

DIALOGUE REFERENCE GROUP

RECONCILE AND RESTORE KENYA THROUGH STRUCTURED DIALOGUE COMMUNIQUE OF THE FIRST NATIONAL DIALOGUE CONFERENCE

PREAMBLE

The first National Dialogue Conference (NDC 1) convened by the Dialogue Reference Group (DRG) has been held at *Ufungamano House, Nairobi*, from 11th – 13th September 2018. The National Dialogue Conference brought together just over 600 delegates from across the nation who included religious, community, women, youth and persons with disabilities leaders as well as representatives from the civil society, business community and trade unions.

The objective of the National Dialogue Conference was to initiate an inclusive dialogue process to effectively address the political and governance crisis in Kenya. Delegates also generated content for the dialogue process, and outlined the key principles, strategies and structures for the dialogue process.

The Conference drew wisdom from the scripture recorded in the Bible in Isaiah 1: 18

“Come now, let us reason together, says the Lord”

And also from the Qura'n Chapter - Shuura verse 38

“... Dialogue amongst yourselves”

Delegates were inspired to learn from God that dialogue is important to resolve conflicts and disputes.

1. RATIONALE FOR NATIONAL DIALOGUE

In our continuous assessment of the state of the nation, the Dialogue Reference Group has found that virtually all government, social, public and private institutions in Kenya suffer a legitimacy crisis. As a result, different attempts to reform the nation driven by individual institutions have failed. It is notable that the formation of coalition governments

in 2002 and 2008, the promulgation of a new constitution in 2010, and the recent handshake between His Excellency President Uhuru Kenyatta and Right Honorable Raila Odinga did not resolve the underlying causes of conflict.

The National Dialogue Conference nonetheless appreciates that the handshake between President Uhuru and Right Honourable Raila has produced a calmness in the nation that portends a golden opportunity for the nation to reflect on and find solutions to the perennial conflicts that emerge at every election.

It is in this context that the Dialogue Reference Group has initiated this national dialogue process so that Kenyans have a chance to build consensus on a pathway to national cohesion, equality and justice as is envisaged by the Constitution of Kenya 2010.

As is outlined in the Framework for National Dialogue developed by the DRG, the National Dialogue Conference intensively discussed 7 dialogue agenda items and now recommends the following solutions to Kenyans.

2. ECONOMIC RECOVERY AND ACCELERATED SERVICE DELIVERY

Kenyans have been systematically impoverished by different administrations of government, causing their lives to be on a downward spiral to misery and suffering. Economic and development policies have persistently been regime-centric, rather than people-centric. Further to this, the government has failed to implement policies, strategies and programmes to improve citizens' access to better services, security, opportunities and welfare. It is the considered position of the National Dialogue Conference that the purpose of economic development should be pro-poor improvement of the people's productivity and lives, not merely undertaking projects that increase consumerism. Seeking to improve the lives of Kenyans, this National Dialogue Conference recommends the following:

- (a) A special Youth Social-Economic Empowerment Sessional Paper be developed within a year to galvanize a national intervention to address the youth unemployment crisis in the country
- (b) The 16% value added tax on petroleum products be scrapped immediately as it is hurting the citizens of Kenya, yet no value has been added on the fuel that is imported to warrant such a cost transfer to consumers. The government should

instead focus on reduction of wastage and the wage bill rather than trying to raise more funds through taxation.

