

JOINT STATEMENT OF INTENT (JSI)

CIVIL SOCIETY DEMOCRATIC GOVERNANCE (CSDG) FACILITY

November 2008

NSA file

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THE PARTNERS

The participants to this Joint Statement of Intent (JSI) are a group of Development Partners who currently include the Royal Netherlands Embassy (Netherlands), the Swedish International Development cooperation Agency (SIDA), The Norwegian Embassy (Norway) and United Nations Development Programme (UNDP). These development partners will be collectively called the "Development Partners".

The Development Partners to this JSI are divided into two categories:

Category 1 – Development Partners funding all aspects of the Civil Society Democratic Governance Facility (the "Facility"), through UNDP to support activities. At the time of signing this JSI; these partners are Royal Netherlands Embassy (RNE), the Swedish International Development cooperation Agency (SIDA), The Norwegian Embassy (Norway) and United Nations Development Programme (UNDP); hereinafter referred to as the Contributing Partners.

Category 2 – Development Partners with earmarked funds (hereinafter referred to as earmarking funding partners) funding earmarked activities under the Facility. Partners under this category shall commit 10% of the funds towards the Facility's Capacity Development funds and shall also pay such percentage towards UNDP's General Management Support (GMS) as may be agreed between UNDP and such partner.

Partners can change category from earmarking partner to contributing partner in case they decide to fund all aspects of the Facility. Other co-funding arrangements channelled through the Facility may also be added at a later stage. This JSI also allows for the inclusion of new development partners.

INTRODUCTION

1. Development partners acknowledge the need to *reinforce the advocacy, watchdog and counter-balancing roles of civil society* in relation to the deepening of democracy and governance reforms in Kenya and to integrate a rights based approach to development in social and economic reforms. This will be done through support to advocacy, service delivery and capacity development of NGOs and CBOs.
2. The Development Partners have committed to set up a flexible Multi-Donor Facility to jointly support and coordinate such civil society



efforts in democracy and human rights and governance reform interventions, and integration of a rights based approach in social economic reforms, and whereas UNDP has expressed the willingness and capability to manage such coordinated support.

3. The Development Partners have jointly prepared this JSI in line with the Paris Declaration on Aid Effectiveness¹. The Partners have reached an understanding on common procedures for consultation and decision-making, funding and disbursement mechanisms, monitoring and reporting, review and evaluation, audit, financial management and the exchange of information and cooperation. This understanding is intended to enhance effective implementation of the Facility, reduce the administrative burden for Development Partners and all other beneficiaries, and to minimise transaction costs.
4. This JSI provides a framework of collaboration between the Partners, and regulates the relationship among Development Partners providing support to the Facility. It also provides a specific framework for the cooperation between UNDP and other Development Partners.

The JSI is based on, and should be read in conjunction with the *UNDP Project Document (PD) for a Civil Society Democratic Governance Support Facility*.

SCOPE AND OBJECTIVES

5. Development Partners, by signing this JSI confirm their commitment to supporting organised Kenyan civil society to practice and promote good democratic governance and human rights, thereby contributing to the deepening of democracy and citizen-led development in a coherent, results-oriented and responsive manner.
6. The Facility is guided by the following principles: (i) *democratic information flows*: transparency and inclusiveness of information sharing – within networks, institutions/organisations and within society at large through issues-centred dialogue, (ii) *democratic terms of engagement*: representative and inclusive participation, special outreach efforts to rural and remote areas as well as to marginalised groups and groups with special needs, safe-guarding the independence of civil society; and (iii) *democratic access to resources*: widely publicised information on funding opportunities, transparent selection

