

Fourth Review Report

October 2009

ANNEX 1:

**SUMMARY OF PROGRESS ON AGENDA 4: LONG-STANDING ISSUES
AND SOLUTIONS**

1. CONSTITUTIONAL REFORMS

Proposed Actions

- (a) Consultations with stakeholders
- (b) Parliament to enact constitutional Review Statute including timetable
- (c) Parliament to enact referendum law
- (d) Draft constitution prepared in a consultative process with expert assistance
- (e) Parliament approves the draft
- (f) People enact through referendum

Progress

I. COMMITTEE OF EXPERTS

- (a) The Constitution of Kenya Review Act, No. 9 of 2008 (CKR) provides a road map and a legal framework for the review of the constitution. The Act was assented to on 11 Dec 2008. The commencement date of the Act is 22 December, 2008.
- (b) The CKR Act provides for the Committee of Experts (CoE), Parliamentary Select Committee, the National Assembly and the Referendum as the organs through which the review of the constitution shall be completed.
- (c) Parliament advertised posts for the CoE on 5 January 2009 with a deadline for 26 January 2009.
- (d) The list of shortlisted candidates for the post of CoE was tabled in Parliament by the Parliamentary Select Committee on Constitutional Review on 4 February 2009 and approved by Parliament on 10 February 2009.
- (e) President Kibaki formally appointed the Committee of Experts by Gazette Notice on 23 February 2009.
- (f) The Minister for Justice convened the first meeting of the Committee of Experts on 2 March 2009 at which the Chairperson and Vice Chairperson were elected. The Experts were sworn in by the Chief Justice on the same day.
- (g) In May 2009, the CoE published contentious issues inviting the public to make submissions on three (3) contentious issues namely: System of Government, Levels of devolution of powers and how to bring the constitution into effect i.e. Transition clauses.
- (h) 15 July 2009: CoE published its regional schedule for public hearings on contentious issues in the local media. The hearings took place in various towns in the country for the period between 20 July 2009 and 25 July 2009.
- (i) 23 July 2009: President Kibaki assented to the Statute Law Miscellaneous Amendment Bill 2009 which amended the Constitution of Kenya Review Act (No.10 of 2008) by setting out the names of thirty (30) interest groups to facilitate consultations on the Draft constitution.
- (j) August 2009: The Committee of Experts formally opened consultations with reference groups where one of the Commissioners, OtiendeAmollo, said the committee received a total of 12,080 views from the public on the three contentious issues earlier published and that the views were being categorized and analyzed.
- (k) 2 – 4 September 2009, the CoE met members of 47 political parties at Leisure hotel, Mombasa to engage them in consultation on contentious issues.

- (l) 16 – 18 September 2009, the CoE held a meeting in Naivasha to begin the work of drafting a new constitution.

II. INTERIM INDEPENDENT CONSTITUTIONAL DISPUTE RESOLUTION COURT (IICDRC)

- (a) The Constitution of Kenya (Amendment) Act No. 10 of 2008 was assented on 24 December 2008 and commenced on 29 December 2008.
- (b) The Constitution of Kenya (Amendment) Act No. 10 of 2008 established the Interim Independent Constitutional Dispute Resolution Court (IICDRC) by inserting section 60A into the current constitution. Its role is to hear and determine matters arising from the Constitutional Review process.
- (c) The positions for Judges as per the Act are required to be nine (9), including six Kenyans and three non-Kenyans. The Kenyan IICDRC positions were advertised on 9 January 2009 with a deadline of 30 January 2009. Parliament was required to vet the shortlisted candidates before interviews could be conducted.
- (d) 4 August 2009: Parliamentary select committee on Constitutional Review started interviewing candidates for the Interim Independent Constitutional Dispute Resolution Court (IICDRC). The team has shortlisted 17 candidates from a list of 144 applicants.

