



GOVERNMENT OF KENYA



UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

SUPPORT TO IMPLEMENTATION OF RESULTANT NATIONAL PROCESSES FROM
THE KENYA NATIONAL DIALOGUE AND RECONCILIATION

PROJECT DOCUMENT

Signature	Date	Name/Title
Ministry of Justice, National Cohesion and Constitutional Affairs _____	_____	Amb. Amina C. Mohamed Permanent Secretary
Ministry of Finance _____	_____	Joseph Kinyua Permanent Secretary
United Nations Development Programme _____	_____	Tomoko Nishimoto Country Director

Implementing Partner: **MINISTRY OF JUSTICE, NATIONAL COHESION AND
CONSTITUTIONAL AFFAIRS**

Start date and Duration: **1ST JULY 2008 - 30TH JUNE 2011**

Project Title: Support to implementation of resultant national processes from the Kenya National Dialogue and Reconciliation

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

CPAP Outcomes: i) A culture of constitutionalism and ii) enhanced capacity for the promotion and administration of justice and human rights (CPAP V. (B. b&c))

Expected Output(s)

- (a) Completion of the Constitution of Kenya Review Process
- (b) A new Constitution for Kenya operationalised
- (c) Independent Review Commission (IREC) findings operationalised
- (d) Commission of Inquiry on Post-Election Violence (CIPEV) findings operationalised
- (e) Truth, Justice, and Reconciliation Commission (TJRC) Bill 2008 enacted and operationalised
- (f) National Ethnic and Race Relations Commission (NERREC) Bill 2008 enacted and operationalised
- (g) Capacity of MoJNCCA strengthened

Implementing Partner: Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA)

Responsible Parties: Government of Kenya / UNDP-Kenya

Collaborating Parties: IREC, CIPEV, TJRC, ERC, KNCHR, Civil Society Widely, Attorney-General’s Office, Kenya Law Reform Commission, the Police, the Judiciary and Parliament

i) Outcome ii) Outputs iii) Activities iv) Inputs
 The long term **outcomes** that this project aims at contributing to are i) A culture of constitutionalism and ii) enhanced capacity for the promotion and administration of justice and human rights (CPAP V. (B. b&c)), Under which the project aims at achieving the realization of (a) electoral reforms, (b) the strengthening of constitutionalism, democracy and governance, (c) national healing and reconciliation and (d) the improvement of inter-ethnic and inter-cultural relations ii) The **outputs** that will contribute to the realisation of these outcomes are a) Completion of the constitution of Kenya review process b) A new constitution for Kenya operationalised, c) Independent Review Commission (IREC) findings operationalised d) Commission of Inquiry on Post-Election Violence Operationalised e) Truth, Justice and Reconciliation Commission (TJRC) Bill 2008 enacted and operationalised, f) National ethnic and race relations commission (NERREC) enacted and operationalised g) Capacity of the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) strengthened, iii) The **activities** that will contribute to the achievement of the outputs are: (a) Legislative framework for the constitutional review process, referendum and operationalisation of a new constitution developed, (b) consensus achieved on contentious constitutional issues, (c) Promulgation of a New Constitution, (d) Key electoral reform areas identified and implemented, (d) strategies to implement recommendations of Commission of Inquiry on Post Elections Violence (CIPEV) developed, (e) legislative framework for TJRC developed, (f) legal framework for ERC developed, (g) consultative workshops and seminars on constitutional review and truth, justice and reconciliation processes held, (h) Extensive advocacy and publicity (IEC strategy) carried out on 6 project components to mobilise and galvanize public support for various processes as well as the anticipated reforms. (i) recruitment and retention of specialists and consultants to strengthen capacity of MoJNCCA, iv) The **inputs** required to realized these activities include lead consultants, thematic expert consultants on constitutional review, Specialist UN Volunteers, consultative and policy workshops and meetings, travel, newspapers advertisements and supplements, radio infomercials, IEC materials, publishing and printing.

Programme Period:	2008 - 2009
Key Result Area (Strategic Plan):	Focus Area 2 (DG)
Atlas Award ID:	_____
Project Number:	_____
Start date:	1 ST JULY 2008
End Date:	31 ST JUNE 2011
PAC Meeting Date:	30 TH APRIL 2008
Management Arrangements:	NEX

2008 AWP budget:	609,500 USD
Total resources required 2008/2011	1,643,500 USD
Total allocated resources:	609,500 USD
• Regular	609,500 USD
• Other:	
o Donor	_____
o Donor	_____
o Donor	_____
o Government	IN KIND
Unfunded budget:	1,034,000 USD
In-kind Contributions	

PURPOSE

This document has been produced to capture and record the basic information needed to correctly direct and manage the support to implementation of resultant national processes from the Kenya National Dialogue and Reconciliation (the “Project”) at the country level. It derives from the Country Programme Action Plan (CPAP) agreed to upon between the Government of Kenya and UNDP.

This Project Document (PD) addresses the following fundamental aspects of the Project:

- What is the Project aiming to achieve
- Why is it important to achieve the stated objectives
- What outputs and deliverables will be produced
- Who will be involved in managing the Project and what are their roles and responsibilities
- How and when the arrangements discussed in the PD will be put into effect

When approved by the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) and UNDP, this PD will provide the “baseline” for the Project. It will be referred to whenever a major decision is taken about the Project and used at the conclusion of the Project to measure whether it was managed successfully and delivered acceptable results.

I. SITUATION ANALYSIS

The improved economic conditions witnessed in Kenya in the recent past, particularly after the Kibaki Administration took over in the 2002 General Elections, led to improved government's revenue and expenditure on the social sector. Gross Domestic Product output grew progressively since 2002 reaching about 7% in 2007 resulting in the reduction of poverty levels from 56 % in 2002 to 46% in 2006. In 2007, the government unveiled a master plan, Vision 2030, to propel the country to a medium income country by 2030. The Vision is anchored on three key pillars, namely, the economic pillar, the social pillar and the political governance pillar. Under the political pillar, the government plans to continue the transformation of the country governance system which was begun with the Kibaki Administration. Key focus areas will be strengthening the rule of law, cultivating genuinely competitive and issue based politics by accelerating electoral and political reforms, enhancing democracy and public service delivery by creating a people centred and politically-engaged society, improving transparency and accountability of government institutions and security, peace-building and conflict management.

The governance reforms undertaken by the Kibaki Administration not only accelerated democratization in Kenya, but also led to tremendous improvement in service delivery in various sectors including the Governance, Justice, Law and Order Sectors. As a result, Kenya has been projected as a human rights adhering state and has been honoured for its public service reforms. In this context, Kenya went to the December 2007 General Elections against the background of a bullish economy and a vibrant political atmosphere that made politics, an extremely competitive affair. It was hoped that through the elections, Kenyans would bring to government, leaders that would continue the political reforms that had begun. Unfortunately, the elections somewhat turned out to be a crisis. The vote counting and tallying exercise as well as the delayed announcement of presidential results, triggered sporadic demonstrations and violence in various parts of the country and disregard for the rule of law, never witnessed before in Kenya's history.

The post-election violence in which more than a thousand lives were lost, hundreds of thousands of people displaced, and in which billions of shillings worth of property and investments was destroyed, shook the foundations of this nation. The violence heightened ethnic suspicions and generated a political and humanitarian crisis that left Kenya at the brink of civil war. Various underlying factors such as the historical injustices, high number of unemployed youth, deep seated inequalities and poverty as well as ethnic tensions in various parts of the country provided ready fodder to increase the intensity of the post elections violence. Thereafter, national and regional mechanisms were put in place to support the process of dialogue and reconciliation in order to put the country back to a normalcy path. In the political agreement brokered by the African Union Panel of Eminent African Personalities chaired by H.E. Kofi Annan, the political leadership in Kenya agreed on the formation of a Grand Coalition Government (GCG) that would consolidate the significant gains that had been made to reconcile the state, and implementation of short term as well as long term interventions to address the crisis.

The main focus of the short term interventions is to sort out the humanitarian crisis, prosecute those responsible for the violence, undertake a thorough-going inquiry into the management of the 2007 General Elections and minimize ethnic tensions through peace building activities. Towards this end, it has been agreed that two independent bodies be established, namely, the Independent Review Commission (IREC) and the Commission of Inquiry on Post-Election Violence (CIPEV).

The mandate of IREC includes analyzing the constitutional and legal framework for elections in Kenya to identify any weaknesses or inconsistencies; examining the organizational structure, composition, and management systems of the Electoral Commission of Kenya (ECK) to assess its independence, capacity, efficacy and functioning during the preparation and conduct of the 2007

elections; and making recommendations on electoral reform including constitutional, legislative, operational and institutional aspects, as well as on accountability mechanisms for ECK commissioners and staff pertaining to electoral malpractices, in order to improve future electoral processes. IREC was established vide Kenya Gazette Notices Nos. 1982 and 1983, published on the 14th day of March 2008, by the President of the Republic of Kenya, under the Commissions of Inquiry Act (Cap. 102) . The Commission has already begun its work. On the other hand, the mandate of CIPEV includes investigating facts surrounding circumstances related to acts of violence that followed the 2007 General Election; investigating actions or omissions of state security agencies during the course of the violence and make recommendations as necessary; and, recommending measures of a legal, political or administrative nature, as appropriate, including measures with regard to bringing to justice those persons responsible for criminal acts. The President announced the appointment of the members of CIPEV on Thursday the 22nd of May 2008. The Commission will be expected to begin work soon thereafter.

