

# Reforms

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A REVIEW ON THE PACE OF REFORMS IN  
KENYA SINCE THE NATIONAL ACCORD.

# Acknowledgement

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# Contents

Why this booklet	iv
Agenda 4 – Brief introduction	1
Constitutional Reforms	3
Legal and Judicial Reforms	6
Police Reforms	8
Institutional Reforms – Civil Service	10
Institutional Reforms – Parliamentary	12
Land Reform	14
Poverty Inequality	16
Unemployment	18
National Cohesion and Unity	21
Truth & Justice Reconciliation Commission (TJRC)	23
Transparency Accountability Impunity	24
Electoral Reforms	27
Perpetrators of Violence	27
National Anthem	28

# Why this booklet

This booklet reviews the pace of reforms in Kenya since the National Accord was signed on February 28, 2008 after the political crisis in the country. It is intended to provoke our thinking into what action we as citizens can take to ensure reforms needed to make our country stable for the sake of peace and progress. Some say “It is their coalition, but our reforms”.

This booklet looks at the different aspects mentioned under the Agenda Item 4 and the progress made since it was signed by the coalition.

## Agenda 4 – Brief introduction

The crisis brought to light key issues that those in power had continuously postponed. These issues identified as long-term issues are

- Constitutional Reforms.
- Legal and Judicial Reforms.
- Police Reforms.
- Institutional Reforms – Parliamentary.
- Land Reform.
- Poverty and Inequality and Regional Development Imbalances.
- Unemployment particularly youth.

- Consolidating national cohesion and unity (including Truth Justice and Reconciliation Commission).
- Transparency, Accountability and Impunity.

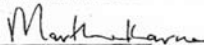
To show their seriousness at that time the people in power even developed an implementation matrix that showed what action would be taken when.

If we don't deal with these issues they will keep growing bigger and bigger until they explode as they did in 2007/2008.

# Signatories of the National Accord

Signed on this day, 23<sup>rd</sup> May 2008:

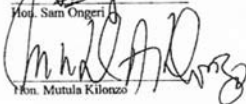
On behalf of Government/PNU



Hon. Martha Karua



Hon. Sam Ongeria

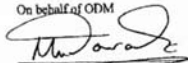


Hon. Mutula Kilonzo



Hon. Moses Wetang'ula

On behalf of ODM



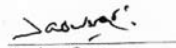
Hon. Musalia Mudavuti



Hon. William Ruto



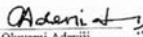
Hon. Sally Kosgei



Hon. James Orengo

Witnessed by:

For the Panel of Eminent African Personalities



H. E. Oluyemi Adeniji  
Session Chair

## Constitutional Reforms

**H**ow will you vote at the constitutional referendum? Will you have voted a certain way because your MP said so? Will you have thrown out a whole constitution based on only one section you do not agree with? Will you refuse to vote because you are tired of the endless political bickering? Or will you choose to stand up for what is right, for a socially just way of running the country, for a constitution that stands the test of time, for the solid future your children deserve?

The Committee of Experts (CoE) on the Constitutional Review launched the Harmonized Draft Constitution in November 2009. Kenyans made over a million comments on the draft. The Committee of Experts (CoE) then revised the draft taking into account some of the comments and forwarded a revised draft to the Parliamentary Select Committee (PSC)

in accordance with the law. The Parliamentary Select Committee (PSC) was able to reach consensus on all issues and returned a draft to the Committee of Experts (CoE), which will forward a revised draft to Parliament.

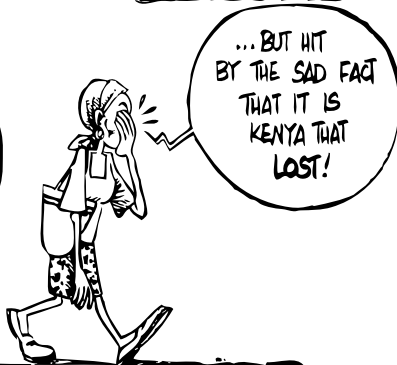
Did you know that a constitution is a negotiated document that carries the dreams and aspirations of every persons ruled by it?

