



Policy Innovation Thinktank
The Consulting House
Office of the GLR and West Africa

CONSOLIDATING GAINS FROM THE KNDR PROCESS

Evaluation of
Support to the Committee of Experts on
Constitutional Review (COE)

FINAL REPORT

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LIST OF ABBREVIATIONS

AU	Africa Union
CIDA	Canadian Agency for International Development
CLO	Coordination and Liaison Office
CMO	Civic Education Mobilization and Outreach
CoE	Committee of Experts
CSO's	European Union
DFID	Department for International Development
FGD	Focus Group Discussion
GLR	Great Lake Region
GoK	Government of Kenya
IDI	In-depth Interviews
IIEC	Interim Independent Electoral Commission
KANU	Kenya Africa National Union
KII	Key Informant Interviews
KNDR	Kenya National Dialogue and Reconciliation
M&E	Monitoring and Evaluation
MIS	management Information System
MoU	Memorandum of Understanding
NARA	National Accord and Reconciliation Act of 2008
NARC	National Rainbow Coalition
NGO's	Non Governmental Organizations
ODM	Orange Democratic Movement
PNU	Party of National Unity
RBM	Results Based Management
SIDA	Swedish International Development Agency
SMC	Swedish Mission Council
SWOT	Strength Weakness Opportunity Threat
TCH	The Consulting House
ToR	Teams of Reference
UN	United Nations
UNDP	United Nation Development Programme
USAID	United States Agency for International Development
USAID-OTI	United States Agency for International Development- Office of Transformative Initiative
MoJCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
KEPSA	Kenya private sector Alliance
SUPKEM	Supreme Council of Kenya Muslims
NCCK	National Council of Churches of Kenya
NCIC	National Cohesion and Integration Commission
RC	Regional Coordinator
CCE	Constituency Civic Educator
CMO	Civic Education, Mobilization and Outreach
CSR	Corporate Social Responsibility

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FINAL REPORT

O Executive Summary

INTRODUCTION

1. **The Brief.** The Kenya National Dialogue and Reconciliation process (KNDR), led to the signing of the National Accord and Reconciliation Act. It is the NARA that facilitated the establishment of a National Coalition Government that would implement the key agenda items of the KNDR especially the long-term issues raised in Agenda No.4¹. Key among these issues was constitutional and legal reforms. To this end, the coalition government enacted the Constitution of Kenya Review Act, 2008 which allowed for the formation of the Committee of Experts on Constitutional Review (CoE). The mandate of the CoE was to guide the constitutional review process. The government of Kenya (GoK) and the donor community were the key financiers of this process. UNDP Kenya acted as the basket fund facility manager for the project funds from the donor community. They also provided technical assistance to the CoE. The support to the CoE from donors ran for 18 months between February 2009 and August 2010 and totaled \$ 11.36 Million².
2. The brief for which this report is generated was to evaluate the performance and results of the support to the CoE process. We were meant to establish what was **done** (outputs) what **happened**³ (outcomes), and what **changed** (impact). Specifically, we answered three questions: One, what has *worked*, what has *not* and the reasons *why*? Two, what were the lessons learnt? And how can they feed into future similar programme/ institutional arrangements of a basket fund modality? Here, we were meant to identify opportunities lost and to 'bank' best practices for future replication. Three, what do the results tell us? This question was meant to give us a logical connection between the findings and the recommendations.

¹ This agenda item sought to address long-term issues, including constitutional, legal and institutional reforms; land reforms; tackling youth unemployment, tackling poverty, inequity and regional development imbalances, consolidating national unity and cohesion, and addressing impunity, transparency and accountability.

² CoE Evaluation ToR 1 paragraph 5

³ ToR 3.1- b

3. **Methodology and Process.** We relied on both primary and secondary sources of data. The secondary sources included programme and other forms of literature⁴. A total of 21 program reports and documents were reviewed. The primary data⁵ was collected from respondents spread across 4 counties⁶. Data extraction employed three techniques; Key Informant Interviews (KIIs), in depth Interviews (IDI) and Focus Group Discussions (FGDs). Tools for data extraction varied, but deferred to a generic Check List developed at the Inception Stage and attached to the Inception Report.

SUMMARY OF FINDINGS

Overall Assessment

4. **Overall Verdict.** It is the position of this report that donor support to the CoE was effective. In fact, the implementation process increased the value of the grants. In our subjective estimation⁷, every US \$ 1 given to this process generated results worth US \$ 1.2. This means that support had 'value-for-money'. This was occasioned by the innovative nature of CoE implementation of its mandate, and the fact that the political environment facilitated their efforts. But we should also note that the CoE did not only innovate, but they also invented new ways of doing civic engagement. And this was particularly true in the case of civic education.
5. Regarding funding mechanisms, this project was designed as a rapid response intervention; but implemented within the rigid constraints of project management. And the culprit, in this case, was UNDP as the facility manager. But this was also because of universal UNDP financial procedures that are generally inflexible. We must note, however, that UNDP did actually bend backwards in some instances.
6. On the funding mechanism, still, we note that the Basket Mode experienced notable 'economies of scale'. However, its design projected it more as a financial, as opposed to a 'process' facility⁸. As a result, what was demanded of the mechanism by CoE was more of the funds and less of the broad-based experiences resident in the co-operating donors. And this should explain in part why UNDP attempts to provide technical support to the CoE were rebuffed. The argument of CoE was that such assistance would smack of external interference⁹.
7. **Important.** Further, it is the position of this report that a 'rapid funding mechanism' like the one under review is critical in the context of Kenya's political fragility. However, instead of waiting for crises, and then

⁴The list of Literature reviewed is contained as **Annex II** of this Report.

⁵Sampling details were spelt out in the Inception Report.

⁶The Schedule of meetings and respondents interviewed is attached as **Annex III** of the Draft Report.

⁷This is not based on any statistical or cost-benefit analysis. It is an estimation build around our evaluation experiences and our interrogation of the CoE project implementation..

⁸Process here refers to governance engagements the Basket donors are involved in including KNDR and bi-lateral governance support.

⁹They based this argument on the Act that constituted them.

constituting such mechanisms higgledy-piggledy, lessons from CoE funding and support to KNDR should be institutionalized. A framework to guide future 'rapid response' support should be developed based on these lessons¹⁰.

8. **The Achievements.** The support to the CoE made a significant contribution to constitutional reforms. In seeking to deliver an affirmative referendum result for the harmonized draft constitution, the CoE achieved a number of other things of, which two are significant. One, whereas we were unable to accurately measure the levels of public participation, it is the view of this report that the level of public awareness about constitution making was heightened as a result of this project¹¹. This stemmed from the impact achieved through the capacity building of local implementing partners to educate the public about the harmonized constitution. It is also noteworthy that public awareness resulted in a significant level of civic competence. This competence has become pronounced during the process of implementing the new law. The second achievement of this project was that it was able to improve the levels of consensus amongst the political class and thus galvanize support for constitutional reforms. Of equal note here is the following: CoE did not necessarily build consensus through dialogue; they built consensus through dominance when necessary. In our view, this was necessary and is partly responsible for their success.
9. There was one other notable achievement from the support to the CoE process. This is the donor basket fund itself. The funding modality was able to very quickly mobilize financial resources to support the CoE. Furthermore, the basket fund was also able to transmit these resources to the CoE relatively quickly¹². These efficiencies were as a result in part of the design of the fund. The basket fund called for the abandoning of a bilateral model of support to the CoE in favour of a multilateral mechanism that would maximize on the economies of scale. The multilateral nature of the basket fund facilitated the convergence of interests among the donors. This curtailed the possibility of inefficiencies arising from the usual 'competition of interests' that encumber organizations with multiple bilateral funding partners.
10. **Lessons Learnt.** We categorize these into two; lessons learnt from design challenges and those picked from the implementation challenges.
 - a. **Design Challenges.** Two lessons were noted from the challenges at the design level. One, there was no deliberate effort to design a support mechanism that was specifically calibrated to the needs of the CoE¹³. This was due to a number of factors among them a lack of consensus among the funding partners and the limited

¹⁰It was not within the ToRs of this review to provide for such a framework. However, the team would be happy to do so at a future date.

¹¹ We are casting the levels of public participation in the CoE process against preceding attempts at constitutional review.

¹² This is in comparison to the support coming from GoK as the other the other major financier.

¹³ This is manifested in the absence of a project document that would have sketched out the intent, delivery and monitoring mechanisms of support to the CoE.

timeframe in which they had to respond to the needs of the CoE¹⁴. Consequently, the UNDP/CLO mechanism was adopted as a compromise solution. Our opinion is that the CLO was saddled with project administration and support responsibilities that were not in its design to undertake. As a result, a number of opportunities to extend sufficient support to the CoE were forgone. The lesson here is that project support mechanisms should be adjusted to respond to the specific needs of the interventions they are aiming to sustain. The second challenge was that a shared appreciation of support to encompass both technical and financial aspects was missed. In our view, the support that finally reached the CoE was only a fraction of what was intended. This was almost entirely financial support with proportionately little technical support accompanying it. The lesson learnt is that an opportunity for primary stakeholders to level expectations, build consensus and come to a common understanding on what needs to be done is critical to effective and efficient project implementation.

- b. **Implementation Challenges.** Two lessons were drawn, both of which derived from one crosscutting challenge. The CoE was severely constrained for time. However, in spite of this the support extended to the CoE was applied with admirable efficiency. Nevertheless, the efficiency of implementation was eroded by the mode of implementation. The support to the CoE was conceived as an emergency response intervention but was instead rolled out using the model of conventional development projects¹⁵. The rationalization provided was only way to ensure that the set standards of transparency and accountability were not undermined¹⁶. This introduced a degree of red tape between UNDP and the CoE. The result of this was that the flexibility and responsiveness of the project became compromised.
- c. The first lesson we drew out of this was that future interventions of this nature require a support mechanism that charts a middle path where the trade-off between flexibility and integrity does not occur.
- d. The second challenge in implementation was with regard to the exit strategy of the CoE. The project wrap-up and transition periods for the CoE were in our opinion, inadequate. This was due to both a design slippage and time limitations. As a result, there was no provision for ongoing post-referendum civic education on the new constitution and associated implementation processes. Similarly, the process of CoE handing over its results and closing the project was both abrupt and unsatisfactory to the supporting partners. For instance, the timing of this evaluation is in our view fairly late because the memories of many of the key respondents had faded. Some of the key respondents could not be accessed as they had departed the country to take up other engagements.

¹⁴FGD with basket Donor group

¹⁵Interview with donor basket contributors, 4th October 2011

¹⁶*Op cit.*

Consequently, key documents could not be traced. The lesson drawn from this is that planning for project exit including follow-up and handover activities as well as evaluations ought incorporated at the inception stage.

Specific Findings

Finance and Administration

11. **Achievements.** The main achievement of this component was its ability to take advantage of the flexibility and responsiveness of the Project Design with regards to funding. When the government of Kenya delayed to disburse funds for this project, the CoE requested for funding from other sources which led to the donor support through the CLO.
12. **Lessons Learnt.** There were institutional weaknesses present in the CoE secretariat. These were worsened by poor monitoring and evaluation practices and disagreement over the general leadership of the secretariat. Institutional weaknesses can be resolved by having a sound project document that anticipates and mitigates such potential loopholes at the project design stage.

Civic Education, Mobilization and Outreach

13. **Achievements.** It is the position of this report that CMO achieved the most notable of results amongst the different CoE departments. CMO uniqueness was in its innovative approaches to civic education. In fact, CMO pioneered approaches that should be replicated in future civic education undertakings by donors. This was in the areas of media use, engaging with existing platforms and the outreach nature of their work. But the most notable of these approaches was the one on 'guerilla marketing'. They 'invaded' public spaces with messages and presence through what they called 'opportunistic forums'.
14. **Lessons Learnt.** The main lesson with regards to CMO relates to the civic education duration. The Review Act provided for only 30 days for the CoE to conduct civic education on the Proposed Constitution. This period was enough to sufficiently persuade the public on the merits of the document and ensure an affirmative referendum vote. However the time was too short to properly educate the public on the contents of the proposed constitution. The lesson therefore is to work on making gains incrementally. It was important that the proposed constitution got an affirmative response. However, as part of the incremental gains, there should be extensive civic education on the contents of the now enacted constitution.

Research Drafting and Technical Support

15. **Achievements.** The component recorded two main achievements which were closely interrelated. One, it enabled CoE to capture many responses from the public on the harmonized draft constitution. The public was provided with several communication options including written responses,

E- mail, short message service (SMS) among others. Two, at every stage in the review process, this department was able to not only capture but to properly express proffered sentiments in their draft publications¹⁷.

16. **Lessons Learnt.** There were two main challenges in this component. The first challenge was inadequate use of technical support during the drafting process. Although attempts were made to get technical expert input, this was especially wanting in certain clauses such as those relating to land¹⁸. CoE should have incorporated more expert support on clauses whose technical depth exceeded the abilities of the CoE members. The second challenge was in the publication and storage of all documents relating to the constitutional review process. These documents were supposed to be accessible to the public even after the completion of the review process. There were attempts to do this, demonstrated by some documents available on the CoE website. However, majority of the documents cannot be accessed and there is no clear institution or authority to which these were handed over to.

Public Information and Media

17. **Achievements.** This component worked closely with the CMO to create public awareness about the constitution review process in general. With time it focused on educating the public on the contents of the constitution. Its main achievement is that it reached large audiences of the public. Working closely with CMO, it employed innovative strategies that targeted specific publics. These innovative strategies took advantage of advances in Telecommunication and Information Technology (IT) to reach mass audiences quickly, repetitively and at relatively low cost compared to the traditional methods of advertising.
18. **Lessons Learnt.** In the rolling out of this component, two main challenges were noted. The first challenge was use of similar advertising media by those opposed to the Proposed Constitution. This diluted the civic education efforts of the CoE. The second challenge was the unwillingness by some members of the public to take advantage of these new media. This necessitated “a cock-tail” of advertising methods with a mix of the traditional media and the new technologies. Going forward, this cocktail may be necessary to ensure that all target audiences in an intervention are communicated to.

SUMMARY RECOMMENDATIONS

Overall Recommendations

1. Given the fragile political environment in Kenya after PEV, a ‘rapid funding mechanism’ like the one under review is a *sine qua non*. However, this cannot advance in response to emergencies. Enough lessons have been

¹⁷ These drafts included the Revised Harmonized Draft Constitution, The PSC Draft, the Draft that was forwarded to the National assembly and the Draft that was published by the Attorney General.

¹⁸ This was alluded to in an interview with the Secretary General of the Kenya Land Alliance, Mr. Odendo Lumumba

learnt from the CoE funding under review and the basket support to KNDR. These lessons should be consolidated into a framework for emergency funding. The framework should then guide future grant-making to situations such as the one CoE was responding to.

2. While the above refers to a funding framework, we also recommend that future support to such projects be made on the basis of a comprehensive implementation framework. This would provide the interface between the basket and the project holder; the results management framework and the tracking system internally and externally.
3. Funding through the basket mechanism should not just be a 'financial facility'. Efforts to avail collective programme experiences of the co-operating donors should also be made. CoE would have benefited immensely from such a 'repository' of knowledge and experience.

Specific Recommendations

1. A **rapid capacity audit** should be a minimum mandatory requirement for emergency interventions of this nature in future. Development of a **nuanced project, monitoring and evaluation** reporting system that captures nuanced qualitative results. This is important in capturing results that can then be ploughed into successive programmes.
2. **Partnership with other CSOs.** Partnerships with complementing existing programmes have a synergistic effect leading to better program returns.
3. **Continue with civic education.** There is need for civic education in the post referendum era. The exercise should be continuous and should target all Kenyans and not just the voting public. There should be special emphasis on educating school going children, the media and the political class. Moreover, the icons and drivers of the civic education process should have longevity and objectivity; as such icons should shift from politicians to other actors for example Vision 2030.
4. **Use the 'cocktail' of communication methods** for maximum engagement with the target audience. This leads to increased interaction with the message which in turn leads to maximum engagement with the audiences.
5. **Content:** Content in education material should take into account literacy levels and reading habits of Kenyans. The material should be brief, in various languages, especially vernacular languages and should be disseminated using the most suitable media for the target audiences.

1 Introduction

1.1 The Context of KNDR Process

1. In the first two months of 2008, Kenya was beset by political and ethnic violence following the disputed general elections of December 2007. The violence mutated into a political crisis that threatened to degenerate into civil war. But the seeds of this crisis date back to 2003 when the National Rainbow Coalition (NARC) broke asunder and split. The emergent schism gelled into the 'Yes' and 'No' camps that split the country into two during the constitutional referendum of 2005.¹⁹ Political violence, hate speech and a retreat into ethnic enclaves became the signature of the 2005 post-referendum period. And this is how the seeds of conflict were sowed leading to the post-election violence of 2008.
2. An international mediation effort to defuse the post-election crisis was mounted by the AU under the stewardship of President John Kufuor of Ghana between 8 to 10 January 2008. From this intervention, a Panel of Eminent African Personalities, consisting of former UN Secretary-General, Kofi Annan (Chairman), the former President of Tanzania, Benjamin Mkapa and former South African First Lady, Graça Machel, was established to assist Kenyans in finding a peaceful solution to the crisis. Under the auspices of the Panel, PNU and ODM started negotiations on 29 January 2008. The dialogue was mediated by the Kenya National Dialogue and Reconciliation Committee (the KNDR or "National Dialogue"). And this is how the KNDR was birthed. It generated four agendas listed below:
 - A. Agenda Item 1: Immediate action to stop violence and restore fundamental rights and liberties

¹⁹ The now-defunct ECK in an attempt to cool the political temperatures sought to assign neutral symbols to the opposing camps. The 'Yes' Camp was assigned a banana as its symbol whilst an orange signified the 'No' camp. It was this orange symbol that later inspired the evolution of the Orange Democratic Movement (ODM) party.

- B. Agenda Item 2: Immediate measures to address the humanitarian crisis, promote reconciliation, and healing
 - C. Agenda Item 3: How to overcome the political crisis
 - D. Agenda Item 4: Address long-term issues, including constitutional, legal and institutional reforms; land reforms; tackling youth unemployment, tackling poverty, inequity and regional development imbalances, consolidating national unity and cohesion, and addressing impunity, transparency and accountability.
3. The political parties signed 6 agreements pertaining to these 4 agenda items between February and July 2008²⁰. The most critical of these was the National Accord and Reconciliation Act (NARA), a power-sharing agreement under Agenda Item 3 that facilitated the formation of the Grand Coalition. The two parties signed the National Peace Accord on 28th February and on 17th April 2008, the members of the Coalition Government were sworn in. Based on the provisions of the NARA, The parties to the KNDR agreed to establish a number of institutional frameworks under Agenda Item 4 that would deal with different aspects of the crisis;
- A. An Independent Review Commission on the General Elections held in Kenya on 27th December 2007
 - B. A Commission of Inquiry into Post-Election Violence
 - C. A Truth, Justice and Reconciliation Commission
 - D. A Review of long-term issues and pursue a constitutional review process
4. It is in the context of the fourth item of the above menu that the CoE under review in this report was constituted. In 2008, the Grand Coalition government enacted the *Constitution of Kenya Review Act*, which established the basis for appointment of a Committee of Experts (CoE) on constitutional review that consisted of three non-Kenyan and six Kenyan experts. The mandate of the CoE was to guide the constitutional review process.
5. To execute its mandate, CoE received support from a basket of donors involved in the KNDR process and UNDP Kenya acted as the basket fund facility manager²¹ for the project funds, providing technical assistance to the Committee as well. Although not directly, this was done under a Mechanisms constituted by the AU known as CLO. The support to CoE ran for 18 months between February 2009 and August 2010 and totaled \$ 11.36 Million²².

1.2 SUPPORT TO COE INTENT AND REVIEW RATIONALE

6. From a review of the available literature²³, we discerned the CoE Component of the KNDR process as having five key result areas²⁴.

²⁰ The specific dates of signing are 1st, 4th, 14th and 28 February, 4 March and 23 July

²¹ The donors to the basket fund facility that specifically funded the CoE component included Norway, DFID, SIDA, Denmark, Finland, Netherlands and Canada.

²² CoE Evaluation ToR 1 paragraph 5

²³ CoE Evaluation ToR

- a. One, **establish a financially independent and fully functional secretariat**. We measured the extent to which the CoE secretariat was capacitated to perform its duties and receive funds to meet its financial obligations. We interrogated the relationship between CoE and its constituent donors; reviewing returns from the CLO, UNDP and the CoE secretariat.
 - b. Two, **facilitate effective public participation in the constitutional review process**. Public participation is the involvement and influence of citizens over the constitutional review process. We assessed the degree to which activities under the CoE project fostered public participation in the constitutional review process.
 - c. Three, **encourage political consensus and agreement**. We evaluated the success of the CoE in bringing together the political class to reach a consensus on the contentious issues contained in the different versions²⁵.
 - d. Four, **foster religious and cultural consensus**. We examined the extent to which the CoE was able to facilitate dialogue and consensus on provisions of the draft harmonized constitution that were being objected to on religious and cultural grounds.
 - e. Four, **ensure an affirmative referendum result within the specified due date**. We evaluated the process the CoE undertook to come up with a revised harmonized draft constitution and the strategy the CoE employed to drum up support for the document. Specifically we will be examining the research, consultation, drafting, analysis and engagement processes with stakeholders that resulted in the revised harmonized draft constitution.
6. Specifically, we evaluated the performance and results of the Support to the CoE process. We were meant to establish what was **done** (outputs) what **happened**²⁶ (outcomes), and what **changed** (impact). More specifically, we answered three questions: One, what has *worked*, what has *not* and the reasons *why*? Two, what were the lessons learnt? And how can they feed into future similar programme/ institutional arrangements of a basket fund modality? Here, we were meant to identify opportunities lost and to ‘bank’ best practices for future replication. Three, what do the results tell us? This question was meant to give us a logical connection between the findings and the recommendations. Detailed evaluation ToR is attached at **Annex I** of this report.

