



Addendum to the Project: Support to the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA)

Country: Kenya

Project Title: Revision of Work Plan on Implementation of Support to the Implementation of Resultant process of Kenya National Dialogue and Reconciliation (KNDR) Process: Constitutional Development and Governance Reform - Support to the Judges and Magistrates Vetting Board

UNDAF Outcome(s): Enhanced capacity of key national and local institutions for improved governance

Expected CP Outcome(s): More efficient, effective and equitable Public service delivery by institutions and systems for democratic governance

Expected Output(s): i) A new Constitution for Kenya Operationalised ii) a credible, responsive and independent Judiciary

Implementing Partner: Judges and Magistrates Vetting Board

Responsible Parties: MoJNCCA, UNDP

Brief Description

The JMVB is an independent Board created by an Act of Parliament. However, operationally the parent Ministry is the MoJNCCA. The government funding is channelled through the Ministry. Since UNDP has a programme running with the Ministry, support provided through UNDP will be channelled through the same project. The expected outputs for this project will be i) Effective engagement by key stakeholders on the vetting process; ii) An informed public on the mandate and role of the Board iii) Technical capacity of the Board enhanced to undertake its mandate iv) The proceedings of the vetting process properly documented and safely stored for future reference

Programme Period:	18 months	2012/13 AWP budget:	USD	670,000
Key Result Area (Strategic Plan):	Governance	Total resources required	USD	670,000
Atlas Award ID:	00050382	o UNDP	USD	70,000
Start date:	May 2012	o RNE	USD	600,000
End Date	November 2013			
PAC Meeting Date	16 th May 2012			
Management Arrangements	NEX			

Agreed by (Implementing Partner):

Agreed by MoJNCCA:

Agreed by UNDP:

GICHIRA KIBARA, EBS
AG. PERMANENT SECRETARY
MINISTRY OF JUSTICE, NATIONAL COHESION
AND CONSTITUTIONAL AFFAIRS

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1. Background

Any country with a liberal democratic constitution needs an efficient, transparent and independent Judiciary. The role of the Judiciary is to independently and impartially administer justice and arbitrate legal disputes. Kenya's general elections in December 2007 unfortunately led to post-election violence which was largely because parties did not have faith and trust in the judicial system to objectively arbitrate the electoral disputes.

Further Kenyans had long lost faith and confidence in the Judiciary because of the history of pandering to the Executive and Legislative arms of the government's programs and policies. In the spirit of creating a credible independent Judiciary, the Constitution (2010) proposes extensive judicial reforms to make the Judiciary responsive and restore confidence. The key steps proposed for reforming and restoring confidence in the Judiciary are:

- The appointment of a new Chief Justice & Deputy Chief Justice
- The Creation of a Supreme Court
- The reconstruction of the Judicial Service Commission
- Increase the number of Judges and Magistrates
- The Vetting of Judges and Magistrates,

a. The Judges and Magistrates Vetting Board

The Vetting of Judges and Magistrates Act, 2011, was passed by Parliament to create the necessary institutional framework and enable the vetting process. The Judges and Magistrates Vetting Board was established pursuant to Section 23 of the 6th schedule of the Constitution and the Vetting of Judges and Magistrates Act 2011.

The Board is comprised of nine members who were competitively selected and appointed by the president after the approval of the national assembly. It includes six distinguished Kenyans and three highly acclaimed and internationally recognized foreign judges whose inclusion not only gives credibility to the vetting process but also was one of the requirements of the Act. Therefore their acceptance and inclusion in the process is vital to the overall success of the vetting objectives and the mandate of the body. The members of the Board are the following:

- i. Sharad S Rao-Chairman
- ii. Roseline Odede-Vice Chairperson
- iii. Abdirashid Abdullahi-Member
- iv. Prof. Ngotho Wa Kariuki
- v. Justus M Munyithya
- vi. Meuledi M Iseme
- vii. Justice Georgina Woods (Current Chief Justice - Ghana)
- viii. Justice Albie Sachs (Former President Constitutional Court South Africa)
- ix. Fredrick Chomba (Former AG of Zambia and Appeal Court of Namibia)

The Chief Executive Officer/Secretary is Mr. Reuben Chirchir.

b. The Link between Ministry of Justice, National Cohesion and the Judges (MoJNCCA) and Magistrates Vetting Board (JMVB)

The JMVB is an independent Board created by an Act of Parliament. However, operationally the parent Ministry is the MoJNCCA. The government funding is channelled through the Ministry. Since UNDP has a programme running with the Ministry, support provided through UNDP will be channelled through the same project.

