

United Nations Development Programme
Country Programme Action Plan of the Government of Kenya
2005 Annual Work Plan

Revision

Title: Support to the Conduction of a Free and Fair Referendum on the Proposed Constitution

Short title: Support to the Referendum

Number: KEN/05/228/C/01/01

ATLAS project: 00047017

ATLAS award: 00041287

Estimated annualised budget (in US\$): 2,157,720

SIDA	2005	913,830
Norway	2005	384,140
Netherlands	2005	609,750
DFID	2005	500,000
UNDP	2005	250,000
Total		<u>2,657,720</u>

UNDAF outcome: 2 - Enhanced capacities of key national and local institutions for improved governance

ACC/UNDP sector & subsector/goals and service lines: 2. Fostering democratic governance

Implementing partner: UNDP

Collaborating parties: Electoral Commission of Kenya (ECK), Ministry of Justice and Constitutional Affairs, Constitution of Kenya Review Commission (CKRC), civil society organisations and media houses

Estimated start date and duration: 5 September 2005 - 31 March 2006

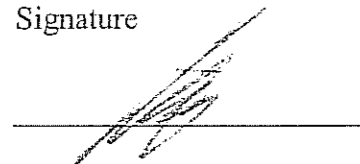
Summary – i) Outcome, ii) Outputs, iii) Activities, iv) Inputs:

i) The outcome of this project is to contribute to the conduction of a free and fair referendum on the proposed new constitution (CPAP V.B.b.50). ii) The project will have four outputs that will contribute to the realisation of this goal: (a) polling agents from yes and no committees monitor referendum at each polling station; (b) peace committees operative; (c) Kenyans provided with balanced and impartial civic education on the current and proposed new constitution; and (d) Kenyans provided with access to copies of the proposed new constitution and the popular version of the proposed new constitution. iii) The activities to be carried out to produce these outputs include (a) facilitation of polling agents; (b) training of peace committee members; (c) contract of consultants to manage and civil society organisations to conduct civic education; and (d) printing of copies of the proposed new constitution and the popular version of the proposed new constitution. iv) The inputs required to produce the outcomes above will among other things include consultant, printing, training, and procurement of space in the media.

Approved on
behalf of

UNDP

Signature



Date

18/11/2005

Name/Title

Paul Andre de la Porte
Resident Representative

I - Situation Analysis

The constitutional review process in Kenya has been ongoing since 1998. The Attorney General released the proposed new constitution 23 August 2005. The referendum about the proposed new constitution is scheduled for 21 November 2005.

The Electoral Commission of Kenya (ECK) has been mandated with setting the date for the referendum and conducting voter education i.e. education on how the referendum will take place, what a referendum is, and what a constitution is as opposed to an ordinary law. The government of Kenya has allocated Kshs. 3 billion for ECK to conduct the referendum. The ECK has indicated that it will mainly provide voter education through media campaigns both because of the limited time that makes it difficult to involve civil society organisations but also because many civil society organisations have taken a public stand on the referendum (yes, no, don't vote) and their neutrality therefore could be questioned. However, ECK is planning to have a meeting with the civic society organisations to discuss voter education. Further, ECK is mandated to make sure that all parties will honour rules and regulations concerning the referendum. This includes securing the right to campaign for ones views and ensuring that violence is avoided.

The Constitution of Kenya Review Commission (CKRC) has been delegated with the task of conducting civic education on the content of the proposed new constitution. They have been allocated Kshs. 1.3 billion by the government of Kenya to undertake this task. CKRC have indicated that they want to conduct the civic education through civil society organisations. It appears that CKRC is planning to allocate Kshs. 210 million to the civic education through civil society organisations i.e. Kshs. 1 million per constituency. How the civil society organisations will be chosen is not clear at the moment. There has not been conducted any audit of the civic education that CKRC has supported in the past. It is also worth noticing that the CKRC commissioners are internally split in a yes- and no-camp. The Ministry of Justice and Constitutional Affairs has requested for funds to the printing of proposed new constitution released by the AG.