II. JUSTIFICATION

With regard to the long term interventions, political leaders also agreed to address historical injustices and to undertake far reaching constitutional, legal and policy reforms as the surest way of addressing the underlying causes of the recurrent conflicts that reached fever pitch in the post election period. For this reason, the completion of the constitutional review exercise, the establishment of a truth, justice and reconciliation commission to look into past human rights violations, historical injustices and the carrying out of appropriate reforms in the land, governance and social sectors as well as addressing deep seated inequalities have been highlighted as key priority activities for the Government of Kenya (GoK). In view of this, the political leadership has also agreed to set up a number of independent bodies and processes, namely: A) a framework for the completion of the constitutional review process incorporating a Constituent Assembly (CA), Parliament and the Referendum; B) a Truth, Justice and Reconciliation Commission (TJRC) and C) a National Ethnic and Race Relations Commission (NERREC).

A) The envisaged constitutional review exercise will involve a number of stages: namely, stakeholder consultations and enactment of the legal framework for the finalization of the review process, the isolation and negotiation of contentious issues, the constitution of a Constituent Assembly (CA) through indirect elections, debate and adoption of the new constitution by the CA, formal endorsement of the new draft by Parliament and civic education and conduct of a referendum. The Mediation Committee is still discussing the finer framework details that will go to the legislation on the review process and the referendum.

B) Following, the political agreement, GoK has published, on the 9th of May 2008, the **Truth, Justice and Reconciliation Commission (TJRC) Bill 2008**. The Bill, which borrows heavily from the work of the Task Force on the establishment of a Truth, Justice and Reconciliation Commission (**the Makau Report**) and was prepared with the involvement of a select group of civil society organisations, namely the International Federation of Women Lawyers (FIDA) Kenya Chapter, the Law Society of Kenya (LSK) and the International Commission of Jurists (ICJ) Kenya Chapter. The Bill is yet to be discussed by Parliament. The broad objective of the Bill is to provide for the establishment, powers and functions of the TJRC. The objective of the Commission is to promote peace, justice, national unity healing and reconciliation among the people of Kenya. The TJRC will be an independent Commission and in the performance of its functions under the Act, it shall not be subject to the control or direction of any person or authority. In addition, the government and all state agencies, public officers and individuals will be expected to cooperate with the Commission.

The mandate of the TJRC will be to:-

- (a) investigate violations and abuses of human rights relating to killings, abductions, disappearances, detentions, torture, ill-treatment and expropriation of property suffered by any person within the specified period
- (b) investigate the context in which and causes and circumstances under which the violations and abuses occurred and identify the individuals, public institutions, bodies, organizations, public office holders, the State, state actors, or persons purporting to have acted on behalf of any public body responsible for or involved in the violations and abuses;
- (c) identify and specify the victims of the violations and abuses and make appropriate recommendations for redress;
- (d) investigate and determine whether or not the violations and abuses were deliberately planned and executed by the state or person referred to in paragraph;
- (e) conduct investigations relevant to its work and or seek the assistance of the police and any public or private institution, body or person for the purpose of an investigation;
- (f) identify any persons who should be prosecuted for being responsible or involved in human rights and economic rights violations and abuses;
- (g) investigate economic crimes;
- (h) investigate and provide redress in respect of crimes of a sexual nature against female victims;
- (i) educate and engage the public and give sufficient publicity to its work so as to encourage the public to contribute positively to the achievement of the objectives of the Commission;
- (j) investigate any other matter that it considers requires investigation in order to promote and achieve national reconciliation;
- (k) make recommendations with regard to
 - (i) the policy that should be followed or measures that should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;
 - (ii) Prosecution of persons responsible for or involved in human rights and economic rights violations and abuses.
- (l) make recommendations with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures that should be taken or introduced in order to prevent the commission of violation of human rights.

The **TJRC Bill 2008** also provides mechanisms for the grant of amnesty. In brief, the Commission may recommend the granting of amnesty to persons who have appeared before it subject to full disclosure, show of remorse and reparation (as much as possible) to the victims of the actions amnestied. In this regard persons who wish to be considered for amnesty shall apply to the Commission which will in turn be required to conduct investigations and to hold hearings where necessary in respect of the actions for which amnesty is applied. Where there are victims of the actions or omission for which amnesty is required, the Commission shall inform such victims of the application for amnesty and afford an opportunity to participate in the hearings. Where amnesty is recommended, the Commission shall publish the names of the persons recommended for amnesty in the Kenya Gazette and shall give clear details of the actions or omissions in respect of which the amnesty is recommended. The Commission shall also inform victims of the actions for which amnesty is applied (if any) of its decision to recommend amnesty. The power of the Commission to recommend amnesty is limited in that the Commission shall not grant or recommend amnesty for crimes against humanity or genocide within the meaning of international human rights law.

The TJRC will investigate human rights abuses that occurred in the period 12th December 1963 to the 28th day of February 2008 and is expected to work for not less than two (2) years. At the end of its work, the TJRC will present a report to the President summarizing its findings and making recommendations on prosecutions, amnesties, reparations, legal and administrative measures needed to address specific concerns identified by the Commission, and other specific actions needed to further the Commission's finding. The findings of the Commission will be implemented by an independent implementation Committee.

An important aspect of the work of the Commission is addressing issues related to gender based violence. To ensure justice is done, the Commission has been empowered to establish special units and mechanisms to ensure the dignity of victims of gender based violence, amongst others, is protected. In this regard, MoJNCCA will be keen to see that gender issues and particularly women issues are addressed both in the procedural as well as the substantive aspects of the TJRC work and will provide whatever support it can to the Commission.

C) The GoK published, on 9th May 2008, the **National Ethnic and Race Relations Commission (NERREC) Bill 2008** to provide a legal framework for the establishment of NERREC. This Bill is pending for debate before Parliament. Broadly, the objects and purpose of the Commission is to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic communities of Kenya and to advise Government on all aspects thereof. The mandate of NERREC will be to:

- a) Promote the elimination of all forms of discrimination on the basis of ethnicity;
- b) Discourage and prohibit persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity;
- c) Promote tolerance, understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in the social, economic, cultural and political life of other communities;
- d) Plan, supervise, co-ordinate and promote educational and training programmes to create public awareness, support and advancement of peace and harmony among ethnic communities;
- e) Promote respect for religious, cultural, linguistic and other forms of diversity in a plural society;
- f) Promote equal access and enjoyment by persons of all ethnic communities to public or other services and facilities provided by the Government;
- g) Promote arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic harmony and peace;
- h) Investigate complaints of ethnic or racial discrimination and make recommendations to the Attorney General, the Human Rights Commission or any other relevant authority on the remedial measures to be taken where such complaints are valid;
- i) Investigate on its own accord or on request from any institution, office, or person any issue affecting ethnic relations;
- j) Identify and analyze factors inhibiting the attainment of harmonious relations between ethnic communities, particularly barriers to the participation of any ethnic community in social, economic, commercial, financial, cultural and political endeavours and recommend to the Government and any other relevant public or private body how these factors should be overcome;
- k) Determine strategic priorities in all the socio-economic political and development policies of the Government impacting on ethnic relations and advise on their implementation;
- l) Recommend to the Government criteria for deciding whether any public office or officer has committed acts of discrimination on the ground of ethnicity;
- m) Monitor and review all legislation and all administrative acts relating to or having implications for ethnic relations and equal opportunities and, from time to time, prepare and submit proposals for revision of such legislation and administrative acts;
- n) initiate, lobby for and advocate for policy, legal or administrative reforms on issues affecting ethnic relations;
- o) Monitor and make recommendations to the Government and other relevant public and private sector bodies on factors inhibiting the development of harmonious relations between ethnic groups and on barriers to the participation of all ethnic groups in the social, economic, commercial, financial, cultural and political life of the people;

- p) Undertake research and studies and make recommendations to the Government on any issue relating to ethnic affairs including whether ethnic relations are improving;
- q) Make recommendations on penalties to be imposed on any person for any breach of the provisions of the Constitution or of any law dealing with ethnicity;
- r) Monitor and report to the National Assembly the status and success of implementation of its recommendations, and
- s) Do all other acts and things as may be necessary to facilitate the efficient discharge of its functions.

NERREC, once established will be a permanent commission under the Ministry. Its commissioners will be nominated by the National Assembly and appointed by the President. The term of commissioners is three years renewable once.

This project seeks to build capacity of the Ministry of Justice, National Cohesion and Constitutional Affairs to enable it support and spearhead constitutional review and development, truth, justice and reconciliation processes and consequential constitutional, legal and administrative reforms that will necessarily arise of these processes. Policy leadership and support of these processes will be critical in ensuring political buy-in and support for the implementation of the outcomes of the processes. Furthermore, constitutional review and development and the carrying out of truth, justice and reconciliation processes will be critical in reversing the economic, social, political and cultural digression that the country had realised over the short period of the crisis and the consolidation of democracy and national harmony going forward. In particular, this Project is designed to contribute to the realization of the following important national outcomes, while contributing to other ongoing initiatives with the same outcomes targets such as those outlined in the GJLOS programme:

(a) Enhancing national stability

The implementation of the Political Agreement is necessary for national stability and progress. It will save the country from further de-generating into violence and chaos that have the potential to weaken and undermine the national state. The Project will contribute to this goal by ensuring that the activities envisaged by the Agreement are undertaken through a process of informed stakeholder consultations and are supported and led by technical expertise that will promote and contribute to quality of decision making.