²⁴ KNDR final report to UNDP (January 2009-September 2010) , Final Report of the Committee of Experts on Constitutional Review. Section 4.5.1 - Key Result Areas

²⁵ These versions included the Pre-2010 constitution, The Ghai Draft, The Wako Draft, and The Bomas Draft

²⁶ ToR 3.1- b

1.3 EVALUATION METHODOLOGY

1.3.1 Sources of Data

7. For purposes of this evaluation, the consultants used two sources of data –secondary and primary

1.3.1.1 Secondary Sources

7. The evaluation relied on three classes of secondary data. First was the UNDP generated literature. This included quarterly and annual reports, the annual plans, M&E reports, and evaluations of the Consolidating Gains Project a critical source will be the consolidated and departmental reports of the CoE. The second class included reports generated by the Coordination and Liaison Office of the African Union Panel of Eminent African Personalities as well as reports by funding partner agencies. The third class comprised of reports generated by the Government of Kenya (GoK) on their support to the CoE and the KNDR process. Reports generated by CoE itself fell under this category. A total of 96 program reports and documents were reviewed²⁷. A List of the Literature Reviewed is attached at **Annex II** of this report.

1.3.1.2 Primary Sources

8. **The Geography.** The CoE conducted a public awareness and participation campaign across Kenya, where they visited 18 locations in the 8 provinces of Kenya directly reaching 6,046 members of the public. Within the selected 18 COE forum locations, four were sampled and visited within the study. These included, Machakos, Thika, Nakuru and Nairobi. The choice of location was influenced by resources, time and availability of respondents given that we were doing the study one year after the CoE field activities.
9. **The Respondents.** Three categories of respondents were relied upon as identified in the ToR²⁸. The first category comprised of the CoE secretariat staff. Although not all were available, we managed to interview some of the crucial staff²⁹. Members of the Committee itself were unavailable for interview. The second category included UNDP and the Basket development partners. These were interviewed separately using KII and FGD techniques. The third category was made up of government officials, service providers, CSO partners and other strategic partners that provided support outside the basket fund. Regarding a data extraction instrument, the checklist was the primary instrument relied upon.
10. **Extraction Methods.** Four methods of data extraction were employed. The first was the desk review³⁰. This was used to review secondary data, from

²⁷ The team deployed four people to scan through the literature. Two from CJSI, an intern from London School of Economics at TCH, who travelled to Kampala for the Scan and a TCH Research Fellow who accompanied the team leader during field visits.

²⁸ ToR 4 (ii) – (iv)

²⁹ Refer also to the limitation of study.

³⁰ ToR 4 Bullet 1

program implementers, implementing partners and sources outside CoE. The second method was Key Informant Interviews (KII). These were used to extract information from strategic players to the CoE process. The third was In-depth Interviews (IDI), used for specialised institutional respondents and expert informants from among the associate implementers. IDI participants included *inter alia*, UNDP Senior Management Staff and key project staff. The fourth method was Focus Group Discussions (FGD) it applied to specified categories within the rank-and-file beneficiaries.

1.4 EVALUATION LIMITATIONS

11. The evaluation was conducted one year after the completion of the project. By this time, the CoE secretariat had been disbanded and some of the key respondents had moved on. This also meant that the literature was limited as critical documents were unavailable. Moreover, a lot of time was expended tracing respondents for the field study since contacts for most of them were not available. Because of the time duration, some respondents complained about memory attrition. Similarly, the disbandment of the COE secretariat made it difficult for the evaluation team to get the respondents for the field study; exceeding the time limits set in our manning schedule.

FINAL REPORT

2 Design and Performance

2.1 PROGRAM DESIGN

2.1.1 Overall Assessment

1. **The Intent.** The primary objective³¹ of this project was to provide supplementary financial assistance to the CoE in response to the twin challenges of delays in funding disbursements from the Government of Kenya and budget shortfalls. The secondary objective of the project extended to providing technical assistance through UNDP to the CoE in the following five areas³²:
 - a. Experts and researchers.
 - b. Research, drafting and distribution.
 - c. Civic education, stakeholder engagement and consensus building.
 - d. Information, education & communication
 - e. Administrative operations.
2. Our understanding is that technical assistance to the CoE was to be accessed at two levels. One, 'up-stream support' which was to come from the funding partners and focused more on the administrative aspects of the project such as planning and reporting. Two, 'down-stream support' which was to be extracted from implementing partners and would mainly address the more mechanical aspects of project implementation activities such as stakeholder mobilization, background research, developing civic education curricula, tools and media messages among others.
3. **The Assessment.** The position of this Report is that the financial support extended to CoE was instrumental to achieving the 68.55%³³ affirmative

³¹ CoE project review ToR 1 (iii, iv and v)

³² CoE project review ToR 2

³³ http://www.iiec.or.ke/sites/default/files/COMPREHENSIVE%20IIEC%20FINAL%202010%20REFFERENDUM%20RESULTS%2009_08_10.pdf [last accessed 01 November 2011]

vote for the harmonized draft constitution. More so, given the hostile context in which CoE operated. But the same cannot be said of the technical assistance. In our assessment, it did not play a similarly stellar role. In fact, flaws and gaps in the method of delivering technical assistance undermined the effectiveness of the financial assistance to the CoE. And the crisis was located at the level of 'up-stream' technical assistance. For instance, even where the goodwill to avail funding to the CoE was present, there were obstacles to access. This was occasioned by capacity gaps within the CoE itself, largely because of the strict time frames. But 'down-stream' technical assistance was also challenged. The crosscutting nature of the capacity gaps at CoE affected the efficient transaction with service providers.

4. The difference in performance between technical assistance and financial support was partly a function of design and partly that of performance. As a result, the impact is more visible with regard to the financial assistance than it is for the technical assistance. Even then, with regard to technical assistance, it is more visible for downstream support than it is for the upstream equivalent.

2.1.2 THE DESIGN INTENT

5. **The KNDR Process.** Before CoE activated its emergency fundraising mechanisms³⁴, the KNDR process was already receiving technical and financial assistance from through the Coordination and Liaison Office (CLO) of the African Union Panel of Eminent African Personalities. This was basket support, coordinated by UNDP using the framework established under the Consolidating Gains from KNDR process. Its primary objective was to promote and facilitate the effective implementation of the KNDR agreements. But in designing COE support, the process did not exploit the KNDR experiences, gains and competencies in full.
6. **Levels and Types of Funding.** The underwriting of the constitution review process was initially intended to be a purely Kenyan affair with the government facilitating financial assistance. However, provisions for external support had been built in to the Constitution of Kenya Review Act (2008) to preclude a situation where the CoE would be hamstrung by insufficient levels of government funding. These emergency-funding mechanisms kicked in when after the CoE experienced a six-month delay in funding disbursements from government³⁵. CoE had a budget of USD 21 Million. The government of Kenya was able to meet approximately two-fifths (44.6%) of this at USD 9.38 Million. And direct bilateral support accounted for slightly less than one-fifth (14%) of the support to CoE at USD 3 Million. The UNDP-CLO multilateral basket fund contributed slightly

³⁴under Section 53 of the Constitution Review Act, 2008, which allowed it to receive grants, donations and/or bequests,

³⁵ CoE project review ToR 1 (iii, iv and v) Also

http://www.coekenya.go.ke/index.php?option=com_content&view=section&layout=blog&id=8&Itemid=61 [Last accessed 02 November 2011]

over two fifths (44.7%) at USD 9.4 Million³⁶. Essentially, the basket support equaled that of GoK.

2.1.3 Critical Design Lessons

7. **Design Slippages.** In the view of this report, the support extended to CoE by the CLO was an emergency intervention stemming from an imminent loss of momentum in the constitutional reform process. As a consequence, support to CoE appears to be an afterthought that was hurriedly scribbled on to the overall KNDR blueprint and foisted upon the CLO. Design of the CoE component was not critically interrogated and integrated into the overall KNDR framework. This led to initial perceptions that the CLO and the CoE were two discrete processes. And with time, the perceptions became a reality when CoE entered into a separate MoU with UNDP on access to the donor basket.³⁷ The fault here does not lie squarely with the CLO: The original sin can be traced back to the twin errors of insufficient budget allocations and delayed funding disbursements by GoK. Of equal note, a conceptual understanding of the full nature of support required by the CoE was not pursued. As a result, critical capacity gaps within the CoE went unnoticed until it was either too late or too contentious to remedy them. Similarly, we were unable to isolate a process in which a pre-award capacity audit of the CoE was conducted. Such an audit would have determined what other support (other than financial) the committee required prior to/or during their engagement with the CLO. In the view of this report, had this been done during the tenure of the CoE, the gaps that hampered project implementation would have been noted and attempts at remedy would have been instituted.

8. The consultant team was informed³⁸ that the CLO support framework was a stop-gap mechanism meant to shift the workload at CoE to the UNDP office. The intent of this arrangement was to minimize implementation bottlenecks, where UNDP would coordinate donor support processes so that CoE would focus on their mandate. A meeting between the donor group, UNDP and the CoE was held where the idea of extending support to build the internal institutional capacity of CoE was floated. However, this did not take flight. The team was not able to examine the minutes of this meeting and other similar meetings. We would have wanted to determine the extent to which the partners examined the external and internal flaws in the framework that was extending support to the CoE.³⁹ As such, a learning opportunity was missed.

We recommend that regardless of the circumstances, a rapid capacity audit be a minimum mandatory requirement for emergency interventions of this nature in future.

³⁶ See Annexes for CoE Budget summary

³⁷ Interview with Alferdo Teixeira, Deputy Country Director (programmes) UNDP, 8th September 2011

³⁸ Meeting with Dr. Ozonnia Ojielo - Team Leader and Senior Peace Building Advisor, UNDP Peace Building and Conflict Resolution Programme 9th September 2011

³⁹ These were to be located and shared with the team by the UNDP office and we expect that when this is done, we can make a determination.

2.1.3 RESPONSIVENESS OF DESIGN

9. **The contradictions of crisis.** We record this as a positive lesson as we shall argue, but one that cannot be replicated consciously. The consultants noted that support to CoE was extended under the unique circumstances of a crisis-within-a-crisis. At the national level, Kenya was yet to begin the recovery process from the disputed general elections. This meant that the wounds were still fresh; ethnic divisions had become ever more deeply rooted; and an atmosphere of hostility prevailed over the political landscape. It was against this backdrop that the committee of experts was constituted and immediately treated with a great degree of mistrust and skepticism by the political class, the civil society and the general populace. On the one hand, each of the political camps viewed the CoE as a creation of the other, expecting it to fracture along partisan lines. Meanwhile, sections of the civil society viewed the CoE as non-inclusive and high-handed body that had bitten off more than it could chew⁴⁰. Parts of the general populace viewed the CoE with apathy, dismissing it as another of the myriad government commissions and committees of yore that had failed to deliver on their promises⁴¹.
10. This hostility from the opposed political camps percolated to the operational levels of CoE precipitating the second crisis. In this crisis, protracted delays in setting up the institutional infrastructure and securing resources for the review process⁴² persisted. This exacerbated the vulnerabilities of the CoE as a temporary body whose autonomy had a sell-by date and thus came under constant attack. Considering the uniqueness of the situation, the standard government mechanisms of resource allocation, disbursement and tracking were not calibrated to handle such transient institutions particularly in crisis conditions and this was evident for instance when the CoE budget was erroneously omitted from the supplementary budget estimates for 2009.
11. However, these crises turned out positively for the CoE, and the support that was extended to the constitution review process. At the national level, the origins of the trauma that the country experienced from the post-election violence was attributed to the failed constitution referendum of 2005. Consequently, after the cessation of hostilities and the progress of political mediation in 2008, the national mood had shifted somewhat from ethnic polarization to a collective resolve to pass the draft constitution. This mood was picked up by both the Principals and also by funding partners in the donor community. The Principals verbalized their joint backing of the draft, while also actively campaigning for an affirmative vote in the referendum. Their actions aided in galvanizing support for and boosting the levels of national confidence in the new constitution at the time.

⁴⁰The view was strongly expressed by the Church for instance, during our interviews.

⁴¹This was obvious from most of the media reports we reviewed during this study.

⁴² For instance, the constitution of Kenya review act which established the CoE was passed in December 2008 but the committee itself was not constituted until February of the following year and could not take up office until they had been sworn in one month later in March 2009. Even after these procedural delays, the CoE did not receive funding from the Kenya Government until July 2009, effectively 7 months into their 12-month term of office.

12. The donors in turn were quick to avail levels of financial assistance that would not have otherwise been available to a similarly structured project under normal circumstances. For instance, we were informed that UNDP made significant concessions to the CoE funding modalities. The limited performance timeframe of the CoE and strict implementation schedule of their mandate also worked in their favour. There was a general mood of 'no-nonsense', which may have curtailed constructive debate on the constitution at its peril, but it also expedited the process of delivering a document that enjoyed widespread public support at the time of the referendum.
13. In the view of this report, these were positive lessons learnt. And although they cannot be replicated, a few things can be 'banked' for future referencing. One, donor flexibility given the complexity of the situation must be recorded as a positive push factor. Similar kind of support must in future exercise flexibility. But this must also be matched by technical assistance that is better designed. That is, a flexible fund mechanism cannot be implemented using the same technical assistance as that provided to conventional mechanisms. Two, in assessing the emergency processes to fund in future, CoE - especially the secretariat - should be used as a good yardstick. Although 'bullish' in its approach, its sheer drive was able to steer the review process to a desirable conclusion. This attitude made the apparent gamble from the donors worth the while.
14. **Defining the Support.** In most of the reviewed documents, support to the CoE was understood in purely financial terms. This can be traced back to the narrow interpretation of section 16 of the constitution of Kenya Review Act (2008). Section 52(2) of this Act provided for the soliciting of/and receipt of grants, gifts, donations or bequests towards the achievement of the objects of the review process by CoE. In both these instances, the grants, gifts, donations or bequests were not explicitly limited to the pecuniary variety but a creative reading of this clause would have made a suitable justification for technical assistance. However we were informed that even where the support was solicited, it was for the implementation of CoE activities downstream and not administrative support to the CoE to engage with funding partners upstream. Where UNDP proposed to domicile a technical assistance officer to aid CoE in navigating the administrative terrain with regard to fundraising, procurement procedures and project reporting, we were informed that the representatives of the CoE secretariat interpreted this as an encroachment on their sovereignty and invoked section 16 of the act to rebuff the overtures by external actors to provide technical assistance.
15. As such, the CoE failed to appreciate the value a systematic process of determining the required types and levels of support. In the end, project support was focussed entirely on securing financial resources from upstream partners and expending these resources as swiftly as possible with implementing partners downstream. From our reading of literature and field experience, however, it was clear that the intent of the project to support CoE was meant to extent both the financial resources and the

necessary skills in their management as a whole and not just to cover the financial shortfalls experienced by the committee. The technical skills transfer to the CoE was meant to maximize on value-for-money, expedite efficiency in the application of funds received and ultimately improve on service delivery. From the review, we can confirm that some technical assistance was availed to the CoE. However, because it was not deliberately built into the design of the project or sufficiently defined, most of it produced sub-optimal returns.

16. **Mapping the Support.** The ToR for this assignment advances the assertion that the support to CoE project included both technical and financial assistance⁴³. From the literature and field experiences, we discerned three levels of support that the project ideally should have targeted. Whilst there is the possibility that other support levels existed, we determined that the assistance to the CoE was intended to do three things. One, contextualize, connect and filter **Upward** the returns from the CoE project into the KNDR process⁴⁴. Two, inject and distribute technical capacity **Horizontally** within the CoE to effectively deal with project planning and implementation as well as revenue raising and reporting. Three, percolate this internal capacity **Downwards** amongst the implementing partners and service providers to the CoE for effective and efficient execution of project activities. At the design level of the CoE project however, this thinking was not unpackaged. Failure to map and strategically target the support was a lost opportunity in the view of this Report.

For strategic focus, **we recommend** that support to such projects be accompanied by an analysis of the nature of desired assistance and to which levels of the project the mode of assistance would be best suited. These should then be prioritised and sequenced accordingly with the intention of identifying which mode of assistance ought to be transmitted first and which ones to follow.

2.1.4 DESIGN DELIVERY AND IMPLEMENTATION

17. **The Delivery Intent.** The selection of CLO as one of the delivery mechanisms meant that the technical assistance at the top level was to be in the form of communication, planning and coordination with the larger KNDR process⁴⁵. At the middle level, an examination of the CoE project revealed an operational plan derived from Agenda No. 4 of the KNDR as the implementation framework for accessing support from the Basket⁴⁶. The operational plan acted as a Project Document, Fundraising and Monitoring and Evaluation Tool for the CoE⁴⁷. At the lower level, the departmental Work plans were identified and the framework through

⁴³ CoE project review ToR 1 (iii)

⁴⁴ This was the essence of UNDP's 'consolidating gains from the KNDR' project

⁴⁵ The mandate of the CLO is to assist the implementation of the agreements reached by the National Dialogue and to support the Coalition Government as it seeks to address the root causes of the 2007 post election crisis

⁴⁶ CoE Operational Plan 2009/2010 (1.0)

⁴⁷ CoE Operational Plan 2009/2010 (1.4)

which technical assistance would be sought downstream⁴⁸.

- 18. Planning, Monitoring and Evaluation (PME).** The CoE retreated for four days one month after gazettelement in April 2009 to generate the aforementioned operational plan. This plan played the triple role of a project implementation blueprint, a fundraising tool and a monitoring and evaluation tool. The operational plan was in four parts the first tackling foundational issues such as the role and mandate of CoE. The second part addressed the seven key result areas whilst the third section handled the structure of the CoE including the secretariat. Finally, the fourth section of the operational plan laid out a logical framework matrix detailing both the vertical guiding logic as a sequenced hierarchy of objectives and the horizontal guiding logic demonstrating how progress against each objective was going to be assessed and the assumptions and risks that presented both threats and opportunities to the achievement of project objectives. We recorded the inclusion of date-specific deadlines within the objectively verifiable indicators (OVI's) as a good planning practice which made it easy for CoE to sequence expected results⁴⁹.
19. The review could not unearth a systematic institutionalization and standardization of a Project Monitoring Evaluation and Reporting system at CoE. According to respondents at the CoE secretariat, the project relied on 'virtual synthesis' where each departmental head extracted the project implementation component relevant to them from the log frame matrix in the operational plan, then proceeded to develop and roll out a departmental work Plan (including M&E components) in isolation of the other departments⁵⁰. The finance and administration department acted as the hub where there was some convergence of information on the activities of the various departments but even this was limited to mainly financial information.
20. As a consequence the Project Monitoring Evaluation and Reporting system was challenged at three levels.
- a. One, there was no designated person to deal with M&E issues. Operationally, these fell in the director's docket. But as the review process gained in crescendo and the director's role changed, PME became neglected. More so as the role of director shifted from project coordination to the 'play' the strategic functions with the commissioners⁵¹.
 - b. Two, the extremely short project life and the absence of a clear project exit plan meant that there was insufficient opportunity to

⁴⁸ Although allusions to departmental workplans are made in the CoE operational plan and the departmental reports such as the one from the Community Mobilization and Outreach Department, the consulting team was unable to secure one for evaluation purposes.

⁴⁹ However, we also questioned the baseline from which the OVIs were advancing. That is, how did they arrive at these quantitative figures?

⁵⁰ In an interview with Veronica Nduva, fmr. Head of Civic Education, Mobilization and Outreach Department, 23rd August 2011, the team was informed that though attempts at departmental M&E were made, they were hamstrung by resource constraints.

⁵¹ Interview with Dr. Ozonnia Ojielo - Team Leader and Senior Peace Building Advisor, UNDP Peace Building and Conflict Resolution Programme 9th September 2011

track the outcomes that proceed from project outputs during the life of the project and assess the impact at the end. In the absence of such a mechanism, the logic of delivering CoE project outcomes appeared to be more process-driven than impact oriented.

- c. Three, the M&E records we obtained were strong on quantitative results, but weak on the qualitative aspects. Yet most of the changes desired by the project were mainly determined using qualitative measures. This meant that many learning opportunities were missed. The emphasis on quantitative measures can also account for the fact that in determining the role of the support to the CoE we were able to easily glean more on what was *done*, than on what was *achieved* from the project reports⁵².

We **recommend** that a more rigorous project monitoring, evaluation and reporting system capable of processing the subtle nuances of qualitative results found in the democratic governance sector be developed and mainstreamed in project implementation in future. Sourcing for this capacity in future programming is a *sine qua non*. In the view of the consultants, the absence of this meant that critical lessons were not analysed and fed back into programming.

21. **Delivery Mechanisms.** The division of labour was tri-furcated. At the top was the CLO who were the main custodian of the KNDR process. UNDP was meant to coordinate fundraising and run interference for CoE with the donor basket facility and the CLO whilst the third tier of implementation was the CoE itself. The CoE secretariat was responsible for the day-to-day operations required to deliver a harmonized draft constitution and an affirmative vote for the document.
22. In the view of this Report, the CoE and its secretariat discharged their role in exemplary fashion under very difficult circumstances. This was confirmed by testimonies by grassroots respondents during fieldwork, and by an online assessment of the team. The personal dedication of team members who carried on with their duties many times without sufficient infrastructural support, personal remuneration and in the face of open and covert hostility, cynicism and suspicion deserves mention. Their capacity to originate innovative solutions and implementation techniques on the ground is also noted by this report.
23. The above notwithstanding, two challenges to CoE Secretariat are worth mentioning. The first is the UNDP resource disbursement and accounting procedures. The long process of contracting and ensuring 'due diligence' slowed down implementation. This was particularly true with regards to procurement of service providers for both specialized and labour-intensive undertakings that the CoE did not have the capacity to accomplish

⁵²What was done can be measured quantitatively. But what was achieved by the CoE in the context national cohesion of is more difficult to quantify.

directly⁵³. The second challenge was with regard to the capacity of UNDP to monitor the other sources of funding to CoE. UNDP and the donor basket noted that CoE did not always disclose the funding disbursements received from the Kenya Government and bilateral donors such as USAID to them⁵⁴. This non-disclosure posed a challenge especially for the finance monitoring office at UNDP to track which funds were used to underwrite which activity.

Recommendation. Funding to CoE was designed as a rapid-response mechanism, but implemented in many ways as a normal project. The design required speedy decision-making, but the funding mechanism remained rigid. Future funding mechanisms of this nature should be flexible. They should balance between speed (as required by the emergency moment) and the need for project management efficiency.

2.3 The Support Performance Framework

2.3.1 Parameters of Performance

24. To measure performance, we used three parameters; efficiency, effectiveness and responsiveness. Similarly, we made an assessment of the results and pitched them at their appropriate levels.

