



**KENYA: GOVERNANCE, JUSTICE, LAW AND
ORDER SECTOR (GJLOS) PROGRAMME**

**FOURTH PROGRAMME REVIEW
Final report**

**Submitted to the fourth
Joint Review Meeting
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List of abbreviations

ADR	Alternative Dispute Resolution
AIDS	Acquired immune deficiency syndrome
CBO	Community Based Organisation
CSOs	Civil Society Organisations
DFID	Department for international Development UK
DGSP	Democracy Governance Support Programme EU
DPA	Department of Probation and After-care
ERSWEC/ERS	Economic Recovery Strategy for Wealth and Employment Creation
EU	Delegation of the European Commission in Kenya
EVA	Economic Value Added model
FMA	Financial Management Agent for GJLOS
GJLOS	Governance, Justice, Law and Order Sector Reform programme
GoK	Government of Kenya
HIV	Human immunodeficiency virus
IASC	Inter-Agency Steering Committee
ICT	Information, Communication and Technology
IEC	Institutional Education Campaigns
KBI	Kenya Bribery Index
KEPSA	Kenya Private Sector Alliance
KR	Key Result
KIA	Kenya Institute of Administration
M&E	Monitoring and evaluation
MDA	Ministry, Department, Agency
MoJCA	Ministry of Justice and Constitutional Affairs
MoV	Means of Verification
MTS	Medium Term Strategy
MTEF	Medium-Term Expenditure Framework
NARC	National Rainbow Coalition
NGO	Non Governmental Organisation
NSA	Non State Actor
PCO	Programme Co-ordinating Office, GJLOS
OVI	Objectively Verifiable Indicator
PS	Permanent Secretary
PRSP	Poverty Reduction Strategy Paper
PSLO SWG	Public Safety, Law and Order Sector Working Group (within the MTEF)
S&T	Strategy & Tactics (South Africa)
SIDA	Swedish International Development Co-operation Agency
STPP	Short-term priorities programme of GJLOS
ST(R)PP	Short-term reform priorities programme
SWAP	Sector-wide approach
SWG	Sector working Group (within the MTEF)
TCC	Technical Coordination Committee
TG	Thematic Group (formerly Key Result Area)
TI	Transparency International
ToR	Terms of Reference
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

GJLOS today: a snapshot

1. Every AT report seems to begin with the observation that it is reviewing a critical moment in the life of GJLOS; this one is no different. GJLOS itself is well over halfway through its lifespan. As we prepared this report, the country was headed towards the first general election in the life of GJLOS; and at the same time was preparing to become a full-blown sector-wide programme (SWAP), something the AT has been recommending since our first report 3 years ago. Transition continues to generate mixed responses within and beyond GJLOS, from enthusiasm to fear and anxiety. Reform energies seem to have dipped, the mood is low, while implementation and absorptive capacities have risen. Many key achievements have been won, but many critical gaps remain, outlined in the final part of this report. Many old battles are still being fought (some over and over again), while new challenges arise each month.
2. In short, producing a single snapshot of GJLOS is virtually impossible: it looks very different when viewed from different angles and perspectives, and when different voices are listened to.
3. For this reason, we have structured the report in a way that builds a picture from the bottom up and followed a similar structure in this summary. We begin by looking at where the programme has added value and some key achievements. We then discuss the context in which GJLOS (and this report) is located and which will affect the way forward. This unavoidably deals with 'big picture' issues including the imminent elections, reform energies, the mood within GJLOS and among MDAs, non-state actors (NSAs) and others.
4. We then turn to the survey of all Ministries, Departments and Agencies (MDAs), undertaken as part of each review, in order to provide a GJLOS-wide picture of key issues as seen by the MDAs implementing the programme. This is complemented by a summary of the findings across the three departmental case studies undertaken as part of this review which focused (as they had in our second review) on the Department of Probation and Aftercare Services (DPAS), the Department of Public Prosecutions (DPP), and Kenya National Commission on Human Rights (KNCHR).¹ This reflects the general bias in all AT work towards evidence-based analysis.
5. Staying with GJLOS as it is today, we analyse the efficiency of the programme – absorptive capacity, management and governance structures, ways of working and capacity to learn lessons. This section is particularly concerned with making sure that GJLOS functions optimally internally, and is well-positioned to meet the challenges of transitioning to a full-blown SWAP.

Value add

6. Let's pause for a moment to look at what has been happening on the ground. If we combine the total number of all GJLOS activities recorded as either 75% or a 100% implemented it is found that roughly half of all planned activities (48%) fall into this category. It can be argued that the programme is about where it should be, half way through completing the planned activities, and just over halfway through its own planned lifespan.
7. Obviously this is a slightly misleading measure, as some activities are considerably more complex than others and the STPP deliberately targeted 'easy wins'. Nevertheless, using this purely quantitative measure the programme can argue that it is making steady progress, and an activity

¹ The three individual reports are available as stand-alone items and will be appended to the final AT report.

trend line would be pointing upwards. This suggests that over time the trend will be for more and more activities to be rated as either 75% or 100% implemented.

8. Building on this positive finding, we have tabulated some key (completed) activities in the main body of the report, at paragraph 58 below. This table records key successes under each of the key results, demonstrates the breadth of the achievements by the programme in a relatively short time and highlights the depth of activities that have been completed. It is clear that in addition to many (fairly straightforward) activities, the programme has also achieved some far more complex activities for which it deserves recognition. The STPP and MTS 1 and 2 have managed to lay the foundation for a successful reform programme in the sector – so long as activities are focused and cluster around key issues and themes rather than being ‘sprayed’ across a very broad spectrum as in the past.

Some specific achievements

9. GJLOS has provided opportunities for participating institutions and incentives for committed public servants to step up and use the reform space to make a concrete contribution to the reform agenda. Skills acquired in participatory planning and budgeting have been applied more broadly and this is a noteworthy contribution by GJLOS to the broader public service reform process.
10. The programme is breaking new ground in running reforms through different departments and ministries. The work of the TGs has opened the sector to greater scrutiny, promoted harmonization and created space for constructive engagement by non-state actors. Many problems have been encountered along the way and some of these remain as challenges to the success of GJLOS; key aspects of which are discussed below.
11. In our survey of MDAs, we asked what value if any had been added to their work by implementing MTS activities. The main responses were internal – 70% told us they had better planning skills, while 56% said co-ordination within the sector had improved as a result of implementing MTS activities. These are key gains in an under-resourced and under-skilled sector.
12. Other areas mentioned by respondents included training and reporting (both cited by 48% of respondents), and linkages with other MDAs. Lower down came procurement (37%) and M&E skills (33%). Just 37% told us that participation in TGs had added value to their MDA, echoed throughout this report. And the impact of GJLOS on respondents should not be under-estimated. Unsurprisingly, respondents were most likely to see positive changes at a personal level – but every single respondent (100%) told us that implementing GJLOS had had a positive impact on them at an individual level. This dropped slightly to 96% who told us their MDA had benefited from implementing GJLOS. This dropped to a still respectable 68% who believed the sector as a whole had benefited from implementing GJLOS. The following changes were noted by respondents.

Level	Positive Changes
Individual	Reform Attitude and Focus Capacity Building Efficiency and Effectiveness Incorporation of best practices Morale and better Working Environment
Institutional	Results focus Internalization of reform Embracing of SWAP Improved planning Increased productivity

Level	Positive Changes
Sectoral	Better Service Delivery (including development of necessary instruments such as service charters, operational manuals, complaints boxes and customer desks) Enhanced public image and visibility Revision of laws and policies Synergy ,Collaboration and Collective Decision making Learning and Discussions Better Understanding of Roles Improved Planning Improved Image
National	Delivery of Services Public awareness of reforms Enhancement of rights e.g. freedom of expression, prisoner's rights Enhanced service delivery to public especially with performance contracting

Table 1: Positive change (MDA survey)

13. Two-thirds of respondents believe that the good practices generated by GJLOS implementation will continue (68%), that they cut across the sector as a whole (63%) and that they have been factored into the design of MTS 3 (61%).
14. The AT (here and previously) has argued that GJLOS is weakened by the failure to develop a single, clear definition of reform. This is reflected in the survey results, where the majority of respondents believe GJLOS to be a reform programme (though this was undefined in the survey questionnaire too), 13% see it as a modernising programme and a fifth are quite happy to regard it as a combination of both. The need for a focused definition remains as urgent today as in previous AT reports/previous JRMs.

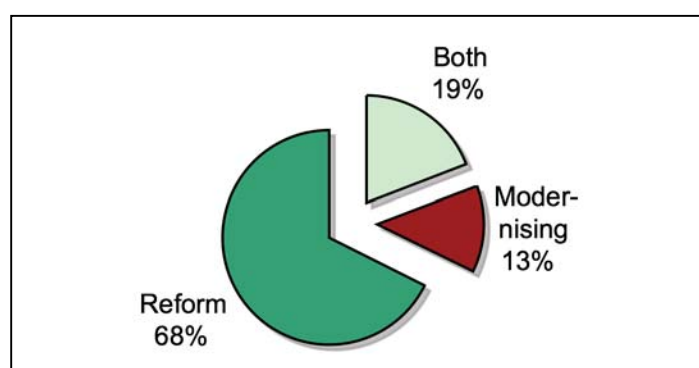


Figure 1: GJLOS: reform or modernising programme? (MDA survey)

15. That said, 59% believe the reform focus of GJLOS was sharpened after the STPP phase – 37% do not – and a significant 89% believe that MDAs are “doing differently” as a result of the programme. This reinforces the notion that the early gains have been made in the internal dimensions of the SWAP – transforming the individuals working in the sector, their MDAs, and the sector itself. This is a major achievement and not to be lightly regarded. But the core challenges – reforming the external governance environment – remain.
16. This should not be taken to mean that GJLOS has had no external impact – it is a question of where respondents see it as having had its main impacts. We asked respondents to focus on this issue in some detail.

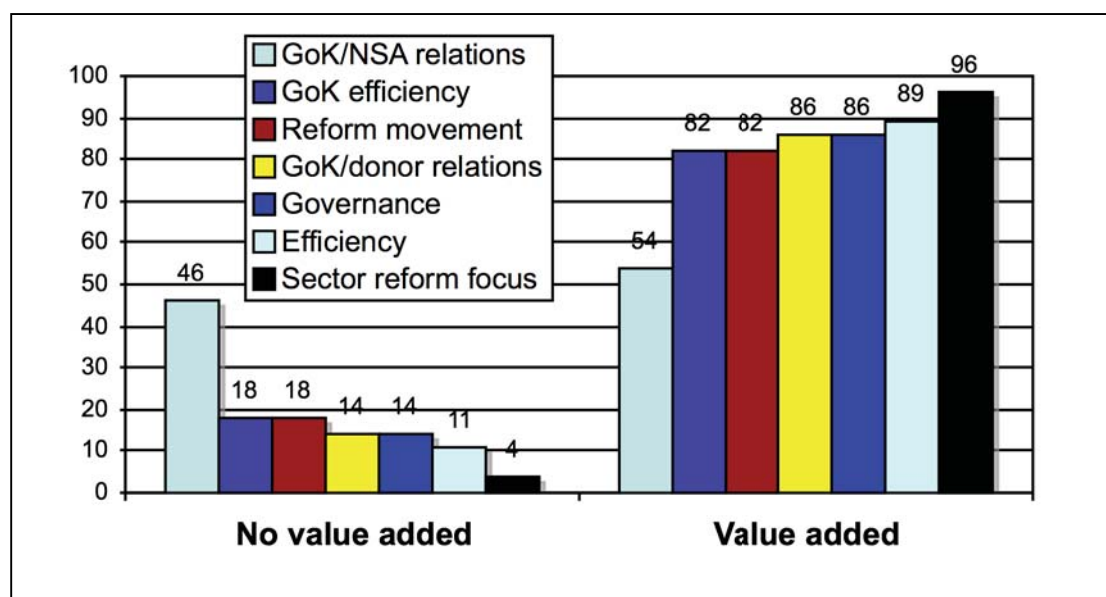


Figure 2: MDA perceptions of where GJLOS has added value

17. Let us be clear: respondents certainly feel that GJLOS has a better reform focus than the AT does, and see this as a key value add of the programme. This is followed by efficiencies in the sector. On the downside – shown in the bars on the left of the graph – the on-going failure to strike up a sound partnership with non-state actors features most strongly.
18. Predictably, externalities were less commonly cited, such as linkages with NSAs (33%) – which have benefited individual MDAs rather than the programme or sector as a whole; or – worryingly – linkages with other reform programmes (30%). The results suggest (as do other findings in the report) that internal capacities and skills have grown steadily, reflected in growing absorptive capacities and a greater proportion of completed activities. On the other hand, the programme increasingly needs to tackle external environmental challenges, most obviously by proper partnerships with NSAs, and linkages with other public sector reform programmes.
19. The MTS phase is acknowledged by most of the MDAs interviewed as having made them critically assess and recognise what needs to change in terms of citizen-focused service delivery, rather than simply engaging in processes. This contrasts with the STPP phase which concentrated more on hardware in terms of acquisition of equipment and facilities, and which was thought to be a “passing cloud”, i.e. it would not last and therefore need not be taken seriously. MDAs acknowledge that there was no reformist orientation during the STPP and no thematic focus as is now present. In the MTS they note a focus on key result areas and sector-wide and cross-cutting issues. In addition there have been institutional milestones in terms of the development of strategic plans and introduction of performance contracting since the STPP that have also changed the approaches by MDAs to the programme during the MTS.
20. The reform and results focus is also credited for preparing the GJLOS MDAs and enabling them to appreciate and to embrace (more readily than other government departments) other public sector reforms, especially performance contracting and the Rapid Results Initiative (RRI). There are linkages with RRI under Thematic Group 7, and some MDAs have incorporated RRI activities into the GJLOS work-plans. Linkages with other reform programmes are however still weak – GJLOS is not a performance target for some MDAs in performance contracting and in some instances RRI has successfully taken place independently of GJLOS (as in the Registrar General’s department), despite the same activity being a key output in GJLOS since the STPP. An analysis of the processes under RRI reveals certain approaches which may be relevant when considering more effective coordinating mechanisms. Under RRI there seems to be political will and buy-in at

highest levels at the very outset, consultation and involvement of all key staff in the department, specific targets set for all staff, and the involvement of other relevant departments such as the Ministry of Public Works at all the stages. There is a need to harmonize and synchronize activities taking place under the different reform programmes for greater efficiency and impact.

