

**EVALUATION OF THE PROJECT
CONSOLIDATING GAINS FROM THE KENYA NATIONAL DIALOGUE AND RECONCILIATION
PROCESS**



Plamen Tonchev
Michele Di Benedetto

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Abbreviations

ACP	Advisory Committee on Procurement
AU	African Union
CIDA	Canadian International Development Agency
CIPEV	Commission of Inquiry into the Post-Election Violence
CLO	Coordination and Liaison Office
CoE	Committee of Experts on Constitutional Review
CSO	Civil Society Organisation
DANIDA	Danish International Development Agency
DCG	Donor Coordination Group
DEX	Direct Execution
DFID	(UK) Department for International Development
DCG	Donor Coordination Group
DSA	Daily Subsistence Allowance
ECK	Electoral Commission of Kenya
GEMA	Gikuyu/Kikuyu, Embu and Meru Association
GoK	Government of Kenya
HDC	Harmonised Draft Constitution
ICC	International Criminal Court
ICTJ	International Centre for Transitional Justice
IDPs	Internally Displaced Persons
IECB	Independent Electoral and Boundaries Commission
IfS	Instrument for Stability
IICDRC	Independent Interim Constitutional Dispute Resolution Court
IIEC	Interim Independent Election Commission
IREC	Independent Review Commission on the 2007 Elections
KNADS	Kenya National Archives and Documentation Service
KNDR	Kenya National Dialogue and Reconciliation process
KNDRC	Kenya National Dialogue and Reconciliation Committee
M&E	Monitoring and Evaluation

NEX	National Execution
NCIC	National Cohesion and Integration Commission
NSIS	National Security Intelligence Service
NTFPR	National Task Force on Police Reform
OCHA	(UN) Office for the Coordination of Humanitarian Affairs
ODM	Orange Democratic Movement
OHCHR	Office of the High Commissioner for Human Rights
OSIEA	Open Society Initiative for Eastern Africa
OTI	Office of Transition Initiatives (USAID)
PEAP	Panel of Eminent African Personalities
PNU	Party of National Unity
PSC	Public Service Commission
PWEQ	Project-Wide Evaluation Question
SSA	Special Service Agreement
SSEQ	Stakeholder-Specific Evaluation Question
SIDA	Swedish International Development Cooperation Agency
ToRs	Terms of Reference
TJRC	Truth, Justice, and Reconciliation Commission
UNDP	United Nations Development Programme
UNDPA	United Nations Department for Political Affairs
UNON	United Nations Office in Nairobi
UNOPS	United Nations Office for Project Services
USAID	United States Agency for International Development

1. Introduction and acknowledgments

This project was necessitated by the dramatic events in Kenya that followed on the heels of the 27 December 2007 elections. The successful mediation effort of the international community through the African Union Panel headed by Mr Kofi Annan helped prevent a dangerous escalation of what was already a full-fledged conflict in the country. UNDP was involved in this effort from the very start and was tasked to manage a significant project aiming at the stabilisation of Kenya through a difficult period of its modern history.

Three years and a half after the conclusion of the negotiations, this is the appropriate time for stock-taking, lessons learnt and some forward thinking. It is hoped that the issues touched upon and points raised in the report will be a small, but constructive, contribution to the consolidation of the gains ensured by the peace-building process launched in February 2008. The evaluators have done their best to offer some useful thoughts which, however, remain their own and do not necessarily represent the views of UNDP.

The review of this project would not have been possible without support provided to the evaluation team by a number of stakeholders. The evaluators would like to express their warm thanks to Ms Nirina Kiplagat, Programme Officer in the Peace Building and Conflict Resolution Unit, UNDP Kenya as well as to Mr. David Ekiro, Procurement Officer, UNDP Kenya. The help of the Coordination and Liaison Office staff, headed by Amb. Nana Effah-Apenteng, has also been highly appreciated and deserves to be highlighted. Representatives of both international donors and local stakeholders have taken the time to meet the evaluators and express their views and suggestions, which are duly reflected in this report.

Last but not least, the Evaluation Team takes the chance to wish the people of Kenya the fulfilment of their dreams for peace, stability and prosperity, which they fully deserve.

2. Executive Summary

The project was a quick and timely response to an emergency in Kenya, in the wake of the deadly post-election violence that broke out between December 2007 and the end of February 2008. The African Union Panel of Eminent African Personalities, led by former UN Secretary General Mr. Kofi Annan, played a crucial role in brokering a power-sharing agreement between the two main parties in the country. Following up on this arrangement and making sure that violence did not erupt again was an urgent task that required continual support. The Panel proposed the establishment of a Coordination and Liaison Office (CLO) with the overall objective of facilitating the effective implementation of the Kenya National Dialogue and Reconciliation (KNDR) process. Funding to the new structure was provided through UNDP, which became involved from the first days of the mediation effort.

In 2009, donors offering financial support to the KNDR process also requested that the CLO project be extended to cover activities of the Interim Independent Electoral Commission (IIEC) and the Committee of Experts on Constitutional Review (CoE). Meanwhile, the Coalition Government made a request that the CLO be extended for a further twelve months, so that it could continue to support the process of implementation of the KNDR agreements. The UNDP-managed project, or at least its CLO component, ended in late 2010 and officially closed in March 2011. However, the workplan of CLO was closely related to the outcome of the entire KNDR process, which is why in April 2011 a new UNOPS-led project was launched, with the title 'Continuing the Gains from the KNDR process'.

The design displays certain weaknesses which transpired at a later stage, e.g. the project structure (Outputs/Components) could have been more thoroughly thought-out and goals (Outcomes) could have been less ambitious. The three-pronged set of CLO mediation (Output 1), monitoring and evaluation activities (Output 2), and the establishment of an archive of the KNDR process (Output 3) was not sufficiently tightly knit. Not all the expectations as regards the political context were fully met, but they also offer useful lessons learnt. For instance, it could have been anticipated that the Government of Kenya might not live up to all its financial pledges. This caused the inclusion of CoE into the CLO project, which had some obvious merits in terms of managing donors' inputs, but was not the best fit operationally, as CoE was primarily a national body and subject to Kenyan procurement legislation. Nor was an exit strategy properly considered at the project design stage.

At the same time, the evaluators acknowledge the fact that the project was launched in dramatic circumstances and its structure was actually designed later under considerable time pressure. It should be noted that UNDP and other UN agencies responded to an emergency, when few other actors were in a position to do so. It is also true that design weaknesses did not affect the relevance of the project as the sole meaningful approach to the post-election crisis in Kenya in early 2008, though there is a question mark over the inclusion of Output 3 raised by donors supporting CLO activities.

One of the inherent features of the project is CLO's dual mission as: (i) a moderator of political dialogue between the Panel and the two major parties involved in the Grand Coalition as well as (ii) an administrative facilitator for the transfer of international expertise to the newly established bodies stemming from the KNDR process. Perhaps inevitably, UNDP and CLO had divergent views on several

policy issues due to the fact that CLO was created as a secretariat to the Panel, has been reporting to its members all along and was at the same time part of the UNDP-managed project.

Necessary funding was ensured, in a somewhat fragmented way, by 15 different donors. The basket fund that covered Output 1 was to a large extent the sole appropriate modality in terms of efficiency, financial accountability and political expediency (mainly from the point of view of donors), even after the inclusion of CoE, which changed the complexion of the project quite a bit. Output 2 was financed directly by the Open Society Initiative for Eastern Africa (OSIEA) and Output 3 was supported by the Rockefeller Foundation through UNDP. The relationship between CLO and UNDP was further strained by a high degree of incompatibility between the rapid-response nature of Output 1 activities as well as the tight timeline of CoE activities and UNDP internal constraints. As a result, a number of deviations from standard procurement procedures had to be considered, so that Output 1 activities were carried out on time and the project could address the lack of understanding of UNDP accountancy requirements on the part of beneficiaries.

At this stage, it may be early to assess the precise extent of the project contribution to the KNDR process over the 2008-2010 period. Yet, all the stakeholders interviewed by the evaluation team agree that the mediation offered by the AU Panel was instrumental in bringing violence to a halt. Subsequently, the dialogue between the Party of National Unity (PNU) and the Orange Democratic Movement (ODM), as moderated by the Panel, helped reduce the tension between the two parties, even if diplomatic efforts are hard to record and announce in public. The evaluators have a very positive view of the outputs produced by South Consulting – methodologically sound reports, of high added value, non-partisan and taken seriously by stakeholders. It is important to stress that South Consulting retains its independence, as the firm has contributed its own expertise, even if comments and advice were provided by CLO. As regards the Kenya National Archives and Documentation Service (KNADS), the infrastructure is largely in place, selected staff have been trained, files have been digitised and footage has been obtained. However, it is still unclear when the sensitive records, currently kept by CLO, will be delivered to KNADS, and when and to what extent they will be accessible.

The Outcomes have been achieved to a varying degree. CLO managed to propose the names of highly qualified international experts at a short notice to the various commissions set up under the KNDR process. The contribution of CLO through the provision of international expertise is not negligible, though it can only be assessed indirectly and by inference. For instance, there are indications that international experts managed to bring in an added value to the process of constitutional revision and that the Government of Kenya (GoK) has been receptive of the findings of the South Consulting reports. The diplomatic efforts of CLO and the reports produced by South Consulting are understood to have contributed to setting the political agenda in some areas, though the overall pace of the KNDR process appears to be slow. While a culture of constitutionalism is still far from being instilled, there have been encouraging developments in Kenya since 2008.

At the same time, the project only touched on a small fraction of the spectrum of acute problems plaguing Kenyan society and of the root causes of violence. What calls for a serious discussion is the resilient culture of impunity in the country and this is a long-term challenge that does not seem to have been addressed satisfactorily yet. Other challenges ahead relate to the multiple elections to be held in 2012 or early 2013 and the delays in the formation of the new electoral administration, the limited (if any) measurable impact on police reform, persistent long-standing issues (e.g. land disputes and displacement), etc. Unless these challenges are duly prioritised, the sustainability of the KNDR process should not be taken for granted. Having said that, the evaluators acknowledge that the mediation effort

of the international community in early 2008 could serve as an example of best practice on a wider regional and international scale. The overwhelming interest and active engagement of the African continent in coming to the aid of Kenya has indicated that there is enough will and skill for an African solution to an African problem.

The list of key lessons learnt and recommendations to be considered includes the following points:

Key Lessons Learnt

- The successful mediation by the AU Panel in 2008 was rightly followed up by the creation of the CLO structure.
- The content of the project as well as funding and operational modalities have not been ideal and underscore the importance of proper design, streamlining and coordination.
- Speed and flexibility are the main exigencies of the operational set-up for this type of rapid-reaction response to a crisis.

Key Recommendations to be Considered

- The CLO structure should remain in place till after the upcoming elections, as a valuable item in the toolkit of the international community in case further assistance is needed.
- The institutional framework should ensure the seamless co-operation between CLO and a service provider specialising in rapid-reaction operations.
- A comprehensive early warning system (EWS) should be devised in conjunction with other ongoing activities well in advance of the upcoming elections and should be widely used by a network of relevant stakeholders, so that their expertise in good governance and crisis prevention is fully utilised.
- In the broader context of the KNDR process and with a view to the challenge of the next elections, capacity building programmes will need to be considered for a number of stakeholders, particularly for the new electoral administration, in terms of best practice and risk mitigation.

3. Evaluation Methodology

Strictly speaking, the evaluation only covers the UNDP-led project till March 2011 (see Terms of Reference of the Evaluation Team in Annex I). In practice, the evaluators have also taken into account the follow-up UNOPS-led project in order to assess sustainability aspects, to enrich the list of lessons learnt and to formulate relevant recommendations for the future. It is noted that at the time of this evaluation mission a parallel review of the CoE project was also under way.

In defining the appropriate methodology to be applied to the assessment of the Outputs (*alias*, Components) and Outcomes, the Evaluation Team have carried out the review bearing in mind the following parameters:

- It is noted that *de facto* project implementation is over and has been fairly well reflected in an extensive body of quarterly, annual and final reports. A substantial part of the assignment was the desk review of relevant documents during the inception phase of the mission. This helped the evaluators formulate a number of assumptions and working hypotheses, which were verified and refined during the meetings with stakeholders. For instance, key findings coming out of the monitoring & evaluation (M & E) component of the project and the quarterly reports produced by South Consulting have been used by the Evaluation Team, but at the same time they have been cross-checked against other sources of information, such as interviews with stakeholders, media reports, etc.
- An initial briefing by UNDP gave the Evaluation Team a solid understanding of the contractual and institutional context of the Kenya National Dialogue and Reconciliation process as well as of the specific intervention. Subsequently, the Inception Report submitted to and approved by UNDP outlined the methodological approach of the team.
- Within the short timeframe of the field mission, the evaluators conducted a series of meetings with key stakeholders (see Annex III). The Evaluation Team opted for meetings with a representative sample of donors, so as to record their views properly. Some of the local and international stakeholders were not available either due to the holiday season or because of their heavy agenda, e.g. time pressure on Members of Parliament to pass the laws envisaged in the new Constitution by 26 August 2011, which necessitated a short no-cost extension of the assignment. In addition, given that a number of beneficiaries were no longer in Kenya, as was the case with international experts and commissioners serving on bodies that have long been dissolved, the evaluators sent e-mails to all of them and received some replies that have been incorporated in the report. Unfortunately, despite their persistent efforts, the evaluators were not able to meet representatives of the Rockefeller Foundation.
- The content of each interview was prepared in advance and the structured questionnaires included stakeholder-specific evaluation questions (SSEQs) as well as project-wide evaluation questions (PWEQs). Stakeholder-specific evaluation questions took into account the mission of the institutions being assessed, their resources and performance. Project-wide evaluation questions addressed horizontal issues, such as the degree of satisfaction of stakeholders with services provided through the project or possible recommendations in view of similar interventions in the future, should they be needed. The interviews with partners and stakeholders helped the Evaluation Team record an array of views, which have been duly processed and reflected in the report.

In addressing the Objective of the Evaluation ('to assess the impact of the support provided to the CLO and identify lessons learned from the process'), the Evaluation Team acknowledges that this is not a typical UNDP project. In fact, CLO is primarily a facilitator in a mediation process and cannot replace key national stakeholders as the driving forces behind the KNDR process, whereas UNDP was called on to support the CLO and its role was essentially limited to the provision of funding. Therefore, the impact of the support offered by UNDP can only be assessed indirectly through the performance of the CLO and its beneficiaries.

Deriving from the above considerations, it is important to note that, while the standard methodology set out in the 2002 UNDP Handbook on Monitoring and Evaluation for Results remains the analytical framework of the assessment, it could only be applied to a certain extent. Given the specificity of the project (e.g. its highly political nature and complexity), the team is of the view that the use of performance indicators needs to be more elaborate and nuanced than usual.

Therefore, the scale used by the evaluators includes five grades, namely:

- For Outcomes: 'clearly negative', 'largely negative', 'average', 'largely positive' and 'definitely positive', with clarifications provided;
- For Outputs: 'definitely no', 'a likely no', 'partial', 'a qualified yes' and 'definitely yes', with clarifications provided.

A detailed evaluation grid can be found in Annex V. As regards the distinction between quantitative and qualitative indicators, the first category is applicable to a much larger extent to Outputs rather than to Outcomes.

The intervention was designed and implemented in a specific – and rapidly changing – political environment. Therefore, the Evaluation Team deemed it necessary to correlate the assessment of project progress to political developments in Kenya over the implementation period. Chapter 4 of the report analyses the way broader political developments affected project implementation. Annex IV then sets out the two parallel timelines in greater detail. Chapter 5 on design presents the Outputs/Components and Outcomes of the project as well as its institutional architecture and the effectiveness of risk management strategies as tested by challenges that emerged over the three-year life cycle of the intervention. Chapter 6 focuses on project management and the funding modality chosen for the provision of financial inputs, while it also highlights practical difficulties encountered during the implementation period. Chapter 7 analyses the extent, to which the activities envisaged have been carried out and the project goals have been achieved. In Chapter 8 the evaluators speculate on the potential impact to be expected as well as challenges ahead. Significant lessons to be drawn are presented in Chapter 9, so that useful recommendations and possible modalities for their implementation are put forward in Chapter 10.

