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KENYAN NATIONAL DIALOGUE AND RECONCILIATION

THROUGH THE MEDIATION OF H.E. KOFI A. ANNAN AND THE PANEL OF EMINENT AFRICAN PERSONALITIES

ON THE RESOLUTION OF THE POLITICAL CRISIS

ANNOTATED AGENDA AND TIMETABLE

*At the fourth session held on 1 February 2008 under the chairmanship of Mr. Kofi Annan, of the Panel of Eminent African Personalities, the Parties to the Kenyan National Dialogue and Reconciliation on the resolution of the political crisis and its root causes, namely the Government of Kenya/Party of National Unity and the Orange Democratic Movement, agreed on the following Agenda for the dialogue:*

A) ANNOTATED AGENDA

1. IMMEDIATE ACTION TO STOP VIOLENCE AND RESTORE FUNDAMENTAL RIGHTS AND LIBERTIES

Both Parties understand that resolving this crisis politically is a matter of immediate priority and have reiterated their commitment to finding a just and durable solution. Discussions on Agenda point 1 will be conducted to identify and agree on the modalities of implementation of immediate action aimed at:

- Stopping the wave of violence that has gripped the country since the announcement of the results of the Presidential Elections;
- Enhancing the security and protection of the population and their property;
- Restoring the respect for the sanctity of human life;
- Ensuring that the freedom of expression, press freedom and the right to peaceful assembly are upheld;

2. IMMEDIATE MEASURES TO ADDRESS THE HUMANITARIAN CRISIS, PROMOTE RECONCILIATION, HEALING AND RESTORATION

Discussions will be conducted to identify and agree on the modalities of implementation of immediate measures aimed at:

- Ensuring that the assistance to the affected communities and individuals is delivered more effectively;
- Ensuring the impartial, effective and expeditious investigation of gross and systematic violations of human rights and that those found guilty are brought to justice;

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Chief of Staff  
12th March 2008.



- Ensuring that the processes of national healing, reconciliation and restoration start at once.

### 3. HOW TO OVERCOME THE CURRENT POLITICAL CRISIS

Under this Agenda item, the Parties will negotiate and agree on a solution *towards resolving the political crisis arising from the disputed presidential electoral results as well as the ensuing violence in Kenya.*

The current crisis revolves, in large measure, around the issues of power and the functioning of state institutions. Its resolution may require adjustments to the current constitutional, legal and institutional frameworks.

### 4. LONG-TERM ISSUES AND SOLUTIONS

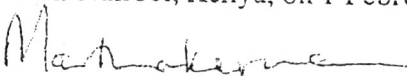
Poverty, the inequitable distribution of resources and perceptions of historical injustices and exclusion on the part of segments of the Kenyan society constitute the underlying causes of the prevailing social tensions, instability and cycle of violence. Discussions under this Agenda item will be conducted to examine and proposed solutions for long-standing issues such as, *inter alia:*

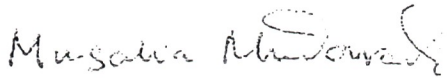
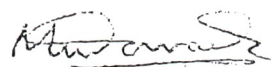
- Undertaking constitutional, legal and institutional reform
- Tackling poverty and inequity, as well as combating regional development imbalances;
- Tackling unemployment, particularly among the youth;
- Consolidating national cohesion and unity;
- Undertaking a Land Reform;
- Addressing transparency, accountability and impunity

#### B) *TIMETABLE*

The Parties agreed that Agenda items 1, 2 and 3 would be resolved within a period of between 7 and 15 days from the date of commencement of the Dialogue, while Agenda item 4 would be resolved within a period of one year after the commencement of the Dialogue (launched on 28 January 2008).

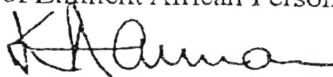
Done in Nairobi, Kenya, on 1 February 2008

  
For the Government/PNU Delegation

  
  
For the ODM Delegation

Witnessed by

For the Panel of Eminent African Personalities



H.E. Kofi A. Annan

Chairperson

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**Public Statement**

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

**Feb 1, 2008**

**Preamble:**

*Goal:*

*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.*

*Noting with concern the situation of insecurity in the country;*

*We need to take the following steps to immediately halt the violence:*

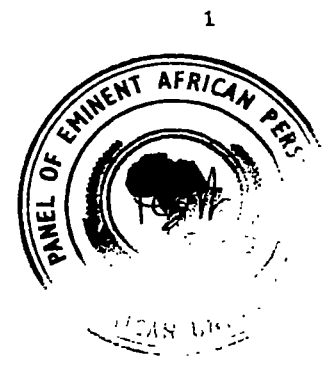
1. To the Police:

- a) The police must act in accordance with the Constitution and the law and in particular the Police Act and the Force Standing Orders. While the police are entitled to use reasonable force to protect vulnerable populations and in case of self defence, live bullets must not be used on unarmed civilians in unjustifiable circumstances.
- b) The security forces must carry out their duties and responsibilities with complete impartiality and without regard to ethnicity, political persuasion, or other partisan consideration.
- c) The deployment of the security agents must at all times promote and reflect national integration and harmony.
- d) In order to harmonise security activities at all levels, there is a need for the cross flow of information between administrative units and the leadership at every level.

