

REPUBLIC OF KENYA
OFFICE OF THE DEPUTY PRIME MINISTER
& MINISTRY OF FINANCE

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THE TREASURY
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NAIROBI
KENYA

Ref.: ERD/EA/TA 107/78/05 'AAH'

6TH APRIL, 2011

Prof. P.L.O. Lumumba, Ph.D
Kenya Anti-Corruption Commission
Integrity House
NAIROBI



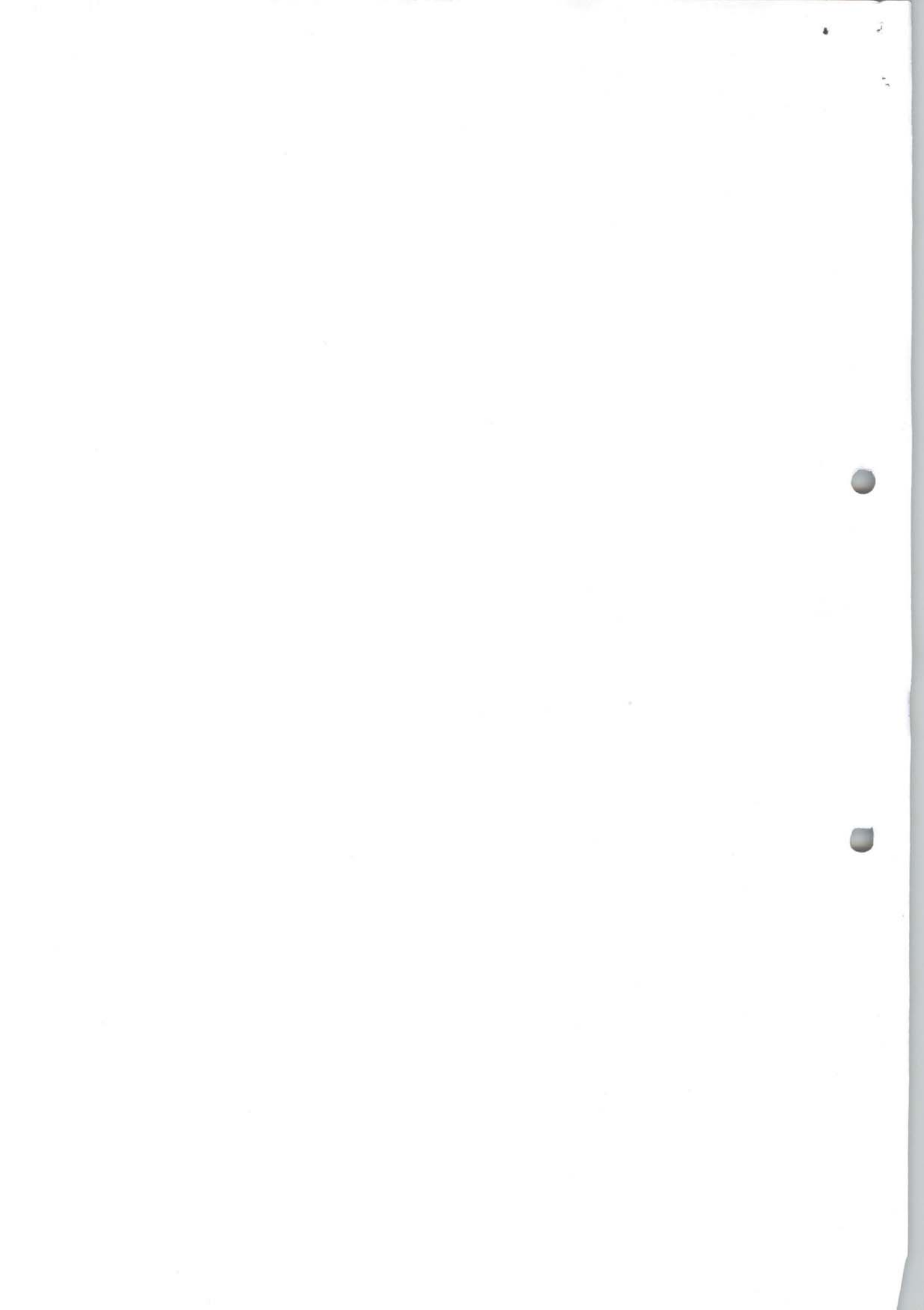
**RE: SUPPORT TO KACC TO REDUCE CORRUPTION RISK
IN KENYA THROUGH WEALTH DECLARATION PROJECT**

We are pleased to inform you that the Permanent Secretary/Treasury has duly signed the three copies of the above project. Since the document has been fully signed by all the signatories, we have retained one copy for reference and record keeping.

This is therefore to forward a copy to you. We can therefore proceed with implementation of the project. Please also note that an approval of KShs.4.6 million has been granted as GoK counterpart funding.

Thank you for your cooperation.

Monica Asuna
For: PERMANENT SECRETARY/TREASURY





PROJECT DOCUMENT

Project Title:	Support to KACC to reduce corruption risk in Kenya through wealth declarations of Public Officers
UNDAF Outcome(s):	Democratic Governance and Human Rights including Gender Equality Progressively Enhanced
Expected CP Outcome(s):	More efficient, effective and equitable public service delivery by institutions and systems for democratic governance and rule of law enhanced
Expected CPAP Output(s):	Capacity of state institutions and systems to manage and deliver quality and equitable services enhanced Capacity of national institutions and systems to manage and deliver constitutional, institutional and legal reforms enhanced
Implementing partner:	Kenya Anti-Corruption Commission (KACC)
Responsible Parties:	KACC, UNDP
Collaborating partners:	Non-state actors (Civil society and media partners), UNODC (technical input)

Narrative

The **overall goal** of the project is to promote accountability and transparency in the public sector in Kenya. The project **objective** is to enhance the capacity of Kenya Anti-Corruption Commission to reduce corruption risks in the public sector through an efficient and effective wealth declaration and audits system. The project has four **outputs**: 1. Legal and policy framework for effective and efficient wealth declarations reviewed; 2. An effective wealth declaration management system established by KACC; 3. Capacity of KACC for asset tracing and recovery enhanced; 4. Effective public reporting and participation in wealth declaration established. The **scope** of the project is that it will constitute a pilot project implemented under the current legal framework, mandate and capacity of KACC. The project will be catalytic and have a possible wider application (another project) depending on amended legislation.

The activities related to the first output seek to establish an overview of the current legislative framework related to wealth declaration and audits. The gaps and challenges will be considered and discussed with key stakeholders and amended legislation will be proposed.

