

KatibaNews

Towards a new constitutional dispensation in Kenya

FEBRUARY 2009

Issue NO. 2.09

Towards disaster preparedness in Kenya

- **So many hungers!**
- **Katiba briefs**
- **Justice be done in Kenya...**
- **State of the Nation**

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ABOUT THE MEDIA DEVELOPMENT ASSOCIATION

The Media Development Association (MDA) is an alumnus of graduates of University of Nairobi's School of Journalism. It was formed in 1994 to provide journalists with a forum for exchanging ideas on how best to safeguard the integrity of their profession and to facilitate the training of media practitioners who play an increasingly crucial role in shaping the destiny of the country.

The MDA is dedicated to helping communicators come to terms with the issues that affect their profession and to respond to them as a group. The members believe in their ability to positively influence the conduct and thinking of their colleagues.

The MDA aims at:

- Bringing together journalists to entrench friendship and increase professional cohesion; Providing a forum through which journalists can discuss the problems they face in their world and find ways of solving them;
- Organising exhibitions in journalism-related areas such as photography;
- Organising seminars, workshops, lectures and other activities to discuss development

issues and their link to journalism;

- Carrying out research on issues relevant to journalism;
- Organizing tours and excursions in and outside Kenya to widen journalists' knowledge of their operating environment;
- Publishing magazines for journalists, and any other publications that are relevant to the promotion of quality journalism;
- Encouraging and assist members to join journalists' associations locally and internationally;
- Creating a forum through which visiting journalists from other countries can interact with their Kenyan counterparts;
- Helping to promote journalism in rural areas particularly through the training of rural-based correspondents;
- Advancing the training of journalists in specialised areas of communication;
- Create a resource centre for use by journalists;

- Reinforcing the values of peace, democracy and freedom in society through the press;
- Upholding the ideals of a free press.

Activities of MDA include:

- Advocacy and lobbying;
- Promoting journalism exchange programmes;
- Hosting dinner talks;
- Lobbying for support of journalism training institutions;
- Initiating the setting up of a Media Centre which will host research and recreation facilities;
- Working for the development of a news network;
- Providing incentives in terms of awards to outstanding journalists and journalism students;
- Inviting renowned journalists and other speakers to Kenya;
- Networking and linking up with other journalists' organisations locally and abroad.

This newsletter is meant to:

- 1 Give critical analysis of democracy and governance issues in Kenya.
- 2 Inform and educate readers on the ongoing Constitution Review Process.

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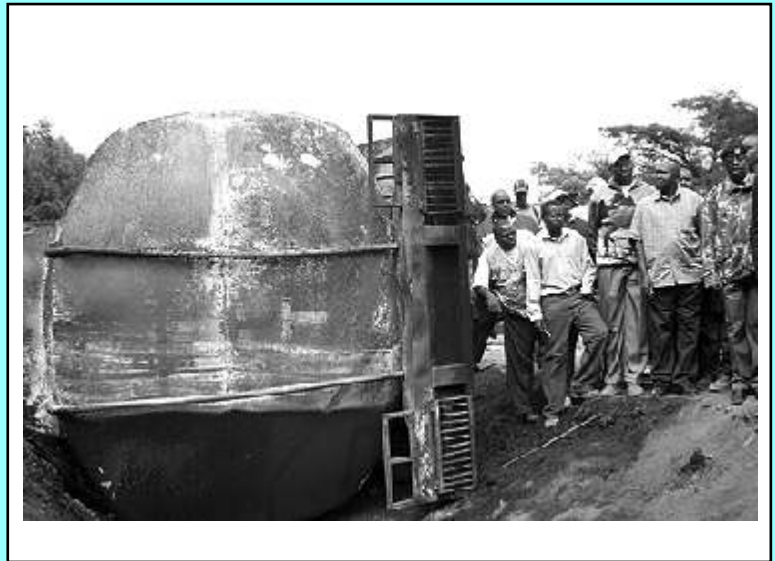
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Towards disaster preparedness in Kenya

By John Ndemo

Lack of disaster preparedness has remained an enduring development challenge for decades. The *El Nino* rains which flooded the country and the intermittent prolonged drought have led to massive displacement of populations, loss of lives, destruction of property, scarcity of water, energy crises and collapse of vital infrastructure. Most of the disaster response initiatives in Kenya have been *ad hoc*, uncoordinated and short-term, represented by emergency relief services to the worst affected areas. However, disaster and environmental management ought to integrate disaster preparedness measures and recovery operations into development programs for sustainability.

Disasters in Kenya have come to be associated with unprecedented deprivation and suffering of the vulnerable, especially persons living in fragile ecosystems. Disasters like droughts, floods and landslides have contributed to environmental degradation and threatened lives and livelihoods on a vast scale. There is lack of recognition of interrelationship between disaster preparedness, unsustainable production, and consumption patterns.

Natural disasters or hazards are multi-disciplinary in nature. The disasters

cause loss of life, property and social and economic disruption. They range from predictable to unpredictable and are classified by origin. Natural disasters can be categorised as:

1. Exogenous - like floods, drought, storms, landslides and avalanches.
2. Endogenous - like volcanism, earthquakes.
3. Anthropogenic which are caused by human activity, for example, collapse of structures (dams, dykes, buildings), land degradation, population growth and fires. Floods and droughts are associated with global climatic change.

Consequences of natural disasters include famine, escalating poverty, reduced water availability, mass migration, deaths and inter-communal conflicts. Some of the major disasters that have afflicted Kenya include the bombing of Norfolk Hotel in 1981 by terrorists, the 1984 widespread drought, the 1998 bombing of the American Embassy and the intermittent flooding and droughts. Recently, Kenya was faced with the disasters of Nakumatt Downtown fire and the Sachang'wan petrol tanker blast in which more than 160 Kenyans lost their lives.

Legal framework

The ability to anticipate disasters and respond expeditiously and effectively in a coordinated manner requires the development of an efficient early warning system with capabilities for preventive action. The issue of preparedness is rooted in the question of capacity to effectively deal with natural and human-made calamities. The capacity question focuses on all aspects of emergency management at both

national and grass root levels, and includes an assessment of the political, cultural, social, economic and environmental factors which influence vulnerability to disasters.

Indecision prior to a disaster is both a capacity and a management problem. Improvement in governance, the development process and resource management could facilitate broad participation and enhance capacities to develop sustainable disaster management strategies. The people should be sensitised about the potential danger of natural hazards and empowered to respond effectively to threats and occurrences of disasters. Awareness creation is a strategic objective of the preventive development approach.

The legal and policy framework on disasters in Kenya has been wanting. Though efforts have been made to develop a coordinated framework of response to disasters, those efforts have not borne fruit. The efforts to develop a legal framework commenced in 1999. However, the process has not been completed and remains in limbo. With the recent spate of disasters, it is time the Cabinet and the Parliament expedited legislation of this Bill.

The Kenyan draft national institutional framework has been noted as progressive and modern. In the proposed Bill, the operational responsibilities are vested in the Director-General of the National Disaster Management Authority, supported by an advisory board comprising representation of government departments, the Kenya Red Cross Society and civil society. The board is mandated to advise on policy matters. The draft legislation defines a disaster as "a serious disruption of the functioning of a society or community, causing widespread human, material or environmental loss which exceeds the



Nakumatt Downtown goes up in flames.

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ability of the affected society or community to cope without outside intervention”.

In the proposed Bill, a disaster is defined as a natural or human caused occurrence whether actual or imminent such as fire, flood, storm, earthquake, explosion or accident which endangers or threatens to endanger the safety or health of persons or animals in the nation; or destroys or damages or threatens to destroy or damage, property in the nation; being an event or occurrence which requires a significant and coordinated response.

In 2006, a draft proposal for a Fire Safety Management Policy of Kenya was to be discussed and adopted by the Cabinet. The draft Policy catalogued loopholes in relation to fire safety including lack of qualified personnel, laxity in the enforcement of laws, lack of public awareness, poor fire early warning systems and sub-standard fire appliances. Kenya has failed to adopt the necessary legal and policy framework to ensure appropriate and timely responses to disaster. At the moment, the Government seems to rely on the Kenya Red Cross to carry out its national responsibility in disaster response and prevention.