2. JUDICIAL REFORMS

Proposed Actions

- (a) Constitutional review to anchor judicial reform measures including:
 - (i) Financial independence
 - (ii) Transparent and merit based appointment, discipline and removal of judges
 - (iii) Strong commitment to human rights and gender equity
 - (iv) Reconstitution of the Judicial Service Commission to include other stakeholders and enhance independence and autonomy of the Commission
- (b) Enact Judicial Service Commission Act, with provisions for
 - (i) Peer review mechanisms
 - (ii) Performance contracting
- (c) Streamline the functioning of the legal and judicial institutions by adopting a sector – wide approach to increase recruitment, training, planning, management and implementation of programs and activities in the justice sector

Progress

- (a) 20 March 2009: The Judiciary finalized and launched its 2009-2012 Strategic Plan to address the institution's image and restore public confidence. The plan identifies the enactment of the Judicial Service Bill, improving human capacity within the Judiciary and establishing a communication department as important objectives. Judiciary Open day also held on the same day.
- (b) The Task Force on Judicial Reforms was established on 29 May 2009 to advise on judicial reforms and how they can be implemented.

- (c) 18 June 2009: High Court Registrar confirmed that the Judiciary was digitizing its registry to establish the extent of its backlog of cases. The registrar was also looking into the possibility of throwing out cases that had not been prosecuted for the past 10.
- (d) 23 July 2009: President Kibaki assented the Statute Law (Miscellaneous Amendment) Act 2009 with crucial amendments to the Civil Procedure Act appointing a mediation accreditation committee to mediate on civil cases and the Appellate Jurisdiction Act which gives the court powers to set a timetable to be adhered to by advocates in a bid to fast track the hearing of appeals.
- (e) 19 August 2009: The Taskforce on Judicial Reforms presented its final report to the Minister for Justice and Constitutional Affairs and to the Chief Justice.
- (f) 10 September 2009: the Chief Justice Evans Gicheru made internal transfer of Judges in various divisions in the High Court.
- (g) 30 September 2009: the Judicial Service Commission advertised for 50 positions of District Magistrates II to preside over District Magistrate Courts in Kenya.

3. POLICE REFORMS

Proposed Actions

- (a) Constitutional review to establish an independent Police Commission
- (b) Review and define the role of the Administration Police.
- (c) Review laws and issues related to security and policing including the independent complaints commission, citizen oversight of police services, enhanced information disclosures, human resource management and capacity building) to make them consistent with modern democratic norms
- (d) Finalization and roll-out of the National Security Policy to enable relevant sector develop their specific sectoral policies
- (e) Recruit and train more police officers to raise the police-to-population ratio to the UN Standard

Progress:

- (a) 4 September 2008: A Police Civilian Oversight Board was established to investigate the conduct of the police but it is yet to start its duties to date.
- (b) 7 May 2009: The National Task Force on Police Reforms was launched and was expected to complete its work on 31 July 2009.
- (c) 8 May 2009: The National Task Force on Police Reforms invited members of the public to public forums held at the KICC on 22nd and 23rd July 2009 to express their views.
- (d) 21st May 2009: The Economic Survey for 2009 released by the Planning, National Development and Vision 2030 revealed that the number of crimes reported to the police rose to 63,476 cases in 2008 from 63,028 cases in 2007.
- (e) 5 August, 2009: President Kibaki granted the taskforce on police reforms an additional 60 days to complete their report upon their request. The taskforces initial term was to end on 31 July 2009 but a new date of 30 September 2009 was given.
- (f) 25 August, 2009: The Task Force on Police Reforms submitted its interim report to President Kibaki recommending far reaching changes to the force.

4. CIVIL SERVICE REFORMS

Proposed Actions

- (a) Parliament to pass Bill incorporating civil service reform measures from past draft constitutions
- (b) Continue with on-going administrative and financial reforms
- (c) Results- Based Management (RBM) and Performance Contracting to cover all persons paid from public funds
- (d) Review the Anti-Corruption and Economic Crimes Act 2003 and the Public Officer Ethics Act 2003
- (e) Review the legal framework for declaration of incomes, assets and liabilities with a view to establishing an efficient and devolved administrative, compliance and analysis institutional framework
- (f) Appropriate constitutional and legal reforms will be undertaken to facilitate parliamentary vetting of senior public appointments
- (g) New Legislation on whistle-blower protection, freedom of information, and operationalisation of the Witness Protection Act 2006
- (h) Review recruitment legislation to institutionalize national character in the Public Service.
- (i) Review Standing Orders to ensure Parliamentary oversight over membership committees is based on competency and integrity

Progress:

- (a) March 2009: The Public Service Commission introduced a new public service superannuation contributory pension scheme and increased retirement age from 55 to 60 years.
- (b) 10th June 2009: The Solicitor General, unveiled a plan to fast track promotions in the Civil Service. The program also known as the High flier scheme would replace the old career progression process where civil servants had to complete a minimum of three years on a given job group to qualify for promotion.
- (c) 25th June 2009: Public service commission chairman launched the Public Service Commission of Kenya strategic plan 2009-2012
- (d) 6th August 2009: The Public Service Commission of Kenya, in an advertisement signed by the public service commission's secretary Bernadette M. Nzioki showed a total of 849 appointments and promotions in the civil service with 654 being male and 195 being female.