(b) Implementation of Electoral Reforms

The disputed presidential elections in the 2007 General Elections has cost this country lives and billions of shillings both in terms of property destroyed and losses arising out of the disruption occasioned to the economy. The country cannot afford to have a repeat of this in future and to be able to do so, deep running reforms must be carried out to the electoral system and process. The work of IREC will largely inform these reforms. The Project will contribute to this important endeavour by bringing on board experts on electoral reform that will make it possible for government to design and implement appropriate electoral reforms.

(c) Finalisation of constitutional review and implementation of consequential reforms

The finalisation of the constitutional review exercise and the implementation of consequential policy, legal and institutional reforms is perhaps one of the most important national processes in post independence Kenya. The new Constitution and its implementation is expected to result in the strengthening of national institutions, enhancement of the protection of human rights and improvement of national resource management and service delivery. The new Constitution is expected to provide the foundation for the consolidation of democracy and for the carrying out of extensive governance reforms. The Project will contribute to this noble exercise by providing expertise and resources that will directly contribute and make it possible to midwife a new constitution. In particular, the Project will provide the much needed expertise to assist in the resolution of contentious issues and the implementation of consequential reforms.

(d) Truth, justice and reconciliation for national Healing

Kenya, like other countries has an uneasy past that needs to be resolved to promote national stability and integration. The urgency of the matter was underscored by the tribal clashes of the 1990s and the ethnic animosity that was witnessed in the post election violence. It is expected that the truth, justice and reconciliation processes will address impunity in terms of the recent violence and past human rights violations. The processes will promote social justice by addressing land issues, past economic crimes and grievances related to marginalisation and inequitable distribution of resources. By establishing the truth about certain events such as political assassinations and disappearances and by punishing those implicated, this process will see to it that some form of justice is done to the families and relatives of those concerned. Furthermore, it will also promote healing and reconciliation amongst Kenyan communities by bringing a close to the past.

The Project will contribute to this process by providing expertise and resources that will enable Ministry of Justice, National Cohesion and Constitutional Affairs to lead the debate on important areas such as those relating to past corruption and economic crimes, amnesty, reparation for past injustices especially sexual and gender based violence, and possible adjustments to the criminal justice system to enable it to deal with subsequent prosecutions.

(e) Improvement of inter-ethnic and inter-cultural relations

The Project will also contribute to the improvement of inter-ethnic and inter-cultural relations in Kenya by providing expertise and resources that will be needed in the development of appropriate legislation, the establishment of ERC and the implementation of policies and strategies that promote ethnic tolerance and co-existence.

(f) Enhanced Public awareness and increased capacity for civic engagement

In recognition of the importance of inclusiveness and the need for a rights based approach in the resolution of national challenges, the Project will enhance public awareness and increase the capacity of the public to engage in these important processes. This will be necessary to create the demand necessary to drive and sustain the processes as well as their outcomes. Ministry of Justice, National Cohesion and Constitutional Affairs is cognizant of this and in collaboration with parties like the KNCHR will ensure that participation is enhanced. Lessons learned for instance from establishment of other independent bodies more so the TJRC in other countries on matters of gender considerations will be keenly pursued under this support. All necessary measures will be put in place to ensure the voices of women, children, persons with disabilities, marginalised groups and communities are incorporated. In particular, Ministry of Justice, National Cohesion and Constitutional Affairs will put in place relevant mechanisms to ensure meaningful participation and inclusion of these groups in the process.

(g) The implementation of the Political Agreement is a government priority

The implementation of the Political Agreement is a matter of priority of the Coalition Government and Kenyan's as a whole. This Project will contribute to this objective by facilitating the timely implementation of the Agreement and the realisation of the benefits expected from the planned activities. Further, the issues involved are of great national importance and sensitivity. As such, the legal and policy choices that Government makes should be informed by the highest possible level of research and discernment. The Project will make this possible by bringing on board professionals of high calibre and repute.

(h) Enhanced capacity for Ministry of Justice, National Cohesion and Constitutional Affairs to support the processes

In terms of government organisation, the issues related to constitutional review and development, and the truth, justice and reconciliation processes fall squarely within the mandate of Ministry of Justice, National Cohesion and Constitutional Affairs. Although these processes are independent of government, Ministry of Justice, National Cohesion and Constitutional Affairs will need to provide

policy and legislative leadership, and to follow up on implementation of the outcomes. For this reason, it will be necessary to put at the disposal of Ministry of Justice, National Cohesion and Constitutional Affairs technical expertise that will enable it to effectively champion these processes. Ministry of Justice, National Cohesion and Constitutional Affairs does not have requisite capacity both in terms of numbers and experience to be able to champion the processes under reference. By strengthening the capacity of Ministry of Justice, National Cohesion and Constitutional Affairs, the Project will ensure that government is adequately informed and prepared to follow-up these processes to the end.

PROJECT OBJECTIVES AND DELIVERABLES

The overall objective of the Project is to enhance constitutionalism, democratic governance and national cohesion. The specific objectives are stated below.

- (i) To build the capacity of MoJNCCA so that it can provide effective support for constitutional review and development. Specific activities will include-
 - (a) Support to the IREC and the implementation of its recommendations particularly with regard to electoral and other consequential reforms.
 - (b) Development of a legislative framework for the review process including a referendum.
 - (c) Isolation and negotiation of contentious issues and related processes.
 - (d) Preparation and conduct of a referendum.
 - (e) Implementation of the new constitution including consequential policy, legislative, institutional and administrative reforms.
 - (f) Conduct of advocacy and publicity around the constitutional review process.

- (ii) To build the capacity of MoJNCCA so that it can provide effective support for the truth, justice and reconciliation processes. Specific activities will include
 - (a) Development of a legislative framework for the truth, justice and reconciliation commission (TJRC) and related mechanisms and particularly those dealing with amnesty and reparation.
 - (b) Follow-up and implementation of the recommendations of the TJRC and particularly legal, administrative and policy reforms.
 - (c) Support to the work of CIPEV and the implementation of its recommendations particularly with regard to prosecution of offenders and the carrying out of consequential legal and institutional reforms.
 - (d) Development of the legislative framework for the NERREC and related mechanisms.
 - (e) Support to the work of NERREC and the implementation of its recommendations particularly with legislative and institutional reforms.
 - (f) Conduct of advocacy and publicity to mobilise and galvanize public support for the issues to be addressed during the truth, justice and reconciliation processes and particularly those that will raise the greatest opposition such as human rights violations, historical injustices, land, distribution of resources and economic crimes.

- (iii) Advocacy and publicity activities around constitutional review and development, truth, justice and reconciliation processes and consequential policy, legal, institutional and administrative reforms. Specific activities will include
 - (a) Newspaper advertisements and supplements;
 - (b) Radio infomercials;
 - (c) Production of IEC materials

The Project Objectives and Deliverables cannot be achieved without the involvement and participation of stakeholders, particularly civil society organisations (CSOs), the media and the

general public. For this reason, the involvement and participation of CSOs, the media and the general public is integral to this Project.

DEFINED METHOD OF APPROACH

The Project will be implemented by MoJNCCA on behalf of the Government of Kenya. The overall management responsibility will lie with the PS MoJNCCA while the technical day to-day management will lie with the Secretary for Justice and Constitutional Affairs at MoJNCCA assisted by a Project Coordinator. To achieve its objectives, the Project will follow the following broad approach.

(a) Engagement of lead experts

A team of lead experts will be engaged to provide the overall policy and technical guidance to the overall constitutional review and development process. The lead consultant will be critical in the development of the legal framework for the review process including the referendum, as well as the truth, justice and reconciliation processes. The consultants will be leading experts in five main areas, namely:-

- (i) constitutional law, constitutional making and comparative practice
- (ii) conflict resolution/ consensus building
- (iii) political science/ policy research and analysis
- (iv) media and communications

The consultants will advise MoJNCCA on procedural and substantive issues relating to the review and truth, justice and reconciliation processes. They will be expected to prepare position papers and strategies on various issues to guide the Ministry and to inform public debate. Once prepared, the position papers developed on various issues will be shared with various stakeholders for discussion and input before being finally taken through the formal policy process.

(b) Engagement of thematic consultant experts on constitutional review and development

To supplement the work of the lead consultants, there will be need to engage experts on a needs basis and on specific tasks particularly with respect to the contentious areas. The experts will be expected to identify the areas of contention and propose the different options and modalities in which they may be resolved taking into account Kenya's history, the views of the people, prevailing circumstances as well as the experience of other countries. Experts will be sourced in the following areas:-

- (i) system of government
- (ii) religion and constitutionality
- (iii) electoral system design and reform
- (iv) devolution/decentralization/ public service delivery
- (v) constitutional architecture and design

The outputs from the consultants will be subjected to internal and stakeholder review meetings before they are processed into formal government policies. These meetings will ensure that all stakeholders get a chance to input to the substantive and procedural aspects of the constitutional review process.

