

Final Narrative Report: KEN/05/228 Support to the Referendum

Project title: Support to a free and fair Referendum on the proposed new Constitution

Atlas Project ID: 00047017

Period covered: September – December 2005

Implementing partner: UNDP

Collaborating partners: ECK, Ministry of Justice and Constitutional Affairs, CKRC, CSOs

Funding partners: Sida, Netherlands, Norway, DFID and UNDP

PROJECT PERFORMANCE—CONTRIBUTION TO THE CP OUTCOMES

Outcome Target: Contribute to the free and fair referendum on the proposed new constitution.

The project successfully contributed to the conducting of a free and fair referendum on the proposed new constitution. Although the initial campaign period had incidences of violence, these incidences reduced in number and intensity towards the final date of the referendum, 21 November 2005. The turn out was high – about half of the registered voters. This was a significant voter turn out given that the December 2002 general election had a voter turn out of 56 percent. There was no violence and the referendum was conducted in a politically charged but quite peaceful atmosphere. The Government which was supporting the proposed new constitution accepted the result which was a rejection of the proposed new constitution. The fact that there were no major incidences of violence and that the referendum voting was generally free and fair and the result accepted by both sides reflects greatly on the outcome of the project. Activities in the project did contribute to this outcome.

Outputs:

- I. Transparency at polling station (prevention of rigging and other irregularities)
- II. Violence related to the referendum prevented
- III. Impartial civic education provided to Kenyans
- IV. Kenyans provided with access to the proposed new constitution

I. Transparency at Polling Stations:

According to ECK the presence of Yes- and No-polling agents at polling stations boosted the transparency and credibility of the referendum. The posting of polling agents have thereby contributed to the peaceful and successful conduct of the referendum.

1. To ensure transparency and prevent rigging and other irregularities at the polling stations polling agents representing the Yes- and No-side were posted at every polling station. The project supported the posting of polling agents in the following districts: Mombasa, Kwale, Malindi, Taita, Meru Central, Meru South, Tharaka, Embu, Mbeere, Kitui, Nakuru, Narok, Vihiga, Mt. Elgon, Busia, Teso, Siaya, Bondo, Kisumu, Nyando, Rachuonyo, Homabay, Migori, Suba, Kuria, Kisii Central, Gucha, Nyamira, Ijara, Samburu, Trans Nzoia, Keiyo, Nandi North, Koibatek, Bomet, Kakamega and Lugari.
2. ECK prepared guidelines that facilitated the two sides of the referendum to constitute national and constituency referendum committees. The Constituency Referendum Committees recruited the polling agents representing the Yes- and No-side.
3. The polling agents in general ensured the accountability, transparency and credibility of the referendum exercise. However, some agents did not perform as well because they were poorly trained and uneducated.

Problems:

4. Although overall successful, some challenges were experienced:
 - I. lack of legal framework;
 - II. polling agents arrived late to the polling stations due to for instance lack of transport;
 - III. lack of representatives from either side due to failure of local committees to appoint their respective agents;
 - IV. polling agents lacked identification letters from the chief agent of the referendum committee;
 - V. local residents in some constituencies intimidated the polling agents because they represented a certain side in the referendum;
 - VI. lack of clear Terms of References for the agents;
 - VII. late appointment of agents;
 - VIII. attempts by polling agents to influence voters;
 - IX. poorly trained and/or uneducated agents.
5. The payment of agents created some problems for ECK: some of the agents employed by the referendum sides were undisciplined, disorganized and rowdy which caused a lot of stress for ECK officials. Further, ECK felt that the remuneration of agents by ECK could compromise the role of the agents, as they are to check the performance of ECK.