5. PARLIAMENTARY REFORMS

Proposed Actions

- (a) Comprehensive review of Parliamentary Standing orders and Procedures to enrich quality and output of Parliamentary debates and strengthen multi-Party democracy
- (b) Parliament's Research Centre to be strengthened
- (c) Live coverage and electronic voting to be introduced
- (d) Enhance oversight role of Parliament over the national budget
- (e) Review Standing Orders to create a Monitoring and Implementation Committee

- (f) Introduce stricter and timelier deliberations on reports by institutions such as the Kenya Anti-Corruption Commission, Kenya National Audit Office, State Law Office and the Kenya National Commission on Human Rights.
- (g) Strengthen organs of Parliament such as Parliamentary Accounts Committee and Parliamentary Investments Committee to promote transparency and accountability in the utilization of public resources.
- (h) Improve transparency of MPs by creating a register of interests and opening up Parliamentary Committee work to the Public

Progress:

- (a) Parliament promulgated New Standing Orders aimed at increasing transparency and accountability in parliamentary work. Parliament adopted the standing orders on 10 December 2008 during the second session of the tenth parliament. The standing orders took effect upon commencement of the 3rd Session of the 10th Parliament which session begun on Tuesday 21 April 2009.
- (b) February 2009: Parliament strengthened its research centre to offer services to parliament and other users. Three new researchers were recruited.
- (c) 7 May, 2009: The Kenya National Assembly officially launched House Live Broadcast (HLB) infrastructure which guarantees Kenyans transparency and accountability in the discharge of parliament’s mandate of law making, representations and oversight. The HLB also known as Flight Kits includes: live broadcast of the national assembly, a designated parliamentary broadcasting unit (PBU) – to manage transmission of parliamentary business both on radio and TV, a structured manner of media interaction with parliament and a specific state of the art media center to host this interaction.
- (d) May 2009: Parliament passed the Fiscal Management Bill 2008, that allows Members a say in the drawing of the National Budget and an opportunity to scrutinize it and give recommendations before it is passed.
- (e) June 2009: Finance Minister set aside Ksh. 200 Million for political parties to enhance their administrative functions and strengthen party politics. ODM received Ksh. 61.2 Million and PNU Ksh. 51 Million.
- (f) 10 June, 2009: MPs passed a motion to set up a mobile parliament. The President was granted the powers to pick its venues on a rotational basis.
- (g) July 2009: Parliamentary Committees opened doors to the public and the media for the first time in Kenya’s history as the budgetary allocation for various ministries was being scrutinized.

6. LAND REFORMS

Proposed Actions

- (a) Constitutional review to address fundamental issues of land tenure and land use
- (b) The development and implementation of land policies should take into account the linkages between land use, environment, forestry and water resources
- (c) Finalization of the draft National Land Use Policy and enactment of attendant legislation
- (d) Land laws to be harmonized into one statute to reduce multiple allocations of title deeds

- (e) Establishment of a transparent, decentralized, affordable and efficient GIS- based Land Information Management System and a GIS-based Land registry at the Ministry of Lands including all local authorities
- (f) Land Ownership Document replacement for owners affected by post-election violence
- (g) Development of a National Land Use Master Plan, taking into account environmental considerations
- (h) Land Reform Transformation Unit in the Ministry of Lands to facilitate the implementation of Land Reform Programme as outlined in the in the National Land Use Policy
- (i) Strengthen local-level mechanisms for sustainable land rights administration and management
- (j) Finalise the Land dispute Tribunal Act