2. To the Public:

- a) All leaders should embrace and preach the peaceful coexistence of all communities and refrain from irresponsible and provocative statements.

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Chief of Staff  
12th March 2008*



b) Mobilise local community, religious, political, business and civil society leaders to hold joint meetings to promote peace and tranquility and stand up for justice and fairness.

c) All Kenyan citizens should stop acts of violence.

d) All illegal armed groups and militias should be demobilized and disbanded.

e) We appeal to all youths throughout the country not to participate in acts of lawlessness particularly those leading to harm or loss of human life and destruction of property.

f) We call upon the victims and those affected by violence to exercise restraint and avoid any acts of revenge or retaliation.

3. As to the restoration of fundamental rights and civil liberties:

a) Ensure that the freedom of expression, press freedom and the right to peaceful assembly are upheld. A suitable code of conduct on live coverage broadcasts, should be developed promptly by the Media Council in consultation with the Ministry of Information and implemented forthwith. This should include punitive measures against abuse.

b) Peaceful assembly as guaranteed by the Constitution should be protected and facilitated. Leaders and the public attending such meetings must ensure that meetings are peaceful, orderly and conducted in conformity with the law.

c) Impartial, effective and expeditious investigations on all cases of crime and police brutality and/or excessive use of force should be undertaken forthwith.

d) Enforce law and order to protect life and property, and to ensure that roads and railways are open and safe for people, goods and services. Major transit routes must be secured and safe passage on all internal road networks throughout the country be guaranteed.

e) All workers, both public and private, must be assisted to return safely back to their places of work. Reopen all institutions of learning and assist teachers and children to return in an environment of safety.

f) All internally displaced persons should be protected and assisted to return safely to their homes and places of work and their rights to reside anywhere in the country be upheld.

g) In order to promote food security, displaced farmers should be assisted to return to their farms. All farmers affected by the crisis should be assisted and encouraged to safely resume their farming activities.

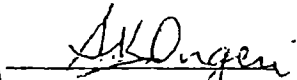
- h) Hate and threatening messages, leaflets, sms, or any other broadcasts of that nature must cease forthwith.
- i) All criminal activities, particularly those of a violent nature, should be prosecuted forthwith.

*Signed on this day, February 1, 2008*

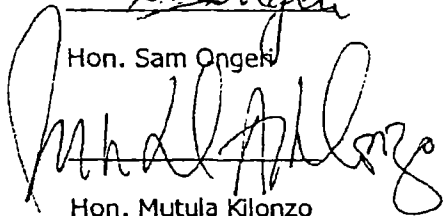
On behalf of Government/PNU:



Hon. Martha Karua

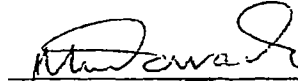


Hon. Sam Ongeri

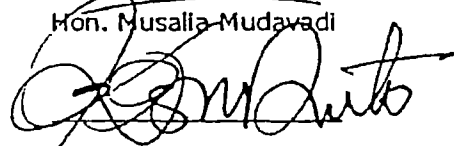


Hon. Mutula Kilonzo

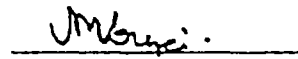
On behalf of ODM:



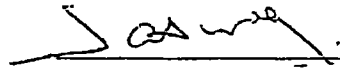
Hon. Musalia Mudavadi



Hon. William Ruto



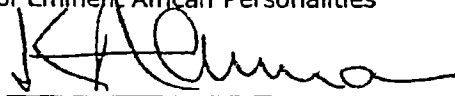
Hon. Sally Kosgei



Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities



H.E. Kofi A. Annan

Chairperson

**Public Statement**

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

**Feb 4, 2008**

**Preamble:**

*Goal:  
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.*

1. With Respect to Immediate Measures to Address the Humanitarian Crisis:
  - a) Assist and encourage displaced persons to go back to their homes or other areas and to have safe passage and security throughout
  - b) Provide adequate security and protection, particularly for vulnerable groups, including women and children in the camps.
  - c) Provision of basic services for people in displaced camps:
    - Ensure that there is adequate food, water, sanitation and shelter within the affected communities – both those in displaced camps and those remaining in their communities.
    - Provide medical assistance with a special focus for women, children, people living with HIV and AIDS and the disabled, currently in displaced camps.
    - Ensure all children have access to education. This will involve reconstruction of schools; encouraging return of teaching staff and provision of teaching materials, and assistance for children to return to their learning institutions.
  - d) Provide information centres where the affected can get easy access to information regarding the assistance that is available to them and how to access it, for example, support for reconstruction of livelihoods, or tracing of family members.
  - e) Operationalise the Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post 2007 Election Violence expeditiously by establishing a bi-

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*Ambassador Nana Effah-Apenteng  
Chief of Staff. 12th March 2008.*



partisan, multi-sectoral Board with streamlined procedures to disburse funds rapidly.

- f) The Fund is open to public contributions and all citizens and friendly countries, governments and international institutions to donate generously.
- g) Ensure close linkages with the ongoing national and international assistance to enhance the effectiveness of delivery.
- h) Ensure that victims of violence in urban areas are not neglected in the implementation of the above.
- i) In order to promote food security, displaced farmers should be assisted to return to their farms. All farmers affected by the crisis should be assisted and encouraged to safely resume their farming activities.