4. Project Life Cycle

The 27 December 2007 elections were the most highly contested elections since Kenya gained its independence in 1963. Violence and looting took place particularly in the Rift Valley, Nyanza, Coast and in some neighbourhoods of Nairobi. After a number of mediation efforts from various actors, the Government and the Opposition accepted the mediation proposals put forward by the international community and agreed that the former Secretary General of the United Nations, Mr. Kofi Annan, should be appointed Chief Mediator, with the support of a Panel of Eminent African Personalities (PEAP) who would negotiate with both sides of the political divide. In addition to Mr. Kofi Annan, the Panel brought together Mr. Benjamin Mkapa, former President of Tanzania, and Mrs. Graca Machel, former First Lady and Minister of Government in Mozambique.

The Panel arrived in Nairobi on 22 January 2008 and was immediately assisted by the UN system in Kenya as well as by a team from the UN Department of Political Affairs (UNDPA). It was arranged between Mr. Kofi Annan and the UN Secretary General Mr. Ban-Ki Moon that the UN would formally support the mediation efforts of the Panel. The Kenya National Dialogue and Reconciliation Committee (KNDRRC) was then formed and developed a four-point agenda.

- (1) Immediate action to stop violence and restore fundamental rights and liberties;
- (2) Immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration of calm;
- (3) Overcoming the political crisis; and
- (4) Long-term issues and solutions (such as land reform, constitutional and institutional reforms, poverty and inequality, unemployment etc.)

The power-sharing compromise, which was enshrined in various agreements between the two major parties, provided Kenya with a Government of National Unity, in conjunction with the creation of a Prime Minister and two Deputy Prime Minister posts. The National Dialogue Team decided to establish three pivotal Commissions: the Independent Review Commission on the 2007 Elections (IREC), the Commission of Inquiry into the Post Election Violence (CIPEV) and the Truth, Justice, and Reconciliation Commission (TJRC). IREC was mandated to investigate all aspects of the 2007 general elections and make recommendations on the improvement of the electoral process in the future. CIPEV was tasked to list the facts relating to the post-election violence, including actions or omissions of state security forces between 28 December 2007 and 28 February 2008. CIPEV was also called upon to make recommendations on criminal accountability, reconciliation and the prevention of similar acts in the future. TJRC was mandated to inquire into human rights violations as well as major economic crimes and historical injustices, including those related to land disputes, covering a time span between 12 December 1963¹ and 28 February 2008. Other decisions included the road map towards a new constitution, which resulted in a Bill foreseeing the establishment of a Committee of Experts (CoE) tasked to examine previous constitutional drafts, receive inputs from the public, propose compromises for contentious issues, and finally present a new draft Constitution.

The UN system in Kenya fully supported the PEAP Secretariat during the negotiation process. Under what was termed the initiation plan, UNDP secured a pool of initial funding from various donors towards meeting the administrative cost incurred by the Secretariat. The United Nations Office in Nairobi

¹ Kenya became an independent republic on 12 December 1963.

(UNON) and UNHABITAT provided personnel and assumed responsibility for the holding of meetings; later on, expenditure related to the work of the Commissions were charged to the UNDP pool project fund.

Mr. Annan chaired a KNDR session on 17 April 2008 immediately after the swearing-in of the Coalition Cabinet. The meeting reaffirmed the need for the continued engagement of the Panel during the implementation phase. Towards that end, the Panel proposed the establishment of a Coordination and Liaison Office (CLO) with the overall objective of supporting and facilitating the timely and effective implementation of the KNDR agreements. The ToRs of CLO were approved by the KNDR team during its formal session held on 30 July 2008.

This marked the end of the mediation phase. CLO was set up as the successor arrangement to the Mediation Process and was structured within a UNDP Project, “Consolidating the gains from the Kenya National Dialogue and Reconciliation Process (KNDR)”. The project became effective on 1 October 2008, initially for one year, though its duration was subsequently extended. The Project Document was officially signed in January 2009.

Meanwhile, the project was already delivering tangible outputs. In October 2008, the two main Commissions resulting from the Mediation Phase of the KNDR produced their reports. IREC submitted the so-called ‘Kriegler Report’² that put forward a structured set of relevant recommendations concerning the reform of the Kenyan election administration. Two of the key recommendations formulated by IREC envisaged (i) a broad consultative process prior to the appointment of ordinary members and the chairman of the Electoral Commission of Kenya (ECK), which should be accountable to Parliament; (ii) a new and more inclusive voter registration process³.

CIPEV (the so called “Waki Commission”) handed over its report to the two principals on the 15 October 2008; its key recommendations dealt with a wide spectrum of aspects related with the post-election violence, spanning from the establishment of Gender Violence Recovery Centres as departments in every hospital, to assessment of the programmes for Internally Displaced Persons (IDPs) and policies in place in the country. The most sensitive part of the report related to the names of people alleged to have been implicated in the outburst of post-election violence and the relevant envelope was handed over to the Panel. The Waki commission suggested the creation and structuring of a Special Tribunal focusing on crimes committed during the outburst of post-election violence⁴. At the same time, the referral of cases to the International Criminal Court (ICC) was put forward as a possible alternative to a Special Tribunal.⁵ The Waki commission also suggested a comprehensive reform of the Kenyan police forces.

In December 2008, ECK was disbanded to be replaced by an Interim Independent Election Commission (IIEC). In January 2009, the second Component of the project (Output 2) was launched, with the

² After the name of the IREC chairman, the South African judge Johann Christiaan Kriegler.

³ Kriegler Report, pp. 154, 157.

⁴ The recommendation on the creation a Special Tribunal is formulated as follows: *A special tribunal, to be known as the Special Tribunal for Kenya be set up as a court that will sit within the territorial boundaries of the Republic of Kenya and seek accountability against persons bearing the greatest responsibility for crimes, particularly crimes against humanity, relating to the 2007 General Elections in Kenya. The Special Tribunal shall achieve this through the investigation, prosecution and adjudication of such crimes.*

⁵ Ibid, Recommendation 5.

publication of the first monitoring and evaluation (M&E) quarterly report produced by South Consulting. A highly visible event was the conference on the progress of the KNDR process held in Geneva in March 2009.

However, the creation of a Special Tribunal proved to be a difficult political decision. In February 2009, the National Assembly failed to adopt the relevant legislation which would have led to the establishment of the new institution. In November 2009, the GoK announced it was ready to co-operation with ICC.

Meanwhile, the Committee of Experts on Constitutional Review (CoE) was set up, including three international commissioners, and became operational in March 2009. IREC/CIPEV equipment stored in CLO premises was provided to the newly set up body. CoE members carried out intensive discussions and ran a large-scale sensitisation campaign aiming at engaging Kenyan society. In June 2009, donors providing financial support to the KNDR process also requested that the CLO project be extended to cover activities of CoE, which they had undertaken to fund through the CLO, and whose mandate was to continue into 2010⁶.

The National Task Force on Police Reform (NTFPR) was created in May 2009 and at about the same time CLO suggested the names of international judges for the Interim Independent Constitutional Dispute Resolution Court (IICRDC). Two months later, in July 2009, TJRC commissioners were appointed by President Kibaki.

With facilitation by CLO, funding was raised by UNDP to support the first by-elections organised by IIEC on 27 August 2009 in Bomachoge and Shinyalu. However, as the funds were not immediately available, CLO pre-financed the activities on the understanding that the funds would be reimbursed once donor pledges were redeemed. The support covered the training of presiding officers, deputy presiding officers and polling clerks.

In addition, the initial project was expanded to also include support for the by-elections to be held by the Interim Independent Electoral Commission (IIEC), which is to be replaced later in 2011 by an Independent Electoral and Boundaries Commission (IEBC). Meanwhile, the Coalition Government, made a request that the CLO be extended for a further twelve months, so that it could continue to support the process of implementation of the KNDR agreements. This request was expressed during a session of the party negotiators appointed by President Mwai Kibaki and Prime Minister Raila Odinga, held on 30 June 2009 at the Serena Hotel.

In another development, the third Component (Output 3) aiming to establish an archive of the KNDR process ('to preserve the knowledge and information generated and to improve national capacities for conflict prevention and mediation in Kenya') was launched in November 2009. The Rockefeller Foundation approved CLO's request for US\$865,000 and the funding was provided to UNDP to manage it on behalf of the beneficiary, the Kenya National Archive and Documentation Service (KNADS).

⁶ CoE was established as *ad hoc* body by an act of Parliament of 22 December 2008 which stated that, if the Constitution was ratified through the referendum, then CoE should stand dissolved forty-five days after the day that the President proclaimed the new Constitution to be in force.

Ahead of the constitutional referendum, CLO Finance and Administration Officer became involved in a fund-raising campaign targeting international donors, whereas UNDP and CoE signed Letters of Agreement laying down the terms of their co-operation. The referendum was held successfully in August 2010 and the new constitution was adopted. Subsequently, CoE and IICRDC were dissolved in October 2010. The second KNDR conference took place in Nairobi in December 2010.

Officially, the project duration expired at the end of September 2010. From the CoE perspective, it had indeed run its course. However, the situation with the CLO was quite different. The CLO workplan was closely related to the outcome of the KNDR process. In April 2011, a new UNOPS-led project was launched, with the title 'Continuing the Gains from the Kenya National Dialogue and Reconciliation process'.

5. Strengths and Weaknesses in Project Design

Given that the implementation of the UNDP-managed project is over, this is essentially an ex-post evaluation, with its inherent advantages and constraints. The team deliberately took a holistic approach to the intervention and sought to look into the project in its entirety, from the design stage through issues emerging during the implementation period to Outputs being delivered and long-term Outcomes likely to be achieved. While the previous chapter covered a time span of nearly three years, this review aims to assess the prospects of the intervention all the way to – and even beyond – the upcoming elections. It is recalled that the intervention started with the PEAP mediation effort, which then necessitated the establishment of a secretariat as the ‘long arm’ of the Panel. In a way, CLO was initially set up as rapid-reaction facility, whereas the project took its final shape about a year later. This is why it would be useful if the assessment of the project design started from the creation of CLO.

Mission and Structure of the Coordination and Liaison Office

Output 1 was the first project component to be launched, immediately after the end of the negotiations in February 2008. The CLO structure was created to replace the *ad hoc* secretariat of the AU Panel of Eminent Personalities and to contribute to the implementation of the KNDR process. CLO's immediate task from Day One was to act as an honest broker and to facilitate contacts between the two major parties whose relations remained hostile despite the agreement on a grand coalition. CLO's ToRs, as set out in the Project Document of January 2009, envisaged that the office would:

- Assist the Panel in mobilising international support and resources for the implementation process;
- Undertake periodic consultations with the Kenya National Dialogue and Reconciliation Team (Dialogue Team);
- Keep the Dialogue Team informed about the status of donor contributions to the work of the Panel;
- Liaise with the Coalition Government on the implementation of the reform agenda;
- Assist in the establishment and the smooth running of the Secretariats of the Commissions; review and coordinate the flow of information from those Secretariats to the Panel;
- Help source experts, as required, to assist the Coalition Government;
- Provide support to the Panel for the periodic/episodic visits of its members, including for *ad hoc* facilitation missions;
- Collaborate with the Dialogue Team to provide regular briefings to key stakeholders;
- Assist the Coalition Government to establish and manage the archives of the National Dialogue, including the Commission;
- Collaborate with UNDP to continue administering the project assistance to the Panel and provide reports to funding agencies;
- Provide daily situation reports to the Panel to the AU through the Chair;

It is clear from the above ToRs that the CLO project targeted Agenda Items 3 and 4, i.e. overcoming the political crisis through the power-sharing agreement and monitoring its implementation. One of the

inherent features of the project is CLO's dual mission: (i) a moderator of the political dialogue between the Panel and national stakeholders as well as between the two major parties involved in the grand coalition; (ii) an administrative facilitator for the transfer of international expertise to the newly established bodies as a result of the mediation process.

The initial organisational chart of CLO presented in the Project Document envisaged 12 positions, i.e. a Coordinator, a Political Affairs Officer, a Special Assistant, a Research Officer, an IT Associate, an Administration Manager, a Procurement/Logistics Officer, a Finance/Administration Officer, a Logistics Assistant, a Finance Assistant and two drivers. In practice, the size of the office has been smaller than that and has fluctuated in accordance with the work load. Given the delicate mission of CLO in a rapidly changing political environment, the flexibility displayed on the issue of the office size has been beneficial.

Project Architecture

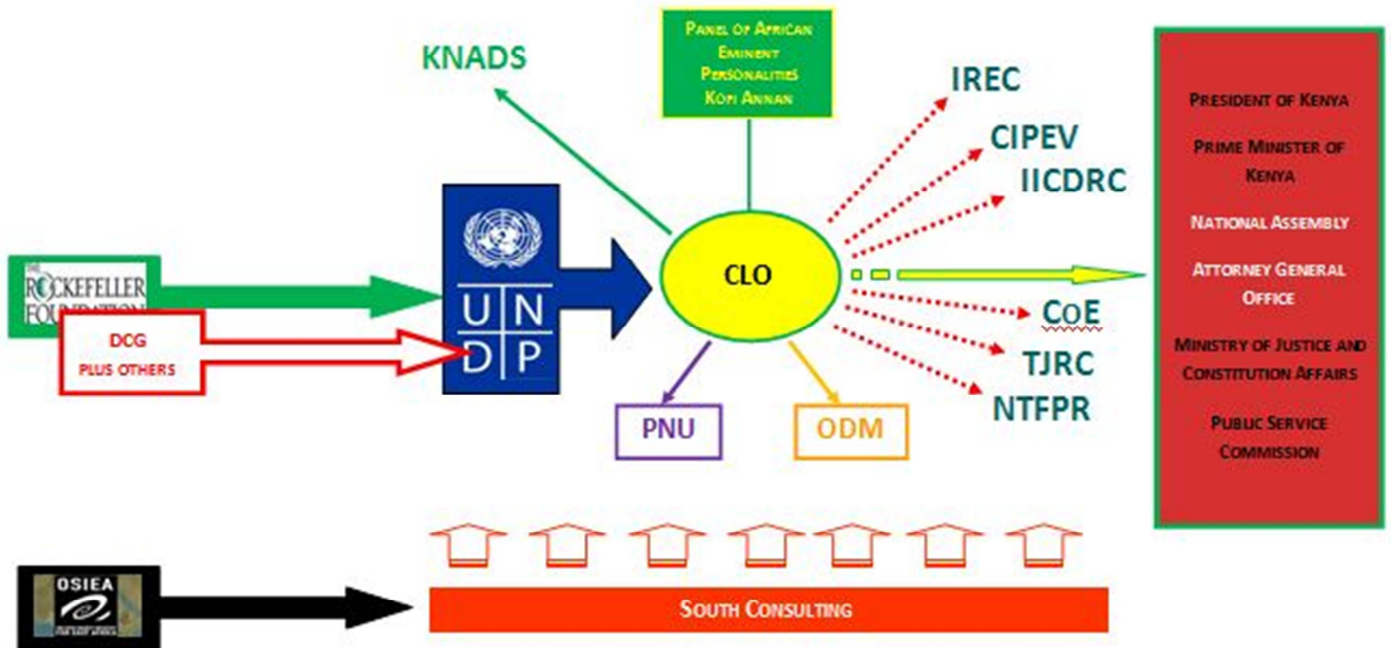
The overall project structure is based on the following three Outputs/Components:

- Output 1 (*to maintain the political dialogue between the coalition partners and the Panel*) focused on CLO activities and was supported by UNDP through the funding provided by 13 members of the so-called Donor Coordination Group (DCG).
- Output 2 (*to ensure that the findings of a comprehensive and coordinated monitoring and evaluation system for the implementation of the KNDR agreements are processed and analysed*) is being funded by OSIEA till the end of 2012. The main outputs are the quarterly reports produced by South Consulting, a private research firm, as well as presentations to key stakeholders and the media.
- Output 3 (*to ensure that the wealth of knowledge and information created by the KNDR process is preserved for historical and lessons-learned purposes and to improve national capacities for conflict prevention and mediation in Kenya and beyond*) envisaged support provided by the Rockefeller Foundation through UNDP to KNADS.