The referendum will be the epitome of a process that has ended up becoming highly political. Attorney General Amos Wako released the proposed new constitution despite an ongoing court case challenging the legality of the process and his right to release the bill. The current court case is just one of many that has been filled under the constitutional review process. The court cases are a manifestation of the remarkable political disagreements and strife that have surrounded the constitutional review process. Because of the many political disagreements the constitutional review process has been much longer than initially envisioned. The high political temperatures surrounding the process could jeopardise the freeness, fairness and legitimacy of the referendum. The politicians have already started campaigns advocating for their different positions.

The argument from those who argue for a "no" and "don't vote" seems to be based on the lost opportunity to vote for the Bomas draft, which is seen as a reflection of the true wishes of the people by some stakeholders. The same people find that the Parliament has mutilated and hijacked the constitutional review process through the consensus act and the following Kilifi Draft. The referendum it is therefore argued to be a lose-lose situations for Kenyans – either the old constitution with wide executive powers is retained or a new constitution, which, according to the advocates for no, basically does not contain the restraint of the presidential powers, which was provided for in the Bomas draft, is approved. The result will be the same:

the executive remains to strong and this beats the purpose of the whole process. Or so goes the argument. The yes-side on the other hand argues that the Bomas draft was to unrealistic in many of its demands and that the Parliament as the representatives of the people had to make the last fine-tuning. They feel the proposed constitution presented by the Attorney General is based on Bomas but has been added with the agreement reached between MPs on some of the contentious issues. They feel the executive is sufficiently checked but also argue that you cannot replace an all-powerful president with an all-powerful Prime Minister. Some MPs, among them both a yes and no advocates, have linked the referendum to a vote for and against the government, stating that a "no" will be seen as an expression of no confidence in the present government.

It is important that campaigning and the related media reports will not stand as the only source of information to Kenyans who wishes further information and knowledge about the proposed new constitution they will vote on in November 2005. It is for this reason that the civic education on the content of the proposed new constitution and measures that could help to prevent violence play a vital role in preparation of the referendum.

Development partners have been supporting the constitutional review process since a very early stage. A group of development partners consisting of SIDA, the Netherlands, Norway and UNDP have agreed to provide support to contribute to the conduction of a free and fair referendum. As a neutral and impartial body, UNDP has been selected as the vehicle for this support. It is on this background UNDP has developed this Annual Work Plan.

Risks

The development partners who have agreed to provide support to contribute to the conduction of a free and fair referendum are aware of certain risks:

- The support needs to be provided within a short time frame given that the referendum will take place in November.
- The constitutional review process has become highly political and there is a risk that some parties will accuse the development partners of taking side (these accusations could come from both sides)
- The ongoing court case questioning the legality of the referendum might lead to the cancellation of the referendum.

How can these risks be mitigated? Despite the short time frame it is crucial that the quality of the support is not questionable. It is therefore foreseen that the cost surrounding the actual civic education will be relatively high. There will be a need to engage consultants to be involved in the development of civic education proposals and to train civic education facilitators. Further, there will be a need to hire people who can verify that the actual civic education on the ground takes place and can report on the quality of the same. These "facilitation" expenses will constitute a quite high percentage of the civic education budget but it is believed to be justified to ensure the quality of the activities.

UNDP is seen as a neutral and impartial body and has therefore been selected as the vehicle through which the support is channelled in order to preclude accusations of taking sides. As CKRC commissioners publicly have taken positions on the proposed new constitution it has been agreed not to channel the funds for civic education through CKRC. UNDP's name alone is off course not enough to avoid accusations of bias. It is therefore important that the civic society organisation that will undertake civic education funded under this annual work plan

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will be carefully vetted. It may not be possible only to select organisations who have not taken a public position, however it should be made sure that the selection overall is balanced i.e. an equal number of yes and no organisations. Even if organisations who have taken positions in this way is included it is important to make sure that the activities they undertake with funds from the development partners is neutral – that the funds are used for education and information and not advocating. The selected organisations will have to sign a statement committing themselves to neutrality and impartiality. It is also for this reason it has been deemed necessary to engage a high number of people who can attend to the activities funded under the annual work plan.

