

Original

t. 25/5-08

Agreement between

The Norwegian Ministry of Foreign Affairs and

Kenya National Commission on Human Rights  
concerning

u. KEN 2042  
- 08/002

VHo.  
jnr. 736/2008

**Documentation and Investigation of Serious Human Rights Abuses following  
the Post Election Violence in Kenya (phase I)**

Project no: KEN-2042 KEN-08/002

WHEREAS Norway has supported the Governance, Justice, Law and Order sector programme (GJLOS) in Kenya through agreement dated August 8<sup>th</sup> 2006, in which KNCHR participates and receives funding from the Donor Basket Fund,

WHEREAS the Kenya National Commission on Human Rights (KNCHR) has requested the Norwegian Ministry of Foreign Affairs (MFA) for support to the investigation, documentation, mapping and analysis of the serious human rights abuses following the declaration of the 2007 presidential election results, and

WHEREAS MFA has decided to comply with the request,

NOW THEREFORE MFA and KNCHR (the Parties) have reached the following understanding which shall constitute an Agreement between the Parties:

**Article I Scope and objectives**

This Agreement sets forth the terms and procedures for MFA's support to investigation, documentation, mapping and analysis of the serious human rights abuses following the declaration of the 2007 presidential election results (the Project) as outlined in the Agreed Project Summary in Annex I and further described in the Project Document "*Financial assistance to investigate and document the serious violations of human rights and international humanitarian law committed in the post 2007 election period in Kenya*" dated February 2008

**The Project goal** is to document and investigate and give an accurate and impartial account of the post 2007 elections human rights abuses with a view to identifying those with the highest responsibility.

**The objectives** of the Project are:

1. To investigate, document, map and analyze the serious human rights violations that have taken place in the post election violence that occurred in Kenya after announcement of the presidential results.
2. To examine the facts and patterns with a view to establish the extent to which such violence resulted from a policy to commit systematic attacks against civilian populations, and to what extent they were ordered, directed or coordinated by persons, public officials or group of persons acting with a common purpose.
3. To address the culture of impunity for commission of such violations by holding to account those who may have ordered, planned, financed or

- instigated such attacks and/or neglected to prevent such attacks.
4. To strengthen the rule of law in Kenya through respect for human rights and adherence to the rule of law.

The Parties may agree on extending existing or including new Project elements within the Project, as well as on re-allocating funds within the Project. Any such agreement shall be in writing.

## **Article II Cooperation – Representation**

The Parties shall communicate and cooperate fully with the aim to ensure that the Goal and Objectives are successfully achieved. The Parties further agree to cooperate on preventing corruption within and through the Project, and undertake to take rapid legal action to stop, investigate and prosecute in accordance with applicable law any person suspected of misuse of resources or corruption. The Parties shall immediately inform each other of any indication of corruption or misuse of resources related to the Project.

In matters pertaining to the implementation of the Project the Norwegian Embassy in Nairobi (the Embassy) shall be competent to represent MFA. All communication to MFA in regard to the Agreement shall be directed to the Embassy.

## **Article III Contribution of MFA**

MFA shall make available to KNCHR a financial grant not exceeding NOK 1.5 million (Norwegian kroner one million five hundred thousand) (the Grant) to be used exclusively to finance the Project in the planned period February 1<sup>st</sup> – June 30<sup>th</sup> 2008.

Any accrued interests on the Grant may be used for the benefit of the Project if agreed on by the Parties in writing.

Any unspent disbursed funds and accrued interests shall be returned to MFA upon completion of the Project.

## **Article IV Contributions and obligations of KNCHR**

KNCHR shall be responsible for implementing the Project, and shall hereunder:

1. Have the overall responsibility for the planning, implementation, reporting and monitoring of the Project,
2. provide institutional resources required in addition to the Grant.
3. ensure that the Grant is used according to approved work plans and budgets,
4. ensure that Project funds, which shall include any accrued interests, are properly accounted for, and that the Grant is reflected in the plans, budgets and accounting of KNCHR,
5. promptly inform MFA of any circumstances that interfere or threaten to interfere with the successful implementation of the Project,

6. ensure that representatives of Norway are permitted to visit any part of the Project for purposes related to the Agreement and examine any relevant records, goods and documents.
7. ensure that the contract with “No Peace without Justice” and any subsequent amendments in it is submitted to Norway for information.

#### **Article V Disbursements**

The Grant will be disbursed on KNCHR’s written request upon signing of this Agreement to a (separate) bank account with KNCHR and shall be made available to the Project immediately.

KNCHR shall immediately, in writing, acknowledge receipt of the funds. The date of receipt shall be stated as well as the exchange rate applied.

All disbursements to suppliers of goods or services shall be made by KNCHR.

#### **Article VI Reports**

##### **Progress Reports**

The KNCHR should keep the Embassy informed of all relevant delays and developments affecting the project’s progress. Within May 31<sup>st</sup> 2008 a preliminary report on findings should be released.