Output 1 obviously focused on the implementation of the power-sharing agreement whereas Output 2 was designed as a decision-making support tool. The KNADS component could be viewed as a long-term Agenda Item 4 'investment', however it is less clear exactly how the idea was conceived. While Outputs 1 and 2 are closely interlinked, Output 3 relates to the core concept of the project somewhat loosely. Notably, the Evaluation Team has recorded reservations about Output 3 expressed by most of the DCG representatives interviewed during the field mission. The only substantive linkage between the KNADS component and the other two Outputs was the involvement of CLO in processing and preserving the records which are to be stored at KNADS at some point in time.

The project architecture and the list of actors involved in its implementation are presented below.

PROJECT ARCHITECTURE



Objectives of the Project

An examination of the objectives (expected Outcomes) of the project also shows that the intentions at the design stage of the intervention were not sufficiently clear.

Outcome 1 (*strengthened capacity of key institutions for enhanced efficiency, effectiveness, transparency and accountability in the formulation and delivery of pro-poor planning and policies*) is twofold. While the aim of strengthening Kenyan institutions seems to fit in with the broader objectives of the KNDR process, '*the formulation and delivery of pro-poor planning and policies*', may be a bit too ambitious a goal, given the short timeframe of the project and the extraordinary circumstances that led to its launch. It is true that the project did contribute to policy-making, but it would be arbitrary to assume that pro-poor planning was really a priority in this intervention which was necessitated by an emergency. It would appear that the wording, if not the essence, of this Outcome has been influenced

to a larger extent by the standard UNDP mission to promote poverty alleviation than by the priority of conflict resolution, which is what was at stake in the turbulent months of January and February 2008⁷.

Outcome 2 (*promoting a culture of constitutionalism*) also appears to be too ambitious a goal in relation to the project timeframe. A profound societal change would presumably require a generational change and, therefore, a long period of time. Above all, it appears that the mission of instilling a spirit of constitutionalism in Kenya was rather on CoE and not on CLO. It is recalled that CoE was brought under this project about a year and a half after its inception, and several months after the Project Document was signed. The inclusion of CoE in the CLO project was done for the sake of channelling funding through UNDP and not for conceptual reasons. It is noted that the decision on the inclusion of CoE in the project was made by the donors contributing to Output 1. They supported this change of the design for the sake of: (i) coordination of funding through one single channel; (ii) keeping a politically expedient distance from Kenyan political actors. In a way, donors wanted to keep GoK at arm's length, in a delicate balancing act of being supportive without being seen as interfering with domestic politics.

Outcome 3 (*enhanced capacity for the promotion and administration of justice and human rights*) seems to be highly relevant in the wake of the 2008 post-election violence. It is towards this end that the idea of TJRC was put forward and CIPEV suggested the creation of a Special Tribunal. However, to what extent Outcome 3 has been achieved will be discussed in Chapters 7 and 8 of this report

Overall, there are serious questions over the design of the project as well as the definition of its objectives. Notably, the Quality Management for Project Activity Results document and the 2008-2009 Annual Work Plan contained about 30 indicators for the three Outputs and only 3 for the Outcomes. This clearly shows that the project was primarily designed as a set of activities, whereas the expected Outcomes were thought-out to a considerably lesser extent. In all fairness, the initial design was produced under enormous time pressure in early 2008. It has been aptly noted that before the CLO phase of the project was designed in June 2008, UNDP's assistance with donors' funding during the KNDR fitted into the "fire fighting mode"⁸. This is most probably why the initial design kept evolving throughout the implementation period, with project components 'living a life of their own', with different sources of finance and different timelines, under the broad KNDR heading and CLO as a common denominator.

Risk Mitigation Strategy

It is true that the project was unique in many ways. If it was not a typical donor project, it was not a typical UNDP project either. Yet, it was the only possible choice as a response to the emergency in early 2008. The political setting also explains the Direct Execution (DEX) modality selected, as a National Execution (NEX) modality could have meant that UNDP and the international community were taking sides and were supporting the then PNU government.

⁷ It is mentioned under Agenda Item 4, but as one of the many long-standing issues to be addressed. Poverty is only marginally referred to in the Waki commission report, pp. 35, 220 and 265.

⁸ Michael Morgan, Final Report on the Review of the Project Consolidating Gains from the Kenya National Dialogue and Reconciliation Process, p. 6.

Strictly speaking, the risks identified referred to the implementation of the specific project. At the same time, the project was part of the broader KNDR process and the stakes were much higher than mere project implementation. Furthermore, the extraordinary nature of the intervention does not explain all the assumptions behind the project design. The risks/constraints and responses, set out in the Project Document, were as follows:

RISKS	RESPONSES
1. Unfavourable political climate	Define linkages with KNDR
2. Limited local expertise	Source appropriate experts from other countries
3. Retention of experts	Assignment-based contracts, adequate incentives
4. Inadequate commitment of resources	Adequate and timely information shared with donors

The evaluation team finds the list of assumptions and risks too short, and the responses to a certain extent inadequate. Some of the obstacles encountered during the project implementation period could have been anticipated, but it is also true that others were clearly unpredictable externalities. Given the rapidly evolving political and institutional environment of the intervention, it is important to assess to what extent the project design allowed for flexibility and responsiveness to changing circumstances.

It is mostly the first and fourth risks that called for more elaborate responses. For instance, what could have been anticipated – and was not – was the lack of sufficient political will in Parliament to address post-election violence through the creation of a Special Tribunal, as suggested in the report of the Waki commission (CIPEV).

As regards the fourth assumption, it was anticipated that GoK might not live up to all its financial pledges. In at least two cases (CoE and TJRC), GoK was slow in providing its share of the funding:

- It certainly did not live up to its pledges in 2009 on the funding of CoE nor on the funding of the 2010 referendum. Given the limited timeframe, all parties wanted activities to commence as soon as possible. There was no choice but to attach CoE to CLO to permit activities to commence. The inclusion of CoE in the CLO project served the funding purpose successfully. However, operationally, it did not seem the best fit, as will be argued below.
- In the case of TJRC, after a slow start GoK funding for the commission has reportedly gone up to some 70% of the funds pledged.

While CLO was set up to act primarily as a political broker and to a very small extent as a facilitator, the inclusion of CoE considerably changed the complexion of the project. It is true that a certain degree of flexibility needed to be demonstrated 'down the road'. However, CoE activities required a great deal of procurement and, as CLO found itself between CoE and UNDP, it was involved in time-consuming administrative activities. Adequate procedures and staffing were not in place in CLO to provide services to CoE, and to ensure efficient operations given the unique nature of CoE's requirements and functions. At the same time, CoE was subject to Kenyan procurement legislation and this caused additional difficulties. In some cases it was felt that CoE was expected to fit within UNDP's rules and regulations that have not been designed for this kind of intervention.

The evaluators acknowledge that not all the externalities, mostly related to the first risk (*unfavourable political climate*) could have been anticipated. For instance, in the eyes of most stakeholders what caused a significant delay in the work of TRJC related to the controversy over its chairman⁹. It is noted that one of the three international commissioners nearly resigned at one point in time.

In addition, an exit strategy was not properly considered. The issue of the time extensions granted to the project is a case in point. Initially, CLO was only meant to be supported for a year and that clearly was not a valid assumption. However, given the significance of the project, the evaluators find that its extension was rightly awarded. While CLO's mission is now different from what it was back in 2008, the office can focus on the implementation of the new constitution.

⁹ For a long time the Chairman of TJRC was under pressure to resign because of his high-profile position in previous governments and allegations of his involvement in some of the crimes falling under the commission's purview.

6. Funding Modality and Project Management

Funding Modality

The funding modality was marked by its fragmentation and different timing of commitment. Under Output 1, the 13 DCG members provided a total of nearly \$9.7m, the biggest donors being DFID, SIDA, Norway, USAID and Finland. Under Output 2, South Consulting and OSIEA have concluded a separate bilateral funding agreement for \$1.6m, which is not reflected in the budget of the Project Document and covers a time span till the end of 2012. In November 2009, the Rockefeller Foundation agreed to contribute the amount of \$865,000 through UNDP to Output 3, focusing on KNADS. Upon the completion of the UNDP project and the launch of the new one led by UNOPS, the Rockefeller Foundation continued to fund Component 3 through UNDP.

CoE was a far-flung structure operating across the country, with ambitious goals and a large budget. As mentioned elsewhere, funding for CoE was only channeled through UNDP, but in essence that was a separate project which is being evaluated in another review.

DCG Funding (in USD)

Australia (AUSAID)	192,080
Belgium	190,000
Canada	399,361
Denmark	750,000
Denmark (specifically for IREC)	500,000
European Union	152,710
Finland	787,233
France	156,219
Netherlands	400,000
Norway	1,436,121
Qatar	50,000
Sweden (SIDA)	1,485,025
United Kingdom	2,170,810
United States of America (USAID)	1,000,000
TOTAL	9,669,559

The evaluators met representatives of DCG members contributing to this project and recorded their views. A specific question raised was “Is the choice of this funding modality for this type of intervention fully justified?” All the donors interviewed are in support of the basket funding formula, as they felt comfortable with routing their contributions through this mechanism. In examining possible alternatives, it is important to point out that CLO is a project and not an entity. For instance, in mid-2008 there were discussions about funds being provided directly to CLO, but its lack of clear legal status prevented such a development. Therefore, the basket funding modality appears to have been the optimal one despite UNDP's internal constraints – notably, donors also acknowledge the practical difficulties that affected the relations between CLO and UNDP.

Reporting to donors appears to have been insufficiently comprehensive – it was arguably more substantive at political than at technical level.¹⁰ Perhaps CLO has not been communicating its activities properly – or has not been able to, mainly due to the political nature of its mission. The communication between CLO and PEAP was confidential, as this reflects the unobtrusive nature of the activities undertaken by the office. Most of the contacts between CLO and GoK were also not public, for fear of wrong perceptions in Kenyan society. Nor was legal advice provided to ministries on draft laws officially announced.

It is noted that, while DCG members held regular meetings, representatives of the OSIEA and the Rockefeller Foundation were never part of relevant discussions. This also shows that the implementation of the three project components was not sufficiently coordinated.

During the implementation period of the UNDP-managed project, some DCG members asked questions about the way financial resources were utilised, though this aspect seems to have improved under the UNOPS-led project. Some donors also raise questions in terms of the CLO cost, the number of staff, reports and results-based management. In particular, they find the reports purely activity-based, without any analysis of results.

Management Structure

The project was initially placed in the governance unit of UNDP and was subsequently handed over to the Peace Building and Conflict Prevention Unit. UNDP was the fund manager, but in fact it was not in the driver's seat. Demands often came from the commissions, with CLO as a 'bridge' between them and UNDP, authorising payments which were then effected by UNDP. In a way, UNDP was seen as a mere service provider and facilitator, whose task was to respond to the demands of the various actors. In many cases UNDP insisted that its rules and regulations be observed, but this was not always possible.¹¹

Apart from the initial design weaknesses, the project became further 'diluted' after the inclusion of the CoE component. The CLO staffing was not supplemented when these additional responsibilities were added. As it had happened at the commencement of the project, there was not sufficient procedural orientation for the CoE personnel on working with UNDP. Despite several related meetings, UNDP continued to receive from CoE requests based on incomplete documentation. It is therefore not totally surprising that CoE acted on its own accord and then expected UNDP to comply. CoE was funded in part by the Government, with its own bank account and decision-making authority. While CoE experts and staff enjoyed near full autonomy from the Government, presumably they felt subjected to too many UNDP rules and regulations.

For the most part of project implementation, the relations between CLO and UNDP turned out to be a challenge. CLO staff felt that UNDP had too much control through financial management and policy advice. UNDP was perceived to claim a role and to have a different understanding of priorities. The truth of the matter is that CLO staff did not really view themselves as part of a UNDP project – in fact, they saw themselves as having been appointed by and accountable to PEAP. There were different views expressed by CLO and UNDP on the inclusion of Output 3 in the project, with the former supporting it

¹⁰ As one of the donor technical staff has put it, 'My ambassador knows more about this project than I do'.

¹¹ Michael Morgan, *op.cit.*, p. 6.

and the latter as well as DCG members opposing it. A number of other issues pertaining to management and financial administration (presented in Chapter 6) also emerged between CLO and UNDP during the project implementation period. On another occasion, DCG members contributing to Output 1 disagreed with the idea put forward by UNDP that TJRC should also be supported financially.

One of the lessons learnt is that UNDP may not be the right organisation to act as a rapid-response service provider. It may not be unreasonable that, given the difficult relationship, CLO requested the change of service provider and the follow-up project is now being implemented through UNOPS, the *par excellence* service provider within the UN system. At the same time, it should be acknowledged that UNDP was the only agency that was available and could have responded swiftly to the emergency in early 2008. It would be fair to stress that UNDP played a very important role at the outset of the project and provided services to CLO and CoE for nearly three years. It was indispensable for the range of outputs delivered between 2008 and 2010, in being in charge of a delicate political situation. Now that support to commissions is no longer needed, the UNOPS-led project appears much easier and more straightforward.

In hindsight, it is now clear that the project was marked by four, if not more, distinct points of view:

- (i) UNDP responded to the emergency in early 2008 and took its task in earnest, only to find itself involved in an increasingly demanding project with an ever-evolving design in a rapidly changing political environment. At the same, having governance as one of its core areas of expertise, UNDP expected to have a say on CLO's political mission.
- (ii) CLO had a strong mandate and views on what was to be done, but did not have a separate legal personality and was therefore dependent on funding provided through UNDP.
- (iii) DCG members were keen to support the project and the KNDR process, but were cautious not to be seen as interfering with domestic politics.
- (iv) GoK was – and still is – split between PNU and ODM. In addition, local stakeholders represented in the newly set up bodies (commissions and CoE) viewed CLO as a political interlocutor, i.e. the 'long arm' of the Panel, and UNDP merely as a source of finance.

In 2010, UNDP Kenya commissioned a report to a consultant with the following goals, *inter alia*:

- Review all aspects of project implementation, documenting the irregular actions taken and the reasons behind them;
- Identify the causes of discontent and dissatisfaction among implementing partners;
- Compile for future reference the vital lessons learnt during the life of the project; and
- Look into what the future of the project might be, and make recommendations for better functioning, if the project was extended.

Procurement Issues

During the life of the project, there were many actions, mainly of a procurement nature, which did not follow UNDP's standard practice for a variety of reasons explained in the report in question.¹² Therefore, these issues need not be analysed in detail in this report and are only briefly mentioned here. For instance, recruitment of staff and other personnel on UNDP contracts was one of the issues throughout the life of the project. As structures were being put in place in early 2008, personnel had to be placed

¹²

Michael Morgan, *op. cit.*, pp. 7-13.

quickly, ruling out or overriding traditional and formal recruitment processes, which would have been time-consuming. From the UNDP perspective there were many question marks over: (i) the recruitment of international commissioners and experts for the newly established bodies; (ii) the appointment of the CLO Coordinator; (iii) the recruitment of support staff; (iv) timelines, procedures and thresholds for procurement.

In particular, as part of the mediation process between the teams from both political parties and staff of the mediator, Mr. Kofi Annan, it was agreed that IREC and CIPEV would be established immediately. It has been stressed by many that speed under the circumstances was of the essence, if return to normalcy was to be ensured. International commissioners were recruited from all corners of the globe. The Kofi Annan Secretariat solicited suitable candidates from an array of institutions, including *inter alia* the International Centre for Transitional Justice (ICTJ), the African Union (AU), the UN Human Rights Commission, the Raoul Wallenberg Institute and the UN Department of Political Affairs (UNDPA). The selection of suitable candidates was done by the negotiating teams and PEAP. This is a process which UNDP could not have undertaken for a variety of reasons, the main ones being that: (i) the pool of expertise required is not of the type which is readily available in UNDP's rosters; (ii) there were two main negotiating parties from both sides of the political divide who had to agree on each of the international experts; (iii) head hunting and personal contacts were essential for the speed required. As a result, there was quite a bit of ambiguity as to who the real employers of these Commissioners were. They all saw themselves as being appointed by the Government of Kenya, with UNDP only nominally being in charge of the contractual process.