GJLOS INSTITUTIONS

21. The PCO remains by some degree the most valued GJLOS institution. Leadership structures including the IASC and TCC are not well-known, and many respondents were unable to rate their performance due to lack of knowledge as to what they do. The transition should be used as an opportunity to re-design and rejuvenate these structures.
22. Attendance at (and the meetings of) GJLOS institutions have been irregular and not always accorded the priority they deserve. Interest, generally, is waning and the policy debate has slackened. In addition to some specific problems, the reason most often articulated for this, is a perceived lack of stewardship at senior government level; often described as a lack of political will for real reform.
23. At the highest programme level, the IASC, although comprised of cabinet ministers, is not a recognised structure of cabinet. GJLOS participants and observers alike, characterise its political leadership with phrases such as, 'suspicion', 'poor communication', and 'without clear and unified direction'. There is evidently lots of work to be done at this level if current levels of commitment among participants are going to be maintained (let alone improved).
24. At senior management level, the programme functions adequately although heads of department represented at the TCC do not always appear to have the time (or information necessary) to engage effectively. Better engagement (through better briefed and prepared personnel) at the most senior levels is needed.
25. Thematic Groups (TGs) have had mixed success. Some TGs are showing good potential and starting to engage as policy and accountability forums (as they were intended) while others are seen merely as conduits for the approval of work-plans and money.
26. The operational management structure of the PCO has benefited from increased capacity and remains highly regarded by all programme participants. This capacity has enabled the PCO to start engaging on a more conceptual level and this is reflected in the (high) quality of reports and briefings emanating from them. The key issue for all respondents is, however, the transition away from an externally staffed PMU. While no one doubts the merits of the decision in principle, MDAs and other programme stakeholders are very concerned about the way in which the transition will be managed and whether a new structure will be able to play the critical role, hitherto championed by the PCO, without (at minimum) a serious dent in the pace of implementation and with possibly more far-reaching and serious consequences for GJLOS. There is a uniform sense of vulnerability, which – coupled with political and leadership uncertainty – are issues that must be addressed openly and urgently.
27. The financial management role of the FMA has become more acceptable to most MDAs who are now generally more familiar with the programmes requirements. FMA outputs and efficiency have steadily improved. There are still specific concerns from some MDAs about poor communication, procurement delays and – perhaps most importantly – no real demonstrable evidence of financial capacity building. The FMA, however, reports setting up the planning and budgeting processes, as well as providing assistance through a 'learning by doing' approach to budgetary control, procurement and financial reporting by MDAs.
28. Development partners continue to meet regularly and engage in GJLOS meetings. The establishment of the NSA support facility, which was to address the serious resource constraints

faced by civil society was slow in development and ironically, ultimately fell victim to the serious co-ordination difficulties faced by civil society itself as well as what might be described as a sense of resignation or even exasperation on the part of MoJCA, PCO and donors towards CSOs. Co-ordination and accountable representation will hopefully be one of the issues addressed with the setting up of new funding modalities, which are currently being discussed by development partners.

SUSTAINABILITY

29. Leadership (at all levels) is key to the sustainability of GJLOS. Star performers in the programme are all blessed with excellent leadership. Large institutions within GJLOS, such as the judiciary and police have a strong inertia to change and their own specific challenges but their ongoing participation is crucial for the reform process.
30. GJLOS needs to take a long-term view and strategise effectively around constraints to meet the challenges. The programme needs to meet the challenge of reform (e.g. new legislation in line with key human rights objectives) as distinct from deliverables in a work-plan (e.g. a draft bill) in a creative and sustained manner, addressing issues from different angles. Thematic groups can serve well to break down this task into manageable components and agree a division of responsibility between different stakeholders. Legislative reform (for example) is a long and involved process and TGs can provide the leadership to follow through on the reform objective, while holding members accountable for the delivery of the individual components of the collective strategy. The recent development of GJLOS joining MTEF as a sector in its own right – including constitutional bodies such as Parliament – should go some way to enhancing the sustainability (and success) of such a collective strategy.²

GJLOS INTEGRATION INTO GOK SYSTEMS

31. At a management level, the integration of GJLOS into a GoK SWAP requires the integration and harmonisation of systems and procedures. There are currently differences & weaknesses in data collection, storage and analysis. There are variances in accuracy, completeness and frequency of data collection. Systems are highly manual and data collation and sharing is a big challenge.
32. While progress has been made towards integrating GJLOS with the MTEF planning cycle, the MTEF budgeting & planning system does not necessarily support a SWAP – especially the procurement procedures and cross departmental policy and planning processes through TGs. This suggests that integration will face many challenges and will need sustained effort and excellent stewardship.
33. As GJLOS agendas become mainstreamed within government policy in Vision 2030, the need for GJLOS leadership to ensure that mainstreaming actually happens within different ministries and departments – and that capacity (and content) gaps are identified and addressed become critical for the realisation of the reform ambitions. Positioning GJLOS at the centre of sustained economic growth, and ensuring that GJLOS institutions both inform and own the GoK reform content, is a key aspect of this integration.

GJLOS EFFICIENCY AND EFFECTIVENESS

34. GJLOS has been characterised by relatively low funds absorption. This has been mainly attributed to delays in procurement, low capacity within MDAs, and the complexity of procurement procedures. In addition, GoK and basket fund donors did not resolve internal issues around the procurement of civil works. Absorption rates have, however, increased dramatically from 2005/6 to 2006/7. While in 2005/6 there was an under-expenditure of 87% (in basket funds) and 67% (in total), this has improved in 2006/7 to 39% and 29% (respectively). It should be noted that basket

² This occurred as the AT report was being drafted and falls beyond our scope in this Review.

fund under-expenditure (in 2005/6) is partly explained by the delayed start up of the basket funded activities (in January 2006.)

35. There have been significant instances of non-adherence to agreed work plans. In addition, some work plans were overly ambitious and may not have considered capacity constraints at the conceptual stage – perhaps due to lack of baseline data on capacity requirements.
36. Parliament has been an obstacle to achieving responsive and enforceable laws & regulations due to low legislative drafting capacity, partisan politics and perhaps naive assumptions by GJLOS that failed to take into account the myriad of obstacles, competing (and powerful) interests and the long complicated process of building the consensus necessary for progressive legislative enactment. Finally, the lack of data on key performance indicators limits the measurement of efficiency and effectiveness.
37. Some ways of resolving these challenges include:
 - Develop standardized templates for data collection and automate data collection systems
 - Allow more time and set clear milestones for the transition of GJLOS RP to GoK system
 - Need for an assessment of GJLOS resource requirement e.g. HR, Office space etc.
 - Need to constantly review performance/leadership of GJLOS institutions i.e. IASC, TCC, TGs etc. especially when management & coordination suffers
 - Replace IASC with a Cabinet Sub-committee
 - Need for mechanisms for penalizing and rewarding GJLOS Institutions/MDAs on the basis of performance
 - Need to clarify mechanisms for dispute resolution for GJLOS institutions
 - Operationalising the agreed harmonisation of the GJLOS sector with MTEF PSLO sector

TRANSITION

38. Having built up a picture of what is happening on the ground and within GJLOS, we turn to two critical issues that operate at a slightly different level. The first is the transition, from the current quasi- to a full-blown SWAP. That this is a key step for everyone in GJLOS is not in question; but what matters is timing and managing the transition correctly, to maximise gains for the programme and minimise its exposure to risk. And people matter in the transition – there is considerable disquiet and unhappiness among a range of actors about the pace and nature of the transition (and, for some, the transition itself). It is important that we move beyond the inter-personal (not that we ignore it, but we manage it appropriately) and focus on what is best for GJLOS.
39. Finally – and most important, from our perspective – is the strategic question of ‘where next?’ for GJLOS? By comparing GJLOS as it stands (as reflected in MTS 2 and MTS 3) with best practice internationally, our own previous recommendations, those of the mid-term review (MTR) and others, we seek to create a framework for taking forward the programme in a way that ensures the key strategic issues reflecting both the Result areas from the logframe and the core components of governance, justice and law & order are covered.
40. While the transition is exercising many at the moment, from a programmatic perspective what should matter is what GJLOS will (and should) be doing in the next 12 months. The transition is important – but it is about the administrative set up for delivery: the key issue is, what should GJLOS be delivering? This is what we try to flesh out in this section of the report. It is obviously vital that the transition is well-managed and that no rushed decisions are made that may imperil GJLOS. But of greater import for Kenya and Kenyans is what will GJLOS look like? What will it focus on? What lessons will it (finally) learn from the 2004-2007 period, what and who will it prioritise, and how? These, it seems to us, are the most important issues facing GJLOS today. And above all, we believe it is critical that GJLOS move away from the current ‘spray and pray’

approach – where multitudes of activities are occurring, but it is unclear quite what they add up to – and focus implementation on core reform areas.

Where next?

41. There is a sense that the GJLOS Reform Programme is making steady progress towards achieving its overall aims. Whilst it is appropriate at this mid-stage of the programme's life to pause for a moment and celebrate the successes it is also appropriate to critically reflect on what has been learnt, what still needs to be done and how best this is to be achieved.
42. Above all – and here the AT is repeating a refrain from every review report we have produced – the programme and the sector continue to suffer from the failure to define reform. Reform means modernising activities and efficiency; it means infusing a human rights approach into everything that is done in the sector; it means identifying key marginalised social groups and serving them (women and girl children, people infected and affected by HIV/AIDS, etc.); and more, depending on who we ask. The problem is that it should mean all of these things – but frequently stops at the first, so that doing my job more efficiently is equated with having been reformed.
43. And while this remains the case, the sector and the GJLOS programme will be marked by a 'spray and pray' approach – that is, unleashing a whole range of very different activities (spray them) and then hoping (pray) that they stick and somehow combine to equal 'reform'. This is an overly harsh characterisation of what is happening – but close enough to the truth to worry us. Our report ends by pondering the question that JRM IV should ponder: if so many important activities have been completed, why is the sum of their parts so much less than the 'reform' whole we all want?
44. And – drawing together the whole story – given the anxiety among MDAs about the post-election period, the disquiet among some and enthusiasm among others regarding the transition, the need to re-orient GJLOS to core reform issues and the need to re-energise MDAs with reform zeal that is matched by the new government – we suggest a 100 day reform blitz in 2008. This would be a second short-term programme, not focusing on infrastructure (as the Short-Term Priorities programme (STPP) did) but on core, critical reform actions that GJLOS needs to win over sceptics, cement friends, cement its place in government, and push forward as a programme. It would be a key hand-over period for the transition, and allow time to win over any new political or other appointments, while settling in as a sector in the Medium Term Expenditure Framework (MTEF) and – above all – orienting the programme to serving (particularly poor) Kenyans. We suggest possible activities that could be completed in the 100 day 'reform honeymoon', though of course finalising the content would be the responsibility of the sector.

