

United Nations Development Programme  
Country Programme Action Plan of the Government of Kenya 2009-2013  
2009-2010 Annual Work Plan

Title: Promotion of Impartial and Transparent Administration of Justice

Short title: JUDICIAL REVIEW

Number: KEN/05/203/01/72

ATLAS project: 00047211

ATLAS award: 00036888

Estimated annualised budget (in US\$): \$50, 000	
/UNDP/SIDA	2009
Total	<u>\$100,000</u>

UNDAF Outcome: 2 - - Strengthened Institutional and legal frameworks and processes that support democratic governance, transformation, accountability, respect for human rights and gender equality. UNDAF Priority Area 1: Improving Governance and Realization of Human Rights

Implementing Partner: The Kenyan Section of the International Commission of Jurists

Collaborating Parties: The Kenyan Judiciary through the Kenya Magistrates and Judges Association, Kenya Women Judges Association, The East African Magistrates and Judges Association, the Kenya National Commission on Human Rights, Ministry of Justice and Constitutional Affairs, the Kenya Law Reform Commission, the Law Society of Kenya, the Federation of Women Lawyers and the State Law Office

Estimated Start Date and Duration: 1 July 2009 – 30<sup>th</sup> June 2010

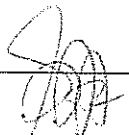
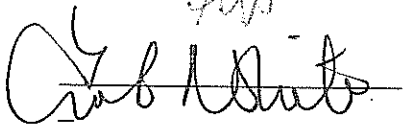
<p>Summary – i) Outcome, ii) Outputs, iii) Activities, iv) Inputs: i) The long-term outcome of this project is to enhance and strengthen the Administration of Justice in Kenya through an independent, corrupt-free, efficient and effective Judiciary equipped to advance the realisation of the Millennium Development Goals. ii) The project will have three immediate outputs to realise this goal: (a) a popular version of the comprehensive audit report on the interface between the administration of Justice and the MDGs (b) A best Practices/comparative publication on Judicial appointments vis-à-vis Agenda Item 4 (c) Gender and Environmental issues mainstreamed in the judiciary through capacity building. iii) The activities to be carried out to produce these outputs include (a) consultative fora involving all key stakeholders; (b) research and documentation on the state of administration of justice and its impact on the MDGs in Kenya in light of Agenda Item 4 long term issues; (c) public outreach and awareness campaign through print media and (d) training of judiciary staff on gender and environmental mainstreaming. iv) The inputs required to produce the outcomes above will include project personnel (co-ordinator), consultants, technical professional expertise, equipment, workshop facilities, and stationery.</p>
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Approved on behalf of Kenyan Section of the International Commission of Jurists  
UNDP

Signature

Date

Name/Title

  
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30/07/2009  
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13/08/09  
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Mr. George Kegoro  
Executive Director

Tomokom Nishimoto  
Country Director

Tomoko Nishimoto  
Country Director  
UNDP - Kenya

## I - SITUATION ANALYSIS

As has been emphasised, the Millennium Development Goals are the world's time-bound and quantified targets for addressing extreme poverty in its many dimensions. The eight Goals are; to eradicate extreme poverty and hunger, to achieve universal primary education, to promote gender equality and empower women, to reduce child mortality, to improve maternal health, to combat HIV/AIDS, malaria and other diseases, to ensure environmental sustainability, and to develop a global partnership for development. The Kenyan government as a member of United Nations has committed itself to achieving the targets set by the MDG's by the year 2015.

At a global level and as has been observed, the achievement of these goals is highly dependent on the political will of governments of both the impoverished and enriched countries. For instance, it has been stated, it is the responsibility of the African Countries to deliver goal No.1 to No. 7 through accountable, transparent and democratic governments. Whilst there is impressive progress in all African countries, especially in on the universal access to primary education, for example, Kenya and Mozambique have greatly reduced budget support from donor countries, the underlying reason for this is simple: where there is political will, the means can always be found.

