

Project support of selected
Strategic Areas for Engagement
with the CIC

2011/2012

Commission for the
Implementation of the
Constitution

Project support of selected Strategic Areas for Engagement with the CIC

PROJECT DOCUMENT

Project Title: Commission for the Implementation of the Constitution.

UNDAF Outcome: Democratic governance and human rights including gender equality progressively enhanced.

CPAP Expected Outcome: More efficient, effective and equitable public service delivery by institutions and systems of democratic governance and rule of law enhanced.




Expected Project Outcome: Enhanced capacity of the CIC to deliver on its constitutional mandate including the successful implementation of the Constitution.

Implementing Partner: CIC

Collaborating Parties: Development Partners, Government and NGOs.

Project Duration: June 2011 – June 2015

Programme Period:	CPAP 2009 - 2013	Budget	USD
Programme Component:	Governance	General Management Fee:	7%
Project Title:	Support to Implementation of the Constitution	Total Budget:	USD 16,474,429
Project ID:	80977	Allocated Resources:	USD 6,778,352
Project Duration:	Five (5) years	UNDP core resources Donor(s)	USD 50,000
Management Arrangement:	NIM	1. Embassy of Sweden	USD 447,761
		2. Embassy of Japan	USD 930,000

Institution	Signature	Date	
CIC		20/2/2012	Charles Nyachae Chairperson
UNDP		21/02/12	Aeneas Chuma Resident Representative
Ministry of Finance		23/2/12	Joseph James Kinyua Permanent Secretary

1. Situation Analysis

Following the historic referendum on the Constitution, held on August 4, 2010, and the promulgation of the Constitution on August 27, 2010, Parliament passed the Commission for the Implementation of the Constitution Act, 2010 to further elaborate the functions, powers, qualification of the Commission, and to provide the appointment procedure for its members. Consequently the Commission for the Implementation of the Constitution (CIC) was appointed and commenced work on January 4, 2011. Since its appointment, CIC has held a retreat to clarify its mandate and develop its programme of work; rendered two quarterly reports; reviewed various bills and administrative measures; and otherwise discharged its mandate. The CIC is now in the process of developing a strategic plan to guide its work. Pending the finalization of the strategic plan, the CIC will be guided by the outcomes agreed at its retreat and the work plans developed thereafter, as will be amended from time to time. The purpose of this document is to provide an overall summary of CIC's approach to the discharge of its mandate for the July 2011 – June 2012 financial year.

2. Mandate of the Commission

The Commission's mandate is to -

- a) Monitor, facilitate, and oversee the development of legislation and administrative procedures required to implement the Constitution;
- b) Coordinate with the Attorney General (AG) and the Kenya Law Reform Commission (KLRC) in preparing for tabling in Parliament, the legislation required to implement the Constitution;
- c) Work with each Constitutional Commission to ensure that the letter and the spirit of the Constitution is respected;
- d) Report¹ at least once every three months to the Constitutional Oversight Implementation Committee on-
 - i. The progress in the implementation of the Constitution; and
 - ii. Any impediments to the implementation of the Constitution;
- e) Exercise such other functions as are provided for by the Constitution or any other written law.

¹ Section 4 (d) of the CIC Act stipulates 3 months as the timeframe for reporting to the CIOC on progress and impediments in implementation.

Further to the provisions above the following Articles in the Constitution are also pertinent in the process and therefore important to constitutional implementation and will in general be taken into account.

Role of the Independent Commissions and Offices

Article 249 (1) the objects of the commissions and the independent offices are to—

1. protect the sovereignty of the people;
2. secure the observance by all State organs of democratic values and principles; and
3. promote constitutionalism.

Section 15(d) of the Fifth Schedule to the Constitution further provides that the the CIC is specifically supposed to effectively undertake its role in Monitoring the implementation of the system of devolved government.

The Commission has interpreted this mandate broadly, taking into account the context of Kenya, to mean that it is the state institution charged with leading the realization of measures necessary for the further implementation of, and compliance with, the Constitution of Kenya, 2010.