The second output is the establishment of a new and automated wealth declaration system within KACC. Activities include a consultancy to map existing systems of other countries for the possible application by KACC. KACC officers will be trained in the usage of the chosen and established system which will be monitored closely for effective usage. Best practices will be shared with other institutions and commissions for possible application.

To reach the third output the main activity will be training of officers for specialised skills with respect to investigatory capacity for asset tracing and recovery. Based on the training that the specialised KACC officers will receive and the expert knowledge of the training providers, a proposal for establishment of a forensic lab will be developed and stakeholder meetings will be convened where the ideas and the proposal will be presented to possible collaboration partners and donors.

The fourth and last component of this project is involvement of non-state actors and sensitisation of the public with respect to wealth declaration. This will be done through close partnership with Civil Society Organisations.



Project Title: Support to KACC to reduce corruption risk in Kenya through wealth declarations of Public Officers

Programme Period: CPAP 2009-2013	Annualized budget:	2011: 360,813 USD
CPAP Component: Fostering Democratic Governance		2012: 165,000 USD
Project Title: Support to KACC to reduce corruption risk in Kenya through wealth declarations of Public Officers		2013: 16,688 USD
Atlas Award ID: 00061389	Total resources required:	542,500 USD
Start date: 1 March 2011	Total allocated resources:	454,250 USD
End Date: 30 June 2013	• DGTF	350,000 USD
PAC Meeting Date: 22 February 2011	• UNDP core resources	50,000 USD
	• Government resources	54,250 USD
	Unfunded budget:	88,250 USD

Agreed by KACC:

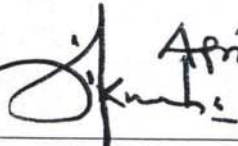
PLO Lumumba, Director/Chief Executive

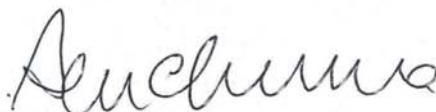

(signature and date) 29/2/2011

THE PERMANENT SECRETARY
MINISTRY OF FINANCE,
P. O. Box 36007,
NAIROBI.

Agreed by Ministry of Finance:

Joseph K. Kinyua, Permanent Secretary


(signature and date) April 5, 2011



Agreed by UNDP:

Aeneas Chuma, Resident Representative

(signature and date)

LIST OF ABBREVIATIONS

ACECA	Anti-Corruption and Economics Crimes Act
AG	Attorney General
AWP	Annual Work Plan
CBK	Central Bank of Kenya
CP	Country Programme
CPAP	Country Programme Action Plan
CPI	Corruption Perception Index
DGTTF	Democratic Governance Thematic Trust Fund
DSA	Daily Subsistence Allowance
DSA	Daily Subsistence Allowance
EACC	Ethics and Anti-Corruption Commission
EMU	Efficiency Monitoring Unit
FY	Financial Year
GIZ/GTZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German International Cooperation) / Deutsche Gesellschaft für Technische Zusammenarbeit (German Technical Cooperation)
HDI	Human Development Index
KACC	Kenya Anti-Corruption Commission
KRA	Kenya Revenue Authority
M&E	Monitoring and Evaluation
MoF	Ministry of Finance
MoJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
MP	Member of Parliament
NBO	Nairobi
NEX	National Execution
OPM	Office of the Prime Minister
PAC	Project Appraisal Committee
PB	Project Board
PIC	Project Implementation Committee
POEA	Public Officers Ethics Act
SBAA	Standard Basic Assistance Agreement
TI	Transparency International
ToR	Terms of Reference
TRAC	Target for Resource Assignment from the Core
UN	United Nations
UNCAC	United Nations Conventions against Corruption
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime

I. BACKGROUND

Corruption stifles growth and investment in Kenya and has disproportionate distortion effects on all productive and service sectors of the economy. It distorts public sector choices and decision-making with undesirable consequences such as poor service delivery by the public sector. By its very nature, corruption is hidden and entails deception and unethical conduct. Furthermore, uncertainty associated with economic transformation, unstable social safety nets, and widespread state capture by various interest groups, has created an open environment for corrupt practices.

Despite efforts by the Government of Kenya and other actors including the UN, development partners and civil society, corruption has remained to be a challenge - both petty corruption (paying "kitu kidogo" - small bribe, literally translated "something small") and grand corruption where billions of public funds are diverted for private gain. From 1980 to 2010 Kenya's Human Development Index (HDI) has only improved with 0.5% annually which gives the country a ranking of 128 in 2010 out of 169 countries. In the corruption perception index (CPI) Kenya scores 2.1 in 2010 ranking the country number 154 out of 178. However, awareness levels of the impact of corruption on attainment of the MDGs remain relatively high in Kenya.

The Government of Kenya has identified corruption under Kenya's long-term development plan, Vision 2030 and its Medium Term Plan (2008-2012) as one of the major challenges besetting socio-economic transformation and attainment of the MDGs. Kenya has also established a legal and institutional framework to combat and prevent corruption: The Anti-Corruption and Economic Crimes Act (ACECA, 2003) and the Public Officers Ethics Act (POEA, 2003) lie at the heart of this framework. ACECA also established the Kenya Anti-Corruption Commission (KACC). Apart from awareness creation in the fight against corruption, there is need to have sustained efforts to eradicate both petty and grand corruption.

One of the preventive mechanisms to be used in the fight against corruption is wealth declarations and lifestyle audits of public officers as this can enhance trust in the public sector through increased transparency and accountability. The legislative framework for carrying out wealth declaration of public officers in Kenya is established through the POEA. However, the system faces many challenges ranging from a cumbersome manual filing system to lack of follow-up mechanisms including verification of the form and criminalisation of non-compliance. This project seeks to enhance the effectiveness and efficiency of the wealth declaration and audit system as part of the efforts to reduce corruption risks in the public sector in Kenya.

II. SITUATION ANALYSIS

The legal framework

Recognizing the need to address corruption and economic crime, the Government of Kenya in 2003 enacted the Anti-Corruption and Economic Crimes Act to combat and prevent corruption, and the Public Officer Ethics Act to cultivate and enhance the culture of ethics in public officers through provision of a code of conduct and ethics as well as re-

quiring declarations of wealth by certain public officers. Together, these Acts constitute the backbone of the legal and institutional anti-corruption framework in the country.

Section 6 of ACECA establishes the Kenya Anti-Corruption Commission while section 7 spells out the principal mandates of the Commission of investigating corrupt conduct, and recovering assets acquired through corrupt conduct including unexplained wealth (section 55).

