



POLICY BRIEF

Number 1 | July 2012

Reconciling Kenya

Opportunities for constructing a peaceful and socially cohesive nation

Allan Ngari¹

Above all, the healing process involves the nation, because it is the nation itself that needs to redeem and reconstruct itself.
– Nelson Mandela on Reconciliation

Introduction and background

The violence that erupted in Kenya in late December 2007 and January 2008 following the disputed 2007 presidential election results was one of the most violent and destructive periods in the country's history. It is estimated that 1,300 lives were lost as a direct result of the violence and conservative figures estimate that 350,000 people were internally displaced. In addition, there are still Kenyans living outside the country as a direct result of the post-election violence (PEV). Others remain in exile for fear of persecution. After these events, Kenya's fate as a country in transition was sealed.

It would be incorrect to peg Kenya's transition and the resulting attempts to deal with the past injustices solely on the events following the 2007 general election. The PEV was the culmination of years of tensions in Kenya around access to state power and the control of national resources – primarily land. What the PEV has exposed, not only to Kenyans but also to the international community at large, are the tragic consequences of deep-rooted ethnic intolerance, corruption and inefficient governance structures. These issues have significantly contributed to ethnic polarisation and physical, emotional and economic scars to the country and its people. Kenyan society has yet to fully address the scars of its history.



PROMOTING COHESION AND RECONCILIATION IN KENYA



In this context of weak governance and poor implementation of policies, poverty is widespread and unemployment is rife. There is a general sense of despair resulting in a disgruntled populace prone to crime and violence. The government and its people have been forced to deal with this difficult past and must forge a way through its transition to a democratic and socially cohesive nation. Confronting this legacy of violence and injustice is necessary if a peaceful future is to be constructed.

The KNDR and institutions involved in the reconciliation agenda

Under the aegis of the African Union Panel of Eminent African Personalities chaired by the former Secretary-General of the United Nations, H.E. Kofi Annan, a four-part agenda was developed by representatives of the competing political formations, namely the Party of National Unity (PNU) led by incumbent President Mwai Kibaki, and the opposition Orange Democratic Movement (ODM) led by current Prime Minister Raila Odinga. The political negotiations took the form of the Kenya National Dialogue and Reconciliation (KNDR), which started on 29 January 2008. Agenda One focused on immediate action to stop violence and restore fundamental rights and liberties. Agenda Two focused on immediate measures to address the humanitarian crisis, and to promote reconciliation, healing and restoration. Agenda Three was aimed at overcoming the political crisis, and Agenda Four saw the creation of national commissions that would address longer term issues and provide solutions.²

On 28 February 2008, the National Accord and Reconciliation Agreement was signed by representatives of the PNU and the ODM, and witnessed by members of the African Union Panel of Eminent African Personalities. Following the political agreement, a government of national unity (GNU) was created with H.E. Mwai Kibaki as the President and Rt. Hon. Raila Odinga as the Prime Minister of the Republic of Kenya (the two Principals). A number of institutions to promote peacebuilding and reconciliation in the country were also created. This included the Kenya National Cohesion and Integration Commission (NCIC), the only permanent institution created. Kenya remains in a state of transition, aspiring to safeguard democracy and establish lasting peace after the PEV and decades of systematic human rights abuses by state and non-state actors.

Significant progress has been made since the formation of the GNU, such as an extensive constitutional reform process which led to the promulgation of a new Constitution of Kenya (the Constitution) in August 2010. This is a major milestone in Kenya's history. The constitutional framework is a significant step in the process of addressing the underlying causes of the PEV.³ Furthermore, the national values and principles of governance in the Constitution provide the necessary legislative and social framework to embark on social cohesion and reconciliation of the Kenyan people.⁴