Did you know it broadly spells out a direction for how laws will be made and therefore not everything should be in the constitution but the values we believe in?

Did you know other small details can be spelt out in acts of parliament by laws and other lesser legislations?

Did you know that the remaining phase needs you to be very vigilante and participate in ensuring that parliament does not derail the process?

Do you know that you can give Kenya a new Constitution if you read it and refused to be swayed by who wants to hold office but rather



think about values principles and goals that are good for our children?

Did you know that by voting yes to a new constitution your children will inherit a working parliament, a fair judicial system, punishment for corruption and rewarding what is right?

## **Implementation Matrix**

### **Focal Point:**

- Ministry of Justice National Cohesion and Constitutional Affairs.

### **Action:**

As described in agreement signed on 4th March 2008.

- Stakeholder consultations.
- Parliament to enact constitutional review statute including a time table.
- Parliament to enact referendum law.
- Draft constitution prepared in consultative process with expert assistance.

- Parliament to approve.
- People to enact through a referendum.

### **Time Frame:**

- Consultation launched and review statute enacted by end of August.
- Constitutional reforms to be completed in twelve months from date of enactment of statute.

### **Progress made:**

- Committee of Experts been constituted.
- Committee of Experts (CoE) has harmonized various drafts and come up with a harmonized draft.
- Committee of Experts (CoE) handed over draft to PSC which has scrutinized it given its input and given it back to Committee of Experts (CoE).
- The process of setting up an Interim Independent Constitutional Dispute Resolution Court is already on course.

## Legal and Judicial Reforms

Are you aware that the judiciary finalized and launched its 2009 – 2012 Strategic Plan to address the institutions image and restore public confidence?

Has the launch changed your confidence in the judiciary?

Are you aware that the task force on judicial reforms presented its final report to the Minister of Justice and Constitutional affairs and to the chief justice in August 19th 2009? Has this changed anything?

Did the internal transfer of judges by the Chief Justice in 10th September make it easier for you to access justice?

A lot of your money is used in this processes do you feel the change as a result of the highly publicized events?

What has changed at your nearest courthouse? We owe it to ourselves and our

children and their children to push for full publication and implementation of the judicial reforms long promised to us.

### Implementation Matrix

#### Focal Point:

- Ministry of Justice National Cohesion and Constitutional Affairs.

#### Action:

- a) Constitutional review to anchor judicial reform measures including;
  - Financial independence.
  - Transparent and merit based appointment, discipline and removal of judges.
  - Strong commitment to human rights and gender equity.
  - Reconstitution of the judicial service commission to include other stakeholders and enhanced independence and autonomy of the commission.

- b) Enact Judicial service commission act, with provisions for
- Peer review mechanisms.
  - Performance contracting.
- c) Streamline the functioning of legal and judicial institutions by adopting a sector wide approach to increase recruitment, training, planning, management and implementation of programmes and activities in the justice sector.

**Time Frame:**

- Constitution to be adopted in twelve months.
- Judicial Services Bill passed to implement the constitutional provisions within three months.

**Progress made:**

- Judiciary has finalized and launched its 2009 – 2012 strategic plan.
- Task force on judicial reforms has been set up.
- Process of digitizing judicial register has begun.
- The president assented to the statute law that paved way for appointment of mediation accreditation committee which will mediate on civil cases and appellate jurisdiction act which allows court to set a timetable for advocates to follow.

## Police Reforms

Do you remember the Report on the National Task Force on Police Reforms, also known as the Ransley Report? The Ransley Commission toured the country and identified ways to improve the police. You cannot be blamed if you do not know about the report, because it was here, and then it was not; and we did not even get to see it. A few recommendations were printed in local newspapers, but the rest of it was kept away from the public. Why?

Did you know that a police civilian oversight board was established on 4th September 2009? Have you seen them? Do you know them?

The changes also included construction of better police housing and disbursement of allowances so that officers can be less abrasive and more committed to services. Is there any sign of this happening?

## Implementation Matrix

### Focal Point:

- Ministry of Justice National Cohesion and Constitutional Affairs.
- Office of the President.
- Ministry of Internal Security.