Before assuming his current role in the project, the CLO Coordinator was appointed Chief of Staff of the Secretariat of the Panel of Eminent African Persons, led by Mr. Kofi Annan. After the mediation process ended in July 2008 and a more permanent CLO structure was established, he was appointed to the post of a CLO Coordinator with the agreement of all the concerned parties, including the Government of Kenya. In reality, there was no room for a formal recruitment process by UNDP. This appointment/placement was strictly political and was justified in terms of the specific role the incumbent was playing in the continuation of the actions approved through the mediation phase. Later attempts to introduce a UNDP-compliant form of contracting, as suggested by the Advisory Committee on Procurement (ACP), proved to be very difficult.

Similarly, in the first month of the crisis, UN staff members were loaned to the mediation secretariat where the negotiations were taking place. When the CLO structure was finally decided on in mid 2008 and the UNDP project was formally approved, UN staff who were on loan were seconded to UNDP for service in the framework of the CLO project. From a strictly UNDP point of view, there were irregularities in that there was not a formal recruitment process.

Travel arrangements also caused lengthy debates. The international commissioners for IREC, CIPEV and the Judges for IICDRC were all high-positioned professionals who expected to be given Business Class tickets which, according to UNDP rules, was not the standard. UNDP was under considerable pressure from all parties to facilitate the Commissioners' arrival in Nairobi in time for the official swearing-in ceremonies. UNDP clearly had no choice but to accede to the demands. This later spilt over to other senior international personnel in CLO and CoE, and the same practice was replicated. There were also disputes over the DSA rate of members of the above-mentioned Commissions in case they were required to travel out of Nairobi in the course of their duties.

In some cases, UNDP received requests at a very short notice from CoE for the expenditure to be incurred by various activities, e.g. retreats. By UNDP rules and regulations, a reasonable value-for-money rate should have been ensured through the provision of quotations for transportation, venue selection, etc, but there was not enough time for these procedures to be applied. Invoices and other supporting documents were submitted *post facto* to UNDP for eventual settlement.

The case of the printing of harmonised draft constitution (HDC) copies also caused anxiety within UNDP. In November 2009, UNDP was requested – again at a very short notice - to facilitate the printing of 400,000 HDC copies and of 40,000 booklets for the official launch on the next day. This case again demonstrated CoE's perception, i.e that CoE was not a UNDP project and hence UNDP's rules should not be imposed on it. There was a subsequent round of printing in December 2009 and on this occasion UNDP once again had to rush to meet the deadlines. Yet another round of printing HDC copies took place in February 2010, with retroactive payments being made by UNDP in this case.

A further case worth considering is that of acquiring raw news footage from the broadcasting stations for archiving purposes. CLO approached the broadcasting stations directly in June 2009 and obtained quotations, followed by negotiations for more favourable rates. UNDP was notified in November 2009 and had to ensure compliance with ACP requirements, which took some extra time.

The use of Serena hotel for all the negotiations is also worth mentioning, as the cost of the premises reached \$1m by March 2010. The decision to use that hotel was taken in January 2008, when the negotiation started. The Serena hotel was chosen for three reasons: (a) the perceived neutrality of the owners; (b) convenience of the location; and (c) security considerations. The exclusive use of Serena continued throughout the initial and subsequent phases, during which the following expenses were incurred and paid for by UNDP.

It is clear from the presentation above that UNDP had to provide many justifications to ACP due to retroactive payments, thresholds exceeded and other deviations from its standard rules and regulations. The evaluation team was not mandated to analyse the financial management of project activities and does not have a view on relevant issues. A financial audit was carried out in 2010 and the evaluators have been assured by UNDP that the auditors accepted all the clarifications provided on expenditure and procedures. At the same time, it is noted that there have been demands from DCG members for a copy of the financial audit and some questions have been raised about the cost of consultancies.

7. Achieving the Expected Outputs and Outcomes

The indicators set out in the Project Document have been duly used; on the other hand, in reviewing the literature available, the evaluators have noticed an imbalance between the ones used for Outputs and those measuring Outcomes. While there are numerous Output indicators, initially there were very few Outcome indicators in the Project Document. Outcome indicators became more elaborate in the 2009 Annual Report, but they could still reflect project impact to a limited extent.

Achieving the Project Outputs

Assessment of Output 1:

The services provided by CLO, as presented in the reports produced by the office, are summarised below:

- Panel visits to Kenya to further the implementation of the KNDR Agreements: Eight visits of the Panel from 1 October 2008 – 31 March, 2011; Meetings with the two Principals; Speaker of the National Assembly Dialogue Team members; and other members of the Executive; civil society, the religious community, the business community and media.
- Provision of support to key reform institutions: Recommendation of non-Kenyan experts to serve as CoE commissioners; funding for CoE was requested by CLO and provided by UNDP; recommendation of non-Kenyan judges to serve on the Interim Independent Constitutional Dispute Resolution Court (IICDRC), TJRC; facilitating the Interim Independent Electoral Commission (IIEC) for first by-elections, with UNDP undertaking a fund-raising campaign for the referendum; recommendation of international police reform experts to serve as Vice-Chair of the National Task Force on Police Reform (NTFPR).
- Role of the Dialogue Team in advancing implementation of the KNDR agreements: seven review meetings held between January, 2009 – December, 2010
- Press releases following each review meeting emphasizing the importance of the Dialogue Team's discussions as a means to facilitate implementation of the KNDR Agreements.
- KNDR conference in Geneva on 30-31 March 2009 and Nairobi on 2-3 December 2010
- Preparation by the CLO of regular review reports on activities for submission to Panel, Chairperson of the African Union; and donors: three end of project reports/annual reports (Jan-Dec 2009; Jan 09 – Sept 10; and Jan 08 – March 11); progress report for Jan 08 – Sept 08 (end of Phase 1 of Project); eight quarterly reports

The two conferences in Geneva (March 2009) and Nairobi (December 2010), held with the assistance of CLO, were also key events in terms of stock-taking and bolstering the reform process. CLO did not bear any financial burden, but provided guidance and advice to 500 delegates.

Stress has been laid on the evaluation of the degree to which political actors in Kenya (notably, the two major parties) appreciated the facilitation provided by the CLO. A key issue looked into was 'Would the political dialogue in the wake of the 28 February 2008 agreement have been possible without the services provided by the CLO?' All the stakeholders interviewed by the evaluation team agree that the mediation offered by the AU Panel led by Mr. Kofi Annan was instrumental in bringing violence to a halt. Subsequently, the Serena process and the Dialogue Team between PNU and ODM, as moderated by

CLO, helped reduce the tension between the two parties allowed for a power-sharing agreement to be reached.

It is understood that during the implementation period the CLO Coordinator briefed Mr. Annan regularly, though it is not known how frequently. It is also assumed that Mr. Annan played a pivotal part behind the scenes and on a number of occasions had a direct communication with the PNU and ODM principals. If so, most probably the CLO Coordinator is privy to these exchanges, but quite understandably relevant reports have not been made public. At the same time, the evaluators have been given examples, even if informally, of the CLO Coordinator's discreet interventions.

Equally instrumental at the time of the UNDP-managed project was CLO in keeping the two major parties engaged through the Dialogue Team and discussions on the findings of the quarterly reports produced by South Consulting. It was through these discussions that the mistrust between PNU and ODM is viewed by many stakeholders as having been addressed to a large extent. At the same time, some interlocutors interviewed during the field mission expressed the view that PEAP members were not seen as being sufficiently active.

DCG representatives have a largely positive impression of CLO's performance, though they also point out that they are not aware of the full scope of the activities of the office. Some of the donors interviewed during the evaluation mission felt that the added value of CLO was not quite clear – or was not properly presented. As a result, the sense of ownership on the part of donors was either somewhat limited or not easy to assess.

Overall, activities under Component 1, as evaluated against the performance criteria set out in Annex V, are rated with a qualified yes. It is acknowledged that CLO has established itself, if not at the heart of the KNDR process, certainly at the interface between the international community and a number of local stakeholders.

Assessment of Output 2

All the interlocutors interviewed by the evaluation team have a very positive view of the outputs produced by South Consulting – methodologically sound reports, of high added value, non-partisan and taken seriously by stakeholders. South Consulting is perceived to be very professional and a key source of insights for both local stakeholders and the international community.

South and CLO have had regular meetings on a weekly basis and consultations before the release of each quarterly report, but no disagreement has been reported. It is important to stress that South Consulting retains its independence – the firm has developed its own methodology, even if with comments and advice provided by CLO on the selection of indicators to be used. CLO then provided the platform for dialogue between stakeholders.

The quarterly reports produced by South Consulting highlighted a long range of issues related to violence containment, the implementation of the recommendations formulated by the independent commissions, constraints and obstacles, etc. Most importantly, these reports cover the implementation of actions agreed under the Four Agenda Items of the KNDR process and offer a useful evaluation. For instance, under Agenda Item 1, the reports refer to incidents of violence, hate speech and activities of

militias; under Item 2 to Internally Displaced People (IDPs) and the activities of TJRC; under Item 3 to the progress of electoral reform and the cohesiveness of the coalition government; under Item 4 to institutional and constitutional reforms and national cohesion, etc.

The reports were actively publicised and promoted, so that they could trigger a lively and meaningful public debate on these significant issues. Apart from the eight quarterly reports produced and presented in the framework of the UNDP-led project, South Consulting also provided at least 12 briefings to various stakeholders, including the principals of PNU and ODM.

Overall, **the view of the evaluation team of the degree of achievement of Output 2 is 'definitely yes'**. The success of this component certainly vindicates the decision to include it in the project structure.

Assessment of Output 3

As a preparatory stage, a room for the files was repaired and necessary furniture was purchased, but some additional equipment for the levels of humidity has yet to be supplied. Two highly qualified experts were recruited for a needs assessment and training. 15 KNADS and CLO staff were trained through the UNDP-led project with a view to the classification of documents in line with international standards. At the same time, trainees interviewed by the evaluation team complained about the effectiveness of the training course. In particular, the course was viewed as being too short and intensive to allow for the acquisition of the necessary technical skills. Some of the beneficiaries find that a practical exercise would have been very useful. Furthermore, the time that has elapsed between the training course and the application of the technical skills has been so long that a refreshing course may have to be considered in the future. While there is consensus that the trainer did a good job, this has not been properly recorded, as no evaluation sheets seem to have been filled in at the end of the course.

CLO outsourced the production of files to three private firms on the basis of a competitive procedure. Some 112,000 pages have now been digitised, 380 hours of footage have been obtained from media outlets and some 40 personalities have been interviewed in relation to the KNDR process. It should be noted, however, that a large share of these outputs has been delivered after the end of the UNDP-managed project, even if CLO continues its work on Component 3 in co-operation with UNDP.

The idea is that KNADS is the custodian of records produced through the project. Yet, to date it is only CoE files that have been delivered to KNADS. While CLO is still in possession of sensitive files, there is no clarity on the exact timing of their delivery to KNADS. Nor have guidelines on access to these files been drafted. The evaluators were told conflicting views on the records as a potential academic resource centre and, at the same time, as files that should be preserved at the highest possible level of confidentiality. In addition, the KNDR Archives website did not become operational within the implementation period of the UNDP project. This is expected to happen soon, as stated by CLO staff, and at this stage there is a mock website which is being tested.

Overall, Output 3 cannot ensure specific and tangible deliverables at present – they appear to be a matter of mid- to long-term progress. As evaluated against the performance criteria presented in Annex V, **the degree of achievement of Output 3 is partial at best**.

Achieving the Project Outcomes

While the performance of the project as regards its Outputs is relatively easy to assess, this is much more complex in the case of the expected Outcomes. Compared to the evaluation of the degree to which project Outputs have been achieved, a clear-cut view on the achievement of the Outcomes has been more difficult to arrive at, as they all relate to the mid- to long-term prospects of Kenya's socio-economic, institutional and political development. An immediate implication of this fact has been the need for predominantly qualitative performance indicators to be used, as the evaluation is inevitably based on assumptions about a long and complex process.

Assessment of Outcome 1

The CLO successfully sourced international experts – often at short notice - for various bodies set up under the KNDR process: IREC, CIPEV, CoE, NPRTF, IICDRC and TRJC. It is noted that in the case of TJRC the CLO support was marginal, through the nomination of the candidates and the provision of Daily Subsistence Allowance (DSA) to the international commissioners for the first three months of their assignment. Technical assistance has also been provided to the new commissions in terms of financial and administrative planning. In addition, the CLO have facilitated meetings with civil society representatives, members of the Coalition Government, donors and other stakeholders to exchange views on the implementation process and on the way forward, including discussion on the Panel's options for action in assisting implementation of the agreements.

- The international commissioners and experts recruited through CLO were accepted and their services were appreciated, even if in the case of IICDRC the contribution of the international experts was reportedly very limited. Most of the foreign experts valuable services in terms of expertise and best practice, but also in terms of moderating highly political debates, were appreciated. They brought in a sense of neutrality and objective judgement. Most of the names suggested by CLO took into account regional sensitivities, as the majority of international experts suggested came from African countries.
- The reports of IREC and CIPEV were made available to the media only a day or two after they were submitted to the principals of PNU and ODM as well as to the Panel. Kenya has since witnessed increased transparency with reports and government decisions more frequently being made available to the general public. The KNDR website¹³ has also enhanced public confidence through the provision of significant documents and publicity about the progress of the process.
- South Consulting's reports also contributed to policy-making, through its presentations to key stakeholders (including the PNU and ODM principals), but also by means of extensive media coverage, thus keeping the general public abreast of priority issues to be addressed. Notably, South Consulting has proven its credibility by both voicing concerns and highlighting achievements, and there is evidence to believe that these reports added to the pressure on GoK structures.

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<http://www.dialoguekenya.org/>.

- CLO's contribution emerges through advice on the development of the indicators used by South Consulting, an M&E plan and reporting formats, the progress of the M&E component (Output 2), processing and analysis of M&E findings for use by PEAP and the Dialogue Team, etc.
- Two of the key recommendations formulated by IREC envisaged (i) a broad consultative process prior to the appointment of ordinary members and the chairman of the Electoral Commission of Kenya (ECK), which should be accountable to Parliament; (ii) a new and more inclusive voter registration process.

The overall degree of achievement of Outcome 1 is evaluated as being largely positive. The intervention has indeed contributed to the promotion of a spirit of openness and public debate on issues of national significance.

Assessment of Outcome 2

While the promotion of a culture of constitutionalism cannot be attributed exclusively to the CLO project, there have been encouraging developments in Kenyan society and its political élite since 2008. Some of these developments have been facilitated by the intervention being evaluated here, e.g.:

- The adoption of a key recommendation formulated in the Kriegler report for the dissolution of the discredited ECK and the creation of an Interim Independent Election Commission (IIEC), soon to be replaced by an Independent Electoral and Boundaries Commission (IEBC). Another recommendation heeded by the Kenyan authorities relates to the voter registration update ahead of the constitutional referendum.
- Some of the recommendations in the report of the Waki commission (CIPEV), mentioned in Chapter 4, were also taken on board, though perhaps the most important of them, the one relating to the creation of a Special Tribunal, never materialised. The adoption of the new constitution is no doubt the biggest achievement of the KNDR process.
- The new constitution pursues to address some of the long-standing issues in Kenya, e.g. tribalism and ethnic fragmentation. It now provides that for a presidential candidate to be declared winner, he or she needs to obtain 25% of the vote in at least 24 of the 47 counties, in addition to getting 50% plus one votes in the national tally. Similarly, one of the provisions in the emerging legislation is the requirement for political parties to have a minimum of 1,000 registered members in at least 24 counties to qualify for participation in the elections. This is a highly constructive arrangement aiming at addressing the 'faultlines' between ethnic groups in Kenya.¹⁴ Similarly, the National Cohesion and Integration Commission (NCIC) has been making commendable efforts to curb the use of hate speech and to promote effective measures aiming at addressing racial and ethnic relations. For instance, NCIC has released a report on the imbalance in public administration revealing the disproportionate presence of Kikuyu officials.¹⁵

¹⁴ As illustrated by the 2007 elections, PNU draws on the Kikuyu/Gikuyu, Embu and Meru communities (GEMA), mainly in the Central and Eastern provinces, as well as in Nairobi area, Coast and Rift Valley provinces. ODM, for its part, draws largely on the Luo, Luyha and Kalenjin communities, mainly living in Nyanza, Rift Valley and Western provinces. ODM also enjoys support in Kenya's major urban areas and among the coastal Muslims and the youth.