The free, fair and peaceful constitutional referendum was conducted by the Independent Interim Elections Commission (IIEC), a commission established under Agenda Four of the KNDR and charged with the pivotal task of reforming Kenya's election system. The IIEC built on the significant work done by the Independent Review Commission (IREC). The Commission for the Investigation of the Post-Election Violence (CIPEV), similarly a product of Agenda Four, made remarkable findings in its investigations into the PEV. One of the CIPEV recommendations was to set up a Special Tribunal for Kenya, which would be a local court with international characteristics, to investigate and prosecute individuals alleged to have committed crimes during the PEV.⁵ Following CIPEV's investigations, a list of ten individuals deemed to be the most responsible persons for the PEV was handed to H.E. Kofi Annan. The CIPEV's report provided that a failure to abide by its recommendations would result in the two Principals referring the situation to the International Criminal Court (ICC). However, the Special Tribunal for Kenya Bill, 2009, was defeated in Parliament. The Prosecutor of the ICC has since initiated investigations that led to the confirmation of criminal charges against four Kenyans, and their trials are expected to commence in April 2013.

The Truth, Justice and Reconciliation Commission of Kenya (TJRC) was created through an Act of Parliament (No. 6 of 2008) to inquire into human rights violations, including those committed by the state, groups or individuals. This includes, but is not limited to, politically motivated violence, assassinations, community displacements, settlements and evictions. The TJRC has a mandate to inquire into major economic crimes, historical land injustices, and irregular and illegal allocations of land – especially those crimes and injustices related to conflict or violence. At this time, the TJRC is at the final stage of its mandate, and it is hoped that the narratives of inquiry developed in its report will be used to build a ‘collective truth’.

Understanding the theory of reconciliation and transitional justice

Reconciliation is the process of repairing damaged relationships.⁶ It is often thought to originate in religious discourse and around the notions of forgiveness and mercy, but reconciliation now transcends such discourse into other components of and disciplines in society. A state in transition is one that is shifting from periods of gross human rights violations, mass violence or protracted armed conflict towards a peaceful, democratic future characterised by respect for the rule of law. Such a state must engage in issues of reconciliation – at the very least in the political and social domain – to promote national healing and avert the resurgence of violence and gross human rights violations in the future.

Political reconciliation focuses on the characteristically impersonal relations among members of a political society.⁷ A state in transition that hopes to build reconciliation must move away from a concern with the resolution of issues and towards a frame of reference that provides a focus on the restoration and rebuilding of relationships.⁸

Transitional justice seeks to address legacies of large-scale past abuses, and includes mechanisms such as acknowledgement and truth telling, criminal trials, reparations and guarantees of non-recurrence, memorialisation, and institutional reform. The anticipated outcome of such mechanisms is the creation of a platform where national healing, cohesion and reconciliation can begin. A key note to states in transition is that reconciliation is not an isolated event but rather a process, which involves an integrated approach on the part of many actors – political leaders, civil society, faith-based institutions, communities and individuals – and extends over a significant period of time.

Reconciliation and transitional justice are interdependent. Reconciliation is perceived as one of the pillars of transitional justice, along with truth seeking, justice, reparations and guarantees of non-recurrence. Reconciliation is also the product of transitional justice interventions in a given society. Ultimately, at the core of the reconciliation process is the institutionalisation of a process of transitional justice.⁹ In this sense, no matter the school of thought, implicit in transitional justice is the concept of reconciliation and the recognition that the practice of reconciliation is a process and not a once-off event in a country in transition.

Challenges for reconciliation as a process and transitional justice in the Kenyan context

Democracy and the rule of law are essential foundations for independent and accountable government.¹⁰ The breakdown of these structures in government (and the resulting mistrust on the part of the Kenyan people) began when the promise and hope of a prosperous, independent Kenya faded away. The independence government took on a form that did not allow all Kenyans, regardless of race, ethnic origin, religious belief or persuasion to live the dream of an independent nation with equal access to national resources. Systemic violations of the rights and dignity of Kenyans commenced and continued to be perpetuated by ensuing governments, and by state and non-state actors alike. Many communities were marginalised as a result of being on the periphery of the governance structures. The root of the problem is therefore not the violations and

addressing these violations, important as that remains. Rather, it seems that the destruction of the spirit of national unity and all that it embodies was the major violation to the Kenyan people. The result is a country divided along ethnic lines and state patronage that exploit the institutions of power and the nation's resources.