Introduction

45. This is the fourth Review of the Governance Justice Law & Order Sector reform programme (GJLOS). Unlike previous Review Advisory Team (AT) reports, we have tried to make this less of a technical report and more of a narrative, where possible, so as to make the whole report more accessible (and shorter!). Whether we have succeeded or not is up to the reader.
46. Similarly, we have refrained from making many, detailed recommendations in preference for a few, key strategic recommendations. A great many recommendations made in AT reports for Joint Review Meeting (JRM) I, II and III remain pertinent today, and we shall not repeat them. We suggested then that the Joint Review Meeting (JRM) appoint a small group to revisit all prior recommendations to see which remain relevant and action them, but that did not occur. This time, we focus on key themes and develop them; for example, the whole of the final section of the report – our suggested strategic way forward – is one extended recommendation.
47. An important observation that we must make at the outset is that GJLOS is constantly evolving. A significant development was recorded just as the Advisory Team was finalising this report, GJLOS achieved MTEF status. The replacement of PSLO by GJLOS and bringing on board new governance institutions that were not part of GJLOS, represents a massive step forward for the programme, with new challenges as well as significant potential for major strides forward. The transition is gaining speed and as a result some of what is said in the report may already be out of date – unavoidably so.

Terms of Reference

48. Our terms of reference are attached at Appendix A. The Advisory team was asked to assess the implementation of MTS 1 and 2 and planning for MTS 3, as well as ‘consider and propose modalities and means for sustaining any successes and addressing any lessons and challenges for the GJLOS Reform programme going forward’. This included an analysis of the overall management and co-ordination of the programme, looking particularly at efficiency and learning capacities; how the reform content has and should be broadened; and how to manage the context in which GJLOS finds itself.

Methodology

49. In order to meet our Terms of reference (ToR), the advisory team used the following methods:
 - Documentary analysis/secondary data analysis: this informed all aspects of the AT work, and included documents, reports, minutes, data sets and the like.
 - 3 MDA-level case studies: all aspects of the ToR were studied in minutiae in focused department-level case studies.
 - Site visits: as part of both the case studies and the broader review, site visits were undertaken in and beyond Nairobi to assess issues *in situ*. This also allowed us to interview end-users of GJLOS services.
 - GJLOS-wide MDA survey: a survey of all MDAs allowed all MDAs to answer questions dealing with all aspects of the AT ToR.
 - Group meetings were held with civil society organisations (CSOs), donors, the PCO and others.
 - In-depth interviews were held with a wide range of key stakeholders including PSs, MDA staff, GJLOS staff (PCO/FMA), NSAs, donors, beneficiaries, commentators and critics, and others.

50. The review team thus used primary qualitative and quantitative as well as secondary data as sources of information. Where possible, triangulation was used to validate findings. Each researcher or team was given broad terms of reference (reflecting those of the AT) but were free to undertake their own research and reach their own conclusions. That all of us reached broadly similar conclusions is important and important in its own right. Of course much of what we do is analyse and interpret data in order to construct a narrative and analytic framework; and of course others may interpret the data in other ways and reach different conclusions.

Some observations on progress and achievements

51. We start by looking at some of the key achievements and progress by GJLOS in meeting its objectives. It is important to note where we are and how far we have come. This brief analysis of the road that GJLOS has travelled, recognises the success as a starting point for our tackling of the issues defined in our scope of work and the foundation for our recommendations at the end of this report.
52. When asked to comment on the “Road Map” currently in use to guide the programme, responses ranged widely from “GJLOS went on a journey without a map”, to “GJLOS has a map, but no one is reading it”, to “we’re still only half way through our journey and so far the map is ok”. Whilst the AT would expect different opinions on the quality and content of the programme’s “road map” it is nevertheless disturbing that some have even questioned the very existence of such a map. This section therefore sets about examining the map in more detail to assess the validity of these different claims.
53. In the second AT report (2005) it was recommended the MTS (2005) should be accompanied by a comprehensive sector-wide implementation plan (3 – 5 years) in which key activities were prioritised and sequenced. The AT has also argued previously that such a plan/ Road Map should be grounded in a human rights based approach, should signal the key priorities within each KR and provide the sequence for these events to follow. The reasons for this recommendation were three-fold. One, it ensured that leadership clearly signalled to all in the programme what, from a multitude of important activities, needed to be addressed and in which order. Two, it would allow the programme managers to assess progress being made against the identified milestones and to act accordingly and appropriately when delays were encountered. Three, following on from the previous point, it would ensure that over time those steering the programme from the centre would develop a realistic sense of what can and what cannot be achieved over time.
54. The AT still firmly believes that it is essential to develop an overall , high level sector-wide implementation plan for the remaining years of the programme, particularly one that underscores a human rights based approach. The AT remains concerned that the “spray and pray approach” to workplan design, and consequent delivery, is unlikely to lead to the achievement of the programmes key results, and as a result, its overall purpose. However, the idea here is not to supersede existing workplans developed by MDAs or TGs, nor is it to dictate to MDAs or TGs what their workplans should contain. Rather such an implementation plan would serve as a guide from leadership within the sector as to what are the key priorities and by when these need to happen.

Analysis

55. Since the onset of the programme in its different guises (from STPP, to MTS I, MTS II and soon to be MTS III), the programme has set itself an ambitious set of activities to complete (889 in all). As the graph below illustrates, completion of these activities, whilst at first uneven, is beginning to gain momentum (as noted elsewhere financial absorption has naturally followed a similar pattern).

56. MTS 2 has admirably turned around the lack of implementation achieved in MTS 1³. The number of outputs achieving 100% implementation has also improved significantly (27% in STPP, 11% in MTS 1 and 40% in MTS 2). Moreover, nearly two thirds (64%) of all MTS 2 activities were either viewed as 75% or 100% implemented. Contrast this with STPP in which less than half (43%) and MTS 1 in which only a third (34%) of outputs were classified as either 75% of a 100% implemented.

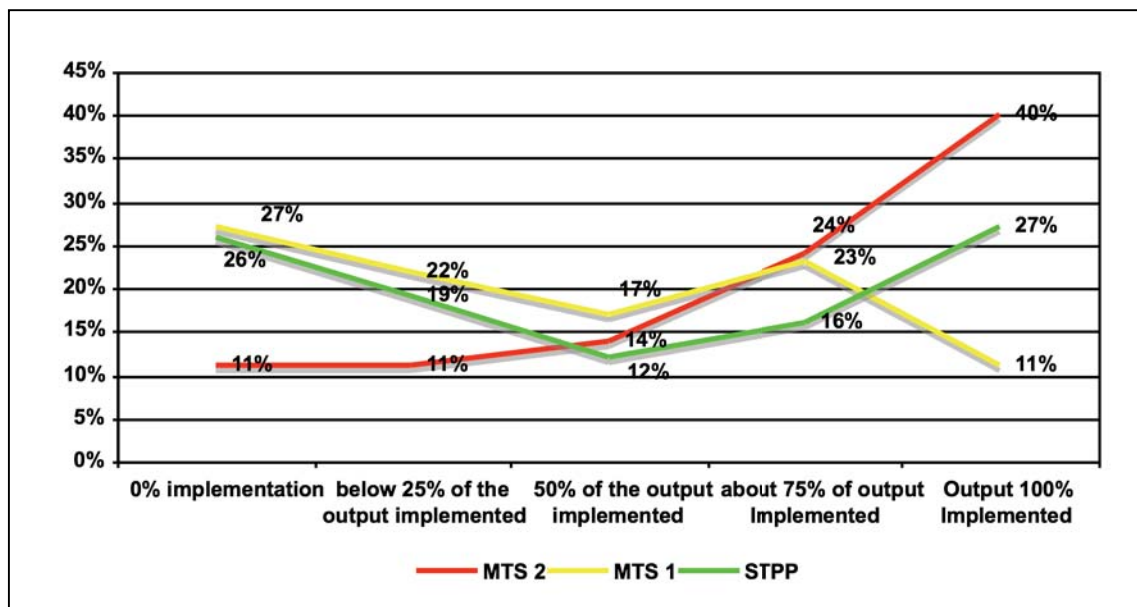


Figure 3: Completion rate of outputs per workplan (MTS 1 & 2, STPP)

57. When the total number of activities, rated as either 75% or a 100% implemented for the three stages, is calculated it is found that roughly half of all planned activities (48%) fall into this category. It can therefore be argued that the programme is about where it should be, half way through completing the planned activities. Obviously this is a slightly misleading measure, as some activities are considerably more demanding, resource intensive and of longer duration than others and so may not be fully implemented for years to come. Nevertheless, using this purely quantitative measure (taking into account that no quality assurance/verification has been done) the programme can argue it is making steady progress and that if one were to add a trend line to the graph above it would be pointing upwards. This suggests that over time the trend will be for more and more activities to be rated as either 75% or 100% implemented
58. Building on this positive finding the table below records key successes under each of the KR's. The purpose here is not only to demonstrate the breadth of the achievements by the programme in a relatively short time (SWAPs often have a life of at least 10 years, and GJLOS is only about a third of a way through a similar period), but also to highlight the depth of activities that have been completed. Whilst many of the activities rated as completed have been fairly straightforward, the examples provided in the table below point to significant activities that have been achieved. The programme deserves appropriate recognition for this.

³ The previous AT review elaborated on this issue noting that the primary problem encountered in MTS 1 was with the slow disbursement of funds.

Key Result 1: Responsive and Enforceable Policy, Law and Regulations	Key Result 2: Improve Service Delivery by GJLOS Institutions	Key Result 3: Reduce Corruption Related Impunity	Key Result 4: Improved Access to the poor, marginalised and vulnerable	Key Result 5: Develop more informed and participatory citizenry and non-state actors	Key Result 6: Effective management and co-ordination of GJLOS Reform Programme
<ul style="list-style-type: none"> • Prioritised Kenya's law reform agenda • More than 36 policies, laws and regulations have been developed • Law reporting re-established after 20 year gap • Core agencies equipped • Expansion of Probation programme through 197 trained and equipped Volunteer Probation Officers • Kenyan School of Law capacity strengthened • GJLOS Policy Framework Paper being finalised/aligned with Vision 2030 • Draft National Crime Prevention Strategy developed and under discussion • Draft National Prosecution Policy finalised • Policy and legal 	<ul style="list-style-type: none"> • Extensive capacity building has occurred⁴ • To date 160 vehicles, 100 motor cycles and nearly 1000 computers purchased • GoK resources have been used to procure more than 2400 housing units for police agents and rehabilitate 17 police cells and 12 courts • All MDAs now have service charters • Gradual shift from output focus to Results Based Management • GJLOS Reform initiatives appearing in Performance Contracts 	<ul style="list-style-type: none"> • Core agencies equipped • Specialised anti-corruption tools piloted • Formal anti-corruption awareness and sensitisation carried out across all GJLOS agencies • National anti-corruption plan developed, launched and completed 1st year completed • Draft regulations for enforcement of Public Officer Ethics Act developed • Anti-corruption advocacy carried out in 23 	<ul style="list-style-type: none"> • Draft Legal Aid and Education Policy developed • Draft legal framework on Plea bargaining developed • National Action Plan on Human Rights being developed and implemented • Human Rights manuals developed and distributed in conjunction with Kenya Police and Prisons • Sexual Offences Bill tabled and enacted • Legal framework for Children's rights strengthened • Action plan on Gender sensitive legal reforms developed • Community 	<ul style="list-style-type: none"> • Support provided to CKRC in hosting multi-stakeholder forums • Media supplements prepared to raise public awareness on constitutional reform initiatives • Printing and dissemination of draft constitution • Facilitation of Eminent Persons Committee • National stakeholder workshops conducted to enhance public awareness of engagement in anti-corruption issues • Civil society participation in Thematic 	<ul style="list-style-type: none"> • GJLOS Sector Development Programme (including sector budget) under development • Alignment of GJLOS planning and budgeting cycle to MTEF • PCO to be integrated into MOJCA structure • Shift from donor-led coordination to government-led donor coordination • increased visibility of programme through IEC initiatives (such as Marekebisho Media awards scheme completed in July 2007 & ongoing National Media Campaigns) • Planning, monitoring

⁴ In Public Safety and Security sector, for example, 20 000 staff have been trained in areas such as ICT and general management. Over 8 000 chiefs trained and 600 District Commissioners/ District Officers have also been trained. In the Justice sector over 3200 people have been trained.

Key Result 1: Responsive and Enforceable Policy, Law and Regulations	Key Result 2: Improve Service Delivery by GJLOS Institutions	Key Result 3: Reduce Corruption Related Impunity	Key Result 4: Improved Access to the poor, marginalised and vulnerable	Key Result 5: Develop more informed and participatory citizenry and non-state actors	Key Result 6: Effective management and co-ordination of GJLOS Reform Programme
<p>framework for legal education developed</p> <ul style="list-style-type: none"> • Key Acts enacted (such as Political Parties Bill, Witness Protection, Prisons Act) • List of prioritised, constitution compliant laws (88 in total) developed and being reviewed by Thematic Law Review Groups 		<p>districts across Kenya</p> <ul style="list-style-type: none"> • Complaints desks being established 	<p>Policing plans under discussion</p> <ul style="list-style-type: none"> • 16 Prisons and 52 Stations visited to investigate human rights violations 	<p>Groups</p>	<p>and reporting culture developing across the sector</p> <ul style="list-style-type: none"> • Observable increase in inter-agency/sectoral dialogue and activities

59. Notwithstanding the many major successes listed above it will be shown below that the beneficiaries of the programme continue to have little confidence in many of the institutions operating in the sector. The sum of the parts do not currently yet add up to the desired whole. This, in essence, is the challenge facing GJLOS today.