2.3.2 The Results of Project Support

25. **Levels of Results.** Three levels of results were discerned. The first level is outputs. This is what the CoE did. It is different from activities in the sense that activities are a means to the outputs. Civic education workshops for instance are an activity. The output produced by workshops is public sensitisation or skills acquisition. And this is what the project did. In the view of this report, the outputs of this project were bankable. However, what we could not establish was their percentage contribution to the affirmative referendum results. And this is partly a design issue and partly a question of project lifespan⁵⁵. With most of the respondents we interviewed, we were told to "...wait until later to assess the impact of the new constitution on national development, cohesion and reconciliation". That is, the period in which the project outputs have been in existence is still too short for them to have created notable change in the quality of life for Kenyans.

26. Results have also begun to be noted at the level of **outcomes**. This is the second level and answers the question: **what happened?** That is, after the sensitisation and consensus building around the draft (outputs), how did the country (project site) respond to these interventions? Two results are being recorded at this level. One, **Constitutionalism has begun to take root**

⁵³There was a flip side to this concern where an omission to adhere to due diligence exposed CoE and the donor basket to the risk of fraud, corruption and a failure to achieve value-for-money.

⁵⁴Interview with donor basket contributors, 4th October 2011

⁵⁵Design because we did not discern a deliberate harvesting of results and grooming them to the next level. Where this happened, it was not a program intention.

in Kenya. This is observable in the elevation and pervasiveness of reference to the constitution in virtually every facet of national discourse from the taxation of MP's salaries, public officer ethics, devolved government, national resource allocations, the ostensible date of the next elections and even the declaration of war on foreign militants. Two, **institutions have begun to undergo reform and get strengthened.** This is particularly observable in the case of the judiciary with the public vetting of candidates wishing to become judicial officers in the high court and the newly established Supreme Court. The reform process continues apace with the police and other public agencies such as anti-corruption commission in progress. These two outcomes are united in enhancing transparency and accountability nationally. However, we cannot attribute these outcomes directly to the work of CoE. But we can confirm that CoE outputs (especially civic education) contributed to the building of civic competence around constitutional issues country-wide.

27. In our assessment, potential for impact exists. However, this is more at the level of 'statutory impact', where constitutional imperatives will drive 'hard change' such as the architectural transformation of governance models and public institutions for improved service delivery. We cannot determine at this time if the support to CoE will deliver 'normative impact' in which the institutional transformation will result in 'soft change' such as in the attitudes and quality of life for Kenyan citizens and residents. Furthermore, it is difficult for us to determine if the increase in popular participation in governance processes was in spite of the old constitution or because of the new one. Similarly, at the level of design, we did not discern a strategy for harvesting and grooming results from one level to the next and establishing a direct causal link between support to the CoE, the realization of national development objectives and national cohesion⁵⁶. And maybe at the level of design, this was probably not possible

2.3.3 The Effectiveness of Project Support

28. **Attribution vs Contribution.** Effectiveness is the extent to which results were achieved and the **cause-effect** relationship between the results and the support extended to the CoE especially by UNDP and the donor basket for the purposes of this study. As already noted, program effectiveness was most pronounced at output and outcome levels. And this was partly a design glitch and partly because impact was not possible during the project cycle. Also noteworthy is this: We cannot confirm attribution (cause-effect relationship) between program results and UNDP/Donor basket support. But we can infer to contribution. And the higher the results level, the more we can speak of contribution as opposed to attribution.

29. **Research, Drafting and Technical Support.** This department within CoE gathered 26, 451 memoranda and presentations from members of the

⁵⁶ Though a scan of the provisions in the political pillar of vision 2030 reveals the intent for constitutional reform, the PEV crisis pre-empted the vision 2030-implementation activities for this component, which were scheduled for 2012 by 3 years. Furthermore, supplementary activities that were meant to add value to this component such as continuous civic education have not taken place.

public in 18 locations across the 8 provinces of Kenya⁵⁷. It was also responsible for undertaking the background research that would guide the thematic consultations with caucuses, interest groups and other experts on the issues that were identified as contentious. As part of this task, the department coordinated the research on constitution-making and comparative studies on other constitutions and constitutional systems. Finally as part of its responsibilities to inform the synthesis of the divergent views this department essentialized the respective pros and cons of proposed remedies to resolution of the contentious issues. The department was effective to the extent that it carried out these activities with tangible results. However, it was argued by some of the respondents that it was not exhaustive enough in its engagements on contentious issues. For instance, it was said not to have gone far enough in soliciting for specialist input in technical aspects of the constitution such as in the land sector, which required protracted and continuous engagement⁵⁸. The same was said regarding the church-related issues⁵⁹. In our assessment, however, the department was constrained by time. And this should explain, in part, their ineffectiveness regarding how they handled contentious issues.

30. **Civic Education, Mobilization and Outreach.** Within the CoE project, public mobilization and outreach was probably the most effective in our view. It attained project intentions that continue to be felt today. And this is largely because the program piggybacked on existing competencies and institutional capacities within the provincial administration and national CSOs. The engagement of local CSO's to oversee mobilization at the regional and constituency levels was a good practice recorded by this report.
31. Civic education had been allocated a window of only 30 days before the referendum date. Due to this extremely short timeframe, it was imperative that innovative and high impact strategies were adopted. Whilst the media-based approach incorporating road shows, print and electronic media was effective, the direct engagement approach where CoE enlisted 15 coordinators at the regional level and another 210 at the constituency level recorded the feedback⁶⁰. The CMO also tapped into the capacity of local CSO networks to aid in the delivery of civic education on the constitution. However in doing this the CoE ceded control over the information being disseminated about the proposed constitution and as a consequence distorted and misleading information was circulated by CSO's that were at odds with the CoE, had not internalized the contents of the constitution or lacked the capacity for sustained engagements with the community.
32. Whilst the support extended to CoE was effectively used in both educating the public on the constitution and countering the myths and falsehoods propagated by the detractors of the constitution, this report in

⁵⁷ CoE Final report

⁵⁸ Interview with Odenda Lumumba, Kenya Land Alliance, 22nd August 2011.

⁵⁹ Interview with Cannon Peter Karanja, NCKK Secretary General.

⁶⁰ CMO departmental report

interrogating the content, thrust and rationale of the civic education has not come away satisfied. The civic education whilst vocalizing the slogan 'JISOMEE, JIAMULIE, JICHAGULIE' (Read, Understand and Make up your own mind), at times placed more emphasis more on **WHAT** one should do (vote 'YES' for the constitution) instead of on **WHY** one should it (the benefits and merits of the proposed constitution over the existing one)

33. **Public Information and Media.** Two aspects of support to public information and media were recorded as effective. The first is the close working relationship this department had with the CMO department. This ensured a certain consistency in the content developed for civic education and the messages that were put out in the media both above and below-the-line. This coherence was critical in keeping the messages on the constitution simple and easy to digest. The second was the innovative approaches used to disseminate the messages. For instance, the CoE capitalized on the interest in the football world cup tournament that was on-going at the time as well as the short messaging services (SMS) with cellular service providers to target the captive audience they had with messages on the constitution⁶¹. Further the CoE outsourced technical aspects of the campaign for the proposed draft constitution to a professional PR firm to rope in the specialist capacity of product marketing experts. Similarly, the CoE also penetrated other fora that at first appeared to be a far cry from constitutional and governance issues such as the agricultural shows as a platform to disseminate messages on the proposed constitution.
34. Service providers in the media fraternity were not inducted or orientated to the CoE process but rather had a 'cold turkey' introduction to the task at hand when they hit the ground running campaigning for the harmonized draft document⁶². As a consequence, a process of 'plugging in' and learning from on-going civic education processes on the ground did not take place. However, this shortcoming was moderated by the fact that there was coherence in the messages from the civic education and media components.
35. **Finance and Administration.** The finance and administration department provided in-house logistical and technical support to the implementation activities of the other departments. The effectiveness of this department is to be judged at two levels. One, the extent to which they were able to support and facilitate upstream engagements that would result in successful fundraising. Two, the extent to which they were able to support the implementing departments to execute their Work plans.
36. At the first level, the finance and administration department did a commendable job of originating the fiscal need and demands of the CoE to funding partners for consideration. However, less exemplary was the sequencing of transmission of these demands, which the donors felt, was not always timely leading to the precipitation of funding crises and allegations of brinkmanship on the part of the CoE against counter-

⁶¹ Interview with George Ojing. Blueprint Media a subsidiary of Ogilvy & Mather.

⁶² *ibid*

allegations of autonomy-usurping conditionalities on the part of the donors⁶³. With regard to the support to implementation, the finance and administration department demonstrated great skill and innovation in developing effective funding disbursement frameworks to grassroots implementing partners such as by direct transfers to the constituency civic educators but withholding the final payment of coordinators until expenditure accounting document were submitted⁶⁴. However, the effectiveness of this department was partially a function of the resource transfer schedules from the donor basket, bilateral partners and government sources. Similarly, the crisis mode in which this department was functioning compromised the capacity to institute and enforce transparency and accountability measures particularly with regard to procurement processes.

2.3.4 Efficiency of Project Support

37. **Defining Efficiency.** In doing the 'efficiency tests', we were interested in how resources were converted into results. That is, how resources were applied and maximised to attain program results. But more fundamentally, we were interested in 'value-for-money'. Although we could not do a scientific assessment here, we were able to make inferences to situations where inputs provided higher returns and vice-versa.
38. **The Efficiency of Design.** Three things concerned us here. One, because the support was not adequately defined and mapped, the extension of the same became limited in its scope mainly to financial aspects⁶⁵. Had the support been more broadly understood accepted and appreciated, much more could have been achieved. An unmistakable understanding of the financial needs of the CoE produced virtually instant results. However, this was the most obvious and pedestrian appreciation of the needs of the CoE and a more nuanced comprehension would have widened the scope of support to derive maximum value from the financial support.
39. Although we did not do a 'value-for-money' assessment, we made a few subjective observations regarding design. One, the basket fund approach was value-adding. In our assessment, the attempt at centralization of resource transmission to the CoE was more efficient than multiple bilateral engagements with various funding partners all of whom have different contractual, administrative and reporting requirements. Two, the CLO model failed in its intent. Because, the CLO did not accord the CoE the requisite attention as a vital component of the KNDR, the strategy of having CoE interface with UNDP directly was not efficient in terms of the KNDR intentions. This may have been as a result of failure to formalize and institutionalize the relationship between CoE and CLO perhaps due to a clumsy institutional framework or the lack of capacity of the CLO to liaise with the CoE.

⁶³ Interview with Dr. Ozonnia Ojelo - Team Leader and Senior Peace Building Advisor, UNDP Peace Building and Conflict Resolution Programme 9th September 2011

⁶⁴ Interview with Peter Ayugi, Deputy Director Finance and Administration, 11th August 2011

⁶⁵ Repeated here for emphasis.

40. **Efficiency of Implementation.** The view of this Report is that implementation was largely efficient in the face of significant odds. As indicated by the reports and field visits, most of the intended activities were carried out, albeit under exceedingly difficult circumstances that banked heavily on the goodwill of the implementing parties. The main challenge we noted is that these activities were not always groomed to the next level of results. For instance, the lack of an exit strategy through which the CoE would systematically vacate office ensuring a smooth handover and transition to the bodies that would maintain the momentum and safeguard the gains made in continue with post-promulgation activities is a glaring oversight.

2.3.5 The Responsiveness of Project Support

41. We set out to determine how flexible the framework for extending support to the CoE was in responding to emerging challenges from the political and logistical arenas. Of interest was how timely and appropriate the corrective actions that were taken were. This report observed that a significant level of responsiveness and indeed even anticipation of the political and logistical challenges in delivering a harmonized constitution inside a poisoned political environment and within such a brief timeframe was present. The CoE was aggressive in seeking out alternative solutions to the financial challenges it faced at inception as exemplified when they invoked section 53 of the constitution of Kenya review act (2008) to secure funding from non-government sources. The 'emergency logic' that guided this thinking however encountered glitches when subjected to the bureaucratic fundraising and disbursement procedures between donors contributing to the basket fund and UNDP. Notably, implementation was at times significantly slowed down by the long procurement procedures at UNDP. This was due to two separate dynamics; One, in situations where the first call for tenders failed to result in a satisfactory result, the entire protracted procurement process had to be repeated, further delaying implementation. Two, even where the tender was awarded to a service provider meeting the procurement thresholds, post-award bottlenecks at times arose to further delay implementation⁶⁶. Another bottleneck to CoE project support lay in the provisions of the letter of agreement with UNDP. The MoU required that the CoE first submit satisfactory expenditure reports for prior disbursements before they would receive any further funding and authority to engage a service provider. At times this was difficult especially where activities were to be carried out in close sequence and there wasn't sufficient time between the phases to submit and secure approval for expenditure reports.

42. The Committee captured issues arising and challenges surfacing from stakeholders in the Sectoral and thematic groups as well as from the grassroots with speed. However, response to the concerns raised was erratic. For instance, the clergy felt slighted by the allegedly brusque manner in which the CoE responded to the challenges they made against the committee when they felt that certain provisions in the harmonized

⁶⁶ A case in point was where the vendor that had been contracted to print copies of the constitution lacked capacity to deliver and the leading dailies had to be engaged to run out a sufficient number of copies.

draft constitution clashed with theological policies and principles as well as ecclesiastical law⁶⁷. In other instances such as in proviso on devolution, the CoE was very receptive to suggestions from a wide range of stakeholders whose views they were able to synthesize into a workable compromise between the contributors.

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⁶⁷ Interview with Reverend Canon Peter Karanja, General Secretary NCKK, 12th August 2011

3 Component Analysis

3.0 INTRODUCTION

1. This chapter provides a detailed analysis of each of the four components of CoE. Focus here is on component design, implementation and performance.

3.1 FINANCE AND ADMINISTRATION

3.1.1 Component Design

2. The CoE operational plan lists the establishment of a financially independent and fully capacitated secretariat as one of its key result areas⁶⁸. This department was tasked with three main functions. One, management of finance, human resources and physical assets of the organization. Two, the periodic production of financial projections and budgets. Three, periodic preparation of management accounts for the CoE director and monitoring and evaluation of all departmental activities especially as relates to activities vis a vis financial resources.

3.1.1.1 Design strong points

3. The design was flexible and donor support picked up on this. Project support was designed to respond to a political emergency a model that would not otherwise apply in normal circumstances. For example, the CoE encountered financial crisis just before the onset of civic education, UNDP signed a letter of agreement with CoE and funded the latter USD 2 million. In order to support the CoE activities UNDP advanced USD 2 million from UNDP TRAC Resources to ensure that there was no interruption in CoE activities especially the civic education exercise. This

⁶⁸ CoE Operational Plan 2009-2010, Towards a harmonized draft constitution. [5.2 Result Areas](#)

advance was then reimbursed to UNDP from donor funds.

3.1.1.2 Design weaknesses

4. **Accountability:** The CoE did not have an institution that it was accountable to. It emphasized the need for independence as a reason for minimal donor interference despite having received donor funding. On the other hand, it also had frosty relations with the government and kept the line ministry of Justice, National Cohesion and Constitutional Affairs at arm's length citing the need to prevent government from interfering with their work and compromising their independence. This meant that financial accountability around the donor support was not necessarily guaranteed.
5. **Lack of technical capacity.** The CoE was unable to anticipate and properly respond to crises. This was a function of poor planning which in turn was a function of lack of capacity. Under its function of provision of technical assistance, UNDP was willing to second one of its members of staff to the CoE secretariat but CoE did not take this offer of technical assistance. The emphasis on financial independence seemed to dim the importance of any other competencies that would further benefit the CoE. More importantly financial independence seemed to take precedence over technical assistance. Full time secretariat personnel with expertise in key thematic areas such as land, finance etc. would have been more productive in the long run⁶⁹.

3.1.2. Component Implementation

6. **Lack of A project Document.** There was no proper document to guide the activities of the project. The 'route map' was provided by the CoE Work Plan. And as we noted earlier, the implementation of this work plan was not fully co-ordinated. Monitoring results at the institutional level was therefore challenged.
7. **Absence of Post- CoE Institutional memory.** Institutional weakness and poor management systems resulted in poor banking and consolidation of the activities, findings and experiences during the constitution making process. This is best demonstrated by the difficulty that the evaluation team experienced in sourcing documents and other crucial data that was originally prepared by the CoE secretariat during the constitution review process.

3.2 CIVIC EDUCATION, MOBILIZATION AND OUTREACH (CMO)

3.2.1 Component Design

8. The purpose of the CMO programme was to ensure that the public fully, meaningfully and effectively participated in the constitution review process. The primary focus was on the voter and all activities centered on educating the voter on the constitution and encouraging the voter to

⁶⁹ Interview with Mr. Odendo Lumumba, Secretary General, Kenya Land Alliance

perform their civic duty and take part in the referendum. Drawing its mandate from the Constitution of Kenya Review, 2008 Act⁷⁰, the CMO developed and implemented civic education strategies, increased awareness and participation in the constitutional review process and ensured that key interest groups were represented and engaged in the review process⁷¹. Within this component, four results were anticipated.

- a. Effective Public Participation in the review process
 - b. Political Consensus and Agreement
 - c. Religious and Cultural Consensus
 - d. Affirmative Referendum Result⁷²
9. The need for a comprehensive strategy was crucial in the apathetic, polarized and politically hostile environment in which the CoE was operating⁷³. To educate the public and rouse them to effectively participate in the constitution review process, CMO focused on three areas: one: engagement with various crucial actors, two, distribution and dissemination of civic education material and three, mobilization of people to stimulate debate and participate in the review process.
 10. Engagement took a three pronged approach: direct engagement, media engagement and partnerships and alliances. For effective distribution and dissemination of constitutional education material, the CoE divided the country into 15 regions according to which logistics were planned around. The provincial administration as earmarked to assist the CoE and other non-state actors involved with civic education by mobilizing people and distributing constitution education material
 11. Due to financial and time constraints, the civic education process solely focused on educating the voter and no other demographic. Positive gains contained in the proposed constitution were highlighted and contrasted against the previous constitution. Consequently, civic education was about publicizing the gains of the document as they affected various groups e.g. clauses on inheritance as they related to women and political representation for minorities and marginalized groups.
 12. CMO came up with a civic education model that was different from the typical “workshop model” used by other programs. Whereas the workshop model of civic education involves the community coming to the organization, CMO planned its civic education in such a way that CoE went out to the voting public and educated them wherever they were. By using these “neo-civic education” strategies, CoE was able educate many members of the public within the short period of 30 days. Civic education activities sought out the voting public in varied forums such as road

⁷⁰ Section 27 of the constitution of Kenya review, 2008 Act. Civic Education.

⁷¹ The Committee of Experts on Constitutional Review, Pg 15. Operational plan 2009-2010: Towards a harmonized and acceptable constitution.

⁷² Committee of Experts on Constitutional Review. Departmental Report. Civic Education, Mobilization And Outreach Final Departmental Report, 20th September 2010.

⁷³ During the development of the CoE on constitutional Review Logistical Framework, one of the problems/ challenges that was flagged out was general public cynicism towards the attainability of a new constitution.

shows, social networking sites, bill boards, radio, TV and newspaper advertisements and SMS. By having varied education methods, the CoE was able to constructively engage with the various demographics of the voting public.

13. The constitution review process had *de jure* and *de facto* actors, who had a stake in the process. CoE conducted meetings with both groups right from the onset so as to secure ‘buy-in’ with them and get the assurance of cooperation in the review process.
 - a. **De jure actors** were those actors directly involved in the constitution review process and had been expressly mentioned in the related legislation. These include the Committee of Experts, Parliamentary Select Committee on the Review of the Constitution, National assembly and the voting public through the Referendum⁷⁴.
 - b. **De facto actors** are those organizations or individuals with a stake in the review process and have the ability to sway opinion of the public ultimately determining the overall outcome of the process. Some of the *de facto* actors included the two principals (the president and the prime minister), the justice ministry, treasury, political parties/actors (parliamentarians and councilors), religious leaders, provincial administration among others.
14. CoE entered in a complementary relationship with other organizations running programs on the grassroots. These groups worked with CoE representatives (provincial Coordinators and Constituency Civic Educators) on the ground during the civic education period. CoE rode on the existing contacts, goodwill and in roads that these organisations had secured with the respective communities to conduct civic education. While these organisations conducted the civic education, CoE provided them with civic education training, training material, copies of the Proposed Constitution as well as the logistical requirements such as transport. These organisations mostly conducted civic education using the workshop model.
15. **The workshop model** works on the ‘..principle of percolation’ in which one cadre is trained and then commissioned to train a cadre below them. This model can be time-consuming and one runs the risk of message distortion leading to reduced effectiveness. The model tends to be generic with the assumption that it is effective across all audiences. The biggest handicap of the workshop model is the fact that the delegates have to come to the organization to be educated; precisely what the CoE was trying to circumvent. In its design, therefore, CoE utilized the workshop model minimally. And we record this as a realization that the model has limitations. Indeed, the model they used seemed to produce better returns.

⁷⁴ Section 5 of the Constitution of Kenya Review, 2008 Act. [Organs of Review](#)

3.2.1.1 Design Strong Points

16. The design of civic education, mobilization and outreach component of linkages identified a number of strong points that can inform future programming. The strong points mainly point at the implementation and responsiveness of the design to the challenges in the environment. They include:
- a. **Innovative civic education strategies.** CMO avoided the generic one size fits all workshop model in favour of a more differentiated and targeted approach. They employed strategies that reached out to specific target audiences and deeply resonated with the audiences. Some of these methods also capitalized on technological advances in Information technology and telecommunications that enabled the transmission of information to multiple audiences within short time periods. Going forward, audience specific methods are likely to be more engaging and effective during program interventions.
 - b. Where civic educators in a certain area were seen to be effective, they were allowed and supported by CoE to extend their areas of operation way beyond their initial spaces⁷⁵.
 - c. **Use of existing program structures.** New programs can use complementary structures of existing programs in carrying out their interventions. This generates synergies and reduces program costs. And this is what CoE did by plugging into existing processes to carry out civic education.

