

**KENYANS FOR PEACE WITH TRUTH AND JUSTICE and
THE NATIONAL CIVIL SOCIETY CONGRESS**

PRELIMINARY RESPONSE TO THE MEDIATION PROCESS IN KENYA

February 7th 2008

Nairobi

The Kenyans for Peace with Truth and Justice (KPTJ) coalition and the National Civil Society congress (NCSC) wish to reiterate their unequivocal support for the Kofi Annan-led AU and internationally backed mediation process in Kenya. Kenyans are desperate to see an end to the nightmare that the current crisis represents: this process represents an important, and perhaps the only remaining, opportunity to resolve the Kenya crisis. KPTJ and NCSC also wish to restate that real, lasting peace will only be achieved through both truth and justice with regard to the Kenya Presidential Election of 2007, and the violence that followed it.

The mediation process has achieved some success as well as raising significant concerns. It deserves applause that the two major combating political antagonists in this crisis have been brought to the negotiating table. It is also deserving of mention that these two groups have remained at the negotiation table despite the very challenging and sometimes outright traumatic environment they are dialoguing under. We will shortly be addressing the content of some of the interim agreements arrived at including the proposed Truth Justice and Reconciliation Commission announced on February 4, 2008.

There are, however, **deep concerns that remain** and have been further deepened by unfolding events. The state of insecurity and incalculable losses of life, limb and livelihood in the country is a tragic derogation of all universally accepted norms and standards of human rights. The KPTJ and NCSC support the call contained in the Kenya National Dialogue and Reconciliation documents for the immediate restoration of the fundamental rights and freedoms of Kenyans, including the right of peaceful assembly. We note that, in the past week or so, two Members of Parliament from one side of the political divide have been murdered in suspicious circumstances and demand the speedy and conclusive clarification of these crimes. Further there have been highly inflammatory and unacceptable statements made by Mediation Parties that trespass on the mediation agenda and undermine the prospects of successful mediation with truth and justice. The pattern of disrespect towards and slighting of international partners-including the African Union and President John Kuffuor -which manifested itself again recently with the rejection of Mr. Cyril Ramaphosa cannot go uncondemned. In this regard, the KPTJ and NCSC express their concern over reports that the hotel room of His Excellency Kofi Annan was bugged. The situation should be investigated and, if the reports are true, those responsible be identified and punished.

Let it be known that ordinary Kenyans reject any slide towards a status as a pariah nation and are pained at the cavalier treatment of those who have tried to assist us out of our present predicament. Kenya must both see and project itself as an accountable and responsible member of the community of nations, in Africa and worldwide. We therefore call on all partners, regional and international, to desist from doing “business as usual” with Kenya: the protagonists must be forced to focus on the mediation process as the most urgent order of business. With regard to this, we reject the presence of IGAD foreign ministers in Kenya at this time and the planned holding of the EAC Summit as detracting from our national focus on the Panel of Eminent Africans (Annan) mediation process.

On the **mediation agenda**, we note as ordinary Kenyans that both this agenda and the participating parties seem to **rotate around the dispute between two contending political sides**. This fails to account for the voting and non-voting citizen who will ultimately be affected by the process and resolutions arising. Kenyans are emerging from a history of numerous experiences of failed involvement by competing political protagonists from independence to the IPPG and subsequent attempts at Constitutional Reform. While confidentiality of certain aspects of mediation may be temporarily necessary, the Kenyan people must have ownership of the process and it must be accountable to them. To this end, a mechanism that encourages transparency and includes the views of Kenyans on the process is necessary.

Having benefited from an examination and analysis of the agenda and initial statement as well as the emerging reports from the Kenya National Dialogue and Reconciliation Process, the KPTJ and NCSC wish to recommend as follows:

1. **FUNDAMENTAL PRINCIPLES:** That the foundational principles of the Mediation Process be clarified as the acceptance of universally accepted human rights, the protection and promotion of democracy and the rule of law, accountability, transparency, and the achievement of justice for all.
2. **TRANSPARENT GROUND RULES:** That the Mediation Process transparently spells out binding rules of engagement as well as attending sanctions in cases where parties are determined to be in violation of those rules. It is important that such rules bind parties to the process to conduct themselves in a manner that builds confidence, cultivates good faith and imposes sanctionable obligations;
3. **LEGITIMACY & ENFORCEABILITY:** That the Mediation Process and its outcomes be constitutionally embedded to ensure that it is binding, enforceable and does not suffer from interference from the competing political interests or challenges to its legality or legitimacy; the Mediation outcomes should be reduced to an instrument or instruments that can be deposited in the Parliament of Kenya;
4. **OWNERSHIP & ACCOUNTABILITY:** That the Mediation Process be open to receive the views of Kenyans and be bound to give feedback to them