Part 1: GJLOS in context

60. The AT ToR instruct us to work “paying particular attention to the programme’s continually evolving context (at National, Sectoral and Institutional level)” as well as to assess the programmes strengths and weaknesses “in an evolving context with an eye on the future”. Context is of course a dominant theme in any grounded study, more so in a transitional society moving from authoritarianism to democracy, while focusing on the governance, justice, law and order sector/s. This is why previous AT reports have spent considerable time analysing the then current contexts.
61. But it is even more true for this review, given that there is a general election merely months away; reform energies seem to have ebbed; non state actor participation is at an all-time low and cynicism at an all-time high. At the same time, however, while we were writing this report the integration of GJLOS into MTEF was being concluded – GJLOS achieved MTEF status replacing PSLO and acquired new institutions that fit well within the sector (e.g. National Assembly, ECK and the National Audit Office). So, GJLOS is becoming internal to key government processes, notably the Medium Term Expenditure Framework although it (still) lacks a formal policy basis.
62. MoJCA argue strongly that the imminent election provides an important opportunity to make the transition to full SWAP, drawing on the energies that the election will release to rejuvenate the sector and the programme and push it over the edge into a full-blown SWAP.⁵ This may be correct at a macro level; but timing the myriad arrangements that make up the transition correctly is critical, and must be done in such a way that the programme sits on very strong foundations that can withstand the moment when the wave of enthusiasm draws back (or other unforeseen eventualities strike), and doesn’t collapse when this occurs.
63. In short: contextual analysis merely highlights the threats and opportunities inherent in the moment – particularly since context and transition are so closely tied to each other.

Context

64. In Part 2 of the report, we provide a brief overview of GJLOS today, as viewed from the perspective of MDAs – all of them as surveyed by the AT, and via the 3 MDA-level case studies. As noted above, the point is to build a bottom-up view of the programme, before tackling broader issues such as transition or the future strategic orientation of the programme.
65. We do so deliberately. GJLOS operates in a highly politicised environment, where the stakes – for the country as well as participants – are extremely high. As a result, what follows are the views of the AT on the context, more to sketch the parameters of the context and less to make definitive statements about them. Each individual will interpret events in their own way and from their own viewpoint; our approach is to try and understand where context has or will impinge on the programme.
66. Moreover, there are multiple ‘contexts’, not a single item that can objectively be assessed. Those contexts – which can be defined in multiple ways (national/sectoral/institutional; or political/party political/electoral; or governance/corruption/state of reform; or the state of party politics/political party reform credentials; or the state of government/civil society; and so on) – overlap and morph into one another. Tackling one and not another is partial and unhelpful; which is why we are

⁵ Interview with Gichira Kibara, Director: Legal Services, and PS MoJCA Dorothy Angote.

trying to trace the outlines and points where context will affect the programme, and no more than that.

Managing political risk

67. Part of the reason for this – to repeat a point made in all previous reviews – is the need for GJLOS to **manage political risk**. It should be noted, moreover, that this is an area where GJLOS has failed: it has neither an elaborate risk analysis nor strategies to manage political risk. This despite the fact that repeatedly, political events, actors or processes – beyond the remit or control of the programme – have affected the programme itself. Funds have been withdrawn or withheld, suspicions and tempers have been raised, walkouts have been staged, individuals criticised, and arguments developed about worth and value of GJLOS on the basis of the actions of political leaders in government. There is continual leakage from the political into the programme arena, the GJLOS is held liable – or hostage – to events and actions far beyond its control. The programme continues to be buffeted by this leakage, rather than develop strategies for (as far as possible) managing it.
68. A senior public servant (not from the Ministry of Justice and Constitutional Affairs (MoJCA)) noted that he regarded GJLOS as successful, but that perceptions of GJLOS have been affected by leading politicians placing political expediency above the national interest, failing to act expeditiously against high-profile individuals accused of corruption, the awarding of high political office to people accused of corruption, and so on. These are beyond the control of the programme – but redound directly onto GJLOS and give currency to arguments that government has back-tracked on reform, has no stomach for reform, and the like – and that GJLOS reflects this.
69. GJLOS as a programme has also been the victim of inappropriate action from donors, who have written protest notes, postponed JRM III without consulting MoJCA, stopped disbursement of funds, or withdrawn entirely as a reaction to what political leaders in government have or have not done. There is a widespread anxiety among MDA representatives we spoke to, that donors will use the election as another ‘excuse’ to cut or slow down funds meant for GJLOS. Part of a SWAP is the attainment of predictability in funding; while some donors have shown themselves to be committed to the long-term goals of GJLOS, others seem far less so, and have created an environment very different to that envisioned in the declarations of Paris and Rome.
70. Many in NSAs - and many in MDAs - analyse GJLOS as an extension of how they analyse the current political conjuncture in Kenya. The reform credentials of GJLOS – which *can* be measured independent of the political arena (see part 3 below) – are themselves frequently analysed not as programme deliverables but in political terms, as evidence of the commitment or absence thereof of government to reform. But it should be recalled that government came to power based in no small part on promises to reform and should be judged accordingly.

The election

71. This report proffers no comments on the election, likely winners or losers and the like. But we do have a handful of key observations to make. Before doing so, we offer a couple of observations reflecting the views of MDA representatives.
72. Elections are a time of change. Politicians and parties change and move; but, very often, so do senior civil servants, notably Permanent Secretaries (PSs). Moreover, new governments bring new mandates, new ideas, and want new programmatic vehicles to express their mandates. In this context, new individuals may take time to settle into the drivers seat. It is unclear if GJLOS (as a programme) has allies (let alone public champions) in any of the opposition parties, and seems to have few among politicians in government.

73. On the one hand, it should be recognised that the programme is anchored in a national development policy framework (ERS) but its reform purpose will likely remain relevant for many years. Furthermore, the issue of reforms in Kenya is likely to remain on the political agenda regardless of the government of the day. GJLOS, itself is the product of reform work that started under the previous government.
74. On the other hand, GJLOS occupies highly visible and politicised terrain in Kenya. There is understandable anxiety among MDAs that GJLOS is far from being a fixture and may not long remain on the scene. GJLOS does not have a robust profile that has percolated into the different political parties, and its half-in/half-out position (until recently) in government, coupled with poor AISC leadership and lack of formal policy status, has lessened ownership by the current ruling political leaders. The failure of parliament to support GJLOS Bills suggests that few allies have been won over among MPs, enhancing the vulnerability of the programme that seems to belong to no-one. MDA respondents have asked the AT why would any party that wins the election want to keep GJLOS? What does it offer them? Whose programme is it? We try to answer that question later in this report, but it is an indication of the fear and anxiety that the AT found to be prevalent among GJLOS MDAs.
75. The same point has been made about MoJCA itself, which did not exist prior to 2002, and of which GJLOS is probably the key programme. If GJLOS is expendable, the argument goes, so too is MoJCA. And this is underscored by the fact that even if both stayed, they may be headed by a new Minister, and/or a new PS. If these top-end personnel were to change – at the same time as the programme support structures are being replaced by new, GoK staff – what would be the impact on disbursements, procurement and implementation? It would be naïve to imagine that the programme transition will occur without any hiccoughs; these may become a choking fit if at the same time senior leadership figures are new in office and having to learn what GJLOS is and what it does. Given that (as we have frequently noted) the PS MoJCA is of fundamental importance to GJLOS, having steered it through very stormy waters to its present point, these fears are real and substantial.
76. Others note that the election may give the new Government of Kenya (GoK) an opportunity to cut or end its support for GJLOS. It may develop an alternative preferred programme; or may find that the level of hostility from donors, CSOs and others is not worth the returns it gets on its (large) investment. It may ignore the transition that GJLOS is undertaking and create a government reform vehicle that supersedes GJLOS – or it may sacrifice GJLOS to placate this or that faction within the political arena, for many reasons – ‘political expediency’, ‘GJLOS as more trouble than it is worth’, ‘GJLOS as too good at what it does’, ‘GJLOS as not good enough’, and so on.
77. This also triggers the debate about who is pro- and who anti-reform. We have discussed this in previous AT reports and do not revisit the issue here, save to note that this kind of discussion can be deeply destructive, when individuals are analysed as pro- or anti-reform; it feeds destructive gossip networks, and does nothing but harm. Coming at the same time as the transition to a full SWAP, it can certainly destabilise the programme.
78. As we noted at the outset, the permutations of context analyses are endless – and are being discussed and explored privately by people working in GJLOS MDAs. The stress of transition is being exacerbated by timing – by taking place exactly as the general election occurs, in a highly politicised area. Anxieties about one leech into the other.
79. The point at issue is not to scoff at these expressed anxieties as unrealistic (as some have done) or write them off as unrealistic or uninformed, but to accept that these fears are woven among GJLOS personnel – and to deal with them frankly and openly. Fear thrives on silence, gossip and

half truths – better by far for GJLOS to create an atmosphere where these anxieties can be discussed in the light of day and dealt with head on.

80. As we frequently observe, communication about the transition has been restricted to high level personnel in participating MDAs and GJLOS structures – it has been very poor at the level of keeping informed the mass of public servants who work in GJLOS institutions. And let us recall that GJLOS MDAs employ some 110 000 people, around 60% of public servants – it is evident that a rigorous communication strategy is needed to keep people abreast of new developments and build their confidence in the transition. This must go a long way beyond circulars written to heads of departments.
81. This is a point we make throughout this report, in different contexts. There is no point trying to make the debate follow this or that course. What can – and should – and has not yet been done – is to provide accurate information to everyone, so that at least the facts of the matter are in the public domain. What happens thereafter is beyond anyone's control. But MoJCA, as the Ministry charged with facilitating GJLOS, should urgently prepare briefing materials that answer the basic questions being asked at the moment which include:
 - i. What is the transition?
 - ii. Why is there a transition?
 - iii. Why now?
 - iv. Who will stay and who will go?
 - v. What will stay and what will go?
 - vi. What will it mean for my MDA?
 - vii. What will it mean for MTS 3?
 - viii. What will it mean for GJLOS funds?
 - ix. What are the views of donors?
 - x. And so on.

A reform dialogue?

82. Having broadly sketched the parameters of the context, as we see them, we make three observations. Firstly, – as yet, anyway – reforms do not dominate the election dialogue. This is not a reform election. This poses its own risks to GJLOS: if the new government (regardless of who wins the election) does not enter government with a reform mandate and a reform energy (and urgency), then GJLOS is a vulnerable programme. On the positive side, because GJLOS has a good track record, the new government may be happy to keep it in place. GJLOS has also just recently found its way into the MTEF and a policy framework is being fast-tracked. On the other hand GJLOS is subject to highly public attacks by donors and CSO activists that redound on the government of the day – who may want to keep their distance from it or even neglect it all together.
83. We have heard both these views – GJLOS is safe, GJLOS is expendable - and only time will tell which is right; but the JRM may wish to ponder how to generate greater dialogue and debate about reform and elevate it above the predictable ethnic-cum-personality focus the election is likely to take. This may be beyond what GJLOS can achieve – but the debate is worthwhile in its own right, since it will encourage GJLOS participants to think about what the programme has and has not achieved, a key starting point for defending it against political attack.
84. Part of this will require participants to spend time considering what GJLOS has achieved – it is too easy to focus on the failures or weaknesses, when the programme needs to be bolstered by recording its achievements. This should be coupled to a very clear strategic take on the future direction of GJLOS, that pins its reform colours to the mast. We make a modest contribution to this in the final section of the report.

85. But the point has long antecedents and will also loom far into the future, because – as we have said before and a point we make again in this AT report – the programme has failed to define reform clearly. For some, reform is about modernisation and efficiency; for others, human rights; for others, a profound re-organisation of the state and how its resources are allocated; for others, it is about who is targeted by the programme; and so on. And as reform energy – and the energies of the former good governance human rights activists who entered government after 2002 in particular – ebb away, GJLOS drops more and more into being a modernising programme rather than a programme seeking to ensure that human rights informs everything the state does. And, concomitantly, GJLOS stops being an engine for change and becomes a milk cow. Thematic groups stop being sites of robust exchange about reform and change and become workplan approval mechanisms. Supply side measures dominate, and ideas about triggering demand-driven reform fade away.
86. For many respondents, this is exactly where GJLOS sits today. On the one hand, we are deeply concerned that this will be worsened by the precipitate jettisoning of the GJLOS support structures, notably the PCO. On the other, there is a core challenge facing the JRM, namely how to re-energise the programme, and give it refreshed commitment to reform. Our belief is that this must come initially from a clear definition of reform and a shift from a supply- to a demand-driven approach; but however it comes, what is clear is that the programme needs to be invigorated and supported as it moves ahead.