If the ongoing court case should declare the referendum illegal it would render the main objective of this annual work plan redundant. However, the participating development partners feel that to wait for the result of the court case before taking a decision to engage would be to abandon Kenyans. The decision by High Court will probably come to late to allow for setting up of the structures necessary for providing support. Even the people who have filled the court case is preparing for the referendum. Even though the main objective i.e. contribute to the conduction of a free and fair referendum would be cancelled if the High Court deems the referendum illegal the involved development partners still feel the activities have an inner value. Some of the activities will build the capacity of civil society organisations in form of a proposal writing workshop and training of facilitators. These are capacities, which would still be an output even if the referendum were cancelled. It is also believed that the civic education in itself contribute to break the culture of patronage by educating in the making an informed choice. The need to make informed choices does not only apply to the referendum and could therefore also be seen as valuable in a longer perspective.

II - Implementation Strategies

It is against this background that the United Nations Development Programme (UNDP) proposes to undertake a project whose objective is to contribute to a free and fair referendum on the constitution. The project will be undertaken and implemented within the Empowerment Component of the UNDP's programme of support to Kenya, with the aim of promoting a culture of constitutionalism (CPAP V.B.b.50) within the context of the United Nations Development Assistance Framework (UNDAF) Outcome on "Promotion of Good Governance and Realization of Rights". The project will be implemented in collaboration with ECK, CKRC, Ministry of Justice and Constitutional Affairs, civil society organisations and media houses. UNDP will engage the required resources – professionals – to implement the programme with full transparency and accountability. The goal shall be achieved through the following:

Ensuring Transparency in the Polling Process

To ensure transparency in the polling process the Electoral Commission of Kenya has requested for polling agents from each side to be present at each polling station at the day of the referendum. The presence of the polling agents can prevent rigging and other irregularities. Their presence further provide both the yes- and no-camp with a framework for monitoring the referendum process in each polling station. The local yes- and no committees will select the polling agents. They shall be engaged for four days. They will be present at the polling station at referendum day. The day prior to the referendum they are supposed to monitor the set-up of the polling station. Prior to the referendum two training days are also envisioned. The support will go to the allowances of the polling agents, which have been set at Kshs. 1,200 per day. The modality of payment will be reimbursement. Reimbursement can only be done with sufficient supporting documents and only be related to polling stations where both the yes and the no polling agent were present.

Prevention of Violence

To prevent the occurrence of violence up to and during the referendum members of peace committees will be trained. Peace committees have been established in each constituency. Apart from the chair the committees are constituted of two representatives from religious organisations, one youth leader, one woman, and an OCPD (Officer Commanding Police Division). The role of the committees is basically to try to resolve conflicts before they turn violent i.e. they have a mediating role. In case conflicts are escalating and the committees are not able to resolve them they are expected to inform ECK. The intention is to train members of peace committees in order for them better to be able to mediate when conflicts arise, but also to make them better positioned to spot potential conflicts at an early stage as to intervene before the conflict level escalates.

Civic Education

Civic education is one way to contribute to break the culture of patronage by educating in the making an informed choice. Balanced, neutral and impartial civic education on the current and proposed new constitution is a key element to give the Kenyans the opportunity to make a free and informed decision on the day of the referendum. Civil society organisations will be the main channel through which the Kenyan people on the ground can be reached with civic education. For purposes of ensuring the accountability of the civic society organisations that receive funds and to avoid accusations of being biased, as channelling the funds through CKRC could be met with, UNDP will contract civil society organisations directly to

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undertake civic education. Information of the supported civic education will be shared with CKRC. The process for doing this will be as follows:

Before 8 September	Contracting of consultancy team (3 people) who can deal with all technical aspects. The consultancy team will basically be managing the rest of this process.
Before 10 September	Consultants to prepare call for Expression of Interest (EoI). Public issuing of call for Expression of Interest.
Before 15 September	Consultants to develop selection criteria for prioritisation among incoming Expressions of Interest. The criteria will be circulated to contributing development partners for comments and approval.
Before 17 September	Receive Expressions of Interest from civil society organisations (CSOs).
Between 17 and 26 September	Consultants to scrutinise and make prioritised list based on received Expressions of Interest. Contributing development partners can sit in the panel scrutinising Expressions of Interest should the wish so. Final list of selected CSOs to be circulated to development partners for comments and approval before any CSOs are contracted.
Before 26 September	Assessment of CKRC curricula and training materials and where necessary develop additional civic education materials.
26 September	Inviting selected civil society organisations to proposal writing workshop.
29 Sept. – 1 October	Proposal writing workshop for selected civil society organisations.
Before 1 October	UNDP to contract 70 national United Nations Volunteers (UNVs) that can go to the field and verify the civic education to be conducted by the civil society organisations.
Before 3 October	UNDP to contract civil society organisations selected to conduct civic education.
7-14 October	Training of facilitators/trainers workshop
Before 10 October	Release of 60 percent of funds to civil society organisations undertaking civic education. The remaining 40 percent to be released upon accounting of the first tranche.
From 17 October	Civil society organisations conduct civic education. National UNVs, consultants, and UNDP staff will undertake verification visits.
Before 10 December	Receipt of financial and technical reports from CSOs.
Before 20 December	Clarify issues regarding submitted financial and technical reports.

