



Submission to the National Dialogue and Reconciliation Team, March 25, 2010

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

Note:

- There have been numerous instances of extra-judicial killings and torture of suspects, in most cases; no tangible action has been taken against culprits. Most recently, seven taxi operators were executed in Kawangware, Nairobi by the Administration Police.
- Insecurity persists: recent developments point to the tenuousness of the apparent peace in the country. In December 2009 and February 2010, over 130,000 rounds of ammunition and assorted weaponry were found in Narok, a town in the Rift Valley Province that was the epicentre of the 2008 violence. Fears have been expressed of more ammunition being hidden in different parts of the country.
- For the past one year, witnesses who testified before the Commission of Inquiry into the Post-Election Violence and could testify again in future trials have been subjected to escalating threats and other forms of intimidation against them. So far, at least two people who could be witnesses in future trials have been killed. Many others have had to flee into exile while others live under constant threat and intimidation. From April 2009, civil society has, with donor support, placed at least 71 human rights defenders under protection, inside and outside Kenya.
- Currently the government is in the process of prescribing amendments to the current Witness Protection Act; steps have been taken to ensure a working programme by April 2010. However the proposed amendments have serious flaws, including a narrow definition of ‘witness’; the programme itself still lacks structural and statutory authority and the composition of the Advisory Board has the potential of weakening the Agency. This could have a negative impact on the witnesses of the PEV.
- The Government has established a Task Force on police reform to oversee the implementation of the recommendations from the First Task Force on police reform and pending related Bills.

Recommendations

- Insist on a restoration of the rights to assembly, association and expression;
- 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.
- Insist on the need for a separate, internationally supported programme for the Post-Election Violence witnesses.
- Insist that the Government commences investigations regarding witness intimidation, as well as cases where witnesses have been grievously harmed or killed.
- With regards to the Task Force on Police Reform, there is a need for better engagement with all stakeholders; an end to dilatory processes, as well as movement on accountability for human rights violations committed during the PEV and all disarmament exercises following 2007.

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:

- The continued neglect of the IDPs by the Government. The majority of the victims of the post-election violence have yet to find homes. The Kshs. 1.4 billion the Treasury had allocated for the purchase of land for the resettlement of IDPS through the Lands Ministry has yet to be disbursed.
- A review of Operation Rudi Nyumbani (ORN) has recently begun in order to analyse the mismanagement of the program, as well as the theft of funds. The relocation and resettlement programme implemented by the government has been riddled with controversy. Of the Kshs. 2 billion so far spent on the resettlement of the IDPs, about Kshs. 500 million have been embezzled. A report by the Auditor General five months ago indicated that officers in Internal Security and Provincial Administration as well as the Special Programmes Ministries which were handling the resettlement programme had embezzled nearly Kshs. 250 million.

Recommendations

- The Government should hasten the disbursement of funds to all IDPs, many of which have been languishing in camps for over two years.
- The just-begun review of ORN must investigate and make strong recommendations with regard to all irregularities in the disbursement of funds for IDPs and the punishment of culprits.

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:

- That the Kenyan Government has consistently demonstrated its lack of commitment towards the reform agenda, with the politicians being more focused on the on-going tussle for power.
- Attaining a common position on the draft constitution appears to be precarious, especially as the Grand Coalition partners differed publicly before the consensus-building retreat began. Also of concern is the danger posed by special interests to the passing of the Draft Constitution. The intransigent posture of certain Christian churches on issues such as the Kadhi's Courts, and the right to life pose a grave threat to national cohesion and the attainment of a new constitution that Kenyans have longed for.
- There have been numerous reports that the Party of National Unity has launched a diplomatic campaign to disband the Mediation team through intense lobbying at the African Union.
- That the IIEC is expected to conduct a referendum on the adoption of the draft constitution by the end of June this year. Out of a budget of Kshs. 7 billion presented to Treasury, the IIEC received Kshs. 1.25 billion. A supplementary vote to cover referendum and other costs will be brought before parliament by the end of the month. However, the registration process began this week raising grave doubts on the capacity of the commission to deliver on its mandate.
- There are some concerns on the ongoing voter registration, which commenced on 22 March 2010 and is taking place under extreme time pressure. The current fresh registration spells out little in terms of solving the problems identified in the old voters' register. Instead, the exercise appears to be more about collecting data and issuing a new card, than having an overall sound database on which to run future elections as recommended by the Independent Review Commission of the 2007 Elections. Printing new cards based on outdated registration technology and updating the system through addition and subtraction could potentially lead to the same sort of manipulation of data uncovered in relation to the 2007 elections

- The particular challenges of registering Internally Displaced People as voters, due to the continued fear and insecurity they face, as well as doubts on the sufficiency of special measures supposedly in place.

Recommendations

- The vacuum in leadership and the sway of impunity has to be highlighted and addressed as a matter of urgency.
- There ought to be no backtracking on international human rights commitments contained in the Draft Constitution, especially in respect to reproductive and sexual health rights. There should be accountability for what amounts to fear-mongering and hate speech in respect to Kenyan Muslims.
- The new register should be configurable to new technologies available on the market to ensure Kenya has a solid voter registration data base on which to run the referendum and future elections.
- The Panel of Eminent African Persons should engage with the Peace and Security Council at the AU on its mandate. Given the persistent instability in Kenya, civil society and others underline their strong support for the Panel and the importance of continuing its presence and work in Kenya.
- Special measures for the registration of IDPs should be extended to all parts of the country which experienced the post-election violence.
- The IIEC must urgently receive the necessary resources to carry out its work.

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:

- The TJRC is at the moment wracked by a serious credibility crisis on account of the personal history of its Chairperson. Ten international former truth commissioners, including Desmond Tutu have also called upon the Chairman to resign. Most civic organisations argue that Kiplagat fails to meet the highest standards of ethics necessary for the post.
- The debate on the Draft Constitution has taken outside Parliament, in effect stealing the process from Kenyans;
- The absence of strong checks and balances by Parliament has resulted in rising levels of corruption. The continuing emergence of mega scandals in government has further tainted Kenya's credentials in the international community, angering donors, some of whom have suspended aid.

Recommendations

- Engage proactively with parliament on the need for consensus building on the draft Constitution;
- The opportunity offered by the TJRC to move Kenya forward should not be wasted on account of the Chairman's real and perceived accusations of conflict of interest. It is important that the TJRC is shielded from contention and ridicule so that it will be able to move Kenya from the current path of impunity to a culture that upholds accountability.
- That the current Chair of the TJRC be removed by the appointing authority through the stipulated process and for all international support to be withheld until this is done so. In the case that the Chairman is not removed, KPTJ would request the removal of all international commissioners.
- The government must conduct a vigorous and united campaign against corruption in its ranks. All officials suspected of involvement in corruption must step aside to facilitate investigations.

(end/kptj/as/10)