GJLOS/national developments

87. In a later section we discuss GJLOS with regard to Vision 2030⁶, government's new national visioning exercise to replace the ERS that ends in 2007. The point to make here is the awkward way in which GJLOS relates to these programmes.
88. GJLOS was a late tag-on to the ERS, starting after ERS and ending two years after ERS does: ERS ends in 2007, but GJLOS is planned to 2009. Now Vision 2030 will begin in 2008, while GJLOS is still pursuing ERS-related goals. GJLOS timing has to be synchronised with changing national development strategy. The MTS workplans will have to be revised to ensure that they (and the GJLOS logframe) reflect Vision 2030 in the same way as previously they did ERS goals.
89. It is fair to go further and note that the 'political' pillar of Vision 2030 was itself the last to be developed, with the economic pillar (and its shift from pro-poor to wealth creation) dominating the planning phase, followed by the social pillar. The political pillar borrows its content very largely from GJLOS⁷, but again there was limited sector involvement in developing and shaping the pillar – not least because GJLOS is only now developing a formal status. It is commonly seen as a donor-funded programme of MoJCA. Until GJLOS is government's relevant sector body, it will continue to be an add-on rather than the go-to point of reference on governance, justice, law and order.
90. This is slightly odd seen from a discourse point of view, given that Kenya is enjoying high GDP growth, which many senior public servants (outside GJLOS) attribute in part to GJLOS successes. PS Planning and National Development, for example, notes that the post-2002 high levels of direct foreign investment would have been impossible without improvements in the investment climate, deriving in particular from improved governance.⁸ But GJLOS is slow to claim such successes, or to deepen the discourse that situates economic growth in a governance context.
91. Looking forward, it is critical that GJLOS makes itself central to activities in and monitoring of the political pillar of Vision 2030. This (as we discuss below) will require increased internal

⁶ Government of Kenya (2007) Vision 2030: A competitive and prosperous Kenya.

⁷ Interview with PS, Ministry of Planning and National Development.

⁸ Interview with PS, Ministry of Planning and National Development.

efficiencies, such as going online with M&E and ensuring GJLOS and GoK M&E systems ‘talk’ to each other. But above all, it will require a Cabinet-approved GJLOS policy paper that situates GJLOS squarely within Vision 2030 and gives it the authority to act appropriately in the programme.

92. At base, it is incumbent on GJLOS to make explicit the relationship between governance and justice reform on the one hand, and the national development indicators in Vision 2030, on the other.

GJLOS/SWAP

93. In our survey of GJLOS MDAs, we asked respondents about the SWAP and how embedded they thought it was as a way of working. Firstly, there is a lot of confidence in MDAs’ capacity to effectively implement activities – which has grown over time, starting from a low point in MTS I and increasing steadily (see Part 3 of the report). Two-thirds (68%) of respondents believe their MDA is capable of implementing sector activities. But entrenching a sector-wide way of working is challenging, and there is little sign of misplaced optimism: just 57% told us that GJLOS is an entrenched way of working, reminding us of the fragility of any SWAP and the ease with which government can drop back into a ‘silo’ approach. The transition must be gently handled to ensure this does not happen.
94. One thing respondents are very clear about is that greater accountability and transparency exist: fully 89% of respondents agreed with this notion. This is not the same as arguing the sector is working well as a sector – just a third (32%) believe the sector to be ‘cohesive and collaborating’. So we have progress in transparency and accountability, but building a coherent and collaborative sector is a longer-term challenge still facing GJLOS.
95. Much of the remainder of this report deals with the state of the programme and the transition to a full SWAP, key aspects of the context (see below). In this broader contextual section, it is worth noting in passing that many warn that the key challenge facing GJLOS today is competing institutional interests, both among institutions within GJLOS, and between GJLOS and other government sectors. When the transition is over, we may look back on this phase of GJLOS as a moment when the programme was weakened by being outside of or adjunct to government; but was strengthened because it was not sucked into the institutional rivalries and resource tussles that mark government (here and elsewhere in the world).
96. The way in which GJLOS institutional arrangements take shape post-transition will be critical. Thematic Groups (TGs) are meant to be crucial vehicles for debating reform, understanding it, and translating it into workplans. They are also fora where all participants are equal – where the size of a department or its budget does not automatically dictate the way in which future resources are allocated.
97. But TGs have declined consistently over the life of GJLOS, to the point where (in a probably over-strong generalisation) they have become workplan approval mechanisms, and GJLOS a source of funds not a driver of reform. Unsurprisingly, squabbles have broken out in TGs, with some MDAs withdrawing from TGs because of disputes with other MDAs, TG convenors and so on. This should not be possible within a SWAP – but GJLOS failed to develop conflict resolution mechanisms (part of the ‘rules of the game’ that are of critical importance to SWAPs) and seems unable to respond to disputes between MDAs. The challenge facing the sector is how to take these partially functional structures and translate them into government while at the same time rejuvenating them to become drivers of reform.

Intersecting contexts

98. Our second observation is that where different contexts and discourses intersect is the key danger for GJLOS. For example, we believe the programme can make a good case for reasonably efficient delivery of effective services, nodding heavily in the direction of governance reform, and can defend itself if attacked on that basis. But where for example the programme is elided with the aims of political parties and political personalities in government, and the programme is judged not on its own terms but those beyond its control, it is in real trouble. On the other hand, intersections may be positive – GJLOS could be taken up during electioneering as an example of best practice and cement its future place. It is because of the multiplicity of outcomes that we do not waste time trying to calibrate the possible impacts that contexts and intersecting contexts may have on GJLOS. That GJLOS – or reform, anyway – will be a political football in the election game, is one prediction the AT will make.
99. Finally, a point we return to below: the JRM must very carefully consider the wisdom of a simultaneous double transition – namely from this to the next government, and from this to the next ‘version’ of GJLOS as a full-blown SWAP. Transition in this context is understood less as the deep-seated changes – becoming an MTEF sector, gaining Cabinet support, and so on – and more to do with changing the support structures that thus far have steered the programme through to its present state.
100. Again, there are arguments for and against. Seen from one angle, the election provides an opportunity to re-energise the reform forces, to re-engage the programme with political rulers, and generally to give it a much needed fillip.
101. But the negatives are compelling. As we saw above, GJLOS can easily be seen as an irritant – a programme that generates negative publicity for government and others associated with it, with limited visible returns. To move out the PCO and retain a short-term FMA – requiring the creation of a high-level department within MoJCA, getting Cabinet approval for a policy paper, while ensuring that the MTS reflects the priorities of the newly elected government and potentially inducting new Ministers and other top officials - seems a very large bite to chew on. A more appropriately phased hand-over that includes pairing up of senior officials during the next workplan development phase (which may be soon if the new government so chooses....) seems more appropriate, from our perspective.
102. Of course GJLOS is buttressed by some very important gains. We have already noted key achievements (in the overview and introduction of the report) that go a long way to staking a strong claim for robust reform credentials. The programme operates in a very different pre-election context than obtained pre-2002, with expanded political space, greater respect for human rights, and the like. That said, this has to be set against the recent shootings by police, heavy-handed breaking up of civil society marches, and other less-than-reformist activities. Broadly speaking, however, things are better now than they were five years ago.
103. The government has overseen robust economic growth, and key targets of the ERS are regarded by many as having been successfully attained. But perhaps the greatest successes are internal: the sector increasingly thinks and acts like a sector. Openness and inter-MDA accountability have become the norm over the lifespan of the programme, even though problems remain with some institutions. Although the recent fall-out between KNCHR and police mars the situation, it is rare – anywhere in the world – to find bodies such as these sitting together to plan activities, develop budgets, prioritise activities, and so on.
104. The sector-wide approach – rather than the old ‘silo’ approach – is widely entrenched and many MDAs feel that it would be extremely difficult to go back to the old way of working. And among the greatest advances have been made in planning and budgeting - key gains in an under-resourced and unpopular sector of government. Expertise and experience have both grown, and as we show

below, this is reflected over time in greater absorptive capacity, increased implementation generally, and a steady growth in activities recorded as 100% completed.

105. Although the work plans for MTS I were finalized by October 2005, the implementation period commenced in January 2006 to June 2006, while for MTS II it commenced in July 2006 to September 2007. Many of the activities in MTS I were therefore rolled over to the MTS II work plan. It was also noted by MDA respondents that the MTS I work plan was unrealistic and too ambitious, now addressed in the planning for MTS III, whose work plan is scaled down, with more realistic activities. More efficient planning is necessary, and there is the likelihood in this regard of MTS III implementation being affected and delayed by the general elections scheduled for December 2007.
106. Most MDAs reported effective planning processes especially with a focus on results and outcomes. This is borne out by the format of the workplans which clearly states the outputs from each activity in the work plan that is linked to one of the six Key Results of the MTS. Prioritization and alignment of the MTS work plans to departmental strategic plans and work plans was also reported by the MDAs. The result-based planning is a key milestone in the programme and was the most highly rated programme implementation method that has added value to the MDAs. On the other hand some MDAs still find the paperwork, correspondence and meetings involved overwhelming, pointing to instances of lack of understanding and capacity in some MDAs in this regard.
107. The role of Thematic Groups during work plan discussions was considered by some MDAs as critical, and especially in creating sector-wide synergies and collaborations. The sector wide discussions and linkages especially at the Thematic Groups is taking root, as is the sector-wide planning and budgeting. The efficiency of this arrangement is now visible in some - but not all the Thematic Groups. There are some where these linkages and synergy have particularly been effective, while there are others where all that takes place is reporting on activities. This is due to the failure and/or inability of the Thematic Group Convenors. The exploration and identification of interrelationships between different MDAs and prioritization of sector-wide activities during the planning sessions therefore needs to be strengthened.
108. There are major successes, reflecting key internal gains and external deliverables. That there is a long way to go is not in question – if not, GJLOS as a *reform* programme would be redundant. But the gains are often obscured by the on-going debates about the state of reform, the commitment of (this and the next) government to reform and other issues beyond the remit of the programme but which nonetheless leak across into GJLOS.
109. Many of the risks facing GJLOS have been spelled out by the AT in previous reports. These include the following:
 - i. GJLOS has been outside many key government processes. While joining the MTEF is a important milestone and some progress has been made in slowly drawing the programme into government, this is far from complete. Until the programme is fully aligned to government processes, it remains vulnerable.
 - ii. GJLOS is rarely if ever publicly endorsed by senior Cabinet members or the president, which could do wonders for its public image and status (even within government). The GJLOS media campaign is presumably helping build a profile – but strong support from the most senior political figures in the country seems oddly absent. Ironically, in the divisive political climate that is characteristic of Kenya, the lack of political endorsement could also be shielding the programme from political attack.
 - iii. The absence of vocal political endorsement is compounded by the lack of a formal policy basis. Although a policy paper is being prepared, it is very late in the day, and if it

- is not approved by Cabinet before the election – which seems unlikely to occur – it exposes the programme to vulnerability.
- iv. The weak links between the programme and parliament have seen a series of draft Bills fail in the House, after which they were returned to MoJCA where they remain.
- v. Donor unpredictability has confronted the programme repeatedly over its lifespan, and remains the case today. Donors remain deeply divided as to whether they should support the move to a full SWAP or not, and MDAs are deeply wary of post-election donor support for GJLOS. Notably, donors have done little to publicly endorse the programme in the election build-up.
- vi. The relationship with civil society organisations (CSOs) remains fraught, and marked by mutual suspicion and hostility.
- vii. The performance of GJLOS governance institutions has been uneven, with the Inter Agency Steering Committee (IASC) particularly poor at providing the political leadership needed by GJLOS.
- viii. Within GJLOS, the Thematic Groups (TGs) continue to perform an important job, but to do so in a very uneven manner, with performance seemingly dictated by the personality of the convenor not the needs of the TG or the programme.

110. Even if we set these against the known strengths of the programme, it seems fair to conclude that pushing ahead to speedily remove the key organ that holds GJLOS together – the PCO – seems to be an inadvisable move. That GJLOS should be fully absorbed by government is not in question – but *when* that occurs and over what timeframe the process should be phased is a key issue the JRM should debate and resolve.

111. So if we were to try and ketch the dimensions of context (without seeking to weight one above another) it would look like the following.

