

STATE OF THE NATION REPORT TO THE OVERSIGHT BOARD MEETING ON WEDNESDAY 27TH FEBRUARY 2008

Introduction

The State of the Nation committee was formed by the Oversight Board (OB) which met on 10th January 2008 following unprecedented violence which engulfed the country after the Electoral Commission of Kenya (ECK) announced that Kibaki had won the Presidency in the December 27th 2007 general elections against Raila Odinga.

The immediate effect of the crisis is that over 1,000 people have lost their lives and another 600,000 are internally displaced. Billions of shillings have been lost in destroyed property and lost opportunities. The country's international image has suffered and industries which depend on international goodwill like tourism have been severely hit.

Tribal militias took advantage of the situation and started 'patrolling and collecting taxes' from innocent Wananchi while persons from certain communities have been expelled from their homes and ended up in Internally Displaced Persons (IDPs) camps across the country. Others are destitute and a burden to others even though they made it to their 'ancestral homes'.

Hate language among communities has characterised normal discourse while fear of movement by ordinary people has added its toll to socio-economic life of the country. Uncertainty and tension also pervade multi ethnic settlements and other areas. Ethnic tensions and balkanisation of the country through quit notices to non indigenous peoples, loss of workplace diversity and harmony are all contributing to breakdown of the social fabric.

The mid term effects of economic contraction will be felt in the coming months. Education system and medical service provision have been grossly affected posing a serious challenge to the provision of social services.

When it started, the crisis appeared to be as a result of a dispute between Party of National Unity (PNU) led by Mwai Kibaki and Orange Democratic Party (ODM) led by Raila Odinga over the presidential results. Concern primarily focused on the need to stop widespread violence and destruction of property while arranging to resettle displaced persons. There were calls for re-tallying of the presidential vote and/or re-run of the presidential elections in order to get the real winner of the presidential vote.

However, it soon became clear to all that although the immediate cause of the eruption was the disputed presidential results, other issues of historical nature also came to the fore and compounded the crisis. These include: Land resource issues, negative ethnicity, inequitable distribution of public resources, inequitable development of the country, centralisation, misuse and abuse of political power for private gain and great income disparities amongst the country's citizens.

This crisis also revealed undercurrents that would accurately describe Kenya as a nation of plenty wallowing in abject poverty with 60 % of its citizens living below the poverty line while a handful enjoy great wealth, most of it siphoned from public coffers. Even a growing economy as witnessed in the 1960s and 19670s built small

economic elite while alienating large sectors of society especially the youth from mainstream political and economic life.

Other indictments of betrayal of people's hopes include its failure to restore persons displaced at independence to their lands as the government operatives hijacked the million acre scheme and acquired huge tracts of land at the expense of the needy, while elsewhere corruption became a pastime in public life. Increased intolerance led to human rights violations and repression against persons with divergent political tendencies.

Except for 2002 general elections, electoral malpractice has been the order of the day especially in Presidential contests. The crisis has also dramatised the negative effects of the country's failure to write a new constitution. An imperial presidency with enormous power of the executive with unfettered opportunities to dispense patronage to select groups based on ethnic identity to exclusion of others was entrenched by successive regimes. The concentrations of power at the centre and the tendency to rewards cronies through corruption and distribution of state largesse means that incumbents cling to power at all costs while opponents fight with equal motivation to get to power. The high prize of attaining power and the huge costs of failing to capture it literally reduce political competition to a life and death contest.

An African Union sponsored mediation Team of Eminent Persons led by Dr. Kofi Annan was put in place and continues to work to bring the PNU and ODM together and work out a political formulae to end the crisis. The Annan team and Kenyans in general have recognised that reform issues must address the underlying tensions in the country and especially provide a model of managing ethnicity in Kenya including all groups in emerging power arrangements as well as dealing with inequality in the country.

A comprehensive review of the constitution would form the basis for restructuring the state, strengthening institutions, addressing historical injustices and guiding equitable distribution of resources. Other institutions particularly the ECK and the judiciary also need reforms to regain confidence and ensure effective service delivery.