Whereas these African states have dedicated themselves to creating favourable condition in their countries, a look at their national action plans and budgetary allocation, shows a lack of commitment. At ICJ Kenya, we strongly contend that the MDGs are not about aid but prioritisation and proper use of nationally generated resources- some countries do not need aid at all, they just need a caring, accountable and democratic government.

In order to achieve the said goals, national budgets, plans and policies need to reflect the MDGs Especially in those areas that still lag behind such as poverty eradication, gender empowerment, maternal health and other related MDGS. For example, under the Political Pillar of the Kenya's Vision 2030, the transformation of country's political governance system is envisaged to take into account six strategic areas among which a clear emphasis has been place on the 'Rule of Law principle'<sup>1</sup>. Under this strategy, it is proposed that '*adherence to the rule of law as applicable to modern market-based economy in a human rights-respecting state*'. The specific strategies will involve (i) *aligning the national policy and legal framework with the needs of a market-based economy, human rights and gender equity commitments*<sup>2</sup>.

However, in ICJ Kenya's view progress of achieving MDG's in Kenya has been affected by political instability which resulted in the 2007 post election violence and global trends such as the financial crises. The knock on effect is that the government has had to reprioritise and align itself to the immediate concerns popularly dubbed Agenda Item three and four despite the noble intentions to meet its commitment to the goals by 2015.

These Agenda Items were conceived as the lasting solution to the underlying problems that brought about the political crisis. The National Dialogue and Reconciliation Committee resolved to complete the comprehensive review of the Constitution of Kenya within a period of twelve months. The Committee developed Four Agenda Items that were binding on the Grand Coalition government. To date the three preceding Agenda Items have been concluded which included the appointment of two commissions; the Independent Review Commission (IREC) and the Commission of Inquiry into Post Election Violence (CIPEV).

The Waki Commission was the first official inquiry to document sexual violence as a part of the political violence in Kenya. Its findings revealed the extent to which gender based violence is embedded within Kenyan communities and the deep rooted attitudes in Kenyan society towards

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<sup>1</sup> Kenya Vision 2030 'A globally competitive and prosperous Kenya' pg xi

<sup>2</sup> ibid

gender based violence. As a result of the documented violence, the MDG 3 will be used as an advocacy tool as its aims to promote gender equality and empower women, who no doubt suffered a setback since there no mechanisms for recourse in the Judiciary, were available at the time to provide a remedy for the injustices suffered during the post election violence.

In an effort to address and implement the long term issues and solutions, various interventions have been put in place by the government in restoring long lasting peace and order in the country. Most of these have been targeted at the government and other institutions that played a key role in the breakdown of the rule of law. However one such institution that has not been prioritised is the urgent and targeted reform of the Kenyan Judiciary.

Under the Agenda Item Four (4) agreed long term issues and solutions Matrix of Implementation Agenda<sup>3</sup>, the provisions pertaining to institutional Reform of the Kenyan Judiciary were outline as follows;

a) Constitutional Review to anchor Judicial Reform measures including;

- i) Financial Independence
- ii) Transparent and merit –based appointment, discipline and removal of judges
- iii) Strong Commitment to Human Rights and Gender equity
- iv) Re-constitution of the Judicial Service Commission to include other stakeholders and enhance independence and autonomy of the Commission

b) Enact Judicial Service Commission Act with provisions for

- Peer Review Mechanisms
- Performance Contracting

c) Streamline the function of Legal and Judicial institutions by adopting a sector wide approach to increase recruitment, training, planning, management and implementation of programme activities in the justice sector. The Time frame given was 12 months upon the adoption of a Constitution. The Judicial Service Bill would be passed to implement the constitutional provisions within 3 months. The focal point would be the Ministry of Justice, National Cohesion and Constitutional Affairs.

The achievement and implementation of Agenda 4 (which also address tackling youth unemployment, poverty, inequity and regional development imbalances, consolidating national unity and cohesion and addressing impunity, transparency and accountability) will no doubt boost the achievement and realisation of the Millennium Development Goals

Based on the research findings of the Audit report and the judicial officers training undertaken in the past year, MDG 7 which aims to ensure ‘environmental sustainability’ has also suffered a critical setback due to the ongoing political volatility in the country. However, ICJ Kenya is convinced that this can be achieved by the integrating the principles of sustainable development into the country policies and programmes and reverse the loss of environmental resources.

