

Kenyans for Peace with Truth and Justice (KPTJ)

Submission to the National Dialogue and Reconciliation Team

A. In respect of decisions reached on Agenda Item 1: Immediate Action to Stop Violence and Restore Fundamental Rights and Liberties

Note:

- Democratic space continues to be constrained by the refusal to allow for peaceful public assembly and spurious charges relating to the same for civil society;
- Crime and insecurity are of concern—related to the failure to disarm and demobilise all illegal armed groups and militia (within the boundaries of the Constitution and the law) as well as resource-based conflicts that have acquired economic and political overtones, particularly in the north of the country;
- Extrajudicial executions by the security services—in the name of disarmament and the disbanding of illegal armed groups and militia continues—with reports of security service involvement in cases of threats and adverse actions against human rights defenders;
- The on-going recruitment into various security agencies—the National Youth Service, the Kenya Police Force, the Administration Police and armed forces—runs parallel to unmet demands for security sector reform, creating unhealthy competition as is apparent between the KPF and the AP. This competition has acquired political overtones and compromises the overall security effort. While the recruitment offers some relief in terms of absorbing unemployed youth, it has not been sufficiently insulated against bribery, corruption and discrimination based on ethnicity for presumably political purposes;
- The movement of senior personnel within the security services does not satisfy the demand for accountability for gross and systemic human rights violations committed by the same—or change the culture of policing in the country.

Recommendations

- Insist on a restoration of the rights to assembly, association and expression;
- Insist on a comprehensive approach to DDR that respects human rights of both those believed to be members of illegal armed groups and militia as well as the communities within which they are active;
- Insist on full implementation of the recommendations for SSR contained in the reports of the Commission of Inquiry into the Post-Elections Violence, the United Nations Special Rapporteur on Extrajudicial Executions and the Task Force into Police Reform—all of which stressed the need for credible internal and external accountability mechanisms for all security services.

B. In respect of decisions reached under Agenda item 2: Immediate Measures to Address the Humanitarian Crisis and Promote National Healing and Reconciliation

Internally Displaced Persons

Note:

- Commitment to the resettlement of IDPs is questionable and the resettlement exercise has not ensured long-term peace by acknowledging and addressing the legitimate grievances of so-called host communities. The security of resettled IDPs is in doubt.

Recommendations

- Solutions to the problems of IDPs must recognise the diversity of IDPs and take the legitimate grievances of so-called host communities into account;
- All resettlement efforts must be in line with regional and international standards for the same.

National Healing and Reconciliation

Note:

- The appointment of a national cohesion council of elders under the Ministry of Justice, National Cohesion and Constitution Affairs, parallel to the establishment of an National Integration and Cohesion Commission is odd;
- The failure to define direct and indirect/systemic discrimination, the multiple grounds on which it occurs and remedies when it does occur makes the Commission ineffective—as does its lack of enforcement powers.

Recommendations:

- Develop and adopt comprehensive anti-discrimination and equality legislation, with a quasi-judicial body to provide remedies and provide clear anti-discrimination guidelines for national planning and budgeting purposes (including the obligation to redress differential outcomes of indirect/systemic discrimination over time).

Truth, Justice and Reconciliation Commission

Note:

- The TJRC was never intended to address criminal prosecutions for the post-elections violence. Its only mandate with respect to the political crisis was to investigate historical injustices that may have contributed to the same. To suggest otherwise is to violate the letter and spirit of the mediation agreements.
- We welcome the reported position by the Government that the Truth, Justice and Reconciliation Commission will not be utilised to prosecute perpetrators of the post-election violence, however political disunity within the Grand Coalition may undermine this.

Recommendations

- Urge the referral of the Kenyan situation to the International Criminal Court for those believed to have command responsibility for all forms of violence during the political crisis;
- Urge the establishment of a Special Tribunal for Kenya, with all the safeguards envisaged by the CIPEV at the investigative, prosecutorial and adjudication levels, for criminal trials of lower and mid-level perpetrators;
- Ensure the two Principals desist from amendments to the TJRC Act that attempt to expand the TJRC's mandate as a replacement for credible criminal trials by the ICC and the proposed Special Tribunal for the post-elections violence and ensure that the Government releases a statement to this effect reassuring the Kenyan people that this will remain its position.

C. In respect of decisions reached under Agenda Item 3: How to Resolve the Political Crisis (Coalition Government/Power Sharing)

The Grand Coalition Government

Note:

- Stability is predicated precariously on the two Principals, without an institutionalised conflict management system—one Principal is silent on almost every matter of public import while the other seems to lack the power to address the same. The Permanent Committee on Coalition Affairs has not been able to function as it ought to;
- Neither Principal seems able to completely hold his respective party to account on issues of impunity—for the violence, for grand corruption, for meaningful reform;
- There is a third power base emerging, which brings together ethnic coalitions within Parliament which is threatening to undermine the reform process;
- There is lack of progress on institutional reforms (of the judiciary, the security services and the electoral system) particularly with respect to accountability (as opposed to capacity and performance), with the replacement of individuals here and there purporting to substitute for real legal and political accountability.

Recommendations

- The vacuum in leadership and the sway of impunity has to be highlighted and addressed as a matter of urgency.

D. In respect of decisions reached under Agenda Item 4: Long Standing Issues and Solutions

Long-term issues, including land and other transitional justice issues:

Note:

- Of the long-term issues, only Constitutional and institutional reforms have received attention, the latter unsatisfactorily so;
- With regards to the Committee of Experts, we have seen much movement through team-building exercises and seminars, but very little substantive motion towards reform.
- While the Committee of Experts has, in the main, committed to delivering a harmonized draft, the polarisation and tensions between and within parties to the Grand Coalition Government make the prospects of coming to a referendum in agreement slim, with boycotts from various members within the Commission;
- With respect to electoral reforms, no voters roll is in place six months to the referendum (exercise usually takes up to two years), and the gaps in the electoral system at the presidential, parliamentary and civil levels have not been addressed;
- Land, the existence of legitimate yet overlapping claims to land and illegal land allocations are yet to be dealt with comprehensively;
- The Cabinet has prepared a National Land policy, however disunity within Parliament, as demonstrated by the lack of resolution on the issue of the Mau Forest, may undermine the passing of a comprehensive land policy;
- Cases of grand corruption continue to spiral and the fight against corruption has not been proactive with no real efforts to address the prosecutions gap between the Kenya Anti-

Corruption Commission and the offices of the Attorney General and Director of Public Prosecutions;

- A lack of sufficient leadership within the judiciary continues to plague this institution, greatly hampering reform efforts. One major criticism that could be levelled at the Taskforce on Judicial Reform was its failure to address the same, instead administrative and financial issues were given greater priority;
- The establishment of a National Youth Fund is not an adequate response to the demographic challenge of youth bulge.

Recommendations

- Engage proactively with parliament on the need for consensus building on the draft Constitution;
- Address the current lack of harmony between bodies responsible for designing the electoral system, ensuring its governance and management and designing the electoral boundaries;
- Prioritise the development of a voters roll;
- Address the prosecutions gap in the criminal justice system;
- Ensure the integration of equity, as they relate to women and youth in the national planning and budgeting process and proactively engages and involves groups that have been working on these issues.

In sum we do not share the principles' assessment of progress made by the grand coalition government in the implementation of the reform program as impressive, but note our concern at the lack of substantive progress as outlined above.

(end/kpt6/10/09)