¹⁵ According to the report in question, 22% of public servants and over 50% of State House staff hail from the Kikuyu community, which only accounts for 16% of the total population.

- CoE was a substantial part of the KNDR process, with its preparatory work for the debate on and adoption of the new constitution. IICRDC also played its, if limited, part in the promotion and adoption of the new constitution.
- The debate caused by the President appointing the Chief Justice in January 2011 single-handedly, i.e without proper consultations, and the rejection of the nominee was seen by many as a sign of awakening and as being symptomatic of a new culture emerging in Kenyan society.

However, it should also be noted that:

- While the promulgation of the new Constitution on 27 August 2010 was an important milestone in the reform process, political culture cannot change overnight. It is important to realise that the new constitution does not yet amount to a new culture of constitutionalism. Constitutional provisions take time to translate into legislation, which will then take even more time to be felt at the level of society.
- The process of legislation development in the National Assembly of Kenya has shown that conflicting interests and resilience to change remain as factors to be reckoned with. Since the referendum in August 2010 the real 'battlefield' has been the implementation of the constitution. The new laws debated in and passed by the National Assembly have demonstrated the intricacy of translating constitutional provisions into a modern and progressive legal framework.
- The IICRDC was established late, was short-lived and its contribution to the promotion of Outcome 2 was very limited. There is little evidence that the international commissioners recruited through the project had a substantive impact on the decision-making process.
- The CLO project played a minor part in what was a large-scale intervention carried out primarily by CoE. It is recalled that the CoE project is the subject-matter of another review.

Overall, as assessed against the performance criteria presented in Annex V, **Outcome 2 has been achieved to an average degree.** A key point to be raised here is that the ambitious Outcome, as defined at the project design stage, is at dissonance with the relatively short-term timeframe of the intervention.

Assessment of Outcome 3

The evaluation of Outcome 3 inevitably calls for some tough questions. Is there real political will in the political élite for justice? To what extent has CLO really contributed to the work of TJRC, let alone of the Special Tribunal? TJRC is arguably the most problematic of the newly created bodies. Created in 2008¹⁶ and being operational since March 2009, the new institution needed at least a year to take off due to the controversy around its chairperson. By the end of the UNDP-managed project, TJRC had made limited progress.

While TJRC is already gathering evidence across the country through public hearings, there may still be a question mark over the public perception of the institution. An extension was recently awarded and it is expected that TJRC will carry on with its work till the middle of next year and is to issue a report as well as a list of recommendations.

¹⁶

TJRC was created under the Truth, Justice and Reconciliation Act in October 2008.

What would have been a significant contribution to the promotion and administration of justice and human rights is the Special Tribunal proposed in the Waki commission report. However, for reasons presented in Chapter 4 on the Project Life Cycle, this institution was never created in 2009 and the cause of justice was essentially reverted to ICC. What is more, at the time of the evaluators' field mission, there were conflicting messages coming from GoK that the ICC jurisdiction was being questioned, which may further undermine public confidence. There seems to be a division within GoK, with PNU being opposed to ICC's engagement and ODM being more supportive.

Overall, the evaluators' view is that **at present the degree of achievement of Outcome 3 varies from largely negative to average at best.** It is noted that the low degree of perceived success should be attributed to the highly political – and divisive - nature of justice dispensation.

8. Contribution to Reforms and Impact

Impact on stakeholders

The evaluators have recorded the following indicators of possible impact to be expected:

- It would not be an exaggeration to state that at the height of the crisis without the Panel and CLO the dialogue between PNU and ODM would have been extremely difficult, if not impossible. CLO provided a platform for dialogue and contributed to a 'talking culture' between the two main parties, at least till the end of 2010 and the end of the UNDP-managed project.
- CLO draws on the prestige of the AU Panel and Mr. Annan personally. CLO is in an exceptional position of neutrality and enjoys credibility in a heavily polarised political environment, which is rife with suspicion and conspiracy theories.
- It is felt by many that CLO has contributed to a process that changed the mindset of a number of Kenyan stakeholders at government level. While the impact is not easy to measure, it is thought to be significant. Notably, foreign embassies are also involved in discreet diplomacy, but CLO has a different leverage thanks to its special status of a secretariat set up by the Panel of Eminent African Personalities.
- The project was instrumental in helping recruit highly qualified and respectable international experts for IREC, CIPEV and, at a later stage, CoE as newly set up bodies that needed both expertise and sound judgement. The formation of these commissions and the publications of their reports contributed to appeasement in 2008 and the perception of a credible process. At the same time, the project impact may be harder to discern with respect to the other bodies set up under KNDR process, namely IICDRC, TJRC and NTFPR.
- Funding provided to South Consulting has enabled the firm to produce and present its reports, which have clearly had an impact on the reconciliation process. Apart from publicity and the debate generated through these reports, there are indications that some ministries, though not the entire GoK, have been receptive of the findings of South Consulting and have considered them in terms of policy-making. It should also be noted that the reports produced by South Consulting put additional pressure on GoK thanks to taking on board Kenyan society.

At the same time:

- It is less clear what impact the project will have on KNADS. As long as the list of KNADS beneficiaries has yet to be drawn and the guidelines on access to sensitive records have not been drafted, the added value of this component cannot really be assessed.
- If there should be some impact to be expected from TJRC activities, the commission's timeframe effectively spans beyond the next elections, therefore the contribution of TJRC to the KNDR process could only be assessed in a mid-term perspective at best.
- As regards civil society, many interlocutors share the view that CLO could have engaged civil society to a larger extent. At the same time, CLO staff have stressed its engagement with business communities, civil society organisations (CSOs) and religious groups, though this is not properly documented in reports.

Contribution to a National Reform Agenda on Governance

There are definitely positive signs that could be attributed, even if indirectly, to the impact of the project on the reform process currently under way in Kenya:

- Arguably, the constitutional referendum held in August 2010 marked the peak of the KNDR process and was marked by enthusiasm, as evidenced by the voter turn-out rate – at 72.2%, it was the highest turn-out rate ever recorded in Kenya's electoral history¹⁷.
- The rejection of the Chief Justice nominated by President Kibaki was also one of the highlights of what many saw as a 'peaceful revolt' against old practices. The public debate caused by the appointment of the Chief Justice – an indication of an awakening in Kenyan society? For some interlocutors, this demonstrated a society shift in mental terms, e.g. transparency, accountability, etc.
- The transparent – indeed, exemplary, even if time-consuming – process of vetting future IEBC commissioners by a bi-partisan committee set up by Parliament. Similarly, a new Judicial Service Commission was set up which has embarked on renewing Kenya's judiciary in a competitive and transparent way, through public vetting procedures.
- Sensitization and training efforts seem to have produced some impact, as the constitutional referendum campaign was widely and professionally covered by the media, in contrast with the inflammatory tone of many media outlets in early 2008 at the height of the post-election violence.
- A third KNDR conference is being planned to be held in Nairobi under the UNOPS project, possibly toward the end of 2011. It is expected that this event will contribute to a meaningful public debate on the KNDR process at the last turn before the upcoming elections.

However, on the downside one needs to highlight the following factors:

- It is recalled that the CLO project was designed to help address, *inter alia*, the six issues under Agenda Item 4 (constitutional, institutional and legal reform; land reform; poverty, inequality and regional imbalance; unemployment, particularly among the youth; consolidation of national cohesion and unity; transparency, accountability and impunity). A quick review of the prospects of these issues being addressed within the timeframe of the project shows that at this stage only one of them may receive a positive score, namely the first one, thanks to the new constitution adopted in August 2010 and an array of new laws already passed or expected to be passed by Parliament shortly.
- While the two major parties are still working on a reform agenda, there are indications of rising tension and it would appear that the dialogue has lost its dynamic. By all accounts, the Dialogue Team had ceased to be effective by the time of this review. What is more, an undeclared electoral campaign, as reported in the media, was already under way at the time of the field mission.
- No doubt, there are limitations that should be taken into consideration. The CLO project only addressed a small fraction of the spectrum of acute problems plaguing Kenyan society and root causes of violence. The international community never sought to replace national Kenyan institutions and demonstrated full respect for the country's sovereignty. However, political will – or the lack of it – on the part of Kenyan authorities cannot be overstated.
- KNADS is ready to host the IREC and CIPEV files, but it is now up to CLO to decide when that could happen. There are sensitive files that require extremely limited access. The access guidelines are to be jointly produced by CLO and KNADS, which will take an estimated two months after the records have been delivered to KNADS. It is expected that the trainees will have controlled access to the files, upon vetting by the National Security Intelligence Service

(NSIS). TJRC files are also to be stored at KNADS, but that can only happen in 2012 at the earliest. At this stage, it is not clear which records exactly will be used in the ICC process. Nor is it clear exactly how the workshops and conference envisaged under the ongoing UNOPS project will increase the impact of Output 3, given that the most sensitive files will remain classified for quite a while. Notably, according to CLO the KNADS records are not expected to be released over the next 5 or 10 years.

- If the ICC keeps its momentum, this will send a positive signal to Kenyan citizens in the battle against impunity. However, it may equally destabilise the two major parties, depending on the ICC verdicts.
- This may merely enhance an entrenched conviction in Kenya that no government official has ever been prosecuted and that the culture of impunity in the country remains resilient.
- TJRC covers a 45-year period (1963-2007) and a wide range of long-standing issues, such as land disputes, corruption, inequality in terms of socio-economic development, etc. At present, it appears that TJRC is merely filling in the gaps in the description of problems, not addressing them. The recommendations to be formulated in the TJRC report will be binding under the legislation, but what will make the difference will be: (i) the realistic nature of the recommendations; (ii) the establishment of a credible implementation and monitoring mechanism; (iii) the engagement of an array of actors, including civil society organisations (CSOs) in the process. In any case, this can only happen after the next elections.
- It is equally worrying that there seems to be no real impact on police reform at this stage. This may be a serious parameter, given the negative role of police forces in the post-election violence in early 2008.

Sustainability of the KNDR process

As one of the key expectations from this review is the formulation of realistic and actionable recommendations, the evaluation team has made a conscientious effort to identify some of the obstacles that may be encountered in the way of the KNDR process. The evaluators find it useful to highlight certain challenges for the sustainability of the KNDR process for the sake of preparedness on the part of concerned stakeholders. There can be no guarantee yet that the conditions for violence during the last general elections are over. The factors that contributed to the crisis in 2007/8 have yet to be fully addressed and, no doubt, there is still a long list of stumbling blocks ahead:

- While the two major parties worked closely together on a number of issues on the national reform agenda, there seem to be increasing signs of a lack of cohesion and coherence in decision-making within the coalition government a year or so before the next elections.
- The colonial legacy and mismanagement of land distribution especially in the Rift Valley has generated conflict over what is often perceived as the most important form of wealth and source of political power: arable land.¹⁸ Arguably, land disputes remain the most contentious issue in Kenya and account for a large majority of the cases investigated by TJRC.¹⁹
- Given the elaborate process for the appointment of the IEBC commissioners (nomination, interviews and parliament vetting) and the capacity building requirements, it may take quite some time before the new commission becomes fully operational. A concern that IEBC will have little time to review the boundaries and deliver credible elections may not be far-fetched.

¹⁸

Report from OHCHR Fact-Finding Mission to Kenya, 6-28 February 2008, p. 3.

¹⁹

Source: TJRC.

Furthermore, the next elections will be a serious challenge, given their multiple nature (presidential, senate, parliament, country level, governors, women; in Nairobi – mayor and councillors). The electoral exercise may be further complicated by reactions against the ongoing devolution process in the country. The groundwork for a stable aftermath of the upcoming elections needs to be laid long before Election Day and time is already running out.

- While the voter registration drive for the 2010 referendum was a successful exercise, the update to be carried out ahead of the upcoming elections cannot be neglected. Census results from eight counties (in Turkana and Kenyan Somali, all of them in North-eastern province) have been cancelled. It is recalled that census figures will be taken into account for the delineation of 80 new constituencies, as provided for in the new constitution. This task may be further complicated by a provision in the new constitution that the boundaries of each constituency should reflect the national quota (the total number of voters divided by the number of constituencies).
- The issue of displacement has been long-standing in Kenya. Its causes are rooted in multiple factors, among which community rivalry over land, cattle rustling or competition over resources, conflicts between refugees and local population, natural disasters (e.g. floods, droughts, etc.), and political electoral violence. As pointed out in a recent UNDP/OHCHR report, the politically orchestrated violence witnessed in the lead up to the 1992 elections was repeated in subsequent electoral cycles in 1997, 2002 and 2007. For this reason, the post-election violence of 2007-2008 and the displacement that accompanied it was not as surprising as it was grand in scale and far reaching in its ramifications.²⁰ Notably, Kenya does not yet have a national IDP policy or legal framework to deal with displacement and help facilitate return, resettlement or reintegration, even if the Ministry of State for Special Programmes is reportedly in charge of drafting a national IDP strategy.

Given the above challenges and without the intention of sounding alarmist, the evaluators find that another crisis of the 2008 type is not inconceivable.

Broader international impact

On a more positive note, the Panel led by Mr. Kofi Annan helped prevent nothing short of a civil war in Kenya. Can the CLO project, as part of the Kofi Annan-led mediation effort of the international community, contribute to the establishment of best practice? In other words, is the “Kenyan model” exportable across the region? Africa has seen post-election violence in a number of countries. Apart from Kenya in 2007-8, Ethiopia in 2005 and Côte d'Ivoire in 2010 are cases in point. There are other examples of power-sharing arrangements, e.g. in Zimbabwe, Guinea and Burundi, though no general pattern can readily be formulated and one should keep in mind country-specific limitations.

Kenya is a good example of how the AU has a comparative advantage in mediation processes in Africa. The overwhelming interest and active engagement of the African continent in coming to the aid of Kenya has indicated that there is enough will and skill for an African solution to an African problem.

²⁰

Situational Analysis Report on Necessary Conditions for Durable Solutions to Internal Displacement, Reconciliation and Restoration of Human Dignity of Internally Displaced People, UNDP/OHCHR, June 2011, p. 6.

Although Component/Output 3 can be questioned to a certain extent, the fact that it has been retained in the UNOPS-led project with a focus on best practice and lessons learnt can increase its sustainability and long-term impact with a view to possible replication in other countries affected by post-election violence.

9. Lessons Learnt

The lessons learnt are grouped together under three key headings: (i) the political expediency of the mediation effort and the creation of CLO as a post-mediation structure; (ii) project design and content; (iii) operational modalities.

The Mediation and CLO

- The successful mediation by the AU Panel in 2008 was rightly followed up by the creation of a CLO structure. The CLO was the appropriate response to a large-scale crisis and should stay in place, until after the next elections. If problems should occur again, this useful mechanism can be considered again, utilising the experience acquired since January 2008.
- The figure of Kofi Annan (plus other African leaders) was pivotal thanks to his international standing. The AU Panel enjoyed enormous trust and all stakeholders (political parties, media, business actors and civil society included) followed, so moved the process forward. No least of all, most of the names of international commissioners suggested by CLO took into account sensitivities, rightly so, hence the recruitment of predominantly African experts.
- One of the key limitations is the fact that the international community could only to a certain extent exert influence in Kenya and could not replace national authorities. Therefore, the project was about steering the process of reconciliation at national level at best and not about setting the political agenda single-handedly. There was a delicate balance to be struck between assistance provided by the international community and a strong sense of ownership of the KNDR process on the part of local stakeholders.
- GoK's weak financial commitment and ambivalence on the ICC issue – a sign of insufficient political will. At the same time, this may be one of the many limitations of power-sharing agreements.
- The adoption of the new constitution in August 2010 was a very positive development and an historic achievement, because PNU and ODM stayed together and supported the process despite their specific party considerations.
- One of the lessons learnt from the 2008 crisis is that a number of early warning signs had been neglected. Kenya paid an enormous price for not being prepared for what happened in 2008. Exclusion, growing inequality, marginalisation, injustice, etc... were there and had not been paid due attention to. Thinking back, it is now clear that resentment ran high over land ownership and land use, and was further aggravated by high levels of unemployment, especially among the young people. It is clear now that violence was conducted primarily along ethnic lines, motivated by an endemic sense of marginalisation.²¹ The culture of impunity had become the hallmark of violence and other crimes in the country and there had been a clear trend of institutionalisation of violence in Kenya over the years.²² In the turbulent weeks after the December 2007 elections, failure on the part of the Kenyan police and provincial administration to act on intelligence and other early warning signs also contributed to the escalation of violence.²³
- The international community, too, was caught off guard by the outburst of violence. If the post-election violence in 2007-2008 was caused by a political spark over an inflammable ethnic mix,

²¹ 'A choice for peace? The story of forty-one days of mediation in Kenya', International Peace Institute, August 2009, p.4.