3.2.1.2 Design Shortcomings. These are concentrated on the design intent of the project. They include:

17. **Inadequate Civic Education.** The project had a constitutional deadline of one year within which the CoE had to guide the country into a new constitution. Due to this time limit one month was set aside for civic education. As the deputy director for CMO said, the period was enough to persuade the people to the merits of the constitution. However, it was not adequate to educate the public and result in behavior change and increased civic competence. Similar sentiments were echoed by the CoE message development consultant⁷⁶.
18. **Voter specific civic education.** The CMO civic education activities specifically targeted the voting public. This was explained as a result of time and financial constraints as well as the need to deliver an affirmative referendum result. However, the centrality of the constitution in the lives of Kenyans not just in the present but in the future as well called for a more holistic education process. This is a social contract document of far reaching effects and its contents should have been

⁷⁵ For example, Ben Gathugu was approached by Mr. Aukot and asked to extend his civic education activities beyond Nakuru Town all the way into North Rift and North Western Kenya.

⁷⁶ Interview with Mr Gituku Ngari, Message Development Consultant hired by CoE

taught not just to the voting public but to other categories of the citizenry as well. The exclusion of students (university, primary or high schools) from this civic education program was a missed opportunity to start nurturing civic competence in the country's youth.

3.1.2 COMPONENT IMPLEMENTATION

3.1.2.1 Overview

19. Under implementation, evaluators were interested in examining and establishing how the designed strategies and interventions were translated into actionable activities. In this section we demonstrate 'what was done' and with what results.

3.1.2.2 Interface with Stakeholders

20. Through CMO, COE interfaced with several stakeholders in order to deliver on its targets above. We examined this interface and the type of results it generated.
21. **Interface with media owners and practitioners.** This aimed at reminding owners and senior editors of their crucial role in this process as the gatekeepers of information. The media was urged to cover this process in an ethical manner and to be educative and informative in their reporting rather than to take positions on the review process.
22. We noted from the field survey that the media was for most part responsible and objective in its coverage of the review process⁷⁷. The focus was on the constitution and the civic duty of the public to read and understand the constitution and make an informed decision. As part of civic duty, voters were encouraged to come out and vote. In our assessment, this was aided further by the fact that the two Principals were advancing from the same side. However, we note that the interface with the media was more of an occasional event and less of a continuous engagement. Although desirable, this, in our view did not alter the anticipated results from the media.
23. **Partnership with the provincial administration.** The CoE secretariat staff met up with the members of the provincial administration between 18th June and 3rd July. The reasons for these meetings were two-fold. One, they sought to reassure the Provincial administration on their positions as addressed in the Proposed constitution⁷⁸. Two, having allayed the fears of the provincial administration, they sought the assurance of the latter's

⁷⁷ Mr. Ben Gathugu said the media in the North Rift (home to William Ruto, an ardent opponent of the proposed constitution) were a mouth piece for the "NO" campaign. He gave an instance where a focus group discussion being held live on Kass FM was disconnected when the civic educators started to clearly articulate issues that had been instrumentalized in the area's propaganda politics especially the issue of land and gay marriages.

⁷⁸ There was a lot of speculation on the fate of the provincial administration. There were calls for its repeal but equal support for its continuity in the new constitution. The HDC provided for its abolishment, however the Revised HDC changed this to a year gradual phase-off. In the Proposed Constitution, the manner of the repeal was the prerogative of the devolved government.

cooperation during the civic education period. The Review Act, 2008 clearly spelt out that the role of the provincial administration in supporting CoE and other non-state actors taking part in the civic education process⁷⁹. In the view of this report, this interface worked, but not necessarily because of CMO. Government directive to civil servants to popularize the draft constitution left the provincial administration with no choice but to co-operate with CoE. We must however, note that CMO outreach to the PCs gave them some levels of confidence, hence making it easier for them to co-operate with CoE.

24. **Interface with other KNDR reform bodies.** The other reform bodies were the IIEC (Interim Independent Electoral Commission), IIEBC (Interim Independent Electoral Boundaries Commission), NCIC (National Cohesion and Integration Commission) and TJRC (Truth, Justice and Reconciliation Commission). CoE met with these bodies after the publication of the harmonized draft constitution(HDC) to ensure that the contents of the HDC responded to long term issues of the reform process and the KNDR process and that the HDC contents complimented the intended outputs of the three other commissions. Meetings with IIEC were crucial as this was the body that was tasked with overseeing the referendum. It was to conduct a nationwide voter registration and compile a new voters' roll in preparation for the constitution referendum on the proposed constitution. Moreover, IIEC and IIEBC were also crucial in thematic consultations revolving around feasibility of proposed electoral systems of government and the devolution system.
25. **High level Meetings.** CoE met with the two principals of the coalition government i.e. the President, His Excellency Mwai Kibaki and the Prime Minister, the Rt Hon Raila Odinga⁸⁰. The Ministry Of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) was the next actor COE engaged with. Cooperation with MoJNCCA was instrumental since this was the line ministry of the constitutional review process. Meetings were held with the PSC (Parliamentary Select Committee) to appraise them of the amendments to the Revised Harmonized Draft Constitution and reach a common understanding regarding these amendments⁸¹. What is commendable about the high level consultations is that CoE maintained its independence as it interfaced with these actors. Its ability to stay on course must be recorded as a good practice. One that enabled them to produce a draft devoid of political nuances of any side of the coalition divide.
26. **Sectoral Consultations.** Consensus building meetings were held with religious organizations like the, political leaders, and other interest groups such as the Kenya Private Sector Alliance (KEPSA) and Kenya Land Alliance. Religious organizations included among others; The National Council of Churches of Kenya (NCCCK); The episcopal Conference, Supreme Council of Kenya Muslims (SUPKEM). The main political organizations were the two government coalition partners; The Party of National Unity (PNU) and The Orange Democratic Movement (ODM). CoE

⁷⁹ The constitution Review Act, 2008. Chapter 35 section 3:

⁸⁰ Interview with CMO deputy director Veronica Nduva

⁸¹ Final Report of the Committee of Experts on Constitutional Review. Section 4.5.3 – High Level Meetings

conducted consensus building meetings with political parties in Mombasa from 2nd to 3rd September 2009⁸². The sectoral consultations aimed at leveling out expectations of these groups and the contents in the Harmonized Draft Constitution and The Proposed Constitution.

27. Sectoral consultations, for most part were successful. **The CoE extrapolated the gains of the constitution to each individual group.** This strategy of appealing to a group's self interest paid off as groups supported the constitution because they could directly trace the benefits they would reap from its enactment. Save for the church and some politicians, other sectoral groups, including women, minorities, people with disabilities, professional groups etc supported the Draft Constitution.
28. Although these consultations bore some fruit, some of the sectoral stakeholders argued that CoE was 'bullish' in its approach to consensus building. And this view is attributed largely to the 'No' camp which had occupied a position they were unprepared to change. In the view of this report, therefore, maybe CoE had no option but to 'dominate' the opposing stakeholders and adopt the position of majority of the actors.
29. **The Reference Group:** This was a group of 30 representatives convened by the CoE from interest groups outlined in the fourth schedule of the Constitution of Kenya Review, 2008 Act. Interest groups included religious groups, women organizations, the private sector, special groups, professional groups etc. 45% of the reference group was made up of religious leaders. Their proportionately higher representation was informed by the trust and goodwill that the people of Kenya have in their religious institutions and religious leaders. CMO's handling of the Reference Group was criticized by the Church and the land sector. The observation was that insufficient attention was paid to this group and that CoE's approach to consensus-building did not engender dialogue⁸³.
30. **Partnerships with Civic Education Providers.** CoE worked with a consortia of organisations with complementary roles that all led to the singular goal of effective civic education across the country. The organisations included Pact Kenya, UN Women, Oxfam, Uraia, UNDP Amkeni, SIDA among others. The logic here was that these organisations already had a presence at the grassroots by way of various programmes they were carrying out. Hence they already had inroads and networks, which CoE piggy backed on. For instance in Njoro, the IIEC was carrying out civic education on electoral processes⁸⁴. CoE engaged the same organization that IIEC was working

⁸² Hansard . Verbatim Record Of Proceedings Of The Committee Of Experts On Constitutional Review Consultative Forum With Political Parties Held On 2 September 2009 At Leisure Lodge Resort, Mombasa. Accessed from <http://www.coekenya.go.ke/images/stories/Resources/CoE1.pdf> and Hansard. Verbatim Report Of Proceedings Of The Committee Of Experts On Constitutional Review Consultative Forum With Political Parties Held On 3 September 2009 At Leisure Lodge Resort, Mombasa Accessed from <http://www.coekenya.go.ke/images/stories/Resources/CoE2.pdf>.

⁸³ This was inferred from interviews with Rev Cannon Peter Karanja, The Secretary General for The National Council of Churches of Kenya (NCCCK) and from an interview with Mr. Odenda Lumuba, Secretary General of the Kenya Land Alliance (KELA).

⁸⁴ We learnt this during an interview with the Project Officer for Mau Community Development , a local NGO that was initially engaged by the IIEC and UNDP before eventually partnering with the CoE on conducting civic education in the area.

with to conduct civic education on the constitution. This partnership complemented the CoE and prevented duplication of duties. Moreover it allowed CoE to make inroads into remote areas by using existing networks. This helped the CMO department to cover a lot more territory than it would have had it worked alone. More importantly, it helped CoE to concentrate on the primary task of overseeing, supervising, monitoring, supporting and controlling the civic education activities while these partners carried out the actual civic education activities. We record this approach as a good practice. In fact, future civic education engagements should borrow from the CoE innovative model.

3.1.2.3 Rolling Out the Civic Education

31. **Professional Groups**⁸⁵. The CoE engaged professional groups to conduct civic education in the latter's communities. Professional groups comprised of community representatives, civil society leaders, legal experts and individuals of high standing within the communities. They were used to conduct civic education in areas where the general atmosphere was opposed to the proposed constitution and wary of CoE civic education. Examples were areas indigenous to Turkana Maasai, Kipsigis and Kamba communities although the strategy was employed in other areas as well. Propaganda and message distortion of the contents of the Proposed Constitution was rife in these areas. The professional groups conducted barazas where they discoursed with the community in local languages and constructively debated the contentious issues and set the record straight on the distorted information. Some of these professionals, who participated in this included Ekuru Aukot, Peter Ayugi, the Late Michael Chelogy, Koki Muli, and Andrew Mulei. CoE would provide them with necessary material for distribution, transport and other logistical support and the professional groups would provide the much needed rapport and legitimacy for conduction of civic education
32. **High Impact Dissemination**. This was an intervention that targeted 11 identified areas that were deemed as most affected by propaganda. Some of the clauses that had been taken out of context touched on issues relating to Land and property rights, Bill of Rights, Family rights and marriage, Citizenship, Kadhi Courts, Provincial Administration and Devolution. The CoE carried advertisements in the newspaper giving the schedule of activities which ran from 13th July 2010 to 31st July. The intervention took two forms; **public forums** and **road shows**. During public forums. CoE discussed contents on the constitution that had been distorted by propaganda, took questions from the public and urged members of the public to Participate in the coming referendum. Roadshows were characterized by entertainment followed by segments for education by the members of the CoE on live radio links⁸⁶. The radio shows were collaboration between CoE and Royal Media services which has FM stations broadcasting in local languages in various parts of the country⁸⁷. While some of these smacked of 'hit-and-run' initiatives, they

⁸⁵ CMO Final Report.3.2.20. Use of Professionals in Conducting Civic Education

⁸⁶ This concept of combining education and entertainment is aptly referred to as edutainment.

⁸⁷ CMO Final Report.3.2.26. High Impact Dissemination

had the desired effect in the long-run. These creative ways of doing civic education must be recorded as having increased the value of the grants given to CoE by the basket.

33. **Guerilla Marketing.** In order to increase their reach, CMO embarked on a 'guerilla marketing' strategy where they took advantage of upcoming public occasions and moments. They made use of unplanned opportunities that provided a forum to interact with members of the public. One such opportunity was the **Legal Awareness Week**⁸⁸, whose theme was "*The Emerging Issues in the Proposed Constitution of Kenya.*" The focus on the constitution afforded CoE a chance to engage with Kenyans on discussions around the constitution and to distribute IEC and draft copies of the proposed constitution. 16,000 English copies of the PCK, 11,000 Swahili copies of the PCK, 14,000 copies of the Simplified Version and 200 copies of the Handbook on civic education were distributed during this event.
34. The other such opportunity was The World Cup and The Agricultural Society of Kenya (ASK) Shows. On the World Cup, CMO took advantage of increased viewership and intensified advertising in media so as to reach the increasing audiences⁸⁹. Similarly, CMO participated in 9 ASK shows across the country. In the Nairobi ASK Show, Kitale ASK Show and Eldoret ASK Show 6,000, 20,000 and 5,000 people visited the CoE stands respectively⁹⁰. They also participated in Agricultural shows in Nakuru, Kakamega, Machakos, Meru, Nanyuki and Kisumu. In addition to setting up stands and distributing material, CoE also advertised on the ASK catalogues where they published Frequently Asked Questions (FAQs) on the constitution with accompanying answers⁹¹. To reach the youth, CMO used Music Concerts. As part of edutainment CoE worked with a group of musicians 'Kenyans 4 Change 2010' led by Achieng Abura. During these concerts, the musicians would urge revelers to read the constitution and then they would invite CoE members to briefly discuss it.
35. Guerilla marketing, as a variant of civic education, must also be recorded as an innovation of CoE. In the view of this report, this approach can be replicated in future, especially in similar circumstances to those of CoE.
36. Some Challenges. We recorded a few challenges to the implementation process.
37. **Undue advantage to the "NO" team.** Delays in releasing Funding and material to support civic education gave the "NO" campaign team a head start over the CoE. In addition there was a two week delay in arrival of

⁸⁸ CMO Departmental Final Report. Section 3.2.22. Legal Awareness Week

⁸⁹ Interview with CMO Deputy Director, Veronica Nduva

⁹⁰ [coekenya.go.ke. Participation in the ASK Nairobi Show, ASK Kitale Show and ASK Eldoret Show.](http://www.coekenya.go.ke/Participation%20in%20the%20ASK%20Nairobi%20Show,%20ASK%20Kitale%20Show%20and%20ASK%20Eldoret%20Show)
 Accessed from
http://www.coekenya.go.ke/index.php?option=com_content&view=article&id=192:civic-education-activities&catid=72:programs&Itemid=157

⁹¹ CMO Departmental Final Report. 3.2.21. Participation in the Agricultural Society of Kenya (ASK) Shows. Advertising in the ASK Catalogues.

materials from Nairobi to the field⁹². During this time, the civic educators had to make do with distributing newspaper inserts which had the disadvantage of non-durability. Delays in receiving the PCK copies combined with the several versions of the draft that were in existence (HDC, RHDC) led to a case of several drafts being in circulation. Some Actors opposed to the proposed constitution were accused of citing clauses in outdated drafts and purporting them to be the contents in the PCK.

38. **Accessibility of remote areas.** In lower eastern, it was difficult to access arid and semi-arid areas using public transport and the CCEs more often than not exceeded their transport budgets⁹³. In Njoro and Molo, the civic education period coincided with the long rains making many roads in the interior impassable. Civic educators had to walk on foot with materials in rainy weather. The scenario was further complicated in areas where the civic educator did not speak the local language; necessitating the hiring of a local interpreter.
39. **Neutrality of the CoE** during the civic education exercise was questioned in some instances with accusations of the CoE being in the “Yes” Camp. The review Act specifically asked the CoE to deliver an affirmative referendum vote. However, the CoE was also tasked with conducting civic education in an unbiased manner. All respondents interviewed in this evaluation were of the opinion that CoE conducted neutral and objective civic education. However, there were two particular instances where CoE was perceived as partisan; providing ammunition for those opposed to its activities.
- a. One, the use of color green by the CoE and the use of the same by the IIEC as a symbol for those supporting the constitution. The CoE corporate colours were green, red, black and white; symbolic of the national flag. IIEC came up with colours to symbolize support for (green) or against (red) the proposed constitution at the national referendum. This was informed by the logic of traffic lights and the meanings of the colours. However, the “green’ debate took a discourse of CoE support of the “Yes” camp. This led to a lot of propaganda on the ground and inability of CoE to use already prepared IEC material that was printed in green.
 - b. Two, during the civic education period, CoE partnered with royal Media services conducting road shows especially in the high impact dissemination exercise. However, there were claims that Royal media services had taken up a position on the proposed constitution and openly campaigned in its favour using CoE platforms. This partisanship hued the public perceptions of CoE in some cases⁹⁴.

⁹² Interview with James Makumi Chairman/ Project Officer of Mau Development Organisation Njoro and Mr Ben Gathugu, Constituency Civic educator, Nakuru Town

⁹³ Although they were told by CoE they would be reimbursed for incurring additional expenses when they returned their monthly progress reports, this was not the case in practice.

⁹⁴ Elog report- Kenya Election observation group Accessed from

40. **A divided political class.** Despite the united support for the new constitution by the two coalition principals, the political class did not speak with one voice on the constitution. The political class started their campaigns way before the constitutionally mandated date. All constituency civic educators cited politicians as one of the hindrances to conduction of civic education.
41. There was **deliberate distortion** of contents of the draft constitution to suit individual political ends. In rift valley, the discourse on the ground was that if the constitution was approved, land will be forcefully taken away from some communities⁹⁵. This same discourse was reiterated in Lower eastern region where people were told the government will start limiting land ownership. This idea took root and fostered a lot of opposition specifically in Kibwezi, Masolongani and Kiboko settlement Schemes. The residents were scared that their land will be taken away and there will be inter-ethnic conflict between the Maasai and the Kamba communities⁹⁶.
42. **Bribery** accusations were also leveled against politicians during the field study. This worked against the cash strapped COE and other resource-stretched non-state actors who conducted civic education. In Nandi Hills, national leaders would give money to local politicians to disrupt civic education activities. This forced the civic educators to shift from the workshop model and start using opportunistic forums such as market places⁹⁷.
43. **Disruption of Civic Education activities and intimidation of civic educators.** This was the case in areas where people were opposed to the draft constitution. Civic educators would be barred from addressing the public. In Iten, the local councilor delayed renting out the Public Hall for hours and once they gave the civic education team permission to use the hall; they took the front seats and heckled then throughout the function⁹⁸. In lower eastern region, some MPs were accused of asking their supporters to beat up civic educators.
44. **Religious institutions and leadership, notably the church.** The mainstream churches were opposed to the constitution. The Catholic Church was opposed to the manner in which the clause on abortion was drafted claiming it led to ambiguity and by omission, allowed for unchecked abortion. It was also against the automatic adoption and supremacy of ratified international statutes over domestic law⁹⁹. The Anglican Church was opposed to the constitution referendum taking place in a polarized environment as it was¹⁰⁰. The protestant churches and the evangelical churches were also opposed to the constitution. While the protestant and evangelical churches were opposed to the clause on Kadhi's Courts, the Catholic Church opposed to the clause on abortion. The church was also

⁹⁵ Interview with James Makumi Chairman/ Project Officer of Mau Development Organisation Njoro and Mr Ben Gathugu, Constituency Civic educator, Nakuru Town

⁹⁶ Focus group discussion with various constituency civic educators in Machakos

⁹⁷ Interview with Mr Ben Gathugu, Constituency Civic educator, Nakuru Town

⁹⁸ Ibid

⁹⁹ Stand Up for Life. Accessed from muigwithania.com/tag/kenya-news/

¹⁰⁰ www.ackkenya.org/news/statements/archbishops_referendum_message_31July2010.pdf

opposed to clauses related to land and property which it felt was infringing on their rights. Ironically, while mainstream churches opposed the constitution, Coe was able to reach out to smaller churches and independent churches. One of the respondents in Nakuru, a pastor at the IDP camp confirmed having attended consensus building workshops organised by CoE where they were educated on the contentious clauses and consensus was achieved¹⁰¹.

45. **Provincial Administration.** Although the provincial administration was singled out in the review act, 2008 as providing support during civic education; this did not happen in some areas. The provincial administration was vital in logistics, mobilization and outreach as they would be used to organize meetings and distribute education material. CCE respondents gave instances where the Provincial Administration hindered effective working of Civic education activities. For instance, In Nakuru, there was reluctance and difficulty in obtaining copies of the constitution from the PCs office, forcing the CCE to keep the copies in his house.
46. **Ethnic tensions.** Where ethnic tensions were high, members of the public preferred being educated by a member of their own community over one from another community¹⁰². A case in point was the Kalenjin dominated Mauche division where the residents of the area who had already taken a negative stand against the constitution; refused to let Mr. Makumi address them because he is Kikuyu and was seen as a supporter of the constitution. In the particular case of Mauche, MDC circumvented the problem by getting civic educators who were indigenous to the area. Despite this, civic educators had to be careful not to anger the people in the area and emphasize that their civic education was not partisan but neutral. Other areas where the COE was perceived as partisan and unwelcome included Kuresoi, Londiani, Kipkelion, Chepsion, Kedowa, Litein / Buret and Sotik.
47. **Extent of Reach.** The CCEs were too few to cover the constituencies, especially the big constituencies. They had to go over and above their expected outputs for effective civic education. In Nakuru and Machakos, civic educators were not restricted to their constituency and where they were effective, were allowed to cover greater geographical territory¹⁰³. Presence of CoE on the ground was taken as a measure of credibility and CoE educators lent a sense of legitimacy to the civic education process. In Lower eastern, a civic educator trained by URAIA mentioned instances where people were reluctant to give him audience when he was unaccompanied by the area CCE. This is because they were suspicious of the agenda of an NGO conducting civic education when the CoE was mandated to conduct the same function.

¹⁰¹ FGDorganised by the provincial representative of people with disabilities and representatives of minorities and special groups from the IDP camp Nakuru.

¹⁰²Field visits in Nakuru revealed this in particular.

¹⁰³ Ben gathugu , James Makumi of Nakuru and Mr. Kimote and Elijah Munove covered vast areas way beyond the areas they had been allocated.

43. Lessons Learnt. We recorded the following lessons

- a. CoE should have had a more pronounced presence on the ground as it had legitimacy that the other organizations lacked. While CoE took up the role of providing overall leadership and support and let other organizations do the actual civic education, it would have been more effective if it increased its presence on the grassroots.
- b. The approach used by CoE of preempting opposition and securing buy-in by seeking cooperation with each of the actors individually was very savvy. Not only were they able to smooth out the process from the start, they were also able to read into the politics of the process and achieve **consensus through dominance**. That is, given the time constraints and the fact that majority of the political players had been mobilized to support the constitution, it was not necessary to create consensus through dialogue. Such consensus was easier created by using the 'tyranny of numbers' which was in favour of the 'Yes' Team. This ability to force consensus through dominance was politically savvy in the view of this report. Moreso because the contentious voices had hardened their positions and dialogue was not going to change it.