2. With Respect to Immediate Measures to Promote Reconciliation, Healing and Restoration:

- a) Joint peace rallies should be convened by all leaders of parties to promote peace and reconciliation.
- b) Ensure that the freedom of expression, press freedom and the right to peaceful assembly are upheld.
- c) Peaceful assembly as guaranteed by the Constitution should be protected and facilitated.
- d) All-inclusive Reconciliation and Peacebuilding Committees at the grassroots level should be established. The committees should involve the provincial administration, council of elders, women, the youth, conflict resolution/civil society organizations.
- e) Counseling support should be provided to those affected communities.
- f) A national resettlement programme should be developed.
- g) The law on registration of persons should be reviewed to remove the emphasis on ethnicity.
- h) A Truth, Justice and Reconciliation Commission that includes local and international jurists should be established.
- i) Welcome and encourage the United Nations High Commissioner for Human Rights investigatory team.



3. Recommendation to Parliamentarians:

Request the Speaker of Parliament to urgently convene a meeting of all members (Kamukunji) so that the Committee has the opportunity to inform Parliamentarians of the progress of the National Dialogue and Reconciliation.

4. Briefing on Progress to the Principals:

The Panel of Eminent African Personalities will provide periodic joint briefings to H.E. Mwai Kibaki and Hon. Raila Odinga.

5. Implementation of Recommendations:

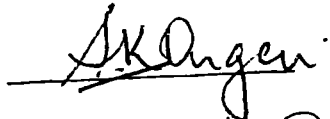
Weekly progress reports on implementation of these and other recommendations to be made to the Committee by the relevant parties/institutions.

Signed on this day, February 4, 2008

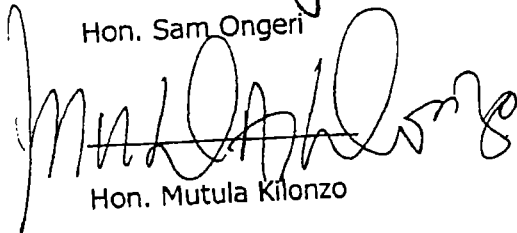
On behalf of Government/PNU:



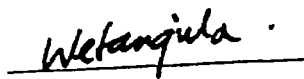
Hon. Martha Karua



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Hon. Mutula Kilonzo

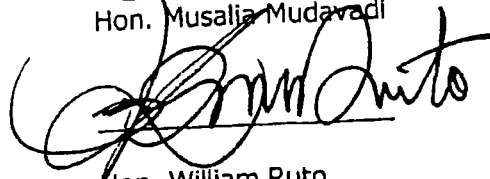


Hon. Moses Wetang'ula

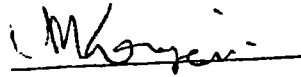
On behalf of ODM:



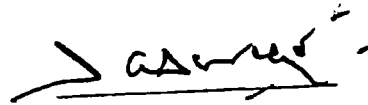
Hon. Musalia Mudavadi



Hon. William Ruto



Hon. Sally Kosgei



Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities



H.E. Kofi A. Annan

Chairperson

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*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 29<sup>th</sup> 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 27<sup>th</sup>. 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.

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*Ambassador Nana Effah-Apenteng  
Chief of Staff  
12<sup>th</sup> March 2008.*



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.

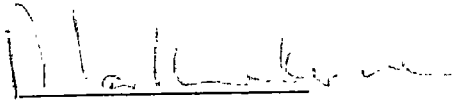
- Consolidating national cohesion and unity;
- Land reform;
- Tackling poverty and inequity, as well as combating regional development imbalances, particularly promoting equal access to opportunity;
- Tackling unemployment, particularly among the youth;
- Reform of the Public Service;
- Strengthening 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.

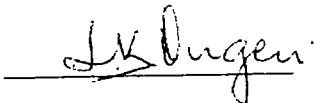
Milestones and benchmarks for the implementation of the reform agenda will have to be defined.

Signed on this day, 14 February, 2008

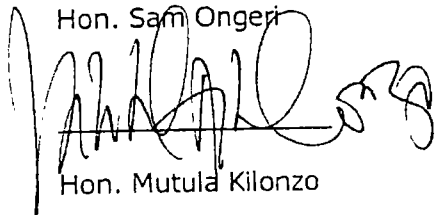
On behalf of Government/PNU:



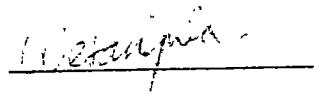
Hon. Martha Karua



Hon. Sam Onger

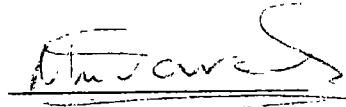


Hon. Mutula Kilonzo

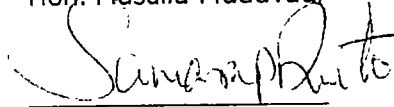


Hon. Moses Wetang'ula

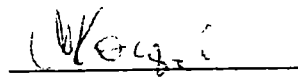
On behalf of ODM:



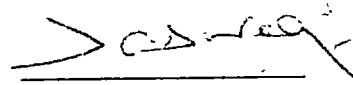
Hon. Musalia Mudavadi



Hon. William Ruto



Hon. Sally Kosgei



Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities



H.E. Kofi A. Annan

Chairperson

5

**ACTING TOGETHER FOR KENYA**

**AGREEMENT ON THE PRINCIPLES OF PARTNERSHIP OF THE COALITION GOVERNMENT**

**Preamble:**

The crisis triggered by the 2007 disputed presidential elections has brought to the surface deep-seated and long-standing divisions within Kenyan society. If left unaddressed, these divisions threaten the very existence of Kenya as a unified country. The Kenyan people are now looking to their leaders to ensure that their country will not be lost.