Progress

- (a) The Draft National Land Policy was completed in May 2007 and was subjected to stakeholder discussions in 2008.
- (b) 25 June, 2009: The Cabinet approved the National Land Policy. It has taken approximately six years to have the policy approved and adopted by cabinet.
- (c) May 2009: Ministry of Lands launched a GIS based Information Management System in the process of computerizing the Lands Ministry registry.
- (d) 30 July, 2009: The cabinet adopted the Mau Task Force Report which reveals that 107,000 hectares were illegally acquired. The taskforce challenged the government to take the lead through enhanced budgetary allocation to forests, to make funds available to implement the forest Act of 2005 and speed up competitive recruitment into Kenya forest service.
- (e) 4 August, 2009: The Ministry of Lands began implementing the recommendations of the Inter ministerial taskforce on the ten mile coastal strip, 2007 by inviting land owners and tenants to register their interest in the land in a bid to aid in administration of the said land. This was done through advertisements in the print media.
- (f) 16 August, 2009: Minister for Forest Services and Wildlife ordered over 2,500 families settled in the Mandaguni forest evicted.
- (g) 4 September 2009: the Prime Minister launched the Mau Complex Interim Secretariat to implement the recommendations if the multi-stakeholder taskforce. The taskforce will only be a coordinating office while the Implementing Responsibility will fall under the concerned ministries particularly Forestry, Environment, Water, Lands and Roads.

7. POVERTY AND INEQUALITY MEASURES

Proposed Actions

- (a) Ensure equity and balance are attained in development across all regions including in job creation, poverty reduction, improved income distribution and gender equity
- (b) Increase community empowerment through devolved funds for both social and income programmes, and develop local capacity to manage devolved funds
- (c) Implementation of polices and programmes that minimize the differences in income opportunities and access to social services across Kenya, with special attention to the

most disadvantaged communities in the Arid and Semi-Arid Districts, urban informal settlements and pockets of poverty in high potential areas

- (d) Improve wealth creating opportunities for disadvantaged groups and regions through increased infrastructure spending in roads, water, sewerage, communications, electricity, targeting poor communities and regions.
- (e) Increase availability of affordable and accessible credit, savings programmes and appropriate technologies to create an enabling environment for poor communities to take part in wealth creation
- (f) Develop an Affirmative Action Policy and enhance the Women's Enterprise Fund
- (g) Improve health infrastructure in underserved areas in the country through construction or rehabilitation of community health centres

Progress:

- (a) Strategies and specific measures to address aforementioned issues are captured in the Medium Term Plan and Strategy for national transformation 2008-2012.
- (b) 21 May 2009: The Economic Survey for 2009 released by the Planning, National Development and Vision 2030 Minister Wycliffe Oparanya and prepared by the National Bureau of Statistics revealed an increase in the inflation rate being the highest rate since 1994 from 9.2% in 1997 to a staggering 26.2 % in 2008 caused by the high food and fuel prices witnessed during the period under review. Maize production declined from an estimated 32.5 million bags in 2007 to 26.0 million bags in 2008.
- (c) 23 July, 2009: A 15 Member Taskforce to hear Public views on the Constituency Development Fund (CDF) was launched. This gives Kenyans a greater chance to have a say on the operations of the CDF. Hearings begun in various Provinces in August 2009.
- (d) 13 July 2009: Internal Security Minister announced that all the 210 constituencies were converted into Districts bringing the total number of gazzetted districts to 254. This is an additional 45 districts having been created since March 2009. The minister also commissioned 36 new District Commissioners. He defended the increment in new districts as a move aimed at tackling growing insecurity in the country.
- (e) 17 August, 2009: Government Lunched a 2 billion National Economic Stimulus Project on Food Production intended to put over 40,000 acres of land under irrigation throughout the country.

8. YOUTH UNEMPLOYMENT

Proposed Actions

- (a) Generate an average of 740,000 new jobs each year from 2008-2012
- (b) Youth polytechnics to be revitalized and expanded in all districts to facilitate the training of young people in technical, vocational and entrepreneurial skills to equip them with relevant skills to participate fully in productive activities
- (c) Youth Empowerment Centre's to be rehabilitated or established in all constituencies
- (d) Upgrade existing National Youth Service institutions and establish three new ones
- (e) Development and enactment of a National Youth Council Bill
- (f) Establish Youth Enterprise and Employment Programme to promote SMEs and self employment among the Youth