To avert the possible resurgence of violence, the political formations in Kenya must firmly commit to political reconciliation, especially in the run-up to the next elections (due to take place in March 2013). Some activities that contribute to the possible resurgence of violence include the aversion towards group or ethnic affirmations on the part of political leaders, as well as the use of inflammatory language by politicians and their affiliates. Such activities have the capacity – if not the intent – of undermining efforts towards reconciliation in the country and contribute to violence and ethnic polarisation. In the recent past, we have read of resolutions from such ethnic formations in Kenya that create ideologies of ethnic victimisation, in their attempts to address the accusations levelled against the political leaders facing charges at the ICC. Political leaders and individuals seeking public office should refrain from the politics of ethnic formations, and those responsible for spurring ethnic tension by using inflammatory language should be prosecuted in accordance with the law.

In as much as the resolution of historical injustices is important in Kenya, a key opportunity for sustainable reconciliation rests on continued dialogue centred on building trust both between government structures and the people, and among the people themselves as one nation.

There is a strong case for coordinating transitional justice initiatives in Kenya to contribute to national cohesion and reconciliation. A number of transitional justice mechanisms are already operational in the country: the KNDR and the concomitant institutions created are a part of these mechanisms. In addition, there are efforts by civil society organisations, community-based organisations and faith-based institutions that are working towards reconciliation in Kenya. All these efforts contribute to national cohesion and reconciliation and have varied levels of success. There is, however, little or no coordination of all these national and community-based initiatives on reconciliation. It will take the commitment, courage and resilience of all Kenyans to engage in national healing, social cohesion and reconciliation.

The opportunities for consolidating transitional justice mechanisms for reconciliation

Acknowledgment and forgiveness

For the process of reconciliation to be successful, there are certain things that should take place in society. Acknowledgment of the harm caused to society for mass violence and gross violations of human rights stands as a key component of this process. Acknowledgment comes in various forms: it may be voluntary or coerced. In an ideal situation, acknowledgment of harm is closely followed by remorse on the part of the perpetrator(s). The perpetrator(s) should then ask for forgiveness from the victim-survivor(s), who in turn can choose to forgive or not. Forgiveness, however, should not be used as a conduit for impunity.

If carefully managed, the participation of witnesses and victims in trials benefits victims in their own individual healing and contributes to the process of personal reconciliation as well as forgiveness. However, caution must be exercised with regard to forgiveness. Given that victims have experienced unimaginable pain and suffering, it is unreasonable to put the burden of forgiveness upon them in an explicit way. This process is deeply personal and must be voluntary. Where a community decides to engage in forgiveness, it is important that access to psycho-social support services is available to reinforce the longevity of reconciliation. For the nation to be reconciled, the reconciliation process must include personal reconciliation. There is no greater healing than a personal process where one comes to terms with the events of the past and willingly chooses to move forward in a peaceful manner – whatever that may mean to the individual.

Truth seeking

The Kenyan people have suffered from violations of human rights for decades leading up to the PEV. The political settlement of 2008, though, marked the beginning of the country's efforts to deal with historical injustices. At the national level, the TJRC was set up, with the specific mandate to establish an official and accurate record of the atrocities of the past and make recommendations to the government concerning reparations and prosecution, among others, in order to deal with injustices in the country from 12 December 1963 to 28 February 2008. With such a wide mandate, the time frame to complete this task was herculean from the outset. Coupled with public concern regarding the selection and integrity of the Chair of the Commission, the TJRC faced a measure of paralysis in effectively carrying out its mandate.

