

# **BUILDING BRIDGES INITIATIVE**

## **TECHNICAL COMMITTEE PROPOSALS**

### **INTRODUCTION**

The ushering in of the '***Building Bridges to New Kenyan Nation Initiative*** has been informed in one part by the painful reality of Kenya's electoral system which, every electoral cycle, precipitates deadly violence which has led to loss of lives, limb, population displacement and destruction of property and in another part by the need to pursue with more vigor, Kenya's elusive '***Nationhood Project.***' It has been observed that all Kenyan elections where there has been (a) major challenger(s) facing an incumbent President have ended in violence. This is true of the 1992, 1997, 2007 and the 2017 elections. The 2007 electoral cycle witnessed the worst form of violence that almost drove the country to the precipice; had it not been for the timely intervention by the international community through the African Union (AU) fronted Kenya National Dialogue and Reconciliation (KNDR) process which led to the formation of the Grand Coalition Government under the National Accord Act, 2008. There are still unsettled Internally and Integrated Displaced Persons. The 2017 violence and the resultant deaths including those of children, use of rape against women as a weapon of war and destruction of property was a blot on the integrity and dignity of Kenya's sovereignty among the community of civilized nations. This happened in spite of Kenya having adopted a fairly progressive Constitution that guarantees sanctity of life, civil liberties and protection of property.

In an effort aimed at sparing succeeding generations of Kenyans the scourge of the debilitating cyclic electoral violence and forging national cohesion, H.E. Uhuru Kenyatta and H.E. Raila Amolo Odinga who were foremost protagonists in the 2017 Presidential Election, surprised Kenyans by unveiling the now famous "Handshake" on 9<sup>th</sup> March 2018. Subsequent to the unveiling of the **Building Bridges to a New Kenyan Nation Initiative**, Ambassador Martin Kimani and Mr. Paul Mwangi were appointed Joint Coordinators. An Advisory Task Force of fourteen (14) members was initially nominated to advise H.E. Uhuru Kenyatta and H.E. Raila Amolo Odinga on operationalizing the Handshake. The character of the Task Force was

transformed vide the **Kenya Gazette, Vol. CXX—No. 64 of 31st May, 2018; Notice No. 5154 dated 24<sup>th</sup> May, 2018** in which H. E. President Uhuru Kenyatta, established the Advisory Committee as the **Building Bridges to Unity Advisory Taskforce**.

## **THE ISSUES**

The Memorandum of Understanding between H.E. Uhuru Kenyatta and H.E. Raila Odinga identified the following nine issues whose resolution would guarantee all Kenyans true citizenship and justice:

- I. Ethnic antagonism and competition
- II. Lack of national ethos
- III. Inclusivity
- IV. Devolution
- V. Divisive elections
- VI. Safety and security
- VII. Corruption
- VIII. Shared prosperity
- IX. Responsibilities and rights

In summary, the main point of the nine issues is that when we end Tribalism, Corruption, Impunity and Electoral Theft, Nepotism and Politically-Motivated Development and Employment, then the glass ceiling will be broken for all Kenyans to realize their fullest potential, especially the historically marginalized namely, women, youth, persons with disabilities, minorities, pastoralists and other vulnerable groups. That this will lead to the forging of a united, just and prosperous Kenyan nation.

## **OUR PROPOSALS**

In preparing our input, the Technical Committee posed the following questions as a guide for each of the issues.