(c) Engagement of thematic experts on truth, justice and reconciliation processes

It will be necessary to engage a number of experts to support the truth, justice and reconciliation processes. The experts will be engaged on various specific tasks, key ones among them being the following:-

- (i) Transitional justice and comparative experience

- (ii) Restorative /alternative justice
- (iii) Conflict resolution, mediation and negotiation
- (iv) Criminal and forensic investigation
- (v) Criminal prosecution
- (vi) Witness protection

The experts will be expected to conduct research and develop policy positions and strategies to inform government action and approach to the TJRC process and particularly the implementation of the outcomes. Similarly, the outputs from the consultants will be subject to internal review meetings which, where possible, will also include selected interest groups or stakeholders.

(d) Facilitation of workshops and seminars on constitutional review and development

Workshops and seminars will be the principal fora for consultation and involvement of stakeholders and specialized groups. Specialized group consultations will be most effective in terms of ensuring the input and participation of stakeholders. The main groups and institutions to be consulted are the following-

- (i) Main bodies responsible for the review process;
- (ii) political parties and political party leadership;
- (iii) the relevant parliamentary committee;
- (iv) media owners and journalists
- (v) women and women's organizations
- (vi) professional organizations
- (vii) persons with disabilities and organizations representing persons with disabilities;
- (viii) minorities and organizations representing minorities
- (ix) children and children organizations
- (x) trade unions
- (xi) religious groups
- (xii) private sector/ industry
- (xiii) governance and organizations dealing with governance issues

(e) Facilitation of workshops and seminars on truth, justice and reconciliation processes

It will be necessary to hold consultation workshops and seminars between MoJNCCA and stakeholders, to discuss high level policy issues and ramifications relating to the truth and justice and reconciliation processes. These workshops and seminars will be held not only to inform the legal framework but also to discuss emerging issues as the Project progresses. It is expected that consultations will be held with the following groups:-

- (i) Commission of Inquiry on Post-Election Violence
- (ii) Truth, Justice and Reconciliation Commission
- (iii) Representatives from various government agencies such as Attorney-General's Chambers, the Judiciary, the police etc
- (iv) Relevant parliamentary committee and selected MPs
- (v) Human rights organizations
- (vi) Professional organizations
- (vii) Regional and district level meetings for Community Based Organizations (CBOs) / community leaders
- (viii) Other stakeholders

(f) Placement of newspaper adverts and supplements

MoJNCCA will from time to time need to place paid advertisements and supplements in the print media to highlight progress of activities and to present certain details of some of the products of these processes in deliberate information sharing with the public. The same publicity will be used to invoke public participation in various processes pertaining to the transitional justice mechanism

at the national and regional context. The number and contents of these newspaper advertisements and supplements will be agreed from time to time. Newspaper advertisements may for example be placed to explain progress of work or provide highlights of the report and findings of the various commissions while supplements may be carried to provide people with full or summarized copies of acts of parliament or regulations made by the commissions or to record some agreements reached by the various stakeholders.

(g) Running of Radio infomercials

In addition to newspaper advertisements and supplements, key messages may be communicated through the running of infomercials on radio. Such infomercials would be utilized to promote participation of local community in various processes and will include encouragement of victims or witnesses of post-election violence to come out and report their cases or give evidence or provide information. They would also be run to emphasize the object of each of the two processes for example that the truth, justice and reconciliation process is not principally about revenge but about truth and national healing. Infomercials will be built around the themes of constitutional review and development and truth, justice and reconciliation processes. The period for each of the infomercials will be determined after establishment of the proposed processes.

(h) Production of varied IEC materials

To encourage participation, local ownership and engagement of the locals IEC materials such as T-shirts, caps, flyers and brochures will be prepared to publicize the activities. The number and cycle of these materials will be determined as the programme activities progress. The IEC materials will be produced for distribution to workshop and seminars attendants and to the general public. IEC materials will be aimed at providing information and guidance or for publicity of events.

III. KEY OPERATIONAL CONSIDERATIONS OF THE PROJECT

The Project will operate in the context of the overall national policy framework: Vision 2030. Vision 2030 prioritises six reform areas under the political pillar: namely, rule of law and human rights, electoral and political processes, democracy and public participation, transparency and accountability, public administration and service delivery and security, peace building and conflict management. To implement Vision 2030, GoK has finalised the preparation of a five year plan-the **Medium Term Plan 2008-2012**-titled “ **Strategy for National Transformation: Accelerating Equitable Economic and Social Development for a Prosperous Kenya**” (MTP). Under the MTP, constitutional reform, TJRC processes, IREC, CIPEV and NERREC and the implementation of their outcomes has been prioritised. In this regard therefore, the Project activities are directly in line with national priorities and will go along way in ensuring “**A Functioning Democracy Respectful of Human Rights, Social Justice and the Rule of Law**” which is the Vision of the ‘Governance and Rule of Law’ sub-sector of the MTP.

The Project, situated within the Governance Justice, Law and Order Sector (GJLOS) will also operate in the milieu of the Governance, Justice, Law and Order Sector (GJLOS) Reform Programme. The GJLOS Reform Programme is one of the sector-wide initiatives that has prioritised by the MTP. The Project objectives and outcomes fall within the reform priorities of the GJLOS Reform Programme and are part of the policy principles of the proposed GJLOS Policy Framework Paper (PFP). In terms of inter-linkage with the GJLOS Reform Programme, the Project activities fall within Key Result Area 2 on “**Democracy, Human Rights and Rule of Law**” and Key Result Area 5 on “**Constitutional Development**”. Constitutional reform and development activities would fall within the latter while the truth, justice and reconciliation processes would fall within the former.

Given that the Project activities are complementary to those of the GJLOS Reform Programme, there is need to ensure that the two are well coordinated. The coordination between the two will be

achieved in three ways. First, the Project activities will be aligned with those of the GJLOS Reform Programme during the next work planning process which will take place in the new financial year (which begins in July 2008). Secondly, in the formulation of activities for the GJLOS Work Plan, care will be taken to ensure that activities proposed under the work plan complement and reinforce those in the Project. Finally, coordination will be achieved given the fact the both the Project and GJLOS are situated and managed by MoJNCCA.

This Project is designed with the appreciation that the participation and involvement of the people is critical for the success of the two processes. It is important to note that in their current status, both the review process and truth, justice and reconciliation process have had a background of involvement and consultation of the people. With regard to the review process, the people were extensively consulted and involved by way of public hearings at the constituency level, specialised groups, the National Constitutional Conference and ultimately the referendum. Specialised groups were also involved in a multi-sectoral process in 2006 that led to the development of the Constitution of Kenya (Amendment) Bill 2007 and the Constitution of Kenya Review Bill 2007 both of which lapsed after Parliament was unable to discuss them before its prorogation for elections in 2007. The results of these consultations will inform the content as well as the approach of the current Constitution review process initiative. Similarly, the Truth, Justice and Reconciliation process will heavily draw from the work of the Ministerial Task Force on the Establishment of a Truth, Justice and Reconciliation Commission (**the Makau Report**). The Makau Report was prepared after public hearings around the country and extensive national debate.

The antecedent consultation and involvement of the people notwithstanding however, the Project will ensure that the people of Kenya are effectively engaged around the Project activities and particularly in processing the outputs of the activities. The Project will also ensure that the people participate in the follow-up and implementation of the outcomes of these processes.

An important aspect of the implementation of this Project is the relationship between MoJNCCA-the implementing agency-and the independent processes that are to be set up for the purpose of constitutional review and truth, justice and reconciliation. The Project is to be implemented with the understanding that these independent processes must remain so with the role of MoJNCCA being to provide policy and strategic support and to follow up on implementation of the outcomes of these processes. MoJNCCA's role is critical in these two processes given the fact that it is the ministry of government that is responsible for coordinating and facilitating reforms in the entire governance sector.

In this context, MoJNCCA will play a vital role in supporting and linking the work of these institutions to the mainstream government and particularly Cabinet and the National Assembly and in taking forward the constitutional and legal related recommendations emerging from these processes. This is rightly so because MoJNCCA is the ministry of government responsible for policy guidance and strategic direction with respect to constitutional reform and development; the administration of justice; the development and consolidation of democracy; the promotion and protection of human rights and the enhancement of social justice; legal reform, and the coordination of the Governance, Justice, Law and order Sector (GJLOS) Reform Programme that includes other government departments such as the Attorney-General (AGs) Office, the Judiciary, the Police, the Prisons, the Electoral Commission of Kenya (ECK) and the National Assembly.

In executing its mandate as described above, MoJNCCA works and will continue to work in partnership with other specialized institutions of government such as the AG's Office which is responsible for criminal prosecution and legislative drafting, the Kenya Law Reform Commission (KLRC) which is responsible for legislative reform, the ECK responsible for elections, the Judiciary responsible for the administration of justice, and the Kenya National Commission on Human Rights (KNCHR) responsible for human rights issues. However, the urgency, uniqueness and intensity of the activities envisaged presents specific challenges to MoJNCCA including shortage of staff, lack

of appropriate skills and experience amongst the staff in post and financial constraints. In this light therefore, this solicitation is being made to enhance the technical capacity of MoJNCCA to be able to play its role efficiently and effectively, and to provide additional funding for planned activities that are necessary for the success of these important national processes.