Mandates of the African Union and regional economic communities
The AU Treaty provides that 'environmental protection, humanitarian action and disaster response and relief' is of common interest to Member States. The AU Executive Council is permitted under the treaty to make decisions on common policies. The AU Commission is responsible for undertaking the groundwork necessary to develop a common policy because its functions include elaborating draft common positions of the Union, preparing strategic plans and studies for consideration of the Executive Council and harmonising the policies of the Union with those of the regional economic communities like the East African Community, the Common Market for East and Southern Africa and the Inter-Governmental Authority on Development (IGAD).

The IGAD Treaty provides that Member States agree to develop and expand cooperation and undertake to respect the fundamental rights of the

peoples to benefit from emergency and other forms of humanitarian assistance, be guided by the objectives of saving lives, of delivering timely assistance to people in distress and of alleviating human suffering. Member States shall facilitate the movement of food and emergency supplies in the event of natural disasters.

There is a clear awareness that disasters have a significant impact on the African continent. Africa is the only continent where the regional share of reported disasters has increased over the past decade. The recurrence of disasters has had a devastating impact on the continent's fragile development gains. Most of the disasters occur due to hazards and vulnerability conditions. The policies recognise the significance of drought, desertification and flooding. Such hazards may worsen with the impact of climate change. The policy frameworks also identify epidemics, particularly HIV/AIDS, as a natural hazard. Other recognised natural hazards include pests, wildfires and earthquakes. However, there is recognition that structures and processes that exist to deal with conflict situations are weak.

Strategic approach and underlying principles

Kenya should seek to learn from regional and international perspectives on disaster management and response. This will include incorporating best practices that have established disaster management and response policies and laws. Strategic objectives for disaster management include:

- a) Strengthening disaster preparedness to assist in improving the effectiveness of emergency response through, for example, the development of national disaster preparedness strategies. Disaster response requires broad-based access to comprehensive, timely and relevant information pertaining to hazards and vulnerabilities. This principle underlies the strengthening of early warning information systems
- b) Improving sub-regional collaboration for preparedness and response through developing regional disaster assessment, emergency response and recovery teams.
- c) Developing the supporting policy and legal framework through elaboration of supporting policies, legislation and agreements.

- d) Improving knowledge management in relation to disaster management, which encompasses improving impact and needs assessment; developing and inventory and database of regional resource capacities; and implementing effective information management systems.
- e) Developing education and training programmes in disaster risk reduction, preparedness and response.
- f) Collaboration and co-operation with international relief and humanitarian organisations to improve the facilitation, co-ordination and regulation of emergency response initiatives.

The analysis and compliance with the strategic objectives would assist in development and implementation of an appropriate and responsive disaster early warning and management framework in Kenya. The development of capacity will take time. The framework must be modified appropriately to suit the circumstances, needs and conditions of the country.

Disaster management is a basic responsibility of the government. It is a fundamental national responsibility. Regional disaster management initiatives must build on the strength of national disaster management systems. It entails regional collaboration and articulation of the roles and responsibilities of the regional economic communities. There is need for improved collaboration among national disaster management agencies and the strengthening of regional scientific agencies such as the Drought Monitoring Centre in Nairobi. This facilitates knowledge and expertise sharing in disaster management theory and practice.

Gender and disaster management
The approach adopted by most humanitarian agencies is that disasters affect communities. There is no need to target interventions for specific sub-groups. However, in recognition of women's particular vulnerabilities in situations of disaster such as victims of gender-based violence, heads of single-parent households, and the special needs of pregnant women, and the key role women play in environmental management, agriculture and food security, there should be systematic incorporation of gender issues into

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disaster management which would impact on, for example, the collection and analysis of information relating to disaster information, and the promotion of women as integral members of disaster management. Ultimately, disaster management decision-making should be based on broad-based community participation.

National Agency for Disaster Management

The need for a national agency responsible for disaster management cannot be overemphasised. This affirms that disaster management is a national responsibility. The national disaster agency is responsible for coordinating disaster. The South African national framework provides that the national agency is responsible for promoting an integrated and coordinated system of disaster management, with special emphasis on prevention and mitigation by national, provincial and municipal organs of State, statutory functionaries and other role-players involved in disaster management and communities. This legal provision best gives effect to the principle that while disaster management is the responsibility of domestic authorities, other actors such as local civil society play a key supporting role.

Comparative analysis of national disaster management legislations Ghana

The Ghanaian legislation establishes separate structures in the disaster management organisation and the National Disaster Management Committee, where both seem to have operational roles. The organisation, headed by a National Coordinator, is responsible for developing national disaster plans, promoting education and awareness campaigns, disaster response and co-ordination. The Committee, comprising senior national government officials, is headed by a Minister, and is responsible for such matters as assessing the extent of damage and the needs of affected areas in the event of any disaster; identifying, receiving, managing and supervising relief items; and collecting and preserving data on disasters, amongst others.

The governing body of the organisation is the National Security Council, a constitutional body comprising high level political and security personnel. The legislation defines a disaster as 'any occurrence by which there is a serious

disruption of general safety endangering the life and health of many people or large material interests which requires coordinated action by services of different disciplines and includes, floods, earthquakes, drought, rainstorm, war, civil strife and industrial accidents.

Nigeria

The Nigerian framework does not establish separate structures for policy making and operational matters. The disaster management authority has policy formulation and operational-type functions. The authority is headed by a governing council comprising high level State officials, a representative of the Nigerian Red Cross Society and other civil society organisations. The legislative mandate is confined to dealing with disasters arising from any crisis, epidemic, drought, flood, earthquake,

depending on 'designation' by the Minister, international humanitarian and relief agencies are given a voice in operational matters pertaining to disaster management. The legislation establishes an Intergovernmental Committee on Disaster Management (ICDM) which only comprises senior State functionaries. ICDM plays a role in policy formulation and strategy development and is responsible for advising the South African Cabinet. A disaster is defined in the legislation as 'a progressive or sudden, widespread or localised, natural or human-caused occurrence which causes or threatens to cause death, injury or disease; damage to property, infrastructure or the environment; or disruption of the life of a community; and is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using



A victim of the Sachangwan fire tragedy in the Rift Valley.

storm, train, roads, aircraft, oil spillage or other accidents and mass deportation or repatriation.

South Africa

There are separate structures for policy making and operational matters. Operational responsibility is in the hands of the Commission. He/she is, however, assisted in this function by the National Disaster Management Advisory Forum. The Forum is comprised of the heads of provincial and local disaster management government agencies, and representatives of other disaster management role-players designated by the Minister of Provincial and Local Government. These may include representatives of religious and welfare organisations and of other relevant non-governmental and international organisations and relief agencies.

Through the vehicle of the Forum, and

only their own resources.

Proposals for reform

The International Committee of the Red Cross and Red Crescent Societies defines disaster as a serious disruption of the functioning of society which poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature or human activity, whether developing suddenly or as the result of long term processes, but excluding armed conflict.

The Federation has drafted guidelines to assist States recognise and implement their responsibilities on disaster preparedness, management and response. States affected by a disaster have the primary responsibility to ensure disaster risk reduction, relief and

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So many hungers!

Ensuring food security in Kenya

By Johnstone Mokuia

The agriculture sector accounts for 24 per cent of Kenya's GDP and for the employment of 70 per cent of the labour force. The sector is dominated by production of commodities categorised as cash crops (tea, coffee, and horticulture), food crops (maize, wheat, and rice) for local consumption and livestock. A confusing and conflicting set of policy objectives hinders the sector's progress. Kenya's goal of food self-sufficiency remains unmet. Frequent droughts require food aid to mitigate the ravages of famine, especially in the arid and semi-arid regions.