1. Vision and Mission

The *Vision* of the Commission is

“A united, peaceful and prosperous Kenya in which all citizens including leaders respect the rule of law, uphold national values and live by the Constitution”.

Its *Mission* is

“To ensure that policies, laws, structures, systems and administrative procedures developed and applied at all levels are consistent with and according to the letter and spirit of the Constitution of Kenya.”

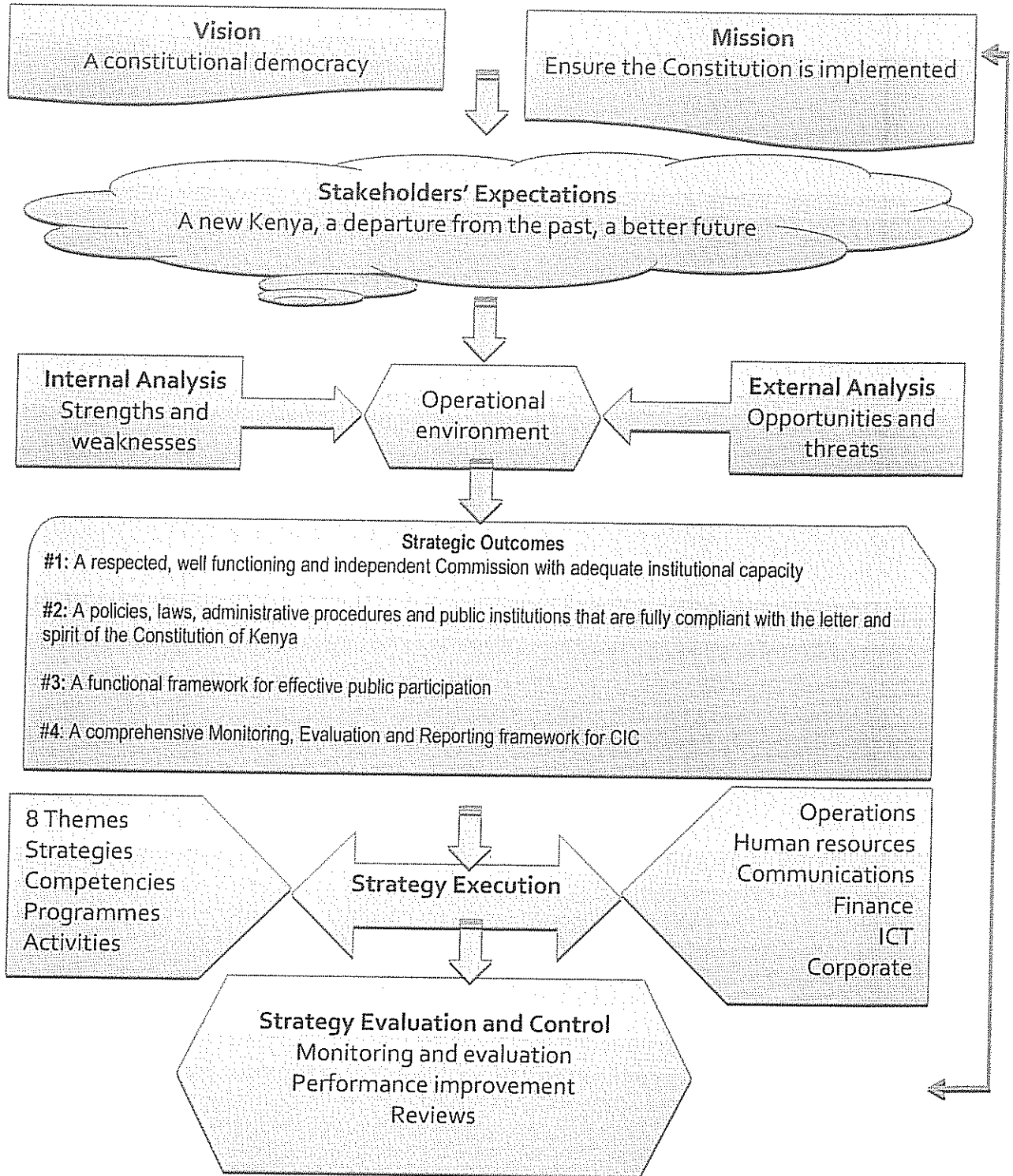
2. Strategic Outcomes

CIC's work will be organized around the following 4 key results areas at the outcome level:

- **Outcome #1:** A respected, well functioning and independent Commission with adequate institutional capacity for effective delivery on its mandate
- **Outcome #2:** Policies, laws, administrative procedures and public institutions that are compliant with the letter and spirit of the Constitution of Kenya 2010 developed
- **Outcome #3:** Effective and meaningful participation of the public in all processes and aspects of implementation of the Constitution of Kenya 2010
- **Outcome #4:** A comprehensive Monitoring, Evaluation and Reporting framework for CIC developed and executed on timely basis.

Outcome Number 2 is further broken down into 8 Thematic Area-specific outcomes to cater for the specificity of the policies, laws, administrative procedures and public institutions required under each Thematic Area.

Figure 1: Overall Strategic Framework for Implementation of the Constitution



Approach to execution of mandate

In keeping with the manner in which the commission has organized its work, the outcomes above will be attained through implementation of processes in 8 thematic areas, namely:

- (1) Citizenship and Human Rights
- (2) Public Service and Leadership
- (3) Judiciary and Constitutional Commissions
- (4) Devolution
- (5) Public Finance
- (6) Land and Environment
- (7) Executive and Security
- (8) Representation of the People and the Legislature

The thematic areas are drawn from the subject matter in the different chapters of the Constitution. They are all inter-related while some are cross-cutting; this will be factored in the design of the activities of the Commission. The overall strategic framework is as presented in Figure 1 above.

For each of these Thematic Areas, the CIC will ensure that the following cross cutting issues are effectively incorporated in compliance with the Constitution of Kenya:

- a) Effective and meaningful participation of the public in all processes and aspects of implementation of the Constitution of Kenya
- b) The national values and principles in article 10 of the Constitution of Kenya

The basic infrastructure and system for delivery of results in each of the 8 Thematic Areas is the institution of CIC. **The institution** is a special "Thematic Area" that deals with the establishment of a functional institution with the relevant institutional systems and structures, as well as the requisite **institutional capacity**.

Institutional capacity is an abstract term that describes a wide range of capabilities, knowledge, and resources that the Commission needs in order to be effective. The Commission will be said to be effective when it is achieving optimum results that it is intended to achieve.

For the immediate term the Commission considers institutional and organizational capacity with regard to two key concerns: The first is to see how well the Commission as

an organization links Vision with action through appropriate strategies, programmes and projects, executed by competent and well-managed people. The second is about how CIC is linked to stakeholders and the outside world by mobilizing necessary resources, maintaining a variety of relevant external relationships, and the production of results that are consistent with its mission. The first type of capacity relates to the ability of the Commission to accurately define activities within its mandate and create the right institutional arrangements to execute them effectively, while the second relates to its ability to follow through on its long-term plans and achieve relevant results.

The Commission seeks strengthen and align six key interdependent components of institutional capacity. These are:

- (a) Governance and leadership
- (b) Vision, Mission and Strategy
- (c) Programme Delivery and Impact
- (d) Internal Operations and Management
- (e) Strategic Relationships
- (f) Resource Development

The operating environment

The CIC is a public institution with a Constitutional mandate. This therefore ideally places a duty on all public authorities as well as state and non state actors, and other stakeholders in the Constitution implementation process to offer the CIC optimum cooperation and support. This has not been the case and is likely not to be the case for the foreseeable future with regards to some public agencies and officials. CIC is therefore up against challenges in the operating environment. There are indications that most challenges will emanate from mainstream political class and some public agencies that may feel that the work facilitated by CIC threatens their interests.