Civic education through civil society organisations will also result in some positive side effects: the capacity of the involved civic society organisations will be increased through the training in proposal writing and the training of trainers/facilitators. Further, it is also believed that the civic education will underline the general importance of making informed choices and thereby break the culture of patronage. This can also be seen as an important message in the civic education that can be foreseen in the preparation of the 2007 general election.

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The geographical coverage of civic education delivery will be as wide as possible but will be constrained (given the short time frame) by the ability/capacity of CSOs applying to participate.

There might be a need to develop a materials and pamphlets that summarises the content of the current and the proposed new constitution and a training curriculum in general. However, this will be decided upon an evaluation of the existing available materials.

Provide Access for Kenyans to the Proposed New Constitution

In order for Kenyans to be able to make an informed choice at the referendum they need to have access to the two choices i.e. the current and proposed new constitution. With this purpose this project intends to support the government printing of the popular version of the proposed new constitution. The copies funded by this project should be made easily available by the government of Kenya. The distribution of the documents should cover the whole country. In addition to printing of copies a modality for provide access to the content of the proposed new constitution to Kenyans is to bring supplements with the proposed new constitution and the popular version of the proposed new constitution in the most widely read national newspapers. This component will also include neutral media adverts urging Kenyans to vote at the referendum whether they oppose or support the proposed new constitution. This component will be implemented in collaboration with the Ministry of Justice and Constitutional Affairs.

III - Management Arrangement

The United Nations Development Programme (UNDP) will be the implementing partner for this annual work plan. The UNDP rules and regulations are specified in the UNDP Programming Manual (<http://www.undp.org/bdp/pm>).

Further, UNDP will follow the provisions stipulated in the funding agreements signed with each of the contributing development partners.

A Coordination Steering Committee will be constituted of collaborating parties hereunder ECK, CKRC and the Ministry of Justice and Constitutional Affairs. The committee will have a meeting, the Local Project Appraisal Committee meeting, before the project commences with the purpose of building consensus around the project's strategies and planned results. The Coordination Steering Committee only has an advisory role.

A Donor Steering Committee consisting of one representative from each contributing partner will be established.

- The Donor Steering Committee will meet every three weeks to give strategic guidance on the programme and approve any major changes in the annual work plan. UNDP can be requested to convene additional Donor Steering Committee meetings should any of the contributing partners request so.
- UNDP will act as chair and secretariat for the Donor Steering Committee.
- UNDP has the responsibility to circulate issues for the steering committee per e-mail and indicate date where after the circulated will be seen as approved if no objections is received. As the annual work plan is implemented within a very tight time frame UNDP can circulate issues with a 24 hour deadline for comments/no-objections.
- Other development partners who at a later stage wish to contribute to the annual work plan can be incorporated on a no-objection basis from the Donor Steering Committee.

UNDP shall submit financial and narrative reports to the funding development partners at the latest three month after the completion of the implementation of activities in this annual work plan.

Work plan and budget: The work plan and budget is detailed in the Annual Work Matrix below.