- (g) Youth Enterprise Development Fund to be increased and mechanisms put in place for easier access to credit and collateral.
- (h) Some 5,000 youth to be recruited to National Youth Service and employed in labor intensive road projects, tree planting programmes and other productive activities

Progress:

- (a) Strategies and specific measures to address these issues are captured in the Medium Term Plan and Strategy for national transformation 2008-2012. The Government is also implementing the Youth Marshall Plan aimed at creating capacity and Skills in the youth for self reliance.
- (b) 12th March, 2009: The Government launched the KaziKwaVijana program. The program, which was to cost 5 Billion between March and June 2009, was aimed at creating jobs for the youth through labour intensive employment. However, only 3.4 billion is set aside for the program.
- (c) A further 10 billion was to be raised from government sources and development partners in the 2009/2010 Fiscal year. However, the Finance Minister did not set aside any specific amounts for the KKV program.
- (d) August 2009: Discussions between the government and the World Bank were finalized to establish KaziKwaVijana II, which will be a longer term, sustainable program to provide skills based employment for the youth.
- (e) 30 June 2009: The Public Procurement Access to Youth Enterprises (PPAYE) initiative was launched to assist youth access money for projects faster.
- (f) 7 July 2009: The ministry of Youth Affairs gave Rift Valley Province 88 million to fund youth who could not go to secondary schools due to academic and financial constraints. The funds will be used to subsidize the cost of courses at polytechnics in 46 Districts to enable the youth advance their education. The government further released another 68 million for tuition fees for polytechnic students in central province. The money will assist 4,400 students at 89 polytechnics under the new subsidized tuition scheme.
- (g) 3 August, 2009: The National Youth Service recruited 3,500 youth for training
- (h) 5 August, 2009: The government launched the national school health policy guidelines. The policy provides a comprehensive school health program to ensure the health of children as well as impact positively on the communities around schools.
- (i) 10-15 August, 2009: Ministry of Youth Affairs and Sports (MOYAS) through the department of youth development celebrated the national youth week for fostering youth empowerment, sensitizing youth on KKV, and fostering national healing and reconciliation across all the eight provinces

9. NATIONAL COHESION AND UNITY

Proposed Actions

- (a) Finalize and support enactment of the Ethnic and Race Relations Bill by Parliament
- (b) Parliament and the Executive to initiate and sustain advocacy role on ethnic and racial harmony
- (c) Establish and operationalise a policy and institutional framework for a Peace-Building and Conflict Resolution Programme (PBCR) and early warning mechanisms

- on social conflict, including a PBCR monitoring and evaluation system and a restructured Secretariat, and enactment of the Alternative dispute Resolution Bill
- (d) Extend District Peace Committee framework to entire country and link it to District Security Committees
 - (e) Finalize Hate Speech Bill and review the Media Act to control incitement attempts
 - (f) Undertake civic education on ethnic relations
 - (g) Inculcate a civic culture, which tolerates diversity and encourages inter-ethnic cooperation, through the school curriculum
 - (h) Operationalisation of the Truth, Justice and Reconciliation Commission

Progress:

I. National Cohesion and Integration Commission

- (a) Parliament enacted the National Cohesion and Integration Act, 2008 on 27 November 2008. The Act was assented to on 24 December 2008 and came into force on 9 March 2009.
- (b) The Act establishes the National Cohesion and Integration Commission to promote national integration. Parliament advertised for positions of Commissioners on 13 March 2009 with a deadline of 3 April 2009.
- (c) The relevant Parliamentary Committee conducted interviews in April 2009 and subsequently tabled 15 names for the approval of the House.
- (d) The names were approved on 12 May 2009
- (e) The Ministry forwarded the names to the office of the President on 19 June 2009
- (f) 10 September, 2009: The president appointed commissioners to the National Cohesion and Integration Commission in pursuit of the National Cohesion and Integration Commission Act 2008.