##### **Final report**

Within August 1<sup>st</sup> 2008 KNCHR shall submit to MFA final report for the Project. The report(s) shall give information on the fulfillment of the plans and objectives mentioned in the Project Document and in the Agreed Project Summary (Annex I), any deviations (positive or negative) and problems encountered.

##### **Financial Statements**

Within August 1<sup>st</sup> 2008 KNHCR shall submit to MFA certified financial statements for the Project showing receipts/ income and expenditures of the Project. The certification shall be done by the accountant and the Commission Secretary of KNHCR. The statement must itemize expenses as in the budget in the Project Document (Annex II).

##### **Audit**

The financial statements of the Project shall be audited by the Auditor General or an equivalent governmental audit body or an independent professional accountant/ accountancy firm in public practice (external auditor/audit firm) engaged by the Auditor General. KNCHR shall submit to MFA the audit report and any other report from the auditor significant to the implementation of the Project within October 30<sup>th</sup> 2008. KNCHR shall comment upon the auditor’s findings. MFA shall respond within 4 weeks upon reception of the report.

The audit report shall state the auditor’s opinion/findings as to:

- Whether the financial statements present fairly, in all material respects, the Project’s cash receipts/income and expenditures as well as the cash/bank/financial position in accordance with an acceptable financial reporting framework,

- whether the audit has uncovered any material weaknesses in relevant internal control(s),
- whether the audit has uncovered any illegal or corrupt practices,
- whether funds have been used exclusively to cover Project expenditures,
- whether cash receipts/income and expenditures are properly accounted for.
- whether appropriate internal controls to counteract illegal or corrupt practices have been established and are complied with.

KNHCR shall submit to MFA a copy of the audited financial statements of KNHCR as such, for the financial year that covers the Project period, as soon as it is prepared.

#### **Article VII Procurement**

KNCHR undertakes to effect all procurements of goods and services necessary for the implementation of the Project.

The procurements shall be performed in accordance with generally accepted procurement principles, good procurement practices and the procurement regulations of Kenya. Norwegian suppliers shall be given the same opportunities as other suppliers to compete for deliveries.

KNCHR shall observe the highest ethic standards during the procurement and execution of contracts,.

No offer, gift, payment or benefit of any kind, which would or could, either directly or indirectly, be construed as an illegal or corrupt practice, e.g. as an inducement or reward for the award or execution of procurement contracts, shall be accepted. Invitations to make offers as well as the procurement contracts shall, respectively, include a clause stating that the offer will be rejected and/or the contract cancelled in case any illegal or corrupt practices have taken place in connection with the award or the execution of the contract.

KNCHR shall upon request furnish MFA with all relevant information on its procurement practices and actions taken, and provide access to all related records and documents. MFA may require access to information even during the stage in the procurement procedure when it is restricted to the officers performing the procurement. Restrictions on such information shall be respected until the information can be made public without any risk of detriment to the result of the procurement.

#### **Article VIII Reviews – Evaluation**

MFA reserves the right to carry out independent reviews or evaluations of the Project as and when MFA deems it necessary. The cost for such reviews will be covered by funds over and above the Grant.

#### **Article IX Reservations**

MFA reserves the right to reclaim all or parts of the Grant and cancel the Agreement if Project funds are found not to have been used in accordance with the Agreement or are found not to be satisfactorily accounted for.

MFA has the right to cancel the Agreement or portion of the Agreement, and has the right to demand the cancellation of any contract financed under the Agreement, with immediate effect if it determines that corrupt or fraudulent practices were engaged in by representatives of KNCHR or by a beneficiary of Project funds during procurement or execution of the contract without KNCHR having taken timely and appropriate action satisfactory to MFA to remedy the situation.

Before MFA reclaims funds or cancels the Agreement, the Parties shall consult with a view to reaching a solution in the matter.

#### **Annex X Distribution of the Agreement**

The Parties shall distribute copies of the Agreement to the respective ministries, authorities and other institutions involved in the Project or otherwise in need of information on its content.

#### **Article XI Entry into force – Termination – Disputes**

The Agreement shall enter into force on the date of its signature, and shall remain in force until the Parties have fulfilled all obligations arising from it. Whether the obligations are fulfilled, shall be determined in consultations by the Parties.

Notwithstanding the previous clause each Party may terminate the Agreement upon 15 days written notice.

If any dispute arises relating to the implementation or interpretation of the Agreement, the Parties shall consult with a view to reaching a solution.

IN WITNESS WHEREOF the undersigned, acting on behalf of their respective Party, have signed the Agreement in two originals in the English language.

Done in Nairobi the day of March of 2008.

For the Norwegian Ministry  
of Foreign Affairs



ELISABETH JACOBSEN  
Ambassador

10/4-08

For the Kenya National  
Commission on Human Rights



MBURU GITU  
Commission Secretary

10-4-08

Annex I: Agreed Project Summary  
Annex II: Budget and Funding Plan

## Annex I

### Agreed Project Summary KEN-20nn KEN-08/00n

**Project name:** Documentation and Investigation of Serious Human Rights Abuses following the Post Election Violence in Kenya (phase I)

**Implementing institution:** Kenya National Commission on Human Rights KNCHR)  
Partner Institution: "No Peace without Justice"

#### Goals/Objectives

**The Project goal** is to document and investigate an accurate and impartial account of what the post 2007 elections human rights abuses view of identifying those with the highest responsibility.