- (c) An independent forensic audit of the national debts be undertaken immediately to establish who is owed, how much they are owed, the terms of the debts, purposes for which the money was borrowed, and if the debts were actually invested for the purposes they were intended. If Parliament does not commence this process within 6 months or if the exercise is not undertaken fully and satisfactorily, the Dialogue Reference Group will set up a People's National Debt Audit Task Force to undertake the assignment.
- (d) The government immediately stops borrowing for infrastructure projects. In particular, the proposed expansion of the Nairobi-Mombasa highway should be suspended for now since the Standard Gauge Railway was intended to decongest the current highway. Focus should be put on increasing the usage of the SGR to make it worth the colossal investment made to build it. Further, the Naivasha to Malaba extension of the SGR should be suspended since the country is broke and cannot even feed its own people. Kenya must avoid recolonisation through debt as has been witnessed in other countries.
- (e) The National Assembly must forthwith use its powers and tools to ensure that Treasury prepares a balanced budget based on our national income to stop the trend of borrowing to cover budgetary deficits
- (f) A Kenya National Economic Transformation Marshall Plan be developed which will in part guide the setting up of cottage industries and expand productivity in the counties, and promote youth employment. Parliament should pass a Sessional Paper to effect this within one year.
- (g) The Presidency should, within three months, present to Parliament a comprehensive statement on the Northern Rangelands Trust, and especially to respond to the concerns that major land and natural reserves have been annexed in Northern Kenya for foreigners.
- (h) The Presidency should outline the country's strategy to conserve rivers, wetlands and all water towers in the context of a wider climate change adaptation and mitigation strategy
- (i) County and national governments should enhance service delivery to all Kenyans with a special focus on food security and increase in access to health services

- (j) Public officers and state officials be required by law to only receive health services from public health facilities
- (k) Counties be required to entrench public participation in the identification of community needs and priority projects

3. DECISIVE ACTION TO DEAL WITH CORRUPTION

Corruption has permeated every sector of the Kenyan society to the point where it has become the social norm. So pervasive is corruption in Kenya that community members often frown at those who are not corrupt and instead reward the corrupt by electing them to political offices. This symbiotic relationship between politics and corruption impedes transparency and accountability. To decisively deal with corruption, the National Dialogue Conference recommends the following:

- (a) Corruption should be declared a national disaster so that its eradication is a national commitment and not an engagement undertaken at the discretion of the President
- (b) There should be developed a corruption tackling strategy that draws a line between old corruption and new corruption. Old corruption should be addressed through a mechanism for voluntary surrender of assets corruptly taken from the state and disclosure of co-conspirators, in return for amnesty from prosecution. The conditional amnesty is to be availed for only one year. Those who confess to having engaged in corruption should be barred from holding public office for a period of time. New corruption, which is any corruption engaged after the commencement of the amnesty period, must then be ruthlessly tackled through forceful seizure of assets and jailing of the corrupt for life. The same should apply to those who engaged in old corruption but do not take advantage of the amnesty offered.
- (c) The Ethics and Anti Corruption Commission should be restructured to serve as the Serious Crimes Unit with investigative and prosecutorial powers, while regular corruption cases are dealt with by the Directorate of Criminal Investigations and the Director of Public Prosecutions
- (d) The National Assembly must immediately pass a Conflict of Interest Act which will stop public officers, state officers, political leaders, their spouses, children and representatives from doing business with the government at national and county

levels. This injunction should also apply to elected officials who previously were practicing law, who should be barred from personally representing clients in court during their tenure in office. Their law firms should however not be stopped from providing services to their clients. Any officials who breach this Act should face punitive measures that include being required to permanently quit politics to go and do business.

- (e) Religious institutions should not accept public donations or contributions from elected or appointed political leaders or state officers that are given with fanfare. Contributions from such persons should be anonymous and personal like those of all other worshippers. Religious institutions should not be seen as channels for sanitising corrupt individuals.
- (f) Article 99 (3) must be repealed to remove the lacuna that allows politicians to vie for elective office even when they are faced with integrity, corruption or criminal cases in courts of law. The IEBC should be empowered to bar through vetting any individuals with such integrity questions until they have been cleared and found not culpable.
- (g) The Campaign Financing Act must be strictly enforced to ensure that only monies from legitimate sources are invested in political campaigns. Further, spending by political parties during campaigns must be limited to what is strictly necessary.
- (h) Deliberate efforts, fully funded by the Exchequer, be rolled out to create awareness and mobilize citizens to actively participate in fighting and preventing corruption and in management of public affairs

4. CONSTITUTIONAL AND LEGAL REFORMS

In light of the high stakes that accompany presidential elections, with resultant incidences of tension and violence, questions have been raised regarding the efficacy of maintaining the system of government as we have today. These have been coupled with sentiments that the Constitution of Kenya 2010 gave Kenya more government rather than better government. To remedy this, the National Dialogue Conference recommends the following:

- (a) Audit of the implementation of the Constitution be undertaken. The National Assembly should enact the law to facilitate this within 6 months.