44. Recommendation:

- a. Civic education should be tailor-made for different audiences. For example one has to factor in reading habits, literacy rates, preferences of mode of communication and others, while deciding on the best mix of civic education strategies.
- b. Future projects should adopt a **multi-pronged intervention** approach like the COE did with direct engagement, partnerships and media engagement. Not only does the complementarity save on valuable resources, it also results in a division of labour leading to efficiency.
- c. **Re-grouping and Re-mapping of Non-state actors:** This will prevent the recycling of the same members of the civil society in workshops. It was noted that one of the weaknesses of the workshop model was its inability to reach many people. This is partly because the participants in these workshops tend to be the same regardless of the program being implemented leading to a phenomenon of Professional Workshop Attendants. Presence of professional workshop attendants could be indicative of the maturity of civil society in the country. More worrying though is the risk that they are likely to become information gatekeepers, choosing what to tell, what not to tell, and how to tell what to tell. Regrouping and remapping of non-state actors will inject new ideas in civic education and hopefully allow for engagement with higher and varied audiences.

- d. **Continue with civic education**¹⁰⁴. Due to the very short time allocated for civic education, the civic education that took place was enough to convince the public on the merits of the Proposed Constitution but failed to translate into civic competence. Moreover, it was targeted at the voting public only, leaving out other demographic segments. In areas where people were opposed to the constitution, very little or no civic education took place¹⁰⁵. All these people and the country in general, need to be educated on the constitution. There should be an understanding among the general public not just of their rights but of their responsibilities as explained in the constitution.

3.3 Research Drafting and Technical Support

3.3.1 Component Design

45. **Design Intent.** This component of the had its mandate clearly spelt out in the Review Act, 2008:

- a. *"solicit and receive from the public written memorandum and presentations on the contentious issues"*¹⁰⁶
- b. *"Carry out or cause to be carried out such studies, researches and evaluations concerning the Constitution and other constitutions and constitutional systems"*¹⁰⁷
- c. *"Articulate the respective merits and demerits of proposed options for resolving the contentious issues"*¹⁰⁸
- d. *"Prepare a harmonized draft Constitution for presentation to the National Assembly"*¹⁰⁹

46. The overall function of this component was to analyze and express the views and recommendations presented to the COE by the public. This was to be done in a manner that not only maintained the participatory approach of the process but also strengthened and solidified public ownership of the document. Ultimately, this component was charged with the proper and accurate reflection of the views and wishes of the Kenyan people throughout the constitution review process¹¹⁰.

¹⁰⁴ This was proposed by all respondents we interviewed in the field and by the CMO in its final Report.

¹⁰⁵ Mr. Makumi informed us there was no civic education in Kuresoi constituency and his organization was now conducting civic education in Kuresoi Post Referendum.

¹⁰⁶ Section 23(c) The Constitution of Kenya Review, 2008 Act. Functions of the Committee of Experts

¹⁰⁷ Section 23(e) The Constitution of Kenya Review, 2008 Act. Functions of the Committee of Experts

¹⁰⁸ Section 23(f) The Constitution of Kenya Review, 2008 Act. Functions of the Committee of Experts

¹⁰⁹ Section 23(h) The Constitution of Kenya Review, 2008 Act. Functions of the Committee of Experts

¹¹⁰ Committee of Experts on Constitutional Review. Research Drafting and Technical Support. Accessed from http://www.coekenya.go.ke/index.php?option=com_content&view=article&id=99:research-drafting-a-technical-support-&catid=49:departments&Itemid=90.

47. To ensure proper execution of the functions above, the CoE formed sub-committees with a clear division of labour¹¹¹. There were two sub-committees; **Sub-Committee on Research** and **Sub-Committee on Drafting**.

- a. The sub-committee on research focused on the research function of this department and ensured that the relevant findings of their research informed the committee reports¹¹².
- b. The sub-committee on drafting was tasked with drafting recommendations on various aspects of the constitution drafts. This was to be a continuous process that would reflect the changes and compromises made on the constitution document during the review process¹¹³.

3.2.2 Component Implementation

48. **Library, documentation and reports.** The research department set up a library with relevant materials on constitution making including constitutions from all over the world¹¹⁴. Similarly, the CoE website has downloadable publications of the different constitutional drafts¹¹⁵, civic education material and articles written by the experts clarifying on contentious issues in the constitution. This points at an attempt to make constitution process-related documents available to the public. However, this still fell short of the requirement set in the review act¹¹⁶. Most glaringly was the absence of progress reports by all other departments with the exception of CMO. The evaluation team was unable to determine whom these reports and documentation had been handed over to. Proper handing over was very instrumental in light of the fact that the secretariat would be disbanded and the CoE dissolved 45 days after the promulgation of the new constitution.

49. **Coding collation and analysis of memoranda, communication and views from the public**¹¹⁷. The CoE allowed the public a 30 day period running from 17th November when the HDC was published; for the public were to debate the contents of the HDC and submit their views to the CoE. For proper information management, the department set up two databases; the first database contained bio data of the people who presented their views while the second database housed the actual observations and recommendations that had been presented. The COE received 39,439 copies of substantive memoranda and a total of 1,732,386 suggestions or recommendations from the public¹¹⁸.

¹¹¹ CoE final Report. Annex 2: Sub-Committees of the CoE

¹¹² Members of this committee were Otiende Amollo, Chaloka Beyani, Atsango Chesoni, Christina Murray and Frederick Ssempebwa and the late Michael Chelogy.

¹¹³ Members of the committee were Fredrick Ssempebwa, Otiende Amollo, Chaloka Beyani, Bobby Mkangi, Christina Murray and Njoki Ndung'u

¹¹⁴ Final CoE Report 2010. Section 4.4.4.

¹¹⁵

¹¹⁶ Section 36 of the Constitution of Kenya Review Act, 2008, Maintenance of Records

¹¹⁷ Final CoE Report 2010. Section 7.2 (a) Methodology used by the CoE to review the Harmonized Draft Constitution

¹¹⁸ Final CoE Report 2010. Section

50. **Printing of copies of the constitution.** Copies of the proposed constitution were printed as **books** and as **newspaper inserts**. The books were copies of the proposed constitution in English, Kiswahili and in Braille. Copies of the simplified version were printed as well. Newspaper inserts of the Proposed constitution were available on specified dates in *The Nation*(250,000) , *The Standard*(250,000), *The Star*(100,000) and *Times* (5,000) dailies.

51. **Dissemination of copies of the harmonized draft constitution.** Printed books on the harmonized draft constitution were transported by air and road depending on the accessibility of the region. Some of the areas where helicopters were used for dissemination of the material included Mandera, Wajir, Moyale, Marsabit, North Horr, Maralal, Baragoi, Loyangalalani, Lodwar, Lokichogio, Lokitaung, and Lokichar. Hard copies were disseminated by CoE staff, G4S Courier service and partners who were offering in-kind support. Once they reached the destination, the Provincial Administration worked with the CoE and other non-state actors involved in the civic education to help disseminate the material to the voters in the respective regions. Hard copies numbered up to 4 million while the CoE, website recorded 2, 589, 352 downloads of the constitution giving an estimation of 6, 589,352 disseminated copies of both hard and soft copies of the harmonized draft constitution¹¹⁹.

52. Lessons learned from the above activities include the following

- c. **Proper information management** and complete documentation is essential in any project, more so in a project of this nature where the project related documents are to be archived for future reference by the public.
- d. **Information technology** has come of age and is an effective way of communication. As the website, SMS service and social networking websites demonstrated, it is cheap and as effective as the traditional forms of information sharing. Over one third of the harmonized draft constitution copies that were disseminated were in soft copy having been downloaded from the CoE website.

3.2.3 Component Performance

53. We were unable to speak to any of the secretariat staff in the research drafting and technical support department ¹²⁰. This made it difficult to clarify the outcomes of the department. The situation was further complicated by the lack of departmental progress reports making the evaluation team to infer the outcomes of this programme from other CoE material such as the CMO departmental, COE supplements and CoE final report. Despite this obstacle, the department was able to fulfill one of its

¹¹⁹ The Report Of The Committee Of Experts On Constitutional Review Issued On The Submission Of The Reviewed Harmonized Draft Constitution To The Parliamentary Select Committee On Constitutional Review, 8th January, 2010.

¹²⁰ The deputy director , research , drafting and technical support, Mr Michael Chelogy passed on in 2010. We were unable to secure an interview with the person recommended to speak with us in his place.

main tasks which was to produce constitution drafts that aptly captured sentiments expressed by Kenyans during the constitution review process.

54. **Incomplete reporting:** The final report for the CoE covered the activities and challenges of the constitutional review process. However, it missed out on several important issues. The report did not provide for actual budgetary expenditure for the process in the report. With no access to most of the departmental reports, it made triangulation of this information impossible. There was also failure to mention the financial consequences that the government printer error had on the CoE. The government printer, printed copies of the constitutions that had unauthorized insertions that altered the interpretation of clauses concerning national security and human rights¹²¹. Over one million copies which had been printed had to be destroyed and new copies with the corrected clause printed afresh. The government downplayed the budgetary implications of the error by saying distribution of erroneous copies was minimal¹²². However, there must have been budgetary consequences to this error. The evaluation team was unable to get any documents giving details of this incident. It would have been important to know who covered the cost of printing the new copies of the constitution, the number of erroneous copies that had been distributed (a figure confirmed by CoE), the budgetary implications for CoE, the dissemination and logistical consequences of this mishap among other things.
55. **Maintenance of records.** Although the CoE Website has most of the material used in the review, internal reports, such as departmental reports are not available. We were unable to get copies of these during the evaluation as UNDP did not have them save for the CMO final departmental report. Failure to access these records could be due to three reasons. One, the reports were never written in the first place. Two, the reports were written but were not circulated to the public because they were about internal operations. Thirdly, the reports were written but were not given to UNDP during the handing over by the secretariat before its disbandment¹²³.
56. In the interview with the CMO deputy director, she gave the requirement for periodic progress reports as one of the challenges she faced as the CoE faced time constraints. One of the UNDP team members went ahead and clarified that they did not receive any progress reports as would have been required by UNDP reporting procedures¹²⁴. However, UNDP made concessions for CoE due to the gravity of the project and the great public expectation that was placed on this project.

¹²¹ Allfrica.com ,Nairobi star, 12 May 2010. *Who Smuggled Clause in to Draft?*
Accessed from <http://allafrica.com/stories/201005120935.html>.

¹²² Office of Public Communication, (Office of the government Spokesman). 13/05/2010. *Error in Printing of Proposed Constitution Copies*. Accessed from <http://www.communication.go.ke/media.asp?id=1152>

¹²³ The CoE secretariat was disbanded by law 30 days after the President signed the Constitution into law. This was provided for in the *Review Act 2008*.

¹²⁴ Interview with Dr. Ozonnia Ojelo, Team leader, Peace Building and Conflict Prevention Unit. UNDP-Kenya

57. **Copies of the constitution.** The CoE has stated in their reports that there was a higher reception to the English version of the constitution compared to the Swahili ones¹²⁵. The civic educators had to translate clauses into Kiswahili and vernacular during the civic education exercise. This was not only time consuming, it also posed the risk of the contents being distorted as word meanings were lost in translation. Respondents who conducted civic education in Nakuru¹²⁶, Juja¹²⁷ and Machakos¹²⁸ argued that they would have preferred to have more Swahili versions than English versions. They also proposed for copies of constitution in vernacular. In addition, they wanted all these language translations to be available in simplified versions.

58. Recommendations

- a. In a situation where the donors support an emergency project like this and it comes to an end, there should be a clear and complete handing over of the project materials. This makes access to the project documents much easier when one wants to make reference to them in the future.
- b. Where documents are printed for public circulation, they should take into account the ethnic diversity of Kenyans, their varying levels of literacy as well as the people with disabilities. Materials for public consumption should be easy to read and understand without diluting or distorting the message being passed across. Equally important to the printing is that there is enough material being produced and that the target audiences can access the publications with ease.

3.4 Public Information and Media

3.3.1 Component Design

59. The overall goal of this component was to keep the public informed about the constitutional review process. It was the avenue through which the intentions of the CoE were voiced to the public. The public information and media program worked closely with the CMO programme to educate voters, and to stimulate public discussion and raise awareness on the activities of the constitutional review process¹²⁹.

3.3.2 Component Implementation

60. **What was done?** The media was one of the actors that CoE sought to establish partnerships with right from the beginning of the process. Activities in this program were closely related to and highly complementary

¹²⁵Interview with James Makumi, Chairman /Project Officer Mau Development Organization and Ben Gathogo, Constituency civic educator, Nakuru Town Constituency.

¹²⁶Interview with Michael Oliewo, Political Activist and chairman of Juja Constituency development Initiative

¹²⁷Interview with James Makumi

¹²⁸Interview with Elijah Munove Kyalo, civic educator affiliated with URAIA

¹²⁹ The Deputy Directors for Public Information and Media and Civic Education, Mobilization and Outreach; Vitalis Musebe and Veronica Nduva respectively sat on the sub-committee for Civic Education.

of the Civic Education, Mobilization and Outreach (CMO) programme. The aim of this program was to saturate the voter with enough knowledge on the constitution with the intention of behavior change¹³⁰.

61. Advertisements were carried in mainstream and alternative media. Mainstream media comprised of traditional media agents such as radio, newspapers television and billboards. Alternative media comprised of means of communication that have emerged with advances in information technology and telecommunication. These included SMS (short message service), social networking sites such as Facebook and Twitter, blogs among others.
62. Initially focus was on the mandate of the CoE, activities and timelines of the review process and general awareness on the review process. Then as the research and drafting department carried on its work, the public information and media content updated the voters on the contents and various changes that were incorporated into the drafts as the review process progressed. Periodically, the public would also be reminded about the timelines of the process. Lastly, there were advertisements that raised awareness and the centrality of the voter in the review process. This was best captured in the JJJ (Jisomee, Jiamulie , Jichagulie¹³¹) campaign accompanied by the image of a ballot box and a voting slip. Emphasis was placed on the fact that the acceptance or rejection of the proposed constitution was solely the voter's prerogative and no one else's. Moreover, the question of acceptance or rejection would be determined at the referendum and not at any other forum. This was aimed at shoring the confidence of the voters about the legitimacy of the referendum process.
63. **SMS Service.** The CoE team approached mobile phone companies to use short message services to convey brief important educative messages about the constitution review process. Although this was a budget item with cost approximations; the CoE team also encouraged mobile phone companies to offer this service free of charge and ascribe it to their Corporate Social Responsibility (CSR) for the year¹³².
64. **Newspaper articles¹³³:** The CoE solicited for editorial /non-paid publicity in different newspapers and also ran paid advertisements. The articles and advertisements relayed information on the mandate of the CoE ,how to submit views on the constitution, messages emphasizing that the ultimate decision maker was the voter (Jisomee, Jiamulie, Jichagulie - JJJ campaign), timelines for the different activities during the process among others. According to an independent media monitor Synovate, in November 2010, articles related to the Harmonized draft constitution

¹³⁰ It was estimated that the average voter needed to interact with the civic education at least 6 times if there was to be behavior change. Due to time and financial constraints, the traditional “workshop model” of civic education could not achieve this level of interaction. New methods of education and interaction had to be utilized, where previously people gathered to be educated, the new methods sought people out wherever they were and educated them there.

¹³¹ This roughly translates into “read for yourself, decide for yourself and choose for yourself”

¹³² Interview with Veronica Nduva, Deputy Director, Civic Education , Mobilization and Outreach.

¹³³ Committee of Experts on Constitutional Review . *The Daily Nation*, 16 June 2009. *Constitution Review* Accessed from http://www.coekenya.go.ke/images/stories/Resources/CoE_SupplimentFinal.pdf

covered the equivalent of 84 full newspapers spread over 10 print media titles in Kenya¹³⁴.

65. **TV and radio advertisements.** Advertisements were run on mainstream TV and radio stations and vernacular radio stations. The latter was particularly effective in reaching audiences in the rural areas. According to synovate, there were 14,349 radio spots and 3,967 TV spots related to advertising the HDC related information in the month of November. We were unable to meet respondents from Synovate to find out the media statistics for the other stages of the constitutional review process.
66. **Information technology:** Social networking sites such as Facebook and Twitter were used to reach out to youthful audiences. This media had the added advantage of being cheaper than mainstream means of advertising.
- a. **Design Challenges** although the component design was innovative, using both below and above the line advertising, parties opposed to the review process used the same media to stage their 'NO' campaigns. It was not uncommon to find CoE advertisements running at a similar time segment with political campaign advertisements on TV, radio and in newspapers. This sent conflicting messages to the voter and compromised the perception of the CoE as a neutral body; instead framing it as an opponent to the 'No" campaign.
 - b. **Component Recommendations.** Use the 'cocktail' of communication methods for maximum engagement with the target audience. This way, members of the public are likely to interact with more than one of the methods used for communication. This leads to increased interaction with the message which increases the likelihood of better understanding and behavior change. Future projects of this nature should identify their target audience after which they can select the best mix of communication methods so that they can achieve maximum engagement with these audiences.

¹³⁴ Final CoE Report. 6.4.8 „Publication and Dissemination of the Harmonized Draft.Public Response to the Harmonized Draft Constitution.

4 Summary Recommendations

4.1 OVERALL RECOMMENDATIONS.

1. Given the fragile political environment in Kenya after PEV, a ‘rapid funding mechanism’ like the one under review is a *sine qua non*. However, this cannot advance in response to emergencies. Enough lessons have been learnt from the CoE funding under review and the basket support to KNDR. These lessons should be consolidated into a framework for emergency funding. The framework should then guide future grant-making to situations such as the one CoE was responding to.
2. While the above refers to a funding framework, we also recommend that future support to such projects be made on the basis of a comprehensive implementation framework. This would provide the interface between the basket and the project holder; the results management framework and the tracking system internally and externally.
3. Funding through the basket mechanism should not just be a ‘financial facility’. Efforts to avail collective programme experiences of the co-operating donors should also be made. CoE would have benefited immensely from such a ‘repository’ of knowledge and experience.

Program Design

1. Regardless of the circumstances, a **rapid capacity audit** should be a minimum mandatory requirement for emergency interventions of this nature in future. This will be to curtail the possibility of watering down the

prescribed remedy to a crisis of this nature through incapacitated response mechanisms and instead ensure the maximum possibility of achieving the peace and reconciliation objectives of the intervention.

2. Any future programming in this area be preceded by an analysis of the nature of assistance and to which levels of the project the mode of assistance would be best suited. These should then be prioritised and sequenced accordingly with the intention of identifying which mode of assistance ought to be transmitted first and which ones to follow.
3. A more nuanced project monitoring, evaluation and reporting system capable of processing the subtle nuances of qualitative results found in the democratic governance sector be developed and mainstreamed in project implementation in future. Sourcing for this capacity in future programming is a *sine qua non*. In the view of the consultants, the absence of this meant that critical lessons were not analysed and fed back into programming.
4. Borrowing approaches used in other rapid-response initiatives such as are found in humanitarian aid and disaster response programmes which are very flexible to cope with the nature of the emergency. Establishing a framework for an emergency kitty that is just as flexible to respond to crises in governance and development, as was the case in the post-election violence period is an idea for the donor community to consider. The implication of this recommendation is a readjustment in the funding strategies of the donor organizations to accommodate looser restrictions on due diligence, checks and balances when it comes specifically to emergency interventions of this nature in the governance sector.

4.2 COMPONENT RECOMMENDATIONS.

4.2.1 CIVIC EDUCATION, MOBILIZATION AND OUTREACH(CMO)

1. The approach used by CoE of preempting opposition and securing buy-in by seeking cooperation with each of the actors individually was very savvy. Not only were they able to smooth out the process from the start, they were also able to read into the politics of the process and achieve **consensus through dominance**.
2. Future programs should adopt a **multi-pronged intervention** approach like the COE did with direct engagement, partnerships and media engagement. Not only does the complementarity save on valuable resources, it also results in a division of labour leading to efficiency.
3. **Re-grouping and Re-mapping of Non-state actors:** This will prevent the recycling of the same members of the civil society in workshops. It was noted that one of the weaknesses of the workshop model was its inability to reach many people. This is partly because the participants in these workshops tend to be the same regardless of the program being implemented leading to a phenomenon of **Professional Workshop Attendants**. Presence of professional workshop attendants could be

indicative of the maturity of civil society in the country. More worrying though is the risk that they are likely to become information gatekeepers, choosing what to tell, what not to tell, and how to tell what to tell. Regrouping and remapping of non-state actors will inject new ideas in civic education and hopefully allow for engagement with higher and varied audiences.

4. **Continue with civic education**¹³⁵. Due to the very short time allocated for civic education, the civic education that took place was enough to convince the public on the merits of the Proposed Constitution but failed to translate into civic competence. Moreover, it was targeted at the voting public only, leaving out other demographic segments. In areas where people were opposed to the constitution, very little or no civic education took place¹³⁶. All these people and the country in general needs to be educated on the constitution. There should be an understanding among the general public not just of their rights but of their responsibilities as explained in the constitution. This civic education can take a two pronged approach:
 - a. **Establish a civic education directorate** whose sole mandate will be to conduct civic education on the contents of the constitution. Additionally the directorate should also educate the public on the various pieces of legislation that are needed to flesh out the constitution. This will not only lead to the desired civic competence in the public but will also act as a check to legislative mischief.
 - b. **Include civic education in the school curriculum right from primary school up to college and university level.** It is important to commence at the basic level of education so that even those who drop out of school early will have a basic understanding of the constitution before they engage with the civic education directorate.
5. The project should have had less constraining timelines so as to allow for more time to conduct civic education. Further training would have prepared the CCEs better for their work. They would have been able to keep better records, organize their activities better and respond better to the challenges thrown to them by the “NO “campaign team.

4.2.2 RESEARCH, DRAFTING AND TECHNICAL SUPPORT

1. There should be a project manager to supervise project activities, funding and proper reporting. The project manager should oversee the installation of systems relating to information management, financial management and monitoring and evaluation. The manager will be able to compromise between proper systems and reports on one hand and strict deliverable timelines on the other hand.

¹³⁵ This was proposed by all respondents we interviewed in the field and by the CMO in its final Report.

¹³⁶ Mr. Makumi informed us there was no civic education in Kuresoi constituency and his organization was now conducting civic education in Kuresoi Post Referendum.