POEA is aimed at inculcating a culture of honesty, hard work and rejection of corruption in the public sector. The Act mandates multiple commissions to be responsible for the implementation of the wealth declaration system in their respective jurisdictions without an oversight mechanism for the overall management and enforcement. POEA does not assign responsibility for investigations and content verification of the declarations made. Other areas of concern which have further weakened wealth declaration system under POEA are: i) lack of subsidiary legislation (regulations & gazette notices), ii) the inadequacy of amendments made to POEA iii) failure to make 'administrative procedures' to be followed by the respective responsible commissions (s.33 (2)); iii) lack of any methodology to gauge the level of compliance (development of procedures, gazettement, timeliness, and, operationalization) of the Act.

UNCAC Gap analysis

Kenya was the first country in the world to sign and ratify the United Nations Convention against Corruption (UNCAC) in late 2003, hence the same year as POEA and ACECA was enacted. As a way of analyzing the extent the policy, legal and institutional frameworks have lived up to and were in accordance with the provisions of UNCAC, a gap analysis was conducted under the auspices of KACC and the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) with technical support from GTZ (now GIZ since 1st January 2011).

The work commenced in 2007 and the gap analysis and its correspondent implementation plan were published in October 2009. This analysis constitutes a solid framework for investigating where to invest in the fight against corruption for both public and private institutions working towards a common objective of a corruption-free Kenya.

Related to the issue of wealth declarations, the UNCAC gap analysis clearly shows that while the legislative framework for conducting wealth declarations is in place, the follow-up mechanisms including management of the information, scrutiny and verification of the forms and criminalisation of non-compliance have not been provided for. For this failure, the wealth declaration system has not worked properly as a tool to fight corruption (see box in Annex 2).

The Constitution of Kenya 2010 and the Ethics and Anti-Corruption Commission

Kenya's current constitution was promulgated on 27th August 2010. Unlike its predecessor, it has articulated the proper values and ethics to which public officers must ascribe in the performance of duty. Chapter six of the Constitution of Kenya, 2010 articulates the guiding principles on leadership and integrity for state officers including responsibilities, oath, proper conduct, financial probity, restriction on activities and citizenship and leadership.

The Constitution 2010 provides for the establishment of an Ethics and Anti-Corruption Commission within one year from its Promulgation through an Act of Parliament and in accordance with Article 79 of the new Constitution. It is expected that the Kenya Anti-

Corruption Commission will transit into the Ethics and Anti-Corruption Commission (EACC) to ensure compliance with the demands of the chapter six of the Constitution as provided for in Article 79: "... establish an independent ethics and anti-corruption commission (...) for purposes of ensuring compliance with a, and enforcement of, the provisions of this Chapter [Chapter 6]".

Together with other key stakeholders, the Commission is actively participating in the drafting of the new Bill for the EACC. This will include considering the entire institutional and legislative framework of the Commission as it is and how the expanded mandate can be integrated into the existing framework and/or if entirely new legislation is needed. Together with other development partners, UNDP supports the transition process that KACC stands before.

As the name of the 'new' Commission implies, the EACC will have a wider mandate of enforcing integrity and ethical values in leadership and the running of public affairs in Kenya. The provisions of the Constitution will inter alia, be achieved through enhanced cooperation and coordination between wealth declaration implementation systems, law enforcement agencies, and anti-corruption bodies so as to ensure successful investigation and prosecution of acts of corruption. Further, a wealth declaration system focused on content verification or investigations will require an investigatory body with adequate authority to gather the information required for an effective investigation and a credible prosecution and court system to follow up on alleged cases of abuse exposed through investigation.

KACC current mandate

KACC is by law (ACECA) granted the mandate to prevent, investigate corruption and recover assets acquired through corruption. On this basis, KACC formulated its overall objective as "to entrench good governance and reduce impunity and opportunities of corruption in the delivery of public service in Kenya". The strategic plan 2009-2013 of KACC focuses on three main strategic themes:

1. Institutional capacity building and development – strengthen the capacity of the Commission to deliver on its mandate
2. Investigation and asset recovery – enhance the legal capacity and to undertake investigations and asset recovery
3. Corruption prevention – reduce the prevalence of corruption and economic crime

KACC is in need of technical support to carry out its current mandate and to build the capacity of staff and stakeholders. This project focuses on wealth declaration and audit systems and will as such cut across the three strategic themes. An underlying theme of the project is corruption prevention as that is one of the main objectives of a wealth declaration system. Furthermore the project has strong elements of capacity building of KACC also in the area of investigative capacity, and the project will include elements of awareness raising and public education on corruption.

Public officers are enjoined under the law to submit wealth declaration to the responsible Commission. As one of these Commissions, KACC only has the mandate to collect and handle the wealth declarations of its own staff members. KACC as an oversight body however also has the investigation powers over all public officers and are able to access these wealth declaration forms for purposes of investigation if the Commission can prove that it has good reason to do so.

Wealth declarations and audits – legal provisions

The following paragraphs constitute an analysis of the POEA (referred to as the Act) which is the main enabling act for wealth declarations against the best practices on the subject

Coverage/scope of the law

Section 26 of the Act requires every public officer to submit, after every two years of the previous declaration, to the responsible commission, a declaration of income, assets and liabilities of self, spouse(s) and dependent children under the age of 18 years. Declarations are made to multiple authorities defined as 'responsible commissions' in the Act, Section 3. Public officers include the President, MPs, Speaker, the AG, Ministers, civil servants, local authorities, and members of other public bodies.

However, it has been argued that, the coverage of all public officials is too ambitious, and it is not practicable to subject all public servants to asset declaration provisions. The universal coverage of public officials poses the risk of non-compliance, absence of up-to-date information and inability of follow-up given the massive documentation and information. Besides the wide coverage, the current reporting is manual thus introducing challenges in terms of transportation (who meets the costs of transporting the forms), storage (too bulky/inefficient/costly/lack of safe custody) and retrieval (inefficient/difficult to analyse/use).

Content and comprehensiveness of the declarations

The Act requires declarations on income, assets and liabilities but is not considered comprehensive enough because it does not require declaration of officer's 'outside activities' - also referred to as 'interests in public life' - and fails to clearly define the assets, income, and liabilities. The declarations do not require details on the source of income and assets.

Filing frequency requirement

Declarations are required within 30 days of becoming a public officer as per section 27 (3) or after ceasing to be a public officer - section 27(5) office. In addition, a public officer is required, once every two years, to submit a declaration with the responsible institution (in December of the second - section 27(1)).

Sanctions for non-compliance

Section 32 of the Act only defines two offences, namely, non-submission, and, false/misleading information and provides for a fine of up to Ksh1m or imprisonment not exceeding 1 year, or both. There are no sanctions for late filing or incomplete submissions. There are no minimum or severe penalties that are commensurate to the respective offences. In addition, there are no sanctions for non-compliance by the responsible commissions. The foregoing need be incorporated in the law for effective application of this law.

