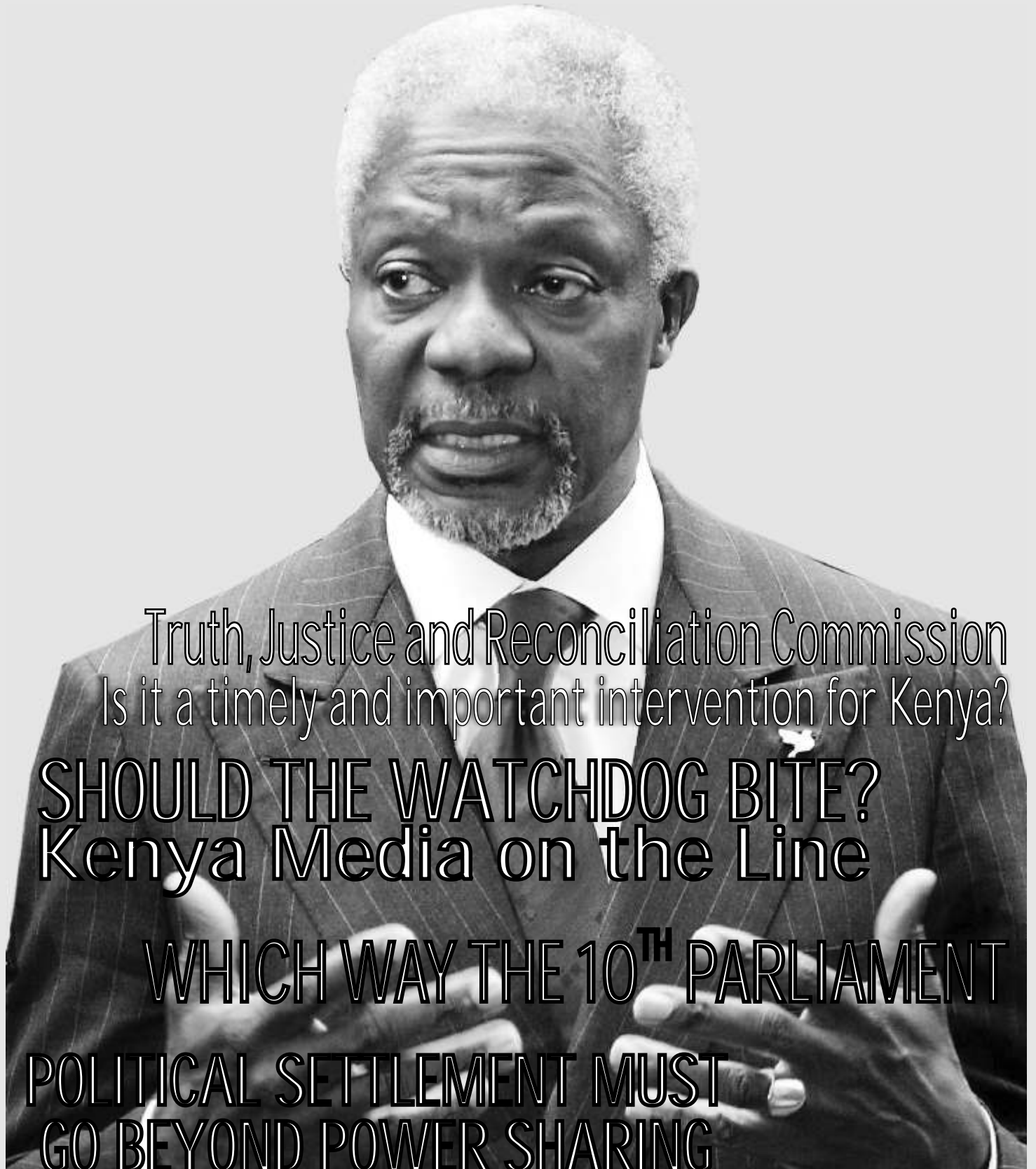


KatibaNews

PUBLISHED BY MEDIA DEVELOPMENT ASSOCIATION
FEBRUARY 2008 NEWSLETTER

Your Free Copy Issue NO.02.08



Truth, Justice and Reconciliation Commission
Is it a timely and important intervention for Kenya?

SHOULD THE WATCHDOG BITE?
Kenya Media on the Line

WHICH WAY THE 10TH PARLIAMENT
POLITICAL SETTLEMENT MUST
GO BEYOND POWER SHARING

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.

KatibaNews is published by Media Development Association (MDA). This publication has been made possible with the kind support of the Konrad Adenauer Stiftung (KAS) in Kenya.

MDA is not-for-profit organisation registered under the Societies Act.

Managing Editor
Stephen Ndegwa

Associate Editors
Susan Kasera
Patrick Mwangi
Henry Owuor

Office Assistant
Monica Muthoni

Photography
MDA Library

Art Direction & Design
Khafre Graphics

KatibaNews is published monthly and is distributed free to all media houses, civil society organisations, and the public. All are welcomed to send their observations on the constitutional review process to be the Editorial Board.

Views expressed in this newsletter do not necessarily reflect those of MDA, KAS or partners. Reprinting of materials permitted provided the source is acknowledged.

All Correspondence to:
The Editor
Katiba News
P.O. Box 64254-00620
Tel. 020 2098548
Cell: 0724 376883
Nairobi, Kenya
Email: mediakenya@yahoo.co.uk

THIS MONTH FEB 2008



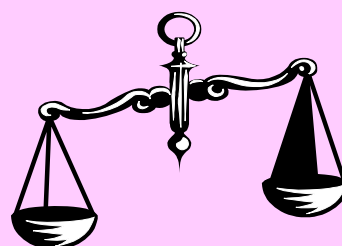
Contents

3 Truth, Justice and Reconciliation Commission

6 Should the watchdog bite?

9 The 10th Parliament?

12 Political settlement



EDITORIAL

OF PLAYING RUSSIAN ROULETTE AND BITING THE BULLET

Since the country gained independence from the British colonialists 44 years ago, Kenyans have been living a very big lie! But hold on before you accuse me of making a blatant statement.

Going by what has happened in this country over the last two months, you do not need to be a student of history to know that Kenya will now have to undergo a complete paradigm shift as far as democracy and governance is concerned. Although those of us who were born after independence are given accounts of times in our history when the country nearly went over the precipice, I believe past events do not come close to what happened after the announcement of the presidential results towards the tail end of 2007.

For years, Kenyans have been in denial about their true identity. Each and every Kenyan has been going on like he or she owns the place, oblivious to the fact that we all carry ethnic tags in our names, language, culture, education and economic class. Innocently or otherwise, we have for long branded each other with jabs such as thieves, vagabonds, spendthrifts and morally decadent depending on which tribe one is describing.

Gradually, we have been sowing the seeds of conflict with each other either as groups or individuals. But what we did not realise all this time is that we have been dicing with death. And the one shot, the deadly ethnic shot, finally got fired on December 30th last year.

As we now bite the bullet, we have become a nation of bleeding hearts and souls. We have been playing a game whose grave consequences are so evident in the sorry state of most of our

neighbours. Like the proverbial thorn birds, we have been foolishly tempting fate.


The time for laying down and addressing the socio-economic and political baggage that we have carried as a nation in the last 40 plus years has come. It is going to be a painful experience for all Kenyans as we search our souls and try to get back on our feet again. Yes, it is going to be business unusual!

In our second edition this year we start with the increasing calls for the establishment of a Truth, Justice and Reconciliation Commission. That this is an undertaking whose time has come needs not be overemphasised. As they say, those who do not learn from history are bound to repeat it.