Despite the challenges, the TJRC has collected statements from Kenyans from all walks of life and every region of the country – the largest collection undertaken by any truth commission to date. In addition, the TJRC has extended its work to neighbouring countries where Kenyan refugees resided in camps after fleeing the violence. The TJRC has made and continues to make positive and progressive contributions to the reconciliation process in Kenya. Its report and recommendations will be important as a foundation for the continuing healing and reconciliation process in the country.

The South African Truth and Reconciliation Commission (SA TRC), globally hailed as a model for truth-seeking mechanisms, did not heal all the wounds left behind by apartheid in South Africa. Archbishop Desmond Tutu, who chaired the SA TRC, was quick to point this out, and noted that, while the process contributed to the reconciliation process in that country, more work was required beyond the life of the SA TRC in reconciling that nation.

Truth commissions must be seen as initiators of dialogues within fragmented societies. Their objective is to provide safe spaces for genuine remorse, and for creating narratives for a collective truth that does not suppress the contributions of certain communities to nation building. They should be able to grant amnesty where appropriate within the ambit of internationally accepted standards, and they provide platforms for a continued healing process.¹¹

The TJRC report is expected to be presented to the President and Prime Minister in the coming months. It will be important for the government to endorse and implement the recommendations of the TJRC. It is equally important that civil society remain engaged in the process as it is pivotal to establishing a collective truth. This will be key as the country engages in further reconciliatory dialogues between different government structures, government structures and the people, and among the people as one nation.

Truth-seeking and truth-telling exercises are not confined to the national level and they are not a once-off event. In fact, the benefits of such exercises are best seen where they percolate to the grassroots of any society. Conversations around 'the truth' should be promoted. These conversations exist in every community and should now extend between communities.

Justice

The retributive theory of justice has as its objectives, the punishment of past crimes and the deterrence of future crimes. The trial of individuals accused of committing gross human rights violations can contribute to reconciliation. Depending on how they are managed, international and locally owned justice processes may either foster or impede national reconciliation. Whereas the ICC process has enjoyed wide public support as a vehicle for fighting impunity in Kenya, there is scepticism about the ability of the ICC interventions to promote reconciliation in the country. There has been a fair amount of politicisation around the timing and subjects of ICC trials, which does not contribute to an effective dialogue on reconciliation. It is, however, possible for international criminal trials to contribute to political reconciliation by fostering the social conditions required for the rule of law.

Cultivating respect for the rule of law is a constitutive part of the process of political reconciliation. International criminal trials can contribute to reconciliation by cultivating legal decency and good judgment among officials, and encouraging faith in the law among citizens.¹² In addition to being a State Party to the Rome Statute that created the ICC, Kenya has implemented the Rome Statute in the form of the International Crimes Act, No. 16 of 2008. Kenya is one of a handful of African State Parties to implement the Rome Statute effectively. These are gains that Kenyans should celebrate and that the government must support by establishing the necessary structures to enforce the legislation.

International criminal trials can influence prospects for reconciliation in Kenya through an 'educative' exposure of the practices of the past in the country – educative in the sense that the due process of international criminal law and the structures established by international criminal procedure are respected. Such an educative role can powerfully shape a transitioning state's adherence to the rule of law in accordance with internationally accepted standards. Kenya has, for example, enacted the Witness Protection Act, No. 16 of 2006, and reviewed the law through the Witness Protection (Amendment) Act, No. 2 of 2010, which established a Witness Protection Agency, to conform to international standards of procedural provision for the protection of witness identities during and after court proceedings, in order to ensure that witnesses can testify freely and safely. It is critical that the witnesses who do cooperate with law enforcement agencies be provided with adequate protection, including for their families. To the extent that such procedures are followed, international criminal trials provide a model for how national criminal proceedings should be conducted.

The treatment of alleged perpetrators of crimes at international criminal tribunals also provides a model for national criminal jurisdictions. From the presumption of innocence, and the conducting of fair trials, to the humane treatment of those accused (no torture or degrading treatment to obtain confessions or information in the investigative stages of a trial). These are practices which can be adopted by national criminal processes.