²² CIPEV report, p. viii.

²³ Ibid, p. ix.

nearly four years later that mix does not seem to have disappeared and it is not entirely unthinkable that the upcoming elections may provide yet another spark. Therefore, a comprehensive crisis management strategy is definitely needed as is a system of early warning signs, in conjunction with ongoing relevant activities.²⁴

Project Design and Content

- The content of the intervention as well as funding and operational modalities have not been ideal, which underscores the importance of design as well as of streamlining and coordination between project components.
- The duality of the project needs be highlighted, as it requires at the same time: (i) political support and high-calibre diplomatic skills; (ii) technical expertise as well as administrative and managerial capacity.
- The M&E component is a very useful exercise that could register the pulse of the country. At the same time, the publication of the reports offers space for reflection and triggers a broad and meaningful debate in society.
- While properly recording the success story of the 2008 mediation effort as a legacy is definitely needed, there is no compelling reason why this should be linked to rapid-response interventions aiming at conflict resolution.

Operational Modalities

- An important question that calls for a discussion is whether Direct Execution (DEX) was the ideal execution modality to have been adopted? For instance, the National Execution (NEX) modality through the Ministry of Justice might have seemed a reasonable alternative. There were, however, strong concerns on the part of donors about such a route, hence the channelling of funds through UNDP in order to ensure a greater degree of accountability, meaning that DEX was the only modality which could have been adopted under the circumstances.
- At the same time, there was insufficient understanding of the DEX modality on the part of a number of stakeholders. Similarly, there was insufficient orientation for project personnel and external partners on what working with UNDP entails, what rules are to be observed and the division of responsibilities. This caused a number of problems in terms of financial administration, leading to unnecessary frictions.
- UNDP's service delivery capacity should have been evaluated before taking on larger and more sensitive operations such as the CLO and CoE procurement requirements which call for extraordinary measures. There is evidence to suggest that UNDP's limited procurement services were overstretched and adding more entities like CLO and CoE only increased pressure on the organisation. The small procurement unit of UNDP Kenya serves more than 20 UN agencies and offices. This team has had to battle with unrealistic timeframes mainly related to CoE activities²⁵.

²⁴ An EWS has reportedly been established by the National Steering Committee on Peace Building and Conflict Management at the Ministry of Provincial Administration and Internal Security, Office of the President.

²⁵ Michael Morgan, *op. cit.*, p. 16.

- CLO was a project financially supported through UNDP and not a separate entity, but its political guidance came primarily from PEAP and Mr. Annan personally. The chain of command was a contentious issue throughout the implementation period and was never fully resolved.
- The UN agency, which has governance as one of its main thematic programme areas, was relegated to the role of fund manager only. In all fairness, UNDP was overwhelmed with administrative functions instead of strategising.
- -Speed and flexibility are the main exigencies of the operational set-up for this type of rapid-reaction response to a crisis. Given the time pressure in a sensitive and high-profiled intervention like this one, the mechanics of project implementation needs to be paid due attention to. Whilst a project implementation plan was prepared, it did not provide the details on fast-track procurement procedures nor realistic delivery timelines. Relevant operational issues seemed to have been overlooked.
- Yet, one of the most striking features of the project was the discrepancy between the speed and flexibility required, and procedural constraints of UN agencies, mostly in terms of procurement. While the UN does have rapid response mechanisms in the areas of conflict containment (e.g. through the deployment of peace-keeping forces) or humanitarian aid (through the UN Office for the Coordination of Humanitarian Affairs - OCHA), mediation does not seem to have been developed to the same extent.²⁶ Although this is outside their mandate, the evaluators would like to suggest that the creation of a mediation-related rapid reaction facility be considered at some point in time within the UN system. The USAID Office of Transition Initiatives (OTI) may be a case in point. OTI is the office within USAID that supports US foreign policy objectives by helping local partners advance peace and democracy in priority countries in crisis. Seizing critical windows of opportunity, OTI works on the ground to provide fast, flexible and short-term assistance targeting key political transition and stabilisation needs. Furthermore, a relatively new rapid-reaction tool of the European Union, the Instrument for Stability (IfS) that was established in 2006, could also be considered as an example. In any case, the successful mediation of PEAP in early 2008 is a legacy that deserves to be studied and replicated by the UN.
- Relations between CLO and donors under the UNDP-led intervention were largely indirect. While the evaluators have not been tasked to assess the UNOPS-led project, a look at its format offers some useful lessons learnt. For instance, the project board brings together the major donors and CLO around the same table, which is conducive to fruitful, if informal, exchange of information and views. This should definitely be kept in mind in view of future interventions of this type.

²⁶

Under Art. 1 of the UN Charter, it is a core task of the UN 'to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace'.

10. Recommendations

Much as it is hoped that the events of early 2008 will be avoided in the future, the Evaluation Team fully understands that national stakeholders, UN agencies and the international community at large ought to have a certain degree of preparedness, should instability occur again in Kenya. Therefore, the Evaluation Team has made a conscientious effort to formulate clear-cut recommendations, both to UNDP and other stakeholders in the KNDR process. The number of these well-meaning suggestions is not large, but they are aiming at useful and realistic solutions to be kept in mind.

Mediation Strategy

1. The CLO structure should remain in place until after the upcoming elections as a valuable item in the toolkit of the international community in case further assistance is needed.
2. CLO should do its utmost to help reduce the likely tension between the two major parties ahead of the upcoming elections.
3. The members of the AU Panel of Eminent African Personalities should remain fully engaged through visits to the country, particularly in the run-up to the forthcoming elections.

Project Design and Content

4. A comprehensive early warning system (EWS) should be devised in conjunction with existing ones and should be widely used by a network of relevant stakeholders that would fully utilise their expertise in terms of good governance and crisis prevention. Notably, the Waki commission report contains a recommendation on the creation of a Conflict and Disaster Early Warning and Response systems. As mentioned elsewhere, an EWS has been devised by Kenyan authorities with UNDP support. In addition, a similar system was devised by DFID ahead of the 2010 constitutional referendum.
5. The exercise of constituency delineation is likely to be politically charged and would require a broad consultation as well as a high degree of neutrality, so that the new boundaries are accepted by all stakeholders. Therefore, the donor community may have to consider the recruitment of international commissioners, whose presence could allay fears of manipulation and gerrymandering.
6. Capacity building should be provided to a wide range of electoral stakeholders, namely:
 - The new Independent Election and Boundaries Commission (IEBC) as well as its secretariat will need intensive training as soon as they are constituted. The date of the upcoming elections has yet to be determined (August 2012 or towards the end of the year), but time for comprehensive electoral preparation is already running out.
 - Given that IEBC will be a new institution, its staff should not only be trained in international best practice of electoral preparation, but should also be alerted of likely mistakes to be made and the appropriate responses to possible negative developments.

- Given the crucial role of the media as a negative protagonist in the 2007-2008 post-election violence and a benevolent factor in the 2010 referendum, donors should pay due attention to capacity building programmes for journalists, with stress laid on the coverage of election campaigning, the announcement of results, complaints adjudication, etc.
- The police forces, yet another negative protagonist in early 2008, will need capacity building with a view of crowd control and rules of engagement as well as appropriate equipment and ammunitions.
- CLO and KNADS staff may need an additional training course in classification and maintenance of sensitive records.
- All capacity building programmes and supply contracts should be closely coordinated, so that overlaps are avoided and resources made available are fully utilised. UNDP has a significant role to play in terms of strategic planning and donor coordination.

7. Guidelines on access to CLO/KNADS sensitive records should be drafted as soon as possible.

Funding and Operational Considerations

8. The project architecture should ensure the seamless co-operation between CLO and a service provider specialising in rapid-reaction operations.

9. It would be beneficial if orientation sessions were envisaged for CLO and other stakeholders to help them familiarise themselves with the intricacies of UN agencies as regards their rules and procedures, required timelines and in general their *modus operandi*.

10. The service provider, CLO and donors should have regular meetings in the framework of a Project Board or a Project Steering Committee. This would help project stakeholders to have direct, if informal, exchange of information and views on the progress and effectiveness of the intervention.

Annexes

Annex I: Terms of Reference of the Evaluation Team

Annex II: Literature Reviewed

Annex III: List of Interlocutors

Annex IV: Project Life Cycle

Annex V: Evaluation Grid

TERMS OF REFERENCE

EVALUATION OF THE PROJECT CONSOLIDATING GAINS FROM THE KENYA NATIONAL DIALOGUE AND RECONCILIATION PROCESS

1. Background

Kenya experienced the greatest threat to its stability since its independence with the violence that escalated into a political crisis that engulfed the country following the 2007 general elections. In response to the crisis a Panel of Eminent African Personalities was established to assist Kenyans in finding a peaceful solution to the crisis. It was composed of former UN Secretary-General, Mr. Kofi Annan (Chairman), former President of Tanzania, Mr. Benjamin Mkapa and former South African First Lady, Mrs. Graca Machel. This resulted in the signing of the National Accord and Reconciliation Act (NARA) in February, 2008. Effective implementation of the agreement is critical as part of the consolidation of the peace process. Due to the need for continued engagement a Coordination and Liaison (CLO) with the overall objective of supporting and facilitating the timely and effective implementation of the KNDR agreements was established through the project, Consolidating Gains from the Kenya National Dialogue and Reconciliation Process. The CLO's overall objectives are the maintenance of political dialogue between the coalition partners and the Panel; processing and analysis of the findings of a comprehensive and coordinated monitoring and evaluation system for the implementation of the KNDR agreements; and the preservation for historical and lessons-learned purposes of the records and documents of the KNDR process, including the commissions, in consultation with the Kenyan authorities and in accordance with international standards and practices. The processing and analysis of the findings from the comprehensive and coordinated monitoring and evaluation mechanism has been undertaken by a private research firm.

Specific support from the CLO included provision of political analysis, advice, drafting support and strategy options to the members of the AU Panel of Eminent African Personalities. The CLO has also successfully sourced international experts for the Coalition Government various needs including the Committee of Experts on the Constitutional Review Process, the Truth, Justice and Reconciliation Commission (TJRC), the Police Reform Task Force and the Constitutional Dispute Resolution Court. Technical assistance has also been provided to the new commissions in terms of financial and administrative planning. In addition, the CLO have facilitated meetings with civil society representatives, members of the Coalition Government, donors and other stakeholders to exchange views on the implementation process and on the way forward, including discussion on the Panel's options for action in assisting implementation of the agreements. This critical support provided through the project contributes towards addressing the long term issues, including: constitutional, legal and institutional reforms; land reforms; consolidating national unity and cohesion, and addressing impunity, transparency and accountability, which are essential components of consolidating peace and stability in Kenya.

In 2009 the initial project was expanded to also include support to the Interim Independent Electoral Commission (IIEC) and the Committee of Experts on Constitutional Review (CoE). Separate reviews are being undertaken for each of these components.

2. Project Components

The long-term outcomes that this project aims at contributing to are: strengthened capacity of key institutions for enhanced efficiency, effectiveness, transparency and accountability in the formulation and delivery of pro-poor planning and policies; a culture of constitutionalism; and enhanced capacity for the promotion and administration of justice and human rights. The specific outputs are:

- (a) Political dialogue maintained between the coalition partners and the Panel of Eminent African Personalities.
- (b) Findings from a comprehensive and coordinated monitoring and evaluation mechanism for the implementation of the KNDR agreements are processed and analyzed
- (c) Records of the KNDR and the Commissions emanating from the KNDR are properly stored, archived and preserved (Information repository established).

3. Objective of the Evaluation

The overall objective of the evaluation is to assess the impact of the support provided to the CLO and identify lessons learned from the process.

3.1. Specific Objectives

Specifically, the Evaluation aims to accomplish the following:

- a) Assess the Project and its contribution to national reform priorities on democratic governance and its impact on various stakeholders;
- b) Review the performance of the Project in achieving the expected outcomes and outputs as per the Project Document;
- c) Identify factors, which facilitated or hindered the achieving the outcomes, both in terms of the external environment and those internal to the Project and document lessons learned in the development and implementation stages. This should include but not be limited to assessing the strengths and weaknesses in design, management, coordination, human resource, and financial resources;
- d) Assess the appropriateness of the programme strategy including the programme institutional/management arrangements and the basket fund modality to reach the intended outputs and outcome;
- e) Assess the effectiveness of risk mitigation strategies in the implementation of the project, particularly in the context of the CoE not being a permanent entity;
- f) Make clear and focused recommendations that may be required for enhancing effectiveness of similar projects

3.2. Scope of the Evaluation

In assessing the impact of the Project, the evaluation will take into consideration:

- a) the project's concept and design;
- b) whether the problem (s) the Project was supposed to solve was clear, objectives were achievable, and whether the relationship between the objectives, the outputs, the activities and the inputs was clear, logical, and commensurate, given the time capacity and resources available;

- c) to what extent the immediate objectives of the project have been attained and how effective it has been in assisting the Government of Kenya in implementing the KNDR;
- d) project implementation and operational performance. Particular attention will be given to the mobilization of inputs in terms of quality, quantity and timeliness; and the impact of these external factors on the project workplan schedule; and the overall management arrangements;
- e) the quality and timeliness of the implementation and responsiveness of the Project in light of the objectives, outputs, activities and risks;
- f) the achievement of planned outcomes and outputs as per the project document and budget;
- g) significant lessons that can be drawn from the experience of the project and its results, in particular, anything that should be or should not be applied to the other projects.

4. Methodology of the Assignment

Based on UNDP guidelines for evaluations, and in consultations with UNDP Kenya, the Consultants should develop a suitable methodology for this evaluation. The evaluation will be inclusive and participatory, involving all stakeholders into the analysis. The evaluation will consider the social, political and economic context which affects the overall performance of the outcome achievements. During the evaluation, the Consultants are expected to apply the following approaches for data collection and analysis.

- Desk review of relevant documents;
- Discussions with the CLO and UNDP Kenya Senior Management and programme staff;
- Interviews with partners and stakeholders including the AU Panel of Eminent African Personalities, government officials, service providers, development partners (within the basket and those outside the basket), strategic partners, among others.
- Consultation meetings.

The evaluation will be conducted according to the UNDP Handbook on Monitoring and Evaluation for Results (2002), which follows the result-based management methodology.

5. Deliverables

The Consultants are expected to provide the following outputs:

- Inception report on proposed evaluation methodology, design, workplan and proposed structure of the report;
- Initial findings from field work;
- A draft evaluation report;
- Final evaluation report of sufficient detail and quality, with annexes

6. Implementation Arrangements

The Consultants will be briefed by UNDP upon signing contracts on the objectives, purpose and output of the evaluation. An oral debriefing by the Consultants on the proposed workplan and evaluation methodology will be done and approved prior to the commencement of the

evaluation process. A wrap-up meeting during where comments from participants will be noted for incorporation in the final evaluation report must be held.