PROJECT SCOPE AND EXCLUSIONS

This is a national level Project that seeks to influence national processes that will have far reaching impact on the life of the people of Kenya for generations to come. In accordance with the principles of the Rights Based Approach to Development (and Reform), stakeholders, CSOs and the general public will be engaged at all levels during the implementation of the Project.

The Project will contribute to effective and efficient processes from inception all the way to implementation of outcomes. In this regard, it is expected that constitutional review and development will enhance constitutionalism, democracy, governance and the enjoyment of fundamental rights and freedoms with the consequential benefits for better service delivery and higher quality of life for all. The new value system to be underpinned by a new constitution will ensure better leadership and more sensitive and equitable management of public resources, institutions and processes.

The truth, justice and reconciliation processes will ensure that those responsible for violence, human rights violations and economic crimes are brought to book while victims are compensated and are helped to heal so that they can move on with their lives. Effectiveness of this realization will be pegged on an extensive, nationwide and decentralised engagement. The resolution of outstanding national issues such as historical and land injustices, marginalisation and past economic crimes will enhance national healing, promote cohesion, understand and address inequalities and inform future reforms in this area. Truth, justice and reconciliation processes will promote national healing, ethnic harmony, social justice and better and a more equitable society.

IV. MANAGEMENT ARRANGEMENTS

The Implementing Partner (IP) for this Project is the Ministry of Justice, National Cohesion and Constitutional Affairs. The PS MoJNCCA will be responsible for the overall management of the Project assisted by the Secretary for Justice and Constitutional Affairs assisted and a Project Coordinator to be hired for that purpose. The Ministry of Justice, National Cohesion and Constitutional Affairs will work closely with the highlighted collaborating partners. While the Project Document outlines the activity areas in a broad sense, the specific activities and operational details will be spelt out in respective Quarterly Work Plans, which will be agreed upon between Ministry of Justice, National Cohesion and Constitutional Affairs and UNDP. In its role as the Implementing Partner, Ministry of Justice, National Cohesion and Constitutional Affairs, will be responsible for planning and overall management of the project; reporting and accounting; and monitoring and evaluation of all

PROJECT MANAGEMENT

The Project 'Executive' is ultimately responsible for the Project, supported by the Senior Beneficiary and the Senior Supplier. The Senior Beneficiary represents the interests of those who will ultimately be affected and benefit from the activities in the Project. The Senior Supplier represents the interests of those designing and developing the Project deliverables and providing Project resources.

In order to execute their work as outlined here below, the Project Executive Group (PEG) will be supported by the PS MoJNCCA assisted by the Secretary for Justice and Constitutional Affairs of

MoJNCCA and the Project Coordinator. The Project Coordinator will be appointed by MoJNCCA while the UNDP will nominate one of its Programme Officers to provide the Project Assurance role.

The Project Executive Group (PEG) will be responsible for the overall policy direction and guidance for the Project. The Project Executive Group will in turn be supported at the technical level by the Project Manager.

The main project management responsibilities are summarised here below, as follows:

Project Executive Group

1. Overall direction and guidance for the Project
2. Monitor and control progress
3. Review of each completed stage
4. Commitment of Project resources (as required)
5. Delivery of Project results and objectives

Project Assurance

This role is delegated to a UNDP based programme Officer.

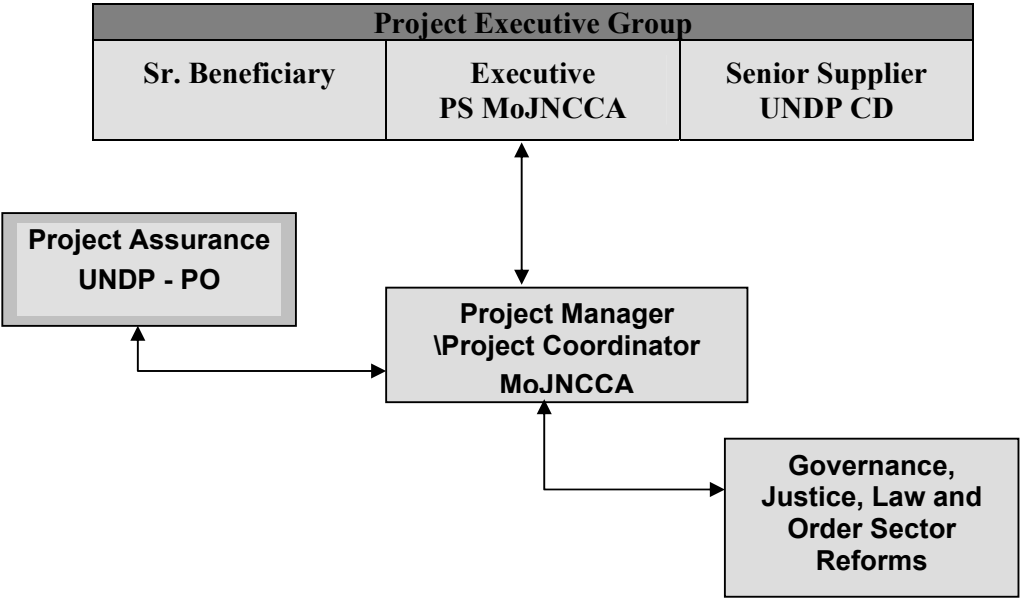
1. Adherence to the business case (on behalf of the Executive)
2. Monitor the compliance with user needs and expectations (on behalf of Senior User)
3. Supplier Assurance carried out by spot-check of deliverables and outputs
4. Review of Deliverables via Quality Review

Project Manager

The overall Project Management will rest with the PS MoJNCCA while the day-to-day technical management lies with the Secretary for Justice and Constitutional Affairs assisted by the Project Coordinator. The role of the Secretary for Justice and Constitutional Affairs assisted by the Project Coordinator will be the following.

1. Day-to-day management of the Project
2. Identify and obtain any support and advice required for the management, planning, and control of the Project
3. Reporting progress through regular updates (e.g. meeting, email briefing, etc.)
4. Responsible for Project monitoring
5. Ensuring the delivery of the Project's deliverables as outlined in the Project Initiation Document (PID).

Project Organization Structure



This document together with the Country Programme Action Plan (CPAP) signed by the Government of Kenya and UNDP which is incorporated by reference constitute together a Project Document as and all CPAP provisions apply to this document. Consistent with the Article III of the Standard Basic Assistance Agreement, the responsibility for the safety and security of the implementing partner and its personnel and property, and of UNDP's property in the implementing partner's custody, rests with the implementing partner.

The implementing partner shall:

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- a) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the project is being carried;
 - b) assume all risks and liabilities related to the implementing partner's security, and the full implementation of the security plan.

UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this agreement. The implementing partner agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received pursuant to the Project Document are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via: <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>. This provision must be included in all sub-contracts or sub-agreements entered into under this Project Document".

V. FINANCIAL MANAGEMENT AND REPORTING

Disbursement of Finances

UNDP shall disburse funds for this Project to the Ministry of Justice, National Cohesion and Constitutional Affairs. The disbursements will be based on the approved expenditure of the AWP and in the Quarterly Work Plans. The project will be implemented on a NEX (National Execution) modality with Ministry of Justice, National Cohesion and Constitutional Affairs as the implementing partner.

Financial Accountability

The Implementing Partner shall be responsible for ensuring that the allocated resources for the Annual Work Plan are utilized effectively in funding the envisaged activities. Unless otherwise mutually agreed by all parties to this Agreement, the Government of Kenya (GoK) financial rules and regulations, and monitoring, evaluation and reporting procedures shall apply in the execution of this Project. Ministry of Justice, National Cohesion and Constitutional Affairs will maintain records and controls for the purpose of ensuring the accuracy, reliability of financial information and to ensure that disbursements are within the approved budgets.

Financial Reporting

The Implementing Partner shall within 20 days after the end of each quarter submit to the UNDP a detailed expenditure report with a copy of all supporting documentation. Upon receipt of such documentation, UNDP must verify the disbursements and revert to Ministry of Justice, National Cohesion and Constitutional Affairs confirming concurrence or suggesting amendments, if any. The Implementing Partner must enter details of the expenditure report into appropriate books and produce Financial Reports for purposes of audit.

Fiduciary Compliance

In managing the Annual Work Plan resources, the Implementing Partner has fiduciary and compliance responsibilities to UNDP. It also has compliance responsibility for UNDP reporting procedures.

Audit Requirements

All nationally executed Annual Work Plans must be audited at least once in their lifetime. The objective of the audit is to provide the United Nations Development Programme administrator with the assurance that United Nations Development Programme resources are being managed in accordance with:

- a) The financial regulations, rules, practices and procedures for the Annual Work Plan;
- 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

Thus an audit of this Annual Work Plan must fulfill the following set of objectives:

1. Disbursements are made in accordance with the Annual Work Plan
2. Disbursements are valid and supported by adequate documentation
3. An appropriate system for internal control is maintained by the Implementing Partner and can be relied upon;
4. Annual Work Plan financial reports are fair and accurately presented;
5. The Annual Work Plan monitoring and evaluation reports are prepared as

The United Nations Development Programme takes the responsibility to audit the project by subcontracting 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 it is the responsibility of the Implementing Partner to ensure that all audit observations are attended adequately. The Implementing Partner may include the activities of this Project in the normal audit for their use.