Kenyans have placed their hopes in the Committee of Eminent persons led by Dr. Annan and they seem to have given the ongoing talks between PNU and ODM a chance. But this is uneasy calm which can easily give way to fresh rounds of violence. Indeed another round of violence could turn out to be more vicious as it would be most certainly organised. The immediate priority is to get a political settlement that will bring about order necessary for preventing collapse of the economy and governmental structures in many parts of the country through fresh mayhem and destruction.

A solution which addresses underlying tensions in the country as well as the interests of the main protagonists through an immediate political settlement must therefore be sought. The State of the Nation committee recognises that unless there is equitable distribution of state resources, and a political settlement arrived at which is anchored in constitutional, legal and institutional reforms, the challenge which our country faces will be far from over.

PROPOALS FOR THE WAY FORWARD

The State of the Nation committee too has pointed at these underlying problems and tensions and is therefore proposing solutions based on issues that have come to the fore. The State of the Nation committee also wishes to discuss the role of political parties in finding the solution to the country's problems. A workshop to get the views of political parties on the current crisis was held on 8th February 2008 and came up with resolutions which have been attached elsewhere. The committee also prepared a communiqué which was availed to Dr. Annan's committee

The committee similarly recognises the efforts and contributions of other actors such as the **civil society congress** and **the women political actors**. The committee considered and followed the unfolding events and issues and came up with the following recommendations:

- a. Putting in place a transitional government with power sharing arrangements that are anchored in the constitution to facilitate legal and institutional reforms before calling for an election within 24 months.(Is this pragmatic ?)
- b. The transitional government to address the longstanding issue of constitutional review culminating in an election within 24 months.
- c. Immediate summoning of Parliament to make the necessary constitutional changes and legislation to domesticate mediated agreements.
- d. Efforts to address and redress the humanitarian crisis and resettlement of IDPs to be intensified but with a clear understanding that a long term solution to the current crisis lies in a just political settlement that enjoys the goodwill of all Kenyans.
- e. That CMD Kenya facilitates political actors in severely affected provinces like Rift Valley and Central. (these two only?)
- f. Political parties to raise their voice in the mediation efforts and subsequent healing and reconstruction process.

The State of the Nation committee further recommends that CMD Kenya continues to support the mediation process and dialogue on cross and intra-party basis. CMD Kenya's contribution will be needed in the healing and peace building processes.

Attached herewith are tabular presentations of available options for a political settlement for considerations by the Oversight Board:

PROPOSED MEASURES TO END CRISIS

OUT PUT	ISSUES	PROCESS
<p>1. Power sharing in a grand coalition between ODM and PNU.</p>	<ul style="list-style-type: none"> - Deal anchored in Constitution and enabling legislation - Institutions put in place to facilitate functioning of transitional government - Power sharing arrangements to culminate in elections within 24 months - 	<ul style="list-style-type: none"> - Transitional government to institute constitutional, legal and institutional reforms - New political arrangement to check culture of impunity and abuse of power.
<p>2. Transformative justice</p>	<ul style="list-style-type: none"> - Human rights violations - Looting and destruction of Property and lives 	<ul style="list-style-type: none"> - Truth and Reconciliation Commission - Transitional justice - Prosecution of offenders - Restitution
<p>3. Independent competent and trusted Judiciary</p>	<ul style="list-style-type: none"> - Low level trust in the Judiciary by Kenyans - Lack of capacity and professionalism leading to backlog of cases. - Judiciary understaffed - Outdated methods of record keeping. 	<ul style="list-style-type: none"> - Appointments of Judicial officers to be done in transparent, professional and competitive manner. - Strengthen Judicial Service Commission as an autonomous body - Enhance calibre of Judicial officers - Engage more staff - Invest in modern technology
<p>4. Reforming electoral process</p>	<ul style="list-style-type: none"> - Separate presidential election from parliamentary and civic elections - Legislation dealing with elections is scattered in National Assembly and Presidential elections Act, Election Offences act, The Local authorities Act, the Penal Code, The Kenya Broadcasting Act, among other statutes 	<ul style="list-style-type: none"> - Independent audit of electoral process - Enact Elections Bill that consolidates all election laws (to include election code of conduct) - Enact referendum law - Election petitions to have a time limit
<p>5. Reconstituting the ECK</p>	<ul style="list-style-type: none"> - Appointment of competent and impartial ECK commissioners by or with input from Parliament. - Reducing size of ECK - Separating policy role of ECK commissioners and management to be left to 	<ul style="list-style-type: none"> - Disbandment of ECK - ECK to draw budget from consolidated fund. - Investing in technology to standardise the voter register, voting procedure and real time announcement of results.