7. Composition, skills and experience of the evaluation team

The mission will consist of two consultants with the following expertise:

Team Leader

Required qualification and skills for the team leader:

- Advanced university degree in political science, international development or related field
- At least 7 years of experience in the relevant field
- Sound knowledge about results-based management (especially results-oriented monitoring and evaluation)
- Previous experience on undertaking evaluations of similar scope
- Previous work experience in related areas with UNDP desirable but not mandatory
- Fluency in English
- Excellent writing and communication skills

Specifically, the team leader will perform the following tasks:

- Lead and manage the evaluation mission;
- Design the detailed evaluation scope and methodology (including the methods for data collection and analysis) for the report;
- Decide the division of labor within the evaluation team;
- Conduct an analysis of the outcome, outputs and partnership strategy (as per the scope of the evaluation described above) for the report;
- Draft related parts of the evaluation reports; and
- Finalize the whole evaluation report.

The team leader will take the overall responsibility for the quality and timely submission of the evaluation reports to the UNDP country office.

Second Consultant

Required qualification for the second consultant:

- Advanced university degree in political science, international development or related field
- At least 5 years work experience in the relevant field.
- Sound knowledge about results-based management (especially results-oriented monitoring and evaluation)
- Previous experience on undertaking evaluations of similar scope
- Previous work experience in related areas with UNDP desirable but not mandatory
- Fluency in English
- Excellent writing and communication skills

The second consultant will perform the following tasks:

- Review documents;
- Participate in the design of the evaluation methodology;
- Data collection;
- Assessment/construction of indicators' baselines

- Actively participate in conducting the analysis of the outcomes, outputs and targets (as per the scope of the evaluation described above), as agreed with the team;
- Draft related parts of the evaluation report; and,
- Assist the team leader in finalizing document through incorporating suggestions received on draft related to his/her assigned sections.

8. Timeframe

The detailed schedule of the evaluation and the length of the assignment will be discussed with the Consultants prior to the assignment. The final report is expected no later than 14th April, 2011. Based on the above guidelines, the tentative work-plan for the assignment is shown below:

Indicative Work plan	
Activity	Timeframe
Inception report	2 days
Desk Review	2 days
Interviews including field visits	7 days
Preparation of main findings and recommendations	3 days
Wrap-up meetings	1 day
Preparation and submission of 1 st draft of the evaluation report	3 days
Feedback on draft reports	2 days
Finalization of evaluation report and submission of final report	

9. Remuneration

The Consultants will be contracted by UNDP according to the organization remuneration scale.

10. Duty Station

The consultants shall not be obliged to work from the UNDP-Kenya Country Office. All field travel costs related to the assignment shall be borne by UNDP.

11. Reporting Relationship

The Consultants will report to the UNDP Kenya Deputy Country Director of Programmes.

Application procedure.

Interested and qualified consultants should submit their application which should include the following;

1. Detailed Curriculum Vitae
2. Current P11 form
3. Proposal for implementation of the assignment.

The applications should be forwarded to consultants.ken@undp.org, to reach us on or before 28 March 2011

ANNEX II

Literature Reviewed

CIPEV, *Final Report of the Commission of Inquiry into Post-Election Violence*, October 2008

CLO, *Project Progress Review Reports on Support to African Union Panel of Eminent Persons' Facilitation Efforts on Peace-Building and Reconciliation*:

- CLO Project Review Report January – March 2009
- CLO Project Review Report April – June 2009
- CLO Project Review Report July – September 2009
- CLO Project Review Report October – December 2009
- CLO Project Review Report January – March 2010
- CLO Project Review Report April – June 2010
- CLO Project Review Report October – December 2010

CLO, *Support to African Union Panel of Eminent Persons' Facilitation Efforts on Peace-Building and Reconciliation*, Annual Report January – December 2009

CoE, *Final Report of the Committee of Experts on Constitutional Review*, October 2010

EUEOM, *Kenya - Final Report - General Elections 27 December 2007*, April 2008

Internews, *The International Criminal Court and Post-Election Violence in Kenya*, May 2010

IREC, *Final Report of the Independent Review Commission (Kriegler Report)*, December 2007

Kofi Annan Foundation, *The Kenya National Dialogue and Reconciliation: One Year Later*, Geneva, 30-31 March 2009

Kofi Annan Foundation, *The Kenya National Dialogue and Reconciliation: Two Years On: Where Are We?*, Report of the Meeting, Nairobi 2-3 December 2010

Lindenmayer E. and Kaye J. L., *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya*, International Peace Institute, August 2009

Morgan M., *Final Report on the Review of the Project Consolidating Gains from the KNDR Process*, July 2010

Mwathane I., *The Contribution of Land to the Recent Violence in Kenya: Implications for the Ongoing Land Policy Dialogue*, Land Development and Governance Institute (LDGI), Nairobi, Kenya, April 2010

South Consulting, *The Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project*:

- *Project Context and Summary of Findings*, January 2009
- *Draft Report on status of implementation* (Agenda Item 1 to Agenda Item 4 Chapters), January 2009
- *National Baseline Survey*, January 2009
- *Status of Implementation of Agenda Items 1-4 Draft Report*, May 2009
- *Status of Implementation of Agenda Items 1-4 Third Review Report*, July 2009
- *Review Report for October - December 2009*, January 2010
- *Status of Implementation of Agenda Items 1-4 Progress Report for January - March 2010*, April 2010

- *Implementation of Agenda Items 1-4 and Progress Towards a New Constitution Review Report*, July 2010
- *Review Report*, October 2010
- *Draft Review Report*, April 2011
- *Review Report*, June 2011

UNDP, CLO Project Document, *Consolidating the Gains from the Kenya National Dialogue and Reconciliation Process*, January 2009

UNDP, CLO Project Document, *Consolidating the Gains from the Kenya National Dialogue and Reconciliation Process*, September 2010

UNDP, *Initiation Plan for the Support to African Union Panel of Eminent Persons' Facilitation Efforts on Peace Building and Reconciliation in Kenya post December 2007 Elections*, January 2008

UNDP, *Consolidating the Gains from the Kenya National Dialogue and Reconciliation Process*

- Project Annual Report 2009
- Final Report, October 2008 – March 2011
- Final Report, January 2009 – September 2010

UNDP, *Consolidating the Gains from the Kenya National Dialogue and Reconciliation Process*, Work Plan January – March 2011

UNDP – OHCHR, *Situational Analysis Report on Necessary Conditions for Durable Solutions to Internal Displacement, Reconciliation and Restoration of Human Dignity of Internally Displaced People Report* (preliminary draft), June 2011

UNDP Evaluation Office, *Handbook on Monitoring and Evaluating for Results*, 2002

UNDP Evaluation, *Guidelines for Outcome Evaluators*, 2002

UNHCHR, *Report from OHCHR Fact-finding Mission to Kenya*, 6-28 February 2008

UNOPS, *Continuing the Gains from the Kenya National Dialogue and Reconciliation Process*, Program Description

Additional documents:

Correspondence on extension of the project *Consolidating the Gains from the Kenya National Dialogue and Reconciliation Process*, August 2009, August 2010 and December 2010

Minutes of the Final Project Review Meeting for the Project *Consolidating the Gains from the Kenya National Dialogue and Reconciliation Process* on 21 March 2011

The Truth Justice and Reconciliation Act, 2008, Kenya Gazette Supplement No. 84 (Acts No. 6), December 2008

The National Accord and Reconciliation Bill 2008, March 2008

Various media reports

ANNEX III

LIST OF INTERLOCUTORS

Commission of Inquiry on Post Election Violence (CIPEV) - Waki Commission

George Mong'are Kegoro, Executive Director of International Commission of Jurists - Kenya Chapter, formerly Secretary to the Commission

Dialogue Team (Permanent Committee on the Management of Coalition Affairs)

Gichira Kibara: Secretary in Charge of Constitutional Affairs at the Ministry of Justice of Kenya, formerly Permanent Secretary on behalf of PNU of the National Dialogue Team

Donor Coordination Group (DCG)

Camilla Veerman: Head of Economic Section, Embassy of the Kingdom of the Netherlands

Catie Lott: Director, Office of Democracy and Governance, USAID

Dorcas Gacugia: Programme Officer, Development Cooperation, Royal Norwegian Embassy

Muratha Kinuthia: DFID

Rober Simuyu: Governance Advisor, CIDA

Sandra Diesel: Embassy of Sweden

Sheila Karani: USAID

Tomas Kønigsfeldt: Royal Danish Embassy

Wera Helstrøm: First Secretary (Political Affairs), Royal Norwegian Embassy

Interim Independent Constitutional Dispute Resolution Court (IICDRC)

Michel Bastarache: Commissioner, Canada

John Alastair Cameron (Lord Abernethy), UK

Kenya National Archives

John G. M’reria: Ag. Director

Richard M. Wato: Chief Archivist

Francis G. Mwangi: Snr. Assistant Director

Open Society Initiative for Eastern Africa

Mugambi Kiai: Programme Manager

Panel of Eminent African Personalities Coordination and Liaison Office (CLO)

Ambassador Nana Effah-Apenteng: Chief of Staff

G. Justin Jepson: Political Affairs Officer

Neha Sanghrajka: Liaison Officer

John Kennedy Omondi: Finance and Administrative Associate

Leonard Obonyo: ICT Associate

South Consulting

Karuti Kanyinga: South Consulting

Truth, Justice and Reconciliation Commission (TJRC)

Ronald Slye: Commissioner, USA

ANNEX IV

PROJECT LIFE CYCLE IN RELATION TO GENERAL POLITICAL DEVELOPMENTS

February 2008 – July 2008: mediation phase

July 2008 – September 2008: transition phase

October 2008 – September 2009: dialogue phase

FEBRUARY 2008 – JULY 2008: MEDIATION PHASE	
<p style="text-align: center;"><u>February 2008</u></p> <p>28/02/2008: Agreement on the Principles of Partnership of the Coalition Government</p> <p>February – March 2008: Decision on the creation of IREC , CIPEV and TJRC</p> <p style="text-align: center;"><u>March 2008</u></p> <p>March 2008: Signing of The National Accord and Reconciliation Bill 2008</p> <p>20/03/08: IREC members sworn-in</p> <p style="text-align: center;"><u>April 2008</u></p> <p>14/04/08: Formation of the Grand Coalition government</p> <p>17/04/08: Mr. Annan chairs a KNDR session (CLO creation proposed)</p> <p style="text-align: center;"><u>May 2008</u></p> <p>May 2008: Launch of Operation Rudi Nyumbani (IDPs return)</p>	<p style="text-align: center;"><u>February 2008</u></p> <p>15/02/09: Signature of the Initiation Plan of the Support to the African Union (AU) Panel of Eminent Persons' Facilitation Efforts on Peace Building and Reconciliation</p> <p style="text-align: center;"><u>March 2008</u></p> <p style="text-align: center;"><u>April 2008</u></p> <p>17/04/08: KNDR meeting chaired by Mr. Kofi Annan</p> <p>17/04/08: Creation of CLO proposed</p>

23/05/08: Parties to the National Dialogue clear and sign a Statement of Principles on long-term issues	
JULY 2008 – SEPTEMBER 2008: TRANSITION PHASE	
<p><u>June 2008</u></p> <p>03/06/08: The three member of the CIPEV sworn in</p> <p>17/06/08: Draft Bill on New Constitution agreed upon</p> <p>20/06/08: Draft Bill on New Constitution</p> <p><u>July 2008</u></p> <p>09/07/08: Starting of CIPEV hearings</p> <p>15/10/08: The Waki Commission (CIPEV) submits its report (Recommendations On Special Tribunal, Police Reform and Disaster and Conflict Early Warning Systems)</p>	<p><u>July 2008</u></p> <p>30/07/08: ToRs of the CLO approved by the KNDR team</p>
OCTOBER 2008 – SEPTEMBER 2009: DIALOGUE PHASE	
<p><u>October 2008</u></p> <p>23/10/08: Parliament passes the Truth, Justice and Reconciliation Bill</p> <p><u>December 2008</u></p> <p>16/12/08: Electoral Commission of Kenya dissolved by an Act calling for establishment of IIEC</p> <p>17/12/08: Kibaki and Odinga agree on the implementation of the CIPEV (Waki Commission) recommendations</p> <p>22/12/08: The CoE created by an Act of Government</p>	<p><u>October 2008</u></p> <p>17/10/08: sealed envelope with names of persons implicated in the PEV is given to the Panel by the Waki Commission</p> <p>October 2008: Kriegler report (Recommendations: voter registration, creation of new electoral commission)</p>

December 2008: National Cohesion and Integration Bill enacted into law	
<u>January 2009</u>	<u>January 2009</u>
January 2009: South Consulting's first review report issued	January 2009: South KNDR Reporting - February 2008 - January 2009
	January 2009: The revised project document of CLO signed
	08/01/09: CLO submits to the National Assembly the list of five non-Kenyan candidates for CoE
	14/01/09: The National Assembly asks the CLO to identify candidates for the three non-Kenyan positions for judges on the IICDRC
	26/01/09: CLO coordinator briefing to the donors (DCG)
29/01/2009: Special Tribunal for Kenya Bill introduced in the National Assembly	30/01/09: The CLO convenes the First Review Meeting with the Dialogue Team. Presentation of South Report
29/01/2009: Constitution of Kenya Amendment Bill introduced in the National Assembly	
<u>February 2009</u>	<u>February 2009</u>
01/02/09: Deadline for the enactment of the Special Tribunal legislation	
03/02/09: Statement by Mr. Annan, "Kenya We Want", submitted to the office of the Prime Minister	
12/02/09: Constitution of Kenya Amendment Bill fails to be adopted, hence the failure of the law on establishing a Special Tribunal.	12/02/09: South Report submitted to the President and the Prime Minister
13/02/09: Statement released by the Panel expressing disappointment at the defeat of the Bill (Annan: "a blow to efforts aimed at ending the culture of impunity in Kenya")	13/02/09: South Report presented to civil society and business community
	17-20/02/09: CLO coordinator in Geneva for consultations with Mr. Annan
	23/02/2009: Mr. Kofi Annan letter to the President and the Prime Minister in support of efforts to enact legislation for a Special Tribunal providing additional time for creation of the Special Tribunal

28/02/09: Mr. Annan audio statement to mark the anniversary of the signing of the Agreement on the Principles of Partnership of the Coalition Government	
23/02/09: Three Kenyan CoE members appointed by the President (Ekuru Aukot, chairperson)	
<u>March 2009</u>	<u>March 2009</u>
02/03/09: First meeting of CoE (taking over equipment of CIPEV and IREC)	07-21/03/09: CLO consultant archivist, Karen Benedict, second mission
09/03/09: Enactment of the Truth, Justice and Reconciliation Act	
11/03/09: Members of the IIEC appointed and sworn-in	20-21/03/08: Peter Mazikana selected as CLO archivist
	March 2009: CLO provides logistical and technical support to the KNDR Conference in Geneva
	23/03/09: CLO coordinator briefing to the donors (DCG)
	30-31/03/09: “KNDR: One Year Later” conference in Geneva. 250 participants
	<u>April 2009</u>
	21/04/09: CLO submits three nominees for non Kenyan members of the TJRC to the national Assembly
	April 2009: CLO submits a proposal for funding to the Rockefeller Foundation
	29/04/09: Panel members’ statement expressing concern at the deadlock in the National Assembly concerning the nomination of the Leader of Government Business in Parliament
<u>May 2009</u>	<u>May 2009</u>
08/05/09: President Kibaki appoints the members of the National Task Force on Police Reforms	May 2009: South KNDR Reporting - January – April 2009