¹ The Paris Declaration, 2 March 2005, www.oecd.org/effectiveness

- criteria, independent selection processes, quality and issues-based selection, high accountability standards, minimised gate-keeping and conflict of interest, ongoing capacity support and skills building in organisational good governance practices and programme management.
7. The following values underpin all activities: social justice, gender equity, poverty reduction and respect for social, economic, cultural, civil and political human rights.
 8. The Development Partners commit to transparent funding of the Facility and will share information on all relevant funding and activities.
 9. The Development Partners will enter into financial arrangements or agreements with UNDP that are compatible with the spirit and provisions of this JSI and will refrain, as far as possible, from setting conditions in these agreements or arrangements that contradict or diverge from the spirit or the provision of this JSI. However, if there is any inconsistency between the provisions of this JSI and any of the financial arrangements or agreements entered into with UNDP, the financial arrangements or agreements will prevail.
 10. The Facility will operate in parallel and as a complement to other ongoing programmes and bilateral arrangements to support civil society actors in Kenya in the field of democratic governance. However, it will seek to harmonise and complement other ongoing initiatives in terms of approaches and processes for increased effectiveness of civil society support in the sector. UNDP will make efforts to co-ordinate with other initiatives supporting civil society in the same areas.
 11. It will operate with long-term funding cycles of maximum three (3) years through successive and overlapping Calls for Proposals, covering any aspect of democratic governance support that primarily (but not exclusively) reflects the key result areas of Kenya's national development objectives as envisaged in the, Medium Term Plan, Vision 2030 and other development commitments and Government of Kenya policy / reform strategies in the area of democratic governance.
 12. The first focus area will be on the key reform priority areas of the Governance Justice Law and Order Support programme (GJLOS) through a targeted Call for Proposals. Possible areas for targeted



future Calls for Proposals include around the African Peer Review Mechanism (APRM), Public Service Reform (PSR), Public Financial Management (PFM), and/or targeted rights-based initiatives in service delivery around roads, water, health, education, etc.

13. Methods of delivery, such as civic education, voter education (if/when applicable), and public awareness through an extensive media programme will be utilised as appropriate for all thematic areas covered by the Facility. Capacity building of NGOs and CBOs will also be given priority. NGOs training institutions on rights based approach in social reforms can apply for grants to carry out capacity building.

MANAGEMENT, DECISION-MAKING, COORDINATION AND APPROVALS

14. The Development Partners will cooperate to ensure effective realisation of the objectives of the Facility. The management framework and decision-making mechanisms of the Facility in relation to strategic direction and learning, as well as grant management and implementation are illustrated below:

The UNDP Programme Management Unit (PMU)

15. UNDP will manage the Facility, through a PMU on behalf of the Development Partners. The PMU will undertake the following responsibilities:
- (i) Management, coordination and oversight of Facility activities
 - (ii) Appraise the Expression of Interest (EOI) and Applications from the CSOs based on the set criteria and make recommendations to the Project Appraisal Committee (PAC).
 - (iii) Provide technical support and advice related to the management of the Facility (institutional set-up and arrangements, progress tracking, M&E, IEC procedures etc.)
 - (iv) Provide advice in terms of democratic governance and the strategic direction of the Facility, based on stakeholder priorities
 - (v) Commission consultancy services when needed, and in managing ongoing consultancies and capacity building services
 - (vi) Manage tailored capacity building services to organisations, and facilitate a participative process to set minimum organisational good governance standards and benchmarking for participating organisations.
 - (vii) Coordinate and exchange information with other ongoing related programmes and initiatives.

- (viii) Regularly convene and facilitate meetings of the Facility Stakeholder Reference Group (see below)
- (ix) Ensure the capturing of lessons and documentation of best practice, and sharing at regular learning platforms.
- (x) Manage Calls for Proposals and liaise with the UNDP Project Appraisal Committee (PAC) for feedback on approved applications.
- (xi) Ensure financial management in accordance with UNDP rules and procedures.
- (xii) Manage UNDP-donor cost-sharing agreements and arrangements, and
- (xiii) Monitoring, tracking and reporting to development partners
- (xiv) Ensure that UNDP Programme Management rules, regulations and procedures are followed in the implementation of the Programmes under the Facility.

In establishing the PMU, emphasis will be on qualified and sufficient human resources supported by a highly qualified and experienced Capacity Building Specialist within the UNDP country office.

The Stakeholder Reference Group (SRG)

16. A Stakeholder Reference Group (SRG) shall be constituted for the Facility.

The initial composition of the SRG will be as follows:

- I. Five CSO Representatives representing each of the Key Priority Areas of GJLOS Reform Programme.
- II. At least three representatives of marginalised and vulnerable groups.
- III. At least four representatives of CSOs/CBOs with offices outside Nairobi.
- IV. Two Representatives of Development partners.
- V. One UNDP Representative.
- VI. The Representation to the SRG shall ensure gender balance.