### Action:

- Constitutional review to establish an independent police commission.
- Review and define the role of Administration Police.
- Review laws and issues related to security and police (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.
- Finalization and roll out of the national security policy to enable relevant sectors to

develop specific sectoral policies.

- Recruit and train more police officers to raise police – to population ratio to the UN standards.

### **Time Frame:**

- Constitution to be adopted in twelve months.
- Review process to be completed within six months.
- Recruitment and training to be completed by 2012.

### **Progress Made:**

- A Police Civilian Oversight Board was established.
- National Task Force on police reforms been launched and has completed its work.
- Police Reform Implementation Commission has been appointed by the President.

## Institutional Reforms – Civil Service

**D**id you know that the reason was part of the institutions to be reformed was because it was inefficient and corrupt among other things?

Did you that the retirement age has increased from 55 to 60 years? What does this mean for you? Does it make the civil service less corrupt and more efficient?

Do you remember the word performance contract? What has since happened? Are all those who signed contracts performing so well?

It is encouraging that most offices have posters on the walls indicating their willingness to support you but is that enough? Do you deserve more than just a sign on the wall?

## Implementation Matrix

### Focal Point:

- Ministry of State for Public Service/Service Commission.
- Ministry of Justice National Cohesion and Constitutional Affairs.

### Action:

- Parliament to pass bill incorporating civil service reform measures from past proposed draft constitutions.
- Continue with ongoing administrative and financial reforms.
- Results Based Management (RBM) and performance contracting to cover all persons paid from public funds.
- Review the corruption and economic crimes act 2003 and the public officer ethics act 2003.
- Review the legal frame work for declaration of incomes, assets and liabilities with a

view to establish an efficient and devolved administrative, compliance and analysis institutional framework.

- Appropriate constitutional and legal reforms will be undertaken to facilitate parliamentary vetting of senior public appointments.
- New legislation on whistle blower protection, freedom of information, and operationalization of witness protection act 2006.
- Review recruitment legislation to institutionalize national character in the public service.
- Review standing orders to ensure parliamentary oversight over membership of committees is based on competency and integrity.

### **Time Frame:**

- Bill to be passed by Parliament within twelve months of the coming into force of the new constitution.
- Results Based Management (RBM) and Performance contracting to be entrenched in the new constitution.
- The various legislations to be adopted by parliament within six – eight months of promulgation of the new constitution.

### **Progress Made:**

- Public Service Commission introduced a public contributory scheme and increased retirement age to 60.
- Solicitor General unveiled a plan to fast track promotions in civil service.
- Public Service Commission has launched its strategic plan.

## Institutional Reforms – Parliamentary

Does your Member of Parliament (MP) make any contributions in parliament? If s/he does not, do you ever wonder why?

Does your member of parliament take advantage of the Fiscal Management Bill 2008 which allows her/him to have a say in the drawing of the national budget?

Has the research centre which was strengthened in February 2009 helped your member of parliament? Has it made parliament more responsive?

Did the 200 million set aside for political parties ODM received 61.2 million and PNU 51 million make their administrative functions stronger? Has this changed the way political parties behave?

It is your money it is our country stand up and be counted! Ask for accountability.

## Implementation Matrix

### Focal Point:

- Parliament.

### Action:

- Comprehensive review of parliamentary standing orders and procedures to enrich quality and output of parliamentary debates and strengthen multi party democracy.
- Parliaments” research centre to be strengthened.
- Live coverage and electronic voting to be introduced.
- Enhanced oversight role of parliament over the national budget.
- Review standing to create a monetary and implementation committee.
- Introduce stricter and timelier deliberations on reports by institutions such as the Kenya Anti Corruption Commission (KACC), Kenya National Audit Office, State Law

Office, Kenya National Commission on Human rights.

- Strengthen programmes of parliament such as parliamentary accounts committee and parliamentary investments committee to promote transparency and accountability in the utilization of public resources.
- Improve transparency of MPs by creating a register of interests and opening up parliamentary committee work to the public.