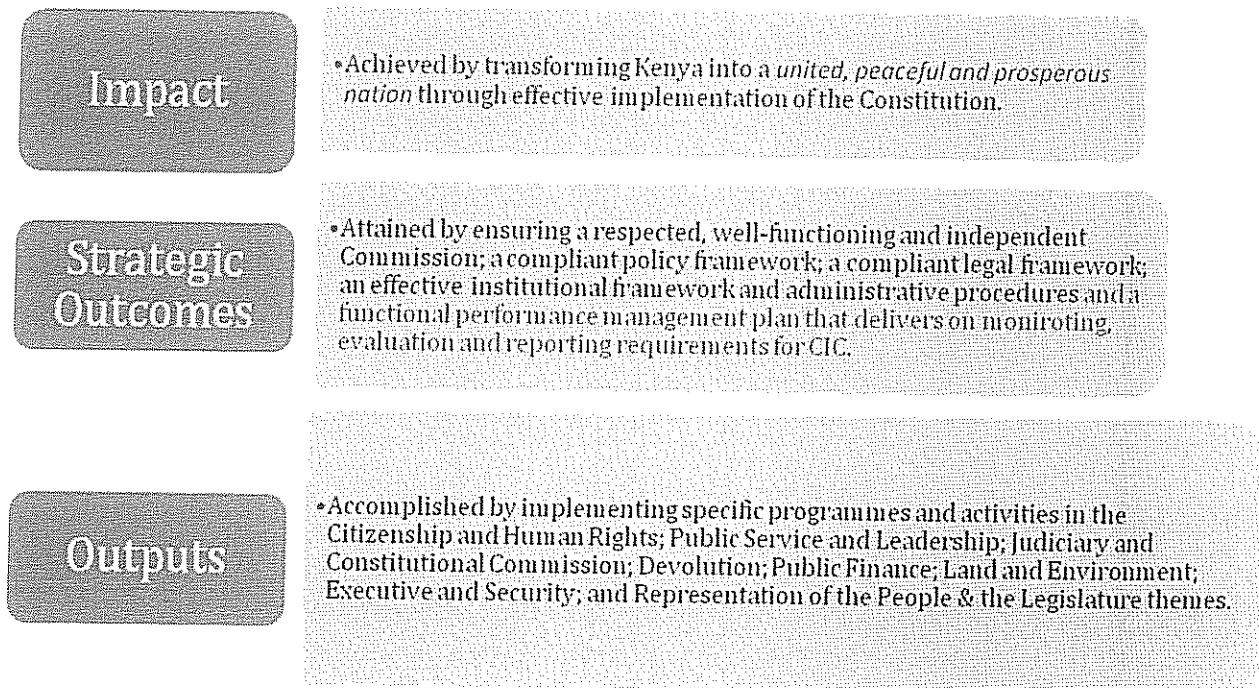
While CIC will continue to engage in dialogue with all actors and stakeholders to secure support for the execution of its mandate, sustainable support will depend on how well the public is informed. CIC will invest in informing and educating the public on its (CIC's) role in the Constitution implementation process, and in managing the expectations of the public. It will also invest in education the public on its (the Public's) constitutionally sanctioned right and role of participating in all Constitution implementation processes, i.e. public participation.

3. Monitoring, Evaluation and Audit

The overall results framework is as presented in Figure 2 below. CIC's work contributes towards the larger national strategic objective of reforming the Kenyan society. It will therefore adopt a results based management approach in order to ensure that its processes, products, and services contribute to the achievement of clearly stated results for which it is willing to be held accountable. Monitoring and evaluation of CIC will mirror the results based approach – results based monitoring - in order for it to consistently track progress on results. In addition to tracking general activity implementation information, CIC will also track the contribution of its activities of the broader strategic objective. On the basis of the work plans annexed to this main programme document, CIC will develop a performance monitoring plan (PMP) that will help it to collect and analyze performance information on inputs and processes, outputs, outcomes and the overall long term effect of its interventions (impact).

It is important to note that the expected results will be achieved through a combination of the CIC strategies and the strategies of the different implementers in all the sectors. In order to measure performance on the plan, CIC will, in consultation with the different stakeholders identify milestones, targets and indicators for the expected results. Data will be regularly collected and analyzed to determine achievement of key milestones and targets. This will enable CIC to report to the Parliamentary Select Committee on a quarterly basis; annually to the President and Parliament; and engage relevant stakeholders with a view to improving performance and promoting effective implementation of the Constitution. A monitoring and evaluation framework will be developed to guide CIC's monitoring and evaluation work.