## **ON ISSUE ONE: ETHNIC ANTAGONISM & COMPETITION**

- **What or who are the causes or source of ethnic tensions?**
  - Scramble over resources – at national and local levels
  - Winner-takes-all electoral system
  - Historical injustices
  - Stereotyping and ethnic profiling
  - Willing buyer-willing seller land transfer policies.
- **What action would we recommend for handling the cause or source of the tension?**
  - Develop policies and legislation that address inequitable access to resources at national, regional and local levels
  - Review the electoral system – especially with regard to the National Executive
  - Implement reports of NCIC and TJRC
  - Make ethnic profiling an felony punishable in law
  - Strengthen the role of NLC and ensure it is populated by persons of integrity.
- **What solutions would you recommend for permanently resolving ethnic antagonism and competition?**
  - Making the competition for leadership a contest of ideas through political party platforms as opposed to ethnic warfare – adopting a parliamentary system.
  - Proportional Representation or mixed Member Proportional Representation.
  - Full implementation of TJRC and Waki reports as well strengthening of the NCIC.
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- Would the identified solutions require changes in existing policy, law or the Constitution? If yes, please explain the changes briefly.
- Would the identified solutions require establishment of a new agency or body or strengthening existing ones? If it will require establishment of a new agency, please give a brief outline of its mandate. If it is strengthening an existing agency, please give a brief description of what the strengthening should be.

## **ON ISSUE TWO: LACK OF NATIONAL ETHOS**

Ethos is the positive distinctive collective character or identity, spirit, and attitudes of a people, shared culture or practices which guide respectful mutual relationships in a group, society or country. Ethos provides a moral compass, which inhibits harmful acts towards others in society and in the performance of duty, both in public and private sectors. It is the known, accepted, shared, predictable and expected way of relating to one another and doing things. When someone meets a Kenyan anywhere that person should be able to immediately know that she or he is dealing with a Kenyan.

- **What should the National Ethos of Kenya be?**
  - Kenya first (patriotism)
  - Sharing
  - Non discrimination
  - Gender and inter-generational equity
  - Social justice
  - Promotion of the national language
- **What should be done to ensure that the ethos is part of our daily national life?**
  - Make Kiswahili the medium of learning at all levels of education
  - Teach patriotic (genuine) history of our country in school and make it a compulsory subject in primary to high schools.
  - Design and promote a national dress.
  - Abolish use of English as the official language and make it mandatory for all original official government documents to be in Kiswahili .
  - Hold a “Kenya Week” annually.
  - Make negative stereotyping, hate speech, and all forms of ethnic, gender, racial and disability-based discrimination offences punishable by law.
  - Abolish quota system in school and college admission.
  - Promote national art – including music, cinema, drama, sculpture etc.
- **Would our recommendations require changes in existing policy, law or the Constitution?**
  - Review Article 10 of the Constitution to more forcefully promote national values.
  - Develop a Sessional Paper on National Culture and Heritage.
  - Amend Article 7(2) of the Constitution to make Kiswahili the official

language. [NO CONSENSUS]

- Introduce a clause in Article 7 making English the second international language.[NO CONSENSUS]

- **Would the recommendations require establishment of a new agency or body or strengthening existing ones?**
  - Revise the mandate of NCIC and strengthen it.
  - Establish a Kiswahili Language Research and Development Centre.

### **ON ISSUE THREE: INCLUSIVITY**

- **What or who in our view is/are the source(s) or cause(s) of the feeling of exclusion by a section or sections of Kenyans?**
  - Public appointments
  - Asymmetrical development (some regions are more favoured than others).
  - Lack of a comprehensive policy on public participation.
  - Skewed procurement in national and county governments.
  - Absence of deliberate policies aimed at integrating marginalized segments of society, e.g. PwDs.
  - Enhancing the authority of NCIC to audit public agencies and institutions.
- **What recommendations would you make, from the perspectives of gender, disability, youth, minorities, pastoralists and other marginalized and vulnerable groups, to permanently resolve this feeling of exclusion?**
  - Propose a PR or MMPR electoral system.
  - Use reports of NCIC to compel government ministries, departments and agencies to ensure inclusivity.
- **Would the preferred recommendation require changes in existing policy, law or the Constitution?**
  - Ensure no more than two-thirds of either gender in each cadre of appointive position in the public service.
  - Ensure that appointment to all cadres in the public service is proportionate to communities' share of national population.
  - Ensure that at least 30% of all public appointments are reserved for marginalized communities.