Secondly, we take a look at the role, if any, the media played in sparking off and escalating the post election violence both just before and after the elections. My obviously unpopular view is that the media, both print and electronic, have a case to answer to the people of Kenya.

In our third analysis we give ask ourselves whether it is going to be business as usual in the yet to be opened 10th Parliament or whether we expect a new direction given our current circumstances.

Lastly, we go beyond the buzz of power sharing as a political solution between the PNU/ODM-K Government and opposition ODM. Is it all about who will yield the big stick or are our politicians thinking of the 33 million inhabitants who walk on this our land and nation? Your guess is as good as mine...

Stephen Ndegwa
Managing Editor 

Truth, Justice and Reconciliation Commission

Is it a timely and important intervention for Kenya?

By Antoinette Mulama

Reconciliation and Justice are almost twin notions. It is argued that the search for peaceful coexistence, trust, empathy and democratic power sharing demands that "justice be done". Many proponents in the West argue that "there is no peace and no reconciliation without punitive justice". Sceptics, however, have raised four objections to the use of trials and criminal prosecutions in dealing with a violent past claiming:

- (a) It is affected by the current political climate.
- (b) It ignores and sidelines victims.
- (c) Material obstacles may hinder the delivery of justice.
- (d) Trials have the potential to thwart the reconciliation process.

There have been debates in the past on the need to establish a Truth, Justice and Reconciliation Commission in Kenya.

The establishment of the Commission is just one component of transitional justice. Transitional justice embodies an attempt to build sustainable peace after conflict, mass violence or systemic human rights abuse.

Indeed in 2003, the Government set up a Task Force to examine the question and make recommendations. The Task Force recommended formation of such a Commission. However, the Task Force's recommendation to establish the Commission was not implemented. In the aftermath of the post December 2007 general election violence in which there were gross human rights violations of the rights to life and property, the need to establish the Commission has come to the fore.

The establishment of the Commission is just one component of transitional justice. Transitional justice embodies an attempt to build sustainable peace after conflict, mass violence or systemic human rights abuse. It involves prosecuting perpetrators, revealing the truth about past crimes, providing victims with reparations, reforming abusive institutions and promoting reconciliation. Other measures that are necessary to ensure transitional justice are institutional reforms, prosecution of perpetrators in domestic and international tribunals, promoting reconciliation in divided communities, construction of memorials to preserve the memory of the past and taking into account gendered patterns of abuse to enhance justice for female victims. Transitional justice is an important and necessary intervention to create a rule of law State.

A truth commission is defined as an official body that is mandated to produce a formal record, within a limited time frame, of past violations of humanitarian or human rights law committed by a previous regime and



Hon. Martha Karua
Minister for Justice & Constitutional Affairs

non state actors in a defined part of recent history. The commission is a mechanism that complements, but not substitutes, courts of law, and primarily focuses on the most serious violations such as extra judicial and summary executions and torture. Establishing an official truth about a brutal past can help inoculate future generations against revisionism and empower citizens to recognise and resist a return to abusive practices.

From 1974 to 2007, at least 32 truth commissions were established in 28 countries. More than half of these commissions have been established in the past 10 years. Some of the African countries that have established truth commissions include Chad, the Democratic Republic of Congo,

continued next page

Truth Commission can assist in combating a culture of impunity and unaccountability by exposing human rights abuse to public scrutiny and attributing responsibility for violations. Ideally, the findings of the Commission form the basis for prosecutions.

from page 3

Nigeria, South Africa, Ghana, Liberia, Morocco, Sierra Leone and Uganda.

The establishment of the commission should be preceded by broad consultations to ensure consensus in the meaning of justice and reconciliation is reached. The commission must be considered neutral by all stakeholders, it must conduct its activities impartially and it should focus on past violations and abuses.

The purpose of the Truth Commission

The Commission can play an important role in a divided society emerging from a period of gross human rights violations. Consequently:

1. The commission can assist in building confidence between the conflicting groups which may undermine negotiations for a peaceful political settlement.
2. The commission can assist in ending cyclical violence since violent acts by one group usually begets retribution and retaliation. The cycle of violence is span by demagogues that aggravate inter-group divisions by inflaming latent tensions and distorting facts. The media can also contribute by providing biased news.
3. The process of truth telling and official acknowledgement of facts has therapeutic value for victims if the process is conducted in an inclusive and participatory manner. The Commission can provide solutions and

framework for reparations for victims of the violations and their families.

4. Truth Commission can assist in combating a culture of impunity and unaccountability by exposing human rights abuse to public scrutiny and attributing responsibility for violations. Ideally, the findings of the Commission form the basis for prosecutions. The commission assists States to fulfil their State party obligations under International Law by investigating serious violations of human rights, by provision of a domestic remedy, by bringing perpetrators to justice and taking measures to prevent future violations.
5. The Commission can make recommendations for institutional reforms that will prevent future recurrence of gross violations of human rights. This would include repeal of discriminatory laws, reorganisation of institutions of the state such as the police, prosecution department and the Judiciary and establishment of effective oversight mechanisms such as office of Ombudsman.

Mandate of the proposed Commission

Under the Kenyan law, the Commission can be created by the President through a Presidential Order section 3 of the Commissions of Inquiries Act or by Parliament through an Act of Parliament. Whereas creation by a Presidential Order can be done quickly and without undergoing the rigours of

the legislative process, such a Commission may function at the whims of and defer to the appointing authority and may be deemed to be dependent on the Executive, whose actions will be under investigation by the Commission. Establishment as a commission of Inquiry requires broad consultations to ensure that the composition and mandate of the Commission is acceptable to all groups.

We recommend that the Commission should be established through an Act of Parliament. Establishment through legislation offers a wide and largely acceptable consultative process and insulates the Commission from Executive manipulation and institutionalises the independence of the Commission. Such an Act of Parliament will define all key aspects and the functioning of the Commission. The appointment of the Commissioners can also be done through a vetting process which involves Parliament.

The mandate of the Commission will be set out in the enabling instrument. It must be acknowledged that the Commission cannot investigate all past human rights violations. An effective mandate must be flexible to

continued page 5

The political crisis in Kenya has exposed the fragile state of State institutions and deep rooted grievances of a historical nature. It is, therefore, necessary that violations that have occurred since independence be investigated with a view to recreating the Kenyan State and informing the constitutional review process.

accommodate unexpected challenges, realistic in scope, match the resources available, and clear in the nexus between the Commission and courts of law. The mandate must define:

1. **The scope of investigations:** The commission must identify who are the victims and who are the perpetrators. The commission should prioritise cases on the basis of legal weight, number of victims, the meaning attributed to them by society in general and their impact on the conflict dynamic and future reconciliation.
2. **The types of powers which will be vested in the commission to facilitate its work:** Such powers include power to conduct searches, call for production of relevant information and summon witnesses. The recommendations of the Commission should be legally binding to prevent recurrence of violations.
3. **The time frames within which it must achieve specified results:** Ideally, the commission should be established soon after a regime transition or signing of a peace accord. Due to the need to maintain public confidence, the commission should be established rapidly.

The political crisis in Kenya has exposed the fragile state of State institutions and deep rooted grievances of a historical nature. It is, therefore, necessary that violations that have occurred since independence be investigated with a view to recreating the Kenyan State and informing the constitutional review process. Some violations which occurred soon after independence, for example, the murders of Hon Gama Pinto, Hon Tom Mboya and Hon J. M. Kariuki were not satisfactorily investigated and concluded. Consequently, it is important that the Commission collects evidence on these matters so that the truth is

known and so that the matters can be closed.