2. When a project comes to an end, there should be a clear and complete handing over of the project materials. This makes access to the project documents much easier when one wants to make reference to them in the future.
3. Where documents are printed for public circulation, they should take into account the ethnic diversity of Kenyans, their varying levels of literacy as well as the people with disabilities. Materials for public consumption should be easy to read and understand without diluting or distorting the message being passed across.

4.2.3 PUBLIC INFORMATION AND MEDIA

1. **Use the 'cocktail' of communication methods** for maximum engagement with the target audience. There should be continued use of a mix of information sharing methods since this ensures increased engagement of the program with more people.
2. **Fine-tune a specific mix of methods of communication** to respond to the priority program demographics and be optimized against resources. Future programs should identify their target audience after which they can select the best mix of communication methods so that they can achieve maximum engagement with these audiences.

FINAL REPORT

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- Annex VI: Committee of Experts Financial Budgets

FINAL REPORT

Annex I:

TERMS OF REFERENCE**EVALUATION OF SUPPORT TO THE COMMITTEE OF EXPERTS (COE) ON CONSTITUTIONAL REVIEW THROUGH THE PROJECT CONSOLIDATING GAINS FROM THE KENYA NATIONAL DIALOGUE AND RECONCILIATION PROCESS****1. Background**

Kenya experienced the greatest threat to its stability since its independence with the violence that escalated into a political crisis that engulfed the country following the 2007 general elections. The genesis of this tension can be traced back to the 2005 referendum on the new constitution, which was rejected. The campaign leading up to the referendum was characterized by violence, hate speech and ethnic as well as regional clustering, the culmination of which was witnessed during the 2007 post-election violence. The international mediation effort in reaction to this crisis resulted in the signing of the National Accord and Reconciliation Act (NARA) on 28th February, 2008. The first three agenda items of the peace accord focus on immediate peace dividends of the crisis, while Agenda item 4 of the accord focuses on the long term issues, including constitutional, legal and institutional reforms.

The general principles of the constitution review process comprise of five main stages to be completed within a stipulated time period. These principles are:

1. An inclusive process to establish a statutory constitutional review;
2. The enactment by Parliament of a constitutional referendum law;
3. The preparation of a comprehensive draft Constitution by stakeholders with assistance of expert advisers;
4. Consideration and approval by Parliament of the resulting proposals for a new Constitution; and
5. The organization of a referendum on the new Constitution.

Although the Government of Kenya pledged USD 7.71 million to support the Committee's budget amounting to USD 19.8 million these funds were not forthcoming six months into the Committee of Expert's (CoE's) period of operation, which seriously hampered the Committee's work, delayed key activities and created the need for other sources of funding. Within this context and pursuant to Section 53 of the Constitution Review Act, 2008 which allows the CoE to receive grants, donations and/or bequests to ensure it meets its objectives, the CoE sought donor assistance to meet its objectives.

Subsequent discussions held between the CoE and donor agencies reached consensus that donor funding be channeled through the Coordination and Liaison Office (CLO) of the African Union Panel of Eminent African Personalities using the framework established under the UNDP project, Consolidating Gains from the Kenya National Dialogue and Reconciliation (KNDR) process, whose mandate is to promote and facilitate the effective implementation of the KNDR agreements with a view to the sustainable realization of national development objectives through entrenchment of constitutionalism, democratic governance and national

cohesion. Under this project, UNDP Kenya through the use of a basket fund modality, acts as a fund manager for the project funds, as well as provides technical assistance to the CoE.

In June 2009 support was officially requested through the afore mentioned project to support urgent activities of the Committee of Experts (CoE) in the amount of USD 1.95 million while awaiting to receive Government funding. Although the latter funding was finally received it was insufficient to meet the funding needs of the CoE. Therefore, in November 2009 an additional appeal was made to donors under Addendum 2A of the project document, which reflected the changed timelines and additional funding requirements amounting to USD 5.06 million for the period July 2009 to June 2010. Another appeal was made in May 2010 for additional funding to support activities in the lead-up to the August 4th Referendum on the proposed constitution in the amount of USD 4.35 million.

2. Project Components

The project focused on providing support to the CoE in the following areas:

- Experts/Researchers;
- Research, Drafting and Distribution;
- Civic Education, Stakeholder Engagement and Consensus Building;
- Information, Education & Communication; and
- Operations

1. Objective of the Evaluation

The overall objective of the evaluation is to assess the impact of the support provided to the CoE and identify lessons learned from the process.

3.1. Specific Objectives

Specifically, the Evaluation aims to accomplish the following:

- a) Assess the Project and its contribution to national reform priorities on democratic governance and its impact on various stakeholders;
- b) Review the performance of the Project in achieving the expected outcomes and outputs as per the Project Document and budget;
- c) Identify factors, which facilitated or hindered the achieving the outcomes, both in terms of the external environment and those internal to the Project and document lessons learned in the development and implementation stages. This should include but not be limited to assessing the strengths and weaknesses in design, management, coordination, human resource, and financial resources;
- d) Assess the appropriateness of the programme strategy including the programme institutional/management arrangements and the basket fund modality to reach the intended outputs and outcome;
- e) Assess the effectiveness of risk mitigation strategies in the implementation of the project;
- f) Make clear and focused recommendations that may be required for enhancing effectiveness of similar projects.

3.2. Scope of the Evaluation

In assessing the impact of the Project, the evaluation will take into consideration:

- a) whether the problem (s) the Project was supposed to solve was clear, objectives were achievable, and whether the relationship between the objectives, the outputs, the activities and the inputs was clear, logical, and commensurate, given the time capacity and resources available;
- b) project implementation and operational performance;
- c) the quality and timeliness of the implementation and responsiveness of the Project in light of the objectives, outputs, activities and risks;
- d) significant lessons that can be drawn from the experience of the project and its results, in particular, anything that should be or should not be applied to the other projects/

4. Methodology of the Assignment

Based on UNDP guidelines for evaluations, and in consultations with UNDP Kenya, the Consultants should develop a suitable methodology for this evaluation. The evaluation will be inclusive and participatory, involving all stakeholders into the analysis. The evaluation will consider the social, political and economic context which affects the overall performance of the outcome achievements. During the evaluation, the Consultants are expected to apply the following approaches for data collection and analysis.

- Desk review of relevant documents;
- Discussions with former members of the CoE, UNDP Kenya Senior Management and programme staff;
- Briefing and debriefing sessions with UNDP, as well as with other donors and partners;
- Interviews with partners and stakeholders including government officials, service providers, CSO partners, CoE commissioners and staff, development partners (within the basket and those outside the basket), strategic partners (those providing support outside the basket), among others.
- Where necessary, field visits to selected regions and discussions with project teams, project beneficiaries and major stakeholders;
- Consultation meetings.

The evaluation will be conducted according to the UNDP Handbook on Monitoring and Evaluation for Results (2002), which follows the result-based management methodology.

5. Deliverables

The Consultants are expected to provide the following outputs:

- Inception report on proposed evaluation methodology, design, workplan and proposed structure of the report;
- Initial findings from field work;
- A draft evaluation report;
- Final evaluation report of sufficient detail and quality, with annexes

6. Implementation Arrangements

The Consultants will be briefed by UNDP upon signing contracts on the objectives, purpose and output of the evaluation. An oral debriefing by the Consultants on the proposed workplan and evaluation methodology will be done and approved prior to the commencement of the evaluation process. A wrap-up meeting during which comments from participants will be noted for incorporation in the final evaluation report must be held.

7. Composition, skills and experience of the evaluation team

The mission will consist of two consultants with the following expertise:

Team Leader

Required qualification and skills for the team leader:

- Advanced university degree in political science, international development or related field
- At least 7 years of experience in the relevant field
- Sound knowledge about results-based management (especially results-oriented monitoring and evaluation)
- Previous experience on undertaking evaluations of similar scope
- Previous work experience in related areas with UNDP desirable but not mandatory
- Fluency in English
- Excellent writing and communication skills

Specifically, the team leader will perform the following tasks:

- Lead and manage the evaluation mission;
- Design the detailed evaluation scope and methodology (including the methods for data collection and analysis) for the report;
- Decide the division of labor within the evaluation team;
- Conduct an analysis of the outcome, outputs and partnership strategy (as per the scope of the evaluation described above) for the report;
- Draft related parts of the evaluation reports; and
- Finalize the whole evaluation report.

The team leader will take the overall responsibility for the quality and timely submission of the evaluation reports to the UNDP country office.

Second Consultant

Required qualification for the second consultant:

- Advanced university degree in political science, international development or related field
- At least 5 years work experience in the relevant field.
- Sound knowledge about results-based management (especially results-oriented monitoring and evaluation)
- Previous experience on undertaking evaluations of similar scope
- Previous work experience in related areas with UNDP desirable but not mandatory

- Fluency in English
- Excellent writing and communication skills

The second consultant will perform the following tasks:

- Review documents;
- Participate in the design of the evaluation methodology;
- Data collection;
- Assessment/construction of indicators' baselines
- Actively participate in conducting the analysis of the outcomes, outputs and targets (as per the scope of the evaluation described above), as agreed with the team;
- Draft related parts of the evaluation report; and,
- Assist the team leader in finalizing document through incorporating suggestions received on draft related to his/her assigned sections.

8. Timeframe

The detailed schedule of the evaluation and the length of the assignment will be discussed with the Consultants prior to the assignment. The final report is expected no later than 14th April, 2011. Based on the above guidelines, the tentative work-plan for the assignment is shown below:

Indicative Work plan Activity	Timeframe
Inception report	2 days
Desk Review	2 days
Interviews including field visits	7 days
Preparation of main findings and recommendations	3 days
Wrap-up meetings	1 day
Preparation and submission of 1st draft of the evaluation report	3 days
Feedback on draft reports	2 days
Finalization of evaluation report and submission of final report	

9. Remuneration

The Consultants will be contracted by UNDP according to the organization remuneration scale.

10. Duty Station

The consultants shall not be obliged to work from the UNDP-Kenya Country Office. All field travel costs related to the assignment shall be borne by UNDP.

11. Reporting Relationship

The Consultants will report to the UNDP Kenya Deputy Country Director of Programmes.

Application procedure.

Interested and qualified consultants should submit their application which should include the following;

1. Detailed Curriculum Vitae
2. Current P11 form
3. Detailed proposal for implementation of the assignment.

The applications should be forwarded to consultants.ken@undp.org to reach us on or before 31March 2011

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**Annex II:
List of Respondents**

NATIONAL LEVEL

NO	NAME	TITLE	INSTITUTION/ DESIGNATION
1	Alfredo Teixeira	Deputy Director Programmes	UNDP Kenya
2	Dr. Ozonnia Ojielo	Team Leader & Senior Advisor	Peace Building and Conflict Resolution Programme - UNDP Kenya
3	Mburu Gitu	Governance / Human Rights Specialist	Netherlands Embassy
4	Justin Jepson	Political Officer AU Panel of Eminent African Personalities	CLO-Coordination and Liaison Office
5	Con Omoro Osendo		DANIDA - Danish International Development Agency
6	Murathia Kinuthia		DFID - Department for International Development
7	Robert Simiyu	Governance Advisor Canadian Cooperation Office	CIDA-Canadian International Development Agency
8	Jussi Laurikainen	Governance Programme Officer	Embassy of Finland
9	Rigmor Koti		Norwegian Embassy
10	Neha Sang Hrajha		CLO-Coordination and Liaison Office
11	Peter Ayugi	Deputy Director: Finance and Administration	Committee of Experts on Constitutional Review
12	Veronica Ndluva	Deputy Director: Finance and Administration	Committee of Experts on Constitutional Review
13	Ngari Gituku	Consultant	Message Development - Committee of Experts of Constitutional Review

14	Mr. George Ojing	Managing Director	Blue Print Media
15	Hassan Ahmed Issack	Chairman	IIEC- Interim independent Electoral Commission
16	Reverend Cannon Peter Karanja	Secretary General	National Council of Churches of Kenya (NCCCK)
17	Engineer Patrick Obath	Chairman	Kenya Private Sector Alliance (KEPSA)
18	Mr. Odenda Lumumba	Secretary General	Kenya Land Alliance

MACHAKOS

NO	NAME	TITLE	INSTITUTION/ DESIGNATION
19	Nthiwa Kilindi	Constituency Civic Educator	Makueni
20	Joyce K Mulu	Constituency Civic Educator	Mbooni
21	Anthony M Ndulu	Constituency Civic Educator	Kibwezi
22	William N. Mathera	Constituency Civic Educator	Kilome
23	Hughes N. Ndonge	Constituency Civic Educator	Machakos Town
24	Ellngton Kilonzo	Constituency Civic Educator	Kathiani
25	James M. Muia	Constituency Civic Educator	Kathiani
26	Patrick Kimeu	URAIA -Trained Civic Educator	Machakos
27	Francis Kimote	Constituency Civic Educator	Mwala
28	Elijah K. Munovi	URAIA -Trained Civic Educator	Lower eastern Region

NAKURU

NO	NAME	TITLE	INSTITUTION/ DESIGNATION
29	James Makumi	Project Officer/Chairman	Mau Development Project
30	Stephan Oduor Ogutu	Provincial Coordinator People Living With Disability	Rift Valley Provincial Headquarters Nakuru
31	Philemon Muiruri	Social Worker	IDP Camp Nakuru
32	Pastor Robert Opiyo	Representative IDP Network and Religious Bodies	IDP Camp Nakuru

33	Phoebe Keya	Representative Widows And Persons Living With HIV/Aids	IDP Camp Nakuru
34	Peter Oluoch Ochieng	Volunteer Representing Persons With Disability	IDP Camp Nakuru
35	Joseph Omondi	Chairman	Mid Rift Human Rights Network
36	Benard Gathogo	Constituency Civic Educator – Nakuru Town Constituency	Youth Reconciliation And Awareness Forum
37	Sammy Njoroge	Educator	Muongano Wa Wanavijiji Nakuru

THIKA

NO	NAME	TITLE	INSTITUTION/ DESIGNATION
38	Michael Oliewo	Chairman	Juja Constituency Development Initiative

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**Annex III:
List of Literature Reviewed**

1. Final Report; Consolidated Gains from the National Dialogue and Reconciliation Process (September 2010).
2. Consolidating Gains from the KNDR Process (January 2009-September 2010).
3. (CoE, 2010), Final Report of the Committee of Experts on Constitutional Review.
4. The Constitution of Kenya Review Commission Draft Submitted to The Bomas Constitutional Conference. (The Ghai Draft)
5. The New Proposed Constitution 2005 (The Wako Draft)
6. The Constitution Conference Draft (The Bomas Draft)
7. CoE Expenditure Reports to UNDP
8. Quarterly and Annual Reports from Kenya National Dialogue and Reconciliation, Committee of Experts and its Constituent Programmes
9. (CMO Department, 2010). Final Report from Civic Education, Mobilization and Outreach (CMO) Department.
10. The Report of The Committee Of Experts on Constitutional Review Issued on the Submission of The Reviewed Harmonized Draft Constitution to The Parliamentary Select Committee On Constitutional Review, 8th January, 2010.
11. (KEPSA, 2009). Private Sector Statement on the Revised Draft Constitution.
12. (KEPSA & KAM, n.d.) A Memorandum On Critical Issues Affecting Business In The harmonized Draft Constitution
13. (KEPSA, 2010). Private Sector Position On The Proposed Constitution
14. (KEPSA & KAM, 2010). Business and the Proposed Constitution of Kenya, 2010
15. (KEPSA, 2010). Private Sector Position On The Proposed Constitution. Press Statement. 19 May 2010
16. (NCCK Communications, July 2010), Professional Analysis Of The Proposed Constitution. An Analysis Of The Proposed Constitution Prepared By Kenya Christian Lawyers Fellowship.
17. (NCCK Communications, July 2010), Will the New Constitution Secure Your Peace , Land and Food?
18. (NCCK Communications, 2010), 10 Reasons to Vote No.
19. CoE Civic Education Curriculum
20. CoE Civic Education Manual
21. CoE Civic Education Simplified Version

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Annex IV:

Consultants' Counter Proposal

UNDP – Consolidating Gains from the KNDR Process
Evaluation
TCH Quotation

A. BACKGROUND CONTEXT

A.1 The Consulting House: *Capability Statement*

1. This bid is originated by The Consulting House (TCH), Office of the Great Lakes Region based in Nairobi. We are a multi-disciplinary technical house working for non-state actors, governments, bi-lateral and multi-lateral agencies in 18 countries of Africa. In the last half of the year, TCH was the lead agency in the review of two USAID supported national programmes in Uganda.
2. Our team of experts has a broad range of expertise for implementing this ToR. The lead consultant has worked in more than 21 countries of Africa and has undertaken programme evaluations for governments, donor agencies and international NGOs. The associate consultant will bring his background experience in programme implementation and evaluation to bear in anchoring the quantitative aspects of the review.

A.2 Assignment Approach

A.2.1 *Reverse-Engineering*

3. The ToR¹³⁷ provides that UNDP is Results Based Management (RBM) compliant. In implementing the ToR, therefore, TCH will use the *reverse-engineering* variant of RBM. Specifically, we will begin by asking the question: What were the desired results of the Consolidating Gains project? What did it intend to change? This will form the Change Menu. Once the change menu is established we will work backwards (*reverse-engineering*) and ask: How did UNDP, the Committee of Experts (CoE), and the development partners, work towards the change? How was the process monitored to ensure that the desired change would be achieved and that the project was on course? Our interest here will be the implementation and tracking of results.
4. **Results Framework.** Our assignment approach will focus on the *results*, not the *activities* rolled out. Instead of focusing on what the project and its

¹³⁷ ToR 4, paragraph 2

partners *did*; emphasis will be on what they *achieved*. The framework for results will therefore focus on three questions:

- a. **What was done?** These are the activities rolled out. They will be treated as a means to an end; not the achievements of the desired change. Here we will examine the **outputs**, which we define as the immediate, tangible and logical consequences of the project support to the CoE activities. We will assess the tangible results and their cumulative potential to the next level of results.
- b. **What happened?** In RBM, these are the **outcomes**, defined as the short-term/medium-term effects of the project activities. These also include the cumulative effects of a combination of outputs. How did the implementation site respond to the interventions? How did the 'CoE clientele' respond as a result of the funding support to CoE activities? How was the knowledge gleaned by the experts and researchers banked? And how was it used for the purpose of drafting? How were stakeholders engaged by the CoE in carrying out their mandate? While as the project may have had control over what was done, its control over 'what happened?' is limited. But if the project was well designed, it is possible to groom the activities to the level of outcomes. We expect to assess this.
- c. **What changed?** As mentioned earlier, the approach will begin by defining the desired change. Here we will examine the **impact** of the project which we define as the tangible changes in development conditions at a national level. Did the CoE civic education programmes supported by the project increase civic competence in the context of the polarized political environment? We will establish whether the competence is at the 'belief' level or whether it graduated to an actual ability to influence. We will record the changes and their potential for sustainability and replication.

A.2.2 NARA Context

5. The consultant understand that this evaluation must be done within the context of the National Accord and Reconciliation Act (NARA). The mandate¹³⁸ of the project is speaks to the core issues outlined in Agenda item 4 of the peace accord as such the consultant understands that NARA and the interests within it will constitute the primary audit tool for the evaluation of the support given to the CoE by the project.

B. CONSULTANTS QUALIFICATION OF TOR

6. The consultants understand the evaluation as requiring us to do three things¹³⁹. One, to make an assessment of the project design¹⁴⁰. Two, to

¹³⁸ ToR 1, paragraph 4

¹³⁹ Broad reading of ToR 3.1

make an assessment of the project 'implementation architecture'¹⁴¹. Three, to offer bankable recommendations for future projects. The consultant understands the key question of the evaluation to be did the inputs by the UNDP project eventually result in impact?

B.1 Project Design

1. The design of the project will be assessed on three levels:
 - a. Design Intent. Under design intent, we will ask a number of questions. How was the project conceptualized¹⁴²? What was the soundness of design in the context of contesting political interests? Was the project design based on a sound understanding of the Kenya National Dialogue and Reconciliation process? How was the result framework conceptualized? How were stakeholders involved in the design of the project? What was the division of labor? We shall do a stakeholder analysis in order to determine the way in which their interests affect the viability and "riskiness"¹⁴³ of implementation.
 - b. Design of Implementation. The consultant will find out whether the outputs of the project were continuously tracked and aligned to expected outcomes. What were the motivators/demotivators of implementation¹⁴⁴ and how were they handled at the design level? In particular, what were the challenges? How relevant was the project strategy? By strategy, we mean the organization of resources whether financial, human or social, to achieve optimal results. What was the design of the basket fund in relation to the project? How was the basket fund modality organized¹⁴⁵? What was the procedure for disbursement of funds? How did the design of the fund affect the efficiency of implementation?
 - c. Responsiveness of Design¹⁴⁶. Here the consultant will find out the extent to which the project was cognizant of the unpredictable and political nature of the KNDR process. The critical concern here will be the responsiveness of the project design to the changing 'political terrain'. The basket fund modality that was built into the project framework involved several stakeholders. Was flexibility built into the design of the basket fund modality? And how did this enable or disable the functionality of the project.

B.2 Implementation Architecture

¹⁴⁰ ToR 3.1 (a) (c), 3.2 (a)

¹⁴¹ ToR 3.1 (b), 3.2 (b)

¹⁴² ToR 3.2 (a)

¹⁴³ ToR 3.2 (c)

¹⁴⁴ ToR 3.1 (c)

¹⁴⁵ ToR 3.1 (d)

¹⁴⁶ ToR 3.2 (c)

2. The question we shall raise here is how effective was the organization of resources in the implementation of the project. Was accurate and reliable information on 'resource use' being generated and used? This will help us in understanding the extent to which the project was efficient in achieving its mandate.
3. The consultant will interrogate the planned activities and the manner of implementation¹⁴⁷. Were the activities aligned to the project mandate? We shall subject the implementation of the project to three tests. First, the *sufficiency test*. Were the activities adequate to realize the project objectives? Second is the *relevance test*. How relevant and appropriate were the project methods and strategies¹⁴⁸? Third is the *appropriateness test*. What was the suitability of the mechanics and instruments used to roll out the activities?