It is preferable, however, for Kenya itself to initiate investigations and prosecutions of individuals suspected of being responsible for the PEV, in a manner that is complementary to the work of the ICC. The Constitution provides the necessary framework and there is existing legislation to embark procedurally on such initiatives. The obstacle in the way of a local criminal accountability system is the lack of political will to genuinely undertake such an activity to the exclusion of political manoeuvring.

Locally owned criminal justice processes have the benefit of restoring confidence and faith in the law and the capacity of legal institutions to provide justice. With the substantive reforms in the Kenyan judiciary, the legal and investigative officers have an opportunity to engage in and invoke reconciliatory language and concepts in the administration of justice. Knowing that arrest does not entail torture, that conviction does not entail death, and that cooperation does not risk death, increases the likelihood that individuals will cooperate with the national criminal justice system. Norms of international law enforced at the national level in this way, and a clear demonstration to the citizenry that officials can be and are held accountable for failing to respect the constraints that law imposes, can restore confidence among citizens that the law will be enforced.

Justice should extend beyond retribution and must involve restorative aspects. In this sense, 'stakeholders affected by the injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm'.¹³ Restorative justice may take the form of consultations with victims and affected communities in the formulation of policies around reconciliation. Engagement of representatives of civil society as drivers of national consultations around policies with regard to reconciliation issues builds an inclusive process and increases ownership of the policies by the beneficiaries of these policies.

When restorative justice processes are entrenched in government activities, there will be a transformation from business as usual – which revolves around state patronage along ethnic lines and relegating some ethnic groups to the periphery – to including the previously marginalised communities in the management of state affairs and public life. It is important for government to carry out periodic audits that give an indication of the inclusivity of all groups in the management of state resources and equal participation in public life in Kenya. The audit undertaken by the NCIC on the ethnic composition of public servants in state-run institutions is one such example.

Reparations and guarantees of non-recurrence

'Reparations' refers to the obligation of a wrongdoing party to redress the damage caused to an injured party. Reparations may take the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁴ The nexus between reparations and guarantees of non-recurrence on the one hand, and reconciliation on the other, is the recognition that for any society whose members have experienced harm as a result of mass violence or violations of human rights, there is an urgent need to redress the harm caused – by capacitating the members of society to participate meaningfully in the healing process of the nation, thereby averting both the risk of reprisals within society and the cycle of violence.

There is a need for a reparations policy in Kenya to redress the injustices committed in the past. A carefully developed, managed and implemented reparations programme has the potential to give legitimacy to other processes under the truth-seeking and justice rubrics. Reparations acknowledge and validate the events of the past, provide victims with the capacity to cope with the harm they have suffered, and contribute to the deterrence of future crimes. In this regard, policy makers may be guided by international standards of what reparation programmes should entail.¹⁵

Engaging the Diaspora

There has been very little involvement of the Diaspora in transitional justice processes in a transiting state. It is important to note that there exist a number of Kenyans who have left the country involuntarily. These conflict-generated Diasporants should be included in the national healing and reconciliation process. In the early days of the National Rainbow Coalition (NARC) party dispensation, following the 2002 general elections, Kenyans forced into exile in the preceding years were urged to return and help build the country. Some returned – but there remain others still hurting from the injustices and fear that they and their families experienced.

Aside from these Kenyans, there are those who have left Kenya of their own free will and who constitute a pool of able individuals who could potentially contribute to national cohesion and reconciliation in the country. Coordinated efforts should be made to include the Diaspora in initiatives aimed at reconciling Kenya, with avenues created for Diaspora contributions. Further, Kenyans in the Diaspora must engage with the issues in the country in a responsible manner; for example, avoiding undermining national healing and reconciliation through hate speech via social media. Kenyans in the Diaspora should be warned that their distance from the territory does not bar criminal liability for hate speech and other divisive conduct. The possibility of dual citizenship under the new Constitution could contribute to instilling a sense of responsibility within the Diaspora.