Recommendations:

6. ECK recommends the following:

- i. that registration of referendum committees and polling agents be done in a timely manner,
 - ii. better selection process for and training of agents be undertaken,
 - iii. ECK should design a curriculum for the training,
 - iv. arrangement in the polling stations should ensure that the agents have no contact with voters,
 - v. ECK should sensitize political parties about agents in polling stations,
 - vi. ECK should build a relationship with referendum committees/political parties as a good working relationship with the stakeholders will enhance credibility and transparency of elections and referenda.
7. ECK recommends that polling agents sign a code of conduct as the behaviour of some polling agents were wanting.
8. Although the presence of side agents at the polling stations was very important for the transparency and credibility of the referendum, ECK recommends that the institution should not in future be doing the payment of side agents/party agents as it can create a dependency syndrome and thereby compromise the independence of the agents. ECK recommends that in future elections payments of agents should be undertaken by the appointing authorities.

II. Prevention of Violence

Initially a component on preventing violence with ECK through training of Peace Committees had been planned. However, ECK felt that support for posting of polling agents was more important and therefore violence prevention was not funded under the programme. All contributing partners agreed to meet the request of ECK for support to posting of polling agents. However, 5,000 copies of the Guidelines for Referendum Committees and Agents and 5,000 copies of Guidelines for Referendum Code of Conduct & Peace Committees were printed for distribution among the committees.

III. Civic Education on the Proposed New Constitution

The civic education on the proposed new constitution was conducted with the purpose of making Kenyans able to make an informed decision at the referendum. 29 CSOs selected through a competitive call for expressions of interest carried out the civic education. The CSOs undertook 11,538 civic education activities and reached 1,064,034 people¹ thereby providing information that enabled the voters to make a more informed choice.

1. The main output target of the civic education component under the project was to contribute to the conduct of a free and fair referendum on the proposed new constitution for Kenya through creating awareness of the content of the proposed new constitution compared to the existing constitution. Awareness

¹ The figure does not include the 302 theatre performances conducted by CRECO and the radio spots by TI.

of the content was seen as a prerequisite for making an informed decision. It was imperative that the civic education provided was balanced and impartial.

2. The initial success indicators for the civic education component Civic Education for the Referendum (CER) included:
 - i. Consultants to manage exercise contracted before 8 September
 - ii. Calls for Expression of interest issued before 10 September
 - iii. Expression of interest received before 17 September
 - iv. Selection process completed by 22 September
 - v. Selected CSOs develop proposals
 - vi. Proposals approved for funding
 - vii. 70 UNVs contracted
 - viii. CSOs provide civic education
 - ix. 2 million Kenyans reached
 - x. Quality materials availed to Kenyans
3. South Consulting was contracted in September 2005 to manage the civic education with the following targets:
 - i. Development of call for expression of interest;
 - ii. Development of CSOs selection criteria;
 - iii. Conduct of proposal writing workshop;
 - iv. Hiring of national UNVs to monitor CER
 - v. Contracting of CSOs to conduct civic education
 - vi. Training of facilitators and project officers
 - vii. Providing civic education on the proposed and the constitutional review process
 - viii. Assessment of CKRC curricula and materials for the purpose of informing development of additional materials and pamphlets
 - ix. Printing of materials
 - x. Monitoring
 - xi. Receipt, analyzing and verification of CSO financial and narrative reports
4. A call for expressions of interest in conducting civic education was issued in Nation and Standard newspapers of 9 September 2005 and 14 September 2005. The call for expressions of interest was also issued in East African Standard of 10 September 2005. South Consulting received 241 applications before the deadline which was 16 September 2005.
5. The selection process among the incoming applications focused on the CSOs administrative conformity (completeness of application), technical capacity of CSO (track record in civic education), institutional capacity of CSO (internal governance structures and capacity of staff), and comparative advantage (demonstrated ability of CSO to mobilize and role out and target area)².

² For Assessment Sheet kindly see South Consulting's Programme Completion Report.

