007 election. It is the interrogation of the evidence contained in the report that will help the Chamber understand the source of the tension between the various ethnic groups during the 2007 election campaign and why Rift Valley Province became the principal fault line during

the post-election violence. This interrogation ought to be done with the help of a researcher, who has evaluated the report and therefore can navigate with ease its interrogation.

4. It is noted that the Chamber wants to understand why political affiliations were largely dictated by ethnicity. It is true that since the advent of multiparty democracy, political competition has been between political parties. In the first election that ushered in independence in 1963, six political parties competed for power. Three main political parties, however, stood out. These were: the Kenya African National Union (KANU) led by among others, Mzee Jomo Kenyatta and Jaramogi Oginga Odinga; the Kenya African National Democratic Union (KADU) led by among others, Mr. Daniel arap Moi, Mr. Masinde Muliro and Mr. Ronald Ngala; the African Peoples Party (APP) led by among others, Mr. Paul Ngei. The majority of the Kikuyu and the Luo supported KANU understandably because Mzee Jomo Kenyatta, the acknowledged leader of the Kikuyu and Jaramogi Oginga Odinga, the acknowledged leader of the Luo belonged to the party. The majority of the Kalenjin sub-tribes, the Luhya sub-tribes and the Coastal people supported KADU understandably because Mr. Daniel arap Moi, the acknowledged leader of the sub-tribes of the Kalenjin, Mr. Masinde Muliro, the acknowledged leader of the sub-tribes of the Luhya and Mr. Ronald Ngala, the acknowledged leader of the Coastal people belonged to the party. The majority of the Akamba supported APP understandably because Mr. Paul Ngei, the acknowledge leader of the Akamba belonged to the party. The other tribes made their independent choices to support any of the parties that took part in the elections. From the result of this election⁵, it is not obvious which tribe voted for which party, however, there is no denying that the Kikuyu tribe overwhelmingly voted for KANU because of the position Mzee Jomo Kenyatta, himself a Kikuyu, held in the party and the Luo overwhelmingly voted for KANU because of the position Jaramogi Oginga Odinga, himself a Luo, held in the party. There is no denying that the Kalenjin sub-tribes voted for KADU because of the position Daniel arap Moi, himself a Tugen, one of the sub-tribes of the Kalenjin, belonged to the party, the Luhya sub-tribes voted for KADU because of the position Masinde Muliro, himself a Bukhusu,

⁵ http://en.wikipedia.org/wiki/Kenyan_legislative_election,_1963

one of the sub-tribes of the Luhya, belonged to the party and the Coastal people voted for KADU because of the position Ronald Ngala, himself a Coastal person, belonged to the party. There is also no denying that the Akamba voted for APP because of the position Paul Ngei, himself a Mkamba, held in the part. This voting pattern therefore demonstrates that in the 1963 general election, Kenyans voted for parties their tribal leaders belonged to. This voting pattern does not, however illustrate why these Kenyans followed their tribal leaders to the parties they belonged to. In the CIPEV report, however, the Waki Commission has attempted to illuminate factors which leads Kenyans to follow their tribal leaders to parties they belong to and it is therefore worthwhile to refer to the report for some insight into why Kenyans support parties which have the support of their tribal leaders. This will help the Chamber understand why political affiliations were largely dictated by ethnicity during the 2007 election as well as understand which parties drew their support from which segments of society.

5. After the 1963 election, Kenya did not participate in any multiparty election until 1992. In this election, 9 parties took part. These were: KANU, FORD-Asili, DP, FORD-Kenya, KNC, PICK, KSC, KENDA, and SDP. The parties which presented presidential candidates were: Kenya African National Union (KANU) which presented Mr. Daniel arap Moi, Forum for the Restoration of Democracy-Asili, (FORD-Asili) which presented Mr. Kenneth Matiba, Democratic Party (DP) which presented Mr. Mwai Kibaki, Forum for the Restoration of Democracy-Kenya (FORD-K) which presented Jaramogi Oginga Odinga, Kenya National Congress (KNC) which presented Mr. George Anyona, Party of Independent Candidate of Kenya (PICK) which presented Mr. John Harun Mwau and Kenya Social Congress (KSC) which presented Mr. David Mukaru Ng'ang'a. The 42 tribes comprising Kenya belonged to these parties. All the 42 tribes votes across all the parties which participated in this election. An examination of the results of this election⁶ confirms that Kenyans support parties which are affiliated to their tribal leaders. This may be very well understood, but why these affiliations turn antagonistic during election period is what has not been explained. The Waki Commission has, however, undertaken to explain why these affiliations turn hostile. In its examination of the root cause of the