The National Cereals and Produce Board (NCPB), a statutory body owned by the Government, is exempted from taxes in importation of maize and wheat. NCPB is responsible for storage of the strategic grain reserve which is managed by the Trustees comprising the Permanent Secretaries in the Ministries of Finance, Agriculture and Special Programmes. NCPB is used by the Government to intervene in the maize and wheat markets by purchasing maize from farmers at a predetermined price.

Food insecurity can be chronic or acute. Chronic food insecurity is a state of recurrently having insufficient food to meet the nutritional demands of a healthy life and is primarily a function of poverty. Acute or transient food insecurity is episodic and is commonly associated with vulnerability to climatic shocks. Other shocks can be of an economic or political nature, including the effects of environmental degradation on the quality of natural assets; and the impact of HIV/AIDS on human and social capital.

It is recognised that there is a distinction between the *availability* of food and *access* to food. Where the individual or household is unable to acquire its minimum food requirements, people are deemed to be food insecure. Increasing food production will not necessarily enhance food security for people without effective mechanisms for enhanced entitlement to that food. Entitlements are affected by poverty and vulnerability.

Current legal and policy framework on food security
Kenya's agriculture is dominated small scale farmers who account for 75 per cent of total agricultural production and 70 per cent of marketed agricultural output. Production is carried out on small land holdings averaging 2-3 hectares. Large scale farming is practiced in Kenya on farms averaging above 50 hectares and accounts for 30 per cent of agricultural production. The causes of poverty and food insecurity in Kenya include low agricultural productivity, inadequate access to productive assets, inadequate infrastructure, limited and dysfunctional markets, high population pressure on land, inadequate access to appropriate technologies by farmers, effects of global trade and slow reform process.



President Kibaki distributes relief food in Yatta Division, Eastern Province

At present, Kenya does not have an elaborate policy framework for dealing with food insecurity. Policy makers have resorted to short term measures in times of crisis to redress food shortages. Further, the interventions by the Government in the market to enhance access to food have been riddled with poor governance and corruption. The latest example was the sale of over 350, 000 bags by NCPB in 2008 when the Government knew or ought to have known of a looming food crisis. This scenario calls for concerted efforts by the Government to establish a food security plan and establish an enabling policy framework to ensure food security for all Kenyans.

Duties and responsibilities in food security
The primary responsibility for ensuring food security in Kenya lies with the Ministry of Agriculture. Other Ministries involved in ensuring food security are the Ministries of Livestock Development, Fisheries, Cooperative Development and Marketing and Lands. The issue of food security is intricately linked to land tenure. Land tenure reform has the potential to enhance food security.

The government has concentrated on developing policy frameworks that facilitate production and sale of cash crops, like coffee,

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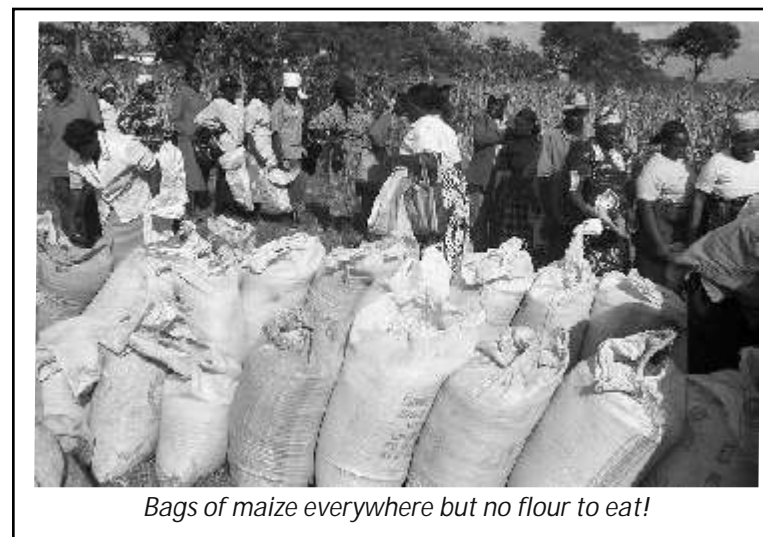
tea, pyrethrum and cotton, to the exclusion of food crops. Whereas policy and legal frameworks for the production, marketing and sale of coffee, tea, pyrethrum and cotton are elaborate, no similar efforts have been directed at food production and marketing.

Due to continued subdivision of land, the sizes of land holding cash crops have been reduced thereby making it uneconomical to farm the crops. It is estimated, for example, that a small scale farmer requires a minimum of 2 acres of land to economically farm tea. The rising cost of food and the diminishing prices of agricultural commodities in the international markets have led to increased food insecurity.

The growth of Kenya's economy has been inextricably linked with the performance of the agricultural sector. After independence, the agricultural sector performed well. A decline in performance was noted in 1980s. This period was marked by the introduction of the Structural Adjustment Programmes when the government withdrew subsidies previously offered to the farmers.

Some of the factors that have been noted to have contributed to the decline of the sector are:

- Inconsistencies and contradictions in agricultural policy and inadequate institutional and legal framework.
- Poor access to affordable credit by small scale farmers. This has been exacerbated by mismanagement of institutions such as Agricultural Finance Corporation due to poor corporate governance.
- Declining public funding of agriculture. Funding for the agriculture has been an average of 4 per cent of the National budget. However, this has been increased in the past financial year to 8 per cent.
- Inappropriate production technologies deployed by small scale farmers due to lack of capital.
- Inadequate provision of support services and the collapse of agricultural extension services.
- Increased frequency of drought.
- Poor governance leading to collapse of farmer institutions, including cooperative societies set up to market farmers produce.
- High cost of farm inputs.
- Dilapidated and inadequate rural infrastructure leading to increased transaction costs
- Depressed commodity prices in the world market.
- Alarming incidence of HIV/AIDS affecting labor supply and diverting resources from productive investment to caring for the sick.
- Human settlement in fragile semi arid environment leading to



Bags of maize everywhere but no flour to eat!

environmental degradation, declining soil fertility and productivity leading to worsening poverty and hunger concentration.

Some of the measures the Government has instituted to revive the sector are:

- a) Enactment of the Coffee Act, 2001. The Act allowed direct sale of coffee and established the Coffee Development Fund to finance coffee farming.
- b) Development and adoption of Cotton Policy and Act intended to revive the cotton sector.
- c) Preparation of the Pyrethrum Bill.
- d) Enactment of the Tea Policy and Act. The reforms in the tea sector facilitated orderly liberalisation of sector. The role of the government was reduced to regulatory, policy formulation and infrastructure development.
- e) The enactment of the Sugar Act, 2003 which facilitated prompt payment of farmers for deliveries of sugar cane.
- f) Development of a policy on potato production. The rules of research, production, standards and marketing have been finalised and adopted.
- g) Strategy for Revitalising Agriculture. The Strategy will be implemented in the period 2004 - 2014 under the Agricultural Sector Coordination Unit which comprises representatives of the Ministries of Agriculture, Livestock, Fisheries Development and Cooperatives and Marketing. The aim of the strategy is to transform agriculture into a commercially oriented and internationally competitive enterprise and thereby contribute to food and nutrition security and poverty reduction.

The six priorities of the strategy are:

- i. Reviewing and harmonising laws, regulations and institutional framework.
- ii. Improving delivery of research, extension and advisory support services.
- iii. Restructuring and privatising non core functions of parastatals and ministries.
- iv. Increasing access to quality farm inputs and financial services.
- v. Formulation food and nutrition national security policies and programmes.
- vi. Improving access to markets through improved rural infrastructure and favourable taxes.

There is an emerging consensus that success in achieving food security requires:

- Recognition that hunger and poverty is concentrated amongst rural people. The programmes which improve the productivity of small farmer agriculture

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and broaden access of poor people to natural resources can play a central role in reducing hunger. Such programmes need to combine the introduction of new technologies with institutional and policy reform.

- There is a need for action to improve food access for those who cannot either grow or afford to buy adequate food. Food safety nets can provide a stimulus to markets.
- Countries which fail to reduce the hunger incidence cannot aspire to high rates of economic growth and will make little progress in poverty reduction strategies. Hunger is a cause and an effect of poverty.