Monitoring compliance

The responsible commissions are assigned the depository role (filing compliance and retention of the declarations) but not other compliance responsibilities, i.e., content verification and investigations. In the view of KACC there is a need for the Act to specify the responsible agency and the procedures for monitoring compliance. There should be a system of registering all the declaration in a central depository with mandate to enforce compliance as well as auditing or verifying the declarations. The central repository should

be linked to important registries such as the Companies Registry, Capital Markets Authority, the Lands Registry, Financial Reporting Centre (once created), Kenya Revenue Authority (KRA), Central Bank (CBK), National Security Intelligence Service etc.

Content verification

The verification of the content of declarations is a technical and complex exercise which is considered to be an extremely important aspect of declaration systems. As noted above, the Act does not assign responsibility for this function as responsible commissions are only mandated to receive and retain the declarations. This essentially renders the declarations process an "empty ritual". The Act should therefore define and assign an independent body with requisite competencies and capacity for content verification.

Public access to declaration

Article 35(1) (a) of the Constitution of Kenya, 2010 recognizes that every citizen has the right of access to information held by the state. The POEA, 2003 does not anticipate the dissemination of wealth declarations information to the public. The kind of data on declarations to be accessed by the public should be well specified in the law.

On the other hand, POEA greatly restricts access to declarations (section 30) by requiring a formal application and the applicant having to show legitimate interest and good cause in furtherance of the objectives of the Act. Further inhibitions are placed by making publication of any of information in declarations without prior consent of the responsible institution, a criminal offence punishable by imprisonment of five years or a fine not exceeding five hundred thousand shillings or both.

Capacity for implementing the wealth declaration system

The administration of the wealth declarations system by all responsible commissions is currently a manual exercise that is prone to various challenges. The responsible commissions often lack designated personnel with the requisite skills to implement the system. It is therefore recommended that resources be allocated to strengthen the individual skills and institutional capacities to not only harmonize the management of the wealth declarations system but also enhance its efficiencies and effectiveness.

III. PROJECT OBJECTIVES AND OUTPUTS

- Overall goal :** Promote accountability and transparency in the public sector
- Objective :** To enhance the capacity of KACC/EACC to reduce corruption risks in the public sector through an efficient and effective wealth declaration and audits system
- Outputs :**
1. Legal and policy framework for effective and efficient wealth declarations reviewed
 - 2: An effective wealth declaration management system established by KACC
 - 3: Capacity of KACC for asset tracing and recovery enhanced

4: Effective public reporting and participation in wealth declaration established

Scope of the project

The project objective and related outputs will constitute a pilot project implemented under the current legal framework, mandate and capacity of KACC. The project will be catalytic and have a possible wider application (another project) depending on amended legislation.

The four project outputs are sequenced in a way that allows for the progressive achievement of the objective of the project.

Output 1. Legal and policy framework for effective and efficient wealth declarations reviewed

The activities related to the first output seek to establish an overview of the current legislative framework related to wealth declaration and audits. The gaps and challenges will be considered and discussed with key stakeholders and amended legislation will be proposed.

Output 2. An effective wealth declaration management system established by KACC

The second output is the establishment of a new and automated wealth declaration system within KACC. This output will address some of the challenges identified with the current system as described above in the situation analysis. Activities include a consultancy to map existing systems of other countries for the possible application by KACC. KACC officers will be trained in the usage of the chosen and established system which will be monitored closely for effective usage. Best practices will be shared with other institutions and commissions for possible application.

Output 3. Capacity of KACC for asset tracing and recovery enhanced

To reach the third output the main activity will be training of officers for specialised skills with respect to investigatory capacity for asset tracing and recovery. This constitutes a critical activity for obtainment of the objective of the project as it directly relates to justice and accountability. KACC does not have an adequate forensic laboratory which would greatly enhance its investigation capacity for better asset tracing and recovery and also for combating impunity related to corruption. To establish a forensic laboratory is very costly and outside the scope of this project. However, based on the training that the specialised KACC officers will receive and the expert knowledge of the training providers, a proposal for establishment of such a lab will be developed. Following this, a stakeholder meeting will be convened where the ideas and the proposal will be presented to possible collaboration partners and donors.

Output 4. Effective public reporting and participation in wealth declaration established

The fourth and last component of this project is involvement of non-state actors and sensitisation of the public with respect to wealth declaration. This will be done through close partnership with Civil Society Organisations.

IV. JUSTIFICATION

As mentioned, the UNCAC gap analysis informs the transformation process that the KACC stands before. This naturally makes UNODC a key partner collaborating on a technical level with KACC as well as UNDP in the project, as UNODC is the custodian of the UNCAC. Anti-corruption is identified as one of the major service areas of the democratic governance practice, and as such UNDP is a leading provider of technical assistance within this field. With the ratification of UNCAC globally, this has become even more important. In UNDP's Kenya Country Office, anti-corruption is identified as a priority area under the Democratic Governance Programmes and UNDP and KACC has a well-founded relationship with a history of implementing programmes together in the fight against corruption in Kenya. The UNDP approach on anti-corruption focuses on both the demand side (inclusive participation such as strengthening civil society and media) and the supply side of governance (long term systemic changes of public institutions), as well as mainstreaming anti-corruption into UNDP's existing work.

The link between efficient and well-functioning institutions and economic development of a country is core toward attainment of good governance. Corruption is also recognized as a key influencing factor in the failure of Kenya to achieve development targets – slow progress towards achieving MDG targets and low world rankings on the HDI. Despite recent efforts in improving governance, comprehensive and regularly updated data on institutional mechanisms for enhancing transparency and accountability of public administration and public officials is still lacking. The emphasis on transparency and accountability in policy making and delivery of services to the public cannot therefore be gainsaid. It is against this backdrop that the requirement for public officials to declare their wealth is widely considered an effective measure to prevent corruption and enhance public trust in the governing system.

The project is catalytic as anti-corruption measure, and the work of KACC is a beneficiary of the momentum of the promulgation of the new Constitution in Kenya. It receives great attention from both the side of the Government and from other donors with whom UNDP cooperates. KACC requires technical capacity support in forensic audit, asset tracing, asset recovery and a dedicated case-management system for wealth declarations and audits in order to meet its current mandate and even more so if the mandate is broadened up.

V. ASSUMPTIONS AND RISK MITIGATION

In accordance with section 33 of the sixth Schedule (Article 262), Transitional and Consequential Provisions, of the Constitution, KACC as established under ACECA, is the corresponding institution to EACC. On this basis, it is envisaged that KACC will transit to EACC to be established under Article 79 of the Constitution with the expanded mandate of being responsible for Chapter six of the constitution and hence for managing all declarations. The pilot project clearly increase the capacity of KACC to fulfil their current mandate, both in relation to establishing an effective case management system within KACC and also in respect to the Commission's investigative mandate related to forensic audit, asset tracing and asset recovery – all with the overall goal of combating corruption in Kenya. The EACC will not only be the direct heir of the pilot project under KACC, but also the increased capacity of KACC to fulfil their expanded mandate.