B.3 Performance Framework

4. Our review of the performance¹⁴⁹ assessment framework will comprise of three components; **efficiency**, **effectiveness** and **responsiveness**.
 - a. By efficiency we will examine 'value for money proposition' by assessing the maximization of programme inputs in the attainment the project objectives. We will look at how the resources were applied and tease out lessons¹⁵⁰ on how resources could have been applied better.
 - b. At the level of effectiveness, we will be interested in ascertaining the extent to which results were achieved, and the **cause-effect relationship** between the results and funding support provided to the CoE. On this, we will make a clear distinction between 'attribution' and 'contribution'. We hold the view that although the funding the CoE received from the project was indispensable in helping it attain its objectives under Agenda item 4 of the peace accord; it may be difficult to attribute the results solely to the project funding. However, we can establish 'contribution'¹⁵¹.
 - c. In the area of responsiveness¹⁵², our interest will be in establishing the extent to which the project anticipated and responded to the peculiar challenges in the implementation of Agenda 4 of the peace accord.

C. EVALUATION METHODOLOGY

¹⁴⁷ ToR 3.2 (b)

¹⁴⁸ ToR 3.1 (d)

¹⁴⁹ ToR 3.1 (b)

¹⁵⁰ ToR 3.2 (d)

¹⁵¹ ToR 3.1 (a)

¹⁵² ToR 3.2 (c)

C.1 Sources of Data

5. For purposes of this evaluation, the consultants will use two sources of data –secondary and primary

C.1.1 Secondary Sources

6. Three categories of literature will be relied on. The first is the UNDP generated reports, the annualized plans, M&E reports, and evaluations of the Consolidating Gains Project. The second category will include reports generated by the Coordination and Liaison Office of the African Union Panel of Eminent African Personalities. The third will include reports generated by the Government of Kenya (GoK) on their support to the CoE and reports by the CoE.

C.1.2 Primary Sources

7. **The Respondents.** Three categories of respondents will be relied upon as identified in the ToR¹⁵³. The first includes the CoE Commissioners and staff. The second will include UNDP Kenya Senior Management and programme staff and development partners. Here we will interview the development partners both within and outside the basket fund modality of the project. The third category will include government officials, service providers, CSO partners and other strategic partners providing support outside the basket fund. A detailed list of respondents will be generated in consultation with the client at the Inception stage.
8. **Tools of data extraction.** The consultant will use a checklist as the main tool for data extraction. Other tools of extraction may be agreed upon at the Inception stage.
9. **Methods of Data Extraction.** The consultant will use three methods of data extraction. One, Key Informant Interviews (KII). Here the consultant will conduct interviews with *inter alia*, key government officials, CSO partners, CoE Commissioners and development partners within and outside the basket. Two, In-depth Interviews (IDI), IDI participants will include *inter alia*, former members of the CoE, UNDP Senior Management Staff and key project staff. Three, Focus Group Discussions (FGD). The consultant will commission focus groups sessions with the stakeholders as identified to generate views in an interactive and open format. The consultant will determine the criteria to guide selection for the constituent FGD's. These criteria will be submitted to the client at the inception meeting.
10. **Workshops.** The consultant will hold at least three workshops. The first will be the Inception workshop. The workshop will be a clarification meeting where expectations arising from the terms of reference will be leveled out. The second workshop will be a consensus building workshop of key stakeholders where the draft report will be discussed. And the third workshop will discuss the final draft.

¹⁵³ ToR 4 (ii) – (iv)

C.2 Task Administration

11. **Quality Control.** The consultants will manage the quality of the process and the content. Right from the start, the assignment implementation plan will be developed and be used as a tool for monitoring of time element of the assignment. The assignment budget will be used as a tool for cost control. The team members have worked together in the past on large assignments and value each other's expertise and competencies. They are all highly respected professionals in their fields. Working together will add value to the assignment team through a process of team synergy.
12. **The Reference Group.** A critical component of quality control is the reference group. This is to be convened by the UNDP. Briefing meetings between the team and this group will be regular for quality check.
13. **Team Management.** There will be a division of labour in the management of the task. The logistics on the team management will be handled by TCH as an institution. The buckstopping of deliverables in terms of quality and process will be done by the team leader as *chief de mission*. At the start of the assignment, the team will agree on the final work plan with UNDP. The plan will outline main activities, outputs and schedules. It will also be used as a tool for measuring the progress of the assignment.

D. TEAM CAPABILITY STATEMENT

D.1 Mutahi Ngunyi, *Team Leader*

14. Mutahi Ngunyi is a political scientist and an international consultant who has worked in more than 21 countries of Africa. He has taught political science in universities in Nairobi and Europe. He has taught development studies and political science in universities in Nairobi and Europe. Most of his consulting assignments have been for governments, donor agencies and international NGOs. He has undertaken assignments for *inter alia*, DFID-London, DFID-East Africa, Sida-Kenya, Sida Uganda, Sida Tanzania, Sida/SMC Stockholm; Development Co-operation Ireland (DCI) Dublin, Irish Catholic Agency for World Development (Trocaire) East Africa, Great Lakes, and West Africa; CIDA, Kenya and Uganda; Oxfam Rwanda and Kenya; International Alert Great Lakes Region, Africa;. Africa Alliance, and UNDP Kenya.

D.2 Dr Musambayi Katumanga: *Team Member*

15. Katumanga is a political scientist and an expert on governance and democratic reform in countries that are experiencing or are recovering from conflict. His work has taken him to *inter alia*, countries of the Great Lakes Region (GLR), and Asia. He is currently a political science senior lecturer at the University of Nairobi and an instructor at the Defense Staff

College, in Nairobi. He is also a Senior Fellow at The Consulting House in charge of our security and state fragility programme.

D.3 Jean Kambuni: *Buckstop Team*

16. Jean holds a degree in Law and is currently an Associate Fellow at the Consulting House. She brings to this process an analytical, intuitive and results driven approach to programme evaluations

E. MANNING SCHEDULE¹⁵⁴

ACTIVITY	TIMEFRAME
Inception Report	2 Days
Desk Review	2 Days
Interviews and Field visits	7 Days
Preparation of main findings and recommendations	3 Days
Wrap-up meetings	1 Day
Preparation and submissions of 1 st draft of the evaluation report	3 Days
Feedback on draft reports	2 Days
Finalization of evaluation report and submission of final draft	
Total Assignment timeframe	20 Days

¹⁵⁴ This manning schedule has been generated ex nihilo and is based on the ToR. A detailed work plan will be tabled by the consultant at the inception stage.

Annex V
Consultants' Inception Report

UNDP - Consolidating Gains from the KNDR Process

Support to the Committee of Experts on Constitutional Review Evaluation

A. Background Preliminaries

A.1 The Context of the KNDR Process.

8. In the first two months of 2008, Kenya was beset by political and ethnic violence following the disputed general elections of December 2007. The violence mutated into a political crisis that paralyzed the institutions of state and threatened to balkanize the country along two dominant ethnic and political camps aligned to the Orange Democratic Movement (ODM) or the Party of National Unity (PNU).
9. The seeds of the violence between these two camps were sown in 2003 when the initial schism emerged when a section of leaders of the then ruling National Rainbow Coalition(NARC) party left government after feeling aggrieved at the abrogation of a MoU that facilitated the defeat of the KANU party in the 2002 general elections¹⁵⁵. These differences are what gelled in to the 'Yes' and 'No' camps that split the country in a referendum on a new constitution in 2005 that subsequently failed¹⁵⁶. Political violence, hate speech and the retreat into ethnic as well as regional cocoons were the signature of the 2005 constitutional referendum and were simply escalations in the post-election violence of 2008.
10. An international mediation effort to defuse the crisis was mounted by the AU under the stewardship of President John Kufuor to Kenya from 8 to 10 January 2008. From this intervention, a Panel of Eminent African Personalities, consisting of former UN Secretary-General, Kofi Annan (Chairman), the former President of Tanzania, Benjamin Mkapa and former South African First Lady, Graça Machel was established to assist

¹⁵⁵ The MoU had proviso on the National Reform Agenda and a Power sharing formula, which facilitated the fielding of a single compromise presidential candidate by a majority of the opposition political parties.

¹⁵⁶ The now-defunct ECK in an attempt to cool the political temperatures sought to assign neutral symbols to the opposing camps. The 'Yes' Camp was assigned a banana as its symbol whilst an orange signified the 'No' camp. It was this orange symbol that later inspired the evolution of the Orange Democratic Movement (ODM) party.

Kenyans in finding a peaceful solution to the crisis. Under the auspices of the Panel, PNU and ODM started negotiations on 29 January 2008, through the Kenya National Dialogue and Reconciliation Committee (the KNDR or “National Dialogue”). A four-point agenda for the National Dialogue Process was agreed upon as follows:

- E. Agenda Item 1: Immediate action to stop violence and restore fundamental rights and liberties
- F. Agenda Item 2: Immediate measures to address the humanitarian crisis, promote reconciliation, and healing
- G. Agenda Item 3: How to overcome the political crisis
- H. Agenda Item 4: Address long-term issues, including constitutional, legal and institutional reforms; land reforms; tackling youth unemployment, tackling poverty, inequity and regional development imbalances, consolidating national unity and cohesion, and addressing impunity, transparency and accountability.

11. The political parties signed 6 agreements pertaining to these 4 agenda items between February and July 2008¹⁵⁷. The most critical of these was the National Accord and Reconciliation Act (NARA), a power-sharing agreement under Agenda Item 3 that facilitated the formation of the Government of National Unity. The two parties signed the National Peace Accord on 28th February and on 17th April 2008, the members of the Coalition Government were sworn in. Based on the provisions of the NARA, The parties to the KNDR agreed to establish a number of institutional frameworks under Agenda Item 4 that would deal with different aspects of the crisis;

- E. An Independent Review Commission on the General Elections held in Kenya on 27th December 2007
- F. A Commission of Inquiry into Post-Election Violence
- G. A Truth, Justice and Reconciliation Commission
- H. A Review long-term issues and pursue a constitutional review process

12. The coalition government enacted the *Constitution of Kenya Review Act, 2008*, which established the basis for appointment of a Committee of Experts (CoE) on constitutional review that consisted of three non-Kenyan and six Kenyan experts. The mandate of the CoE was to guide the constitutional review process. UNDP Kenya acted as the basket fund facility manager¹⁵⁸ for the project funds and provided technical assistance to the CoE. The support to the CoE ran for 18 months between February 2009 and August 2010 and totaled \$ 11.36 Million¹⁵⁹. The CLO allocated the CoE a budget of \$ 340,982 from which the CoE was able to expend \$ 256,027¹⁶⁰.

¹⁵⁷ The specific dates of signing are 1st, 4th, 14th and 28 February, 4 March and 23 July

¹⁵⁸ The donors to the basket fund facility included Australia, Belgium, Canada, Denmark, EU, France, Finland, Netherlands, Norway, Qatar, Sweden, UK and the United States.

¹⁵⁹ CoE Evaluation ToR 1 paragraph 5

¹⁶⁰ Final Report; Consolidated Gains from the Kenya National Dialogue and Reconciliation process (September 2010)

FINAL REPORT

A.2 Intent of Support to CoE

13. The intent of the KNDR component that extended SUPPORT TO THE COMMITTEE OF EXPERTS ON CONSTITUTIONAL REVIEW was to promote and facilitate the effective implementation of KNDR agreements on constitutional, legal and institutional reforms as derived from Agenda Item No. 4. The reform process aimed at sustainable realization of national development objectives through entrenchment of constitutionalism, democratic governance and national cohesion.
14. Support to the CoE began from June 2009 and lasted until August 2010 when the constitutional referendum was held. From a review of the available literature¹⁶¹, we discern that the CoE Component of the KNDR process had four key result areas¹⁶².
- a. One, **facilitate effective public participation in the constitutional review process**. We will assess the degree to which activities under the CoE project fostered public participation in the constitutional review process. By public participation we mean the involvement and influence of citizens over the constitutional review process. We will be measuring the amplitude of the 'civic voice' i.e. the ability of the citizen to identify, frame and articulate their concerns and aspirations with regard to the harmonized draft constitution. To do this, we will review the returns from the public participation activities such as the 18 regional hearings that were held countrywide and determine if the draft harmonized constitution accurately reflected the views from the grassroots.
 - b. Two, **encourage political consensus and agreement**. We will evaluate the success of the CoE in bringing together the political class to reach a consensus on the contentious issues contained in the different versions¹⁶³. To do this we will examine the success of consensus building activities with the political parties and the extent to which buy-in and support of the harmonized draft constitution by political parties was secured. We will also examine the role experts and researchers affiliated to the CoE played in originating provisions that were acceptable to all parties.
 - c. Three, **foster Religious and cultural consensus**. We will examine the extent to which the CoE was able to facilitate dialogue and consensus on provisions of the draft harmonized constitution that were being objected to on religious and cultural grounds. To do this we will look at the stakeholder engagements and civic education the CoE had with religious groups, civil society organizations and other stakeholders that aimed at achieving consensus. We will also examine the contribution experts and

¹⁶¹ CoE Evaluation ToR

¹⁶² KNDR final report to UNDP (January 2009-September 2010), Final Report of the Committee of Experts on Constitutional Review. Section 4.5.1 - Key Result Areas

¹⁶³ These versions included the Pre-2010 constitution, The Ghai Draft, The Wako Draft, and The Bomas Draft

researchers affiliated to the CoE made in conceiving amendments that were agreeable to all parties.

- d. Four, **ensure an affirmative referendum result.** We will evaluate the process the CoE undertook to come up with a revised harmonized draft constitution and the strategy the CoE employed to drum up support for the document. Specifically we will be examining the research, consultation, drafting, analysis and engagement processes with stakeholders that resulted in the revised harmonized draft constitution. We will also be examining the distribution, civic education and public communication strategies that were adopted by the CoE in popularizing the revised harmonized draft constitution.

15. The CoE Evaluation will thus deliver on six key areas¹⁶⁴. **One**, determine the contribution made by the project to national priorities on reforms in democratic governance. From this we will be able to determine if the project was able to achieve its overarching objective. **Two**, conduct an audit of the actual project performance against the outputs and outcomes stipulated in the project document and budgets. **Three**, identify the internal and external factors that enabled and inhibited the achievement of project objectives. To achieve this, we will conduct a SWOT analysis of the project design, management and resource deployment. The results of the SWOT analysis will allow us to draw out the best practices and lessons learnt from the constitutional review process that can be replicated, scaled-back, scaled-up or scaled-out in future constitutional review processes in Kenya or other countries. **Four**, assess the impact of the institutional and implementation architecture as well as the funding modalities in achieving the desired project results. Here we will be seeking to determine how appropriate the implementation arrangements of the project were and whether they aided or hindered the achievement of results. **Five**, review the risk assessment approached and risk mitigation strategies that were developed as a consequence to minimize project failure. **Finally**, from the outcomes of the preceding five processes we will generate recommendations that will inform similar projects in the future.

16. Specifically, the evaluation will answer four questions¹⁶⁵: One, was there a logical connection between the problem identified, the solutions generated and the actions taken to effect the solution in the support to CoE? Two, what is the status of the project's performance? Three, How relevant and responsive was the project to the identified problem and attendant implementation risks? Four, what were the lessons learnt and how they can be put into practice in future UNDP programming, especially those interventions that are unexpected, yet critical? In answering these questions we will be able to indicate what has worked, what has not and the reasons why. We will also determine the extent to which the CoE component of the Consolidating Gains project has contributed to the sustainable realization of national development objectives in Kenya.

¹⁶⁴ CoE Evaluation ToR 3.1

¹⁶⁵ CoE Evaluation ToR 3.2

B. Specific Review Issues

B.1 Review of the Project Design

The design of the project will be assessed on three levels

17. Intent of the design. We expect to examine how the support to the CoE was conceptualized and what factors and considerations informed the process¹⁶⁶. The intent will be to test the soundness of the project design in the context of contesting political interests. To do this we will examine the path that was taken in engineering the objectives of the Consolidating Gains process. Two, what were the anticipated solutions to these problems? The aim here will be to determine if the project design was based on a sound understanding of the Kenya National Dialogue and Reconciliation process. To do this we shall examine how the Consolidating Gains project identified its areas of intervention with particular reference to the support to the CoE. We will remain cognizant of the fact that the CoE initiative was more ad hoc than a pre-planned engagement. Three, who was involved in the conceptualization of the problem and solutions? The aim of this will be to delineate the division of labor in achievement of project objectives. We shall do a stakeholder analysis in order to determine the way in which their interests affect the viability and "riskiness¹⁶⁷" of implementation. The stakeholder analysis will also determine the level of stakeholder involvement and contribution to the identified problem and anticipated solutions.

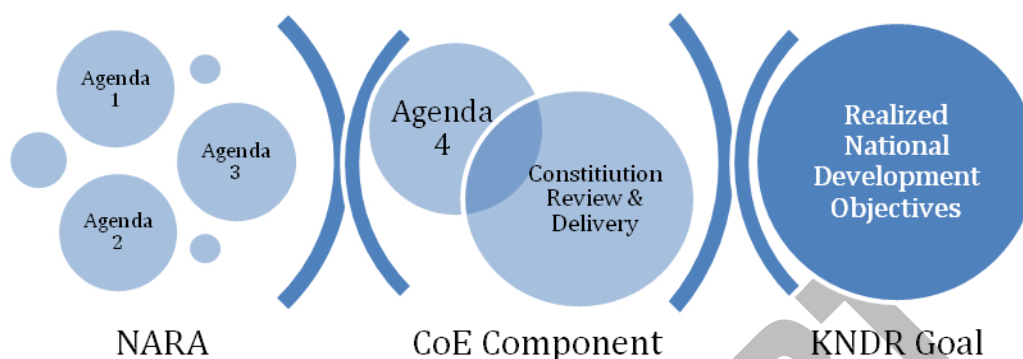
18. The Consultant team conceptualizes the design of the KNDR process as a 'value chain'. The Team will review the arrangement involving the AU Panel of Eminent African Personalities, the UNDP-led Coordination and Liaison Office (CLO), the Committee of Experts (CoE) and the various categories of stakeholders¹⁶⁸ in the constitutional review process with a view of establishing the adequacy and appropriateness of key players in the chain as well as identifying 'missing links' i.e. who else could have played major role in the KNDR framework. The interconnectivity and interoperability of the entities that formed this arrangement will also be assessed and the analysis will be guided by our understanding of the KNDR process.

¹⁶⁶ Broad Reading of ToR 1 Paragraph 4

¹⁶⁷ ToR 3.2 (c)

¹⁶⁸ These include *inter alia*; Parliamentary representatives, Religious and special interest groups, the common *mwananchi* and Private sector representatives

Fig. 1: Consultants Understanding of the KNDR Process



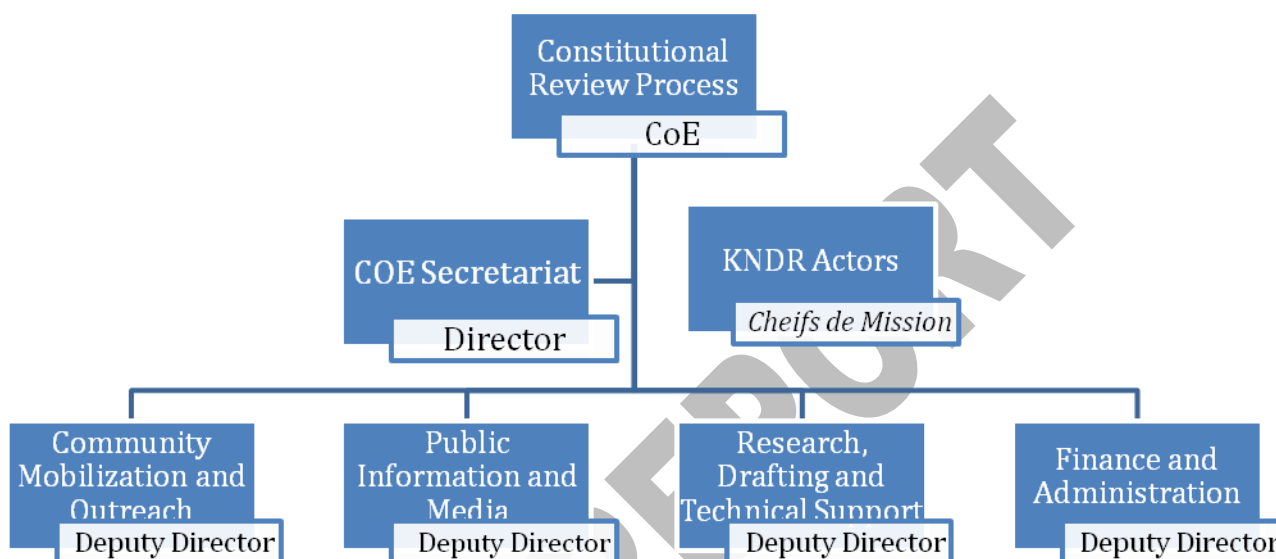
19. Implementation of the Design. Here we will be assessing if the project design was executed as was planned. Specifically, we will be assessing how the primary objective of the CoE project was programmed to be executed and achieved. This will entail a review of the various tasks, activities, and outputs that were to be implemented. To do this we will examine a number of things: **One** how were the outputs of the project continuously tracked and aligned to expected outcomes? **Two**, What were the motivators, de-motivators and risks to implementation and how were the risks mitigated¹⁶⁹? How did the funding design and resource deployment strategy affect the efficiency of project implementation? **Three**, how was the CoE component envisaged to link with the overall KNDR process to enhance attainment of national development objectives? **Finally** we will assess both the intra and inter-component linkages and synergies between CoE and other entities in the KNDR process such as the Coordination and Liaison Office (CLO) as well as the appropriateness in the sequencing of implementation to realize the desired impact.

20. A 'critical path' analysis will be carried out to assess appropriateness of the timing/sequencing of implementation of the CoE project and of individual interventions among the four programs that constituted the CoE project¹⁷⁰. The critical path analysis will also assist in establishing the functional relationship that existed between the different entities that constituted the KNDR process as well as the logical connection between key interventions/activities within and across the components of KNDR.

¹⁶⁹ ToR 3.1 (c)

¹⁷⁰ These are, the Community Mobilization and Outreach (CMO), Public information and Media, Research, Drafting and Technical support and the finance and Administration component.

Fig. 2. Consultants Understanding of CoE Architecture



21. Responsiveness of the Design¹⁷¹. Here the consultant will find out the extent to which the project was cognizant of the unpredictable and political nature of the KNDR process. The critical concern here will be the responsiveness of the project design to the changing 'political terrain'. We will also critically examine the basket fund facility, which involved several stakeholders. The intention will be to determine the degree of flexibility of the basket fund and how it affected the functionality of the project.