⁶ http://en.wikipedia.org/wiki/Kenyan_general_election,_1992

post 2007 election violence, the Commission illustrates how and why political affiliations, starting from the period leading up to independence through to the 2007 election, degenerated to hostility.⁷ It will therefore be meaningful to refer to the Waki Commission report as it offers insight into the issues Prof. Maupeu will be shedding light on.

6. The third multiparty election was held in 1997. In this election, several political parties took part. The parties which presented presidential candidates were: Kenya African National Union (KANU) which presented Mr. Daniel arap Moi, Democratic Party (DP) which presented Mr. Mwaki Kibaki, the National Development Part (NDP) which presented Mr. Raila Odinga, Forum for the Restoration of Democracy-Kenya (FORD-K) which presented Mr. Kijana Wamalwa, the Social Democratic Party (SDP) which presented Mrs. Charity Ngilu, Forum for the Restoration of Democracy-Asili (FORD-Asili), which presented Mr. Martin Shikuku, Kenya National Congress (KNC) which presented Prof. Katama Mkangi, Kenya Social Congress (KSC) which presented Mr. George Anyona, Forum for the Restoration of Democracy-People (FORD-People) which presented Mr. Kimani wa Nyoike, Kenya National Democratic Alliance (KENDA) which presented Mr. Koigi wa Wamwere, United Patriotic Party of Kenya (UPPK) which presented Mr. Munyua Waiyaki, the Green African Party (GAP) which presented Mr. Godfrey M'Mwereria, Labour Party of Kenya (LDP) which presented Prof. Wangare Mathaai, Independent Economic Party (ICP) which presented Mr. Stephen Oludhe, and Umma Patriotic Party of Kenya (UPPK) which presented Mr. David Waweru Ng'ethe. The 42 tribes comprising Kenya belonged to these fifteen parties and many other parties. All the 42 tribes voted across all the parties which participated in this election. An examination of the results of this election shows that the support base of each party that took part in this election came from the region where the leadership of the party came from.⁸ This supports the conception that Kenyans support parties which are affiliated to their tribal leaders. We may understand why Kenyans followed their tribal leaders to whichever party they belong to, but, we may not understand why this following turns violence during elections. The Waki Commission has strived to explain why this

⁷ CIPEV p.24-38

⁸ http://en.wikipedia.org/wiki/Kenyan_general_election,_1997

following turns hostile during elections. In its description of the pre-election period and the legacy of the 1990's State sponsored violence, the Commission gives an account of the 1997 violence.⁹ It will therefore be significant to refer to the CIPEV report because it elucidates issues the Prosecutor wants the Chamber to understand.

7. The fourth multiparty election was held in 2002. In this election, political parties formed alliances just before the election. The first alliance was formed by the Democratic Party (DP) led by Mr. Mwai Kibaki, Forum for the Restoration of Democracy (FORD) led by Kijana Wamalwa, and the National Party of Kenya (NPK) led by Mrs. Charity Ngilu. This alliance came to be known as the National Alliance of Kenya (NAK) and was led by Mr. Mwai Kibaki. The second alliance was formed by the Liberal Democratic Party led by Raila Odinga and the NAK alliance. This alliance came to be known as the National Rainbow Coalition (NARC). The alliance was led by Mr. Mwai Kibaki. This alliance and the parties which presented Presidential candidates were: the National Rainbow Coalition (NARC) which presented Mr. Mwai Kibaki; the Kenya African National Union (KANU) which presented Mr. Uhuru Kenyatta; Forum for the Restoration of Democracy-People (FORD-People) which presented Mr. Simeon Nyachae; Social Democratic Party (SDP) which presented Mr. James Orendo and Chama Cha Umma (CCM) which presented Mr. David Ng'ethe. The 42 tribes comprising Kenya belonged to the NARC coalition and the other parties which took part in the election. All the 42 tribes voted across the NARC alliance and the other parties which took part in the election. An examination of the results of this election will reveal that the Kikuyu, led by Mwai Kibaki, the Luo, led by Raila Odinga, the Abaluhya, led by Kijana Wamalwa, the Akamba led by Kalonzo Musyoka and Charity Ngilu overwhelmingly voted for the NARC alliance.¹⁰ The Kalenjin overwhelmingly voted for KANU, and the Abagusii overwhelmingly voted for Simeon Nyachae.¹¹ This voting pattern proved that Kenyans followed their tribal leaders to the alliance and the other parties which participated in this election. What is of noteworthy is that during the campaign period, there was no tension right up to the ballot and the announcement of the result. What the Chamber should