VI. PROCUREMENT OF GOODS AND SERVICES

The procurement of goods and services shall be undertaken on the basis of GoK laws and regulations relating to procurement of goods and services.

VII. MONITORING AND EVALUATION

Monitoring and evaluation is an important component of this Project. It will be used to ensure that the Project realizes its objectives. Monitoring performance and progress of activities will be done at the level of the AWP against the established performance and outcome indicators. As has now become the practice in the GJLOS Reform Programme, the project will be reviewed in a participatory manner so that all stakeholders are involved in measuring progress as well as in designing strategies to upscale performance.

The performance of the activities in the AWP will be tracked by reviewing the benchmarks /indicators for each activity. Monitoring of specific AWP activities will be the responsibility of the MoJNCCA. The aim will be to provide timely information about the progress, or lack thereof, in the production of the outputs and achievement of the Project's objectives. The mechanisms that will be used to monitor the AWP will be the following:

- (i) Quarterly progress report, a technical and financial report prepared by MoJNCCA. The format of the report shall follow UNDP standards.
- (ii) Regular input/information sharing within the framework of the GJLOS programme
- (iii) Annual progress report, a technical and financial report prepared by MoJNCCA at the end of the year.
- (iv) Field visits undertaken jointly by MoJNCCA and UNDP.
- (v) Evaluations including spontaneous evaluations of activities implemented under the AWP may be carried out.

Quality Management for Project Activity Results

OUTPUT 1: A New Constitution for Kenya operationalised		
Activity Result 1 (Atlas Activity ID)	<i>Framework for constitutional review in place</i>	Start Date: May 2008 End Date: April 2009
Purpose	To put in place a process national framework and restart constitutional review process	
Description	In the spirit of national reconciliation and following from the political agreements post elections 2007 and the formation of a grand coalition government, to utilize the existing political will to jumpstart a comprehensive constitutional review process.	
Quality Criteria <i>how/with what indicators the quality of the activity result will be measured?</i>	Quality Method <i>Means of verification. What method will be used to determine if quality criteria has been met?</i>	Date of Assessment <i>When will the assessment of quality be performed?</i>
Checklist for review law and referendum law	Review of established checklists	Monthly at the beginning of each new Month and quarterly during the Quarterly reviews
Review law and referendum law Bills	Physical review of produced drafts and final versions of bills and laws	
Number of Internal review meetings held	Review of list of participants and physical participation in meetings. Establishment of diversity of stakeholders engaged. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	
Number of Consultative workshops and seminars on constitutional review and process.– Number and sectoral diversity of stakeholders in meetings	Review of list of participants and physical participation in meetings. Establishment of diversity of stakeholders engaged. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	
Review law and referendum law enacted by Parliament	Media reports and parliamentary coverage. Cabinet memoranda and enacted law that is published by the Government press	
Number of Contentious issues identified and number of options for their resolution developed and consensus built towards their resolution	Reports from the Government. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	
Number of Newspaper advertisements/ supplements placed in various papers	Media reports and publications	
Number of Radio infomercials and number of radio stations running them	Media recordings and reports	

Type of IEC materials produced	Physical assessment of produced material. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	
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OUTPUT 2): Independent Review Commission (IREC) findings operationalised		
OUTPUT 3): Commission of Inquiry on Post-Election Violence operationalised		
Activity Result 1 (Atlas Activity ID)	<i>Consequential reforms implementation enhanced</i>	Start Date: May 2008 End Date: April 2009
Purpose	Processes to operationalize the consequential policy, legislative, institutional and administrative reforms set up	
Description	Linkages defined with independent bodies resulting from the Kenya national Dialogue and Reconciliation in the Government led longer term constitutional and other reforms	
Quality Criteria <i>how/with what indicators the quality of the activity result will be measured?</i>	Quality Method <i>Means of verification. What method will be used to determine if quality criteria has been met?</i>	Date of Assessment <i>When will the assessment of quality be performed?</i>
A Comprehensive report identifying gaps in electoral system.	Report from the IREC	Monthly at the beginning of each new Month and quarterly during the Quarterly reviews
Comprehensive position papers on the areas for electoral reform.	Number of position papers presented to various stakeholder	
Number and outputs from Internal and stakeholder consultative meetings on electoral reform held. – Number and sectoral diversity of stakeholders in meetings	Review of list of participants and physical participation in meetings. Establishment of diversity of stakeholders engaged. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	
Number of Laws, polices, institutions and administrative measures and mechanisms to implement new Constitution	Media pull outs and reports from the Government	
Number of Internal review and stakeholder consultative meetings on proposed laws, policies, institutions and administrative measures to implement new Constitution– Number and sectoral diversity of stakeholders in meetings	Review of list of participants and physical participation in meetings. Establishment of diversity of stakeholders engaged. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	
Newspaper advertisements/ supplements placed in various papers	Media reports and publications	
Radio infomercials run	Media recordings and reports	
IEC materials produced	Physical assessment of produced material. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	

OUTPUT 4): Truth, Justice, and Reconciliation Commission (TJRC) Bill 2008 enacted and operationalised		
OUTPUT 5): National Ethnic and Race Relations Commission (NERREC) Bill 2008 enacted and operationalised		
Activity Result 1 (Atlas Activity ID)	<i>TJRC and Ethnic Relations Commission established</i>	Start Date: May 2008 End Date: April 2009
Purpose	Longer term resolution of historical issues and entrenchment of inter ethnic respect and relations	
Description	To deepen national reconciliation, peacebuilding, reconstruction and creation of an environment of cohesion towards accelerated realization of development objectives in Kenya	
Quality Criteria <i>how/with what indicators the quality of the activity result will be measured?</i>	Quality Method <i>Means of verification. What method will be used to determine if quality criteria has been met?</i>	Date of Assessment <i>When will the assessment of quality be performed?</i>
Draft(s) and final TJRC Bill	Media reports and parliamentary coverage. Cabinet memoranda and enacted law that is published by the Government press	Monthly at the beginning of each new Month and quarterly during the Quarterly reviews
Internal review meetings and stakeholder consultations held. – Number and sectoral diversity of stakeholders in meetings	Review of list of participants and physical participation in meetings. Establishment of diversity of stakeholders engaged. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	
TJRC Bill enacted into law by Parliament	Media reports and parliamentary coverage. Cabinet memoranda and enacted law that is published by the Government press	
Tools and strategies for implementation of recommendations	Reports from development process of tools and consultations with various stakeholders.	
Number of Comprehensive comparative studies on ERCs undertaken	Number of visits held and reports presented from visits	
Draft(s) and final ERC Bill developed	Media reports and parliamentary coverage. Cabinet memoranda and enacted law that is published by the Government press	
Internal review meetings and stakeholder consultations on ERC Bill held	Review of list of participants and physical participation in meetings. Establishment of diversity of stakeholders engaged. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	
ERC Bill enacted into law by Parliament	Media reports and parliamentary coverage. Cabinet memoranda and enacted law that is published by the Government press	
Newspaper advertisements/ supplements placed in various papers	Media reports and publications	
Radio infomercials run	Media recordings and reports	
IEC materials produced	Physical assessment of produced material. Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	

OUTPUT 6: Capacity of MoJNCCA strengthened		
Activity Result 1 (Atlas Activity ID)	<i>Capacity development of MoJNCCA</i>	Start Date: June 2008 End Date: July 2009
Purpose	To strengthen comprehensive project implementation	
Description	Provision of requisite expertise and capacity development for effective leadership on proposed national issues	
Quality Criteria <i>how/with what indicators the quality of the activity result will be measured?</i>	Quality Method <i>Means of verification. What method will be used to determine if quality criteria has been met?</i>	Date of Assessment <i>When will the assessment of quality be performed?</i>
Coordinator and other requisite personnel engaged	Quality of reports produced	Monthly at the beginning of each new Month and quarterly during the Quarterly reviews
	Implementation rate of project	
	Level and quality of incorporation and mainstreaming of key thematic issues in various processes (Gender, ethnic diversity, disabilities, amongst others)	

VIII. PUBLICITY AND PUBLICATIONS

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

IX. PROJECT RESULTS AND RESOURCES FRAMEWORK

A 3 year estimated budget is provided below, out of which a 1 year project Results and Resources Framework is elaborated.