#### **Time Frame:**

- Review to be completed within six months

#### **Progress Made:**

- Parliament has promulgated new standing orders that aim to increase transparency and accountability.
- Research centre strengthened; three new researchers been appointed.
- Parliament now has live broadcast.
- Parliament passed fiscal management bill to enable it have more say in the drawing of the National Budget.
- Political parties bill passed.
- A motion for mobile parliament is now in place.

## Land Reform

Did you know that the national land policy was enacted into law in November 2009? Has anything changed since then? Has government repossessed land grabbed? Why?

Was parliament in a hurry to enact land policy since it was a major reason for the post election violence?

What has happened to displaced persons who cannot go back to land that is legally theirs? Is there a change of attitude in land use given that we need to use land sustainably?

We need to think what good an eighth of an acre is to us, when it is not productive, just as we need to firmly say no to private ownership of vast tracts for the benefit of a select connected few.

Land grabbing goes unpunished. Government cannot do anything. Do you know that for effective implementation of land policy recommendations we need to enact a new constitution?

## Implementation Matrix

### Focal Point:

- Ministry of Lands.

### Action:

- Constitutional review to address fundamental issues of land tenure and use.
- The development and implementation of land policies should take into account the linkages between land use, environmental conservation, forestry and water resources.
- Finalization of the draft national use policy and enactment of attendant legislations.
- Land laws to be harmonized into one statute to reduce multiple allocations of title deeds.
- Establishment of a transparent ,decentralized, affordable efficient Geographic Information System (GIS) based land information management system and Geographic Information System (GIS) based land registry at ministry of lands including all local authorities.

- Land ownership document replacement for owners affected by post election violence
- Development of a national land use master plan, taking into account environmental consideration.
- Land reform transformation unit in the ministry of lands to facilitate implementation of the land reform programme as outlined in the national land use policy.
- Strengthen local level mechanisms for sustainable land rights administration and management.
- Finalize the land dispute tribunal act.

### **Time Frame:**

- Land reform process to be factored in the constitutional review process within twelve months.

### **Progress Made:**

- Draft land policy completed and the Cabinet has approved it.
- Ministry of Lands has launched Geographic Information System (GIS) management system.
- Mau complex Interim Secretariat launched.
- National Land Policy been enacted into law.

## Poverty Inequality and Regional Imbalances

**H**as the government done enough to ensure equitable distribution of wealth?

Did you know that the reason the Office of the President announced all 210 constituencies as districts in 13th July 2009 was aimed to tackle insecurity which would then translate into economic prosperity? What do you think?

Did you know the government in 17th August 2009 launched a 2 billion National Economic Stimulus project on Food production with the intention of putting over 40,000 acres of land under irrigation?

Are you feeling that we are now in the right track after the economic survey for 2009 was released by the planning national development and vision 2030 in 21 May 2009?

Did you speak to the 15 member task force

to hear public views on the constituency development fund which was launched on 23rd July 2009 and begun hearings on August? Have you seen them?

### Implementation Matrix

#### Focal Point:

- Ministry of Planning National Development and Vision 2030.

#### Action:

- Ensure equity and balance are attained in development across all regions including in job creation, poverty reduction, improved income distribution and gender equity.
- Increase community empowerment through devolved public funds for both social and income programmes and develop local capacity to manage devolved funds.
- Implementation of policies and programmes that minimize the difference 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.

- Improve wealth creation opportunities for disadvantaged groups and regions through increased infrastructure spending in roads ,water ,sewerage ,communications, electricity targeting poor communities and regions.
- 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.
- Develop an affirmative action policy and enhance women enterprise fund.

- Improve health infrastructure in underserved areas of the country through construction or rehabilitation of community health centres.

#### **Time Frame:**

- Implementation of measures to be reviewed within 2-3 years.

#### **Progress Made:**

- Task force to hear the public views on Constituency Development fund (CDF) was launched.
- Office of the President announced all 210 constituencies as districts to curb insecurity.
- Government launched 2 million stimulus project on food to put more land under irrigation.

## Unemployment (Youth)

What has the Youth Marshall plan done in terms of creating capacity and skills for youth?