Comparative analysis

Malawi

Malawi re-introduced subsidies in the agricultural sector. These subsidies resulted in surplus production of maize which was exported to neighboring countries. In the past Malawi was a net importer of food.

South Africa

Agriculture in South Africa is mainly carried out in large scale farms. These farms are owned by the settlers. South Africa as is in the process of carrying out land tenure reform which will ensure that part of the productive agricultural land is in the hands of the indigenous South Africans. Agricultural production is highly mechanized and uses modern methods of production. Further, South Africa has adopted biotechnology to boost agricultural production.

Egypt

Most of the land in Egypt lies in the desert. The Government has implemented measures to irrigate parts of the country to ensure food sufficiency. This has mainly been achieved through damming of the Nile River. Egypt has undertaken massive investments to facilitate agricultural production and is now food sufficient.

Some policy concerns for Kenya in developing a food security policy include:

Better coordination in implementation of policies

One of the impediments to food security has been poor coordination in policy implementation in the agricultural sector. Ensuring food security requires creation of institutional mechanisms. Such mechanism may include the reinforcement of the role of the Inter-ministerial Committee on Food Security to ensure that greater focus is given to issues of chronic rather than transitory food insecurity. There is a need for a management capacity to fill institutional gaps within the agricultural sector and develop greater synergy between efforts to combat food insecurity.

The functions of the Inter- Ministerial Committee can be proposed to include:

- Promote sharing of knowledge on improving food security.
- Monitor the offering of start-up grants to farmers. Such grants would be conditional upon submission of plans for self financing of future activities.
- Sponsor pilot activities to address food insecurity where experimental work is regarded as necessary.
- Prepare project proposals to raise resources, especially from local authority and national government sources and from donors.
- Monitor and report on progress and offer awards for performance.

Completion of implementation of the strategy for revitalising agriculture

The implementation of the Strategy is underway. However, the process should be expedited given the frequent food shortages in Kenya.

Seed Policy

Most of the seeds used to produce food in Kenya are not certified. Farmers must be sensitized on the need to select appropriate seeds for planting to ensure maximum production from their farms. The Government must promote the availability of certified seeds in the market. Whereas this has been done for maize and wheat, seeds for other crops like beans and potatoes are not easily available. There is therefore a case for revision of the seed policy in Kenya.

Land tenure system

In Kenya, poverty is inextricably related to the control and ownership of the factors of production, which include land and capital. Food production requires land as of essence and is crucial to the attainment of economic growth and poverty reduction. Unequal distribution of land was a key reason for the recent post election violence, which left 350,000 people displaced, and 1500 dead. The Kenya National Dialogue and Reconciliation talks identified land as one of the underlying factors which must be resolved. In Kenya, women contribute up to 80 per cent of the workforce yet they only hold 1 per cent of registered land titles with around 5-6 per cent of registered titles held in joint names. This has impacted on poverty whose current rate is 46 per cent. Women bear a disproportionate larger burden. Women constitute 52 per cent of the 36 million Kenya's population.

Women's right to land is a critical factor in social status, economic well-being and empowerment. Land is a basic source of livelihood providing employment, the key agricultural input, and a major determinant of a farmer's access to other productive resources and services. Land is a social asset, crucial for cultural identity, political power and participation in local decision – making process. Women's access to other natural resources, such as water, firewood and forest products is also crucial for food security and income, particularly as land becomes increasingly scarce and access becomes a growing problem.

Land is the main asset in agricultural production and generally, limited availability of productive land is a major constraint to increased agricultural production. Kenya has

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an area of about 587,000 square kilometers of which 11,000 and 576,000 square kilometers are water and land mass respectively. Only about 16 per cent of the latter is of high and medium agricultural potential largely because it receives adequate and reliable rainfall. The rest falls under arid and semi arid lands. The debate on the draft National Land Policy should be expedited.

Strategic reserves

The storage of the Strategic Reserves in Kenya is vested upon the National Cereals and Produce Board (NCPB). However, the management of the reserve is vested in as Board of Trustees. Inadequate reserves in the strategic reserves and the mismanagement of the reserve have been contributory factors to the famine situation in Kenya. The reserves must be managed in a manner that is above board. Further, NCPB should be reformed to ensure procurement and sale of grains is transparent and that national interest and food security are prioritised.

Nutrition policy

The Government must lead the efforts of diversification of the staple foods for Kenyans. Kenya imports most of its wheat and rice. These

foods are subject to import tariffs. The international wheat price has dropped significantly over the last few months. The Government should consider reducing or even abolishing the tariffs to ensure that these foodstuffs are available to a majority of Kenyans. The urgent need is to increase the flow of staple foods into the country and ensure their availability at an affordable price. The Government should promote a shift from over reliance on maize as the staple food. The low wheat prices should serve as an opportunity for the Government to promote consumption of wheat products. Other crops that can be promoted include drought resistant crops like millet, sorghum and cassava.

Urban and peri-urban agriculture

Urban food security depends primarily on rural agricultural production. Where there is poor infrastructure, lack of refrigeration and a

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Katiba briefs

3rd - A parliamentary committee comes up with a list of local experts that will be part of the law review team. University lecturer Ekuro Arukat will serve as the director of the committee whose task will be to draft a new Constitution based on previous documents and views from various stakeholders.

4th - The list of experts to write the new Constitution goes before parliament amidst divisions in the parliamentary select committee on constitution review. MPs will have to decide the fate of one of the law review members after the parliamentary team failed to agree on whether to retain Mr Abdi Rashid Abdulahi. Some members expressed reservations about the inclusion of his name because he is serving in an existing tribunal.

5th - The list of experts expected to write the new Constitution is tabled before the House. Parliament is now expected to debate the list, which will pave way for the review of the document.

11th - Parliament approves names of the committee of experts expected to lead the country to a new Constitution, setting the stage for the resumption of the process which has eluded the country for decades.

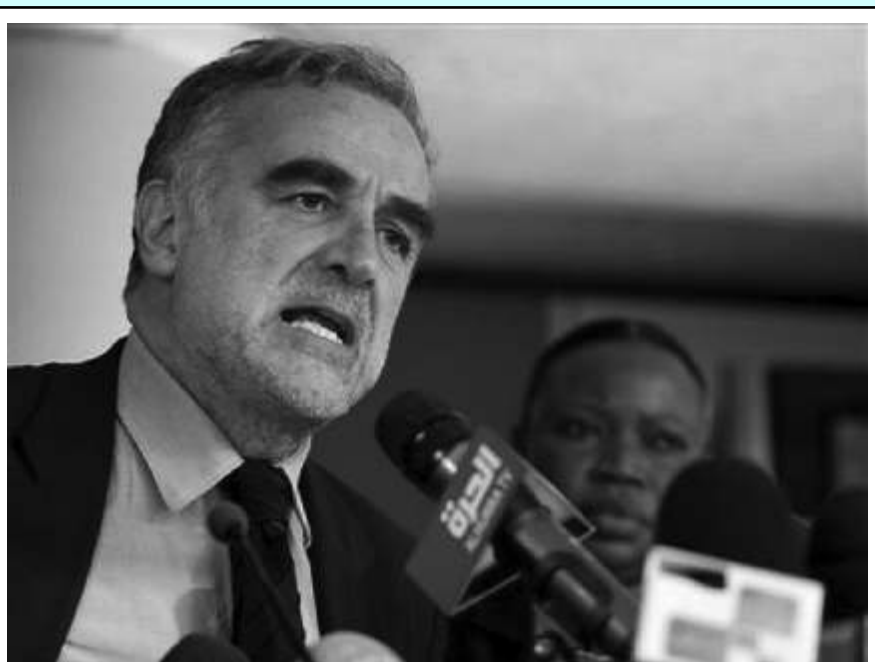
12th - Kanu vice-chairman and former MP, Gideon Moi, expresses concern at the exclusion of the Rift Valley from the nominees to the committee of experts on constitutional review named the previous week.