6. Only organizations that scored more than 70 percent and above were considered. A total of 43 organizations scored more than 70 percent. 12 of these organizations were disqualified because of lack of proper audited reports and lack of comparative advantage in proposed intervention areas. Of the remaining 31 organizations, 27 proposed to work with civic education at community level while four organizations proposed alternative strategies. All these organizations were assessed on their ability to deliver non-partisan and impartial civic education. South Consulting assessed that all 31 organizations were able to comply with this requirement. South Consulting's assessment was presented at a donor steering committee meeting on 21 September 2005. Following the donor steering committee meeting, 29 CSOs were approved to be contracted to undertake civic education: Transparency International (TI), CRECO, CLARION, Kituo Cha Sheria, Center for Governance and Development, Abantu, League of Kenya Women Voters, Federation of Women Lawyers (FIDA), Christian Development Partners Development Agency, Release Political Prisoners, National Council of Churches in Kenya, Centre for Minority Rights Development, ACK Nakuru, ACK Eldoret, Institute for Civic Education and Development in Africa, Catholic Diocese of Eldoret, Mainyoito, Kenya Section of the International Commission of Jurists (ICJ), Kenya Human Rights Commission, Kenya Youth Education & Community Development Program, Youth Agenda, Catholic Diocese of Homabay, Kwetu Training Centre, ACK Western, Catholic Diocese of Kisumu, Kenya Episcopal Conference (Catholic Justice and Peace Commission), Education Centre for Women in Democracy, Arid Lands Development Focus, and Centre for Human Rights and Civic Education³.
7. The 29 selected CSOs were invited to a proposal writing workshop which took place from 28 to 30 September 2005. The workshop focused on design and implementation arrangements, programme principles, geographical mapping and development of CSO budgets.
8. The approved proposals contained 12,316 civic education activities and were estimated to reach 1,004,005 Kenyans directly.
9. The participating CSOs nominated people who could act as trainers for the civic education facilitators. On 1 and 2 October 2005 the training of trainers took place. The trainers conducted training of facilitators in a number of workshops all around Kenya between 7 and 15 October 2005.
10. Contracts with the 29 CSOs and UNDP were signed during October 2005.
11. The CSOs carried out 11,538 civic education activities against 12,316 planned activities (94 percent of target). The activities reached 1,065,034 people

³ For detailed evaluation and comments on each of the applying CSOs kindly see South Consulting's Programme Completion Report.

against a target of 1,004,005 people (106 percent of target)⁴. These are the people who were directly reached through civic education. Since studies show that every person directly reached has the potential to reach more than two other people then one can estimate that the project potentially indirectly reached about three million adult Kenyans. This is a significant observation given that about five million Kenyans voted in the referendum.

12. The civic education was delivered through various activities. Facilitators used local CBOs, barazas, cultural institutions, churches and mosques as venues for civic education.
13. The total number of people reached against the set target varied considerably from province to province. In Central, Eastern and Nyanza, CSOs reached significantly more people than planned (success rate between 122 and 152 percent). In Nairobi, North Eastern and Western the number of people reached was significantly lower than planned (between 52 and 61 percent of target). In Nairobi and Western the low performance is related to the fact that significantly fewer activities took place than planned (54 and 64 percent of planned activities) while the under performance in North Eastern was related to over-estimation in numbers of people attending each activity (in North Eastern 103 percent of planned activities took place).
14. In terms of gender the CSOs reached 560,947 women and 502,002 men i.e. 53 percent of the people reached were women. The gender balance in the reach varied between the different provinces. In Central, Coast, Eastern and Nyanza more women than men were reached (between 54 and 59 percent of the people reached in these provinces were women). However, in Rift Valley and North Eastern women were significantly underrepresented (46 percent and 38 percent respectively).
15. Two CSOs (TI and CRECO) provided specialized services – theatre and radio. Through theatre CRECO translated the proposed and the current constitutions into works of theatre, which they played out in public fora in selected parts of the country. Radio was used to provide civic education, which included explaining the draft and the current constitution by teams of experts. The radio component also educated people on the importance of a conducting and contributing to free and fair process; and ensuring that the process was non-violence and a transparent. CRECO held 320 performances and reached about 90,000 people. TI aired 411 infomercials and 12 episodes of Pasha Nikupashe (weekly radio program at KBC).
16. It is worth noting that the project was rolled out rather late. Planning and mobilising resources was meant to take place within weeks. This was a major

⁴ Target referred to originates from the CSO proposal writing workshop. The figures do not include people reached through theatre (CRECO) and radio (TI).

challenge to all those involved – and it was a major achievement that it was successfully done.