The TJRC conducted interviews in 2011 with Kenyan refugees living in camps in Uganda, in order to determine how refugee communities affected by the PEV of 2007 could be included in transitional justice process. The Liberian Truth Commission similarly took statements and conducted hearings in other countries where the Liberian Diaspora was significant. These public hearings and statement-taking contributed to psychological healing of the Diaspora community. The role of the Diaspora is not only limited to truth commissions. Using the principle of universal jurisdiction, Diasporants from Rwanda, for example, have been able to bring perpetrators of the

1994 genocide living in Europe to account in European courts. An informed Diaspora of various transitional justice mechanisms and existing legislature in resident countries that support these mechanisms results in an engaged Diaspora in the processes that bring national healing and reconciliation.

Towards a national reconciliation agenda for Kenya

Reconciliation remains key to securing a peaceful future in Kenya and in preventing the use of past injustices as the seed for renewed conflict.¹⁶ A reconciled society has the dual function of representing a breaking of the cycle of violence and gross violations of human rights, and promoting peaceful co-existence among its members. In return there is a consolidation of democratic institutions that ensure good governance and respect for the rule of law.

Acknowledgment is a key pillar of reconciliation. Harm to bodily integrity is a physical manifestation of violations. Yet it could be argued that the worst forms of violation are those that affect the emotion and the psyche. The harm caused to an emotionally violated individual pervades the very core of the individual's existence, along with the ever-present danger of that individual resorting to revenge and violence. Perpetrators must acknowledge the harm that they have caused to their victims in order for reconciliation between the two parties to have real, long-term meaning. Similarly, institutional acknowledgment of wrongdoing must accompany efforts towards national healing and reconciliation. State and other political entities' acknowledgment of violations to its people is germane to the reconciliation process. Other institutions, such as faith-based groups, must also take responsibility for their complacency with regard to past injustices, or indeed for complicity in actively engaging in injustices to their constituents.

A Kenyan society that tends towards reconciliation must address the challenge of divergent political opinions, while ensuring that national and county governance alike are inclusive of all views – or at the very least provide a platform for the expression of these views and a guarantee of respecting them. Ultimately, effective reconciliation in Kenya, as in many other states in transition, will take more than one generation and must include all the country's people.

Practical steps towards reconciliation initiatives will involve institutions such as the NCIC working with civil society. Activities that are ongoing include the following:

- The creation of platforms that foster and coordinate engagement and contribution from all levels of society. The national reconciliation agenda is promoted through the facilitation of reconciliation dialogues in all regions in Kenya and capacity-building training for key stakeholders working in the fields of peacebuilding and reconciliation.
- Transformation audits that measure inclusivity of all ethnic groups in the management of state resources and their equal participation in public life.
- Development of policies that promote reconciliation, including a reparations policy that effectively and inclusively addresses the needs of victims of violations of human rights. Such policies should address gross human rights violations, land issues, economic, social and political marginalisation, acts of state repression, and ethnic conflict and tensions.
- National consultations with communities on reconciliation issues, including:
 - » Recognition of work on addressing human rights violations, which would include recognition and even supplementing of efforts to map human rights violations and conflict in the country with a view to understanding the origins of violence; and then effecting programmes aimed at conflict prevention as well as programmes to promote, protect and ensure the respect of human rights for all; and
 - » Historical clarification exercises in the country, in the form of new curricula in educational institutions, publication of books, and rebuilding of national archives and museums, to bring out the suppressed narratives of the many ethnic groups,

especially the marginalized communities, who contributed to nation building; the understanding being that such narratives should be included in the national historical narratives.