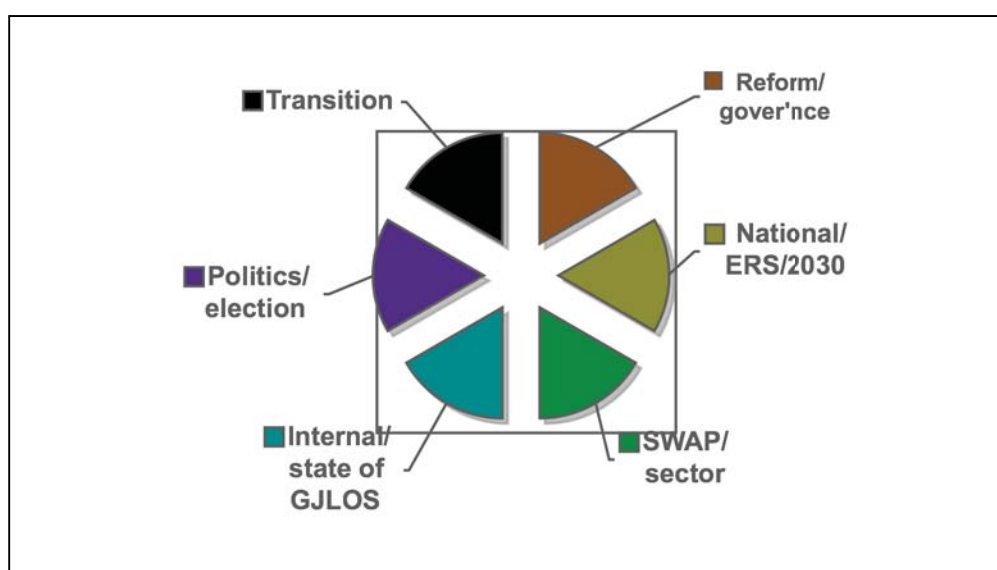


Figure 4: The main dimensions of the current context

112. Underpinning it all is the state of reform and governance in Kenya, and the energy (or lack of) among the reformist cadre. These in turn link to national political developments – but also reflect GJLOS's tenuous linkages with ERS and Vision 2030 – tenuous because although the programme reflects the core of both, it remains exogenous. Finally, there is the state of the sector, and the progress made towards SWAP status.

113. The dimensions are dominated, if current discourse is any guide, by the imminent election and the transition of GJLOS from quasi- to full-blown SWAP. These serve as a useful reminder that the

context is simultaneously internal and external to GJLOS. And that in turn is a reminder that what is internal is manageable; that which is external, is not.

114. Our basic approach is that whatever can be managed by GJLOS must be done with as much dexterity as possible, given how many uncontrollable, imponderable externalities face the programme. In other words – if the sector can maximise risks by slowing, or speeding the transition, then do it – but the sector should not proceed down the planned transition path without first assessing the likely benefits of such a course taken as part of a broader assessment of the context as a whole. This is a management challenge – but it should be clear that it is a challenge facing the sector, not merely MoJCA.

Transition

115. We return to the issue of transition throughout this report. Let us note here that a number of MDAs are reserving judgement, while the remainder are optimistic. Asked what impact they expect from the move to channelling funds through Treasury, 50% of respondents said the impact would be positive, while 32% foresaw a negative outcome (the remainder were neutral).
116. We develop this argument below, but let us state the views of the AT clearly up front so the reader is clear about our position. The AT has argued from JRM I onwards that GJLOS must progress to a full SWAP. We have elaborated this in a number of ways, to include a policy paper, entry into MTEF, improved internal governance structures and leadership, and so on.
117. Becoming a SWAP works in different ways. Critically, it is an internal matter – it is about organising the sector to think, design, plan, budget, implement, monitor and evaluate as a sector. Secondly, it is about externalities – primarily about donors. Here the aim is to get financial support on budget behind the sector goals, removing conditionalities and streamlining the reporting requirements on government.
118. That GJLOS must transition to being a full SWAP is surely not negotiable. That government is ‘not ready’ is not a response – if it were, reform would be unnecessary. What concerns the AT is that the transition is being approached in reverse order. The first thing to do is get Cabinet backing via a policy paper; then use that to muscle into the MTEF cycle and take up a formal sectoral role; then to use that to access sector resources, not merely programme resources (different by an order of magnitude); and only then to worry about changing the support structures from external (PCO/FMA) to internal (a new department).
119. But GJLOS is doing it in reverse, or at least in a somewhat haphazard fashion. We have no policy paper – although a draft exists – and thus no Cabinet backing. While this report was being written, PSLO became the GJLOS MTEF sector, which is a key gain. PCO contracts expire in December 2007 and a stripped down new FMA will be in place to release basket funds, provide oversight, advise and build capacity for the next couple of years. And yet the PCO – which is a very large proportion of the institutional memory and accumulated experience of GJLOS – will dissipate in 2008. Already multiple transition deadlines have passed without being met (see part 3 for more on this) and there is little to persuade us that a high-level department of reform will be in place, and a hand-over (of any quality) taken place, by end-2007, as noted by MoJCA officials⁹. This aspect of transition seems to be driven more by externalities – attempts to insulate GJLOS and MoJCA from perceived ‘external influences’ – than by the internal needs of the sector. Many factors are beyond the control of GJLOS, or MoJCA as the department hosting it; but what can be managed needs to be managed effectively to ensure the best possible transition and maximum benefit for the sector.

⁹ Interview with Gichira Kibara, MoJCA.

120. At issue, therefore, is not whether or not GJLOS should become a full-blown SWAP – the only issue is how best to time it. The issue is not one of delaying ‘until Treasury is ready’ or ‘until the public service has been reformed’ or other such comments made to us. (Although even here, it should be noted, public sector reform is moving ahead apace.) If the public service were perfect, no GJLOS Reform Programme would be needed. And, as officials reminded us, GJLOS has to enter GoK, not the reverse. The question boils down to: how can we make the transition smoothly, with least risk and most gains accruing to GJLOS? This is particularly acute right now, where the main emotions detected among respondents drawn from MDAs are fear and anxiety, broadly because they are insufficiently informed about the transition.
121. As stated in various documents, the transition is seen as a 12 – 18 month process. If so, robust planning for the process is urgently needed. If, for example, the PCO has to hand over to the new ‘reform and co-ordination department’, then PCO contracts and ToR must reflect this, and DPM needs to be encouraged to fast-track securing appropriate appointees. These are basic steps that can be planned and executed well in advance; but the AT found little evidence that this was the case. Of course, we may be wrong in our analysis of the situation.
122. Many have told us that ‘transition is not about individuals’ or ‘transition is not about contracts’. This is true: but the notion that the PCO and/or FMA are reducible to a quibble over contracts is to blind ourselves to the value they (and the PCO in particular) provide to GJLOS. The PCO is the most valued GJLOS institution among MDAs (see the MDA survey results below). Many respondents have pointed out that GJLOS is a reform programme because workplans are subject to Quality Assurance by the PCO – in effect, they are vetted for reform content before being approved. Many have questioned if and how a government department – vested in the same public service rivalries and ‘games’ as MDAs – will perform a similar set of actions, stand up to ‘the big boys’ with their political champions and refuse to fund this or that because it has no reform content? The PCO has done this – will its successor?
123. People also wonder if the new department will be willing to bite the tough bullet of insisting on soft over hard issues; of refusing to fund capital expenditure and insisting rather on training and other ways of changing the attitudes and ‘headspace’ of people in the sector? Put bluntly, the transition is meant to provide GJLOS with “insulation from political and other opportunistic attacks”¹⁰ – but it may do so at the expense of the reformist components it currently includes. The PCO tries to protect smaller MDAs against larger, and injects an equity approach into resource allocation to bolster the budgets of smaller institutions based on function not size. It is not prey to the traditional turf battles and games of existing government institutions. It is widely credited with growing planning, budgeting and management capacity in the sector.
124. Our view – at the risk of repeating ourselves – is that transition needs to cover key bases to move forward. Primary amongst these must be Cabinet backing, to reinforce the just-achieved formal status in the MTEF cycle – this is where predictable, large-scale, sector- (not programme-) wide resources can be accessed. Only then should the programme worry about the relatively minor issues (by comparison) of replacing the PCO with a new department.
125. There needs to be a careful, planned hand-over that includes – critically – taking the new department’s staff through a work-planning session. The current situation, where PCO contracts largely expire at the end of 2007, is driving PCO staff out of the programme – and the loss of the institutional memory and accumulated experience in the PCO will be a massive blow to GJLOS, one that may – unnecessarily – take years to replace, as new staff have to learn in new jobs without any support or mentoring beyond that which MoJCA staff can provide. If this causes

¹⁰ No author/no date: ‘Concept paper: Sustainability of government participation in the implementation of governance justice law and order sector reform programme (GJLOS-RP)’.

stoppages in fund release or implementation – following that which occurred in MTS I, from which the programme only recently recovered – it may prove fatal.

126. This strikes the AT as unnecessary and avoidable – and an action that will expose GJLOS to far greater risk than is necessary. A slower, better planned transition is needed; one where the gains to GJLOS are maximised and the risks minimised. We return to this below.

Part 2: GJLOS today

Findings from the case studies

127. The objectives of JRM IV require the AT to conduct three MDA-level Case Studies in relation to: how the STPP phase of the programme has informed implementation of MTS; effectiveness of implementation of MTS phase among the three MDAs; results and impact achieved during the MTS phase; and challenges faced in carrying out activities in the programme.
128. The MDAs for the case studies are the same MDAs selected for JRM III. These are:
- Department of Public Prosecutions
 - Department of Probation and Aftercare (DPA) in the Office of the Vice President and Ministry of Home Affairs; and
 - The Kenya National Commission on Human Rights (KNCHR), a semi-autonomous government agency.
129. In collecting data for the three case studies, the AT has combined several research methods. Details of methods used for each case study are contained in each of the cases studies annexed to this report. The case study team reviewed secondary information and conducted in-depth interview with several respondents. These included beneficiaries of services provided by the MDAs.
130. This section of the report discusses the findings from the case studies with specific reference to if and how lessons learnt in STPP have helped the MDAs to implement the MTS phase of the programme; results of implementation of MTS; lessons learnt and challenges faced in implementing the programme. The section also discusses the MDAs' views on the changing context of GJLOS including their views on the transition of the programme to a full SWAP.

Lessons from STPP

131. Lessons learnt from STPP vary across the case studies. At DPP, some respondents observed that the STPP gave an opportunity for State Counsel to understand the reform aspect of GJLOS. They also learnt to develop work plans for their activities. This is an experience that they find useful in the management of their operations. Through STPP, the department realised that it is important to have many staff members involved in the programme rather than leaving the programme to a few individuals. An internal programme implementation structure comprising the State Counsel from field offices, administrative staff and finance officers was established in line with this understanding.
132. Several respondents within the DPP observed that the retreat held in October 2005 gave them an opportunity to understand the programme. However, the department did not make any follow up after the retreat yet there are new people in the department who require orientation on the programme and its focus on reforms. This is a broader problem in GJLOS, where the impact of JRMs seems limited to those who actually attend the meeting – no follow ups or internal mini-review meetings are organised.
133. Indeed because of varied levels of knowledge about the programme, some respondents referred our questions to those they thought had relatively better knowledge of the programme than them. Field staff were not involved in STPP; their knowledge of the programme remains limited.
134. The Department of Probation and Aftercare (DPA) respondents argued that they were disillusioned by the priorities adopted for STPP. In their view, STPP focused on capacity building of staff which was done without a needs assessment of what the department should focus on.

- Furthermore, very few individuals were responsible for GJLOS in the department. They neither consulted nor involved anyone else in planning for the programme. Decisions were made unilaterally without involving other staff. The department did not entrench knowledge about GJLOS neither did the department identify priorities based on needs.
135. Only a few individuals at DPA were responsible for the programme. They did not involve others in programme work. Because of this, there are very few senior and middle level staff with a good understanding and knowledge of the programme including its reform content. The department constituted a Committee to guide planning and implementation of MTS activities following this experience.
 136. At KNCHR, respondents including Commissioners and senior programme staff observed that the Commission began with over-ambitious plans during the STPP. The staffing level was low but the demand for services was high following the coming to power of a new government. In their view, this contributed to over-ambitious work plans. Within the Commission, the Commissioners, programme as well as administrative staff have a good knowledge of GJLOS. All staff have a good understanding of what the Commission's work on human rights entails.
 137. During STPP, the Commission recognised that the success of its work on human rights was dependent on a good relationship with other MDAs. However, relations between the Commission and some MDAs such as the police became increasingly strained. This has affected performance in some areas.
 138. There are several lessons learnt from the STPP phase within these case studies. First, the domination of work planning by a few individuals results in knowledge gaps among staff in the department yet these same staff are meant to implement the programme. We have seen that, in some instances, a few individuals were responsible for the programme and acted without involving other staff. This resulted in other staff members – senior, middle and junior level - not having a good knowledge about the programme and its reform content. The good news is that this lesson from the STPP has occasioned a decision in DPP and DPA to establish mechanisms through which other staff can participate in planning for the programme. More people are now involved in programme work and are aware about its reform focus.
 139. Secondly, the STPP had a positive impact on work- planning in the three MDAs. STPP resulted in staff acquiring experience in programme planning, management, and budgeting.
 140. Thirdly, a participatory culture is gradually evolving with respect to planning and implementation of GJLOS activities. In these case studies, there are now more people involved in planning and implementation of GJLOS activities. This has evolved in response to the STPP experience in which a few individuals happened to be responsible for the programme and were therefore the only ones with good knowledge about it. Indeed, we have argued in the past that it is important for everyone within MDAs to have a good understanding and knowledge about the programme and its reform content in order to ensure that the reform content is internally owned.
 141. Fourthly, the MDAs in these case studies are conscious about sustainability and internal ownership of the programme. Both the DPP and DPA have established a mechanism for wider consultation in planning for GJLOS. They have formed in-house committees to assist in infusing a reform agenda in what they do. These Committees have had one important impact: they have broadened knowledge about the programme at the level of the MDA. The Committees have the potential to deepen the reform focus of what these MDAs are doing.
 142. Knowledge about the programme during the STPP phase was confined to a few individuals in two of the case study MDAs. Orientation of staff to the programme was minimal, and only a few staff tended to know about the programme. Staff turn over has also created a gap in knowledge about

the programme. New staff have no knowledge about the programme yet they are expected to participate in implementation of its activities. There is a need for MDAs to ensure that information-sharing about GJLOS is a continuous activity. Continuous information sharing will not only deepen knowledge about the programme but also consolidate reform ownership within the MDAs.