The commission should have a prescribed time frame of one to two years to complete its task. This will provide quick results as confidence building measures and capitalise on political goodwill in the transitional environment. Such a time frame may allow for investigation of only select cases, thus decreasing the potential reconciliation impact of the commission's work. It is important to ensure the mandate of the commission is properly set out through wide consultations to ensure the work of the commission has the necessary impact and credibility. The commission must adopt a victim centred approach in its rules of procedure.

The commission should conduct hearings in a central location as well as visit the areas where the violations have occurred. This will ensure wider participation and facilitate proper understanding by the commissioners of the local context in the violations. The commission must establish fair procedures by ensuring the right to fair trial and protection from self incrimination.

The mandate of the commission will include investigations into purported crimes such as ethnic cleansing, massacres and possible genocide, post election political violence, economic crimes, torture, detention, exile, rape, disappearances, political instigated clashes, political assassinations and violations of economic social and cultural rights.

In conducting its work, the commission should have the right to access Government records and reports, track down stolen public assets and recommend their return, negotiate with perpetrators of economic crimes for the return of stolen assets in exchange for recommendations of amnesty, should have independence and immunity for the commissioners and wide powers of investigation. The commission should have the power to make recommendations for amnesty and to promote reconciliation and

unity.

Legal and other remedies available for victims

The remedies available at the commission will be set out in the enabling instrument. The Commission complements the other available structure of redress like the courts of law. It does not replace their mandate and some of the remedies available in the courts can be pursued even when the commission is conducting its hearings. Some of the remedies available are:

- a) **Amnesty.** The decision to offer amnesty by a commission is essentially a political one. The amnesty is granted in situations where due to the sheer numbers of the potential indictments, the judicial system is incapable of effectively handling the cases or where the perpetrators wield significant power. Blanket amnesty fosters a culture of impunity and undermines efforts to prevent future rights violations. It should be considered on a case-to-case basis. Amnesty should not be available for the sponsors of the violations.
- b) **Lustration.** This entails disqualification of perpetrators of past rights violations from public service.
- c) **Criminal prosecutions.** This can proceed alongside or only after the operations of the commission. This will ensure formal justice for perpetrators identified by the commission. Prosecution will provide the opportunity for uncovering complex and highly detailed information and analysis into the commission of past human rights abuses, including examination into chain of command and level of knowledge. Prosecutions can serve to deter future crimes, be a source of comfort for the victims,

SHOULD THE WATCHDOG BITE?

Kenya Media on the Line

By Eric Ombok

Kenyan media has expanded and grown in sophistication tremendously since the first private radio station, 98.4 Capital FM, went on air in September 1996.

Radio is the most influential form of media in the country due to the relative affordability of a radio set and almost every household in the country owns one.

The public broadcaster Kenya Broadcasting Corporation (KBC) has eight radio stations, in addition to the more than 20 privately owned FM radio stations in the country. The main television stations include KBC Channel 1 and Channel 2, Kenya Television Network (KTN), Nation TV (NTV), Citizen TV and K24, which went on air in November 2007.

The mainstream daily newspapers include *The Daily Nation*, *The Standard*, *The People Daily*, *The Kenya Times*, *Business Daily*, *Daily Metro* and *Nairobi Star*.

One cannot ignore the vibrant new media in Kenya today. The first Internet Service Provider (ISP) was the not-for-profit African Regional Centre for Computing (ARCC) owned by renowned Computer Scientist Dr Shem Ochuodho.

ARCC began offering its services in October 1995 followed in April 1996 by Africa Online and Form-Net in May 1996. Today, there are 51 licensed ISPs and close to 10 million active mobile phone users.

Popular forms of new media include the Internet, e-mail, blogs and sms, all of which were extensively used for propaganda campaigns mostly before and during the December

2007 general election campaigns by the two main political parties - Mwai Kibaki's Party of National Unity (PNU) and Raila Odinga's Orange Democratic Movement (ODM).

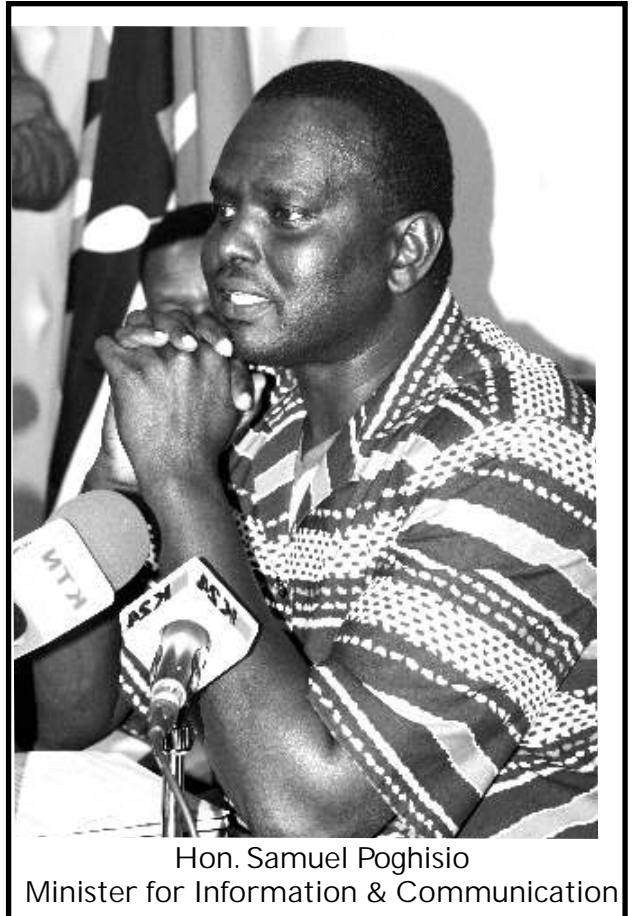
Election 2007

No other elections in Kenya have received as much media coverage as the 2007 General Election. Live broadcasting was the hallmark of coverage before and during the elections. Then on December 30, 2007 moments after Mwai Kibaki was announced as the winner of the disputed December 27, 2007 poll, the government banned live broadcasting.

The ban was lifted on February 4, 2008 but this has not stopped the raging debate on the role the media played in fueling post election violence that resulted in more than 1,000 people dead, more than 500,000 internally displaced persons and more than 1,000 Kenyan refugees in neighbouring Uganda.

The Government turned the heat on the media when it announced plans to establish a task force to look into the conduct of the media before, during and after the election, and make recommendations on how to achieve a more non-partisan media.

Permanent Secretary in the Ministry of Information and Communication, Dr.



Hon. Samuel Poghiso
Minister for Information & Communication

Bitange Ndemo, says the task force will be set up to inquire into the role of all media, including foreign correspondents during the post election period.

The taskforce's mandate is:

- To inquire into the role of, and make recommendations about, the conduct, performance and professionalism (or lack thereof) of the media sector prior, during election 2007.
- To inquire into the role of, and make recommendations about, vernacular FM radio broadcasting during

continued page 7

the same period and their contribution to, and/or complicity in the preparations for violence, the conduct of violence and its aftermath.

- To inquire into, and make recommendations about, the impact and dynamics of media ownership vis a vis election 2007.
- To inquire into, and make recommendations about, the employment criteria and the working conditions of journalists vis a vis their commitment to professional standards and conduct as contained in the Code of Conduct of Journalism in Kenya.
- To inquire into, and make recommendations about, the education and training of journalists and the training institutions that certify journalists as professionals.
- To inquire into, and make

Indeed, the two largest media houses in the country, Nation Media Group and the Standard Group, issued guidelines on political advertising with the former ceasing acceptance of political advertisements to give the mediation process led by former UN Secretary General, Kofi Annan, a chance.

recommendations about, the training of journalists as regards the coverage of national democratic events such as general elections and referenda.