**The objectives** of the Project are:

- To investigate, document, map and analyze the serious human rights violations that have taken place in the post election violence that occurred in Kenya after announcement of the presidential results.
- To examine the facts and patterns with a view to establish the extent to which such violence resulted from a policy to commit systematic attacks against civilian populations, and to what extent they were ordered, directed or coordinated by persons, public officials or group of persons acting with a common purpose.
- To address the culture of impunity for commission of such violations by holding to account those who may have ordered, planned, financed or instigated such attacks and/or neglected to prevent such attacks.
- To strengthen the rule of law in Kenya through respect for human rights and adherence to the rule of law.

#### Target group

The target group is those who have violated human right and international humanitarian law in Kenya. It is also expected that the output from the investigations will benefit the society in general, but also more specifically the victims, the police, the judicial system and Kenyans decision makers in the present and the future.

#### Outputs

- A report that names, for further investigation, the persons who bear the greatest responsibility for the post 2007 election human rights violations.
- A report that documents and maps the patterns of human rights violations in the post 2007 elections period.
- Analysis of the trigger and underlying causes of the post 2007 election human rights violations.
- Recommendations for legal and policy reforms
- Data base on the patterns of human rights violations in the post 2007 elections period.

## **Inputs**

The overall Project budget is for USD 1,308,450. MFA will contribute with NOK 1, 5 million (app. USD 300,000). The Project is funded according to the Funding Plan in Annex II.

The KNCHR will use experts from *No Peace without Justice* (NPWJ), an international NGO working with peace building and conflict solution. This is done on a secondment basis.

## **Risks:**

- Misunderstanding by the public, the Government and the Opposition on KNCHR's investigations.
- Escalation of insecurity.
- Hostility and resistance from political leaders and security forces
- Political risk to KNCHR
- Political failure to establish TRJC.
- Lack of funding for the short to mid-term priorities of the project

## Annex II

### BUDGET and FUNDING PLAN

#### KENYA NATIONAL COMMISSION ON HUMAN RIGHTS/NO PEACE WITHOUT JUSTICE

#### INVESTIGATION AND DOCUMENTATION OF POST 2007 ELECTION'S HUMAN RIGHTS ABUSES

Item	Total (US \$)
<b>Equipment and services</b>	
Desktop computers	7 500
Laptop computers	9 000
Films, batteries and cassettes	4 000
Filing Cabinets	750
Stationery	8 000
Mobile telephone hotline services (Kencell and Safaricom)	6 000
Telephone (fixed lines)	8 000
<b>Subtotal</b>	<b>43 250</b>
<b>Data base</b>	
Data Base Software and installation	15 000
Training on Data base and data entry	10 000
<b>Subtotal</b>	<b>25 000</b>
<b>Human Resource Requirements</b>	
Honoraria for International Legal Experts by <i>No Peace Without Justice</i>	96 000
Accommodation for international legal experts by <i>NPWJ</i>	67 200
Per diem for international legal experts by <i>NPWJ</i>	33 600
National experts for Analysis (short terms national hires)	80 000
Conflict Mapping Recorders/statement recorders	80 000
Data entry clerks (short term hires)	40 000
Air tickets for international staff	32 000
Group insurance for international experts and national experts	5 000
<b>Subtotal</b>	<b>433 800</b>
<b>Field Expenses during investigations</b>	
Accommodation and Meals for investigation teams	360 000
Field Communication (airtime) for investigation teams	30 000
Hire of 10 four-wheel vehicles	120 000
Running costs of vehicles (fuel)	60 000
<b>Subtotal</b>	<b>570 000</b>

<b>Media Advocacy and Monitoring</b>	
Media outreach and communication	8 000
Paid up advertisements on the investigations/outcomes	30 000
Printing of FAQs (two prints)	20 000
<b>Subtotal</b>	<b>58 000</b>
<b>Report</b>	
Layout and design	5 000
Printing Report	50 000
Distribution	5 000
<b>Subtotal</b>	<b>60 000</b>
<b>Training Workshop for Data analysts</b>	
Meals and Accommodation (full board)	8 000
Transport to and from Venue	2 000
Facilitators (international experts)	4 000
Air tickets for international experts	3 000
Accommodation for trainers	800
<b>Subtotal</b>	<b>17 800</b>
<b>Audit costs</b>	
Financial report and audits	15 000
<b>Subtotal</b>	<b>15 000</b>
<b>SUBTOTAL DIRECT COSTS</b>	<b>1 222 850</b>
<b>Overhead (&lt;7%)</b>	<b>85 600</b>
<b>GRAND TOTAL</b>	<b>1 308 450</b>

### **Funding**

UK	300 000
Germany	150 000
OSEIA	250 000
Finland	80 000
Norway	280 000
Sweden	250 000
<b>Total Pledges</b>	<b>1 310 000</b>