17. The Stakeholder Reference Group shall be advisory in nature, and funding decisions ultimately lie in the hands of the development partners through the Project Approval Committee and the CSDGDG.

18. The Stakeholder Reference Group will:

- I. Lead strategic inputs and agenda-setting in learning platforms, stakeholder dialogue opportunities and joint reviews.
 - II. Provide strategic guidance on emerging issues that may form basis for future or supplementary calls for proposals.
 - III. Provide advice on strategic ways of engaging and dialoguing with the Government on the Priority areas of reform.
 - IV. Provide advisory services and strategic guidance for the different results-focused Calls for Proposals and implementation cycles.
19. Civil society will be responsible for electing its own representatives (as provided in **Paragraph 16**) above in a forum convened for that purpose. The CSO representatives to the SRG should consist of technically qualified representatives according to targeted key priority areas of reforms and national development objectives. The Programme Management Unit (PMU) Manager will attend the SRG in an ex officio capacity. The PMU will act as a Secretariat for the Stakeholder Reference Group.
20. CSOs members elected to the SRG shall serve in their personal capacity and not as representatives of their respective organizations.
21. The chair of the SRG shall be selected by SRG members from among the CSO representatives. Such selection shall be by consensus or where there is no such consensus by a simple majority vote of members in a meeting convened for that purpose.
22. CSO representatives to the SRG will serve for an initial period of one year after which a third (1/3) of the members shall be eligible to be replaced at the next annual CSDG week in accordance with the criteria under paragraph 16 above.
23. The SRG representatives shall present a report of their activities to all the stakeholders during the annual CSDG week.
24. Decisions of the Stakeholder Reference Group will be made by consensus. Any such decision however shall not be contrary to the spirit and intent of this JSI or any bilateral Agreement entered into between UNDP and any of the other development partners AND shall not contravene UNDP's rules, procedures and Regulations.
25. Development Partners will participate in the Stakeholder Reference Group through their representatives as provided for under Paragraph 16. Participation will be on rotational basis, but to ensure continuity,

the lead donor and deputy Lead Donor cannot be replaced at the same time. Government representatives will be invited to attend as observers when needed and as felt appropriate (to be determined by Stakeholder Reference Group members).

26. All decisions made at Stakeholder Reference Group meetings shall be recorded and circulated via email to the SRG, CSOs and CSDGDG by the PMU.

The Project Appraisal and Approval process

27. The PMU together shall conduct the Appraisal of expressions of interests and Proposals submitted by applicants and shall prepare a report and recommendations to the Project Approval Committee (PAC). Where the PMU deems it necessary to engage experts to assist in evaluating EOI and proposals, independent experts will be hired by the PMU for this purpose. The PMU will act as a secretariat for the PAC.

28. Project Approval Committee (PAC) will be set up to Appraise, consider and approve the recommendations on the applications received from the PMU and make a decision on the funding to the CSOs.

29. Members of the PAC will be:

- I. UNDP Country Director – Chair
- II. Assistant Resident Representative of another UNDP Unit
- III. UNDP head of Governance Programme
- IV. One representative of the donors
- V. Capacity Building Specialist – Ex officio

30. TORS for the PAC

- I. As provided for under Paragraph 27 above, the PAC shall receive recommendations and reports on proposals submitted by CSOs from the PMU
- II. Make decisions on the funding of applications from CSOs.
- III. Communicate decision to CSDGDG for information
- IV. Such decisions of the PAC shall be final

31. Decisions of the PAC shall be communicated to the CSOs by the PMU.



The Civil Society Democratic Governance Donor Group (CSDGDG)