Civic Education Materials

17. The programme was implemented in close collaboration with CKRC and was able to use several CKRC materials such as the popular version of the proposed new constitution (2,000 copies were distributed through CER), the CKRC Source Book (1,000 copies were acquired for CER). In addition South Consulting produced a simplified booklet comparing key provisions in the proposed new constitution with the current constitution. 500,000 copies of this booklet were distributed through CER. In addition 250 copies of the full version were made available for the facilitators.

Monitoring

18. South Consulting was tasked with monitoring CER. To assist South Consulting in this task UNDP recruited 49 UN Volunteers (UNVs). South Consulting trained the UNVs in monitoring at a workshop held on 10 and 11 October 2005. The training focused on programme design, delivery methodologies and programme principles (neutrality and impartiality). Each UNV was allocated a district where they were to carry out monitoring of civic education activities. The UNVs were provided with a monitoring report format that they had to complete when they monitored activities.
19. The UNV monitoring reports validated that the programme principles and code of conducts were adhered to with a few minor qualifications. The UNV reports further indicated that the facilitators in general were able to disseminate the content of the civic education without any bias, that they mastered the content relatively well, and were able to respond to questions on content from the public.
20. South Consulting and UNDP also undertook field monitoring visits. The monitoring visits of South Consulting and UNDP confirmed the points highlighted in the UNV monitoring reports.

Partnership strategies

21. Many CSOs had established linkages with grassroots organizations and/or other CSOs on the ground. These partnerships were solidified during the period. Significantly, some CSOs were able to foster very good relations with the CKRC and shared resources at local level. There was improved collaboration and networking at this level. They shared materials and at times jointly disseminated civic education to participants.

Problems encountered in conducting civic education

22. CER experienced various challenges during implementation. Planning and rolling out of activities had to take place within two months. This created a serious time-constraint. Some CSOs were able to commence on their activities prior to disbursements from UNDP while other CSOs did not have funds available. This compelled some CSOs to delay the commencement of activities.
23. Some politicians had politicized the referendum before the civic education commenced thereby making it difficult to provide civic education in some areas with an already biased public.
24. Long delays in financial and narrative reporting by some CSOs delayed the closure of the project. Several reports submitted to UNDP and checked by South Consulting had to be rejected and send back to South Consulting for them to follow up with the CSOs as documentation were missing or not sufficient.
25. CSOs complained that requirements for accounting developed by South Consulting were too detailed.
26. Catholic Diocese of Eldoret did not account for a balance of Kshs. 521,070. The organization has not responded to several reminders by CER. The unaccounted balance of Kshs. 521,070 constitutes 1 percent of the total CER expenditure on Kshs. 51,345,830. UNDP has written a letter demanding for payment of the unaccounted for balance.

Recommendations

27. Planning and implementation of a programme of the magnitude of CER needs more time than available in CER. It is therefore recommended that planning should start at a much earlier stage.
28. The use of UNVs as monitors of implementation provided constant feed back from the ground and was a very cost-effective way of being on the ground all over the country. It is therefore recommended that UNVs are used as monitors in similar programmes in the future.
29. More focus should be given to follow up with the implementing partners immediately after finalization of activities to avoid delays in accounting.

IV. Provide access for Kenyans to the Proposed New Constitution and the Current Constitution

The target of this component was to provide access for Kenyans to the proposed new constitution and the current constitution that they had to choose between at the day of the referendum.

