

JUDICIAL COMMISSION of INQUIRY INTO THE GOLDENBERG AFFAIR

By: Gibson Kamau Kuria, Assisting Counsel
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This Commission is a tool of governance through which the government of Kenya which was elected on December 27, 2003 inter alia is:-

- (a) Facilitating the enjoyment by its citizens of the rights to know and participate in their government;
- (b) Endeavoring to discover how colossal sums of money were between 1990 and 1990 illegally removed from the consolidated fund without the authority of parliament and used partly to corrupt the democratic electoral process in both 1992 and 1997 and partly to enrich the rulers of the day;
- (c) To identify which rulers obtained what sums of money, what forms these take today and how these may be recovered;
- (d) To educate the citizens how the stolen money destroyed the Kenyan economy before it left the central Bank of Kenya ;
- (e) To identify the ways in which the abuse of power which occurred may be prevented in future.

These and other purposes of the Commission are set out in the Commission which the new President Mwai Kibaki issued on February 24, 2003 as amended on July 29, 2003. The Commission is analogous to the 1963/4 Earl Warren Commission which was appointed by President Johnson to inquire into the circumstances surrounding the assassination of President John F Kennedy in 1963.

The members of the Kenya Commission are three. Two of them are High Court and Court of Appeal judges who were appointed by former President Moi who did not believe in the independence of judges. The third member is an old conservative attorney from one of the country's oldest law firms. In colonial Kenya it served colonists.

The Commission is assisted by four counsels. Two of them Mr. Waweru Gatonye and Mrs. Dorcas Oduor were appointed by President Kibaki on the advice of Attorney-General Wako who served former President Moi loyally. The appointment was made on March 28, 2003 when the new government wrongly thought that it could get competent legal advice from that attorney-general. The other two assisting counsel Dr. John Khaminwa, and I, human rights are attorneys who were detained by former President Moi because of asserting the independence of the Kenya Bar, were appointed assisting counsel on March 28, 2003 after President Kibaki concluded that there was a likelihood of the Moi appointed judges manipulating the Commission to defeat its legal objective and consequently counsels who would assert the independence of counsel were needed.

The duties of counsel are three:

- The first one is to interview witnesses, take statements from them, study documents and present evidence to the commission on the matters which are being inquired into.
- The second duty is to research into, identify and recommend the ways in which the government may recover domestically and outside Kenya moneys which were stolen.
- The third duty is to serve as wise and courageous counsel to ensure that the objectives of the commission are attained.

The events which constitute the Goldenberg Affair took place between 1990 and 2002 fall into two phases:

- Phase 1 which runs from December 1990 to August 1993 is the one during which the money was stolen.
- Phase 2 which runs from late 1993 to December 2002 is the period of cover up. The temptation to “raid” the national treasury or the country’s Central Bank arose from three political facts:
 - The first one was the fall of communism in late 1989 and accompanying fall of the philosophical basis of Africa’s (Kenya included) one party dictatorship.
 - The second political fact was the restoration of political pluralism. Much money with which to buy power from voters and the country’s institutions was needed. No corporations or individuals could be counted upon to contribute campaign funds.
 - The third political fact is the possibility of the former rulers going to live abroad in exile after they lost power. They would need money. If they did not leave the country, according to the theory of mega corruption, which Cicero described in the course of prosecuting Governor Averres of Sicily, the rulers needed money which they would use to corrupt all the country’s institutions of government to avoid both punishment and frustrate the citizens endeavor to compel them to return the public wealth stolen.

Those who designed and executed the “raid” were the country’s former President, the country’s director of intelligence of the day, the Governor of the Central Bank of Kenya, the Minister of Finance, his permanent secretary or adviser and a very businessman whom the public figures would use as conduit. This was to be like Governor Averres whom Cicero prosecuted in old Rome. The stratagems which were used were used were many. They included:

- (i) The corrupt businessman cheating that he exported gold and diamond jewelry and was eligible to receive export compensation at the rate 35% of the alleged export, the incentive designed to earn the country an export;
- (ii) The businessman being allowed to buy foreign currency at a low exchange rate in the morning and being allowed/required in the afternoon to sell the same currency at inflated prices.

The money which was stolen has been invested both locally and offshore. The inquiry entails taking witness statements from the former rulers of the country and requiring them to come and testify.

Of the four assisting counsel I am the only former academic. My jobs include doing whatever research is needed, doing commission's litigation, presenting evidence before the commission and looking for solutions to commission's problems.

Gibson Kamau Kuria

For more information or document by the Robert F. Kennedy 1988 Human Rights Award Laureate contact Mr. Abdelilah Kadili, Senior Program Officer, Robert F. Kennedy Memorial Center for Human Rights