Recommendations

To the Government of Kenya:

1. Empower an existing permanent institution, such as the NCIC, with the specific mandate of fostering, protecting and enforcing reconciliation nationally and within the different regions in Kenya. Such an institution should:
 - a. create platforms for engagement and dialogue between government structures and the people, thereby fostering accountability;
 - b. coordinate transitional justice interventions in Kenya to contribute to national cohesion and reconciliation;
 - c. recognise and promote community-level truth-telling processes. In this context, government should promote inter-community dialogues on truth with the assistance of civil society organisations and with the provision of psycho-social support for truth telling;
 - d. partner with civil society in engaging victims and affected communities in consultations around policies that will affect them; and
 - e. entrench restorative justice policies to contribute to reconciliation.
2. In support of national healing and recognition of abuses by state and non-state actors alike, symbolically apologise for the harm caused by past and current governments, as a basis for initiating reconciliation dialogues.
3. Fully implement the TJRC report recommendations as well as other unimplemented recommendations from commissions of inquiry relating to reconciliation.
4. Implement programmes that would educate the electorate on the importance of free, fair and peaceful elections, and take necessary measures to dispel fears of recurrence of violence. In this vein, guarantee free, fair and peaceful elections, to counteract violence stemming from flawed electioneering procedures and practices.
5. Ensure that the full implementation of the Constitution does not exceed the five-year target from its promulgation, and expedite ongoing judicial and institutional reforms while maintaining their adherence to the Constitution's progressive spirit.
6. Engage Kenyans in the Diaspora positioned in strategic locations in their host countries to raise awareness of reconciliation in Kenya. With the proliferation of social media and the ease of connecting globally via the internet, the Diaspora should be encouraged to support and positively contribute to transitional justice processes in Kenya. In addition, it is necessary for constructive dialogue to be facilitated by the state through proper channels, in order to receive input from Diasporants on existing or future reconciliation processes.
7. Capacitate the judiciary, members of the bar and investigative offices to adopt and invoke the language and concepts of reconciliation in the administration of justice.
8. Operationalise reconciliation policies through legislation. Placing reconciliation on the legislative agenda would generate the necessary attention and public debate, which would foster the reconciliation process.

To faith-based institutions:

1. Act as agents of social reconciliation by fostering reconciliation between individuals and communities in conflict. Reconciliation must be approached at all levels. Faith-based institutions should take concrete steps towards engaging their constituents in social reconciliation.
2. Foster inter-faith reconciliation, first among the different faith-based institutions, in order to ensure credibility as agents of social reconciliation, and then with the people, particularly in regions in the country where conflicts and tensions exist based on religious differences.
3. Undertake clear engagement with politicians, with the aim of ensuring non-politicisation of faith issues.

To civil society:

1. Link to the national reconciliation agenda and coordinate these activities with education and training programmes, in order to create public awareness of, support for and advancement of reconciliatory and cohesive practices. Also engage with community-level truth-telling exercises.
2. Fully digest the outcomes of reconciliation workshops involving government representatives, civil society and other relevant stakeholders, with the aim of generating educational materials for the Kenyan context relating to national cohesion and reconciliation, and of providing platforms for deconstructing ethnic divisions through dialogues.
3. Contribute to the process of consultations with victims and affected communities on restorative justice policies that promote reconciliation, while maintaining that government has the primary responsibility for this.