Figure 2: Overall Results Framework



The output for the monitoring, evaluation and audit component is to ensure that CIC's work is monitored, evaluated and audited in accordance with international best practices, and Kenya government standards, rules and regulations of project management.

The constitutional dispensation, has entrenched national values and principles of governance that include democracy and participation of the people, human dignity, equity, social justice, inclusiveness, equality, transparency and accountability among others which the CIC has to continuously fall back to in the process of monitoring the various government agencies implementing the constitution. This is important to ensure that no legislation, policy or administrative framework is developed in contradiction to the letter and spirit of the Constitution.

5.1 Monitoring and Evaluation Framework

The monitoring of CIC's work will involve tracking processes (efficiency) as well as performance on the basis of specific expected results, using predefined indicators for each activity. Monitoring of the activities will primarily be the responsibility of the CIC. Development partners will participate in monitoring through provision of both technical and financial support. The aim will be to provide timely information/reports about the progress, or lack thereof, in the production of the outputs and achievement of planned

activities; and the overall picture on the progress being made in Constitutional implementation including any actual, emerging or potential impediments. The mechanisms that will be used to monitor this phase will include:

Within the annual cycle

- On a quarterly basis, and as part of CIC's statutory reporting requirements, assessment shall record progress towards the completion of key output results, based on quality criteria and methods. A financial report shall be provided to donor partners on a biannual basis.
- An Issue Log shall be activated and updated by the CEO/Secretary of CIC, in consultation with respective Commissioner Conveners of the various Thematic Areas, to facilitate tracking and resolution of potential problems or requests for change.
- Based on the initial risk analysis submitted, a risk log shall be activated and regularly updated by reviewing the external environment that may affect the Commission's progress.
- There shall be a "**Joint Steering Committee**"(JSC) that will act as a project roundtable, bringing together the CIC and donors contributing to its funding. The Steering Committee shall be chaired by CIC.
- Based on the above information quarterly financial reports shall be submitted by the CIC, to the Steering Committee, using the agreed standard report format.
- A Lessons-learned log shall be activated and regularly updated to ensure on-going learning and adaptation within the Commission, and to facilitate the preparation of a Lessons-learned part of the Commission's statutory quarterly report.
- Monitoring Schedule Plan shall be activated and updated to track key management actions/events
- Joint review meetings by CIC and funding partners shall be held and any other activity jointly undertaken according to an agreed upon schedule. .

Annually

- **Annual Review Report.** An Annual Review Report shall be prepared by the CIC and shared with the Joint Steering Committee. The Annual Review Report shall cover the whole year with a summary of results achieved against pre-defined annual targets at the output level.
- **Annual Project Review.** Based on the above report, an annual review shall be conducted during the fourth quarter of the year or soon after, to assess the performance of CIC and appraise the Annual Work Plans (AWP) for the following

year. In the last year, this review will be a final assessment. This review is driven by the Steering Committee and may involve other stakeholders as required. It shall focus on the extent to which progress is being made towards outputs, and that these remain aligned to appropriate outcomes.

5.2 Final Evaluation

- At the end of one year, an independent evaluation will be conducted. A consultant will be engaged to assess the impact of CIC's work and draw up lessons learned to guide future programming and partnership for all stakeholders involved.

5.3 Audit Requirements

The objective of the independent audit is to provide the CIC and other development partners an assurance that resources are being managed in accordance with agreed rules and regulations, more specifically:

- The Kenya Government's Public Financial Management laws and procedures, and any other agreed practices and procedures where resources are managed by a third Party
- The UNDP rules and procedures whenever it audits the component supported by the Basket Fund
- The Work Plan activities, management and implementation arrangements, monitoring evaluation and reporting provisions; and the requirements for implementation in the areas of management, administration and finance.