- To inquire into, and make recommendations about the impact of the phenomena of opinion polling and political advertising on media content and conduct.
- To inquire into, and make recommendations about, the role of foreign correspondents and news agencies during election 2007.
- To inquire into and make recommendations about the accreditation of journalists, both local and international.

One school of thought contends that the media is a mirror that reflects the situation in a society and if the reflection is an ugly one, it can do little about it. That the media was just reporting facts and that the results of the disputed presidential elections were merely the trigger that broke the camel's back resulting in post election violence. That the real cause of the violence is historical underlying issues revolving around equitable access to national resources, especially land ownership.

"I do agree with Kanja (Waruru, Chairman of the Media Owners Association) that we need to audit all the players in order to establish where the rain started beating us. More importantly, we need to ask ourselves as groups and as individuals what we can do so that our country can never again find itself in such a bind," KTN news anchor, Farida Karoney, wrote in an online discussion on the matter.

Karoney, however, adds that the mainstream media did a lot in the way of self regulation. "Many of the things that were available to us yet were never aired nor printed are indeed shocking," she says.

"During the elections, the media was exercising the self regulation rule and a lot of the stories that were filed during this period were censored because they were hate speeches and issues not fit for printing, but we thought it would all die out after the elections and things would

One school of thought contends that the media is a mirror that reflects the situation in a society and if the reflection is an ugly one, it can do little about it. That the media was just reporting facts and that the results of the disputed presidential elections were merely the trigger that broke the camel's back resulting in post election violence.

also get back to normal," Waruru says in the online discussion.

Indeed, the two largest media houses in the country, Nation Media Group and the Standard Group, issued guidelines on political advertising with the former ceasing acceptance of political advertisements to give the mediation process led by former UN Secretary General, Kofi Annan, a chance.

In spite of a high degree of self censorship exercised by the mainstream media, I contend that a section of the media is guilty as charged. Blanket condemnation of the media is useful in moving the country forward.

Therefore, a task force set up by the Government is not the way to go about looking into the conduct of the media in election 2007 whereas we have the legally constituted Media Council of Kenya (MCK), which is mandated to handle complaints against the Fourth Estate.

continued page 8

MCK has resolved a complaint lodged by the Embassy of Portugal against *The People Daily* and a complaint lodged by the Kenya Medical Association against KTN. According to the MCK code of conduct for covering elections, the way the media covers an election process could give good indicators on their value to society as agenda-setters.

In fact, local media did this effectively not only during the campaigns but also during the actual elections when the media were ahead of the ECK in tallying of votes.

"Coverage of elections provides one of the toughest ethical tests for media practitioners. At times the Kenyan media tend to concentrate on parochial, unengaging and irrelevant issues that do not benefit voters in their day-to-day life. They engage on personalities and the rhetoric spewed by them instead of matters that would help voters judge whether such people deserve to be elected or not," notes MCK.

So what are the specific charges against the media? To begin with, there are parallels between Kenya and Rwanda in as far as the media is concerned in fuelling ethnic animosity. On April 6, 1994 a plane crash that claimed the life of Rwandan President, Juvénal Habyarimana, and Burundian President, Cyprien Ntaryamira, became the straw that broke the camel's back in Rwanda, plunging the country into a genocide that left over a million Rwandese dead.

"Local media fuelled the killings, while the international media either ignored or seriously misconstrued what was happening," says Allan Thompson, who edited the book, *The Media and The Rwanda Genocide*.

Thompson is a Professor of Journalism at Carleton University in Ottawa, Canada, and a columnist with the *Toronto Star*, Canada's largest circulation daily newspaper.

And on March 13, 2007 Kofi Annan, the then Secretary General of the United Nations, told a symposium on the media and the Rwanda genocide at the Carleton University School of Journalism and Communication that the

media were used in Rwanda to spread hatred, to dehumanise people, and even to guide the "genocidaires" toward their victims.

Annan, who is now the Chief Mediator in the crisis of the disputed presidential election between PNU and ODM, told the symposium that, "It is encouraging to know that the news media are also undertaking a process of self examination as we collectively remember this tragedy".

"Three journalists have even been found guilty of genocide, incitement to genocide, conspiracy and crimes against humanity by the International Criminal Tribunal for Rwanda. We must find a way to respond to such abuses of power without violating the principles of freedom, which are an indispensable cornerstone of democracy," Annan says.

In the case of Kenya, Information and Communication Permanent Secretary, Dr Bitange Ndemo, says in an online discussion: "When Rwanda had a political crisis, some FM stations worsened the situation. In our case, no one denies the fact that we were in a crisis towards the end of December (2007). It was desperate and we took desperate measures. No one can say what would have happened if we let media inflame passions of our people".

The UNDP Kenya office sponsored media monitoring for elections under the auspices of the 2007 election assistance programme as part of an initiative to strengthen the overall capacity of the Electoral Commission of Kenya (ECK), civil society, media and other agencies critical to the achievement of free and fair elections, and improvement of citizens' participation in the electoral process and understanding of their rights and duties.

The monitored media were:

Newspapers
The Nation newspapers
The Standard
Kenya Times
People
The East African
Nairobi Star

Radio stations
Capital FM

Kiss FM
Classic FM
Easy FM
Simba FM
Citizen FM
KBC General Service

Vernacular radio stations
Mulembe FM
Kass aFM
Musyi FM
Coro FM
Ramogi FM
Kameme

Television stations
KTN
CITIZENTV
NTV
KBC TV

The first report released in September 2007 said:

- The print media provided more coverage to PNU and its affiliate parties than the other competing parties. ODM-K was given significantly less coverage by all the monitored print media.
- Coverage in vernacular stations tended to favour the political parties that were deemed to have more following among the communities.
- PNU received most of its coverage during the launch of the party by the President. Most of the stations provided live coverage of the event during which ODM and its candidate was mentioned more times than PNU and its flag-bearer Mwai Kibaki. The coverage was negative to ODM and positive to PNU.
- The Orange Democratic Party (ODM) received significant coverage by the various media houses. Overall, the coverage was accurate and fair. The party led in the number of mentions as other parties tended to refer to it in a negative light during their campaigns.
- The Orange Democratic Movement of Kenya (ODM-K) received the least mentions of the leading political parties. The coverage was generally fair and accurate.
- There was a general bias in

continued page 16

Which way the 10th Parliament?

By Paul Mwangi

If tradition were being followed, the opening of the first session of the 10th Parliament is now overdue. The first session of the last Parliament was officially opened by President Mwai Kibaki on 18th February 2003. However, we did begin this year in a rather dramatic fashion. We can expect, therefore, that there will be delays in the commencement of the Parliamentary agenda.

In common logic, one would expect that Parliament works successively and that the new Parliament will automatically take over the unfulfilled agenda of the last one. In some ways this does happen. In legal principle, however, one Parliament is totally distinct from the other and each has its own independent agenda.

Legally, when Parliament is dissolved, all unfinished business dissolves with it. All pending questions, motions and Bills that had not been addressed as at October 22, 2007 when the ninth Parliament was dissolved are no longer alive. They dissolved with the House.

Other arms of government do operate differently. If a new president is elected, all government projects continue unaffected by the change. While a new president may implement new and different policies, programmes implemented by the last regime remain valid unless expressly altered.

In the Judiciary, however, nothing is affected by a change of personnel. All litigation continues from where it was left. In fact, one Judge can validly write a judgment on a case heard by a totally different judge.