In addition, there has been the global recognition and demonstration of two essential facts with respect to MDG -7 (environmental sustainability); firstly that its objective cannot be fulfilled without a strong legal and institutional framework, i.e. without the rule of law; and MDG-7 is inextricably intertwined with the achievement of the other MDGs. With the government of Kenya

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See the Daily Nation Newspaper dated 21<sup>st</sup> August 2008

embroiled in its political intrigues reports abound in the media with regard to the environmental degradation taking place in Kenya. The destruction of the Mau complex has led to depletion of rivers. The political elite have been complicit in its destruction, distributing land for the sake of political mileage. Illegal logging, charcoal production and uncontrolled grazing and squatters within the forests have further contributed to the destruction of the forests.

Urgent measures including application of the law, the sensitization of the communities, tree planting and protection of all catchment areas from human encroachment must be undertaken. However the Kenyan judiciary is faced with a myriad of challenges which ranges from inadequate laws and policies, tedious rules and procedures with regard to environmental matters, conflicting decisions that set bad precedents, discriminatory laws that target petty offenders rather than the people carrying out massive destruction of property and insufficient capacity of judicial officers to handle environmental cases.

In sum, the Kenyan Section of the International Commission of Jurist recognizes that the achievement of MDG's in toto cannot be divorced from the ongoing national processes and the political climate. ICJ Kenya further recognizes that the judiciary plays a pivotal task in achieving the MDG's through its role in its realization of the rule of law, social, political stability of any nation and legal protection of human rights. In order to achieve high judicial standards, substantial attention needs to be given to institutional and legal infrastructure reforms necessary to support, implement these ideals as well as promote the rule of law as envisaged under Agenda Item 4.

ICJ Kenya has for a long time been involved in ensuring observance and upholding of the rule of law, respect for human rights and democratic principles. For the past five years, ICJ Kenya has carved a niche for itself as a leading organisation in the push for judicial reforms in Kenya through advocacy, monitoring, evaluation and documentation, content analysis of key information touching on the Judiciary in particular and administration of justice in general. Under the 1999 – 2003 Country Cooperation Framework, UNDP supported ICJ Kenya to mainstream gender in the Judiciary through production of a gender mainstreaming manual, court guides and training of Judiciary officers. It has further supported ICJ-Kenya in mainstreaming environmental issues. Through this project ICJ-Kenya has been able to collate information that has been used in informing intervention strategies that are more relevant and effective on the ground. This project aims to consolidate these gains, while agitating for comprehensive, co-ordinated and all-inclusive reform agenda for the Judiciary through training, consultations, research and comparative study.

## **II - Implementation Strategies**

It is against this background that the United Nations Development Programme (UNDP) and the Kenyan Section of the International Commission of Jurists propose to undertake a project whose long-term objective is to enhance and strengthen the administration of justice and ensure respect for the Rule of Law and promotion and protection of Human Rights in Kenya through an independent, corrupt-free, efficient and effective Judiciary (I). The project will be undertaken and implemented within the Empowerment Component of the UNDP's programme of support to Kenya which aims at "enhancing capacities of key national and local institutions for improved governance" within the context of the United Nations Development Assistance Framework (UNDAF) Outcome on "Promotion of Good Governance and Realization of Rights". The project will be implemented in collaboration with other UNDP grantees, and will also ride on other existing networks established under other projects within ICJ Kenya, particularly, the Human Rights Education Programme which has paralegal networks in various parts of the country in

order to reach and impact on a wider audience. The goals shall be achieved through the following:

**a) Linking Access to Justice to Millennium Development Goals (MDGs)**

Kenya is one of the pilot countries for the Millennium Project. Underway is a campaign that aims at creating awareness of MDGs at all levels in Kenya (national to grassroots level) and garnering support for the realization of the same, including mobilizing of resources from development partners. An examination of all the existing initiatives exposed an abject absence on initiatives that specifically target the judiciary and linking its work in enhancing access to justice with the realisation of the MDGs by 2015.