Expected Outputs	Key Activities	Monitoring Actions	Success Indicators	Time schedule 2005				Collaborating Party	Planned Budget	
				S	O	N	D		Source of Funds	Input Description
Transparency at polling stations and prevention of rigging and other irregularities at referendum day	-Polling agents trained by ECK -Polling agents representing yes and no committees posted at every polling station at referendum day	-Signed list from polling agents -Monitors and observers reports that polling agents were present at polling stations -Attending randomly selected training sessions -Read training session reports -Feed back from ECK	-Polling agents report that the referendum have been free and fair					SIDA RNE Norway DFID UNDP	Allowances	815,000
Prevention of violence related to the referendum	-Training of Peace Committee members	-Peace Committees able to mediate in local conflicts between advocates for yes and no -Peace Committees will involve ECK in conflicts the committees are unable to solve before conflicts escalates -Consultants hired before 8 September					UNDP, ECK Peace Committees	SIDA RNE Norway UNDP	Trainers Venues Transport & allowances Printing Miscellaneous Sub-total	20,000 10,000 160,000 40,000 20,000 250,000
Kenyan's have received balanced and impartial civic education on current and proposed new constitution	-Hiring of consultant team to manage civic education through CSOs Development of call for Expression of Interest (EoI) Development and use of selection criteria for incoming Expressions of Interest	Verify consultancy contracts Verify adds in media -Register incoming EoI -Verify selection criteria document	-Calls for Expression of Interest issued before 10 September -Expression of Interest from CSOs received before 17 September -Selection process completed before 22 September -Development partners approve selection criteria and selection				UNDP, consultancy team, CSOs	SIDA RNE UNDP	Consultants UNV's Venues Allowances Printing of materials Media adds CSO civic education Transport Miscellaneous Sub-total	110,000 110,000 40,000 30,000 30,000 10,000 720,000 20,000 12,334 1,082,334

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 ATLAS project: 00047017

Expected Outputs	Key Activities	Monitoring Actions	Success Indicators	Time schedule 2005				Collaborating Party	Planned Budget	
				S	O	N	D		Source of Funds	Input Description
	Civic education proposal writing workshop	-Attend workshop	-Selected CSOs have developed civic education proposals -Civic education proposals have been approved for funding							
	Hiring of 70 national United Nations Volunteers (UNV) that can monitor the civic education	-Verify UNV contracts	-70 UNVs contracted							
	Contracting of selected civil society organisations	-Verify contracts with CSOs	-Contracts with CSOs signed before 3 October							
	Training of facilitators and programme officers workshop	-Attend workshop	-CSO facilitators and programme officers are ready to do civic education							
	Providing of civic education on the current and the proposed new constitution	-Random attendance at civic education activities by UNVs -Scrutinizing of incoming financial and narrative reports	-Civic education provided under the programme reach 2 million Kenyans -Acceptable financial and technical reports received from CSOs before 10 December							
	Assessment of CKRC curricula and materials and where need be development of additional materials and pamphlets	-Verify materials to be used in the civic education	-Quality materials available for CSOs who implement the civic education							

Expected Outputs	Key Activities	Monitoring Actions	Success Indicators	Time schedule 2005			Collaborating Party	Planned Budget		
				S c p	O c l	N o v		D e c	Source of Funds	Input Description
Kenyan's have access to copies of the proposed new constitution and the popular version of the proposed new constitution	-Printing of the popular version of the proposed new constitution -Supplements in national newspaper with the proposed constitution and the popular version of the proposed new constitution -Neutral newspaper adds urging Kenyans to vote whether they oppose or support the proposed new constitution	-Verifying printed copies -Verifying supplements in newspapers -Verify media adds	-300,000 copies of the popular version of the proposed constitution printed -Newspaper supplement with proposed constitution and the popular version of the proposed new constitution in the most read newspapers -Media campaign reach 30 percent of eligible voters -Message in media campaign understood by those people who see the messages				UNDP, Ministry of Justice and Constitutional Affairs, media houses	SIDA RNE UNDP	Printing Newspaper fees Sub-total	70,000 320,000 390,000
Monitoring, audit and evaluation	Monitoring visits Final project report Audit Evaluation	-Read reports	-Final project report produced in a timely manner -Audit reports shows that the project have been managed probably -Evaluation states that the project have made a valuable contribution to the conduction of a free a fair referendum				UNDP	UNDP	Audit Evaluation Transport Sub-total	2,000 7,000 1,000 10,000
Administration							UNDP	SIDA RNE Norway DFID		120,386
TOTAL										2,657,720