Given the current situation, neither side can realistically govern the country without the other. There must be real power-sharing to move the country forward and begin the healing and reconciliation process.

With this agreement, we are stepping forward together, as political leaders, to overcome the current crisis and to set the country on a new path. As partners in a coalition government, we commit ourselves to work together in good faith as true partners, through constant consultation and willingness to compromise.

This agreement is designed to create an environment conducive to such a partnership and to build mutual trust and confidence. It is not about creating positions that reward individuals. It seeks to enable Kenya's political leaders to look beyond partisan considerations with a view to promoting the greater interests of the nation as a whole. It provides the means to implement a coherent and far-reaching reform agenda, to address the fundamental root causes of recurrent conflict, and to create a better, more secure, more prosperous Kenya for all.

To resolve the political crisis, and in the spirit of coalition and partnership, we have agreed to enact the National Accord and Reconciliation Act 2008, whose provisions have been agreed upon in their entirety by the parties hereto and a draft copy thereof is appended hereto.

Its key points are:

- There will be a Prime Minister of the Government of Kenya, with authority to coordinate and supervise the execution of the functions and affairs of the Government of Kenya.
- The Prime Minister will be an elected member of the National Assembly and the parliamentary leader of the largest party in the National Assembly, or of a coalition, if the largest party does not command a majority.
- Each member of the coalition shall nominate one person from the National Assembly to be appointed a Deputy Prime Minister.
- The Cabinet will consist of the President, the Vice-President, the Prime Minister, the two Deputy Prime Ministers and the other Ministers. The removal of any Minister of the coalition will be subject to consultation and concurrence in writing by the leaders.

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Ambassador Nana Effah-Apenteng  
12th March 2008.





- The Prime Minister and Deputy Prime Ministers can only be removed if the National Assembly passes a motion of no confidence with a majority vote.
- The composition of the coalition government will at all times take into account the principle of portfolio balance and will reflect their relative parliamentary strength.
- The coalition will be dissolved if the Tenth Parliament is dissolved; or if the parties agree in writing; or if one coalition partner withdraws from the coalition.
- The National Accord and Reconciliation Act shall be entrenched in the Constitution.

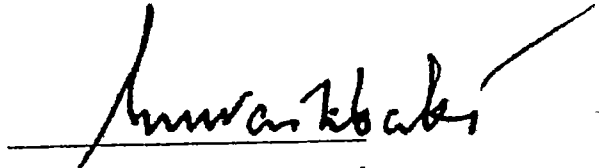
Having agreed on the critical issues above, we will now take this process to Parliament. It will be convened at the earliest moment to enact these agreements. This will be in the form of an Act of Parliament and the necessary amendment to the Constitution.

We believe by these steps we can together in the spirit of partnership bring peace and prosperity back to the people of Kenya who so richly deserve it.

Agreed this date 28 February 2008

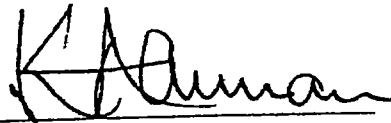


*Hon. Raila Odinga  
Orange Democratic Movement*

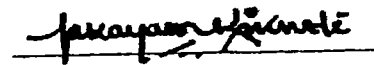


*H.E. President Mwai Kibaki  
Government/Party of National Unity*

*Witnessed By:*



*H.E. Kofi A. Annan  
Chairman of the Panel  
of Eminent African Personalities*



*H.E. President Jakaya Kikwete  
President of the United Republic of  
Tanzania  
and Chairman of the African Union*

## The National Accord and Reconciliation Act 2008

### Preamble:

There is a crisis in this country. The Parties have come together in recognition of this crisis, and agree that a political solution is required.

Given the disputed elections and the divisions in the Parliament and the country, neither side is able to govern without the other. There needs to be real power sharing to move the country forward.

A coalition must be a partnership with commitment on both sides to govern together and push through a reform agenda for the benefit of all Kenyans.

### Description of the Act:

An Act of Parliament to provide for the settlement of the disputes arising from the presidential elections of 2007, formation of a Coalition Government and Establishment of the Offices of Prime Minister, Deputy Prime Ministers and Ministers of the Government of Kenya, their functions and various matters connected with and incidental to the foregoing.

1. This Act may be cited as the National Accord and Reconciliation Act 2008.

2. This Act shall come into force upon its publication in the Kenya Gazette which shall not be later than 14 days from the date of Assent.

3. (1) There shall be a Prime Minister of the Government of Kenya and two Deputy Prime Ministers who shall be appointed by the President in accordance with this section.