21st - The controversy over the proposed Interim Independent Electoral Commission (IIEC) persists as members of a parliamentary select committee differ over the selection of officers of the new polls team. The parliamentary select Committee on constitutional review will meet for further talks on the matters that have threatened to derail electoral reforms

27th - The Parliamentary Select Committee on Constitution Review drops lawyer Cecil Miller as a possible chairman of the IIEC. The PSC, chaired by Mandera Central MP Abdikadir Mohammed, announces it would re-advertise the post. The committee also disqualifies two other nominees, Suleiman Yesse Bulo from Coast and Charles Masinde from Western province.



Justice be done in Kenya as in at in The Hague



All eyes on him: Chief Prosecutor of the ICC, Luis Moreno-Ocampo

provision, the section stated that parts of the Constitution that were in conflict with the Constitution would not affect the Statute.

The sections of the Constitution that have the potential to negatively impact on the work of the special Tribunal are:

1. Section 14 of the Constitution grants the President immunity from civil and criminal liability while in office. If the Special Tribunal were to indict the President for the crimes under its jurisdiction, such indictment would contradict section 14. The Bill does not deal with the questions of immunity and amnesty before the Tribunal.

2. The Attorney General has power to commence, carry out and terminate prosecutions under section 26. The amendment does not expressly confer prosecutorial powers to any other entity. The Office of the Prosecutor of the Tribunal is not a constitutional office. If the Attorney General sought to terminate proceedings before the Special Tribunal, there would be a conflict between the powers of the Attorney General and the powers of the Prosecutor established under the Statute. The tribunal has not been protected from the powers of the AG to take over and terminate any case and the President power to grant pardons.

3. The powers of the President under section 27 of the Constitution to pardon persons convicted of offences means that the President could pardon persons convicted of

By Macharia Nderitu

The Government published the Constitution of Kenya (Amendment) Bill, 2009 and the Special Tribunal of Kenya Bill, 2009 with a view to implement the Recommendations of the Commission of Inquiry on Post Election Violence. The Commission had granted the Government up to the end of January, 2009 to pass the necessary law to set up the Tribunal, which was expected to commence operations from March 1, 2009.

This deadline compelled the President to recall Parliament in January when traditionally Parliament resumes business in March. The Bill was rejected by Parliament on February 12, 2009. The Government is back to the drawing board to ensure the Bills are enacted. Failure by the Government to set up the

Tribunal may lead to reference of the case to the International Criminal Court (ICC) by the chief Mediator, former UN secretary general Kofi Annan.

Constitution of Kenya Amendment Bill, 2009

The Bill inserts Section 3A into the Constitution. The section provides that Parliament may establish by Statute of Parliament a special tribunal with exclusive jurisdiction to investigate, prosecute and determine cases relating to genocide, crimes against humanity, gross violations of human rights and such other crimes as may be defined in the Statute. The section further states that the Statute shall not be deemed to be inconsistent with the Constitution and in case of a conflict, the Statute shall prevail. This section was intended to entrench the Statute of the Special Tribunal for Kenya into the Constitution. Through a blanket

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crimes by the Special Tribunal thereby undermining the functioning of the Tribunal.

4. Section 77(4) of the Constitution protects Kenyans from being prosecuted for crimes that did not exist in law at the time of their commission. The offences forming the jurisdiction of the court are known international crimes. However, they were not part of the Kenyan criminal law at the time of their commission. The section would therefore conflict with the provisions of the Statute and form a basis for constitutional challenge for breach of fundamental rights and freedoms.

The protection against prosecution for offences that did not exist at the time of their commission is a known international human rights guarantee espoused by the Universal Declaration of Human Rights and the International Covenant on Civil and political Rights. The Constitution must be amended to embrace crimes recognized under international law. Section 77 (4) of the Constitution provides that no person shall be held guilty of a criminal offence on account of an act of omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for the offence at the time it was committed.

5. Section 60 of the Constitution establishes the High Court of Kenya with unlimited criminal and civil liability. Further, the Judiciary is the only recognised organ in the Constitution with the mandate of trying and convicting suspects. This means the relationship between the Tribunal and the Courts is unclear. The tribunal has not been insulated from constitutional challenge.

Special Tribunal for Kenya Bill, 2009
The Statute of the Special Tribunal for Kenya establishes jurisdiction over offences of genocide, crimes against humanity and gross human rights violations carried out in Kenya between December 3, 2007 and February 28, 2008. The Special Tribunal shall have a Trial Chamber and an Appellate Chamber. The Trial Chamber was proposed to have a Chairperson and two other judges and the Appeals Chamber was to have a Chairperson and four judges. The Chairpersons of the two Chambers were to be appointed by the President in consultation with the Prime Minister within 21 days from coming into force of the Statute. Three judges of the Appeal Chamber and the two judges of the Trial Chamber shall be appointed by the Panel of Eminent African Personalities within 14 days from coming into force of the Statute.

The Special Tribunal was to try persons bearing the greatest responsibility for the crimes under jurisdiction of the Tribunal through their involvement in planning, instigating, inciting, funding, ordering or providing other logistics to facilitate the carrying out of the crimes. The Tribunal shall consider the level of authority, leadership, decision making power or influence in determining responsibility. The Tribunal shall consist of the Trial Chamber, the Appeals Chamber, the Prosecutor, the Registry, Defence Office and the Special Magistrates. The President with the concurrence of the PM may establish additional Chambers in the interest of justice. Such Chambers shall be established through a notice in the Gazette.

The Tribunal shall have primacy over the Courts. The Special Magistrates shall exercise jurisdiction over persons suspected of committing crimes defined in the Statute but who do not bear the greatest responsibility for the crimes. The Special Magistrates will have power to prosecute crimes under the Penal Code. The elements of crimes for genocide, crimes against humanity and gross violations of human rights shall be the elements adopted by the

ICC. Individuals responsible for carrying out or organising criminal acts shall be responsible individually. The holding of a public office shall not exempt any individual from responsibility for the crime. The fact that a person acted pursuant to an order shall not relieve any person from criminal responsibility. Persons who have been tried by the tribunal shall be exempted from further trial by the tribunal for the same offence.

The judges of the Chambers shall be appointed for a period of three years which can be extended by a resolution of more than half of MPs. A vacant shall arise in the office of judge if the occupant dies, is declared bankrupt, is convicted of an offence, is removed from office by the President in concurrence with the PM and the Panel of Eminent African Personalities, or resigns from office. The removal of a judge shall be carried out for misbehaviour, for conviction of an offence of moral turpitude, or by reason of mental or physical infirmity. The President, in concurrence with the PM shall appoint Special Magistrates. The Magistrates shall be appointed for a three year term.

The Prosecutor shall be responsible for prosecution of cases in the Tribunal. The office shall be organised into the Investigation and Prosecution Department. The Prosecutor shall be a non citizen and shall be appointed by the President in concurrence with the Prime Minister from a list submitted by the Panel of Eminent African Personalities. The Prosecutor shall be independent in carrying out his duties and shall not be subject to control and direction of any person or authority. The Prosecutor shall be assisted by a Deputy Prosecutor who shall be a Kenyan citizen. The Registrar shall be responsible for the management and administration of the affairs of the Tribunal. The Registrar shall be a non citizen but shall be assisted by a Deputy Registrar who shall be a Kenyan. The Registrar shall set up a victim and witnesses unit to provide safety and protection to witnesses and victims.

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The Defence office shall be responsible for protecting the rights of the defence, providing support to defence counsel and persons entitled to legal aid. The legal counsel enlisted to defend persons in the tribunal shall be paid such honoraria as may be determined by the tribunal. The tribunal may engage such staff as may be necessary to carry out its functions under the Statute.