Effective handling of wealth declarations for all public officers requires establishment of a sole depository for wealth declarations and also putting in place of strong enforcement measures. This will depend on the implementation of the new constitution and the possible amendments to legislation as foreseen under the first output of this project. To make KACC the sole depository constitutes a more structured response to the POEA as mentioned above, KACC already has the mandate related to handling wealth declarations from its own staff and this project will constitute a pilot project for the mandate KACC already has at this point.

The automated system that will be put in place in KACC under this project will be structured in a way that ensures that it can be transferred to other Commissions including EACC, and other levels of governance. In other words, the pilot project can either be expanded internally in KACC/EACC and/or transferred to other institutions.

VI. IMPLEMENTATION STRATEGY

This project is realised through a grant from the UNDP Democratic Governance Thematic Trust Fund (DGTTF). Besides the grant of USD 350,000 from DGTTF the UNDP Kenya country Office has contributed USD 50,000 from its core (TRAC) resources, and Government of Kenya has contributed 10% of the total budget amounting USD 54,250. It is envisaged that additional resources will be raised for the successful implementation of the project throughout the implementation period.

Kenya Anti-Corruption Commission will be the implementing partner of the project and as such overall responsible for the timely implementation of project activities.

Collaboration with non-state actors is a crucial component to broadening the fight against corruption. It is recommended that the development of the wealth declaration system, as an anti-corruption tool, builds on the resourcefulness and focused networks of the non-state actors to enhance awareness creation and publicity of the targeted interventions. The non-state actors will include media, civil society organizations, non-governmental organizations, religious organizations, academic and research institutions, and the private sector.

VII. WORK PLAN

EXPECTED OUTPUTS (Activity results)	PLANNED ACTIVITIES	TIMEFRAME								RESPONSIBLE PARTY	PLANNED BUDGET			
		2011				2012-13					Funding Source	Budget Description	Amount in USD	
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4					
Output 1: Legal and policy framework for effective and efficient wealth declarations reviewed <i>Baseline:</i> <ul style="list-style-type: none"> Inadequate legal and policy framework <i>Indicators:</i> <ul style="list-style-type: none"> Recommendations for legal and policy framework reforms <i>Target:</i> <ul style="list-style-type: none"> Recommendations for addressing identified weaknesses and gaps in policy and legal framework proposed 	1. Consolidate existing knowledge through a desk review									KACC	UNDP (DGTF)	Facilitation of meetings In-kind contribution from KACC	1,000	
	2. Hold stakeholders consultations to analyse and make recommendations for an appropriate legal and policy framework amendments										KACC	UNDP (DGTF)	1-day consultative meeting for 100 pax @ USD 37.50 5-day residential technical retreat for 30 pax for 6 nights @ USD 212,50 1-day validation workshop for 100 pax @USD 37.50	3,750 38,250 3,750
	3. Advocate for legislative and policy changes to address the identified gaps										KACC	UNDP (DGTF)	1-day consultative/advocacy meeting with civil society for 100 pax @ USD 37.50 2-day advocacy meeting with 30 MPs and 70 stakeholders from 15 different institutions @ USD 750	3,750 75,000
Sub-total for output 1														125,500

EXPECTED OUTPUTS (Activity results)	PLANNED ACTIVITIES	TIMEFRAME								RESPONSIBLE PARTY	PLANNED BUDGET				
		2011				2012-13					Funding Source	Budget Description	Amount in USD		
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4						
Output 2: An effective wealth declaration management system established by KACC <i>Baseline:</i> <ul style="list-style-type: none"> Ineffectual wealth declaration system to reduce the risk of corruption among public officers <i>Indicator:</i> <ul style="list-style-type: none"> System for managing wealth declarations in use <i>Target:</i> <ul style="list-style-type: none"> Functional automated wealth declaration system in place and effectively utilised by trained officers 	1. Undertake a mapping exercise to establish current practices of the different public sector institutions in Kenya and best practices of interlinked systems from other developing countries											UNDP (DGTF)	Contract a consultant for 30 days @ USD 500	15,000	
	2. Commission an automated wealth declaration management system												UNDP (DGTF)	Purchase, installation, roll-out, testing and maintenance of system	150,000
	3. Training of KACC staff in usage of the system												UNDP (DGTF)	Contract a training provider	25,000
	4. Operationalize usage of the automated system (incl. M&E)												KACC	In-kind contribution by KACC	0
	5. External mid-term review												UNDP (DGTF)	Contract a consultant 5 days @ USD 500 per day	2,500
	6. Share best practices of usage of the system with other public sector institutions												UNDP (DGTF)	1-day meeting for 100 pax @ USD 37.50	3,750
	7. External end-of project Review												UNDP (DGTF)	Contract a consultant 9 days @ USD 500 per day	4,500
Sub-total for output 2													200,750		

Move to Btr 4

EXPECTED OUTPUTS (Activity results)	PLANNED ACTIVITIES	TIMEFRAME								PLANNED BUDGET				
		2011				2012-13				RESPONSIBLE PARTY	Funding Source	Budget Description	Amount in USD	
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4					
Output 3: Capacity of KACC for asset tracing and recovery enhanced <i>Baseline:</i> <ul style="list-style-type: none"> Inadequate capacity for asset tracing and recovery <i>Indicator</i> <ul style="list-style-type: none"> Skill level of officers to trace and recover assets <i>Target</i> <ul style="list-style-type: none"> Enhanced skill level of an increased number of officers 	1. Training of officers for specialised skills with respect to investigatory capacity for asset tracing and recovery incl. operation of a forensic laboratory 2. Development of a proposal for establishment and staffing of a forensic laboratory within KACC 3. Convene stakeholders meetings to present and discuss the proposal for establishing and staffing a forensic laboratory									KACC	UNDP Other funding needed	Contract London-based team of experts to carry out in-house training for about 25 pax for 2 weeks in two phases @ USD 62,500	125,000	
										KACC		In-kind contribution by KACC		0
											KACC	UNDP (DGTTF)	1-day meeting for 100 pax @ USD 37.50	3,750
Sub-total for output 3													128,750	