ITEM NO.	OUTPUTS	2008/2009 (US\$)	2009 /2010 Estimates (US\$)	2010 /2011 Estimates (US \$)	SUB TOTALS
1.	A new constitutions dispensation for Kenya	293,750	150,000	50,000	493,750
2.	Short term and medium term reforms consequent to the Kenya National Dialogue and Reconciliation implemented	25,000	150,000	100,000	275,000
3.	Truth, Justice and Reconciliation processes finalised and recommendations operational	218,750	200,000	200,000	618,750
4.	Capacity of the Ministry of Justice, National Cohesion and Constitutional Affairs strengthened	72, 000	92,000	92,000	256,000
	Grand Total	609,500	592,000	442,000	1,643,500

YEAR: 2008/2009 – RESULTS AND RESOURCES FRAMEWORK

OUTPUT	OUTPUT INDICATORS	OUT PUT BASELINE	DETAILED ACTIVITIES	ACTIVITY INDICATORS	COSTS	J/S 08	O/D 08	J/M 09	A/J 09	INPUTS
CPAP OUTCOME : A culture of constitutionalism										
PROJECT OUTCOME: Constitutionalism, Democracy and Governance strengthened										
PROJECT OUTCOME INDICATOR: Approved new Constitution for Kenya; Legal, policy, administrative and institutional reforms carried out										
Completion of the constitution of Kenya Review Process	a) Review laws (Review law, Referendum Law and Constitutional Amendment to entrench the review process) enacted.	28 th February 2008 Political Agreement provides for the completion of the review process within 12 months.	(a) Development of Bills of the Review Laws (b) Internal review meetings to discuss the draft Bill. (c) Identification of key stakeholders and undertaking consultative workshops and seminars to mobilize consensus on the framework for completion of the review process. (d) Strategic support to Parliament during debates on the Review Laws.	(i) Bills of the Review Laws developed (ii) Number of internal review meetings held. (iii) Number of consultative workshops and seminars on constitutional review and process held– Number and diversity of stakeholders in meetings (v) Review Laws enacted by Parliament.	52,000					(i) Meetings (national/regional and local) (ii) Consultants (iii) Thematic expert (iv) Stakeholder workshops (v) Equipment (vi) Printing and publishing (vii) Publicity and advocacy activities (viii) Travel
	Harmonized Constitutional Draft	Contention in many areas of the Constitution	Consensus on the new Constitution (a) Strategic support towards identification of contentious issues and the development of options for their resolution. (b) Engagement with the Independent Review Body and Parliament in resolution of contentious issues (c) Advocacy and publicity activities on the review process	(i) Contentious issues identified and models for their resolution developed (ii) Newspaper advertisements/ supplements (iii) Radio infomercials and radio stations running them (iv) IEC materials produced and distributed (v) Thematic papers produced informing on, and to address contentious issues	57,750					

OUTPUT	OUTPUT INDICATORS	OUT PUT BASELINE	DETAILED ACTIVITIES	ACTIVITY INDICATORS	COSTS	J/S 08	O/D 08	J/M 09	A/J 09	INPUTS
Completion of the constitution of Kenya Review Process <i>(CONTINUED)</i>	Refined Constitution Document presented to the People of Kenya in a referendum	(a) No Referendum Law (b) Contention in various areas of the Constitution (c) Low awareness on the substance as well as the process of constitution review	National Referendum held (a) Strategic support to the organization of the referendum process including facilitating enactment of regulations and conduct of civic education for the referendum (b) Building consensus on key issues with political stakeholders (c) Advocacy and publicity activities to mobilize Kenyans for the referendum process	(i) Number and diversity of stakeholders in meetings (ii) Consensus on key issues achieved (iii) consultative workshops and seminars on constitutional review and process (iv) Newspaper advertisements/ supplements placed in various papers (v) Number of Radio infomercials and number of radio stations running them (vi) Number of IEC materials produced and distributed	62,000					(i) Meetings (national/regional and local) (ii) Consultants (iii) Thematic experts (iv) Stakeholder workshops (v) Printing and publishing (vi) Publicity and advocacy activities (vii) Travel
	Gazette Notice promulgating new Constitution issued by the President	Out dated Constitution	New Constitution promulgated Facilitate drafting and placement of a gazette notice on the new Constitution by the President including liaising with relevant offices	Gazette Notice prepared and issued	72,000					

OUTPUT	OUTPUT INDICATORS	OUT PUT BASELINE	DETAILED ACTIVITIES	ACTIVITY INDICATORS	COSTS	J/S 08	O/D 08	J/M 09	A/J 09	INPUTS
A New Constitution for Kenya operationalized	(a) Laws reviewed/ New laws enacted (b) New policies formulated (c) Institutional and administrative reforms completed	(i) Mechanisms for the enactment and implementation of the new constitution not in place (ii) Low public engagement on consequential reforms for implementation of new constitution	(a) Identification of legal, policy, institutional and administrative mechanisms to implement new Constitution. (b) Internal review meetings and stakeholder consultations held on the proposed legal, policy, institutional and administrative mechanisms for implementation of the new Constitution. (c) Strategic support and engagement with Parliament and other institutions implementing the new Constitution (d) Advocacy and publicity on the implementation of the new Constitution including placement of newspaper advertisements and supplements, radio infomercials and production of IEC materials	(i) Legal, policy, institutional and administrative mechanisms to implement new Constitution identified (ii) Number of internal review meetings and stakeholder consultations on the proposed legal, policy, institutional and administrative mechanisms for implementation of the new Constitution held- Number and diversity of stakeholders in meetings (iii) Strategic support to Parliament and other institutions implementing the new Constitutions provided. (vii) Number of Newspaper advertisements/ supplements placed in various papers (iv) Number of Radio infomercials and number of radio stations running them (v) Number of IEC materials produced and distributed	50,000					(i) Meetings (national/regional and local) (ii) Consultants (iii) Thematic experts (iv) Stakeholder workshops (v) Equipment (vi) Printing and publishing (vii) Publicity and advocacy activities (viii) Travel

OUTPUT	OUTPUT INDICATORS	OUT PUT BASELINE	DETAILED ACTIVITIES	ACTIVITY INDICATORS	COSTS	J/S 08	O/D 08	J/M 09	A/J 09	INPUTS
CPAP OUTCOME : A culture of constitutionalism										
PROJECT OUTCOME: Electoral reforms undertaken										
PROJECT OUTCOME INDICATOR: Electoral and Political Process Reforms to enhance free and fair elections implemented										
Independent Review Commission (IREC) findings operationalised	<p>a) Functional Commission (investigations carried out, public hearings conducted, public submissions submitted, Commission report prepared and submitted)</p> <p>(b) Recommendations of the Commission operationalised (persons found culpable prosecuted, legal, policy and administrative reforms relating to the electoral system and process proposed for implementation)</p>	<p>(i) The February 2008 political Agreement establishing an Independent Review Commission to look into the 2007 General Elections and recommend improvements.</p> <p>(ii) The Independent Review Commission (IREC) established</p>	<p>(a) Engagement to support effective implementation of activities of IREC</p> <p>(b) Identification of legal, policy, institutional and operational mechanisms for implementation from findings and recommendations of IREC</p> <p>(c) Internal review meetings and stakeholder consultations held on the proposed legal, policy, institutional and operational mechanisms for implementation of findings and recommendations of IREC</p> <p>(d) Engagement with Parliament and other institutions on the implementation of the recommendations of IREC</p> <p>(e) Advocacy and publicity on the implementation of the proposed legal, policy, institutional and administrative mechanisms for implementation of the recommendations of IREC</p>	<p>(i) Report of the Independent Review Commission (IREC) finalized</p> <p>(ii) Legal, policy, institutional and operational mechanisms for effective implementation of the recommendations of IREC identified</p> <p>(iii) Meetings and stakeholder consultations on the proposed legal, policy, institutional and operational mechanisms for implementation of the recommendations of IREC held- Number and diversity of stakeholders in meetings</p> <p>(iv) Engagement with Parliament and other institutions operationalizing the recommendations of IREC</p>	25,000					<p>(i) Meetings (national/regional and local)</p> <p>(ii) Consultants</p> <p>(iii) Thematic experts</p> <p>(iv) Stakeholder workshops</p> <p>(v) Printing and publishing</p> <p>(vi) Publicity and advocacy activities</p> <p>(vii) Travel</p>

OUTPUT	OUTPUT INDICATORS	OUT PUT BASELINE	DETAILED ACTIVITIES	ACTIVITY INDICATORS	COSTS	J/S 08	O/D 08	J/M 09	A/J 09	INPUTS
CPAP OUTCOME : Enhanced capacity for the promotion and administration of justice and human rights										
PROJECT OUTCOME: National healing and reconciliation										
PROJECT OUTCOME INDICATOR: CIPEV Recommendations implemented										
Commission of Inquiry on Post-Election Violence operationalised	<p>(a) Functional Commission of Inquiry on Post-Election Violence (investigations carried out, public hearings conducted, public submissions submitted, Commission report prepared and submitted)</p> <p>(b) Recommendations of the Commission implemented (persons found culpable prosecuted, innocent persons released, legal, policy, administrative reforms undertaken)</p>	<p>(i) The February 2008 Political Agreement provides guidelines for the establishment of CIPEV.</p> <p>(ii) Absence of a framework for implementation of the recommendations of the findings of commission of inquiry</p> <p>(ii) Low public engagement with CIPEV</p>	<p>(a) Engagement to support to the work of the CIPEV and particularly the identification of legal, policy, institutional and operational mechanisms for implementation of the recommendations of CIPEV</p> <p>(b) Internal review meetings and stakeholder consultations held on the proposed legal, policy, institutional and operational mechanisms for implementation of the recommendations of CIPEV</p> <p>(c) Engagement of Parliament and other institutions on the implementation of recommendations of CIPEV</p> <p>(c) Advocacy and publicity on CIPEV activities</p>	<p>(i) Report of the CIPEV finalized</p> <p>(ii) Legal, policy, institutional and administrative mechanisms for implementation of the recommendations of CIPEV identified</p> <p>(iii) Internal review meetings and stakeholder consultations on the proposed legal, policy, institutional and operational mechanisms for implementation of the recommendations of CIPEV</p> <p>(iv) Engagement with Parliament and other institutions operationalizing the recommendations of CIPEV</p>	70,000					<p>(i) Meetings (national/regional and local)</p> <p>(ii) Consultants</p> <p>(iii) Thematic experts</p> <p>(iv) Stakeholder workshops</p> <p>(v) Printing and publishing</p> <p>(vi) Publicity and advocacy activities</p> <p>(vii) Travel</p>

