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## South Consulting - 1st Review Report - Project Context and Summary of Findings

Truth, Justice, and Reconciliation Commission

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**THE KENYA NATIONAL DIALOGUE AND RECONCILIATION (KNDR)  
MONITORING PROJECT\***

**Project Context and Summary of Findings**

**January 2009**

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**INTRODUCTION**

1. Following the disputed presidential election results in December 2007, an unprecedented wave of violence erupted in several parts of the country. The violence quickly spread and was transformed into an ethnic conflict. The crisis had the potential of growing into a civil war as both the Government/Party of National Unity and the main opposition political party, the Orange Democratic Movement (ODM), hardened their positions.
2. The crisis brought to the surface deep-seated issues and divisions in Kenya. It threatened the very existence of Kenya as a unified nation-state. The country was rapidly getting divided into ethno-regional blocks.
3. On 28<sup>th</sup> February 2008 and under the auspices of the African Union Panel of Eminent African Personalities chaired by Mr. Kofi Annan, the Government/PNU and ODM signed the 'Agreement on the Principles of Partnership of the Coalition Government.' In the framework of the Kenya National Dialogue and Reconciliation (KNDR) the parties agreed to enact the National Accord and Reconciliation Act 2008 to end the political crisis. The National Accord laid the foundation for power sharing and for moving the country out of the crisis.

**The Kenya National Dialogue and Reconciliation (KNDR) Framework**

4. The KNDR framework identified four main agenda items for the purpose of ending the crisis. The four areas are critical for addressing the causes of the crisis, reconciling communities, and preventing future conflicts in the country.
5. These four agenda items are:
  - a. Agenda 1: Immediate action to stop violence and restore fundamental rights and liberties
  - b. Agenda 2: Immediate measures to address the humanitarian crisis, promote reconciliation, and healing
  - c. Agenda 3: How to overcome the political crisis

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- d. Agenda 4: Address long term issues, including constitutional, legal and institutional reforms; land reforms; tackling youth unemployment, tackling poverty, inequity and regional development imbalances, consolidating national unity and cohesion, and addressing impunity, transparency and accountability.
6. The parties to the KNDR agreed to establish a number of institutional frameworks to deal with different aspects of the crisis. The parties agreed to:
  - a. Establish an Independent Review Commission on the General Elections held in Kenya on 27th December 2007
  - b. Establish a Commission of Inquiry into Post-Election Violence
  - c. Establish a Truth, Justice and Reconciliation Commission
  - d. Review long-term issues and pursue a constitutional review process

### **WHY MONITOR IMPLEMENTATION**

7. Kenya's coalition government is not an end in itself. It was formed as a response to the political crisis that threatened the existence of Kenya as a nation-state. The coalition, therefore, was formed as a means to an end. It was formed to provide a means to implement broad reforms, including those that would address the factors responsible for the conflict the country was witnessing. Monitoring progress in undertaking reforms is important to assess successes and challenges with a view to providing lessons that keep Kenya on the reform track.
8. By their very nature, however, coalitions are politically fragile. They comprise different and dynamic political entities that work jointly while preserving their individual identities. It is difficult, therefore, for coalition partners to monitor or track their progress on their own because individual interests may influence how they see and interpret this progress. Therefore, in order to keep focused on the goal of the National Accord, there is a need to regularly track or monitor progress made in implementing action points on each agenda item.
9. An external and independent assessment is important in showing progress or lack of it in implementation of each agenda item. This is also critical in identifying and providing feedback on progress, challenges and gaps in implementation. Moreover, there is need to keep reminding everyone that reforms – for which the coalition government was established – are critical. Comprehensive reforms will prevent a violent political conflict.

### **THE KNDR MONITORING PROJECT: OBJECTIVES AND SCOPE**

10. This project aims at assisting in objective and independent monitoring of how each agenda item is being implemented. The project seeks to track progress in implementation and provide feedback on a regular basis. The findings will inform decisions on what actions or interventions need to be undertaken within given timelines.

11. The project has three objectives:
  - a. Avail objective data on the progress in the implementation of the National Accord.
  - b. Provide data to inform interventions.
  - c. Provide information on emerging socio-political issues/challenges that impact on the implementation of the National Accord.