Has the Kazi Kwa Vijana with a budget of 3.4 billion set aside created jobs for the youth?

Do you a Public procurement access to youth enterprise initiative was launched in 30th June 2009 to assist youth access money for projects faster? Do you know of any beneficiary of this program?

On 7th July 2009 youth who could not go to school in rift valley were given 88 million to subsidize cost of their schooling in polytechnics in 46 districts, has anybody since found out how many youth actually joined polytechnics?

What about the 68 million to subsidize tuition cost in central province? Where the 4,400 are intended beneficiaries, have you seen them?

What will happen to our country if the issue of youth unemployment is not tackled decisively?

### Implementation Matrix

#### Focal Point:

- Ministry of Roads, Public Works, Youth, Special Services and Gender.

#### Action:

- Generate an average of 740,000 new jobs each year from 2008-2012.
- 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.
- Youth Empowerment centre's to be rehabilitated or established in all constituencies.

- Upgrade existing National Youth Service institutions and establish three new ones.
- Development and enactment of a national youth council bill.
- Establish Youth Enterprise and Employment Programme to promote Small and medium enterprises (SMEs) and self-employment among the youth.
- Youth Enterprise Development Fund to be increased and mechanisms put in place for easier access to credit and collateral.
- Some 5,000 youth to be recruited to National Youth Service to be employed in labor intensive road projects, tree planting programmes and other productive activities.

### **Time Frame:**

- Review progress of implementation of the various measures within 12 months.

### **Progress Made:**

- Government is implementing a Marshall plan.
- Launch of Kazi Kwa Vijana plan.
- Government has been mobilizing donors to support Kazi Kwa Vijana.
- National Youth Service has recruited more youth.



# National Cohesion and Unity

**D**id you know that parliament enacted the National Cohesion and it came into force on March 2009?

The act was intended to promote national integration and provided for the appointment of commissioners to the National Cohesion and Integration Commission who were appointed on 10th September 2009 by the President?

Have you seen them? Have you heard about them? What happened why are they not working?

## Implementation Matrix

### Focal Point:

- Ministry of Justice National Cohesion and Constitutional Affairs.

- Office of the President.
- Ministries of Education and Information.

### Action:

- Finalize and support enactment of the Ethnic and race relations bill by parliament.
- Parliament and the Executive to initiate and sustain advocacy role on ethnic and racial harmony.
- Establish and operationalize a policy and institutional framework for peace building and Conflict Resolution Programme and early warning mechanisms on social conflict, including a Peace Building and Conflict Resolution (PBCR) monitoring and evaluation system and a restructured secretariat and enactment of the alternative dispute resolution bill.
- Extend District Peace committee framework to entire country and link it to District Security Committees.

- Finalize the Hate speech Bill and review the media act to control incitement attempts
- Undertake civic education on ethnic relations.
- Inculcate a civic culture, which tolerates diversity and encourages inter ethnic cooperation, through the school curriculum.
- Operationalisation of the Truth Justice and Reconciliation Commission (TJRC).

#### **Time Frame:**

- Ethnic Relations bill to be passed by parliament within 3 months.
- Review progress in implementation of the various measures within 12 months.
- The Truth Justice and Reconciliation Commission (TJRC) to complete its work in 2010.

#### **Progress Made:**

- Parliament Enacted the National Cohesion and Integration Act 2008, 27th November.
- Commissioners to the National Cohesion and Integration Commission have been announced and sworn in.
- The Truth Justice and Reconciliation Act has been enacted.
- Commissioners to the Truth Justice and Reconciliation Commission (TJRC) have been appointed.
- The Truth Justice and Reconciliation Commission (TJRC) has started its regional outreach by attending various town hall meetings listening to citizens' experiences.

## Truth & Justice Reconciliation Commission (TJRC)

**D**id you know that for the Truth Justice and Reconciliation Commission to work it needs to be legitimate and credible as an institution? Do you think that the fact that the current TJRC being constituted without the victims of violations being at the centre makes it not credible?

