

*Kenya National Dialogue and Reconciliation
Mediated by H.E. Kofi Annan and the Panel of Eminent African Personalities*

14 February 2008

Agenda Item Three: How to Resolve the Political Crisis

I. Preamble:

Reaffirming the Goal of the National Dialogue and Reconciliation:

To ensure that the National Dialogue and Reconciliation is carried out in a continuous and sustained manner towards resolving the political crisis arising from the disputed presidential electoral results as well as the ensuing violence in Kenya, in line with the agreement between His Excellency Mwai Kibaki and Honourable Raila Odinga, as publicly announced on 24th January and reaffirmed on 29th January 2008 at County Hall in Nairobi.

The final goal of the National Dialogue and Reconciliation is to achieve sustainable peace, stability and justice in Kenya through the rule of law and respect for human rights.

Recognising under Agenda Item Three that, in large measure, the current crisis revolves around the issues of power and the functioning of state institutions, and also recognizing that its resolution may require adjustments to the current constitutional, legal and institutional frameworks, the parties negotiated and agreed on a solution *towards resolving the political crisis arising from the disputed presidential electoral results* as well as the ensuing violence in Kenya.

II. Regarding the disputed presidential electoral results, we examined the following options:

(a) *Complete Re-count of the Presidential Elections.*

We agreed that any re-count, to be considered credible in the eyes of the Kenyan people, would need to be nation-wide, involving a ballot by ballot scrutiny of all of the more than 11,000,000 ballots cast on December 27th. We agreed that all ballots and electoral materials would have to be made available at counting centres across the country before announcing a re-count. A re-count would need to be conducted under the full scrutiny of trained observers and party agents, who would have the right to scrutinize the counting and verify each and every ballot.

We agreed that a re-count would need to be overseen by a specially appointed independent body that enjoys the trust and broad support of all Kenyans.

We considered the timeline for a possible re-count. We agreed that the preparatory work required to make a re-count credible in the eyes of the Kenyan people and in keeping with international best practices could take up to three months.

We were concerned that a delay of several months could significantly increase existing tensions and delay resolution of the current crisis, and we recognize that the result of a re-count might not further Kenyan unity, and we therefore decided to review other options.

(b) Re-tally

We agreed that any re-tally, to be considered credible in the eyes of the Kenyan people, would need to be nation-wide, involving full scrutiny and re-tally of results sheets from all of the more than 27,500 polling station tally sheets and 210 constituency tally sheets. We agreed that all forms would have to be made available across the country before announcing a re-tally. A re-tally would need to be conducted under the full scrutiny of trained observers and party agents, who would have the right to scrutinize the conduct of the process and the validity of each tally sheet, and would need to be overseen by a specially appointed independent body that enjoys the trust and broad support of all Kenyans.

While we agreed that a re-tally could successfully identify problems or irregularities in the tally sheets, a re-tally could not however identify the correct result in those stations or constituencies where problems or irregularities were identified.

For these reasons stated above, we decided to review other options.

(c) Re-run of Presidential Elections

We were not in agreement on the need for a re-run of the Presidential elections.

We agreed however that, to safeguard the trust and confidence of the Kenyan people in the democratic process, the next election should take place only after electoral reforms, including but not limited to the reform of the Electoral Commission of Kenya, finalization of the work of the Independent Review Committee (see below), updating of the Voters' List, establishment and improvement of dispute resolution mechanisms and effecting measures to ensure enfranchisement of Internally Displaced Persons and refugees have been implemented.

We considered the timeline for these reforms, which would be essential to make the process credible in the eyes of the Kenyan people, and in line with international best practices, would be substantial and would take at least one year.

We recognized that Kenyans could not wait that long for a resolution of the crisis, and we therefore decided to review other options.

(d) Judicial Process

We agreed that a judicial process was no longer an option as the legal time limit had expired, and we therefore decided to review other options.

e) Forensic Audit

We considered a forensic audit of the electoral process. We agreed that an audit would have the advantage of investigating and making findings regarding the conduct of the 2007 election. We agreed that an audit will not reduce tension and violence and will not result in a solution to the crisis, and that the legal basis for such an audit was unclear.

We further agreed that the functions of a forensic audit would be best undertaken by an Independent Review Committee (see below).

f) Independent Review Committee

We agree to establish an Independent Review Committee that would be mandated to investigate all aspects of the 2007 Presidential Election and would make findings and recommendations to improve the electoral process.

The Committee will be a non-judicial body made up of Kenyan and non-Kenyan recognized electoral experts of the highest professional standing and personal integrity.

The Committee will submit its report within 3-6 months and it should be published within 14 days of submission. The Committee should start its work not later than 15 March 2008.

The findings of the Independent Review Committee must be factored into the comprehensive electoral reforms that are envisaged.

III. Regarding the need for a political settlement to resolve the current crisis, we agree on the following points:

We recognize that there is a serious crisis in the country, we agree a political settlement is necessary to promote national reconciliation and unity.

We also agree that such a political settlement must be one that reconciles and heals the nation and reflects the best interests of all Kenyans. A political settlement is necessary to manage a broad reform agenda and other mechanisms that will address the root causes of the crisis.

Such reforms and mechanisms will comprise, but are not limited to, the following:

- Comprehensive Constitutional reforms;
- Comprehensive electoral reform – of the electoral laws, the electoral commission and dispute resolution mechanisms;
- A truth, justice and reconciliation commission;
- Identification and prosecution of perpetrators of violence;
- Respect for human rights;
- Parliamentary reform;
- Police reform;

- Legal and Judicial reforms;
- Commitment to a shared national agenda in Parliament for these reforms;
- Other legislative, structural, political and economic reforms as needed.

We have only one outstanding issue under this Agenda Item, the governance structure, which is being actively discussed. Several options have emerged and the parties are going to consult their principals and leadership on these options and will revert to the Chair shortly.

We also agree that the issues in Agenda Item Four are fundamental to the root causes of the crisis, and are closely linked with Agenda Item Three. The implementation of the following reforms should commence urgently in concert with reforms of Agenda Item Three. However, these processes may continue beyond the timeline of the next election.

- Consolidating national cohesion and unity;
- Land reform;
- Tackling poverty and inequity, as well as combating regional development imbalances, particularly promoting equal access to opportunity;
- Tackling unemployment, particularly among the youth;
- Reform of the Public Service;
- Strengthening of anti-corruption laws/public accountability mechanisms;
- Reform of Public Finance and Revenue Management Systems and Institutions;
- Addressing issues of accountability and transparency.

We recognize that this settlement is not about sharing of political positions but about addressing the fundamental root causes of recurrent conflict, and we reaffirm our commitment to address the issues within Agenda Item Four expeditiously and comprehensively.

Milestones and benchmarks for the implementation of the reform agenda will have to be defined.

Signed on this day, February 14, 2008

On behalf of Government/PNU:

Hon. Martha Karua

Hon. Sam Ongeru

Hon. Mutula Kilonzo

Hon. Moses Wetang'ula

On behalf of ODM:

Hon. Musalia Mudavadi

Hon. William Ruto

Hon. Sally Kosgei

Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities

H.E. Kofi A. Annan

Chairperson