- (b) Essential Constitutional and legal reforms should be immediately commenced to:
- (i) Initiate constitutional reforms to provide for an executive that includes the President, Deputy President, Prime Minister and two Deputy Prime Ministers. This will ensure that the Presidency is not overbearing and that it is accountable to Parliament through the Prime Minister appearing before the National Assembly while Cabinet Secretaries appear before committees of Parliament.
 - (ii) Initiate constitutional reforms to dignify the opposition by enabling the runners up in the Presidential election to serve as the Leader of Official Opposition in the National Assembly while the running mate becomes the Leader of Official Opposition in the Senate. The offices of the leader of official opposition should be adequately facilitated to perform oversight over the national government
 - (iii) Amend the constitution to reduce the number of Members of National Assembly to 209, comprising of members elected from 150 constituencies, 47 Women Representatives, and 12 Special members. The provisions under this proposal will be structured to fulfil the gender, youth and persons with disabilities representation requirements.
 - (iv) Amend the constitution to provide that the runners up in the gubernatorial polls are facilitated to assume the position of Leader of Official Opposition in the counties with adequate resources to oversight the County governments. This facilitation should include a secretariat and advisors
- (c) The two thirds gender rule be strictly enforced in all elective and appointive bodies and political parties
- (d) A National Ethics and Civic Education Commission (NECEC) should be established to provide education and empowerment of the citizens of Kenya on socio-political and civic matters. The Commission should be fully funded by the exchequer.
- (e) Constitutional Commissions should be strengthened so as to enhance good governance
- (f) Operationalization of the Public Benefit Organisations Act 2013 should commence immediately to ensure that non governmental organisations thrive and are

accountable in their operations in a bid to expand the civic and democratic space in the country

- (g) The Dialogue Reference Group will on its part establish a Human Rights Advisory Board comprised of religious leaders with a mandate to recommend steps to secure judicial independence, effectiveness of Constitutional Commissions and Independent Offices, and the faithful implementation of the Constitution of Kenya

5. BRINGING A CLOSURE TO THE 2017 ELECTIONS AND MAKING ELECTIONS CREDIBLE AND ACCEPTABLE

Systematic and structural weaknesses in the electoral process in Kenya have resulted in persistent inconclusive electoral cycles characterized by lack of closure and finalization of elections. If these weaknesses are not addressed, there is a threat of each election in future being progressively more violent than the previous one. The National Dialogue Conference proposes the following interventions:

- (a) An independent audit of the electoral process be undertaken similar to the one undertaken by the Kriegler Commission, with a goal of identifying gaps, weaknesses and points of strength, with a clear commitment that recommendations arising from there will be implemented
- (b) The Independent Electoral and Boundaries Commission (IEBC) Act be reviewed to strengthen and streamline the body's operations. Key among the amendments should be:
 - a. Separate boundaries review functions from the elections management and domicile it in a different body
 - b. Establish a training institute for IEBC staff knowing that most of the staff at the body are engaged on a temporary basis
 - c. IEBC officials who are found to have presided over an election in which electoral offences were committed are held personally liable and prosecuted
- (c) The President should immediately cause the establishment of a Selection Panel to fill the vacancies among the Commissioners of the IEBC
- (d) An independent audit and cleaning up of the voters' register be undertaken by the end of 2nd year after every General Election

- (e) All elections petitions should be terminated at the Court of Appeal, and should be concluded within 6 months from the date of the election, except the Presidential poll petition which is adjudicated at the Supreme Court
- (f) Implement the two thirds gender rule
- (g) Stagger elections for the different positions
- (h) Enforce Chapter 6 of the Constitution to ensure ethics in politics