Thus CIC audits must confirm and certify that Kenya Government's rules and regulations governing public expenditure have been complied with, and additionally:

- Disbursements are made in accordance with the Work Plan;
- Disbursements are valid and supported by adequate documentation;
- An appropriate system for internal control is maintained by CIC and can be relied upon by all stakeholders;
- Work Plan financial reports are fair and accurately presented;
- The Work Plan monitoring and evaluation reports are prepared as required;
- Work Plan disbursements are duly verified by CIC and the procurement, use, control and disposal of non-expendable equipments are in accordance with Government of Kenya's requirements or with the UNDP's rules and procedures when requested to procure on behalf of the CIC.

- UNDP regulations, rules and procedures as Basket Fund Manager and Technical assistance agency.

Where any of CIC's activities shall be funded through a basket facility, the appointed basket fund manager shall take the responsibility to audit the basket funded activities. A reputable firm sub-contracted by the basket fund manager will conduct the audit as per the agreed rules and regulations. In the event of such an audit, the CIC will ensure that auditors are given all records and information that they will need to perform a meaningful performance audit.

4. Management Arrangements

Implementation:

The project will be primarily implemented through the **National Implementation (NIM/NEX)** modality. Under this arrangement the CIC is the implementing partner responsible for all the specific Output areas.

While the programme will operate under National Implementation modality, UNDP will manage the funds on behalf of the funding Agencies. UNDP and the Implementing Partner will sign a yearly work plan and an MOU that forms the relationship between the UNDP and the CIC.

To ensure collective responsibility for the programme, overall oversight, direction and quality of its implementation will be assured through, first, quarterly reviews by technical staff of the implementing partner. CIC will be responsible for convening and chairing these review meetings to ensure achievement of planned programme outputs.

Recruitment of project staff and consultants will be done by CIC in line with standard, published, government procurement and recruiting rules and procedures. In addition the basket fund manager is able to provide support to the Implementing Partner by processing procurement of goods and services, as well as accessing and adapting best practices from its global knowledge networks.

Every quarter CIC will submit to UNDP full expenditure report and at the same time request for new disbursement upon perusal and confirmation of accounting documents. Other payments will be made by the fund manager on presentation of Direct Payment Requests (DPRs) by the CIC. Such DPRs will include sufficient documentation to support the requested payments.

Other payments will be made by UNDP on presentation of Direct Payment Requests (DPRs) by the Implementing Partner. Such DPRs will include sufficient documentation to support the requested payments.

Joint Steering Committee:

The project shall be managed by a Joint Steering Committee and which will include the Implementing Partner, representatives of UNDP and development partners including those who may not be part of the basket modality. The Joint Steering Committee (JSC) will be chaired by CIC as the implementing partner. The JSC is responsible for making, on a consensus basis, management decisions for the project when guidance is required, including recommendation for UNDP/ Implementing Partner approval of project revisions. Project reviews by this group are made at designated decision points or as necessary when raised by the CIC. The JSC will provide overall coordination of the programme, provide guidance regarding the technical feasibility of the programme, and ensure the realisation of programme benefits from the perspective of programme beneficiaries.

The vital objective of the JSC is to ensure that donor assistance to CIC processes and key milestones is consistent and applied towards meeting priority activities. The CIC will set up and lead a coordination mechanism to optimize the efficient use of resources, eliminate double allocations of funds to projects and initiatives and minimize potential differences among donors and other stakeholders.

Funding for the project will be through the NIM/Nex modality for implementation of agreed activities and responsibility for specific output areas will lie with CIC. The appointed fund manager will manage the funds on behalf of the funding Agencies. The fund manager and the CIC will sign a work plan and an MOU that will guide the relationship between the fund manager and the CIC.

Roles

The CIC will appoint an officer who will have the authority to run the programme on a day-to-day basis. The officer's prime responsibility is to ensure that the programme produces the results specified in this project document and relevant annexes, to the required standard of quality and within the specified constraints of time and cost.

Project Assurance

UNDP along with representatives from the various responsible parties will carry out objective and independent project oversight and monitoring functions. This role ensures that appropriate project management milestones are managed and completed.

Legal Context and International Dialogue Forum

This shall be specified in an MoU between CIC and the basket fund manager as the case may apply.