B.2 Review of Implementation

22. The consultants shall assess how successful the implementation of the CoE project has been. To determine this we shall answer three questions: **One**, what were the planned activities and were they fully implemented? We will review the eighteen-month timeframe¹⁷² over which support was extended to the CoE to determine its effect on the quality and quantity of the activities that were carried out. **Two**, what were the deviations from the planned activities and why did they occur? From the results of the prior assessment we will measure both the negative and positive variations from the CoE activities as laid out in the work

¹⁷¹ ToR 3.2 (c)

¹⁷² 27th February 2009 – 27th August 2010

plan¹⁷³ and seek to find out what brought them about¹⁷⁴. From these, we will draw out lessons that will inform the implementation strategies of future programs by UNDP and its partners. **Three**, what were the results from the activities and how were they affected by the deviations?

23. We will apply the reverse-engineering variant of RBM to measure the results of support to the CoE at three levels;
- a. **Output level**; which we define as the immediate/short-term, tangible and logical consequences directly attributable to completed activities under the support to CoE project component. Outputs relate to what was done and are the activities that were rolled out by the four CoE programs. They will be treated as a means to an end; not the achievements of the desired change. We will assess the tangible results and their cumulative potential to the next level of results.
 - b. **Outcome level**, which we define as the **cumulative effects** over the medium-term from a combination of activities carried out by the CoEs supported by the CLO. Outcomes are accredited to the attainment of the specific objectives of the Consolidating Gains program. Outputs relate to what happened and are a reflection of how the implementation site responded to the intervention activities (outputs). Here, we will be seeking to determine how did the 'CoE clientele' respond as a result of the funding support to CoE activities? How was the knowledge gleaned by the experts and researchers banked? And how was it used for the purpose of drafting? How were stakeholders engaged by the CoE in carrying out their mandate? While as the project may have had control over what was done, its control over 'what happened?' is limited. But if the project was well designed, it is possible to groom the activities to the level of outcomes. We expect to assess this.
 - c. **Impact level**; These are the tangible changes in development conditions at a national level as a result of changes in democratic governance and national cohesion. Impact relates to what changed and we will be tracking these changes as they have taken place over the long-term from a contribution made by the CoE and other stakeholders. We will also highlight the effect that both negative and positive variations had on the different result levels. As mentioned earlier, the approach will begin by defining the desired change. Among the questions we will be seeking to answer are; did the CoE civic education programmes supported by the project increase civic competence in the context of the polarized political environment? We will establish whether the competence is at the 'belief' level or whether it graduated to an actual ability to

¹⁷³ We are yet to receive the CoE Workplan and instead have reconstructed the planned activities from other project documents such as Expenditure reports to UNDP, Quarterly and Annual reports from both KNDR, the CoE and its constituent programs

¹⁷⁴ Among the issues to be examined is the 24.7% balance amounting to \$ 84,313 in unexpended financial resources allocated to the CoE and the effect these unutilized resources had on project implementation. (Consolidating Gains final report, September 2010)

influence. We will record the changes and their potential for sustainability and replication.

24. Specifically, the Consultants shall assess the degree of improvement in development conditions at the national level by auditing the achievement of national development objectives in the post-NARA period. The consultants will assess if indeed there has been an entrenchment of constitutionalism, an expansion of democratic governance and an improvement in national cohesion and whether these have translated into an improvement in the quality of life for Kenyan citizens and residents.
25. The focus of the review will be on; One, what modalities have been created to entrench constitutionalism, democratic governance and national cohesion? Two, have these modalities resulted in an enabling environment for increased representation and participation in national development processes for citizens and stakeholders in the political arena? Three, has this enhanced representation and increased participation effectively culminated in greater national cohesion? Finally, has greater national cohesion resulted in the realization of national development objectives?

B.3 CoE Results Tracking

26. Under tracking, we expect to analyze the mechanisms of monitoring and verifying the achievement of desired results from the support to the CoE. In particular, we will be interested in the National Accord and Reconciliation Act (NARA) as the tool for continuous monitoring and evaluation. We shall assess the consideration of the core issues outlined in Agenda item 4 of the peace accord in the development of performance indicators that would be used to track project implementation. We will also assess the process of feeding back the lessons learnt into project implementation. We also expect to assess how the CoE project experiences and lessons were documented and lessons teased out. Of interest also is how information generated from CoE work can be put to use.

B.4 Performance Assessment Framework

27. The performance assessment framework will comprise of three components; **efficiency, effectiveness** and **responsiveness**.
- a. By efficiency we will examine 'value for money' by assessing the maximization of programme inputs in the attainment the project objectives. We will look at how the resources were applied and tease out lessons¹⁷⁵ on how resources could have been applied better.
 - b. At the level of effectiveness, we will be interested in ascertaining the extent to which results were achieved, and the **cause-effect relationship** between the results and funding support provided to the CoE. On this, we will make a clear distinction between

¹⁷⁵ ToR 3.2 (d)

‘attribution’ and ‘contribution’. We hold the view that although the funding the CoE received from the project was indispensable in helping it attain its objectives under Agenda item 4 of the peace accord; it may be difficult to attribute the results solely to the project funding. However, we can establish ‘contribution’¹⁷⁶.

- c. In the area of responsiveness¹⁷⁷, our interest will be in establishing the extent to which the project anticipated and responded to the peculiar challenges in the implementation of Agenda 4 of the peace accord.

B.5 Institutional Architecture

28. This is the architecture erected to effect the implementation of the KNDR statement of intent. Our focus, in this respect, will be on structure, systems, actors, linkages and relationships; policy and legislative frameworks that supported the intent.
29. **Structures.** We will look at four things regarding structures. One, the CoE project management structures; their composition, efficacy and operations at national and local levels with the partner stakeholders and beneficiaries. Focus here will also be on the capacity of these structures to coordinate with stakeholders and drive the program results.
30. **Systems.** Systems analysis will focus on the M&E, MIS and FIS. Three things will constitute part of this enquiry. One, the efficiency and effectiveness of programme management and the monitoring and evaluation system at all levels. Two, the CoE performance monitoring process including the Performance Monitoring Plan¹⁷⁸, the performance indicators at both outcome and process levels. And three, the CoE feedback channels to the larger KNDR process and other stakeholders.
31. **Actors.** Five categories of actors will be involved here. The first are the grassroots beneficiaries of the intent of the KNDR process. The second are the stakeholders in the political arena and they include *inter alia* the political parties, CSO’s, religious organisations, special interest and minority interest groups. Third, are the project implementers in the KNDR framework including the CoE¹⁷⁹. Fourth are the implementing partners including the AU panel of eminent personalities and Kenyan implementing partners such as the parliament and the state law office¹⁸⁰. Finally there are the funding partners who contributed to underwriting the costs of the KNDR process¹⁸¹.

¹⁷⁶ ToR 3.1 (a)

¹⁷⁷ ToR 3.2 (c)

¹⁷⁸ The NARA will be used in lieu of a PMP if one does not exist.

¹⁷⁹ UNDP and the CLO will be clustered here

¹⁸⁰ For high-profile actors such as the AU panel, the consultants will rely on both grey and academic literature to extract their views in the KNDR process and in particular the constitutional review process

¹⁸¹ The representation of donors to the basket fund facility who included Australia, Belgium, Canada, Denmark, EU, France, Finland, Netherlands, Norway, Qatar, Sweden, UK and the United States will be made by respondents from the CLO .

C. Methodology

C.1 The Sources of Data

32. For purposes of this evaluation, the consultants will use two sources of data –secondary and primary

C.1.2 Secondary Sources

33. The evaluation will rely on three classes of data. First is the UNDP generated literature. This will include quarterly and annual reports, the annual plans, M&E reports, and evaluations of the Consolidating Gains Project a critical source will be the consolidated and departmental reports of the CoE. The second class will include reports generated by the Coordination and Liaison Office of the African Union Panel of Eminent African Personalities as well as reports by funding partner agencies. The third class will comprise of reports generated by the Government of Kenya (GoK) on their support to the CoE and the KNDR process. Grey and academic literature generated by other actors will also be relied upon.

C.1.3 Primary Sources

34. The CoE conducted a public awareness and participation campaign across Kenya where they visited 18 locations in the 8 provinces of Kenya directly reaching 6,046 members of the public. *Within the selected 18 COE forum locations, five will be sampled and visited within the study. The choice of 5 forum locations that hosted CoE interventions is influenced by constraints of time, resources, accessibility and demographic factors. These may change as the fieldwork kicks off.*

Province	CoE Forum Locations	Sample Target Locations
Rift Valley Province	Lodwar Eldoret Narok Nakuru Maralal	Nakuru
Nyanza Province	Kisumu Kisii	Kisumu
Western Province	Kakamega	Kakamega
Central Province	Nyeri Thika	Thika
Eastern Province	Kitui, Machakos, Meru Isiolo	Machakos
North Eastern Province	Garissa	-
Coast Province	Mombasa, Kilifi Wundanyi	-

35. Three categories of respondents will be relied upon as identified in the ToR¹⁸². The first includes the CoE Commissioners and staff. The second will include UNDP Kenya Senior Management and programme staff and development partners. Here we will interview the development partners both within and outside the basket fund modality of the project. The third category will include government officials, service providers, CSO partners and other strategic partners providing support outside the basket fund.

a. **CoE Commissioners and Staff.** The respondents will include the appointed commissioners, the hired experts, provincial coordinators and constituency civic educators. From each of these respondents an analysis of the inputs from the program against outputs, outcomes and results achieved will be made. The analysis will address four key result areas. One, the capacity of the CoE to encourage public participation in drawing up the harmonized draft constitution. Here we will attempt to establish the popular views and aspirations from the grassroots that found their way into the harmonized draft constitution. Two, the ability of the CoE to achieve consensus on issues that proved contentious within the political class, religious and cultural factions. Here we will be looking at the conceived amendments that aided in the attainment of a common ground on previously belligerent issues. Three, publishing of a harmonized draft constitution. Four, the attainment of an affirmative referendum result. Here we will look at the strategies employed by the CoE to ensure that the public was well educated on the contents of the proposed constitution. Overall, we will be looking at the factors that hindered and facilitated the constitutional review process.

b. The second category is that of **UNDP Kenya Senior Management and programme staff and development partners.** Here, we will be interrogating the design of implementation and responsiveness of the project design. To this end, the respondents will shed light on the basket fund modality and how this linked with the operations of the CoE secretariat. The intention here is to find out how institutional arrangements contributed to the outcomes of the Project. From this, recommendations can be drawn on how to enhance the effectiveness of future similar projects' operations. We will also be assessing the suitability¹⁸³ of the activities¹⁸⁴ of the CoE to the intended results of CoE¹⁸⁴.

¹⁸² ToR 4 (ii) – (iv)

¹⁸³ These are explained in Detail in Chapter 3 of the Final Report from Civic Education, Mobilization and Outreach (CMO) Department of the Committee of Experts on Constitutional Review

¹⁸⁴Final Report of the Committee of Experts on Constitutional Review. Section 4.5.1 - Key Result Areas

- c. The third category of respondents will be **stakeholders**. There will be two groups in this category; one, the *associate implementers* and two, the *rank-and-file beneficiaries*. The associate implementers will include government officials, service providers, CSO partners and other strategic partners providing support outside the basket fund. These respondents will comprise of actors operating in the same sphere as the program implementers and implementing partners but who are not part of the basket fund arrangement. They will be contacted to give an objective critique on the relevance of the outcomes and the sustainability of gains made from the SUPPORT TO THE COMMITTEE OF EXPERTS ON CONSTITUTIONAL REVIEW project. The specific list of associate implementers to be interviewed will be determined at the pre-evaluation stage. The second group in this category are the rank-and-file beneficiaries. These are the actors and interests including religious groups and representatives of minority groups who derive value from outcomes of the SUPPORT TO THE COMMITTEE OF EXPERTS ON CONSTITUTIONAL REVIEW project. They will be interviewed to obtain feedback on which intended outcomes were actually achieved and which ones were not as well as the relevance and impact of the results of the project.
- d. Another critical stakeholder will be the Parliamentary Committee on Constitutional and Legal Affairs. We will also interview the IIEC regarding the referendum with a view to establishing the relationship between a smooth referendum and the work of CoE supported under this programme.

Component	Key Institutions to be visited
Grassroots Beneficiaries	Grassroots mobilizing organizations in each of the organizations
Stakeholders in the political Arena	Political party secretariats CSO's particularly in governance and democracy sector Religious organisations Special interest groups Minority interest groups
Project implementers	UNDP –Coordinating and Liaison office (CLO) Parliamentary Select Committee on Constitutional Review State Law Office Media Houses
Implementing Partners	Representatives of AU panel of eminent personalities ¹⁸⁵ The parliament The state law office Ministry of Justice, National Cohesion and Constitutional Affairs
Funding Partners	Funding agency liaisons with the CLO

¹⁸⁵ For high-profile actors such as the AU panel, the consultants will rely on both grey and academic literature to extract their views in the KNDR process and in particular the constitutional review process

36. **Data extraction Instruments.** The primary instrument of data extraction will be the checklist (see attached) through which program effectiveness will be measured against the objectives and scope of the evaluation¹⁸⁶. The Final Report of Committee of Experts on constitutional Review will inform the development and use of the checklist. The information contained in the report will inform the evaluation in tracking the CoE activities and interventions to assess the extent to which desired changes were achieved.
37. **Extraction Methods.** Five methods of data extraction will be employed. The first will be the desk review¹⁸⁷. This will be used to review secondary data, from program implementers, implementing partners and sources outside the SUPPORT TO THE COMMITTEE OF EXPERTS ON CONSTITUTIONAL REVIEW project. The second method will be Key Informant Interviews (KII). Here the consultant will conduct interviews with *inter alia*, key government officials, CSO partners, CoE Commissioners and development partners within and outside the basket. The third will be In-depth Interviews (IDI) also used for specialised institutional respondents and expert informants from among the associate implementers. IDI participants will include *inter alia*, former members of the CoE, UNDP Senior Management Staff and key project staff. The fourth method will be Focus Group Discussions (FGD) to apply to specified categories within the rank-and-file beneficiaries. The fifth and final approach will be self-evaluation workshops. This will be an interactive feedback session bringing together the various categories of informants. In this workshop the consultant will lead the informants in a validation exercise of the findings of the evaluation. The participants under the facilitation of the consultant will verify the achievements and gaps in the implementation of the SUPPORT TO THE COMMITTEE OF EXPERTS ON CONSTITUTIONAL REVIEW project and extract lessons learnt. These will inform the recommendations.

C.2 Task Administration

38. **Quality Control.** The consultant will manage the quality of the process and the content¹⁸⁸. Right from the inception, the assignments schedule will be developed and will be used as a tool for monitoring the time element of the consultancy. The assignment budget will be used as a tool for cost control. While each team member will be responsible for the quality control of her or his individual outputs, the team leader will be accountable to UNDP for the quality of the interim and final reports. Regular and close consultations amongst the team members will also contribute to the quality improvements of the outputs and the process. The team members have worked together in the past on large assignments and boost each other's expertise and competencies. They are all highly respected professionals in their fields. Working together will

¹⁸⁶ ToR 3.1 and 3.2

¹⁸⁷ToR 4 Bullet 1

¹⁸⁸ ToR 5 – Assignment 1

add value to the assignment team through a process of team synergy. Regular meetings, consultations and peer reviews will be part of the assignment quality management process.

39. **The Reference Group.** A critical component of quality control is the reference group. This is to be convened by UNDP as a sounding board for our emerging results. Briefing meetings between the team and this group will be regular for quality checks.

40. **Team Management.** There will be a division of labour by core competence in the management of the task. At the start of the assignment, the team will develop a Work plan that will be discussed and agreed upon with UNDP Kenya¹⁸⁹. The plan will outline main activities, outputs and schedules. It will also be used as a tool for measuring the progress of the assignment. The logistics on the team management will be handled by TCH, although travel will be the forte of UNDP. The team leader as *chief de mission* will do the buckstopping of the evaluation in terms of quality and process.

C.3 The Manning Schedule

ACTIVITY	TIMEFRAME	Proposed DATES
Desk Review	4 Days	Week of 11 th July
Inception Report	3 Days	Week of 18 th July
Interviews and Field visits	14 Days	Weeks of 25 th July to 1 st August
Preparation of main findings and recommendations	3 Days	Week of 8 th August
Wrap-up meetings	1 Day	
Preparation and submissions of 1 st draft of the evaluation report	3 Days	Week of 22 nd August
Feedback on draft reports	2 Days	Week of 29 th August
Finalization of evaluation report and submission of final draft		Week of 5 th September
Total Assignment timeframe	30 Days	

C.4 THE EXPECTED OUTPUTS

The team will provide the following reports.

41. **Draft Report.** The report will contain among others the assessment of actual implementation of activities and projects; effects and impact of the same; assessment of the appropriateness and effectiveness of the mode of co-operation and interventions supported; evaluation of the overall achievement of the objectives of the SUPPORT TO THE COMMITTEE OF EXPERTS ON CONSTITUTIONAL REVIEW project, lessons learned and the recommendations on the way forward.

42. **Final Report.** This will be the agreed version between UNDP Kenya and the consultants. It will be the validated draft by stakeholders.

¹⁸⁹ ToR 5 – Task 1

FINAL REPORT

**ANNEX I
THE CHECKLIST**

SCHEDULE 1.

OVERALL

a) Design

1. Was the basic program rationale appropriate?
2. Were the causal links between the project inputs, outcomes goal logical?
3. If not logical, what changes should be adopted if the same/similar project is to be implemented in the future?
4. To what extent did the project meet its targets as laid out in the performance monitoring plan?
5. What factors can be cited for the program achieving its goals, achieving some of them, or not achieving them?

b) Implementation

1. To what extent can the success in the above areas of intervention be attributed to the support to the committee of experts on constitutional review project?
2. Were the planned activities fully implemented?
3. What were the relevant and positive outcomes of these activities?
4. What critical factors facilitated or hindered the achievement of these outcomes?
5. Were the above critical factors present in the external environment or were they internal to the project?
6. To what phase of the project can these be attributed to; development or implementation? State the specific sector e.g. design, management, coordination/logistics, human resource, financial resources etc.
7. How did the CoE secretariat mitigate/neutralize these threats (both internal and external) facing the project?

c) Lessons Learned:

1. What lessons can UNDP and its partners obtain from this project?
2. What went well and what did not?
3. How can these lessons be applied so enhance effectiveness of similar future projects with respect to program design and implementation?

SPECIFIC REVIEW ISSUES

DESIGN

1) **The Framework** - Covering the Policy Frameworks.

- i. How was support to the CoE objectives anchored in the NARA and Constitution of Kenya Review Act (2008)?
- ii. To what extent did CLO support to the CoE contribute to changes in constitutionalism, democratic governance and national cohesion?
- iii. To what extent was the thinking that guided the design of the CoE grounded in the realities of;
 - a) The polarized state of the nation
 - b) The volatile political terrain
 - c) The partisan political interests

2) **Actors**

- i. What measures were in place to ensure stake holding based on laid out criteria and all key institutions and actors were involved?
- ii. Who was involved in the design? Who was left out? With what impact?
- iii. What mechanisms were in place to ensure effective participation and collaboration among different stakeholders?
- iv. What challenges did the actors face while implementing the CoE project?
 - a) What were the internal challenges?
 - b) What were the external challenges?
- v. What is your overall perception of the synergies and dissonance among the three target beneficiaries after the completion of CoE activities?(Political Parties, Civil Society Organizations and the grassroots beneficiaries)

(3) **Structures** - Coordination, Management and Operational Structures

- i. What implementation arrangements did the CoE have in place?
- ii. What measures did you take to ensure coordination between the various stakeholders in the basket fund facility, the Government of Kenya (GoK) and the KNDR project?
- iii. What measures did you take to ensure functional national level structures such as the CLO and the CoE secretariat interfaced with regional structures at district level?

(4) Systems

- i. What systems were in place to manage information generation and flow, programme and financial accountability, procurement and performance tracking? What is their degree of functionality?
- ii. What steps were taken to ensure adequate, competent and committed human resources manned the various structures?
- iii. How well were resources (human, technical and financial) deployed in the implementation of the CoE component of the KNDR process? (Was there equity in resource distribution across all the KNDR components?)
- iv. Did the personnel assigned to the CoE component accord it adequate time, capacities and resources to attain results?

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Annex VI
Committee of Experts Financial Budgets

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COMMITTEE OF EXPERTS FINANCIAL BUDGETS								
	2009/2010		2010		Total			
	Total Budget		Contributions/ Pledges		Contributions/ Pledges		Contributions/ Pledges	
	KES	USD	KES	USD	KES	USD	KES	USD
GLOBAL BUDGET	169,973,000	21,791,000						
GOK	601,400,000	7,710,000						
DIRECT FUNDING	23,441,000	3,006,000						
USAID-OTI			73,623,000	944,000	19,500,000	250,000	93,123,000	1,194,000
URAIA			90,955,000	1,166,000			90,955,000	1,166,000
GTZ			11,448,000	147,000			11,448,000	147,000
UNDP-CLO			3,460,000	44,000			3,460,000	44,000
GERMAN EMBASSY					34,455,000	455,000	34,455,000	455,000
SUB-TOTAL DIRECT FUNDING			179,486,000	2,301,000	53,955,000	705,000	233,441,000	3,006,000
BASKET FUND (UNDP-CLO)	733,893,000	9,409,000						

DFID			41,743,000	535,000	78,000,000	1,000,000	119,743,000	1,535,000
CIDA			27,066,000	347,000			27,066,000	347,000
SIDA			46,815,000	600,000			46,815,000	600,000
NORWAY			41,860,000	537,000	24,960,000	320,000	41,860,000	857,000
NETHERLANDS			45,240,000	580,000	78,000,000	1,000,000	123,240,000	1,580,000
DENMARK			67,860,000	870,000	5,850,000	750,000	126,360,000	1,620,000
FINLAND			67,318,000	863,000			67,318,000	863,000
SUB-TOTAL BASKET FUNDS			337,902,000	4,332,000	239,460,000	3,070,000	552,402,000	7,402,000
ADDITIONAL GOK PLEDGE	130,000,000	1,667,000			130,000,000	1,667,000	130,000,000	1,667,000

Source: Compiled from Addendum 2 Revision A of the CoE2009/2010 funding request to CLO.

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