6. SECURITY SECTOR REFORMS

For years, Kenya has been characterized by heavy politicization of security, coupled with securitization and militarization of politics. The result is that security in Kenya is state-centric, not people centric. The National Police Service continues to be an authoritarian force that serves to crush dissent and control citizens. There is a great need for the security sector to be reformed so that it is dignity, equality and human rights oriented in line with Article 28 of the Constitution. Towards this, the National Dialogue Conference recommends the following:

- (a) The security agencies must immediately stop extra judicial executions, use of excessive force to contain the public, and enforced disappearances of suspects. Regulations to guide these should be developed through consultations with stakeholders so that individual officers are held to account.
- (b) The welfare of security officers be enhanced to include chaplaincy, counselling and psychosocial support especially for those returning from difficult assignments
- (c) Security officers be accorded decent and adequate housing, towards which we recommend that they be given adequate housing allowances to enable them access proper accommodation
- (d) A proper and humane performance management system should be put in place which provides for equitable opportunities for career growth, discipline enforcement, and regular professional development programmes
- (e) The police officers should be adequately tooled and kitted
- (f) The Police Service should be accorded operational independence as provided for in the Constitution. This independence will be indicated by:

- a. The Inspector General and his / her deputies, and the head of the Department of Criminal Investigations, should be appointed through a process that includes public participation
 - b. The Police Service should have a budget independent of the Ministry of Interior with the Inspector General mandated to be the accounting officer
 - c. The Police Service should manage procurement of goods and services and be required to adhere to public procurement rules
- (g) The recruitment of officers into the police service be undertaken in a humane manner that takes into consideration gender inclusivity and is not limited to physical appearance and prowess as the only qualifications
 - (h) The police service chain of command structure should be streamlined to have one central command
 - (i) The provisions of Chapter 6 of the Constitution of Kenya 2010 on Leadership and Integrity be strictly enforced within the police service
 - (j) There should be established at every Police Station a Special Gender Crimes Unit and safe spaces where women and other victims of violence can find shelter
 - (k) Implementation of the National Action Plan for Gender Sensitive Peace and Conflict Resolution should commence immediately
 - (l) The police service should encourage security officers to dialogue with community and religious leaders to build goodwill and strategize on security maintenance, and should develop a policy to guide citizens who wish to provide material support to police stations
 - (m) The County Policing Authorities should be gazetted to enable them operate with clear guidelines, and should be merged with the “*Nyumba Kumi*” initiative
 - (n) The bodies that oversight the Police Service, these being the Independent Policing Oversight Authority and the Kenya National Commission for Human Rights, should be improved and enhanced to ensure professionalism within the service

7. STRENGTHENING DEVOLUTION, INSTITUTIONAL PERFORMANCE AND GOVERNANCE

Devolution is one of the key achievements Kenyans gained through the promulgation of the Constitution of Kenya 2010. They expected quicker socio-economic transformation through effective planning and better service delivery. However, this aspiration is yet to be achieved due to the slow transfer of resources to the counties and the stranglehold the national government continues to exercise over the devolved units. In addition, corruption is rampant in the county governments, and nepotism is prevalent. To make devolution effective, the National Dialogue Conference recommends the following:

- (a) An audit of devolution should be undertaken immediately to establish the status of its implementation
- (b) The Council of Governors should immediately convene a national stakeholder conference to address the crisis in devolution and outline strategies to ensure citizens receive full benefits of the devolution
- (c) The Treasury should raise the funds transferred to the counties to a minimum of 30%, noting that the 15% currently being transferred is the barest minimum provided for in the Constitution. The Commission for Revenue Allocation should provide to the nation a costing of the functions of the national and county governments to facilitate setting of the sharing ratios.
- (d) The pending transition laws should be implemented within one year
- (e) All county governments should fast-track decentralization to the village level within the next two years
- (f) Schedule 4 of the Constitution of Kenya should be reviewed to remove the contradictions between the roles of the national and county governments. The national government must henceforth stop implementing any functions that are domiciled in the county governments.
- (g) The National Government Coordination Act should be repealed so as to scrap the Provincial Administration