One of the implementation strategies in the past year was to carry out a research which sought to identify structures, practices and policies that impede or promote the ability of the Judiciary in Kenya at the institutional and individual level to advance the Millennium Development Goals Agenda. Issues addressed included the relationship between judicial decisions and impact on the environment, gender perspectives, economic growth, and poverty as key issues within the MDGs. The research comprised of consultative fora involving all stakeholders, desk research and statistical survey and analysis. The research was essential in identifying issues which impact on the independence of the Judiciary in Kenya, access to justice.

The audit examined an actual progress made in judicial reforms in Kenya since the purge of judges and magistrates. Key issues addressed included: access to justice by all Kenyans including those marginalised for one reason or the other, the geographical distribution of courts countrywide; distribution of judicial officers; the cost of litigation; technical issues in litigation; legal aid laws; The audit was essential in the identification of issues which impact on the administration of justice and quality of the service that the judiciary offers to its consumers, highlighting the current actual situation as well as informing policy on critical priority areas of reform. It offered appropriate and effective recommendations aimed at improving the dispensation of justice in Kenya to enhance the realisation of the MDGs. The information is currently being shared and disseminated to all key stakeholders including the judicial officers, key officials in the Ministry of Justice and Constitutional Affairs, the Attorney General, legal practitioners in various sectors, experts, and academia among others. Soft copies will be made available via ICJ Kenya's website [www.icj-kenya.org](http://www.icj-kenya.org).

In an effort to make the audit accessible and relevant to the members of the public ICJ-Kenya proposes to publish a popular version of the audit report whose salient features shall include how they can engage with the judiciary in the achievement and/or realisation of MDG's . Secondly specific and additional content will focus and be included in the publication on how members of the public will be informed and engage with the proposed Special Tribunal for Kenya as an option for justice in seeking to particularly address gender concerns that come to light during the post election violence.

The Popular version of the Audit Report will then be distributed widely through ICJ Kenya's existing PASUNE network in collaboration with the Human Rights Education Programme during the regional consultative forums.

The output of this activity will be two fold; the production of a popular version of the comprehensive report and disseminated to members of the public through the existing networks MDGs. This information shall also be made available to the Judiciary for wide distribution

through the court systems, members of the public and above mentioned stakeholders including and a wide range of regional and international audience.

### **b) Institutional Strengthening**

The Government is committed to promoting good governance, realization of human rights and the rule of law as articulated in the Economic Recovery Strategy for Wealth and Employment Creation and its Vision 2030. Underscoring all these initiatives is the commitment to attaining the MDGs by the year 2015. This is evidenced by among other things the participation of the Government of Kenya in the New Partnership for Africa's Development (NEPAD) initiative and accession to the Africa Peer Review Mechanism (APRM) which attest to the government's commitment to improved corporate, social, economic and political governance.

The proposed activity will aim to strengthen the Kenyan Judiciary as a main avenue for the realisation of human rights which culminate in the ultimate realisation of the MDGs.

The Waki Commission proposed the formation by Parliament of a Special Tribunal for Kenya, to deal with those perceived as bearing the greatest responsibility for crimes committed during the post election violence. The composition of the Special Tribunal would consist of local and international judges and would have the jurisdiction to apply Kenyan law and the international criminal law. The project will monitor the implementation of the recommendation on the special tribunal and using best practices learnt from the process agitate for incorporation of such practices within the judiciary in line with agenda 4. The Project will also draw comparative experience from its proposed publication on Judicial Appointments pegged on international standards. Whether it is the appointment of Judges to tribunal or mainstream Judiciary, ICJ Kenya firmly believes that the minimum standards and criteria must be clearly spelt out and information made widely available to members of the public.