Therefore, it is now up to the new Parliament to decide whether to give the business pending in the ninth Parliament a new lease of life. If it does, then the business will have to be introduced anew, though it may be identical in substance.

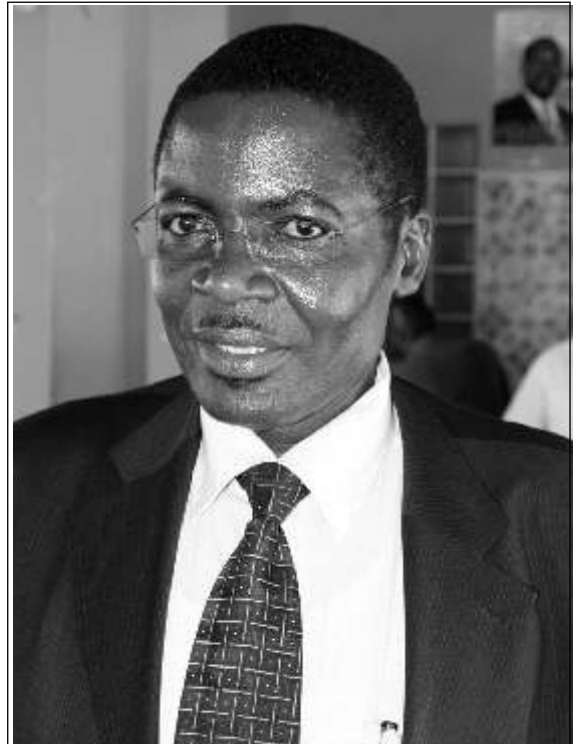
However, this would only extend to questions and motions.

In respect of Bills, the mandate lies with the Executive. Save for Bills sponsored by individual members of parliament as Private Members Bills, all other legislation is proposed by the Government. The Government will thus make the decision whether to re-introduce Bills that were pending by the time the ninth Parliament was dissolved. Since the Government of President Kibaki was given a second term, one would expect that the legislative agenda of Government will remain the same and that the pending legislation will be re-introduced.

But the old legislative agenda is unlikely to be the starting point for the 10th Parliament. The political upheaval through which this country has come through following the December 2007 elections will determine the short term priorities of the new house. The 10th Parliament is expected to legislate a new legal framework through which peace and reconciliation will be worked out.

Already, there are indications that extensive amendments will have to be carried out to our current Constitution and other laws within the next one year. Whether for purposes of legislating new governance structures or constituting a Truth, Justice and Reconciliation Commission, laws will have to be enacted to establish the political infrastructure through which the problems we are in can be addressed.

The nature of these amendments will depend largely on the agreements that are reached by the government (made up of the Party of National Unity (PNU) and the Orange Democratic Movement



Kenneth Marende
Speaker of the National Assembly

Party of Kenya (ODM -K) on the one hand, and the Orange Democratic Movement (ODM) on the other through the Kofi Annan led negotiations. Indeed, the new Speaker of Parliament, Hon Kenneth Marende, has stated several times that Parliament will play its role in providing the legal framework through which agreements at the negotiations will be realised.

But one can expect that the mere signing of the agreement and the promises of the speaker will not be enough to determine the conduct of MPs once the legislative proposals are presented to the House. Each MP holds an independent vote on the floor of the House and there are no sanctions for an MP who refuses to vote in accordance with his party's wishes. Regardless of what the Government or ODM agree on, Parliament will remain an

continued page 10

from page 9

independent institution to which these agreements must be sold.

It is not inconceivable that members of PNU, ODM-K or ODM who feel that the party leadership has compromised the political position of their party will refuse to vote for any legislation brought to implement such an agreement. Each party will undoubtedly hold parliamentary group meetings to campaign for the agreement but the final decision on whether the agreement will be implemented will lie in the hands of individual MPs.

Consequently, it behoves on the Speaker to talk to his members and unite them in voting for the agreement. To do this, he will have to convince them that he is an honest broker pursuing a national agenda. So far, he has shown himself capable of impartiality and fairness and above petty party politics. During the swearing in of members of the 10th Parliament in January, he surprised many

by upholding points of order raised by the Government side while dismissing those raised by the opposition ODM. Yet, he was to later issue a very scathing indictment of the Government regarding its apparent failure to provide security to the MPs after two ODM parliamentarians were shot dead in the span of a week.

But delivering the parliamentary vote for the peace talks may turn out to be a simple test in a very complex political situation. The swearing-in session showed how much the House was divided and how deeply mistrust ran on both sides. The colour of justice is increasingly determined by the sight of the seer. What is truth today largely depends on who is talking. By the time the House meets to vote on the proposed political solutions, each MP may have an independent view of what is true and just, and this may not concur with the views of Kenyans or of the party leaders.

So, despite his initial impartiality, Hon Marende, may find himself under pressure to adopt the view of each competing faction and of individual members. And whatever side he appears to support, the others will condemn him. He will have to find a way of getting the MPs to see things from one perspective. To achieve this, he may require the help of the leaders of each political side and of opinion leaders in the House.

And that will set the tone for all further business of the new Parliament. If Hon Marende manages to unite the House under his command and win the respect and support of all members, we can expect that the 10th Parliament will not go down the road of infamy as its predecessor. If he fails, the 10th Parliament will deteriorate into the worst Parliament yet in Kenya's history.

The writer is an author and advocate of the High Court of

from page 5

reflect a new set of social norms and begin a process of reforming and rebuilding trust in Government institutions.

- d) Civil litigation. Victims of human rights violations can file cases seeking compensation against the State or perpetrators of violations once their role is unravelled and clarified. Such cases will be filed in the national courts. If not addressed satisfactorily, such cases may be referred to international human rights treaty monitoring bodies for redress.
- e) Legal and institutional reforms. These are important measures to guard against future rights violations. Such laws should address relevant conflict-generating grievances and facilitate reconciliation. The Commission can facilitate and add impetus to the transformation of state institutions. By demonstrating that the

human rights abused in the past was not a typical or isolated phenomenon, the commission can strengthen the wish of the Government and the public to realise and implement reforms. The targeted institutions in the Kenyan context include the Kenya Police, the Office of the Attorney General, the Electoral Commission of Kenya and the Judiciary. The political crisis has recreated the constitutional moment for Kenya to realise a new constitutional order. Therefore, it is important that Kenyans demand and Parliament provides a framework for realisation of a new Constitution within the shortest time possible.

- f) Reparation. This can take many forms such as material assistance, psychological assistance and symbolic measures such as monuments, memorials and national days. The formulation of a reparation policy is a politically delicate and technically

complex process. It is important to define victimhood in the context of reparation in order to clearly define the class of victims eligible to compensation. The reparation policy should not seek to create divisions among the different classes of victims.

- g) Compensation. This can be provided by the commission or the courts as part of the remedy. The South African Truth and Reconciliation Commission included a Reparations and Rehabilitation Committee which sought to restore victims' dignity and formulate policy proposals and recommendations for healing of survivors, families and communities, some of which included compensation packages paid to victims.
- h) Witness protection. The commission must put in place effective witness protection programmes to ensure the security of persons who testify before the Commission is safeguarded. Witness

continued page 11

relocation programmes as contemplated in the Witness Protection Act could be an option in some cases. The Commission should facilitate the attendance of witnesses and design special measures for vulnerable groups such as women and children.