(2) The person to be appointed as Prime Minister shall be an elected member of the National Assembly who is the parliamentary leader of -

- (a) the political party that has the largest number of members in the National Assembly; or
- (b) a coalition of political parties in the event that the leader of the political party that has the largest number of members of the National Assembly does not command the majority in the National Assembly.

(3) Each member of the coalition shall nominate one person from the elected members of the National Assembly to be appointed a Deputy Prime Minister.

4.(1) The Prime Minister:

- a) shall have authority to coordinate and supervise the execution of the functions and affairs of the Government of Kenya including those of Ministries;
- b) may assign any of the coordination responsibilities of his office to the Deputy Prime Ministers, as well as one of them to deputise for him;
- c) shall perform such other duties as may be assigned to him by the President or under any written law.

(2) In the formation of the coalition government, the persons to be appointed as Ministers and Assistant Ministers from the political parties that are partners in the coalition other than the

President's party, shall be nominated by the parliamentary leader of the party in the coalition. Thereafter there shall be full consultation with the President on the appointment of all Ministers.

(3) The composition of the coalition government shall at all times reflect the relative parliamentary strengths of the respective parties and shall at all times take into account the principle of portfolio balance.

(4) The office of the Prime Minister and Deputy Prime Minister shall become vacant only if -

- (a) the holder of the office dies, resigns or ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or
- (b) the National Assembly passes a resolution which is supported by a majority of all the members of the National Assembly excluding the *ex-officio* members and of which not less than seven days notice has been given declaring that the National Assembly has no confidence in the Prime Minister or Deputy Prime Minister, as the case may be; or
- (c) the coalition is dissolved.

(5) The removal of any Minister nominated by a parliamentary party of the coalition shall be made only after prior consultation and concurrence in writing with the leader of that party.

5. The Cabinet shall consist of the President, the Vice-President, the Prime Minister, the two Deputy Prime Ministers and the other Ministers.

6. The coalition shall stand dissolved if:

- (a) the Tenth Parliament is dissolved; or
- (b) the coalition parties agree in writing; or
- (c) one coalition partner withdraws from the coalition by a resolution of the highest decision-making organ of that party in writing.

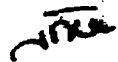
7. The prime minister and deputy prime ministers shall be entitled to such salaries, allowances, benefits, privileges and emoluments as may be approved by Parliament from time to time.

8. This Act shall cease to apply upon dissolution of the tenth Parliament, if the coalition is dissolved, or a new constitution is enacted, whichever is earlier.









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## Kenya National Dialogue and Reconciliation

### INDEPENDENT REVIEW COMMITTEE

#### Terms of Reference

The members of the Panel of Eminent African Personalities (The Panel), together with the Parties to the National Dialogue and Reconciliation:

Recalling the 14 February 2008 agreement by the Parties, witnessed by H.E. Kofi Annan for the Panel of Eminent African Personalities, to establish an *Independent Review Committee*, a non-judicial body, which would be mandated to investigate all aspects of the 2007 Presidential Election and make findings and recommendations to improve the electoral process;

Agreed that the Independent Review Committee (IREC) will be established under the Commissions of Inquiry Act. and will conduct its mandate in accordance with the following Terms of Reference:

#### Key Activities

The activities of the IREC shall be:

- a. Analysis of the constitutional and legal framework to establish the basis for the conduct of the 2007 elections and to identify any weaknesses or inconsistencies in the electoral legislation;
- b. Examination of the organizational structure, composition, and management systems of the Electoral Commission of Kenya (ECK) to assess its independence, capacity and functioning during the preparation and conduct of the 2007 elections;
- c. Examination of the public participation in the 2007 electoral process and the electoral environment, including the roles and conduct of the political parties, media, civil society and observers;
- d. Investigation of the organization and conduct of the 2007 electoral operations including: civic and voter education; training; voter registration; logistics and security; polling and counting; vote tabulation and results processing; and dispute resolution;
- e. Investigation into the vote counting and tallying for the entire election with special attention to the presidential elections in order to assess the integrity of the results and make recommendations for improvements, adjustments or overhaul of the system.

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of the original document.

Ambassador Nana Effah Apenang

Chief of Staff,

12th March 2008.



- f. Assess the functional efficiency of the ECK and its capacity to discharge its mandate;
- g. Proposal of recommendations on electoral reform including constitutional, legislative, operational and institutional aspects, as well as on accountability mechanisms for ECK Commissioners and staff pertaining to electoral malpractices, in order to improve future electoral processes;
- h. Presentation of its findings on the above activities;
- i. Any other tasks that the IREC may deem necessary in fulfilling its mandate.

### **National Cooperation**

All national authorities whose activities have a substantive relationship to the above activities are requested to extend maximum cooperation to the IREC. The IREC shall be permitted access to all electoral materials

### **Composition**

The IREC will comprise seven members, including a Chair, all of whom having the highest professional standing and personal integrity. The Chair will be an internationally recognized eminent jurist. The other members of the Committee will be experienced electoral experts:

- Four will be Kenyan, two of whom will be nominated by the Government/PNU and two nominated by the ODM.
- The remaining three members will be international experts, nominated by the Panel, following consultation with the Government/PNU and the ODM.