EXPECTED OUTPUTS (Activity results)	PLANNED ACTIVITIES	TIMEFRAME												PLANNED BUDGET					
		2011				2012-13				RESPONSIBLE PARTY	Funding Source	Budget Description	Amount in USD						
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4										
Output 4: Effective public reporting and participation in wealth declaration established <i>Baseline</i> • Low level of participation by the public <i>Indicator</i> • Number of reports and whistleblowers <i>Target</i> • Percentage increase in number of reports and whistleblowers	1. Development and production of radio spots and infomercials													KACC	UNDP (DGTF)	Procure radio spot and infomercial production services	20,000		
	2. Airing of radio spots and infomercials													UNDP	UNDP/KACC	Procure airing time for radio spots and infomercials in regional radio stations	15,000		
	3. Hold sensitization meetings in provinces in collaboration with non-stake actors													KACC	KACC	2 counties covered per province @ 3,750 USD (7 provinces as NBO has no cost) Payment for KACC staff DSA, fuel, hiring of ground	52,500		
Sub-total for output 4																		87,500	
GRAND TOTAL																			542,500

To work with LS on desk review -
 Wealth declaration guidelines printing Budget guideline
 EACC to verify & monitor (oversight role)

Annualized budget:	
Annual Budget 2011	360,813
Annual Budget 2012	165,000
Annual Budget 2013	16,688

VIII. MANAGEMENT ARRANGEMENTS

Project management

This project will be directly implemented by the Kenya Anti-Corruption Commission with the Director providing the overall leadership. The Director will be responsible for the overall management and execution of the project, assisted by the designated Project Manager from KACC. The Project Manager is to oversee the day to day operations and coordination of the various project components. More specifically, the Project Manager will carry out the following activities:

- Monitor progress against the approved work-plan;
- Monitor events as determined in the project monitoring schedule plan, and update the plan as required;
- Monitor financial resources and accounting to ensure accuracy and reliability of financial reports;
- Be responsible submitting financial reports to UNDP on a quarterly basis;
- Manage and monitor the project risks initially identified and submit new risks to the project board for consideration and decision on possible actions if required; update the status of these risks by maintaining the project risks log;
- Capture lessons learnt during project implementation – a lessons learnt log can be used in this regard
- Perform regular progress reporting to the project board as agreed to with the board;
- Compile the annual progress report, and submit the report to the project board.

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

The project will be managed under the guidance of a Project Board (PB) which will be chaired by the Director of KACC. The PB will have the following representation:

- The Director, KACC – Chairperson
- Assistant Director, Investigation & Asset Tracing/KACC – Member
- Assistant Director, Finance & Administration/KACC – Member
- Representative from MoJNCCA
- Representative from MoF
- Representative from EMU, OPM
- Representative from Transparency International
- UNDP Deputy Country Director (Programmes)
- UNODC Representative

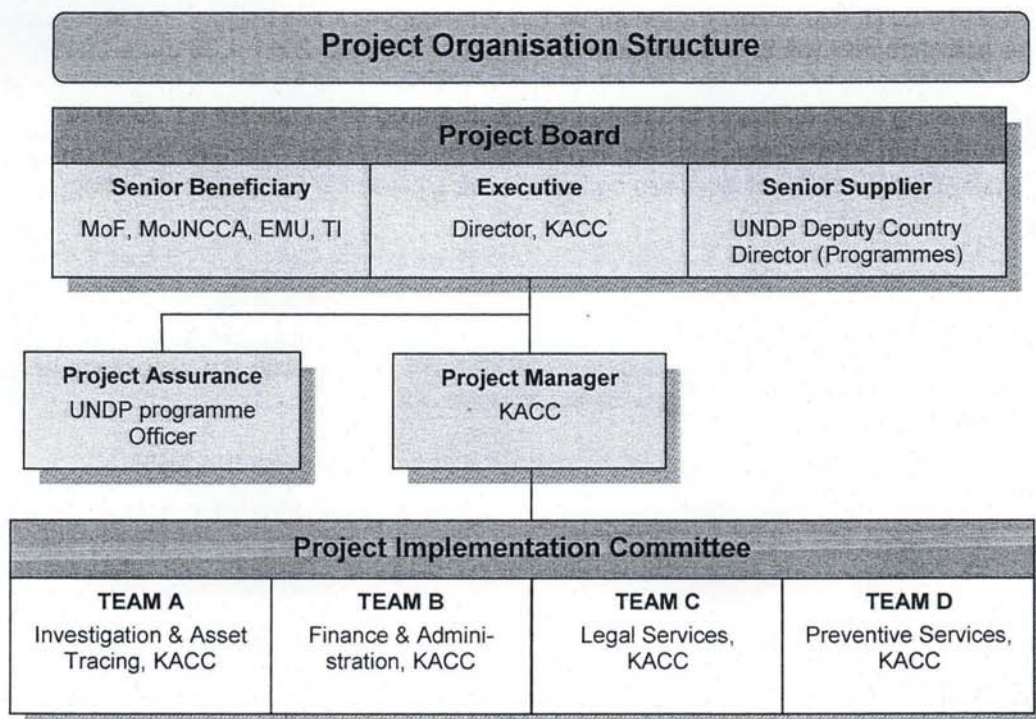
The PB will meet, at least, once every three months, with the first meeting being held within one month of signing the project document. The Project Manager from KACC will act as Secretary to the Board and will attend all meetings. The Board may call on others to become members of the PB as required. More specifically the PB will fulfil the following role:

- Appraise the project annual review report, make recommendations for the next annual work plan;
- Provide overall guidance and direction to the project, ensuring it remains within any specified constraints;
- Address project issues as raised by the project manager;
- Provide guidance on new project risks and agree on possible countermeasures and management actions to address specific risks;
- Review the project progress and provide direction and recommendations to ensure that the agreed deliverables are produced satisfactorily according to plans;
- Assess and decide to proceed on project changes through appropriate revisions;

A Project Implementation Committee (PIC) will be established to support the Project Manager. The membership of the PIC will comprise two representatives of each of the four directorates within KACC. The PIC will be chaired by the Project Manager and will have monthly meetings. The role of the PIC includes, but is not limited to, the following activities:

- Plan the activities of the project and develop quarterly and annual work plans.
- Mobilize personnel, goods, services and training to initiate activities, including drafting terms of reference and work specifications and overseeing all contractors' work;
- Prepare financial reports on a quarterly basis as per UNDP requirements
- Prepare regular progress reports on implementation of the quarterly and annual work plans
- Coordinate implementation of the workplans by the user departments

The organogram on the following page visually shows the management and organisation structure of the project.



Financial Management

UNDP will disburse funds for carrying out the project activities to the KACC. KACC will therefore open a specific Project Account to manage the project funds. Disbursements will be based on approved expenditure of the Annual Work Plan (AWP) and as further specified in the Quarterly Work Plan. The project will be implemented on a National Execution (NEX) modality with KACC as the implementing partner.