⁹ CIPEV p.40-42

¹⁰ http://en.wikipedia.org/wiki/Kenyan_general_election,_2002

¹¹ http://en.wikipedia.org/wiki/Kenyan_general_election,_2002

strive to understand is why tranquility prevails in an election whenever the Kikuyu tribe and the Luo tribe vote on one side, but, go for each other's throats whenever the two find themselves on opposing sides. The Waki Commission has made an effort to explain this state of affairs which no doubt will help in the understanding of the issues the Prosecutor wants the Chamber to understand. It is therefore useful for the Chamber to take a quick look at the CIPEV report.

8. The fifth multiparty election was held in 2007. This election also witnesses formations of alliances. Mr. Mwai Kibaki broke from the NARC alliance and took up a new alliance known as the Party of National Unity (PNU). Mr. Raila Odinga broke from the NARC alliance and took up a new alliance known as the Orange Democratic Movement (ODM). Mr. Kalonzo Musyoka also broke from the NARC alliance and took up a new alliance known as the Orange Democratic Movement Party of Kenya (ODM-K). The alliances and parties which presented Presidential candidates were: Party of National Unity (PNU) which presented Mr. Mwai Kibaki, Orange Democratic Movement (ODM) which presented Mr. Raila Odinga, Orange Democratic Movement-Kenya (ODM-K) which presented Mr. Kalonzo Musyoka, Saba Saba Asili (SSA) which presented Mr. Kenneth Matiba, KPTP which presented Mr. Joseph Karani, KPP which presented Mr. Pius Muiiru, WCPK which presented Ms. Nazlin Omar, CCUP which presented Mr. David Ng'ethe, RPK which presented Mr. Nixon Kukubo. The 42 tribes comprising Kenya belonged to these three alliances and other parties. All the 42 tribes votes across the three alliances and the parties which took part in the election. An examination of the results of this election will reveal that the support base of these alliances and the parties which took part in the election came from the regions of the leadership of these alliances and the parties which took part in the election.¹² This supports the perception that Kenyans affiliate themselves to the parties where their tribal leaders are the bosses or have got a big say. For example the majority of the Kikuyu voted for PNU because Mr. Mwai Kibaki, himself a Kikuyu, was the PNU boss and Mr. Uhuru Kenyatta, himself a Kikuyu was the KANU boss which had affiliated with PNU. The majority of the Luo, the Luhya, the Kalenjin, the Coastal people and the North Easterners voted for ODM because Mr.

¹² http://en.wikipedia.org/wiki/Kenyan_general_election,_2002

Raila Odinga, a Luo, Mr. Musalia Mudavadi, a Luhya, Mr. William Ruto, a Kalenjin, and Mr. Najib Balala from the Coast led the Pentagon wing of the ODM party. The majority of the Akamba voted for ODM-K because Mr. Kalonzo Musyoka, himself a Mkamba was the ODM-K boss. This voting pattern proved that Kenyans followed their tribal leaders to these three alliances and other parties which participated in this election. What is of noteworthy is that during the campaign period, there was the normal tension associated with competition. All was smooth sailing right up to the ballot and the announcement of the result of two out of the three elections. Hell broke loose only when the result of the presidential election was announced. The situation was made worse when the President was sworn in. The Waki Commission has detailed the events which led to this situation in the CIPEV report which the Applicant urges the Chamber to consider reviewing as it will help in understanding what led to the violence that followed the 2007 election.

9. In the event that the Chamber considers reviewing the CIPEV report, the Applicant is ready and willing to offer her research expertise.