- **Would our preferred solutions require establishment of a new agency or body or strengthening existing ones?**
  - Strengthening and expanding the mandate of NCIC

#### **ON ISSUE FOUR: DEVOLUTION**

- **What or who in your view is the source or cause of the weaknesses/failures or challenges faced by Devolution?**
  - Devolution of functions without commensurate resources
  - Corruption and mismanagement.
  - Quality of county legislatures.
  - Inability to deal with cross-county issues.
  - Undue control by national government
  - Incompetence.
- **What recommendations would you make to permanently resolve the weaknesses/failures or challenges faced in the implementation of Devolution?**
  - Match devolved functions with resources.
  - Enhance oversight and audit
  - Create a regional tier.
  - Reduce corruption and nepotism in employment in county public service by abolishing County Public Service Boards and creating Regional Public Service boards. The same to apply for devolved legislatures.
  - Prescribe clear academic, professional and ethical qualifications for members of assembly so as to infuse capacity to legislate and oversight.
- **Would your recommendations require changes in existing policy, law or the Constitution? If yes, please explain the changes briefly.**
  - Policy
    - Develop minimum standards of public participation to apply in all regions and counties.
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  - Legislation
    - Repeal County Governments Act 2012 and replace with Devolved Governments Act.
    - Enact Regional Public Service Boards Act.
  - Constitution
    - Introduce 14 regional governments as per Bomas Draft.

- Create regional assemblies comprising all members of county assemblies in each region.
  - Allocate 45% of the national revenue to devolved governments (13.5% to regional governments and 26.5% to county governments)
- **Would your solutions require establishment of a new agency or body or strengthening existing ones?**
  - Regional Premier
  - Deputy Regional Premier
  - Regional Public Service Boards
  - County Police Chief (elected)
  - Regional Ombudsman

#### **ON ISSUE FIVE: DIVISIVE ELECTIONS**

- **What system should be adopted to address the chronic electoral fraud and why?**
  - Review the current First-Past-the Post Electoral system
  - Consider PR or Mixed Member PR system
  - Adopt a parliamentary system. This will remove focus on presidency that has become the trophy of ethnic competition.
  - The President to serve a 7-year term non-renewable.
  - Devolve IEBC
  - Adopt full electronic voting.
  - Commissioners to be nominated by political parties with presence in respective regions
  - Fully implement the Kriegler Report.
- **Would these recommendations require changes in existing policy, law or the Constitution?**
  - Policy
    - Recruitment and procurement policies of IEBC
    - Stakeholder input into recruitment of IEBC commissioners and senior staff at national and regional levels.
    - Continuous registration of voters to be actualized.
    - Election Regulations
  - Legislation
    - Amend IEBC Act to establish national and regional commissions
    - Enact electronic voting

- Limit election petitions to one petition and one appeal (save for presidential election which ends at petition at SCoK), e.g. county/regional assembly: petition at High Court and one appeal at High court; others: petition at High Court and appeal at the CoA)
- Constitution
  - Restructure the Executive to re-introduce a parliamentary system
    - A president elected by a college of legislatures
    - Functions of the President as defined in the Annexure
    - A Prime minister and cabinet appointed as per annexure.
    - Public service commensurate with the above proposals
  - Provide for establishment of a national and regional electoral commissions, whose members are nominated by political parties.
  - Commissioners shall work part time.
  - The Chair of the Commission at national and regional levels to be rotational and elected by members of the Commission for a period not exceeding 12 months.
  - Restructure the legislature in the following manner:
    - Strengthen Senate as the Upper House
    - Make the size of the Senate 29 (2 members per region plus the Speaker)
    - Abolish nominated senators
    - Reduce the size of the from current 349 to 180 (120 FPTP and 60 PR)
    - Abolish the 12 nominated seats

#### **ON ISSUE SIX: SAFETY & SECURITY**

- **What or who is the source or cause of the police brutality and extrajudicial killings?**
  - Political competition
  - Centralised police command at national level
  - Recruitment of police
  - Training methods and curriculum.