KACC shall be responsible for ensuring that the allocated resources for the AWP are utilised effectively in funding the envisaged activities. Unless otherwise mutually agreed by all parties to this agreement, the government of Kenya financial rules and regulations, and monitoring, evaluation and reporting procedures shall apply in the execution of this Project. KACC 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 budget.

KACC shall at least 15 days before 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 will verify the disbursements and revert to KACC confirming concurrence or suggesting amendments, if any. KACC must enter details of the expenditure report into appropriate books and produce financial reports for purposes of audit. If expenditures in the quarter are less than 80% of the agreed budget, no advance payment will be made for the following quarter until activities are undertaken and the funds are committed. Once the expenditures are approved by UNDP and the activities have been undertaken, a copy of expenditure returns will be forwarded to Treasury for their files.

The Government of Kenya's financial year runs from 1 July – 30 June, and the budget for the FY 2010/2011 had already finalised before formulation of this project. For this reason, for the activities that will take place during the period 1 March 2011 – 30 June 2011 (during the first two quarters of the project period), UNDP will make direct payments. What ends up having been spent in this period will be captured in budget for FY 2011/12.

In managing the AWP 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 UNDP Administrator with the assurance of that UNDP resources are being managed in accordance with:

- The financial regulations, rules, practices and procedures for the AWP
- The AWP activities, management and implementation arrangements, monitoring evaluation and reporting provisions
- The requirements for implementation in the areas of management, administration and finance

The audit will therefore ensure that the project management fulfils the following set of objectives:

- Disbursements are made in accordance with the AWP
- Disbursements are valid and supported by adequate documentation
- An appropriate system for internal control is maintained by KACC as the Implementing Partner and can be relied upon

- AWP financial reports are fair and accurately presented
- The AWP monitoring and evaluation reports are prepared as specified in the project document

The UNDP takes the responsibility to audit the project by subcontracting private auditors to carry out the audit exercise. Funds for audit requirements will be budgeted within the AWP. In the event of such an audit, KACC 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 KACC to ensure that all audit observations are attended adequately. KACC may include the activities of this project in the normal audit for their use.

Procurement of Goods and Services

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

IX. MONITORING FRAMEWORK AND EVALUATION

In accordance with the programming policies and procedures outlined in the UNDP User Guide, the project will be monitored through the following:

Within the annual cycle

- On a quarterly basis, an assessment on progress towards the completion of key results, based on quality criteria and methods captured in the Quality Management table below shall be made.
- An Issue Log shall be activated in Atlas and updated by the UNDP Programme Officer to facilitate tracking and resolution of potential problems or requests for change.
- Based on the initial risk analysis submitted (see annex 1), a risk log shall be activated in Atlas by the UNDP Programme Officer and regularly updated by reviewing the external environment that may affect the project implementation.
- A Quarterly Progress Report shall be submitted by the Project Manager to the Project Board through Project Assurance, using an agreed standard report format.
- Lessons learned will be documented in an appropriate format to ensure on-going learning and adaptation within the organization, and to facilitate the preparation of the Lessons-learned Report at the end of the project

Annually

- An Annual Progress Report shall be prepared by the Project Manager using an agreed standard format and shared with the Project Board. The progress report will also assess the performance of the project and appraise the Annual Work Plan for the following year.

External Reviews

- An external mid-term review will be commissioned and undertaken during second quarter of 2012. It will be a confined exercise that will focus on progress towards outputs, implementation of activities and will also constitute a review of the internal M&E mechanisms established.

- At the end of the project period a final external review will be commissioned. The review will focus on the extent to which outputs have been met, how progress of the project has been and will specifically be used to assess the possible applicability of this pilot project to a wider context.
- For practical reasons these external reviews have been costed under output 2 of the project.

Quality Management for Project Activity Results

Output 1/ Activity Result 1 (Atlas Activity ID)	Legal and policy framework for effective and efficient wealth declarations reviewed	Start Date: End Date:
Purpose	The purpose of the first group of activities is to lay the foundation for the entire project. In order to establish an effective wealth declaration system through the entirety of the project the current situation must be known and analysed and key stakeholders must be involved in the process. Target of this outcome is: Recommendations for addressing identified weaknesses and gaps in policy and legal framework proposed.	
Description	The activities related to the first output include an internal exercise in KACC of establishing an overview of the current legislative framework related to wealth declaration and audits. The gaps and challenges will be considered and discussed with key stakeholders and amended legislation will be proposed and advocated for.	
Quality Criteria	Quality Method	Date of Assessment
Number and quality of recommendations made from consultative meetings	Quick analysis of reports from meetings and retreats	Monthly at the beginning of each new month and feeding into relevant quarterly reports
Diversity of stakeholders in meetings and workshops engaged in discussions	List of participants from meetings and retreats	

Output 2/ Activity Result 2 (Atlas Activity ID)	An effective wealth declaration management system established by KACC	Start Date: End Date:
Purpose	The purpose of the second group of activities is to establish a new and automated wealth declaration system within KACC. This output will address some of the challenges identified with the current system and will run as a pilot. The target of this output is: Functional automated wealth declaration system in place and effectively utilised by trained officers	
Description	Activities include a consultancy to map existing systems of other countries for the possible application by KACC. KACC officers will be trained in the usage of the chosen and established system which will be monitored closely for effective usage. Best practices will be shared with other institutions and commissions for possible application.	
Quality Criteria	Quality Method	Date of Assessment

Number of public institutions in Kenya covered by the consultancy report on best practices	ToR for consultancy Final report from consultancy	Monthly at the beginning of each new month and feeding into relevant quarterly reports
Number of foreign countries covered by the consultancy report on best practices	ToR for consultancy Final report from consultancy	
Number of recommendations made for amending the wealth declaration system internally to KACC	Final report from consultancy	
Timely procurement of an automated wealth declaration system	Tender process and report	
Number of staff trained in the usage of the system	Reports from the training provider	
Number of forms that have been submitted online into the automated system	Analysis of forms in the system	
Percentage of the forms that have been submitted into the system that are being analysed	Analysis of forms in the system	
Timely external review reports	Final reports from the external consultants	
Number of participation in sensitisation meeting	List of participants from meetings and retreats	
Institutions sensitised on best practices of the wealth declaration system	Quick analysis of reports from meetings and retreats	