The prosecutor shall initiate investigations based on CIPEV Report, on his own motion or from information from any other source. The Prosecutor shall have the power to question suspects, victims and witnesses and conduct on site investigations. The Prosecutor may request the assistance of Government agencies. During questioning, the suspect shall be entitled to a defence counsel. If the Prosecutor is satisfied there is sufficient basis to charge the suspect, he shall prepare an indictment which shall contain the facts of the case and the offences for which he is indicted. The indictment shall be submitted to a judge in the Trial Chamber. The names of persons under investigation shall not be revealed other than to persons directly involved in the investigations prior to the filing of the indictment.

Upon conformation of the indictment, a summons shall be issued to the suspect indicating the time and venue for his appearance before the Tribunal. If such person fails to appear before the Tribunal, a warrant of arrest shall be issued. The tribunal shall conduct pre-trial proceedings to determine whether there is sufficient ground for the accused to stand trial. In such proceedings, the accused may challenge the charge, object to evidence or produce evidence. The judge may commit the accused to stand trial or decline to commit the accused to trial where there is no sufficient evidence. The Trial Chamber shall ensure that the trial is fair and just and in accordance with the Rules of Evidence and Procedure. The proceedings of the Tribunal shall be public unless otherwise directed by the Tribunal. Appeals shall be initiated by

the Prosecutor, a convicted person or a person against whom and order is directed. The determination of the appeal shall be final.

The trials before the Special Magistrates shall be conducted using the same procedure. Appeals from the Special Magistrates shall lie in the Appeals Chambers. All suspects shall have the right to remain silence, are entitled to services of an interpreter, to be questioned in the presence of counsel and to be informed of the ground forming his charge before the Tribunal. The accused shall be entitled to a just and fair hearing before the Tribunal and shall be presumed innocent until proven guilty. Qualified counsel from commonwealth jurisdictions shall have the right to appear before the Tribunal.

The judgements shall be delivered in public. The decisions shall be supported by a majority of the judges. The tribunal may impose fines of up to Kshs 10 million. The punishments imposed by the tribunal shall reflect international best practices. While convicting, the tribunal shall have regard to the level of responsibility, gravity of the offence and individual circumstances of the accused. Persons convicted by the tribunal shall be barred from holding public office. The tribunal may order compensation to victims and determine who shall pay the compensation. Upon completion of its work, the tribunal shall submit a report to the President and the PM. The tribunal as formed is not financially independent as the Minister for Justice still retained the role of approving its budget.

Critique

Some of the criticisms of the Bill are:

1. The witness protection regime for the tribunal is weak and ineffective. Guarantees are not sufficient given the suspects will face life imprisonment if convicted. Some witnesses may require protection for life given the gravity of offences that the suspects appearing before the tribunal will face.



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Minister Hon. Martha Karua*

2. Persons who are under investigation by the tribunal will not be required to step aside from public office. This raises the danger of interference with investigations. The police were implicated for complicity for crimes during the post election violence. The Police will be key investigators on behalf of the tribunal. The clause, requiring persons implicated in offences under the jurisdiction of the tribunal to step down from public office, was not included in the Bill. The MPs who opposed the Bill have stated that the professionalism and independence of the ICC is not disputed. A trial in The Hague would send a powerful message against impunity.
3. There is no guarantee of oversight by Parliament, the international community and civil society to ensure that appointments to the tribunal satisfy criteria of competence and independence. The participation of victims in the proceedings of the tribunal is not well stipulated. The appointment process for judges are not open to broad consultations thus appointees may not be independent and impartial.

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4. There is potential conflict between the objectives and operations of the tribunal and the Truth Justice and Reconciliation Commission. Both institutions are intended to promote accountability to end impunity with a view to restoring the rule of law and respect for human rights. The two organs must work in a spirit of mutual respect and cooperation. The Tribunal and the TJRC should enter into a written binding agreement regulating their relationship within 90 days from the date of their formation.
5. The process of establishing the tribunal has been shrouded in secrecy and has not been opened to public consultations. The Bill should be opened up to public debate to enable interested persons to submit their views for consideration. The process is being rushed by the Government.
6. The Tribunal lacks financial independence. The budget of the Tribunal will be controlled by the Minister for Justice and Constitutional Affairs. The tribunal should be funded directly from the Consolidated Fund. How do we ensure that its funding is sufficient and adequate to ensure it performs optimally? Who will authorise the release of funds to the tribunal?
7. The Bill stipulates cut off dates of December 3, 2007 and February 28, 2008. It has been asked what is special about these dates. The cut off date for the jurisdiction of the Tribunal cannot be justified as part of the planning for and the commission of the offences could have occurred much earlier. However, the tribunal shall have the power to investigate prior and subsequent factors and circumstances and prosecute persons responsible.
8. A judge is empowered to decide if there is a *prima facie* case to

warrant the accused to stand trial at the pre-trial stage. The purpose of pre-trial proceedings is to manage the case or confirm the indictment. The likelihood of dismissal of a case at the pre-trial stage increases the pressure on the presiding judge. The appointment of pre-trial judges is not clear from the Statute and the Chamber is not specifically established unlike the Appeals and Trial Chambers

9. The procedure and criteria for removal of judges is not clear. However, the oversight by the Panel of Eminent African Personalities may deter arbitrary removals of judges from the Tribunal. Further, the qualifications for the tribunal's officials are not clear. For example, will the investigators be required to have police background?
10. The tribunal should be protected from underhand pressures such as inviolability of its archives, premises, and documentation, personal security of staff, immunity for key staff like the judges, registrar, the Prosecutor, and autonomy of the Prosecutor. The cooperation of the Prosecutor with state agencies is not clear. For example, cooperation of the tribunal with the police is problematic due to implication of the police in the post election violence.

Statute of the Special Tribunal for Sierra Leone

The Special Tribunal for Sierra Leone was established by the UN Security Council to probe persons bearing the greatest responsibility for genocide, crimes against humanity and war crimes in Sierra Leone. Resolutions of the Security Council are binding on all countries. The tribunal did not require the enactment of local legislation to operationalise. The Special Tribunal for Kenya Bill is modeled on the Sierra Leone Statute in terms of the organs established and the definition of crimes and jurisdiction. The Special Tribunal for Sierra Leone is funded by the United

Nations. So far, the tribunal has commenced less than 10 cases against the persons bearing the greatest responsibility for atrocities in Sierra Leone.

The key officers of the Tribunal including the Prosecutor, judges, the Registrar and the Chief Defence Counsel are appointees of the Secretary General of the UN. The Tribunal submits its reports to the UN and has adopted the rules of evidence and procedure International Criminal Tribunal for Rwanda. The tribunal is, therefore, an international mechanism set up in Sierra Leone which is not subject to the domestic laws of Sierra Leone.

The ICC can only take a limited case load at a time and confines itself to few individuals who hold the greatest responsibility for the crime. The argument of Kenya being a sovereign State does not hold water as the country is part of the community of nations and has ratified international treaties including the Rome Statute on the ICC that grants the international community power to oversee Kenya's observance of human rights and fundamental freedoms. The inability to set up a local tribunal is a sign that Kenya is unable to sort out its domestic affairs and it is the right time for the international community to intervene. Despite the varied legal provisions that can be used to commence prosecutions for politically violence, very few known prosecutions have been undertaken. This is an indication of diminished political will to deal conclusively with impunity.

The tribunal borrows from the ICC Statute in as far as persons can be held culpable by virtue of being holders of positions of authority or having knowledge and influence and holding persons who were not initially named in the investigations responsible. **KN**

The writer is an advocate of the High Court of Kenya.

State of the Nation One year after the Accord

By Katiba News correspondent

It is one year since the National Accord was signed by President Mwai Kibaki, Prime Minister Raila Odinga, President Jakaya Mrisho Kikwete of Tanzania and former United Nations secretary general His Excellency Kofi Annan. With the signing of that Accord, the 10th Parliament enacted the National Accord and Reconciliation Act (2008) and simultaneously amended the Constitution of Kenya to entrench the Act.

One year later, every Kenyan has the right to take stock of the following: what worked and what did not; when some things worked and when some did not; why some things worked and why others did not; how some things worked as they did and how others did not and; who is responsible for any success and/or failures.