<p>12/05/09: The Interim Independent Boundaries Review Commission (IIBRC) headed by Andrew Ligale set up by an Act of Parliament</p> <p><u>June 2009</u></p> <p>04/06/09: members of the Interim Independent Boundaries Review Commission (IIBRC) sworn in</p> <p>19/06/09: CoE in a public notice invites comments from the public on the Constitutional Reform</p> <p><u>July 2009</u></p> <p>02/07/09: Kofi Annan meets a Government Delegation in Geneva on matters of Justice and in particular the Special Tribunal</p> <p>03/07/09: a delegation of Kenyan Ministers sign an agreement with the Prosecutor of the International Criminal Court Moreno Ocampo, declaring that the Kenyan government would set up mechanisms to try</p>	<p>22/05/09: CLO submits the National Assembly a list of five non-Kenyans members for the IICDRC</p> <p>28/05/09: CLO hosts a meeting with Ministry of Justice, National Cohesion and Constitutional Affairs Commission and DCG on TJRC, conveying concerns of the CSOs and business community</p> <p><u>June 2009</u></p> <p>May-June 2009: Mr. Annan intense contacts with the two principals regarding the establishment of a Special Tribunal</p> <p>22/06/09: Mr. Annan letter to the Speaker of the Parliament and the two principals on the importance of setting up a Special Tribunal</p> <p>24/06/09: An addendum to the CLO Project Document envisaging support to the CoE circulated to donors</p> <p>30/06/09: Second Review Meeting with the Dialogue Team at Serena Hotel. Presentation of South Report. Then official transmitted to the two principals</p> <p>30/06/09: The Coalition government makes a request that the CLO be extended for a further twelve months (to 30 September 2010), also donors request that the CLO project be extended to cover activities of the Committee of Experts on Constitutional Review (CoE)</p> <p><u>July 2009</u></p> <p>July 2009: South KNDR Report May –June 2009</p>
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<p>post-election violence perpetrators by 30th September, 2009. In case of default: referral to the ICC</p> <p>09/07/09: Hand-over of the envelope and supporting evidence by Kofi Annan to the ICC</p> <p>22/07/09: President Kibaki appoints the 9 members of the TJRC</p> <p>30/07/09: A draft Bill on the Special Tribunal by the Minister of Justice is discussed in the Cabinet. On same day the Cabinet reaffirms its commitment to the ICC mechanism</p> <p style="text-align: center;"><u>August 2009</u></p> <p>03/08/09: Members of the TRJC sworn-in</p> <p>26/08/2009: Hon. Gitobu Imanyara publishes a private Member's Bill (Constitutional Amendment No.3 of 2009) seeking to entrench the Special Tribunal of Kenya in the Constitution</p> <p style="text-align: center;"><u>September 2009</u></p> <p>01/09/2009: IIEC successfully completes Parliamentary By-Elections for Bomachoge and Shinyalu Constituencies</p>	<p>07/07/09: CLO briefing session with CSOs and the media</p> <p>20-25/07/09: CoE conducts regional hearings in 18 districts countrywide reaching more than 4,200 participants</p> <p style="text-align: center;"><u>August 2009</u></p> <p>06/08/09: Request by Deputy Prime Minister Musalia Mudavadi on extension of CLO life span to support further KNDR process. CLO extended to 30th September 2010</p> <p style="text-align: center;"><u>September 2009</u></p> <p>2-9/09/09: CoE workshop with representatives of the 47 Kenyan political parties</p> <p>07/09/09: Third Review Meeting with the Dialogue Team at Serena Hotel</p> <p style="text-align: center;"><u>October 2009</u></p> <p>October 2009: South KNDR Reporting July - September 2009</p> <p>04-07/10/09: Mr. Annan visit to Kenya</p> <p>05/10/09: Fourth Review Meeting with the Dialogue Team</p>
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<p><u>November 2009</u></p> <p>03/11/09: Police Reform Task Force hands over the final report to the President</p> <p>04/11/09: First visit of ICC prosecutor Moreno Ocampo to Kenya</p> <p>17/11/2009: HDC (Harmonised Draft Constitution) published by CoE</p> <p>26/11/09: Opening of the ICC formal procedure. Victims of post-election violence had 30 days to submit their views (up to 26/12/09)</p> <p><u>December 2009</u></p> <p>02-05/12/09: CoE dissemination of the HDC in 3.9 million copies</p> <p>09/12/09: After various unsuccessful sessions a Constitutional Amendment Bill introduced by Imenti Central MP Hon. Gitobu Imanyara on a Special Tribunal is withdrawn</p> <p><u>March 2010</u></p> <p>March 2010: IIEC launches a new voter registration drive</p> <p>23/03/10: Debate on the proposed constitution begins</p>	<p><u>November 2009</u></p> <p>November 2009: The Rockefeller Foundation approves the request of US\$865,000 from the CLO for the establishment of an archive of the “KNDR” process</p> <p><u>December 2009</u></p> <p>02-08/12/09: Mr. Annan and Ms. Machel visit to Kenya</p> <p>15-17/12/09: Series of meeting of CoE with CSOs, media and other stakeholders on the HDC</p> <p>20/12/09: Processing and cataloguing of the records of the IREC and the Panel completed</p> <p><u>January 2010</u></p> <p>January 2010: First tranche of Rockefeller foundation funding provided</p> <p>January 2010: South KNDR Reporting October – December 2009</p> <p><u>March 2010</u></p> <p>03/03/2010: Bid awarded to COSEKE Ltd. For the development of the KNADS website and to Dotsavvy for the digitisation of the CLO archives</p> <p>23-26/03/10: Mr. Annan visit to Kenya</p>
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31/03/10: ICC authorizes investigation into Kenya's PEV	
<u>April 2010</u>	<u>April 2010</u>
01/04/10: Draft Constitution approved by Parliament	April 2010: South KNDR Reporting January – March 2010
01/04/10: First press conference by Prosecutor Luis Moreno-Ocampo	
<u>May 2010</u>	<u>May 2010</u>
08/05/09: President Kibaki appoints 16 members of a National Task Force on Police Reforms	07/05/10: CoE launches civic education campaign (with distribution of HDC copies)
08-12/05/10: Ocampo investigative mission to Kenya	
12/05/10: Constitutional referendum questions published by IIEC	18/05/10: Fourth Review Meeting with the Dialogue Team
20/05/09: List of seven international nominees for the National Task Force on Police Reforms submitted by CLO to the Prime Minister Office	
<u>June 2010</u>	<u>June 2010</u>
13/06/10: Explosion at Uhuru park	June 2010: Capacity building for the National Archives
	15/06/2010: digitization of the paper documents started
	22-24/06/10: capacity building workshop for the National Archives
<u>July 2010</u>	<u>July 2010</u>
July 2010: Final Report on the Review of the KNDR process (Michael Morgan)	July 2010: South KNDR Reporting April – June 2010

04/08/10: referendum on the Proposed Constitution of Kenya	07/07/10: Fifth Review Meeting with the Dialogue Team
<u>August 2010</u>	<u>August 2010</u>
	August 2010: The National Dialogue Team asks for a two years renewal for CLO (up to 2012 elections)
	26-28/08/10: Mr. Anna visit to Kenya
27/08/10: Referendum, new constitution adopted	
	<u>September 2010</u>
	29/09/2010: Change of CLO project service provider from UNDP to UNOPS
	30/09/10: Digitisation of archives completed. A total of 112,700 captured
	<u>October 2010</u>
	October 2010: South KNDR Reporting July - September 2010
	October 2010: CoE and IICRDC disbanded
<u>November 2010</u>	<u>November 2010</u>
26/11/2010: IIBRC (Interim Independent Boundaries Review Commission) banned by the High Court to publish 80 additional constituencies on the Kenyan Gazette	16/11/10: Sixth Review Meeting with the Dialogue Team
	26/11/2010: IIBRC (Interim Independent Boundaries Review Commission) banned by the High Court to publish 80 additional constituencies on the Kenyan Gazette
<u>December 2010</u>	<u>December 2010</u>
December 2010: "KNDR Two Years On: Where Are We?" Conference in Nairobi	06-08/12/10: Mr. Annan visit to Kenya
14/12/10: The <i>Ocampo Six</i> names released	December 2010: second KNDR Review Meeting (KNDR2)

	<p>December 2010: Ambassador Nana Effah-Apenteng (CLO coord.) request for a three months no-cost extension</p> <p><u>January 2011</u></p> <p>07-08/01/11: Mr. Annan visit to Kenya</p> <p>April 2011: South KNDR Reporting January – March 2010</p> <p>01/04/11: Closure of the UNDP project and UNOPS taking over CLO</p>
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ANNEX V

PROJECT PERFORMANCE ASSESSMENT

		CLO Project Doc. Indicators	Performance	Assessment
OUTPUTS/COMPONENTS				
Output 1	To maintain the political dialogue between the coalition partners and the Panel	<ul style="list-style-type: none"> - Number of consultations between the Dialogue Team and the CLO - Personnel recruited by CLO - Number of visits of AU Panel members - Number of int'l experts recruited by independent commissions - Number and quality of situational reports produced by CLO for the AU Panel - Number of consultations between CLO and the Dialogue Team - Collaboration between CLO and the Dialogue Team for the provision of information to stakeholders 	<ul style="list-style-type: none"> - Seven Review Meetings - Eight Panel visits - Two Review Meetings on KNDR - Three end of project reports/annual reports, one progress report, eight quarterly reports - Panel visits to Kenya to further the implementation of the KNDR Agreements. - Role of the Dialogue Team in advancing implementation of the KNDR agreements. - Review meetings on the Kenya National Dialogue and Reconciliation - Regular review reports on activities for submission to Panel, Chairperson of the African Union and donors. - Recommendation of non-Kenyan experts to the CoE - Managing of funding to CoE - Recommendation of non-Kenyan judges to IICDRC - Recommendation of non-Kenyan experts to TJRC - Pre-financing to IIEC for first by-elections - Fund-raising among international community for referendum - Recommendation of international experts to National Task Force on Police Reform Seven review meetings between 01/09 and 12/10 	<p>Panel role well established and recognised by all parties involved; CLO well-established as a political interlocutor.</p> <ul style="list-style-type: none"> - Continued Engagement of the Panel in the post-mediation phase, even if Panel members were not sufficiently active (e.g. in terms of presence in the country). - Dialogue Team maintained active role in the implementation of the agreements up to the end of 2010, though its dynamic seems to be fading away. - Provision of support to key reform institutions, by means of recommending highly qualified international experts. - Technical support to reform institution recognised as needed and adequate by all parties involved. - CLO's involvement in fund-raising (e.g. in the case of IIEC) instrumental. - Publicity helping increase the transparency and credibility of the KNDR process.

			- Press releases following each review meeting	<u>Overall, activities under Component 1, as evaluated against the performance criteria, are rated with a qualified yes.</u>
Output 2	To ensure that the findings of a comprehensive and coordinated monitoring and evaluation system for the implementation of the KNDR agreements are processed and analysed	<ul style="list-style-type: none"> - M&E mechanism established - Implementation of actions agreed under the Four Agenda Items of the KNDR are tracked reviewed and evaluated - Number and quality of reports produced on the Four Agenda Items - Level of information generated by the M&E mechanism shared with the public - Number of monthly briefings to development partners - Implementation of the recommendations of independent commissions emanating from the KNDR are tracked reviewed and evaluated 	<ul style="list-style-type: none"> - MoU signed - M&E developed and first Report produced by January 09 - Eight coordination meetings - MoU between the Panel and the M&E partners - Set of M&E indicators developed - Number of meetings and consultations between South and CLO to operationalize and review the M&E mechanism - Eight reports produced - Thorough and highly shared information - At least 12 briefings to various stakeholders 	<ul style="list-style-type: none"> - The M&E system has provided a shared set of indicators on KNDR progress to the stakeholders. - Smooth cooperation between South and CLO, based on a clear division of responsibilities. - The Reports have raised and continue to raise media attention, thus helping attract public attention and ensure participation in the public debated on the KNDR process. - Presentations to GoK officials have also added constructive pressure on the government. <p><u>Overall, the view of the evaluation team of the degree of achievement of Output 2 is 'definitely yes'.</u></p>
Output 3	To Ensure that the wealth of knowledge and information created by the KNDR process is preserved for historical and lessons-learned purposes and to improve national capacities for conflict prevention and mediation in Kenya and beyond	<ul style="list-style-type: none"> - Documentation from the KNDR process is properly stored, inventoried and managed for historical purposes - Quality and timeliness of experts assessment of archiving requirements - Quality and timeliness of policies, procedures and agreements developed for archiving of records - Number of files digitised - Extent to which KNDR archives are preserved in accordance with international standards - Management of the archive as 	<ul style="list-style-type: none"> - CIPEV cataloguing by September 2009, IREC & PEAP by December 2012 - 112.700 files digitised by December 2010. - Cataloguing completed, but lack of sustainability. - Footage obtained; some 40 interviews of personalities available to date. - Training of 15 staff of CLO and KNADS, though training may have to be repeated. - Guidelines not yet finalised, plus conflicting views on access to the sensitive records. - Website not operational yet. - Sensitive files still kept by CLO - Lack of clarity as to aim and beneficiaries of the newly created 'library'. 	<ul style="list-style-type: none"> - Process delayed by almost a year. - Lack of clarity as to the benefits to be drawn from the records. - Not clear whether the sensitive files can be used in a judicial process, e.g. by ICC. - KNADS archivists not sufficiently well trained. - This facility may be of use in a mid- to long-term perspective, certainly not in the short run. Questions about the added value of this Output.

		to access policies, future utilisation, definition of beneficiaries		<u>As evaluated against the performance criteria, the degree of achievement of Output 3 is partial at best.</u>
OUTCOMES				
Outcome 1	Strengthened capacity of key institutions for enhanced efficiency, effectiveness, transparency and accountability in the formulation and delivery of pro-poor planning and policies	Continued engagement of the Panel in the post-mediation implementation phase.	<ul style="list-style-type: none"> - Prompt reactions of CLO/Panel to political events related to KNDR process through statements, contacts with two principals/Kenya institutions, visits: 16 events - Estimated impact of CLO interaction with GoK - More effective and timely implementation of KNDR agreements and reforms. - Continued engagement mechanism maintained at the country level. - Estimated impact of the transfer of international expertise to mixed commissions - Impact of KNDR conferences - International commissioner and technical support to reform institution recognised as punctual and adequate by all parties involved - International contribution considered as pivotal as to constitutional reform process - Support to IIEC for the training of 2,600 presiding officers, deputy presiding officers and polling clerks in view of the August 2009 by-elections. 	<ul style="list-style-type: none"> - Political agenda (in view of 2012 elections) gradually gained ground along the lines of the National Accord. - The situational reports produced by CLO for the AU Panel have not been subject to scrutiny due to their confidential character. - CLO and the Dialogue Team developed a close working relationship for the provision of information to stakeholders. - Support to independent commissions through the recruitment at short notice of highly qualified international experts. - Support to South Consulting for the identification of indicators for Output 2 reports. - Facilitation of meetings with various stakeholders. - Contribution to a process of increased transparency in government policies and decision-making. - Support to IIEC, though not envisaged initially, certainly beneficial. - Some 500 KNDR conference delegates and publicity. <p><u>The overall degree of achievement of Outcome 1 is evaluated as being largely positive.</u></p>
			- Positive improvements in areas such as	- Media reception of South Report has

Outcome 2	A culture of constitutionalism		<p>Constitution Review and Land Policy</p> <ul style="list-style-type: none"> - Recommendations against culture of impunity and against political use of ethnicity and of IDP issue received insufficient follow-up - Impact of South Consulting's reports - Findings of the M&E mechanism inform national decision-making for the effective implementation of the agreements and reforms 	<p>supported public participation in the KNDR process providing additional pressure for reforms. However, this relates mostly to monitoring the process of constitutional reform (promoted through the CoE project), not contributing directly to a culture of constitutionalism.</p> <ul style="list-style-type: none"> - Somewhat unrealistic to expect a culture of constitutionalism to take root in the timeframe of such a short three-year intervention (initially designed to be even shorter). <p><u>Overall, as assessed against the performance criteria, Outcome 2 has been achieved to an average degree.</u></p>
Outcome 3	Enhanced capacity for the promotion and administration of justice and human rights	Increased national capacity and knowledge for the prevention of conflict and the resolution of crises (information repository established)	<ul style="list-style-type: none"> - Participatory process of establishment of a shared and transparent history of traumatic events in modern Kenyan history - Demand for justice and perception of equitable justice vs culture of impunity 	<ul style="list-style-type: none"> - KNADS not yet at a level to provide indication of long-term impact (no access guidelines, no homogeneous indications on aim and beneficiaries) - Long-standing issues tackled with great difficulty by implemented mechanisms. - TJRC process hampered at its start by issue concerning chairmanship. Slowly regaining credibility. - Special Tribunal not set up; ambivalence of GoK on the issue of ICC prosecution. <p><u>Overall, at present the degree of achievement of Outcome 3 varies from largely negative to average at best.</u></p>