A Support Office will be established to provide substantive and administrative support to the Committee. It will be based in Nairobi and headed by an international electoral expert.

### **Methodology**

In the performance of its functions, the Committee:

- a. Shall hold public hearings in Nairobi and at such other places as it shall deem necessary for the proper discharge of its mandate;
- b. May hold private hearings whenever it becomes necessary to instill confidence in the people appearing before the committee or to allay their fears of adversity or reprisals;
- c. May carry out or cause to be carried out such studies or research as may inform it on its mandate;

- d. May receive written memoranda from individuals and groups on all issues relevant to its mandate;
- e. Shall have access to all the electoral and related documents necessary for the effective discharge of its mandate;
- f. Shall publish its rules of procedure in the Kenya Gazette; and
- g. Subject to the foregoing, the Committee shall develop its own work plan and procedures.

### **Outputs and Timeline**

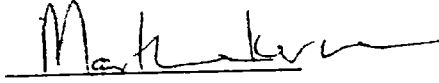
The IREC should start its work no later than 15 March, 2008. Within three to six months of the commencement of its work, the IREC will produce a final report of its findings and recommendations that will be submitted to the President, with a copy to the Panel. The report will subsequently be made public, in English and Swahili, within 14 days of submission.

### **Financing/Logistics**

The Committee will be funded by the Kenyan Government and the Trust Fund for National Dialogue and Reconciliation, and with logistic support from the African Union and the United Nations.

Signed on this day, 4 March 2008:

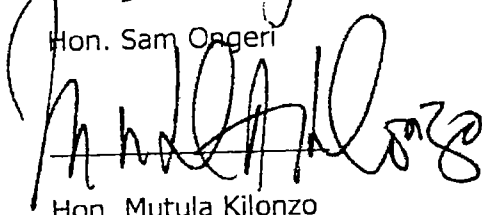
On behalf of Government/PNU:



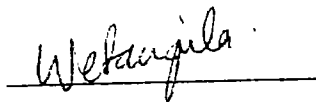
Hon. Martha Karua



Hon. Sam Onger

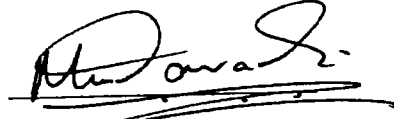


Hon. Mutula Kilonzo

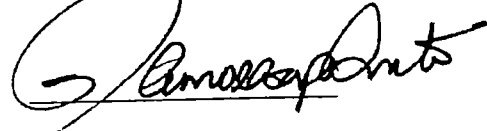


Hon. Moses Wetang'ula

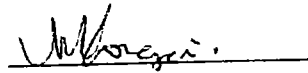
On behalf of ODM:



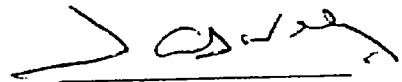
Hon. Musalia Mudavadi



Hon. William Ruto



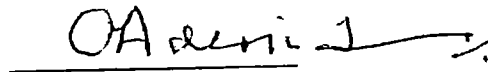
Hon. Sally Kosgei



Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities



H.E. Oluyemi Adeniji

Session Chair

7

TJRC

**Kenyan National Dialogue and Reconciliation**  
**TRUTH, JUSTICE AND RECONCILIATION COMMISSION**

**Background**

Recalling the 14 February 2008 agreement by the Parties for a Truth, Justice and Reconciliation Commission, and in a spirit of reconciliation and national healing;

The Parties to the Kenyan National Dialogue and Reconciliation agree to the following general parameters and principles for the establishment of such a commission:

**General Parameters**

A Truth, Justice, and Reconciliation Commission ("the Commission") will be created through an Act of Parliament, which will be adopted by the legislature within the next four weeks.

The Commission will inquire into human rights violations, including those committed by the state, groups, or individuals. This includes but is not limited to politically motivated violence, assassinations, community displacements, settlements, and evictions. The Commission will also inquire into major economic crimes, in particular grand corruption, historical land injustices, and the illegal or irregular acquisition of land, especially as these relate to conflict or violence. Other historical injustices shall also be investigated.

The Commission will inquire into such events which took place between December 12, 1963 and February 28, 2008. However, it will as necessary look at antecedents to this date in order to understand the nature, root causes, or context that led to such violations, violence, or crimes.

The Commission shall receive statements from victims, witnesses, communities, interest groups, persons directly or indirectly involved in events, or any other group or individual; undertake investigations and research; hold hearings; and engage in activities as it determines to advance national or community reconciliation. The Commission may offer confidentiality to persons upon request, in order to protect individual privacy or security, or for other reasons. The Commission shall solely determine whether its hearings shall be held in public or in camera.

No blanket amnesty will be provided for past crimes. Individual amnesty may be recommended by the Commission in exchange for the full truth, provided that serious international crimes (crimes against humanity, war crimes, or genocide) are not amnestied, nor persons who bear the greatest responsibility for crimes covered by the Commission.

The Commission will complete its work and submit a final report within two years. The final report shall state its findings and recommendations, which will be submitted to the President and will be made public in fourteen days and tabled in Parliament.