## **PROJECT OVERVIEW AND INDICATORS**

12. The goals of the Kenya National Dialogue and Reconciliation monitoring project derive from the **goal** of the National Accord, which is the achievement of sustainable peace, stability and justice in Kenya through the rule of law and respect for human rights. The **purpose** of this monitoring project, therefore, is improved implementation of the National Accord.
13. Both the goal of the Accord and the purpose of the project underscore the need to pay attention to each of the key components of the National Accord. Some of the key indicators to be tracked include the following:
  - a. Agenda Item 1:
    - i. *Stopping violence*: Incidences of political violence; actions to stop violence, for example, demobilisation and disarmament of illegal armed groups; and perceptions about political violence,
    - ii. Restoring fundamental rights and liberties: Different forms and scales of violence; and incidences that promote/violate rights.
  - b. Agenda Item 2:
    - i. *Addressing the humanitarian crisis*: Resettlement programme for internally displaced persons; the nature of humanitarian assistance
    - ii. *Promoting healing and reconciliation*: Actions to promote healing and reconciliation.
  - c. Agenda Item 3:
    - i. *Resolving the political crisis*: Power sharing; political cohesion and coherence in decision making; public perceptions on delivery of services; conflict management in the coalition.
  - d. Agenda 4: Progress made in:
    - i. Undertaking constitutional and institutional reforms.
    - ii. Tackling poverty and inequality.
    - iii. Tackling unemployment among youth.
    - iv. Consolidating national cohesion and unity.
    - v. Undertaking land reforms.
    - vi. Addressing transparency and accountability.
  - e. Tracking progress of commissions of inquiry established to address various aspects of the root causes and the consequences of the crisis.

### *Methods of data collection*

14. The project employs a mix of methods in collecting data. Primary methods include interviews with various respondents and Focus Group Discussions. In addition, the project has conducted a national baseline survey to gather perceptions or opinions on the state of implementation of the various agenda items. Secondary methods include review of reports generated by the government, civil society organisations, the United Nations agencies, the Kenya Red Cross, International Non-Governmental Organisations and the media.
15. For this quarter, a number of methods were employed in collecting data:
  - a. National Baseline Survey: The baseline survey comprised a sample size of 4,021 households spread across the country in all regions. The respondents in the survey were randomly sampled. The survey was conducted in December 2008.
  - b. Case studies: Case studies on implementation of each agenda item were undertaken in selected areas of the country. Case studies were undertaken in Rift Valley Province, Central Province and Nairobi. Data for the case studies was obtained through interviews with key informants, expert interviews, and Focus Group Discussions, among other methods.
  - c. Secondary data sources: A review of data by government departments, United Nations agencies, humanitarian agencies including the Kenya Red Cross Society, civil society organisations and the media was undertaken. This made it possible to obtain diverse perspectives on the implementation of various aspects of the respective agenda items.

## **SUMMARY OF FINDINGS**

### **Agenda Item 1: Immediate Action to Stop Violence and Restore Fundamental Rights and Liberties**

15. Although the Government has taken a number of steps to reduce incidences of political violence, the approach to illegal armed groups appears to have been unsystematic. The informal manner in which these groups operate poses challenges for their demobilisation and disarmament. The lack of a specific policy on disarmament and the fact that these groups could re-emerge is an issue of concern. In addition, there is concern that prosecution witnesses may not give evidence to the Special Tribunal on post-election violence (when the tribunal is constituted) if there are no adequate measures to effectively protect them.
16. Fundamental freedoms and liberties are increasingly being constrained. Violent dispersal of groups petitioning the Government over a number of issues - including violent dispersal of Internally Displaced Persons (IDPs) - is a pointer to a rapid erosion of democratic gains, and freedoms in particular.

**Agenda Item 2: Immediate measures to address the humanitarian crisis, promote reconciliation and healing**

17. Although the number of IDP camps has reduced, this is no measure of success in addressing the IDPs problem. Findings show that the humanitarian crisis is far from over and that it has taken a new and more complex dimension. IDPs continue to live in informal camps without access to basic services; they face new problems. Furthermore, the importance of the IDP situation appears to be diminishing as a national issue and priority.
18. Though there have been initiatives aimed at promoting healing and reconciliation among communities, results are yet to be achieved. Findings show that the initiatives do not address the core causes of conflict and divisions among communities. Politicians are also not actively involved at the local level.
19. There is a relapse with regard to fast-tracking healing and reconciliation. The calm witnessed in the areas affected by post-election violence has led to the assumption that the causes of conflict have been addressed. To the contrary, there is resentment against IDPs in areas from where they were evicted.