The South African experience

Serious discussions about the idea of a commission began after Nelson Mandela was elected President in 1994. After considerable input from the civil society and hundreds of hours of hearings, in 1995, the South African Parliament passed the Promotion of National Unity and Reconciliation Act establishing the Truth and Reconciliation Commission. Following a public nomination and selection process, 17 commissioners were appointed. The cut off date for the mandate of the Commission was March 1, 1994. It had a staff of 350, a budget of USD \$ 18m each year for two and a half years. The establishment of the commission was agreed as a measure to break with the past violations of human rights in the apartheid era and to ensure national reconciliation and healing between members of different races. It gave the commission the power to grant amnesty, search premises and seize evidence, subpoena witnesses and run a sophisticated witness protection programme.

The Act set out the objectives of the commission as to promote national unity and reconciliation in the spirit of understanding which transcends conflicts and divisions of the past by:

- a) Establishing a complete picture of possible causes, nature and extent of the gross violations of human rights which were committed during the period from March 1, 1994 to the cut-off date including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and

perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;

- b) Facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of the Act;
- c) Establishing and making known at a public forum the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them; and
- d) Compiling a report providing as comprehensive an account as possible of the activities and findings of the commission, and which contains recommendations of measures to prevent the future violations of human rights.

The commissioners were appointed by the President in consultation with the Cabinet and were to be less than 11 but not more than 17. The commission operated through three committees created under the Act. The Committees were:

1. Human Rights Violations Committee

The committee investigated human rights abuses that took place between 1994 and 1994, based on statements filed before the commission. The committee established the identity of victims, their fate or present whereabouts and the nature and extent of the harm they suffered, and whether the violations were the result of deliberate planning by the State or other organisation, group of individual. It took statements from thousands of survivors and witnesses.

2. Reparation and Rehabilitation

Committee

The role of the committee was to provide victim support to ensure that the Truth Commission process restores victims' dignity; and to formulate policy proposals and recommendations on rehabilitation and healing of survivors, their families and communities at large. The envisaged overall function of all recommendations was to ensure non repetition, healing and healthy co-existence. A President's Fund, funded by Parliament and private contributions, was established to pay urgent interim reparation to victims in terms of the regulations prescribed by the President.

3. Amnesty Committee

The primary function of the committee was to consider that applications for amnesty were done in accordance with the provisions of the Act. The committee considered those who committed abuses during the apartheid era as long as the crimes were politically motivated, proportionate and there was full disclosure of the person seeking the amnesty. Applicants could apply for amnesty for any act, omission or offence associated with a political objective committed from March 1, 1994 to December 6, 1993. The cut-off date was later extended to May 11, 1994. The final date for the submission of applications was September 30, 1997. Being granted amnesty for an act means that the perpetrator is free from prosecution for that particular act. This was the most controversial of all its powers. It was the subject of unsuccessful constitutional challenge and subsequent court battles. It received over 7,112 applications for amnesty, 5,392 people were refused amnesty while 849 were granted amnesty. Approximately 10 per cent of the victims gave evidence at public hearings.

The commission heard from over 2,000 victims, perpetrators and witnesses of violation and presented its report on October 28, 1998 after dealing with more than 21,000 victims. Due to the

continued page 14

POLITICAL SETTLEMENT MUST GO BEYOND POWER SHARING

By Tom Kagwe

A lot of positive and negative things have happened in our beloved nation. While one month ago Kenya seemed to be on the cusp of precipice as if the country was sinking, today there are some rays of hope that indicate Kenya is, indeed, rising from the ashes of the politically-instigated violence. Many commentators have written about the efforts by the National Dialogue and Reconciliation Committee led by former UN secretary general Kofi Annan. Many commentaries have been written, especially related to components of a political settlement, which seems to be the way the mediation talks are going.

However, while some writers such as Barrack Muluka in the *Saturday Standard* on February 9, 2007 and Prof Makau Mutua in the *Sunday Nation* on February 10 have really addressed the issues, many other commentaries have generally addressed a 'power-sharing' formula among the political class to the exclusion of other agendas that constitute what should and must be addressed beyond cutting deals among the political elite.

For any political settlement to be sustainable, there should be a three-pronged approach as to what should constitute such a settlement, without which Kenya could once again sink after the 2012 General Election no matter who wins. Generally, the political settlement must stagger the issues in the short term, medium term and also long term. The following are staggered proposals, some of which have been put on the table of the mediation talks, while some have not found their way there.

Short-term settlement

At the beginning of the mediation talks, there were proponents of a re-run, re-tallying of votes or even resignation of President Mwai Kibaki. However, these proposals have since

been overtaken by events. There are four elements of the short term settlement which could be realised between March and June 2008.

First, there should be recognition, acknowledgment and apologies by both President Kibaki and Orange Democratic Movement's, Hon Raila Odinga, that the presidential elections were full of impropriety. Results from ODM and PNU strongholds indicate that the results were tampered with. This is the case in Rift Valley and Nyanza provinces that voted strongly for Raila, while the same is true for Central and Eastern provinces that voted overwhelmingly for Kibaki, not to mention the electoral fraud that took place at the national tallying centre. The summary statement may not be popular with many Kenyans, but the truth is that it is impossible to know who actually won the presidential elections.

The second element is connected to the first, which must involve an independent and international forensic audit of the same results. This should be able to indicate to Kenyans that indeed the last 30 hours, between December 29 and 30, 2007, were a "countdown to deception" as Kenyans for Peace with Truth and Justice termed the situation. The third element of the short-term measure at settling the political scores is the devolution of presidential powers to other offices - not necessarily that of the prime minister if the mediation talks ever settle on such a position. The imperial presidency must be democratised by returning power to where it belonged before the notorious 40 or so amendments to the Constitution of Kenya, which created an undemocratic and unaccountable presidency. In this regard, power must be 'shared' (returned) to other offices such as Legislature, Judiciary and other constitutional offices. This will go a long way at reducing the

massive and unchecked powers that reside in the presidency.

Finally, it is indeed commendable and encouraging that there was a national day for prayer for peace on February 8, 2007. Another good idea is the proposal to have a national day of rallies for peace in all the 210 constituencies, done on the same day and hour by all elected MPs. Since cheap propaganda and hate speech by the political elite fuelled intolerance (not that the people are saints anyway), all MPs should go back to the same people to repent and talk about peace.

Medium-term settlement

In the mid term, perhaps targeted between July 2008 and June 2009, there are also four critical issues that could be proposed. First, within that period, Kenya should establish a transitional justice mechanism, be it a Truth, Justice and Reconciliation Commission or whichever the mediation talks will agree on. It is imperative that all Kenyans understand the purview of that Commission as illuminated by proposals such as those of Prof. Makau's led Taskforce on the establishment of such a Commission. The integrity of the Commission, its independence, its modalities and operationalisation, its terms of reference, the appointment of the Commissioners and the follow-up of its recommendations among other factors must be carefully considered within the legal framework that will establish it.

The Commission should not and must not be established under the Commissions of Inquiry Act which gives the presidency unchecked powers and has rendered all past commissions of inquiry useless since all their reports are still gathering dust on shelves or are somewhere in shreds. The Akiwumi, Goldenberg, Kiruki and Ndung'u Land commissions are just a few

continued page 13

Impunity has taken root in Kenya for far too long to the extent that some individuals, especially in the political class, have presided over both political and economic crimes but still 'roam free'.

from page 12

reminders of how Kenyan taxpayers' money has been used without achieving the stated objectives. No wonder the country is on fire today since all issues brought before these commissions were either swept under the carpet or put on ice.

The second component in the mid term revolves around electoral reforms, especially with regard to two issues. The first one concerns the Electoral Commission of Kenya (ECK) and secondly, the electoral system of first-past-the-post where the winner takes all. On the ECK, fundamental changes must be made to the electoral body. A proposal would be both in hard and soft options. The hard option is to fire all commissioners and some members of staff and reconstitute the entire body afresh using the Inter-Parties Parliamentary Group (IPPG) formula. But the latter must be made tighter than it was 10 years ago where our elite-based parties nominated their kindred or cronies to be named as commissioners. The soft option would be to isolate commissioners and the election staff, and a way is found to prosecute all those who committed or presided over the electoral fraud at the constituency and national levels.