Notes

- 1 This Policy Brief is authored by Allan Ngari, Project Leader for the Kenya and International Justice Desk, Justice and Reconciliation in Africa, IJR, and is part of a series of policy briefs in the tripartite project between the NCIC, Folke Bernadotte Academy (FBA) and the IJR on 'Promoting National Cohesion and Reconciliation in Kenya'. The author would like to thank the following individuals for their comments and suggestions in the writing of this Policy Brief: Milly O. Lwanga, Commissioner at the NCIC; Munini Mutuku, Senior Programme Officer, Reconciliation and Integration Department, NCIC; Therese Jonsson, Training and Project Leader, Conflict Prevention in Practice, FBA; Peter Nordstrom, Programme Officer, Conflict Prevention in Practice, FBA; Tim Murithi, Programme Manager, Justice and Reconciliation in Africa, IJR; Friederike Bubbenzer, Senior Project Leader, Great Horn Desk, IJR; and Simon Charles, Justice and Reconciliation in Africa Intern, IJR.
- 2 Annotated agenda for the Kenya National Dialogue and Reconciliation, Nairobi, Kenya, 1 February 2008.
- 3 South Consulting. 2011. The Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project: Progress in implementation of the Constitution and other reforms. Review report, October 2011, para. 1. Available from: <http://iccnow.org/documents/KNDRFinalReport12October2011.pdf> [Accessed 19 July 2012].
- 4 *Constitution of Kenya 2010*, Article 10.
- 5 CIPEV (Commission of Inquiry into Post-Election Violence). 2008. Report of the Commission of Inquiry into the Post-Election Violence in Kenya. Nairobi: Government of Kenya, paras 453–476.
- 6 This understanding of the concept of reconciliation can be found in the following: Roth, J. 2004. Unless Experience: Its significance for reconciliation after Auschwitz. In: D. Patterson & J.K. Roth, (eds). *After Words: Post holocaust struggles with forgiveness, reconciliation, justice*. Seattle: University of Washington Press, 86; Philpott, D. 2006. Introduction. In: D. Philpott (ed.) *The Politics of Past Evil: Religion, reconciliation and the dilemmas of transitional justice*. Notre Dame: University of Notre Dame Press, 14; Govier, T. & Verwoerd, W. 2002. Trust and the Problem of National Reconciliation. *Philosophy of the Social Sciences*, 32(2), 178–205. This is the second sense of reconciliation that Paul M. Hughes identifies in his 2001 Moral Atrocity and Political Reconciliation: A preliminary analysis. *International Journal of Applied Philosophy*, 15(1), 123–135.
- 7 Murphy, C. 2010. Political Reconciliation and International Criminal Trials. In: L. May & Z. Hoskins, (eds). *International Criminal Law and Philosophy*. New York: Cambridge University Press, 224.
- 8 Lederach, J.P. 2002. *Building Peace: Sustainable reconciliation in divided societies*. Washington, D.C.: United States Institute of Peace Press, xvi.
- 9 Murithi, T. 2009. The Value of Reconciliation. In: T. Murithi, *The Ethics of Peacebuilding*. Edinburgh: Edinburgh University Press, 136.
- 10 International Standards of Supreme Audit Institutions (INTOSAI). n.d. Principles of Transparency and Accountability. Available from: [http://www.issai.org/media\(794,1033\)/ISSAI_20_E_endorsement_version.pdf](http://www.issai.org/media(794,1033)/ISSAI_20_E_endorsement_version.pdf) [Accessed 19 July 2012].
- 11 Adopted and modified from a reconciliation framework proposed by Hizkias Assefa (see Assefa, H. 2001. Reconciliation. In: L. Reyhler & T. Paffenholz (eds). *Peacebuilding: A field guide*. Boulder, CO: Lynne Rienner.
- 12 Murphy, C. 2010. Political Reconciliation and International Criminal Trials. In: L. May & Z. Hoskins, (eds). *International Criminal Law and Philosophy*. New York: Cambridge University Press, 224.
- 13 Braithwaite, J. 2004. Restorative Justice and De-professionalization. *The Good Society*, 13(1): 28–31.
- 14 McClain, L. & Ngari, A. 2011. *Pay Us so We can Forget: Reparations for victims and affected communities in Northern Uganda*. JRP-IJR Policy Brief No. 2, August 2011.
- 15 See, for example, the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, from the Office of the United Nations High Commissioner for Human Rights, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005. Available from: <http://www2.ohchr.org/english/law/remedy.htm> [Accessed 19 July 2012].
- 16 Bloomfield, D., Barnes, T. & Huyse, L. (eds). 2003. *Reconciliation After Violent Conflict*. International Institute for Democracy and Electoral Assistance (IDEA), 19. Available from: <http://www.idea.int/publications/reconciliation/index.cfm> [Accessed 19 July 2012].



This document has been produced with financial assistance from the Swedish International Development Cooperation Agency, Sida. The views herein shall not necessarily be taken to reflect the official opinion of Sida.