**Agenda Item 3: How to overcome the political crisis (power sharing)**

20. The coalition government lacks cohesion. The dominant perception is that there are ‘two-governments-in-one’. Lack of cohesion has led to lack of consensus in decision-making. This has in turn led to conflicts and disagreements over important issues. Further, the National Accord is itself subject to multiple interpretations with many arguing that power is not equally shared and that one partner is more influential than the other.
21. Conflicts and lack of cohesion within the Coalition have meant lack of collective vision on reforms and that commitment to reforms is not internalised. Absence of a collective vision on reform can give room for anti-reform and non-reform forces to undermine efforts towards comprehensive constitutional and institutional reforms – the main requisite for Kenya’s stability.
22. The Coalition does not have a framework or agreement to manage relations between partners. Although a committee has been constituted to manage affairs within the Coalition, the absence of a coalition agreement portends difficulties in promoting cohesion.
23. Divisions that characterise the Coalition Government threaten the attainment of critical reforms. Political leadership and direction is required from the two principals. There is need for the two principals to begin attending parliamentary sessions to lobby for and mobilise support for key reforms. Although KNDR members have been

leading this initiative, the absence of the two principals from Parliament makes them open to criticism especially by anti-reform forces.

#### **Agenda Item 4: Long standing issues and solutions**

24. Implementation of some aspects of Agenda Item 4 largely depends on the enactment of a new constitution. Two critical laws have been enacted (the Constitution of Kenya (Amendment) Act 2008 and the Constitution of Kenya Review Act, 2008) to jump-start the constitutional review process. The process of creating organs of the review has been instituted and the review process appears to be on course.
25. The huge time gap between the constitution of the Coalition Government and the enactment of the review statutes has delayed the process of achieving a new constitution. This has in turn delayed the process of initiating some key aspects of comprehensive institutional and legal reforms that are linked to a new constitutional framework.

#### **KEY CONCLUSIONS**

26. The findings on Agenda Item 1 show that because the social-political conditions that gave rise to illegal armed groups are yet to be addressed these groups can re-group with ease. Further, adequate protection of witnesses in the Special Tribunal on post-election violence is critical; success of efforts made to end impunity will depend on effective protection of witnesses. There is continued erosion of fundamental freedoms and rights. There is need for members of the KNDR mediation process to mobilise support within the Government to foster respect of fundamental rights and freedoms.
27. Findings on Agenda Item 2 show that the IDP humanitarian crisis is far from over. The significance of the IDP situation as an issue of national concern is rapidly diminishing. Pressure to address the IDP situation must be sustained lest the displaced become increasingly marginalized.
28. Healing and reconciliation is yet to take place. Political leaders have not been at the centre of healing and reconciliation initiatives. The two principals will have to provide leadership and direction; the two principals should constitute groups to mobilise for national cohesion from the national level to the grassroots.
29. Agenda Item 3 remains a subject of contestation. The two parties tend to have different interpretations of the principles of the National Accord. The issue of how “real power sharing” should be comprehensively effected has not been settled.
30. There is lack of collective vision on reforms. This has given room for anti-reform and non-reform forces to operate at all levels. For this reason, there is need for the two

principals to continually attend parliamentary debates and mobilize support for key reforms during such debates.

31. Absence of a coalition agreement to assist in the management of affairs and relations within the Coalition has deepened suspicions and mistrust. A coalition agreement should be developed and signed to manage coalition affairs.
  
32. Agenda Item 4 is central to the future of Kenya as a united nation-state; undertaking fundamental reforms such as constitutional review, land reforms and institutional reforms is critical for the future stability and prosperity of the country. Though progress has been made in some areas, it is not sufficient to prevent another crisis. More important, fostering national cohesion through elimination of feelings of exclusion and marginalisation is critical in achieving a unified nation. Nevertheless, the dominant perception is that after politicians shared power they are not keen to fast track reforms. But comprehensive reforms are a must and should be seen to be taking place if the country is to avoid another wave of political violence.