The above element leads to the third component of the mid term settlement, which is to root out impunity from the face of this country. All those involved in the December 2007 electoral circus and all those allegedly involved in the

politically instigated violence - where some crimes border on crimes against humanity - must be taken to courts of law either individually or in groups.

Impunity has taken root in Kenya for far too long to the extent that some individuals, especially in the political class, have presided over both political and economic crimes but still 'roam free'. Some even have become 'consultants of political thuggery' for some political parties and their candidates in every election year.

The fourth component under this category should be judicial reforms. While the 2003 'radical surgery' of the Judiciary was hailed by many Kenyans, there were some who remained sceptical not just about the process of 'getting judges on the corruption list' but equally the haste and complicity with which the then Narc Government addressed the matter. Two things abound.

First, while some of the judges on the list have since resumed duty, some of the rulings that are now judicial precedents in our laws are not worth the paper they are written on. Second, the way in which the Judiciary is structured, especially the appointment of judges through the politically correct Judicial Service Commission - compromises judicial independence and professionalism. The Judiciary is still a system where justice, more often than not, is auctioned to the highest bidder and hence has become more of a legal system than a justice system. In this regard, it is essential to ensure that judicial reforms are concluded before anyone can talk about seeking justice of any kind.

Long-term settlement

The components of this long term political settlement could be realised between July 2009 and December 2010. There are also four proposals here. First, powers that do not belong to the capital city Nairobi must be ceded to the grassroots. This means political power and authority must be devolved from Nairobi. But the concept of devolution must be understood by all in terms of the structure, levels and format. Sending money through CDF is not devolution. *Majimbo* as provided for in the Lancaster Constitution was closer to devolution but the systems and structures of that *Majimbo* were done hurriedly and also not well secured. Devolution is not how

much money Nairobi can send to the grassroots, but how much political and economic power and autonomy Nairobi can cede to the grassroots for the latter to collect, collate and utilise funds at the local levels guided by the principle of subsidiarity.

The second, and perhaps key component, which should be agreed on at the mediation talks is the issue of a new and better Constitution for Kenya. Most of the above proposals or components within the short, medium and long terms could be settled faster if and when a new and better constitutional dispensation is finalised. However, it is deliberate that this proposal is coming towards the end since if it comes at the beginning, a whole set of 'contentious issues' will once again be in public domain.

This could rob off this country an opportunity to address many other issues that could be settled in a new and better constitutional dispensation. Any new dispensation, however, must be accompanied by a vigilant and inquisitive citizenry since Africa is a graveyard of very good constitutions, as former Constitution of Kenya Review Commission chairman, Prof Yash Pal Ghai, once argued. A good Constitution, therefore, is one which the people live out as written on paper.

The third settlement under the long-term framework could be to deal with the issue of ethnicity and its attendant ills. To resolve this matter is not simple, but there are two proposals. First, there is need to investigate all manner of hate speech campaigns carried out through SMSes, e-mails and leaflets among others by all political players and Kenyans as a whole. All those to have been guilty must be dealt with through prosecution under both the Penal Code and the Election Offences Act. Secondly, since some of the issues are outside the purview of the two Acts, there is need to legislate against hate speech - while still guarding our freedom of speech.

The fourth and final component of the long-term issues has to do with incorporating traditional methods of avoiding or resolving conflict. This can be done through an interrogation of the past, perhaps within the Truth, Justice and Reconciliation Commission, or some

continued page 16

success of the reconciliatory approach in dealing with human rights violations, other countries have instituted similar commissions. Various films and plays have been produced. However, it has been criticised for failing to end racism and bring reconciliation between blacks and white, political bias, while many of its findings have been questioned.

Its processes of selection and interpretation were critiqued. Most people felt that justice was a prerequisite for reconciliation and not an alternative to it. Further, the commission had been weighted in favour of the perpetrators of abuse. Many black South Africans were angered at an amnesty granted for human right abuses by the apartheid government. A high profile objection was the case of Steve Biko who was killed by Police and whose story featured in the movie "Cry Freedom". The family described the Commission as a "vehicle for political expediency" which had robbed them the right to justice.

It opposed amnesty on this and other grounds. In a case filed in the High Court, it argued that the commission was "unconstitutional". In addition, former President P W Botha defied a subpoena to appear before it calling it a "circus". His defiance resulted in a suspended sentence which was later overturned on appeal.

Composition of the proposed Commission

The persons appointed to serve in the

It is important that its establishment be part of the political settlement of the political impasse currently under negotiation under the chairmanship of His Excellency Kofi Annan.

There is need for massive civic education targeting the citizenry with a view to inculcating nationhood and countering negative ethnicity. The media will be an important partner in such a project.

Commission should be persons with high moral integrity, respect for human rights and acceptable to all parties and groups to be investigated. The public needs to be aware of the Commission's role and rationale. It is important that a public information campaign be carried out to dispel misinformation and increase public involvement by building confidence. In the Kenya context, it is important to appoint persons with integrity through a bipartisan consultative process. A vetting procedure by Parliament is also necessary to ensure credibility and acceptability of the appointees.

While local commissioners may understand the dynamics of political conflict better and possess language skills, they may be susceptible to real or perceived partiality. Due to the political divisions generated by the disputed 2007 General Election, it is important to consider inclusion of international experts to serve as commissioners or serve in a supervisory capacity to ensure impartiality and fidelity of the commission's recommendations. Such experts can offer the commission the required technical support and perception of independence and impartiality in its design, programmes and activities.

Challenges to establishment of the proposed Commission

Some of the challenges that can be anticipated in the move to setting up of the commission in the Kenyan context include:

- a) Documents that are relevant to the work of the commission may be destroyed.
- b) Kenya has not put in place a Freedom of Information legislation that would allow public officers to be compelled to give information and

- c) The Government may fail to implement the recommendations of the commission. It is necessary that the enabling legislation empowers the commission or another statutory or constitutional body to follow up on implementation of the recommendations.
- d) Truth Commission may not lead to reconciliation. Such reconciliation is dependent on commitment by all parties to end the threat to violence, setting up of a reparations programme for victims of violence, attention to structural inequalities and provision of material needs of the victimised communities.
- e) Balancing the power of amnesty and the need to meet the ends of justice. The major role perpetrators of the human rights violations should not benefit from amnesty.
- f) The commission lacking the powers to compel witnesses to attend hearings of the commission.

Reconciliation and peaceful co-existence in Kenya

Reconciliation is a concept with a controversial pedigree in transitional justice. Some people interpret it as forced forgiveness, impunity and amnesia. Governments can invoke the concept to insulate themselves from responsibility for their role in the acts of omission and commission that resulted in the mass human rights violations. Reconciliation can serve the purpose of healing suspicions, grievances and animosities in societies that have come from periods of mass atrocities and

continued page 15

widespread conflicts. These divisions endure after the conflict and have the potential to return the society to violence and recurrence of rights abuse.

Reconciliation will assist in breaking the cycle of impunity such as in Rwanda and Yugoslavia which have emerged from painful conflicts. It will also individualise guilt as opposed to collective guilt which is a source of impunity in future. A case in point is the eradication of the dangerous perception of a whole community, for example, Serbs, Muslims, Hutu and Tutsi's. It will protect the return of perpetrators and fulfil the obligation of the victims to see perpetrators punished. In addition, it will avoid unbridled private revenge and such self help justice can trigger social and political disturbance.