- Militia
- Weak oversight of the law enforcement agencies.
- **What recommendations do we make to ensure that state violence and extrajudicial killings do not happen?**
  - Review the winner-takes-all political competition
  - Devolve the police services
  - Professionalise criminal investigation and make DCI fully independent.
  - Introduce Rights-Based Approach (RBA) to policing.
  - Make IPOA truly independent.
  - Revise police recruitment procedures and entry requirements.
  - Implement fully the police training curriculum developed by PRIC in 2011.
  - Integrate the Police into communities.
  - Develop and enforce a code of conduct for Law Enforcement Officers.
  - Conduct massive civic education among the citizenry to understand the law and role of law enforcement agencies.
  - Restructure community policing/*Nyumba Kumi* initiatives.
  - Control small arms
  - Outlaw militia
  - Familiarise with the work of the ***Governance, Justice, Law and Order Sector (GJLOS)***? And implement recommendations for reform of the security sector.
- **Would the recommendations require changes in existing policy, law or the Constitution?**
  - Delink DCI from the national police service and make it a constitutional agency.
  - Make IPOA an independent constitutional commission/office.
  - Devolve the National Police Service.
  - Merge and elevate the Police Training College and APTC into a National Police Academy with regional campuses and review staffing.
- **Would your solutions require establishment of a new agency or body or strengthening existing ones?**
  - Strengthening DCI and IPOA
  - Merging PTC and APTC

## **ON ISSUE SEVEN: CORRUPTION**

- What or who in our view is the source or cause of corruption?
- What necessary steps in our view should be taken to eradicate corruption?
  - Address impunity
  - Reward integrity
  - Wealth declaration to be made public and annual (public & private sector)
  - Public servants not to engage in business while in service.
  - Address the taxation system
  - Those implicated in corruption not serve in public service nor do business with public entities
  - Repatriation/confiscation of corruption proceeds.
  - Public declaration of recovered assets.
  - Protection programme for whistle blowers
- **What in our view should be done to protect whistleblowers?**
  - Reward whistleblowers
  - Where necessary/possible protect their identities
  - Strengthen Witness Protection Agency.
- **Would the recommendations require changes in existing policy, law or the Constitution? If yes, please explain the changes briefly.**
  - Review the Ndegwa Commission Report
  - Bar persons previously convicted on corruption-related offences from employment in the public service or doing business with government agency.
  - Amend the ACECA to provide for making the annual wealth declaration public.
  - Revise the Law to provide for stiffer penalties for economic crimes.
  - Amend the Constitution to abolish EACC
- **Would our solutions require establishment of a new agency or body or strengthening existing ones?**
  - Strengthen DCI, Office of the DPP and the Judiciary.
  - Abolish EACC

## **ON ISSUE EIGHT: SHARED PROSPERITY**

- **What or who in is the source or cause of the unequal prosperity in Kenya?**
  - Ethnic profiling and bigotry.
  - Corruption.
  - Unregulated “free market.” Especially “willing buyer, willing seller” policy in land deals.
  - Skewed infrastructure.
  - Youth unemployment.
  
- **What should be done to ensure decent income for Kenyans?**
  - Improve equity in health and education access
  - Address the quality of education, including teacher-student ratio in all counties.
  - Expand infrastructure into regions marginalized by the Sessional Paper No. 10 of 1965.
  - Ensure commensurate resources follow devolved functions.
  - Expand employment opportunities in private and public sectors
  - Make devolved governments accountable.
  - Reform the agricultural sector, including overhaul of NCPB, which in the interim should include
  - Manage people’s money well. Some of the immediate tasks should be audit of the IFMIS system; institutionalization of
  
- **What are some of the blockages and perverse incentives that undermine innovation, growth and job creation in Kenya?**
  - Punitive taxation regime.
  - Access to credit.
  - Concentration of infrastructure in cities and a few counties neighbouring Nairobi.
  - Lack of entrepreneurial skills.
  
- **What should be the measures that need to be taken so as to remove the blockages and perverse incentives and who or which institutions should be responsible?**
  - Reform domestic taxation policies to make them investor friendly.
  - Establish enterprise development fund.
  - Expand infrastructure.