Support Services

The cost of all support services by a basket fund manager (7% in the case of UNDP) will be recovered under this project.

Fiduciary Compliance

In managing the Annual Work Plan resources, CIC as an Implementing Partner in the basket fund arrangements has fiduciary and compliance responsibilities to the funding institutions. It also has compliance responsibility for all agreed reporting procedures.

5. Risk Management

CIC Programme work plans will be used to monitor key risks to the implementation of its activities, as well as to monitor and further engage stakeholders in discussions on possible risks.

The CIC in its first quarterly report identified a number of challenges, which are not necessarily impediments in the course of undertaking its work, but **have a relevant bearing on risk management**. CIC classified these challenges into three broad categories:

- Institutional and organizational challenges – This relates to the onerous task facing the CIC in that Commissioners have had to commence on substantive work without the necessary staff support. Additionally there are some key bodies which are yet to be formed and their input is also very important in the process of implementing the Constitution of Kenya
 - Political challenges – The political situation in the country has not been ideal for the implementation of the Constitution and poses a challenge going ahead
 - Core business challenges
- The absence of a strong culture of constitutionalism and also a narrow understanding by some that the implementation is about drafting of legislation. The promotion of constitutionalism amongst all stakeholders is critical to have an understanding of the roles, responsibilities and rights of all stakeholders and to uphold the values and principles in Article 10.

Support to Commission for the Implementation of the Constitution

RISK ANALYSIS

Project Title: Support to Commission For Implementation of the Constitution	Award ID:	Date:2011
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#	Description	Type	Impact & Probability	Countermeasures / Mngt response	Responsible	Submitted, updated by	Status
1	Coordination with other Governance Programmes	Strategic	Risk that other Development Partners and Agencies run duplicate activities	Meetings to be held with development partners to share information and align programmes to avoid duplication	CIC	CIC	
2	Relationship between CIC and other stakeholders (including other Commissions, Political Parties, Parliament and CSOs)	Political	The success of the project is dependent on the government, political stakeholders and civil society willing to work together	CIC to invoke its mandate as provided for in the Constitution to mitigate this and facilitate dialogue between government and civil society	CIC	CIC	
3	Implementation capacity of Implementing Partners.	Organizational	Although CIC is expected to undertake processes of monitoring, facilitating and coordinating implementation of the constitution there are challenges in its ability to effectively implement the required processes.	CIC to recruit the required staff to enable the Commission meet the set out deadlines.	CIC	CIC	

4	Coordination among responsible partners	Organizational	Although the responsible partners have capacities to oversee implementation of the programme, if there are weaknesses in coordination of their joint efforts, this may adversely affect the programme	Basket Fund Manager must ensure smooth communication among, and effective coordination, of the responsible partners	Basket fund manager	Basket fund manager	
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6. Work Plans and Budget

The respective work plans for the 8 thematic areas are annexed to this framework as Annexes 1 – 8. CIC is seeking KSh. 824,166,545 from development partners to enable it fully implement its work plans in the 2011/12 financial year. The summary budget is as shown below.

Thematic Area	Budget	Available	Variance	
			KSh	US\$
Institutional Strengthening	763,216,545	398,950,000	(297,866,545)	
Thematic Area #1: Citizenship & Human Rights	90,400,000	15,250,000	(75,150,000)	
Thematic Area #2: Public Service and Leadership	69,980,000	1,250,000	(68,730,000)	
Thematic Area #3: Judiciary and Constitutional Commissions	42,230,000	31,360,000	(10,870,000)	
Thematic Area #4: Devolution	106,000,000	30,050,000	(75,950,000)	
Thematic Area #5: Public Finance	73,300,000	24,900,000	(30,800,000)	
Thematic Area #6: Land & Environment	15,000,000	5,600,000	(9,400,000)	
Thematic Area #7: Executive & Security	114,450,000	44,900,000	(69,550,000)	
Thematic Area #8: Representation of the People & Legislature	125,750,000	23,900,000	(101,850,000)	
Totals (KSh.)	1,400,326,545	576,160,000	824,166,545	