II. Application

10. The Applicant requests for leave to submit *amicus curiae* observations under rule 103 of the Rules of Procedure and Evidence (the "Rules").

III. The Applicant

11. The Applicant is a citizen of Kenya, an educationist, a researcher and a politician. She is qualified to serve as a research expert in the cases facing Uhuru Muigai Kenyatta, William Samoei Ruto and Joshua arap Sang for the following reasons:
12. On 22 May, 2008 the President of the Republic of Kenya appointed a Commission of Inquiry, also known as the Waki Commission to inquire into the post-election violence experienced in Kenya after the general election held on 27 December 2007. The Commission's terms of reference were to:

- Investigate the facts and surrounding circumstances related to acts of violence that followed the 2007 Presidential Election.
- Investigate the actions or omissions of State Security Agencies during the course of the violence, and make recommendations as necessary.
- Perform any other tasks that the Commission may deem necessary in fulfilling the foregoing terms of reference.

Recommend:-

- Measures to be taken to prevent, control or eradicate the occurrence of similar deeds in future.
- Measures with regard to bringing to justice those persons responsible for criminal acts.
- Measures to eradicate impunity and promote national reconciliation in Kenya.
- Such other legal, political or administrative measures as the Commission may deem necessary.
- Make such recommendations to the Truth, Justice and Reconciliation Commission as the Commission may deem appropriate.

13. In addition, the Waki Commission was obligated by the Commission of Inquiry Act (CAP 2) section 7 (1)¹³ to:

- Make a full, faithful and impartial inquiry into the violence that followed the 2007 Presidential election;
- Conduct the inquiry without discriminating directly or indirectly against their participants on grounds including ethnic or social origin;
- Report to the President, in writing, the result of the inquiry and the reasons for the conclusions.

14. After completion of the investigation, the Commission reported its findings in the (CIPEV) report. Its findings, placed in a sealed envelope¹⁴ were transmitted to the Prosecutor.¹⁵ This sealed envelope enabled the Prosecutor to secure summonses to appear

¹³ http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/CommissionsofInquiryAct_Cap102.pdf.

¹⁴ GMM1 p.18 para.1.

¹⁵ ICC-OTP-20090709-PR436

for six Kenyans including Uhuru Muigai Kenyatta, William Samoei Ruto and Joshua arap Sang.¹⁶

15. In view of the fact that Prof. Hervé Maupeu will give evidence in the case facing William Samoei Ruto and Joshua arap Sang and in view of the fact that it is the CIPEV report which produced the names of these two, it makes sense to have the report evaluated.

16. This evaluation will required an expert in research to guide the Chamber navigate through the report. The Applicant possess this expertise which she draws from her academic qualifications as well as her field work as described here:

- *Academic qualifications:* The Applicant has a Master of Philosophy degree in education from the University of Cambridge in the United Kingdom and a Bachelors degree in education from the University of New Brunswick in Canada.
- *Years of academic experience:* The Applicant is a researcher and has more than 25 years of academic experience, having taught in Kenyatta University, the Kenya Polytechnic, Gusii Institute of Science and Technology, Kereri Girls High School and Kaimosi Girls High School.
- *Research done:*
 - An exploration of attitudes and behaviors of Kenyans in relation to citizenship education.
 - A review of the terms of reference issued by the President of the Republic of Kenya on 29 June, 2012 mandating a Commission of Inquiry to investigate into the accident involving aircraft registration 5Y-CDT TYPE AS 350 B3 which occurred on 10 June, 2012 in Kibiko, Ngong forest.