1. Supplements with the proposed new constitution were brought in the two leading Kenyan newspapers (Standard and Nation) in September 2005. Nation normally has a daily circulation of 150,000 copies but the day the supplement was brought, the circulation was 350,000 copies. The edition was sold out. Nation estimates that each copy on average is shared among 10 people. Standard had a circulation of about 120,000 copies. The Ministry of Justice and Constitutional Affairs further put supplements in other Kenyan newspapers.
2. Supplements with the popular version of the proposed new constitution were brought in the two leading newspapers (Standard and Nation) in October 2005. Nation circulation was 350,000 reaching about 3.5 Million people. Standard had a circulation of about 120,000 copies. The Constitution of Kenya Review Commission (CKRC) prepared the popular version.
3. 300,000 copies of the popular version of the proposed new constitution were printed and distributed through the civic education undertaken by CKRC and under CER.
4. Copies of the current constitution were not printed or distributed as the Ministry of Justice and Constitutional Affairs did not request for this.
5. One-page messages were brought daily for 5 days in three leading Kenyan newspapers urging Kenyans to vote whether they supported or were opposed to the proposed new constitution. On a daily basis the campaign reached about 1.5 Million people (circulation times 10) through Nation and about 1.2 Million people (circulation times 10) through Standard.
6. Partners: Ministry of Justice and Constitutional Affairs and the Constitution of Kenya Review Commission

PROJECT PERFORMANCE—IMPLEMENTATION ISSUES

1. Planning and rolling out of activities under CER was meant to take place within two months. This was a nation wide programme and therefore rolling out CSOs within a short period was a major challenge.
2. Disbursement of funding to some CSOs was delayed by a few days/weeks. Some CSOs were able to raise their own funds awaiting project funds. Those not able to were compelled to delay activities.

3. Several CSOs took very long time to account for funds received to conduct civic education. This delayed the closure of the programme significantly.
4. Politicians had politicized the referendum before civic education could be provided. In some instances, it proved difficult to provide civic education to an already biased area/region.
5. ECK changed the preferences for the activities they required donor support for. ECK also submitted requests very late in the process.

RATING ON PROGRESS TOWARDS RESULTS

For outcomes:

Positive change: The referendum was conducted peacefully and the results were accepted by both sides.

Negative change

Unchanged

For outputs:

1. Civic Education. Rating: Achieved above target
2. Provide Access to the Proposed New Constitution. Rating: Achieved above target, more copies of the popular version was printed than planned, but less copies of the full version - however given that legal language might not provide relevant access to the document output is seen as achieved above target.
3. Print 5,000 copies of the current constitution. Rating: Not achieved. Based on request from the Ministry of Justice and Constitutional Affairs this output was omitted.
4. Voter Education. Rating: Partly achieved - the campaign for Kenyans to vote implemented. Based on request from ECK for reallocation their voter education campaign was not supported by the project.
5. Training of peace committee members. Rating: NA. Done directly by ECK
6. Posting of polling agents. Rating: achieved.

SOFT ASSISTANCE NOT PROVIDED THROUGH PROJECTS OR PROGRAMMES

The civic education must be seen as a part of a long term process of breaking patronage so Kenyans can make informed and independent decisions at referendums and elections free from negative tribal and political motives and with the best interest of the people of Kenya in mind.

LESSONS LEARNED

1. Early planning: Proper planning for and implementation of civic education in countries in transition and in situations where many donors are supporting a programme is critical to the success of civic education programmes. Time is of essence; the early the planning the better. Tied to planning is the need to have a lean and experienced team of technical experts running a Programme Management Unit. Only people with experience and track record in delivery can perform such tasks at short notice.
2. Principles and values: civic education in countries in transition and in a politically sensitive environment requires the principles of objectivity, neutrality and non-partisanship. Those providing civic education must sign to and adhere to these principles because the success of the project will depend largely on public perception of the biases of those providing civic education.
3. Capacity of CSOs is critical in delivery of civic education. Those selected must be experienced and technically capable to deliver activities. Success depends largely on capability of CSOs – those with track record to deliver. If it is necessary to have many then those with capacity can be conditioned to ensure that they network with other CSOs. Capacity building of CSOs is therefore critical to the success of this.
4. Donor coordination is critical. Donors must be clear about what they want to provide and must have a coherent vision about this. The success of this project is attributable to the fact that the donors were clear about what they wanted to deliver and how they wanted to deliver it. There was internal harmony on this.

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