- promptly. A mechanism should be established that encourages and consolidates the views of Kenyans. This could be in the form of a timely and periodic two-way feedback mechanism into which views of Kenyans are fed and there is dissemination of concrete information to *wananchi* on how the issues raised are being addressed. KPTJ and NCSC appreciate initial efforts to disseminate information and strongly encourage the mediation team to be proactive and continue to circulate this information more widely so many more Kenyans can be aware of the progress made;
5. **TRIGGERS AND ROOT CAUSES:** That the Mediation Process address itself to, and deal with, the context which has precipitated this crisis and in particular the underlying issues of electoral, institutional and constitutional failure, impunity, political corruption and the ethnicization of politics in order to lay the framework for finding a lasting resolution to the Kenya crisis;
 6. **ADDRESSING VIOLENCE:** That the Mediation Process address all forms of violence that have manifested themselves through this crisis, while appreciating its evolving nature and the real capacity problems inherent in the task of ending widespread violence against Kenyan citizens. KPTJ believes that violence has evolved from the spontaneous post-election protests and organised militia action, to vigilante entrenchment and general banditry and crime. Responses must recognize that resolving violence is no longer just political but must encompass a range of urgent measures such as the enhancement of police capacity, restoring confidence of Kenyans in their security apparatus, and the creation of social safety nets;
 7. **TREATMENT OF INTERNALLY DISPLACED KENYAN CITIZENS:** That due attention be paid to the safety and rights of the 350- 500,000 Internally Displaced Kenyan citizens so that their freedom to independently choose whether they should move or evacuate from their respective locations is not fettered but rather honored and facilitated. It is callous to compel people to live in places where they feel insecure without providing credible guarantees for their security;
 8. **TRUTH JUSTICE AND RECONCILIATION:** That discussions on Truth, Justice and Reconciliation must address independent, impartial, effective and expeditious mechanisms of restorative justice for all victims in order to address the self-negating cycles of revenge and violence. Such a process must draw a distinction between historical or communal grievances and contemporary crimes which should be investigated and prosecuted, lest violence end up being rewarded under the guise of addressing historical grievances or exacting revenge for perceived victimisation;
 9. **CONSTITUTIONAL REFORM:** That Constitutional reform must be fast-tracked into a short-term and medium-term time-frame so as to make it practicable. A comprehensive constitution-making process should be entrenched in the current constitution through a constitutional amendment. Priority should be given to electoral reform, transitional government arrangements, top-level public service reforms, judicial reform and police

reform. Immediately thereafter the comprehensive constitutional reforms should be completed.

10. **ADDRESS CAPACITY DEFICITS:** That any capacity deficits of the parties to reach and assure agreement be addressed and facilitated by the Parliament of Kenya and if need be the AU and the international community. That the international community continue to take such measures as are necessary to ensure that the Mediation Parties and their respective supporters are held accountable to the Kenyan people and to the principles of truth with justice.

KPTJ and the NCSC salute all Kenyans, such as those in civil society and the business community, who have resolved to work for lasting peace through truth and justice and call on non-violence to achieve these objectives. KPTJ and NCSC also applaud and express full solidarity with the Kofi Annan-led AU mediation process for beginning to craft a way out of this cataclysmic crisis in Kenya. KPTJ and NCSC appreciate the positive contributions of those such as UN Secretary-General Ban Ki Moon and the African Union Summit. Given the historical failure of many national processes to resolve Kenya's problems, it behoves all to ensure that there are concerted efforts to work towards the ultimate success of the AU Mediation Process in Kenya.

God/Allah Bless Kenya.

February 7, 2008

Signed:

Africa Centre for Open Governance
(AfriCOG)
Awaaz
Bunge la Mwananchi
Centre for Law and Research
International (CLARION)
Centre for Multiparty Democracy
(CMD)
Centre for Rights, Education and
Awareness for Women (CREAW)
Institute for Education in Democracy
(IED)
International Commission of Jurists
(ICJ-Kenya)
International Centre for Policy and
Conflict

The Cradle-the Childrens Foundation
Constitution and Reform Education
Consortium (CRECO)
East African Law Society (EALS)
Fahamu
Haki Focus
Hema la Katiba
Independent Medico-Legal Unit
(IMLU)
Innovative Lawyering
Kenya Human Rights Commission
(KHRC)
Kenya Leadership Institute (KLI)
Kenya National Commission on
Human Rights (KNCHR)
Kituo cha Sheria

RECESSPA

Law Society of Kenya (LSK)

MARS Group Kenya

The National Civil Society Congress

Muslim Human Rights Forum

National Convention Executive
Council (NCEC)

Society for International
Development (SID)

Sankara Centre

The 4 Cs

Urgent Action Fund (UAF)-Africa

Youth Agenda