32. CSDGDG shall comprise of donors contributing or earmarking funds through the Facility and UNDP.
33. It shall regularly meet to discuss issues and give strategic guidance and advisory input to facilitate effective management and functioning of the Facility including: to endorse the decisions of the PAC on the Funding of Applications from CSOs.; to discuss issues on funding levels or needs; to consider change of development partners funding category; to review of priority areas of focus and to receive feedback from PMU and SRG as necessary.
34. The quorum for any meetings of the CSDGDG meetings shall be a half of the contributing partners or two Development Partners whichever is higher.
35. The CSDGDG shall elect a lead and deputy Lead Donor who will hold office period of one and half years after which another lead donor shall be elected. If the Lead Donor or Deputy Lead Donor chooses to resign, an election will be held to fill the positions.
36. The PMU will act as secretariat for the CSDGDG.
37. The CSDGDG of development partners will meet every two months (second Thursday of every second month) or more often if considered necessary. The Lead Donor will convene the meetings.
38. The CSDGDG will reach decisions by consensus.
39. When consensus cannot be achieved on a decision point after discussion at a meeting, then the decision of two-thirds majority of the Contributing Partners including UNDP will be considered final. Any such decision however shall not be in contravention of any bilateral agreements signed between UNDP and any Development Partner on the funding modalities of funding the facility **AND shall** not contravene UNDP's rules, regulations and procedures.
40. For major or controversial issues that require urgent action, the Lead Donor may consult the Contributing Partners in writing (including via email, provided receipt notification is requested) rather than calling a meeting. If the Lead Donor does not receive any objections within two working days of delivery of the written communication, the proposal

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will be considered approved. If an objection is received, the matter must be taken up at the next CSDGDG meeting (and an emergency meeting can be called upon 2 days written notice to deal with such an issue). Each Contributing Partner is responsible to submit a timely response to urgent requests.

41. It is the responsibility of each Contributing Partner to make sure that an alternate contact is added to the contact list to ensure that a member of the respective partner is contacted in case the normal focal point is absent.
42. In case a Contributing Partner is not able to attend a meeting, the partner can nominate another Contributing Partner to vote on their behalf.
43. All Development Partners will immediately inform each other of any circumstance that may interfere or threaten to interfere with the successful implementation of the planned activities of the Facility and will call a meeting to inform or consult with the other Partners on the remedial action to be taken.

MANAGEMENT ARRANGEMENTS

44. The Development Partners shall contribute to the Facility through UNDP. A cost sharing agreement, contribution arrangement or trust fund agreement will be signed bilaterally between each respective Development Partner and UNDP.
45. UNDP will administer the funds provided by the Development Partners, for the purpose of:
 - i. Providing rigorous, transparent and efficient management of funds,
 - ii. Rapid disbursement and ensuring that payments are made in a timely manner,
 - iii. Satisfying recognised international standards of financial reports on income and expenditure of the funds,
 - iv. Supporting partnership building and resources mobilisation for the program,
 - v. The use of UNDP's knowledge networks and potential for increased sector learning.
46. The funds will be administered in accordance with UNDP's financial and programming regulations, rules and procedures.



47. The Facility will be managed in accordance with UNDP Programming and operations policies and procedures.
48. The Programme Management Unit (PMU) will be anchored in the Governance component of UNDP Kenya.
49. UNDP shall provide dedicated highly qualified Country Office staff within UNDP country office to manage effective oversight and liaison with the UNDP PMU.
50. UNDP shall inform the Development Partners of all the developments relevant to the Programme and shall provide information regarding the Facility that may be reasonably requested. Consultation and exchange of information and documents under this paragraph shall be without prejudice to arrangements, which may be required to safeguard the confidential and restricted character of certain information and documents. Such arrangements will survive the termination of this JSI and of any agreements signed by the Development Partners within the scope of the Facility.
51. Provision of audit and UNDP's reporting to the Development Partners will be included in the cost sharing agreement, contribution arrangements and trust fund agreements signed between each respective donor and UNDP.
52. UNDP will ensure maximum efficiency and effectiveness in administering the funds while promoting sound financial management and accountability. In line with UNDP's policy a cost recovery of 7% will be levied on actual expenditures for the provision of the general management support. A contribution will also be charged of the direct cost for the implementation support services provided by UNDP.