**Guiding Principles**

The Commission will reflect the following principles and guidelines, taking into account international standards and best practices:

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*Ambassador Nana Effah - Apenteng  
Chief of Staff  
12th March 2008.*





*Independence:* The Commission shall operate free from political or other influence. It shall determine its own specific working methodologies and work plan, including for investigation and reporting, and will set out its own budget and staff plan.

*Fair and balanced inquiry:* In all of its work, the Commission shall ensure that it seeks the truth without influence from other factors. In representations to the public through hearings, statements, or its final report, the Commission shall ensure that a fair representation of the truth is provided.

*Appropriate powers:* The Commission shall be given powers of investigation, including the right to call persons to speak with the Commission, and powers to make recommendations that shall be considered and implemented by the government or others. These recommendations may include measures to advance community or national reconciliation; institutional or other reforms, or whether any persons should be held to account for past acts.

*Full cooperation:* Government and other State offices shall provide information to the Commission on request, and provide access to archives or other sources of information. It is urged that other Kenyan and international individuals and organizations also provide full cooperation and information to the Commission on request.

*Financial support:* The Parties encourage strong financial support to the Commission. It is expected that the Government of Kenya will provide a significant portion of the Commission's budget. Other funding may be obtained by the Commission from donors, foundations, or other independent sources.

### **Selection and Composition**

The Commission will consist of seven members, with gender balance taken into account. Three of the members shall be international. The members shall be persons of high moral integrity, well regarded by the Kenyan population, and shall include a range of skills, backgrounds, and professional expertise. As a whole, the Commission shall be perceived as impartial in its collectivity, and no member should be seen to represent a specific political group. At least two but no more than five of the seven commissioners should be lawyers.

In keeping with international best practices, and to ensure broad public trust in and ownership of the process of seeking the truth, the national members of the Commission shall be chosen through a consultative process. The Commissioners shall be named no more than eight weeks after the passage of the Act that establishes the Commission.


The three international members shall be selected by the Panel of Eminent African Personalities, taking into account public input.

Signed on this day, 4 March 2008:

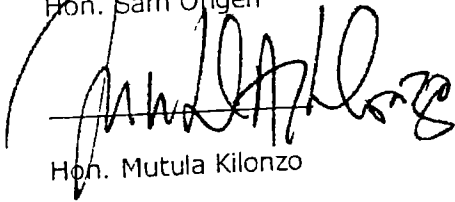
On behalf of Government/PNU:



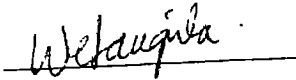
Hon. Martha Karua



Hon. Sam Onger



Hon. Mutula Kilonzo

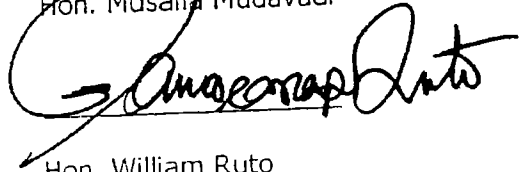


Hon. Moses Wetang'ula

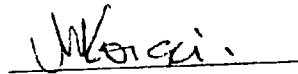
On behalf of ODM:



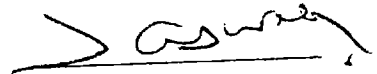
Hon. Musalia Mudavadi



Hon. William Ruto



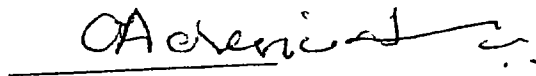
Hon. Sally Kosgei



Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities



H.E. Oluyemi Adeniji

Session Chair

8

**Kenyan National Dialogue and Reconciliation**  
**COMMISSION OF INQUIRY ON POST-ELECTION VIOLENCE**

**Background**

Recalling that the Parties have previously agreed to:

Identify and agree on the modalities of implementation of immediate measures aimed at:

- Ensuring the impartial, effective and expeditious investigation of gross and systematic violations of human rights and that those found guilty are brought to justice.

And have expressed a commitment to:

- Identification and prosecution of perpetrators of violence, including State security agents
- Addressing issues of accountability and transparency

The Parties to the National Dialogue and Reconciliation, together with the Panel of Eminent African Personalities (The Panel), agree to the establishment of a *Commission of Inquiry on Post-Election Violence* (Commission of Inquiry).

This Commission of Inquiry will be a non-judicial body mandated (i) to investigate the facts and surrounding circumstances related to acts of violence that followed the 2007 Presidential Election, (ii) investigate the actions or omissions of State security agencies during the course of the violence, and make recommendation as necessary, and (iii) to recommend measures of a legal, political or administrative nature, as appropriate, including measures with regard to bringing to justice those persons responsible for criminal acts. The Commission of Inquiry aims to prevent any repetition of similar deeds and, in general, to eradicate impunity and promote national reconciliation in Kenya.

**Key Activities**

The activities of the Commission shall be:

To investigate the facts and circumstances related to the violence following the 2007 Presidential election, between December 28, 2007 and February 28, 2008.

- To prepare and submit a final report containing its findings and recommendations for redress, any legal action that should be taken, and measures for future prevention.
- To prepare and submit a final report containing its findings and recommendations for redress, any legal action that should be taken, and measures for future prevention.
- To make recommendations, as it deems appropriate, to the Truth, Justice, and Reconciliation Commission.