¹⁶ ICC-01/09-01/11

- A review of the terms of reference issued by the President of the Republic of Kenya on 21 September, 2013 mandating a Commission of Inquiry to investigate into the ethnic violence in Tana River, Tana North and Tana Delta districts.
- An assessment of environmental degradation surrounding the Thika Superhighway in relation to the impending commissioning of the Superhighway by the President of the Republic of Kenya.
- A review of Ethics and Anti-corruption Commission Bill.
- An appraisal of a report of a Commission of Inquiry appointed by the President of the Republic to investigate into the facts and surrounding circumstances related to acts of violence that followed the 2007 Presidential election.
- An appraisal of a report of the Truth, Justice and Reconciliation Commission, appointed by the President of the Republic to investigate into the historical injustices and the violence which followed the 2007 Presidential election.
- *Political undertakings:* The Applicant served in the Chama Cha Utu Party of Kenya as Chairperson between 2007 and 2012 and vied for the Nyeri Parliamentary seat in the 2007 general elections. As the Chairperson of Chama Cha Utu, the Applicant traversed the country drumming up support for the candidates who had run on its ticket. In the course of this campaign, the Applicant got an opportunity to meet and talk with people from different regions and tribes. She can therefore confidently decipher the political environment that prevailed during this election.

IV. Issues the Applicant proposes to address if granted status:

1. The choice of provinces

17. The choice of the provinces in which the Commission carried out its investigations is significant. Kenya is an amalgamation of 42 tribes each with distinct demarcated territories. These territories are divided up into units of administration defined as Sub-Location, Location, Division, District and Province in that order. A province is the highest administration units. There are eight provinces namely: Western Province, Nyanza Province, Rift Valley Province, Central Province, Eastern Province, North Eastern Province, Coast Province and Nairobi Province. When a researcher has eight choices, there must be criteria for choosing one, two, three or even all the eight. It was important to get an explanation as to why the Commission carried out its investigations in certain provinces or all the provinces. Why for example would the Commission choose to carry out investigations in Nyanza Province and not Coast Province, or in Rift Valley Province and not in Eastern Province? Without proper explanation, there is nothing to stop anyone from insinuating that the Commission's investigations for example in Rift Valley Province or in Central Province targeted particular communities.

2. The choice of constituencies

18. The choice of the constituencies in which the Commission carried out its investigations is vital. Kenya was divided into 210 constituencies at that time. Constituencies are political units from where members are elected to represent the constituency in the National Assembly. When a researcher has 210 choices, there must be criteria for choosing one, two, three or all the 210 constituencies. It was important to get an explanation as to why the Commission chose to carry out its investigations in certain, or all the constituencies. Why for example would the Commission choose to carry out investigations in Eldoret North Constituency and not Eldoret South Constituency or in Gatundu North Constituency and not Gatundu South Constituency? Without proper explanation, there is nothing to stop anyone from insinuating that the Commission's investigations in Eldoret North Constituency for example or Gatundu North Constituency targeted particular individuals.

3. The Choice of witness

19. The political competition during the 2007 general election came from several political parties which took part in the elections. Of these, the most popular ones were (i) the Party of National Unity (PNU) (ii) the Kenya African National Union (KANU) (iii) the Orange Democratic Movement (ODM) (iv) the Orange Democracy Movement Party of Kenya (ODM –K) (v) Forum for the Restoration of Democracy Party of Kenya (FORD-K) and New Forum for the Restoration of Democracy Party of Kenya (New FORD –K). The parties which presented Presidential candidates were the Party of National Unity (PNU) which presented President Mwai Kibaki, the Orange Democratic Movement (ODM) which presented Prime Minister Raila Odinga and the Orange Democratic Movement Party of Kenya (ODM-K) which presented Vice President Kalonzo Musyoka. The Party of National Unity (PNU) drew its support from Central Province, the home of the Kikuyu tribe. The leader of the party was President Mwai Kibaki, himself a Kikuyu. The Orange Democratic Movement Party (ODM) drew its support mainly from Nyanza Province, and Rift Valley Province, the home of the Luo tribe the Kalenjin tribe respectively. The leader of the party was Prime Minister Raila Amolo Odinga, himself a Luo. The Orange Democratic Movement Party of Kenya (ODM-K) drew its support mainly from lower Eastern province, the home of the Akamba tribe. The leader of the party was Vice President Kalonzo Musyoka, himself a MKamba. The other tribes which did not present a Presidential candidate threw their support behind parties of their choice. The Party of National Unity (PNU) won the elections and supporters of the party had a reason to celebrate. The celebrations, however, never came to be as violence broke out moments after President Mwai Kibaki was announced the winner. This is the violence that saw President Kibaki appoint the Waki Commission, to investigate the violence that followed the 2007 Presidential election. The Commission carried out the investigations and produced a report titled: A Report of the Commission of Inquiry into Post-Election Violence (CIPEV). The Commission had the whole of the Kenya population from where it drew its witnesses. In view of the political environment just described, the choice of witnesses to testify before the Commission was critical considering what happened during the Middle Ages Inquisitions, where, upon complaints from anonymous informers, the church burnt many in the stake. Joan of Ark and Galileo Galilei were

victims of this inquisition. The church, many centuries later, canonized Joan of Ark and apologized to Galileo. So with the entire population of Kenya at its disposal, what criteria did the Commission use to select its witnesses to avoid a situation like the one of the Middle Ages Inquisitions?