CONTRIBUTIONS AND COMMITMENTS OF DEVELOPMENT PARTNERS

53. Partners will make contributions and commitments to the fund based on annual projections made by UNDP PMU. Supplementary projections may be made to respond to emerging issues. Contributing partners and earmarking partners agree to contribute the following:
 - I. 7% of their contribution towards the UNDP's General Management Support (GMS) and will also pay UNDP's global Implementation Support Services (ISS) charged by UNDP to manage such programmes.



- II. Administration and other core costs of the PMU to be calculated each year by the PMU and included as part of the budget.
54. Development Partners will confirm funds to be contributed to the Facility, and financial agreement or arrangements will be entered into bilaterally with UNDP for the same. UNDP will communicate such agreements to the CSDGDG.
55. If no legally binding commitments have been made by UNDP on a particular activity under the Facility, Development Partners have the right to withhold disbursements to any activity where in their view, and after consultation with the CSDGDG, significant risk exists that implementation of the said activity would undermine the guiding principles or the effective utilisation of the funds for the Programme.

JOINT REVIEW AND EVALUATION

56. The PMU will be responsible for ongoing monitoring and will have a full-time designated M&E programme officer. The PMU will summarise the quarterly reports received from the implementing CSOs that will include an update on results achieved and any challenges or blockages faced by the Facility.
57. Progress will be reviewed every two months at the CSDGDG meetings, based upon brief financial and progress reports provided by the PMU Manager.
58. The Development Partners will, to the extent possible, refrain from conducting unilateral reviews and evaluations of the Facility, the Work Plan and the implementation of activities.
59. All Partners will participate in the Facility's annual CSDG week once a year to follow up on the progress of the Facility.
60. In cases where the Facility supports activities in and around a particular reform area/programme, reporting should as far as possible be synchronised with the government-led reform programme so that the accumulative effect of government and civil society activities in a designated area can be discussed during joint review meetings and in other stakeholder fora.
61. A midterm review of the Facility (after the first two years of operation); and a final independent review (towards the end of the first funding

cycle) will be commissioned by UNDP, in consultation with the CSDGDG, to assess the structure of the Facility as well as progress towards the realization of target outputs and outcomes.

REPORTING

62. The PMU will provide the Partners with all information relevant to the implementation of the Facility activities and the Work Plan. The PMU will monitor, evaluate and report on an ongoing basis on the implementation of Facility activities and the achievement of its expected results and objectives.

63. The PMU will also provide the CSDGDG with any other information regarding the Programme and its implementation that it may reasonably request.

ANTI CORRUPTION

64. The Signatories will cooperate on preventing corruption within and through the programmes financed by Development Partners, and will require that the PMU's staff, CSOs staff and consultants under projects or programmes financed by the facility refrain from offering third parties, or seeking, accepting or being promised by third parties, for themselves or for any other party, any gift, remuneration, compensation or benefit of any kind whatsoever, which could be interpreted as an illegal or corrupt practice. The Signatories will take swift action to stop, investigate and deal with any person suspected of misuse of resources or corruption, in accordance with applicable law and /or regulations.

RISK MANAGEMENT

65. In the case of non-compliance with the provisions of this JSI, Development Partners may suspend further disbursements, terminate this JSI and reclaim funds already transferred in whole or in part to the Facility. However, such suspension or termination shall not impact any obligation entered into by the Development Partners and UNDP in the related cost sharing and financial agreement or arrangements which will be governed by the terms of those agreements.

Such non-compliance for purposes of this paragraph refers to:

- a) Serious lack of progress on implementation;
- b) Substantial deviations from agreed plans and budgets;
- c) Compromised competitiveness in relation to any tender and/or open Call for Proposal launched by the Facility;

- d) Unsatisfactory management and misuse of funds;
- e) Occurrence of a fundamental change in programmatic circumstances compared to those that existed at the start of the programme.

Contributing Partners and UNDP shall agree on the action needed based on consensus.

66. If a Development Partner pulls out of the programme for reasons other than those set forth above, the remaining Development Partners commit to use their best endeavours to find the most appropriate options to ensure continuity of the programme.

67. To avoid disruption in the implementation of the Facility, a Development Partner must give at least three months notice of intention to withdraw from the programme unless the withdrawal is motivated by non-compliance as described in paragraph 65 above.