With these five factors we interrogate the Grand Coalition one year later with the aim of holding it to account so that it may strengthen what worked and improve on what failed. These five factors are interrogated within four key indicators. These are survival of the coalition, commissions of inquiry, internally displaced persons and the 10th Parliament.

Survival of the Coalition

This is the first coalition government in Kenya's history, at least in terms of what coalitions are - governments that are formed after elections when no party can win a majority to form a government on its own. Most coalitions in the world, especially in Italy, Japan and Israel last about a year. The Kenyan one has clocked one year but, of course, with intermittent factional fights. Fortunately, the principals have weathered storms and tornados from



President Mwai Kibaki, Prime Minister Raila Odinga and former UN Secretary General Kofi Annan

their political lieutenants which could have split the coalition. The two men have made it work since, as we say in Kenyan politics, the party is the person leading it.

Nonetheless, there are other instances where the two principals were asleep on the job, such as when the Party of National Unity (PNU) was splitting and some members elected on a PNU ticket registering their own parties. Another example is Raila allowing some party *riff raff* to dismiss the Waki Report *in toto*. However, the two principals have demonstrated

'statesmanship' like where Kibaki has allowed Raila to really 'head government' in a *de facto* way. Conversely, Raila has given up on the protocol cat-fights with Kalonzo by showing that it does not matter who is second-in-command, and when he stood firm against Mau Forest encroachment.

Unfortunately, there is need to point out that this coalition has the highest number of ministers and their assistants in Kenya's history. Efforts by civil society to have "not more than 24 ministers" hit rock-bottom when the two principals chose political expediency over a lean and efficient Cabinet. It is quite disheartening that in a country reeling with hunger, abject poverty, high food and fuel prices, the two principals allowed such a bloated Cabinet which continues to drain the nation's coffers while majority of the

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people live in deplorable situations. To make matters worse, the fiascos surrounding corruption in the maize and energy (fuel) sectors continue to haunt this government.

Commissions of Inquiry

Four commissions were proposed in the mediation talks. These are the Independent Review Commission (IREC); Commission of Inquiry into Post-Election Violence (CIPEV); Truth, Justice and Reconciliation Commission (TJRC) and; the National, Ethnic and Race Relations Commission (NERRC). The first two commissions completed their work and submitted reports to both principals. The reports were immediately made public unlike previously when such reports were only known to the Cabinet. However, the Cabinet seemed divided on the position to take.

What did not work was the way in which IREC side-stepped assigning criminal responsibility to any one at the Electoral Commission of Kenya (ECK) or any other quarters, including within political parties led by the two principals. At least IREC recommended the dismantling of the ECK. IREC's terms of reference also included investigating both the authenticity of the results and the tallying process.

CIPEV report was met with mixed reactions across the political and ethnic-social divides. But giving credit where its due, Justice Philip Waki and his commission did their work well, especially the automated implementation timelines and 'secret list' which threw politicians into disarray. Many Kenyans were also supportive of the implementation of the report with a view to ending impunity. To date, while many still support its implementation, there has been some confusion on which way to go. Some have supported the proposed 'local tribunal' while others have openly stated that The Hague is the way to go.

But both are the same. The so-called 'local tribunal' has so much foreign influence with four out of six Judges as outsiders, a foreign

chief prosecutor and a Special Statute. The only difference is that the local tribunal will operate in Nairobi and not The Hague. For avoidance of doubt, if the politicians mess the local tribunal, International Criminal Court Chief Prosecutor, Moreno O'Campo, should jettison all those in the 'list' out to The Hague immediately! While CIPEV had some legal gaps and administrative weaknesses, it scored as the first time a Commission of Inquiry had taken politicians by the horns.

Internally displaced persons

Over 200,000 internally displaced persons (IDPs) were rendered homeless and also jobless after the 2007 post election spate of violence. These numbers are only conservative estimates as the true figures could stretch to 500,000 IDPs. Those rendered homeless were either chased away from their homes or farms while others who had businesses in various parts of the country were impoverished. The Government started Operation *Rudi Nyumbani* (return home), which disrespected regional and international instruments that Kenya is signatory to. This included a disregard in profiling IDPs and sidelining the input of other stakeholders.

One year later, IDPs are still lying in camps, especially 'transit camps' near where they were displaced from. Looking at the hills and valleys of Rift Valley, Nyanza and Western Provinces, one sees some sort of 'concentration camps' littered with white or cream torn tents. The truth is that many IDPs have not *gone back home*. Where to? Compensation aside, the Government's failure to admit liability in the design, implementation, monitoring and evaluation of the project is simply shocking.

The 10th Parliament

While live broadcasts of proceedings are a highly celebrated achievement of the August House, Parliament nonetheless has always been fond of bringing disrepute to itself. Looking at the Bills drafted and/or passed by the 10th National Assembly and later on assented to by the President, one is left puzzled. From the Constitution of Kenya Review Bill, to the Constitution of Kenya (Amendment) Act, to the Kenya Communications (Amendment) Act, to the Truth, Justice and Reconciliation Act, the NERRC Bill and others speaks volumes about the honesty, professionalism and integrity of the 222 MPs in the House.

Their lack for the common good leaves one with one conclusion that something is amiss in Parliament and it does not matter who occupies it. Majority of the MPs are new, but it seems the cancer of lacking quorum in the House and its attendant ills like passing horrible legislations still persists. As P. H. Okondo says in the book *A Commentary on the Constitution of Kenya*, what we need are the right systems and structures and not the right men or women! **KN**

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recovery assistance in their territory. Where an affected State determines that a disaster situation exceeds national coping capacities, that State should seek international and/or regional assistance. States have the sovereign right to coordinate, regulate and monitor disaster relief and recovery assistance provided by assisting actors on their territory consistent with international law. The draft Guidelines serve as a guide to States in developing appropriate national legislation.

All States should adopt procedures to facilitate information sharing in order to minimise trans-boundary impact and maximise the effectiveness of any international assistance that might be required including emerging hazards that are likely to cause disasters. States should adopt comprehensive legal, policy and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which are inclusive of domestic civil society, and empower communities to enhance their own safety and resilience. States should devote adequate resources to ensure the effectiveness of these frameworks.

Legal and policy frameworks should adequately address the initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance and should allow for effective coordination of international disaster relief, initial recovery assistance and assisting humanitarian organisations.

The frameworks should designate governmental entities with responsibility and authority. Consideration should be given to establishing a national focal point to liaise between international and government actors. Where necessary and appropriate, the Government should encourage provincial or local governments and regulatory bodies to take the necessary steps at their level.

Looking forward

The key lessons for Kenya in formulating National Disaster Management legislation include:

- The creation of a national agency responsible for disaster management enables the State to manifest the principle that disaster management is a national responsibility. It is recommended that the mission of the agency be expressed in detail.
- In establishing the governance

structures of the national disaster management agency, the distinction between policy development and operational functions should be clearly delineated. These may be vested in the same structure or in separate structures. A disadvantage of the former model is that the policy development function should preferably be the responsibility of the highest political functionaries and that it might be inappropriate and unwieldy to be involving such individuals in hands-on field of operations. In defining the governance framework of the national disaster management agency, the State should carefully consider the level at which input from non-state actors is required.

- The manner in which national legislation defines the term 'disaster' determines the legislation's scope of application. The term can be defined in a specific (with reference to specific hazards) or generic (establishing qualitative criteria to determine whether a situation constitutes a disaster) fashion. It is recommended that that generic approach is preferable on account of its greater flexibility. It is recommended that terms such as 'disaster management' or 'disaster response' should be defined for clarity.
- There is need for synergy between national and regional frameworks including in definition of disaster. The synergy should be established by ensuring consistency in approach, strategic objectives and underlying principles. However it can also be established by expanding the focus of national plans and information systems to encompass a regional in addition to a national focus.
- Most national frameworks lack of mechanisms defining the manner in which requests for international assistance are made. The international humanitarian and relief organizations should be represented on national structures. However, this must be supported by clear guidelines on the method and responsibility within a State of initiating such requests, the threshold at which such requests will be made, the content of such requests and the manner in which the information needs of international humanitarian and relief organizations will be met. There is need to promote inter-state cooperation in disaster management

and response. Disaster management must build on existing and local capacity within the region.