4. Safety of witnesses

20. In view of the political environment prevailing after the 2007 violence, the safety of witnesses was paramount. There were measures, if put in place guaranteed the safety of the witnesses. An evaluation of the Waki Commission will make known how the Commission treated its witnesses in relation to their confidentiality.

5. Questions for the witnesses

21. It is important that leading questions are not put before witnesses. Leading questions, when asked, normally lead the respondent to respond in a way that would lead to a desired response. An analysis of the documents and supporting materials compiled by the Waki commission will illustrate how the Commission framed the questions put before the witnesses.

6. Conducting a full inquiry

22. A full inquiry would entail analyzing the data collected so as to generate meaningful information. An analysis of the documents and supporting materials compiled by the Waki Commission will demonstrate how the Commission analyzed the data it collected

7. Conducting a faithful inquiry

23. A faithful inquiry would require that only matters specified in the terms of reference are inquired into and findings are consistent with the evidence received. An analysis of the documents and supporting materials compiled by the Waki Commission will elucidate the matter that was investigated into and the evidence emerging from the investigation.

8. Conducting an impartial inquiry

24. An impartial inquiry will require that the Commission declines to receive hearsay evidence or evidence adversely affecting the reputation of any person or tending to reflect in any way upon the character or conduct of any person. An analysis of the documents and supporting materials compiled by the Waki Commission would show how the Commission treated the evidence it received from the many witnesses who testified.

9. Consistency of methods and findings

25. In an inquiry, the method used to collect information must be consistent with the findings of the inquiry. An analysis of the documents and supporting materials compiled by the Waki Commission would show whether the methods used to collect information were consistent with its findings considering, for example, if a researcher uses an interview as his or her method of collecting data, then the findings should be drawn from that interview only and nowhere else. Likewise if the researcher uses documentation as his or her method of collecting information, then the findings should be drawn from that documentation only and nowhere else. An evaluation of the CIPEV report will reveal whether the Commission's findings were consistent with the methods used to collect data.

10. Evidence

26. The evidence provided by the Commission will require substantiation. An evaluation of the CIPEV report will show whether the Commission substantiated its evidence.

11. Reporting the findings

27. The Commission of the Inquiry Act required of the Commission to report to the President, in writing, the result of the inquiry and the reasons for the conclusions. An Evaluation of the CIPEV report will verify whether the Commission reported to the appointing authority, in writing, the result of the inquiry and reasons for the conclusion.

12. Implementation of the findings

28. The recommendations of the Commission were supposed to be implemented by the appointing authority. An evaluation of the CIPEV report will disclose whether the appointing authority implemented the Commission's recommendations.

13. Incomplete and incomprehensible

29. The Commission submitted the CIPEV report to the appointing. An evaluation of the report will lay bare the completeness and the comprehensibility of the report.

14. Plagiarism

30. The Commission used other people's works. An evaluation of the CIPEV report will confirm whether it credited these works with any information it may have used.

V. Justification for Amicus Curiae

31. The Applicant is a researcher who has conducted several researches in Kenya, one such research is an exploration seeking to understand the attitudes and behaviors of Kenyans in relation to citizenship. This expertise will assist in the evaluation of the report of the Commission of Inquiry into Post Election Violence.

32. The Applicant participated in the 2007 elections and got an opportunity to comprehend the political environment that prevailed during this election and is therefore able to address certain issues concerning the violence that followed the election.

33. The Applicant is nonaligned and therefore capable of submitting unprejudiced observations.

For all the above reasons, I pray that this Honorable Chamber allow the Applicant to submit *amicus curiae* observations.

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Dated this 3 September 2013

At [KENYA]



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