- Establish business incubation centres (e.g. by revamping the Kenya Industrial Estates)
- **The National Treasury and the Central Bank of Kenya estimate that Kenya's Public Debt now stands at KES 5.7 Trillion. This Debt is a threat to Kenya's realization of a shared prosperity. Article 201 (c) of the Constitution of Kenya provides that "*the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations*;" What measures, should be put in place to ensure that there is proper Debt Management and which institutions should be responsible?**
  - Declare a moratorium on further borrowing until an audit on the current debt has been done.
  - Review budget management at national and devolved levels and address areas of budget leakages.

#### **ON ISSUE NINE: RESPONSIBILITIES & RIGHTS**

- **What or who is the source or cause of impunity in the violation of Human Rights in Kenya?**
  - Art. 21 of the Constitution places the duty of promoting and fulfilling the rights and freedoms in the Bill of rights upon the State and all state organs. Whenever there is a violation and impunity, the state/state organs are the primary source and cause.
- **What should be done to ensure that impunity in the violation of Human Rights in Kenya is eradicated?**
  - Empower the KNCHR in its mandate under Section 8 KNCHR Act to be able to punish those who violate human rights instead of just making recommendations
  - Improve the Capacity of KNCHR in terms of funding
- **Article 43 of the Constitution of Kenya anchors and secures the Economic and Social Rights (ESCR) of Kenyans. There has recently been evictions of citizens and demolitions and destruction of houses, schools, health facilities and utilities in informal settlements in urban centers. What should be done to ensure that such evictions and demolitions do not recur and where they must be carried out**

**they are done on the basis of human rights approach and with due regard to the human rights entitlements of the affected?**

- See Above. It is within Mandate of KNCHR
- **Human Rights Entitlements come with responsibilities and the two must not be separated. What should be done to inculcate a culture of responsible citizenship in Kenya?**
  - When acts of impunity by leaders are punished, citizens will respect the law and adopt responsible behavior
  - Punish corruption.
  - Firmly deal with patronage system.
- **Are there aspects of this the 'NDUNG'U' Land Commission report, which, if faithfully implemented would contribute to addressing historical and existing grievances over individual, communal and corporate land rights in Kenya in a permanent way? Kindly outline the specific items.**
  - Cancellation of all titles to illegally acquired Land
  - Repossession of illegally allocated land
  - Repossession of all land belonging to Parastatals that was sold at below market rates
  - Revoke all land allocations to Public Officers and Politicians in the settlement schemes
  - Abolition of the Nyayo Tea Zones
  - Resurvey of forest boundaries
  - Setting up of the Land Titles Tribunal to undertake the process of revoking and rectifying titles
  - Upgrading of informal settlements
- **How can we use reports of commissions (e.g. the 'WAKI Commission, National Cohesion & Integration Commission (NCIC), Truth Justice & Reconciliation Commission (TJRC)) formed as a result of the 2007/2008 Kenya National Dialogue and Reconciliation (KNDR) process and in particular those parts which have come to be commonly referred to as AGENDA 4 Items?**
  - First amend the commissions of Inquiry Act which is a 1962 relic to bring it in tune with current legal principles of shared power

and accountability.

- Grant Parliament power to form commissions where the President does not
  - Give them real power and make recommendations binding
  - Share their recommendations with other state organs that are bound to implement e.g EACC DCI and the ODPP
- **What measures should be put in place to transform Kenya into a Human Rights State? Would your recommendations require changes in existing policy, law or the Constitution? If yes, please explain the changes briefly.**
  - See proposed changes to the KNCHR Act.....the law is generally adequate....we only need to strengthen enforcement mechanisms.
- **Would our solutions require establishment of a new agency or body or strengthening existing ones? If it will require establishment of a new agency, please give a brief outline of its mandate. If it is strengthening an existing agency or agencies, please give a brief description of what such strengthening should include.**
  - See above with regards to KNCHR and the Lands regime and the Commissions' of inquiry Act