	professional staff.	
6. Land reform	<ul style="list-style-type: none"> - Land issues (historical grievances especially in Coast and Rift) - Absentee landlords in the coast and squatter problem - Perception that outsiders ‘grabbed’ the land in the Rift Valley - Issues raised brought by Ndung’u report 	<ul style="list-style-type: none"> - A clear national land policy - Consolidate all land laws - Review land tenure system - Implementation of the Ndung’u report - Resettle squatters
7. Parliamentary reform	<ul style="list-style-type: none"> - President controls parliamentary sittings - Capacity of Parliament to amend the Constitution in line with mediated positions. - Low public trust of the institution of parliament - Enhance quality of debates, increase work load especially bills 	<ul style="list-style-type: none"> - Reconvening of Parliament to legislate mediated positions - Parliament to have its own calendar - Parliamentary Service Commission to regain its autonomy
8. Social and Humanitarian crisis	<ul style="list-style-type: none"> - Loss lives and the displacement people - Destruction of education system and medical service provision - Language of hate among communities and character of discourse - Ethnic tensions and balkanisation of the country - Fear in people’s lives 	<ul style="list-style-type: none"> - Establishment of a Truth, Justice and Restitution Commission to resolve historical injustices - Provide for immediate resettlement of displaced persons - Identification and prosecution of perpetrators of violence.
9. Constitutional review	<ul style="list-style-type: none"> - Make Constitutional changes to facilitate reform agenda 	<ul style="list-style-type: none"> - Negotiation effort to narrow down to areas of constitutional review
a) <i>Interim Constitutional review</i>		
b) <i>Comprehensive review</i>	<ul style="list-style-type: none"> - The current Constitution has largely contributed to the crisis - Address the issue of devolution of power (executive power) - Desire of the nation to restore confidence in Constitutional government in Kenya - Constitution to provide a model for managing ethnicity 	<ul style="list-style-type: none"> - Parliament to transform itself into a constituent assembly to enact new constitution - Reform to address underlying tensions in the country

	regional/ethnic balance as well as dealing with inequality in the country	
10. Economic crisis	<ul style="list-style-type: none"> - Property destruction worth over Ksh 5 bn (KEPSA) - Collapsing national economy. Famine, high food prices and interruption of road and railway transport - Effects to be felt in mid-term period 	<ul style="list-style-type: none"> - Establishment of a National Reconstruction representative conference - Government to provide for reconstruction of destroyed sectors and revival of the economy
11. Legal reforms		<ul style="list-style-type: none"> - Strengthen various institution and restore confidence in them - Enact IPPG reforms into law - Bring into effect the Political Parties Act - Enact laws to strengthen institutions of governance
12. Institutional reforms	<ul style="list-style-type: none"> - Harmonise and rationalise Ministries - Scrutinise the role of the police - Strengthen and overhaul KACC 	<ul style="list-style-type: none"> - Equitable allocation of appointments in public service to reflect diversity of the nation - Invest in modern technology - Have professionals run institutions
13. Cessation of violence	<ul style="list-style-type: none"> - Deal with professional militias or the semi organised groups - Address impartiality in the Police force 	<ul style="list-style-type: none"> - Identify, disarm and demobilise the militias - Involve leaders from ‘aggrieved’ communities - Independent regular updates on security situation to inspire confidence of the people

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