Do you think that the fact that the TJRC cannot force witnesses to appear before it makes

it legally hard to perform its duty? How about the fact that some people in powerful position are an interested party to the proceedings, does it then affect ability of TJRC to discharge its duty?

Do you think that requiring TJRC to seek permission from High Court to obtain permission to obtain documents may lead to destruction of such documents which may provide crucial leads?

Is TJRC a public relation activity or it is meant to address past injustice? If so ask the government to give it the credibility legitimacy and environment that will enable it work and fulfill its mandate.

## Transparency Accountability Impunity



### Implementation Matrix

#### Focal Point:

- Ministry of Justice, National Cohesion and Constitutional Affairs.
- Ministry of Finance.
- Attorney General office.
- Kenya Anti Corruption Commission (KACC).
- Judiciary.

#### Action:

- 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.
- Undertake programmes to support improved prosecution and adjudication of corruption

- and economic crimes, and improved oversight and consideration of an anti corruption and audit reports by parliament.
- Enhancing capacity and performance in the Investigation and Asset Tracing programme, the National anti corruption Awareness campaign and District Anti Corruption Civilian Oversight Committees.
  - Continuous monitoring of the public officer ethics act.
  - Revitalize Public Financial Management including the management of devolved funds such as Constituency Development Fund (CDF), Local Government Transfer Funds (LGTF) and road maintenance levy.
  - Expand Capacity of District Anti Corruption Civilian Oversight committees to monitor management of devolved funds and stigmatize corruption.
- Review the effectiveness of the Public Procurement Authority.
  - Undertake structural reforms focusing on prevention, investigation and recovery of corruptly acquired assets.
  - Review the effectiveness of Privatization Commission.
  - Fully operationalize the Governance Justice Law Order Sector (GJLOS) policy framework and establish comprehensive GJLOS policy review and update process.
  - Sustain African Peer Review Mechanism (APRM) process by ensuring assessment of government (Executive, Legislative and Judiciary) performance and accountability.

### **Time Frame:**

- Review progress in implementation of various measures within 12 months.

### **Progress Made:**

- Government advertised for public input into anticipated review of the public procurement and disposal act.

- Government gazzeted the international crimes act that domesticated the Rome statutes and defines international crimes.
- Kenya Anti Corruption Commission (KACC) and Ministry of Justice, National Cohesion and Constitutional Affairs finalized their United Nations Convention Against Corruption (UNCAC) compliance review.

## Electoral Reforms

This is an agenda 3 item but it has a lot of impact on agenda 4. This is the process that will oversee the referendum and bring into office persons who will be in charge of our country

Apart from setting up the Interim Independent Electoral Commission (IIEC) office and hiring a secretariat, no progress. What would happen if there was need for a general election without an electoral register in place?

The Government is relying on donors to make the office fully functional. Is that the Kenya we want?

## Perpetrators of Violence

We are still debating on whether to take them to The Hague or have a local tribunal. Ocampo came and went? What is the fate of those who seek justice, what happens to justice deferred or is it denied?

Have you heard that people are afraid to testify? What does this mean with regard to getting the truth?

Remember a threat to justice to justice anywhere is a threat to justice everywhere! Let us seek the truth for it shall set us free!

# National Anthem

## Kiswahili

Ee Mungu nguvu yetu  
Ilete baraka kwetu  
Haki iwe ngao na mlinzi  
Natukae na undugu  
Amani na uhuru  
Raha tupate na ustawi.

Amkeni ndugu zetu  
Tufanye sote bidii  
Nasi tujitoe kwa nguvu  
Nchi yetu ya Kenya  
Tunayoipenda  
Tuwe tayari kuilinda

Natujenge taifa letu  
Ee, ndio wajibu wetu  
Kenya istahili heshima  
Tuungane mikono  
Pamoja kazini  
Kila siku tuwe na shukrani

## English

O God of all creation  
Bless this our land and nation  
Justice be our shield and defender  
May we dwell in unity  
Peace and liberty  
Plenty be found within our borders.

Let one and all arise  
With hearts both strong and true  
Service be our earnest endeavour  
And our homeland of Kenya  
Heritage of splendour  
Firm may we stand to defend.

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.