CONFLICT RESOLUTION

68. Any dispute involving UNDP and other Development Partners shall be resolved in a meeting of CSDGDG and the UNDP Country Director failing which it shall be resolved in a meeting constituted of Heads of Agencies and Heads of Missions and the UNDP Resident Representative.

69. In any disputes involving the CSOs and the UNDP PMU on any matter related the facility UNDP Country Director's Office shall arbitrate and initiate dialogue with a view to amicably resolve the dispute. Specifically the following shall apply:

- I. In a case where an issue or complaint is raised against a CSO touching on financial accountability; implementation challenges and significant budgetary deviation above the 10% tolerance levels UNDP policies and procedures for handling such matters will be applied.
- II. In cases of complaints or grievances outside the above the following conflict resolution procedure shall apply:
 - vi. The issue or complaint once received, registered and or raised by the PMU shall first be discussed internally within the PMU.
 - vii. Should the issue or complaint not be resolved within the PMU, the same shall be forwarded to the UNDP CSDG Programme Specialist for discussions with the UNDP EU ARR and the PMU Manager;
 - viii. If the matter is not resolved the same is then discussed by the ARR who will seek advice from members of the UNDAF governance cluster before referring the matter to the UNDP

Country Director whose decision, direction or recommendation on the issue is final.

- III. Any issue or complaint raised against the SRG by a CSO or other stakeholders
 - a. The issue or complaint is received, acknowledged or raised by the PMU;
 - b. The issue is discussed by the PMU and CO ARR and CSDG Programme specialist;
 - c. If the matter is not resolved the matter is discussed within UNDP CO with the CD whose decision, direction or recommendation on the issue is final.

- IV. In any issue or complaint raised against PMU;
 - a. The issue is received and logged by UNDP Capacity Building Specialist.
 - b. The Issue is discussed by ARR and CSDG Programme specialist within the Country Office.
 - c. If not resolved the matter is referred for discussion with the CD whose decision, direction or recommendation on the issue is final.

DEVELOPMENT PARTNER ACCESSION

70. This JSI will be open to signature by additional Partners subject to the approval of the CSDGDG. The approval will be based on coherence with the Facility, and acceptance of the guiding principles as described in this JSI.

EXPIRATION, MODIFICATION AND TERMINATION OF THE JSI

72. This JSI will expire after the first three years operation. It will be renewable every three years since the Facility is not time-bound in nature, but follows the programme cycles of different thematic and results-oriented Calls for Proposals (the first one focusing on strengthening the demand-side in and around GJLOS key result areas.

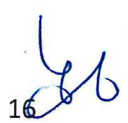
73. The JSI may be modified only by written arrangements between the Development Partners and UNDP.

74. Any of the Partners may withdraw from the JSI upon 90 days written notice to all parties of the JSI.

75. Obligations assumed by the Partners under this JSI shall survive the expiration or termination of this JSI to the extent necessary to permit the orderly conclusion of the implementation of the activities of the Facility.

COMMENCEMENT

76. This JSI commences upon signature of UNDP and at least two other Development Partners.

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For United Nations Development Programme (UNDP):

Tomoko Nishimoto

Country Director

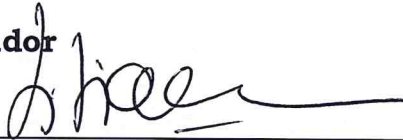


Date ----- 11/12/2008

For Royal Netherlands Embassy:

H.E Laetitia van den Assum

Ambassador



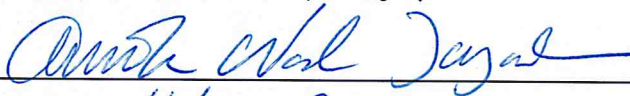
Date: ----- 10.12.08

For the Government of Sweden through SIDA

Annika Nordin Jayawardena

Head of Development Cooperation -SIDA,

Embassy of Sweden (Kenya)



Date: ----- 4/12 2008

For the Government of Norway

H.E Elisabeth Jacobsen

Ambassador

Royal Norwegian Embassy (Kenya)



Date: ----- 1/12-2008