OUTPUT	OUTPUT INDICATORS	OUT PUT BASELINE	DETAILED ACTIVITIES	ACTIVITY INDICATORS	COSTS	J/S 08	O/D 08	J/M 09	A/J 09	INPUTS
CPAP OUTCOME : Enhanced capacity for the promotion and administration of justice and human rights										
PROJECT OUTCOME: National healing and Reconciliation										
PROJECT OUTCOME INDICATOR: TJRC Recommendations implemented										
Truth, Justice, and Reconciliation Commission (TJRC) Bill 2008 enacted and operationalised	Functional TJRC Commission (investigations carried out, public hearings conducted, public submissions submitted, Commission report prepared and submitted)	(i) The February 28 2008 Political Agreement provides guidelines and operational issues for the set up of the TJRC. (ii) Report of Task Force on the Establishment of a Truth, Justice and Reconciliation Commission (Makau Report) (iii) Absence of a framework for implementation of the recommendations of the findings of commission of inquiry on post elections violence (vi)) Low public engagement in the truth, justice and reconciliation processes	(a) Conduct of consultative meetings and stakeholder consultations to consolidate final inputs into the TJRC Bill (b) Strategic engagement with the Parliament during the debate and passage of the TJRC Bill (c) Conduct of consultative workshops with key stakeholders to address key issues and concerns relating to the TJRC processes on a continuous basis (d) Advocacy and publicity on the truth, justice and reconciliation process including placement of newspaper advertisements and supplements, radio infomercials and production of IEC materials	(i) Stakeholder consultative meetings on the TJRC Bill held- diversity of stakeholders in meetings (ii) TJRC Bill enacted into law by Parliament (iii) Engagement with TJRC to ensure adequacies in operations and achievement of mandate. (iv) Newspaper advertisements/ supplements placed in various papers (v) Radio infomercials run (vi) IEC materials produced and distributed	74, 375					(i) Meetings (national/regional and local) (ii) Consultants (iii) Thematic experts (iv) Stakeholder workshops (v) Printing and publishing (vi) Publicity and advocacy activities (vii) Travel

OUTPUT	OUTPUT INDICATORS	OUT PUT BASELINE	DETAILED ACTIVITIES	ACTIVITY INDICATORS	COSTS	J/S 08	O/D 08	J/M 09	A/J 09	INPUTS
CPAP OUTCOME : enhanced capacity for the promotion and administration of justice and human rights										
PROJECT OUTCOME: National Cohesion and Integration promoted										
PROJECT OUTCOME INDICATOR: Legal, policy, administrative and institutional reforms to enhance national cohesion carried out										
National Ethnic and Race Relations Commission (NERREC) Bill 2008 enacted and operationalised	Functional Commission (Policy reviews conducted, new policies and laws developed, programs in place to improve inter-ethnic relations)	(i) NERREC Bill 2008 published on 9 th May 2008 (ii) Poor and tense ethnic and racial relations	(a) Conduct of consultative meetings and stakeholder consultations to consolidate final inputs into the NERREC Bill 2008 (b) Strategic engagement with the Parliament during the debate and passage of the NERREC Bill (c) Engagement with the NERREC in particular on the development of policies and laws as well as implementation of programmes (c) Advocacy and publicity activities on the work of the Commission	(i) Number of stakeholder consultative meetings on the NERREC Bill 2008 held- diversity of stakeholders in meetings (ii) NERREC Bill 2008 enacted into law by Parliament (iii) Number of newspaper advertisements/ supplements placed in various papers (iv) Number of radio infomercials run (v) number of IEC materials produced and distributed	74,375					(i) Meetings (national/regional and local) (ii) Consultants (iii) Thematic experts (iv) Stakeholder workshops (v) Printing and publishing (vi) Publicity and advocacy activities (vii) Travel

OUTPUT	OUTPUT INDICATORS	OUT PUT BASELINE	DETAILED ACTIVITIES	ACTIVITY INDICATORS	COSTS	J/S 08	O/D 08	J/M 09	A/J 09	INPUTS
CPAP OUTCOME : enhanced capacity for the promotion and administration of justice and human rights										
PROJECT OUTCOME: Increased Capacity of MoJNCCA to backstop the constitutional review and truth, justice and reconciliation processes										
PROJECT OUTCOME INDICATOR: MoJNCCA more effective in backstopping constitutional review and truth, justice and reconciliation processes										
Capacity of MoJNCCA strengthened	(a) Strategic and effective support and leadership to the constitutional review and truth, justice and reconciliation processes (b) Effective management and implementation of Project (timely reports, effective communication with stakeholders)	Low capacity of MoJNCCA to implement Project and to provide strategic support to the constitutional review and truth, justice and reconciliation processes	(a) Engagement of project personnel (Coordinator, Consultants, UNVs) to support the day-to-day implementation of the Project including reporting, monitoring and evaluation, documentation and ensuring timely delivery of outputs (b) Preparation of regular and timely Project Reports (c) Continuous as well as spontaneous monitoring and evaluation of the Project (d) Regular and up-to-date communication updates with all Project Stakeholders/ partners	(i) Coordinator engaged (ii) Number and timeliness of management reports of the Project prepared (iii) regular M & E conducted on the Project (iv) Linkage with the GJLOS established and contribution to GJLOS goals mapped and adhered to (v) Up to date communication with all stakeholders (vi) Participation in GJLOS and other coordination fora and presentation of project briefs	72,000					(i) United Nations Volunteer Experts (ii) Consultants (iii) Thematic experts (iv) Stakeholder workshops (iv) Travel
GRAND TOTAL					609,500					

ANNEX I

RISKS AND CONSTRAINTS

There are a number of risks and constraints that the Project may face and which may justify future adjustments.

- (i) The political climate relating to the operationalisation of the Coalition Government may delay the implementation of the Political Agreement including the passage of the necessary legislation and mechanisms. The success of the Project will largely depend on the political climate and tempo.
- (ii) Limited local expertise in some of the areas that may delay the deployment of the necessary capacity.
- (iii) Retention of experts may prove a challenge if they find more lucrative offers.
- (iv) Lack of certainty of all the possible consequential reforms and therefore the inability to adequately provide for all activities.
- (v) Lack of political support and political resistance to some of the measures and reforms that may arise out of the constitutional or the TJRC processes such as land reforms. Lack of political support may derail negotiation of contentious issues.

#	Description	Category	Impact Probability	Countermeasures	Owner	Author	Date Identified	Last Update	Status
1	Unfavourable political climate	Organizational	I = 0.2 P = 0.2	Ensure Project begins as soon as possible and define linkages with the KNDR	Project Assurance, Project Manager	UNDP / MoJNCC A	April 2008	April 2008	
2	Limited local expertise	Organizational	I = 0.2 P = 0.1	Source appropriate experts from other countries	Project Assurance, Project Management	UNDP / MoJNCC A	April 2008	April 2008	
3	Retention of Experts	Organizational	I = 0.2 P = 0.2	Operate assignment based contracts / Ensure adequate incentives	Project Assurance, Project Manager	UNDP / MoJNCC A	April 2008	April 2008	
4	Lack of political support/ political resistance	Implementing NGO	I = 0.2 P = 0.2	Step up publicity and advocacy and promote political buy-ins and base implementation on outcomes of KNDR	Project Manager	UNDP / MoJNCC A	April 2008	April 2008	

COMMUNICATION PLAN

Stakeholder Group		Information Required	Information Provider	Frequency	Method
A	MoJNCCA	Next Quarter Detailed Activity List	Project Manager	Quarterly	Mail
	GJLOS Stakeholders	Quarterly workplans for implementation	Project Manager/Assurance	Quarterly	Participation in relevant meetings
		Financial Reports	Project Assurance	Quarterly	Mail
		Activity Review	Project Manager/Assurance	Quarterly	Mail / Meetings
B	MoJNCCA/UNDP	Finalised AWP(2008)	Project Manager	Beginning of Project	Mail
	UNDP/MoJNCCA	Finalised PID	Project Manager	Beginning of Project	Mail
	GJLOS Stakeholders	Information on project and linkage with GJLOS	Project Manager/Assurance	Beginning of project	Mail, Sharing of prodocs, participation in various fora
		Financial Disbursements	UNDP	On request from MoJNCCA	Official letters
C	PEG	Finalised PID	Project Assurance/manager	Beginning of Project	In person
	LPAC (Stakeholders in Governance Sector)	Review by stakeholders Inputs and linkage with various existing and new Governance programmes	Project Manager	Beginning of Project	In person
	MoJNCCA	Finalized AWP	Project Assurance	Beginning of Project	In person
	MoJNCCA	Final Review documents	Project Manager	End of Project	Mail
D	MoJNCCA/UNDP	Quarterly reviews	Project Manager	Quarterly	Mail/delivery
E	UNDP	Financial Reports	Project Manager	Quarterly	Mail/delivery