Output 3/ Activity Result 3 (Atlas Activity ID)	Capacity of KACC for asset tracing and recovery enhanced	Start Date: End Date:
Purpose	The purpose of enhancing the KACC's capacity in this area is to combat impunity related to corruption. KACC does not have an adequate forensic laboratory which would greatly enhance its investigation capacity for better asset tracing and recovery. The target of this output is: Enhanced skill level of an increased number of officers	
Description	To reach the third output the main activity will be training of officers for specialised skills with respect to investigatory capacity for asset tracing and recovery. The trained officers will develop a proposal for the establishment of such a laboratory in Kenya and KACC will invite for stakeholder meetings where the proposal will be presented.	
Quality Criteria	Quality Method	Date of Assessment
Number of KACC officers trained	Final report from the training provider	Monthly at the beginning of each new month and feeding into relevant quarterly reports
Areas of specialisation covered by the training	After each meeting and workshop have taken place	

Timely development of a quality proposal for a forensic laboratory	Final proposal prepared by KACC staff	
Number of participation in breakfast meeting	List of participants from meeting	
Institutions represented in breakfast meeting	List of participants from meeting	

Output 4/ Activity Result 4 (Atlas Activity ID)	Effective public reporting and participation in wealth declaration established	Start Date: End Date:
Purpose	<p>The fourth and last component of this project is involvement of non-state actors and sensitisation of the public with respect to wealth declaration. This will be done through close partnership with Non-State Actors.</p> <p>The purpose is to involve the public in the fight against corruption and raise public awareness levels and increase the number of whistleblowers in the Kenyan society. It brings increased legitimacy to the projects and it will also focus on informing Kenyans of their obligations as citizens to report cases of corruption.</p> <p>The target of this output is: Percentage increase in number of reports and whistleblowers</p>	
Description	Activities include the production of radio spots and infomercials that will be aired continuously throughout the country, and organization of sensitization meetings in provinces in close collaboration with non-stake actors	
Quality Criteria	Quality Method	Date of Assessment
Number of newspaper articles and ads on the subject of wealth declarations	Media reports and publications	Monthly at the beginning of each new month and feeding into relevant quarterly reports
Number of radio spots informing of wealth declaration	Media recordings and reports	
Number of corruption reports submitted to KACC	KACC's internal systems	
Number of sensitization workshops conducted	Workshop reports	

X. LEGAL CONTEXT

This document together with the CPAP signed by the Government and UNDP which is incorporated by reference constitute together a Project Document as referred to in the SBAA 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 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.

Annex 1: Risk Analysis

Project Title: Support to KACC to reduce corruption risk in Kenya through wealth declarations of Public Officers	Award ID: 00061389
Date: 1 March 2011	

#	Description	Date Identified	Type	Impact (I) & Probability (P)	Countermeasures / Mngt response	Owner	Submitted, updated by	Last Up-date	Status
1	Delays and/or withdrawal of donor funding	Feb 2011	Financial	Delays in project implementation I = 5 P = 1	Seek for Government funding	KACC			
2	Resistance to amend enabling legislation	Feb 2011	Political Regulatory	Hinder the up-scaling of the project I = 4 P = 2	Lobby with relevant stakeholders for amendments	KACC			
3	Delays in procurement process of automated system	Feb 2011	Operational	Delays in automation of the wealth declaration management system I = 2 P = 2	Borrow best practices in procurement process from other countries Ensure that the ToR are as clear as possible	KACC			
4	Lack of commitment to support the project from other stakeholders due to political reasons	Feb 2011	Political	Delays in project implementation I = 1 P = 1	Seek for Government funding Lobby with relevant stakeholders	KACC			

Annex 2: Extracts from UNCAC Gap Analysis

ARTICLE 8 – CODES OF CONDUCT FOR PUBLIC OFFICIALS				
UNCAC CONTENTS	KENYAN LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES	GAP ANALYSIS UNCAC – KENYAN FRAMEWORK		RECOMMENDATIONS
		LEGISLATIVE AND REGULATORY GAPS	ENFORCEMENT AND IMPLEMENTATION GAPS	
5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials	<p>Section 26 of POEA places a mandatory obligation on public officers to declare their wealth and that of their spouses and children in a prescribed form once every two years.</p> <p>The same Act addresses issues of conflict of interest among public officials.</p> <p>Through the Statute Law (Miscellaneous) Amendments Act 2007, POEA has been amended to facilitate public access to wealth declarations of public officers from the relevant Responsible Commission.</p>	The law does not provide for verification of the information given and periodic assessment of such information.	<p>Responsible Commissions lack the capacity to effectively scrutinize the wealth declaration forms to authenticate information given by public officers.</p> <p>There are no mechanisms in place to ensure that the declaration made by any officer gives the true position of his wealth and liabilities.</p>	<p>There is need to formulate regulations for verification of information contained in the wealth declaration forms</p> <p>There is need to enhance the capacity of the Responsible Commissions to effectively scrutinise wealth declaration forms.</p>
6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this Article.	<p>Section 32 of POEA makes it an offence to fail to submit the declaration or to give false or misleading declaration.</p> <p>There are also other administrative and disciplinary measures for violation of POEA and other Codes of Conduct and Ethics formulated by the various Responsible Commissions</p>	There are no strict penalties prescribed for breach of provisions in POEA apart from the issue of wealth declarations	Enforcement of the codes of conduct is weak.	<p>Amendment of POEA to provide appropriate, deterrent penalties for non-compliance</p> <p>Responsible Commissions should regularly sensitise their employees on their respective Codes of Conduct and Ethics.</p> <p>The enforcement of the codes should be enhanced by building the capacity of Responsible Commissions to enforce the Act.</p>

ARTICLE 20– ILLICIT ENRICHMENT				
UNCAC CONTENTS	KENYAN LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES	GAP ANALYSIS UNCAC – KENYAN FRAMEWORK		RECOMMENDATIONS
		LEGISLATIVE AND REGULATORY GAPS	ENFORCEMENT AND IMPLEMENTATION GAPS	
Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income	<p>There is no law that specifically criminalises illicit enrichment. The Public Officer Ethics Act, 2003 provides for the declaration of wealth by all public officials once every two years as a means to keep track of the wealth of public officials in the course of employment, but does not prescribe an offence of illicit enrichment. Under Section 55 of ACECA, KACC is mandated to institute civil proceedings against public officials for forfeiture of unexplained assets (illicit enrichment).</p>	There is no compliance with the obligations imposed under this Article in terms of criminalising illicit enrichment		<p>It is necessary to formulate a law that expressly and specifically criminalises illicit enrichment. The challenge is that the criminalisation of illicit enrichment can entail constitutional problems in relation to the constitutional principle of presumption of innocence of a suspect and the right not to self-incriminate. The requirement to explain the origin of the unexplained wealth can be seen both as shifting the burden of proof to the defendant and compelling the defendant to self-incriminate. As such, it is proposed that alternative measures be explored, such as enhancing tax regimes in order to cover property declarations as well as income declarations, or make more effective use of the wealth declarations to track unexplained wealth.</p>