**National Cooperation**

Kenyan authorities, institutions, parties, and others shall fully cooperate with the Commission of Inquiry in the accomplishment of its mandate, in response to requests for information, security, assistance or access in pursuing investigations, including:

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*Ambassador Nana Effah - Apenteng  
Chief of Staff  
12th March 2008.*



- Adoption by the Government of Kenya of any measures needed for the Commission and its personnel to carry out their functions throughout the national territory with full freedom, independence and security;
- Provision by the Government of Kenya and all Kenyan State institutions of all information in its possession which the commission requests or is otherwise needed to carry out its mandate, with free access provided for the Commission and its staff to any archives related to its mandate;
- Freedom for the Commission to obtain any information it considers relevant and to use all sources of information which it considers useful and reliable;
- Freedom for the Commission to interview, in private, any persons it judges necessary;
- Freedom for the Commission to visit any establishment or place at any time; and
- Guarantee by the Government of Kenya of full respect for the integrity, security and freedom of witnesses, experts and any other persons who help in its work;

The Parties call upon States, relevant UN and AU bodies and, as appropriate, national and international humanitarian or other nongovernmental organizations to provide information to the Commission of Inquiry related to post-election violence, to make such information available as soon as possible and to provide appropriate assistance to the Commission.

#### **Composition**

The Commission of Inquiry will be composed of three impartial, experienced, and internationally respected jurists, or experts in addressing communal conflict or ethnic violence. Two of these shall be international, and one shall be Kenyan. They shall be selected by the Panel following consultation with the Government/PNU and the ODM, and appointed by the President.

A Support Office, based in Nairobi and with adequate expert staff, will be established to provide support to the members of the Commission.

#### **Methodology**

The Commission of Inquiry shall develop its own work plan and procedures. These will be guided in all respects by principles of fairness, impartiality, transparency, and good faith.

#### **Outputs and Timeline**

The Commission of Inquiry will start its work within 30 days following the appointment of its members. It will operate for three months, with an additional month if required. At the conclusion of its work it will submit a final report of its findings and recommendations to the President of Kenya, with a copy to the Panel. Main findings of the report will be made public within 14 days of submission, although certain aspects of the report or annexes may be kept confidential in order to protect the identity of witnesses or persons accused.

#### **Financing/Logistics**

The Commission of Inquiry will be funded by the Kenyan Government and the Trust Fund for National Dialogue and Reconciliation, including support from donor states or foundations. It will receive logistical support from the AU and the UN.

Signed on this day, 4 March 2008:

On behalf of Government/PNU:

Martha Karua

Hon. Martha Karua

Sam Onger

Hon. Sam Onger

Mutula Kilonzo

Hon. Mutula Kilonzo

Moses Wetang'ula

Hon. Moses Wetang'ula

On behalf of ODM:

Musalia Mudavadi

Hon. Musalia Mudavadi

William Ruto

Hon. William Ruto

Sally Kosgei

Hon. Sally Kosgei

James Orengo

Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities

Oluwemi Adeniji

H.E. Oluwemi Adeniji

Session Chair

9

## Kenya National Dialogue and Reconciliation

### LONGER-TERM ISSUES AND SOLUTIONS: CONSTITUTIONAL REVIEW

#### Background

Recalling the 1 February 2008 agreement by the Parties to deal with long-term issues and solutions that may have constituted the underlying causes of the prevailing social tensions, instability and cycle of violence, and recalling the substantial discussions that have been held concerning constitutional reform over recent years, the Parties to the Kenyan National Dialogue and Reconciliation agree to the following general parameters and principles for the establishment of a constitutional review processes.

#### General principles and stages of the process

The parties accept that the constitution belongs to the people of Kenya who must be consulted appropriately at all key stages of the process, including the formation of the process itself, the draft, the parliamentary process and any final enactment.

There will be five stages in the review of the Constitution and there will be consultation with stakeholders in each stage:

- 1 An inclusive process will be initiated and completed within 8 weeks to establish a statutory Constitutional Review including a timetable. It is envisaged that the review process will be completed within 12 months from the initiation in Parliament.
- 2 Parliament will enact a special 'constitutional referendum law' which will establish the powers and enactment processes for approval by the people in a referendum.
- 3 The statutory process will provide for the preparation of a comprehensive draft by stakeholders and with the assistance of expert advisers.
- 4 Parliament will consider and approve the resulting proposals for a new constitution.
5. The new constitution will be put to the people for their consideration and enactment in a referendum.

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of the original document.*

*Ambassador Nana Effah-Apenteng  
Chief of Staff*

*12th March 2008.*



Signed on this day, 4 March 2008:

On behalf of Government/PNU:

Martha Karua

Hon. Martha Karua

Sam Onger

Hon. Sam Onger

Mutula Kilonzo

Hon. Mutula Kilonzo

Moses Wetang'ula

Hon. Moses Wetang'ula

On behalf of ODM:

Musalia Mudavadi

Hon. Musalia Mudavadi

William Ruto

Hon. William Ruto

Sally Kosgei

Hon. Sally Kosgei

James Orengo

Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities

O.A. Adeniji

H.E. Oluyemi Adeniji

Session Chair