ICJ-Kenya will continue working with the Ministry Of Justice And Constitutional Affairs, the Law Society of Kenya, Federation of Women Lawyers and Kenya National Commission on Human Rights and the Kenyan Judiciary in providing technical support on issues with regard to judicial reform. In summary the immediate output of this objective will be

Publication of Best Practices/ Comparative Experience pegged on international standards on Judicial Appointment

### **c) Capacity Building of Judicial Officers**

ICJ Kenya's main concern will be to continue to focus on training and sensitisation of judges and magistrates on the MDGs within Kenya and expand to the East African Region. The specific objective of this activity will be to emphasize on how the manner in which they handle cases such as those affecting women and children, the environment and economic disputes impact on the realisation of the MDGs. Furthermore, a discourse on the wider national processes and political climatic conditions affecting the administration of Justice will need to be considered and discussed with the Judicial Officers.

ICJ Kenya previous capacity building workshop revealed that many judges and magistrates have not been exposed to Gender concepts, Environmental perspectives as well as the relationship between access to justice, rule of law, poverty and development and the Law and thus they make no nexus between the these aspects. There is therefore a need to hold further capacity building

workshops with the judiciary to enhance their capacity and provide them with avenues to discuss issues that impact on their day to day administration of justice.

The proposed activity will also support documentation of the reforms within the judiciary in Kenya, to serve as reference for future reform exercises and for sharing of experiences with other countries emanating the report of the workshop. Documentation of best practices will be supported to serve this purpose. Support for documentation will be through establishing of a documentation centre at the Kenya Magistrates and Judges and East African Judges and Magistrates Secretariat.

Furthermore, ICJ-Kenya will seek to engage the Judicial Training Institute to provide technical support in mainstreaming Human Rights Issues particularly in promoting and advocating for the MDGs in the institute's curriculum.

#### **d) Public Education /Awareness Creation on Judicial Reforms and Access to Justice**

Public participation in judicial reforms and the realisation of the MDGs and accountability of Agenda Items 4 long term issue on the Judiciary is crucial if the public is to have confidence in dispensation of justice. The participation would ensure that judicial reforms are all-inclusive and reflect wishes of the consumers of justice. In this regard, the public needs to have its capacity built in order to make informed suggestions in judicial reforms. In addition to distributing the popular version of the Audit Report and using the existing ICJ Kenya PASUNE networks, the regional visits will seek to use the forum to create awareness on judicial reforms efforts in Kenya and highlight areas that need to be addressed through providing information such as those on judicial appointments pegged on international standards and especially the structure and composition of the proposed Judicial officers for the Special Tribunal. This activity targets the general public,

### **III - Management Arrangement**

The United Nations Development Programme will work closely with the Kenyan Section of the International Commission of Jurists (hereafter the Implementing Agency). UNDP will lead and provide technical support for implementation and management of the activities under the Annual Work Plan, whilst the Implementing Agency will implement the activities on behalf of the Government of Kenya/UNDP.

#### **A. Financial Management and Reporting**

##### **1. Financial Accountability**

The implementing partner (ICJ) shall be responsible for ensuring that the allocated resources for the annual work plan are utilized effectively in funding the envisaged activities. It will also maintain records and controls for the purpose of ensuring the accuracy and reliability of the annual work plan's financial information. The accounting system in place shall ensure that such disbursements are within the approved budgets. The accounting system shall track the advances received and disbursed besides capturing expenditure records through direct payments made by UNDP on behalf of the implementing partner. All other funds will be disbursed to the Implementing partner through the advance of funds modality, unless UNDP determines otherwise. Disbursements shall be effected through EFT. The implementing

partner shall be responsible for ensuring that monthly bank reconciliation statements are prepared for auditing purposes.

## 2. Advance of Funds

UNDP Kenya country office shall disburse funds to the Implementing partner on the basis of quarterly technical and financial reports and according to planned activities as per the AWP backed by quarterly signed work plans (standard format attached). The requests for advances shall be signed by officers who are authorized in writing to do so by the respective accounting officers and shall specify the amounts of funds required for the month in the prescribed form (standard request format attached).

## 3. Financial and Technical Reporting

The Implementing partner must submit the Financial and Technical reports to UNDP Kenya country office no later than 15 days after the end of the quarter. The financial report must be in accordance with the UNDP format (standard format of financial report attached). The submission of the technical and financial reports is mandatory.