143. An important shortcoming here is that the MDAs have not been undertaking internal reviews of their work in GJLOS. Neither have these MDAs studied recommendations in the previous reviews. They have not acted on recommendations that concern them. This is a negative finding. It is indicative of MDAs' dependence on the PCO for direction on what to do with review reports, and implies an unfortunate lack of self-criticism.
144. To step briefly outside the case studies and reflect on MDAs as a whole, it is worth noting that external reports – such as the AT reports, the mid-term review and so on – are more likely to be discussed within MDAs (64%) than within Thematic Groups (46%), according to our survey of MDAs. Thematic Groups are one forum through which MDAs can examine the recommendations and act on what affects each of the MDAs in the group. However, there appears little effort to do so. This is a very poor finding, and should be reflected in the ToRs for TGs. In general, however, the case studies produced good findings for a programme that is moving into the fourth year of implementation.

MTS implementation

DPP

145. The rate of implementation of planned activities in MTS 1 and 2 varies across the case studies. Factors responsible for these variations are many and differ from one case study to another. The pace of implementation of activities at DPP was slow in both MTS 1 and 2. Some activities that were scheduled for implementation in MTS 1 were not implemented. They were carried over to MTS 2. Absorption capacity was also low in both MTS 1 (17.5%) and 2 (about 23%).
146. As argued in our previous DPP case study report, implementation of activities in the department stalled early in 2005 following disputes over procurement of goods and services for the department. The department, in consultation with the State Law Office and USAID, agreed to establish a programme implementation structure to facilitate quick implementation of activities. The structure was approved in November 2005.
147. Delays in establishing this structure in turn stalled implementation of activities. Bureaucratic procurement procedures also continued to constrain the speed of implementation even in MTS 2. In addition, only a few people were involved in planning for the programme implying that GJLOS was not prioritised; GJLOS competed with the prosecution duties of State Counsel and was seen as an external project. But this was addressed through establishment of an internal programme implementation committee. The Committee assists in planning and implementation. The pace of implementation increased from early 2006.
148. DPP's work plans hardly make any reference to field offices. The disconnection between their needs and the focus of the programme will make it difficult for the field offices to effectively embrace the reform discourse. In our view, although field offices are now involved in various consultative structures, failure to attend to their capacity needs will affect how they embrace reforms.

KNCHR

149. KNCHR had similar activities for both MTS 1 and 2. In the view of some of the respondents, the work plans were over ambitious and therefore the implementation rate stood at about 40% in both periods. Factors responsible for this level of implementation include understaffing, late start

up of MTS due to a slow transition from the STPP, and delays in procurement of goods and services. Also cited is lack of cooperation by some of the MDAs.

150. These factors raise several issues about how KNCHR has been developing its work plans and how it relates with other MDAs. First, the Commission appear not to have recognised the need to make realistic plans. Secondly, understaffing should have been considered while prioritising activities for MTS 1, and certainly for MTS 2. The Commission should have prioritised activities that the staffing capacity could accommodate. Failure to develop realistic work plans implies that the Commission leaned too far in the direction of a reform wish list rather than a realistic clutch of implementable activities. It also suggests an inability to match reform priorities with the institutional capacity of the Commission. Ambitious work plans should not be inspired by the need to access resources but by the need to do what institutional capacity can accommodate.
151. Thirdly, lack of cooperation between KNCHR and some of the MDAs is a finding that has implications for institutional inter-linkages within the programme. The Commission complained about these strained relationships and the failure of some MDAs to attend Thematic Group 2 meetings chaired by the Commission. Other MDAs also complained about the Commission's negative attitude towards law and order institutions in GJLOS and about the Commission's censure of their work. They argue that it is difficult to work with the Commission because of the latter's lack of respect for protocol and generally poor attitude to mainstream law and order institutions. Because of this the police do not attend thematic group meetings chaired by KNCHR yet the meetings are a forum through which MDAs can share information to deepen reforms.
152. But – as we state below – difficulties with the police are not restricted to the KNCHR, but were raised by many MDAs. There seems to be a systemic problem within GJLOS that the PCO needs to investigate further.
153. It is important to examine the factors responsible for this relationship. The majority of the staff in the Commission are not from the public sector. They were recruited from the civil society where there is higher degree of flexibility, a demand for quick results and rapid delivery, and less bureaucracy. Staff in other MDAs are career public servants. Some MDAs have a history of violating human rights. The staff at the Commission may not think about this context or how MDAs work, their bureaucratic environment, and their history. There is an expectation on the part of the Commission that things should suddenly change yet the MDAs are locked in a unique context, which GJLOS is seeking to reform.

DPA

154. We have already noted that some respondents in DPA were disillusioned by the choice of training as a priority for STPP. Some of the respondents feel that priority should have been given to procuring of motor vehicles, motor cycles, and bicycles to facilitate the work of officers in the department. Further, GJLOS planning and implementation was the responsibility of a few individuals. Other people in the department had little knowledge about what was happening. This context informs how the department implemented MTS 1 and 2.
155. The department implemented about 30% of planned activities in MTS 1. Again planning and implementing activities in MTS 1 involved small group of individuals. This changed in MTS 2 when a GJLOS Committee was established to assist in planning and implementing work plan activities. The rate of implementation in MTS 2 increased: the department implemented over 60% of planned activities. Experience in MTS 1 and 2 assisted the department in developing work plan for MTS 3, which focused on the development of policies that would sustain the gains of the reform agenda.
156. These findings generally show that inadequate internal consultation on what should have constituted the department's priorities led to a low rate of implementation. The rate of

implementation increased in tandem with establishment of a new space through which staff engaged on GJLOS. It is interesting also that the staff had different interpretations of capacity building. Some staff members did not appreciate training that was undertaken in STPP and MTS. They preferred procurement of vehicles to facilitate staff movement.

157. The findings on DPA point to the need for a thorough needs assessment among MDAs to inform proper planning. This is one point we have stressed all along in all the review reports: that MDAs have a responsibility to undertake internal needs assessments to identify gaps that would constrain the undertaking of reforms in the programme. We emphasised that participatory planning is critical for development of priorities in all MDAs. This lesson appears not to have led to a change of approach in this case study.

Challenges in implementation

158. These findings show that implementation of MTS has had its own challenges. Some of the MDAs did not use participatory approaches in developing work plans. This had the consequence of confining GJLOS to a few individuals. As a result staff had low levels of knowledge and ownership of GJLOS. Whether this contributed to a low implementation rate or not, it is indicative of a weakness in programme management at the level of MDAs. For MDAs to deepen reforms, staff must have full knowledge of the reform content of the programme. Failure to involve other staff leads to GJLOS becoming an add-on rather than an integral part of the core functions of an MDA.
159. Secondly, some of the MDAs did not develop plans using a participatory approach. Staff were not oriented to the programme yet they were expected to manage implementation of activities. Failure to involve more people in GJLOS activities constrains ownership and affects levels of knowledge about the programme. Departmental reform (GJLOS) committees have now been formed at DPP and DPA. This is one example of best practice that other MDAs can follow to deepen knowledge of the programme among the staff.
160. Thirdly, Thematic Groups have largely failed to discuss reforms. In other instances, senior officers do not attend meetings; they send their deputies or middle level staff who cannot commit their MDAs to decisions. The absence of key MDAs from some of the thematic groups has the effect of reducing the impact of discussion on reforms. Irregular attendance of meetings is diluting the content of and energy for reforms. Interestingly, in all the three case studies, the MDAs reported difficulties in maintaining institutional inter-linkages with the police. It is not our responsibility to establish the truth of this. Our role is to simply point at this as a problem that requires urgent intervention to clarify and resolve.
161. While this may be viewed as an issue of coordination, it speaks volume about challenges facing the transition of GJLOS from a programme into a full SWAP. More than three years into the life of the programme, expectations that the programme would be rolling towards a sector wide approach where all the institutions are collaborating, is not an overly ambitious expectation. Talk of disinterest in the programme by some MDAs at this stage in the life of the programme are a pointer to the challenges the programme is facing as it seeks to mature into a SWAP.

Deepening of reforms

162. To what extent has implementation of MTS deepened the meaning of reforms? This is one question we posed to respondents in the three case studies. Again the findings show variations in how the meaning of reform has deepened. At KNCHR all staff have a uniform view of human rights reforms because the Commission's everyday activities, are oriented towards respect and promotion of human rights. At DPP and DPA, there is no coherent meaning of what they pursue as reforms. While DPP emphasises efficiency and effectiveness as reforms, some State Counsel see reforms in terms of transformation or changing mindsets on service delivery. Others see it in terms of 'new ways of doing things'. Within the department, there are still those who see reforms

in terms of 'modernisation' or improving infrastructure for better performance. This echoes what those in DPA see as reforms; improving capacity to perform. In DPA, as we saw, this perception of reforms has resulted in people devaluing capacity development efforts of the STPP phase.

163. A common finding in all the case studies is that discussions on reforms within the programme appear to be reducing in intensity. To some respondents the mood for reforms has slackened. The radical among them argue that the 'reform' aspect of the programme has disappeared altogether and that GJLOS is a modernisation programme, only. There is nothing wrong with departments defining reforms on the basis of what they do. The only problem is that some define reforms in terms of modernisation as an end in itself, rather than how modernisation of their department would have a positive impact on people's lives through improved service delivery.
164. On the basis of these findings, we argue that there are important changes that have taken place in the programme from the time of MTS 1 and 2 and during preparations for MTS 3. Things have changed in the area of planning and budgeting. These MDAs are not muddling through in their work; they plan for their activities and implement them in line with their budgets. They largely credit the PCO for this transformation.
165. Secondly, the MDAs are not developing 'shopping lists' in their work plans. They ask how the planned activities will impact on reforms. Success in this, however, differs from one case study to another.
166. Thirdly, the meaning of reform is properly shared and understood in a coherent manner in only one case study. But reasons for this are completely different from the reasons that contribute to lack of coherence in the meaning of reforms among the other MDAs. Notably, where all staff are involved in planning and implementing GJLOS activities, the meaning of reform is shared and understood by everyone. Where only a few individuals are involved, other staff see GJLOS as an add-on activity.

Evolving context: the case studies and transition

167. All the case study MDAs complained about lack of involvement in discussing the transition of GJLOS into the government system. The need for communication in this critical area is emphasised throughout this report. None of them has been involved in any systematic discussions or high level consultations about how this will take place. Some argue that the absence of the PCO will negatively affect the MDAs because the programme has not built capacity among MDAs to do work planning and programme implementation on their own; they are still very dependent on the PCO. Secondly, no one has informed MDAs about how they will be undertaking procurement in the absence of the FMA. Recent guidelines produced by the PCO in this regard will be extremely helpful, but must be widely and rapidly disseminated among MDAs. Programme transition in the context of new procurement regulations, will have the effect of slowing the pace of implementation.
168. There are others who are worried about programme transition for different reasons. They argue that phasing out of the PCO/FMA and establishing a new structure within MoJCA to coordinate the programme would lead to MoJCA assuming more responsibilities than envisaged at the time the programme was initiated. This argument has its roots in the debate on autonomy which was evolving among some MDAs during JRM I and II. This does not lessen its purchase or relevance. We underlined the need for thorough discussion on how to address the discourse of autonomy and independence, which tended to strain relations between MoJCA and some MDAs. The fact that these issues are being raised again is a pointer that they have not been resolved and will not disappear. But there are new issues relating to the current and future situation: the role of MoJCA after the phasing out of external PCO/FMA. This must be debated and settled at the level of Thematic Groups in order to make the transition work.

169. In all three case studies, respondents argued that it is not clear how the post-election period will affect the programme. In the view of some respondents, it is possible that any government will proceed with the reforms because they are essential for credibility. What may change is perhaps the emphasis; some may want to emphasise governance reforms while others may want to emphasise law and order.