2. Description

In performing its functions, the Board is required to gather relevant information, including requisition of reports, records, documents or any information from any source, including governmental authorities, and to compel production of such information as and when necessary; interview any individual, group or members of organizations or institutions; and hold inquiries where possible throughout the country.

In this respect the Board has developed an 18-month Work-Plan encompassing several activities which contribute towards realization of vetting. To implement these activities the Board will also develop tools and other instruments of engagement in the process.

The bulk of the activities of the Board is supported by the Government through the Ministry of Justice, National Cohesion and Constitutional Affairs. The Board and UNDP have thus developed this work plan to complement the funding from GoK and bridge the funding gap.

3. Current Status

The Board commenced the vetting process on 23rd February 2012. The first Judges to appear before the JMVB were nine (9) Court of Appeal Judges. The Board successfully completed the vetting of the nine Judges and recommended that four out of the nine were found not to be fit to continue holding their positions. The report was presented to the Chief Justice on 30th of April 2012. The Board will continue with its work by interviewing the two Supreme Court Judges who are subject to vetting. These will be followed by the Judges of the High Court and magistrates. A total of 52 Judges and 350 Magistrates are to be vetted.

4. Proposed Activities

The proposed activities to be supported under this work plan cover the following:

- a. Stakeholder Consultations and Engagement
- b. Public Sensitization
- c. Capacity Building of the Board
- d. Technical Support to the Board to undertake its mandate

a. Stakeholder Consultation and Engagement

Stakeholder consultation and engagement is considered important because it helps in informing the public on the process of vetting and in process buying-in in their constructive participation. Some of the key stakeholders that Board intends to engage with are the media, Members of Parliament specifically the Constitutional Oversight Implementation Committee, the Law society of Kenya, the Private Sector, the Correction Centers (Prisons) and civil society organizations. The board has already held several forums with a number of the stakeholders including in the regions.

b. Public sensitization

The bulk of the information which the Board will use to vet the Judges and Magistrates is expected to originate from the public. Mobilization of information from the public is a major tool for building up the issues and concerns on the suitability of Judges and Magistrates. It is therefore important that the public is informed on the mandate of the Board and how they can submit any information

within their knowledge. The hearing by the Board shall not be conducted in public unless the concerned Judge or Magistrate requests a public hearing.

The Board therefore intends to inform and sensitize the public on its mandate through civic education, dissemination of information and awareness-raising activities. This will be achieved by reaching out to the public through radio programmes, advertisements and supplements in both the print and electronic media, availing information/documents at various county offices.

c. Capacity Building

As part of the preparation process to the vetting process and with support from UNDP, the Board held a training retreat in November 2011 for the Board members and another retreat in mid January 2012 for the Board and the staff. The purpose of the January retreat was to bring together the Board and Secretariat in an induction session. The planned future retreats will draw resource persons from experts around the world who have participated in similar vetting processes. The retreat will also be used to share and consider other instruments of vetting including; rules and regulations, Bangalore rules, etc. It will also give the opportunity to the board to craft its strategic direction.

- **Technical Experts**

The Board will require funding for short term external expertise: The Board will require external expertise from time to time for short periods with specific deliverables. These will include analysts, researchers, investigators, valuers, forensic accountants and auditors, report writers and senior lawyers

d. Technical Support to the Board to undertake its mandate

- **Equipment procured: Hansard equipment**

Equipment such as the Audio equipment to be used by the Hansard reporters is extremely urgent. Currently, the JMVB is planning to hire Audio Equipment which will be charged on a day to day basis and at a very costly rate. The required equipment should be technologically up to date (be able to upload proceedings automatically). The Board will be divided into three panels in three different chambers. The Board thus will require three (3) Hansard equipment for the three (3) Chambers that will be used by the Board during the hearings. The Board has in the meantime hired the required Hansard personnel

- **Production of the relevant reports**

There is need for support to the Judges to so that they can complete the reports in a timely manner. Given the tight timeframes available, in case of any follow-up investigations, the Board will need to get services of investigators as need be to avoid any delays in determination of the proceedings.

- **Printing of Submission forms**

The information concerning the Judges and Magistrates will be captured by the general public and submitted to the vetting Board via the FORM FOR SUBMITTING INFORMATION (Form JMVB. 1). These forms will be availed to the public via various channels like the Boards' website downloads and various stakeholders' websites. Due to the fact that a good number of Kenyans, especially those outside the major urban areas have little or no access to the websites of computer link, it is inevitable that Form JMVB. 1 must be printed for distribution. The distribution of these forms will be done through among others, the Provincial Administration. The Board created public awareness through vernacular radio stations to inform the public of the availability of the documents.