## 4. Fiduciary Compliance

In managing the annual work plan resources, the implementing agencies have fiduciary and compliance responsibilities to the funding institutions. They also have compliance responsibility for funding institutions' reporting procedures. Thus an audit of this annual work plan must fulfil the following set of objectives:

- a) Disbursements are made in accordance with the annual work plan;
- b) Disbursements are valid and supported by adequate documentation;
- c) An appropriate system for internal control is maintained by the implementing partner and can be relied upon;
- d) Annual work plan technical and financial reports are fair and accurately presented;
- e) The annual work plan monitoring and evaluations are prepared as required; and
- f) Annual work plan disbursements are duly verified and replenishments are duly authorized by the implementing partner on a three-monthly basis.

Within two months of the completion of the annual work plan or of the termination of the present agreement, the implementing partner shall submit a final report on the annual work plan activities and include a final financial report on the use of UNDP funds, as well as a signed inventory of supplies and equipment.

## 5. The Audit Requirements

All nationally executed annual work plans may be audited once in their lifetime. The objective of the audit is to provide the UNDP administrator with the assurance that UNDP resources are being managed in accordance with:

- a) the financial regulations, rules, practices and procedures for the annual work plan or project;
- b) the annual work plan activities, management and implementation arrangements, monitoring evaluation and reporting provisions; and



- c) the requirements for implementation in the areas of management, administration and finance.

The UNDP may audit non-United Nations implementing partner annual work plans by sub-contracting private auditors to carry out the audit exercise. Funds for audit expenses will be budgeted within the annual work plan. In the event of such an audit, the implementing partner will ensure that auditors are given all records and information that they will need to perform a meaningful performance audit. The implementing partner will ensure that final accounts of the year under audit are submitted to UNDP and for government implementing institutions to the Controller and Auditor-General (or an appointed sub-contractor), by the end of January of the following year. It is the responsibility of the implementing partner to ensure that all audit observations are attended adequately.

## **6. Procurement of Goods and Services**

UNDP's established rules and procedures governing procurement shall be used.

### **B. Implementation**

In all activities undertaken under this Annual Work Plan and the agreed funding shall ensure the following:

1. That gender considerations be mainstreamed in all activities;
2. That a rights based approach be used in planning and implementation;
3. That information be openly shared between all the stakeholders in the different related projects under the Atlas 00036888
4. That effort be put in to finding ways of ensuring sustainability of planned activities
5. That close and fruitful dialogue be maintained between UNDP and the implementing partner regarding capacity development needs and other issues that come up during preparation, implementation and follow-up of the programme

### **C. Monitoring and Evaluation**

Tracking of the achievement of benchmarks/indicators for each activity will monitor the performance of the annual work plan. Monitoring of specific annual work plan activities will be the responsibility of the implementing partner. The aim will be to provide timely information about the progress, or lack thereof, in the production of the outputs and achievement of the annual work plan objectives. The mechanisms that will be used to monitor the annual work plan will include:

- i. Quarterly progress report, technical and financial report prepared by the annual work plan implementing partner; the format of the report is provided in Annex I;
- ii. Annual progress report, technical and financial report prepared by the annual work plan implementing partner at the end of the year; and
- iii. Field visits undertaken jointly by implementing partner and UNDP

An evaluation of the UNDP outcome to which the activities of this annual work plan contribute to achieve will be carried out.

**D. Legal Context**

The country programme action plan shall be the instrument referred to as such in Article 1 of the Standard Basic Assistance Agreement between the Government of Kenya and the United Nations Development Programme, signed by the parties on 17 January 1991.

**E. Publicity and Publications**

Unless UNDP requests or agrees otherwise, the implementing partners and collaborating parties shall take all appropriate measures to publicise the fact that the project has been supported by Sida and UNDP. Information given to the press, project beneficiaries, all related publicity materials, official notices reports and publications, shall acknowledge that the activity was carried out with support from Sida and UNDP, and shall display in an acceptable way the Sida and UNDP logo. In addition, all publications must be reviewed by UNDP before publication, and shall bear the appropriate UNDP disclaimer.

**F. Work-Plan and Budget**

The annual work-plan is detailed in the Work Matrix below.