- (h) The applicable laws should be amended to remove Members of the National Assembly from the management of the Constituency Development Fund so that the elected representatives concentrate on their legislative and oversight mandates
- (i) The Office of the Auditor General should be decentralized to the counties, and be supplemented with a multi-agency approach to deal with corruption at the county level
- (j) County governments should be required to embrace effective performance management to ensure effectiveness of staff
- (k) County governments must implement the two thirds gender rule in all committees and departments
- (l) Consumerism-oriented County Integrated Development Plans should be repealed and be replaced with productivity-oriented plans that focus on robust county-level revenue generation through Cottage Industries. Religious leaders at the county level will organize multi-sectoral forums to review the CIDPs and recommend necessary amendments.

8. NATIONAL COHESION

The history of Kenya is in essence a litany of marginalization, exclusion and injustice. Historical injustices have been documented time and again, but have not been dealt with. Further, citizens lack a national identity and national character, which imperils national cohesion due to the perceived and actual unequal distribution of resources. There is an urgent need to build a national identity so that ethnic identity ceases being a point of division and political mobilisation. To achieve this, the National Dialogue Conference recommends the following:

- (a) A National Transitional Justice Authority should be established immediately to oversee the implementation of the recommendations of the Truth Justice and Reconciliation Commission (TJRC) and the Commission of Inquiry into the Illegal / Irregular Allocation of Public Land (Ndung'u Commission). It should also address the grievances and violations against Kenyans since 2008 including the 2013 and

2017 election violence. This is necessary for the country to experience full healing, forgiveness and reconciliation.

- (b) Civic education that includes narratives of Kenyan heroes, not just politicians, is included in the school curriculum as an avenue for socialization
- (c) The government should ensure full implementation of the National Values, and religious leaders are committed to serving as an accountability framework for national cohesion
- (d) Religious institutions will use their structures to empower citizens to live cohesively

9. COUNTY DIALOGUE FORUMS

Following the successful holding of the National Dialogue Conference, the Dialogue Reference Group will proceed to organize County Dialogue Forums to accord citizens to opportunities dialogue on national and county-specific issues.

We call upon citizens to participate in the forums once the dates and venues are announced.

In the meantime, the delegates to this National Dialogue Conference will use their positions and structures to advocate for implementation of the measures recommended above.

10. ADDRESSING SPECIAL INTERESTS

Prior to the holding of the County Dialogue Forums, the Dialogue Reference Group will convene a Special Interests Dialogue Forum to exhaustively discuss and recommend measures necessary to enable women, youth and persons with disabilities receive the full benefit of the provisions in the Constitution of Kenya 2010.

11. CONCLUSION

We conclude by calling to mind that the aspiration of Kenyans for many years was to get a Constitution that *“strengthens national integration and unity and commits Kenyans to peaceful resolution of national issues through dialogue and consensus”* (Constitution of Kenya 2010 Promulgation Statement in Sub Article (g)).

We call upon all Kenyans to embrace dialogue so as to safeguard our common future as we together work to achieve what we always pray in our National Anthem:

Let all with one accord, in common bond united

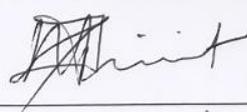
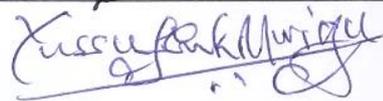
Build this our nation together

And the glory of Kenya, the fruit of our labour

Fill every heart with thanksgiving

May God give each of us the grace to listen to each other and the wisdom to speak what is noble, right, pure, lovely, admirable, excellent and praiseworthy, just as we are exhorted by the Bible in Philippians 4:8.

Signed on this 12th day of September 2018 at Ufungamano House, Nairobi:

Institution	Name	Signature
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National Council of Churches of Kenya	Archbishop TIMOTHY NBAMBUKI	
National Muslim Leaders Forum	Al-Hajj Yusuff Mung'et	
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Seventh Day Adventist Church	Pr. Paul Chepkwony	
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