Victims must not take justice into their own hands. By breaking the cycle of impunity in Kenya, the electoral arithmetic of democracy can exacerbate these cleavages by delivering political power only to the majority ethnic communities, leaving other groups leaving vulnerable and marginalised. There is, therefore, need to reorient the constitutional order to offer adequate protection and reassurances to vulnerable groups. Introduction of a rule requiring the winning presidential candidate to garner more than 50 per cent of the votes can assist to ensure there are cross ethnic collations that emerge

The persons appointed to serve in the Commission should be persons with high moral integrity, respect for human rights and acceptable to all parties and groups to be investigated.

during elections, thereby reducing negative ethnicity generated at elections.

The Kenyan situation requires other measures that will supplement the work of the commission and ensure enduring peace. Such measures include implementation of the recommendations of the commission. In the past, the reports generated by similar Commissions in Kenya have been disregarded. The root causes of the violations are not addressed comprehensively to the satisfaction of all. Traditional forms of Justice may complement the commission. They are designed to deal with a small number of cases, for example, livestock theft between neighbours. An example of such tribunals is the *gacaca* tribunals in Rwanda whose aim was to speed up prosecution in the 1994 genocide, thereby increasing the participation of all in the reconciliation efforts. In Kenya, we can remodel this to deal with incidences of cattle rustling, theft and inter community issues threatening peace.

There is need for massive civic education targeting the citizenry with a view to inculcating nationhood and countering negative ethnicity. The media will be an important partner in such a project. Thirdly, it is important to complete the process of constitutional reforms to strengthen institutions and restructure state power. The resultant structure must reflect the will of the people and the realities of the nation. The new constitutional order must be based on broad consultations that will build on the work that has gone on in the past in generating a new Constitution. Such realignment will include provisions to solve the question of equitable distribution of resources and the land tenure system. Ultimately, the ethnic tensions and the resultant human rights violations will be solved through economic empowerment of all citizens and creation of an environment where all citizens have equal opportunity.

Conclusion

Some of the matters that the commission will be required to

The persons appointed to serve in the Commission should be persons with high moral integrity, respect for human rights and acceptable to all parties and groups to be investigated.

investigate have been dealt with in the past. For example, the murder of Hon J M Kariuki was investigated by a Parliamentary Select Committee which submitted a report to Parliament. The murder of Hon Robert Ouko was investigated by a Judicial Commission of Inquiry which was disbanded before it could complete hearing all witnesses. The ethnic clashes of 1991-1993 and 1997-1998 were the subject of an inquiry by a Judicial Commission of Inquiry chaired by Hon Justice Akilano Akiwumi. It is important to consider the work of past commissions and committees when the commission is eventually established to avoid duplication. Their findings will be useful in informing the mandate of the commission. There should a monitoring and implementation organ that will oversee the implementation of the commission's report.

The establishment of the commission requires an infrastructure of trust, political will and commitment. It is important that its establishment be part of the political settlement of the political impasse currently under negotiation under the chairmanship of His Excellency Kofi Annan. To complement the work of the commission, a FOI Act is necessary to ensure that the commission is able to call for production of documents that are necessary to its work.

The writer is a development worker ✍️

favour of President Mwai Kibaki in both state-owned and private media. The president received more air time and space allocation than his competitors across all the major channels. The coverage was largely favourable and painted him in good light except for the occasional criticism by his competitors.

- Raila Odinga, the ODM flag-bearer received the second most coverage in both electronic and print media. Even though some of the mentions on Raila were negative, the media largely reported it factually.
- Kalonzo Musyoka, the ODM-K presidential candidate, received significantly less coverage in both print and electronic media compared to his competitors. The reporting was largely accurate and fair.
- The media made a fair attempt to bring to the public domain cases of violence with the intention of alerting responsible authorities to take appropriate action. A case in point is the Kisii violence. Across the board, the media presented the scene and allowed the public to make judgment on who was responsible for the violence.
- Hate speech was not widely reported by the mainstream media. There was a commendable attempt by the mainstream media to give blackout to speeches that may have caused violence and anarchy. However, there were cases where media houses did not have the time to edit inflammatory statements. A case in point is the live broadcast during the PNU launch.

The second report released in October 2007 says the overall coverage of political parties by all the television stations showed PNU receiving most of the coverage at 36 per cent of the total airtime. ODM was second in the television stations with 35 percent of the coverage while ODM-K received 28 per cent

of the coverage.

Radio coverage was skewed in favour of PNU with 44 per cent of the total coverage compared to ODM which received 34 per cent. ODM-K got 22 per cent of the total amount of coverage in the radio stations monitored over the period.

Newspaper coverage

Political Groups	Nation %	Standard %	People %	Nairobi Star %	Kenya Times %
PNU	34	32	32	34	36
ODM	31	33	34	35	32
ODM-K	29	29	28	26	27
KPP	6	6	6	5	5
Total	100	100	100	100	100

SOURCE: UNDP/STRATEGIC RESEARCH LTD

Recommendations

Following the post election mayhem, there is an emerging school of thought that we should cease broadcasting in local languages. The radio stations broadcasting in vernacular languages should be given a one year period to phase in broadcasting in either English or Swahili, the official and national languages respectively. This is in not an extreme measure because in Tanzania, radio stations can broadcast only in Swahili and English.

PS Ndemo says that Kenyan media was liberalised without putting a legal framework in place, particularly for electronic media. "We are the least regulated (electronic media) country in the world. This is not good for a developing country like ours," he observes.

Dr Ndemo says the electronic media has taken advantage of the vacuum and recalls that last year the Government lost a case against a leading media house when it tried stopping it from airing adult movies during prime time.

"Our hypothesis on the Fourth Estate is that its important role in society is seriously threatened by multiple factors including tribalism, lack of ethics, poor training, poor pay ..." Ndemo says.

While dealing with tribalism is a long term matter that must be addressed by

employing not only legal and administrative measures, the MCK's code of conduct must be thoroughly enforced.

On training there is need to start from having closer supervision of training institutions, particularly latter day ones mushrooming in down town Nairobi claiming to provide media training without even a single inhouse studio. We need to have a minimum standard for admission and accreditation of first time journalists.

While the Kenya Union of Journalists (KUJ) is legally mandated to negotiate terms of service for journalists, the reality is that majority of journalists are not KUJ members and are indifferent to its activities.

This is exhibited by the establishment of several professional associations of journalists that focus on specific genres like the Parliamentary Journalists Association, Sports Journalists Association, Business Media Development Institute and ICT Media Network among others. There is now need for a professional umbrella association on one hand and on the other the establishment of a commission to review the current terms of service and make recommendations to the Media Owners Association.

Additionally, the MCK should be strengthened and the first opportunity we have to do so is to lodge all complaints we have against the media in the pre and post election coverage in 2007 to MCK.

Just like in the legal profession where disgruntled clients first seek redress through the Law Society of Kenya and the medical profession where dissatisfied patients tend to first seek redress from the Media Practitioners and Dentists Board, those who have a bone to pick with media houses should in future consult the MCK before seeking other avenues.

Bibliography

www.idrc.ca/en/ev-108170-201-1-DO_TOPIC.html
www.kenyaelections2007.org

The writer works for a Nairobi-based FM radio station

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.*

Contact address

Konrad-Adenauer-Stiftung
Mbaruk Road No. 27
P.O. Box 66471
Nairobi 00800, Kenya

MEDIA
DEVELOPMENT
ASSOCIATION

*Promoting
Democracy And
Good Governance
through the
Media*