- The need for facilitation of disaster response can be met by giving powers to a political functionary or group to make, amend, suspend or revoke certain rules in situations of disaster. This allows for rule 'adaptation' to be tailored to the needs of specific disaster scenarios. It is recommended that, where *ad hoc* rules can be adopted as a solution, national legislation expressly states that these powers can be used to facilitate international response. A comprehensive national legal framework on disaster management, incorporating procurement of international assistance, is the optimal solution as it avoids lack of clarity, confusion, lack of appropriate dissemination and frequent revision.
- It is important to underline that the need for coordination in disaster response arises at different levels and establish appropriate forms of institutional responsibility for each type of coordination. Further, that coordination might be hampered in the absence of information concerning stakeholders and lack of clear communication with such stakeholders. The function of regulating disaster response entails assigning responsibility for tasks and establishing the criteria for provision and evaluation. Factors which hinder proper implementation include limited physical and institutional infrastructure for emergency management; logistical problems in the management of emergency assistance and imbalances in response quality. Disaster responses are hindered by lack of linkages between disaster emergency response, rehabilitation and development.
- There should be adequate participation by disaster affected people during the formulation of disaster responses. Disaster management planning and capacity should extend down to the lowest level of governance. Disaster management policy must address all hazards as it is founded on the concept of risk management and extends beyond immediate response and relief. **KN**

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less effective market chain, urban and peri-urban food production tends to increase. The Government has been slow to support urban agriculture in Kenya despite its obvious benefits. Urban and peri-urban agriculture have the advantage of market proximity. The benefits are better nutrition, savings in buying food, generation of income from sales, job creation and environmental conservation. Some of the risks are pathogens and toxic contamination from liquid and solid waste, and air pollution; proximity to animals carrying zootomic diseases, and possible environmental damage. The health risks associated with waste reuse include the pathogenic organisms in waste residues, respiratory problems from dust or gases released, injuries from sharp fragments in waste, and crop contamination from heavy metals contained in waste.

Irrigation and research into drought resistant crops

The Government should promote and offer financing of modern agricultural technologies. This will include mechanization of food production. Further, the Government should seek to increase the land under irrigation to reduce dependence on rain fed agriculture. The Government should promote the cultivation of drought resistant crops in arid and semi arid areas.

Biotechnology

Governance regimes for biotechnology focus on protection of human health and the environment, research, commercialisation and trade in biotech products. The national level governance structures for biotechnology regimes are required to comply with international regimes especially the Cartagena Protocol on Biosafety. Kenya passed the Biosafety Act in 2008. However, its provisions are yet to be implemented.

Arguments against biotechnology are that they confer monopolistic status, placing needed products beyond the reach of poor countries. Fears abound that patents are restrictive and threaten the freedom of farmers to access seed. Ethical questions are asked whether private companies have a right to own fundamental biological components of life. It is estimated that the countries of the Organization for Economic Cooperation and Development hold 97 per cent of all patents and global corporations 90 per cent of all technology and product patents related to living materials. This lopsided ownership of living materials is a potential source of contention.

On the other hand, multinationals spend enormous resources to develop improved agricultural products. Intellectual property rights form the core of their financial base. There is a growing need for partnerships and collaboration between African institutions and these multinationals in technology transfer. The rights are needed to facilitate agreements and ensure an environment of trust. The basic fact is that no company that had spent large sums of money would risk collaboration if protection of its product was uncertain. Research is expensive and may require considerable time input. It requires the use of skills and costly equipment that push up the value of the final product.

Attention should be given to capacity development to provide the skills needed for policy development, enactment of laws, and implementation of technologies for increased agricultural production and food self-sufficiency. Partnerships should be encouraged between stakeholders including multinational companies, international agencies, national research institutions, companies and non governmental organisations for enhancement of technology transfer to address food security. It is key to create an awareness of the role of biotechnology and its potential impact on food security. Therefore, it will be advantageous to encourage networking and the use of local groups in advocacy and awareness creation efforts aimed at developing an

informed society.

As an example, Kenya's maize yields have remained flat over the past two decades. It is estimated that maize stem borers inflict 20 - 40 per cent production losses in Kenya. In comparison, South Africa adopted agricultural biotechnology 12 years ago, giving domestic producers the benefit of all known technologies to control maize stem borer and parasitic plant infestations similar to those noted for the East African region. Consequently, South African maize farmers record higher yields than farmers in Kenya.

The hot plate

Kenya needs an urgent food security action plan. This plan must be inclusive of all players and must be able to make decisions and ensure they are implemented. It must be free of bureaucratic impediments and must ease the flow of food. Kenya must urgently formulate the guiding policy on food security. Approximately 10 million Kenyans have no assured food security. The policy formulation and implementation must be undertaken urgently to ensure that Kenyans are saved from ravages of hunger. It has been reported that yellow maize is available and plentiful and at much lower prices. Kenya is importing yellow maize for industrial purposes and for animal feed. The yellow maize should serve as an alternative human food due to the gripping shortage.

Improved agricultural production and enhanced food security can be achieved through empowering farmers to acquire relevant technical knowledge and management skills. Small scale farmers can transform the food security situation of poor rural communities. Farmer empowerment will lead to a progressive build up in the demand for increasingly sophisticated services - some of which can eventually be met by a responsive private sector.

Success of the programmes requires participation of all actors including farmers, civil society and the Ministry of Agriculture. The Ministry must identify the problems through participative approaches and promote channels for information and knowledge sharing. Steps must be taken to set in place reliable food safety nets and address the food needs of chronically hungry households. Such safety nets should be community managed but underpinned by formal welfare programmes. There is also a need to take a close look at policies - especially land, trade and subsidy policies - to identify possible adjustments which could contribute to reduced hunger. **KN**

THE KONRAD ADENAUER FOUNDATION IN KENYA

Konrad-Adenauer-Stiftung is a German political Foundation which was founded in 1955. The Foundation is named after the first Federal Chancellor, Prime Minister and Head of Federal Government of the then West Germany after World War II. Konrad Adenauer set the pace for peace, economic and social welfare and democratic development in Germany.

The ideals that guided its formation are also closely linked to our work in Germany as well as abroad. For 50 years, the Foundation has followed the principles of democracy, rule of law, human rights, sustainable development and social market economy.

In Kenya, the Foundation has been operating since 1974. The Foundation's work in this country is guided by the understanding that democracy and good governance should not only be viewed from a national level, but also the participation of people in political decisions as well as political progress from the grass roots level.

Our aims

Our main focus is to build and strengthen the institutions that are instrumental in sustaining democracy. This includes:

- Securing of the constitutional state and of free and fair elections;
- Protection of human rights;
- Supporting the development of stable and democratic political parties of the Centre;
- Decentralisation and delegation of power to lower levels;
- Further integration both inside (marginalised regions in the North/North Eastern parts) and outside the country (EAC, NEPAD); and

Development of an active civil society participating in the political, social and economic development of the country.

Our programmes

Among other activities we currently support:

Working with political parties to identify their aims and chart their development so that democratic institutions, including fair political competition and a parliamentary system, are regarded as the cornerstones for the future development in Kenya.

Dialogue and capacity building for young leaders for the development of the country. Therefore, we organise and arrange workshops and seminars in which we help young leaders to clarify their aims and strategies.

Reform of local governance and strengthening the activities of residents' associations. These voluntary associations of citizens seek to educate their members on their political rights and of opportunities for participation in local politics. They provide a bridge between the ordinary citizen and local authorities, and monitor the latter's activities with special focus on the utilisation of devolved funds.

Introduction of civic education to schools and colleges. We train teachers of history and government in civic education. In addition, we participate in the composition of a new curriculum on civic education.

Our principle is: Dialogue and Partnership for Freedom, Democracy and Justice.

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