II. Truth, Justice and Reconciliation Commission

- (a) 24 October 2008: Parliament enacted the Truth, Justice and Reconciliation Act, 2008 on. The Act was assented to on 28th November 2008.
- (b) Act established a Truth, Justice and Reconciliation Commission (TJRC) and a Selection Panel to recruit the commissioners to the TJRC.
- (c) The Act came into force on 9th March 2009
- (d) Selection Panel was constituted on 12th March 2009.
- (e) Advertisements for commissioners were made on 20 March 2009 with deadlines set for 14 April 2009.
- (f) The Selection Panel had seven (7) days after the deadline to recruit and propose the names of 15 nominees to Parliament while the AU Panel of Eminent African Personalities proposed three (3) names.
- (g) April 21, 2009: The Panel submitted the names of 15 nominees to Parliament. The relevant Committee of Parliament discussed the matter and settled on 9 names.
- (h) 28 May 2009: The names were tabled in Parliament and approved on 25th June 2009. The names were communicated to the Minister on 29th June 2009 and forwarded to the President on 1st July 2009.
- (i) July 2009: President Kibaki appointed TJRC commissioners. Ambassador Bethwel Kiplagat and Betty Murungi were appointed Chair and Vice Chair.

- (j) 23 July 2009: President Kibaki assented to amendments to the TJRC Act through the Statute Law (Miscellaneous Amendment) Act to the effect that there would be no amnesty for perpetrators of Post Election Violence who are guilty of international law crimes.

III. National Elders Conference

- (a) 19 June 2009: The Minister for Justice appointed a Planning Committee on the National Elders Conference on Cohesion and Integration. The Conference will be held between 11 and 13 November 2009 and will be preceded by regional consultations. The aim of the initiative is to engage communities in the process of national healing and reconciliation.
- (b) August 2009: The Planning Committee on the National Elders Conference on Cohesion and Integration recruited elders through the provincial Administration. The Elders are currently holding regional conferences to consult and train on the National Conference in various parts of the country. The national conference was postponed from August to between 11 and 13 November 2009.
- (c) 6- 8 August 2009: Government in partnership with USAID held workshops to train community leaders from the clash prone Molo region on dangers of negative ethnicity

10. TRANSPARENCY AND ACCOUNTABILITY

Proposed Actions

- (a) Strengthen the policy, legal and institutional framework for increased public transparency and accountability, anti-corruption, ethics and integrity, including through the development of a national anti-corruption policy, enactment of necessary legislation, and systems and capacity enhancements to strengthen the National Audit Office
- (b) Undertake programmes to support improved prosecution and adjunction of corruption and economic crimes, and improved oversight and consideration of anti-corruption and audit reports by Parliament
- (c) Enhancing capacity and performance in the Investigation and Asset Tracing Programme, the Civil Litigation and Asset Recovery Programme, the National Anti-corruption Awareness Campaign and District Anti-Corruption Civilian Oversight Committees
- (d) Continuous monitoring of the public Officer Ethics Act
- (e) Revitalize Public Financial Management including the management of devolved funds such as the CDF, LGTF and Road Maintenance Levy
- (f) Expand capacity of District- Anti-Corruption Civilian Oversight Committees to monitor management of devolved funds and stigmatise corruption
- (g) Review the effectiveness of the Public Procurement Authority
- (h) Undertake structural reforms focusing on prevention, investigation and recovery of corruptly acquired assets
- (i) Review the effectiveness of the Privatization Commission
- (j) Full operationalization and capacity-building of the Public Complaints Standing Committee (The Ombudsman)
- (k) Finalize and operationalize the GJLOS policy framework and establish a comprehensive GJLOS Policy review and update process

- (l) Sustain the APRM process by ensuring assessment of Government (executive, legislative and judiciary) performance and accountability

Progress:

- (a) 8 May 2009: Government Advertised for Public input on the anticipated Review of the Public Procurement and Disposal Act.
- (b) 31 May 2009: Mutual Legal Assistance Bill to facilitate against corruption was drafted, which will enable detectives' access phone and email records in foreign countries.
- (c) 5 June 2009: The government gazzetted the International Crimes Act that domesticated the Rome Statute and defines international crimes.
- (d) May 2007: President Kibaki assented to the new Kenya Anti Corruption Advisory Board with the mandate to process the filling of the position Director which expires in September 2009. Names of the members were gazzeted on the 5 June 2009.
- (e) July 23, 2009: President Kibaki assented into law the Statute law (Miscellaneous Amendment) bill 2009 which contains a crucial amendment to the Kenya Information and Communications (Amendment) Act 2009. The amendment is a deletion of section 88 of the Kenya Information and communications Act.