5. Duration of the Proposed

The initiation plan is intended to last up to a maximum of 18 months. Start Date: 1 May 2012 End Date: 30 November 2013

6. Outline of Deliverables

The overall aim of this work plan is to provide support to the Judges and Magistrates Vetting Board as they undertake the vetting process. This support is part of the overall Judiciary reforms that will be supported by UNDP in due course.

The main deliverable for this plan will be a timely and successful vetting process by the JMVB.

7. Funding & Management Arrangements

a. Funding

The JMVB has had several consultation sessions with development partners to support the vetting process. UNDP hosted a Heads of Missions meeting in January 2012 where a number of Ambassadors attended and where the Chairman of the Board shared the mandate of the Board and requested for collaboration and support. A technical meeting was then held to further discuss the draft JMVB work plan. UNDP has agreed to coordinate support to the JMVB through the Ministry of Justice National Cohesion and Constitutional Affairs. JMVB will be the implementing partner for this work plan. Implementation will follow UNDP programme and operational rules and regulations as described in the programme operations policies and procedures (POPP).

b. Management

Technical Steering Committee (TSC)

The TSC will be chaired by the CEO/Secretary of the JMVB. The Committee will be comprised on JMVB, MOJNCCA and UNDP. The committee will meet quarterly.

Heads of Missions (HoMs) meeting

The HoMs meeting will be co-chaired by Chair of the Board and the UNDP Resident Representative will be held every six (6) months to update the development partners of the progress.

8. Work plan and Budget

The table below is a summary of expected support to the JMVB in one financial year from the government resources.

	Cost Item	Amount in Kshs	Amount in USD
i	Operational Costs	145,850,000	1,715,882
ii	Capital expenditure	102,602,000	1,207,082
iii	Stakeholder consultations, capacity building, technical support, etc	301,559,513	3,547,759
iv	JMVB Staff costs	434,134,800	5,107,468
		984,146,313	11,578,192

Some of the activities will be supported by Development Partners and other stakeholders. The 18-month work plan with required resources is attached to this Addendum. The JMVB is seeking US\$670,000 million from development partners to finance some of the activities to fulfil its mandate.

I. ANNUAL WORK PLAN

Year: May 2012 to November 2013

EXPECTED OUTPUTS <i>And baseline, associated indicators and annual targets</i>	PLANNED ACTIVITIES <i>List activity results and associated actions</i>	TIMEFRAME					RESPONSIBLE PARTY	PLANNED BUDGET		
		Q1	Q2	Q3	Q4	Q4		Funding Source	Budget Description	Amount
Output 1 Effective engagement by key stakeholders on the vetting process Baseline: regional consultations Indicators: Level & content of media coverage on the vetting process Targets: Positive media coverage of the vetting process on the main media channels	Consultation sessions undertaken with key stakeholders i.e. MPs, LSK, Prisons, Media, Private Sector and CSOs						JMVB	UNDP	Meeting venues Communication	56,988
Output 2 An informed public on the mandate and role of the Board Baseline: Indicators: Number of submissions from the public Targets: At least 5 submissions per Judge/Magistrate	Technical Support on equipment supplies & Functional Website Public Education Activities & Media Strategy						JMVB	UNDP	Website development, Laptops, UPS, Finance and HR software	66,265
							JMVB	UNDP	Newspaper Inserts, TV Scroll, Newspaper strips	48,193

EXPECTED OUTPUTS <i>And baseline, associated indicators and annual targets</i>	PLANNED ACTIVITIES <i>List activity results and associated actions</i>	TIMEFRAME						RESPONSIBLE PARTY	PLANNED BUDGET		
		Q1	Q2	Q3	Q4	Q4	Q4		Funding Source	Budget Description	Amount
Output 3 Technical capacity of the Board enhanced to undertake its mandate Baseline: 1 Indicators: Number of TAs engaged Targets: 4	Engage technical expertise						JMVB	UNDP	TAs	83,133	
Output 4 The proceedings of the vetting process properly documented and safely stored for future reference Baseline: 1 st Report of determination of Court of Appeal Judges produced Indicators: -Timely production of reports -Comprehensive reports of proceedings Targets: -All reports properly produced and stored	Printing of submission forms Production and Documentation of the Boards proceedings and decisions Documentation of reports, maintenance of records and archiving						JMVB	UNDP	Hansard equipment and other ICT equipment	108,434	
Programme Management	Technical Meetings and Heads of Missions Meetings						JMVB/UNDP	UNDP	Management meetings	76,903	
TOTAL										670,000	