Conclusion

170. From these case studies, it is clear that ownership of the programme was quite uneven during the STPP phase. Implementation of the activities was slow because of limited understanding of the programme among the staff. Today, except at KNCHR, not all staff have a full understanding of the programme. Programme implementation committees have been established at both DPP and DPA to address this shortcoming. This is an example of best practice to be replicated. It is a foundation for institutionalising the reform discourse and ensuring that all staff understand the purpose of the programme. This will also ensure that all staff members within an MDA have responsibilities in the programme.
171. Several factors constrained implementation of MTS 1 and 2. These include lessons learnt in STPP and how various MDAs used these lessons to prepare for MTS implementation. Procurement procedures generally constrained the pace of implementation in all the three case studies, notwithstanding the source of funding. In addition to this, only a few staff members were involved in planning and implementing GJLOS in STPP. This changed with MTS.
172. STPP and MTS have had an impact on MDAs. Staff have acquired skills in planning and budgeting. They no longer muddle in their work. Secondly, they are not busy preparing shopping lists; they relate activities to reform purpose. However, there is no coherent meaning of reforms among the MDAs. They continue to define reforms on the basis of what they do. There are also those who think about reforms in terms of modernisation of their institutions rather than what they could achieve with modernisation.
173. Threats to MTS implementation, so far, appear to be the transition from PCO/FMA to GoK systems. This sounds like a contradiction: that transition to a full SWAP is a threat to the programme. This is not the case. The problem is about the management and timing of this transition and the capacity of the government systems to absorb GJLOS and link it with the sector. This has not been done and rushing it will produce new sets of problems for the programme including the failure by MDAs to ensure that their activities are reform oriented.
174. Institutional conflicts appear as the main challenge to the MTS implementation. Thematic Groups initially played the role of promoting institutional linkages. At present, however, there are tensions and conflicts between some of the MDAs, which has in turn affected performance of Thematic Groups. The causes of these conflicts include different perceptions of reforms, a poor understanding of each others' roles and functions as well as poor inter-personal relations among some heads of MDAs. In the absence of mechanisms for resolving conflicts, one may argue that the conflicts will spill over into the programme and affect not only how the concerned institutions relate to each other but also the programme in general. There is a need to begin discussions on how to resolve institutional and interpersonal conflicts – and establish a mechanism for this – as the programme moves to the next context.

Efficiency & effectiveness of GJLOS institutions

Budget variance

175. Budget variances are normally indicators of problems in programme delivery. We have done a comparison of budget variances over the last two financial years. The data shows a marked improvement and using this as an indicator, we may conclude that GJLOS has addressed many of its operational problems in the last 12 months.

The 2005/6 figures

176. In the 1st MTS we saw that GJLOS registered an overall expenditure shortfall of 66.9%, indicating some serious problems. A number of activities planned for at the beginning of fiscal year 2005/6 were not implemented. Among the reasons given for low budget utilization were delays in procurement especially with regard to civil works in a number of MDAs, low capacity within MDAs, and the decision by development partners to slow down disbursement due to changes in the political environment¹¹. The 2005/6 expenditure against budget analysis is contained in Table I, below.

Analysis of 2005/6 GJLOS Budget												
	TOTAL			GoK			DIRECT			BASKET		
	Budget	Actual	Var.	Budget	Actual	Var.	Budget	Actual	Var.	Budget	Actual	Var.
TG 1	348.3	134.5	-61.4%	56.4	97.8	73.4%	61.9	6.7	-89.2%	230.1	30.0	-87.0%
TG 2	434.3	129.3	-70.2%	86.8	77.7	-10.5%	65.1	9.4	-85.6%	282.5	42.2	-85.1%
TG 3	1,345.1	419.7	-68.8%	823.5	394.9	-52.0%	217.4	3.7	-98.3%	304.2	21.1	-93.1%
TG 4	2,046.9	795.0	-61.2%	1,594.4	753.2	-52.8%	27.6	0.8	-97.3%	424.9	41.1	-90.3%
TG 5	79.5%	-	-100.0%	13.7	-	-100.0%	40.7	-	-100%	25.1	-	-100%
TG 6	301.4	35.2	-88.3%	56.6	12.7	-77.6%	55.5	15.0	-73.0%	189.3	7.5	-96.0%
TG 7	249.2	78.8	-68.4%	25.3	2.6	-89.7%	15.0	1.2	-92.0%	208.9	75.0	-64.1%
GJLOS	4,804.7	1,592.5	-66.9%	2,656.7	1,338.9	-49.6%	483.2	36.8	-92.4%	1,665.0	216.9	-87.0%

Figures unless otherwise stated are in Kshs Millions

TG – Thematic Group

Source, PCO

Table 2: Analysis of 2005/06 GJLOS budget

177. It should be noted from the above table that funds that were disbursed by donors directly to GJLOS by development partners (direct donors) recorded the lowest “burn rate” in 2005/6 at approximately 7.6%, meaning that over 92.4% of programme funds were not spent. During the same year, 87% of the donor funds pooled in a basket fund were not utilized, perhaps reflecting the delay in the approval of the MTS I work-plan. The MTS I work plan only became available in early 2006 leaving less than 6 months for programme implementation. This resulted in the rollover of more than 85% of all MTS activities into MTS 2. GoK funds recorded the highest absorption rate at about 50% of total funds reflected in the budget.

178. During the fiscal year 2005/6 Thematic Group number 5 responsible for Constitutional Development did not spend any money budgeted for mainly due to the fact that the constitution review process hit a stalemate following the rejection of the draft constitution by Kenyans in a national referendum held in November 2005.

The 2006/7 figures

179. The figures for the last financial year present a very different picture. Under-expenditure from the basket has dropped from 87% (in 2005/6) to 39% (in 2006/7). The improved expenditure by Government is also dramatic, unutilised funds dropped from around 50% to 6% in the same period. Although showing a 10% improvement, under-expenditure from direct funding sources is still a concern. This improvement in the overall budget absorption rate in GJLOS (over 70% for the whole programme in the last financial year), tallies and supports the finding of improved

¹¹ See protest letter from development partners to the PS, Ministry of Justice and Constitution Affairs communicating the donor decision to postpone JRM III.

planning, and budgeting capacities at MDAs, as well as the overall efficiency of operational management institutions. The improvement is across all TGs but is marked in TGs 4 and 5. The 2006/7 variances in expenditure appear from the data in the table below.

	TOTAL			GoK			DIRECT			BASKET		
	Budget	Actual	Var.	Budget	Actual	Var.	Budget	Actual	Var.	Budget	Actual	Var.
TG 1	512.3	313.6	-39%	64.9	82.4	27%	120.4	2.8	-98%	327.1	228.5	-30%
TG 2	511.1	276.7	-46%	158.6	266.4	68%	33.7	14.1	-58%	319.1	156.9	-51%
TG 3	1,596.8	1,009.8	-37%	1,072.9	781.7	-27%	166.2	15.7	-91%	357.4	216.1	-40%
TG 4	1,994.5	1,844.5	-8%	1,410.4	1,415.0	0%	20.8	-	100%	563.2	429.5	-24%
TG 5*	23.2	27.0	16%	1.0	25.4	2500%	-	-	-	22.2	1.7	-93%
TG 6	301.7	149.9	-50%	43.7	32.2	-26%	62.1	18.2	-71%	195.9	99.4	-49%
TG 7	385.1	174.5	-55%	32.3	-	-100%	33.0	16.9	-49%	319.8	157.5	-51%
GJLOS	5,324.7	3,796.0	29%	2,783.8	2,603.0	-6%	436.1	67.7	84%	2,104.6	1,289.6	39%

Figures unless otherwise stated are in Kshs Millions
 TG – Thematic Group
 Source, PCO
 * GoK expenditure in TG 5 is high because funds budgeted under the basket were spent from GoK

Table 3: Table 2: Analysis of 2006/7 (1 July 2006 to 31 June 2007) GJLOS Budget and expenditure

180. The improvement in operational efficiency appears to be ongoing, and incremental. An analysis of the half-yearly expenditure for this period, as at December 2006, shows that the GJLOS programme as a whole more than doubled its expenditure levels in the 2nd half of the 2006/7 financial year. Expenditure rose from 22% in December 2006 to 71% by 31 June 2007. At the operational management level, GJLOS institutions are now starting to function more optimally. It is critical for the (larger) reform momentum that this operational efficiency continues – and continues to improve. The table below provides a summary of budget, expenditure, and variance (expenditure as a percentage of budget) for the half year to December 2006.

Analysis of 2006/7 GJLOS Budget as at 31st Dec 2006 - 2nd MTS Work-Plan												
	TOTAL			GoK			DIRECT			BASKET		
	Budget	Actual	Variance	Budget	Actual	Variance	Budget	Actual	Variance	Budget	Actual	Variance
KR 1	485	88	18%	150	50	33%	69	5	7%	266	33	12%
KR 2	3,015	402	13%	2,007	148	7%	156	17	11%	850	237	28%
KR 3	439	126	29%	116	81	70%	108	0	0%	215	44	20%
KR 4	586	301	51%	423	251	59%	17	0.04	0%	146	50	34%
KR 5	328	129	39%	51	58	114%	48	9	19%	230	62	27%
KR 6	390	83	21%	37	0.2	1%	36	17	47%	317	66	21%
GJLOS	5,243	1,129	22%	2,784	588	21%	434	48	11%	2,024	492	24%

Figures unless otherwise stated are in Kshs Millions

KR –Key Result

Source: GoK, Progress Report, Medium Term Strategy, 1st July 2006 – 31st Dec 2006.

Table 4: Analysis of 2006/07 GJLOS budget as at 31/12/2006

A comparison year on year

181. The following graphic illustrates clearly the improved operational efficiency of GJLOS over the last two financial years, when measured against levels of budget absorption as an indicator of success.

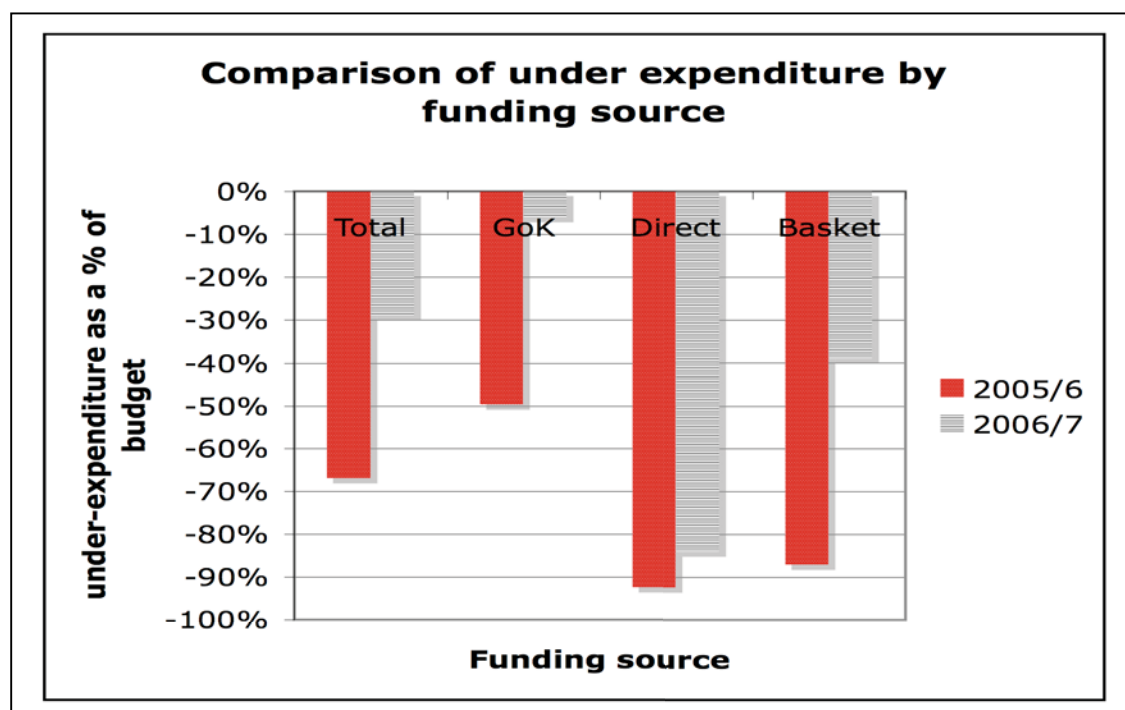


Figure 5: Comparison of under-expenditure by source of funds

182. The difference between MTS 1 and 2 is well known to respondents. The vast majority (86%) regard MTS 1 implementation as only 'partly successful' – borne out by the data – but this rose (in our survey of MDA respondents) to 57% who regarded MTS 2 implementation as 'successful' while 43% saw MTS 2 implementation as 'partly successful'. As we note elsewhere in the report, if there were a trend-line drawn through the MTS it would point steadily upwards.

Non-adherence to agreed work plans

183. There have been notable cases of non-adherence to agreed work plans. The reasons range from ambitious work-plans to capacity constraints to wrong work culture and attitude (see above) to fear of change and complexity of procurement procedures, and finally to failings in other programmes. It is worth noting that although adherence to work plans is always emphasised at the level of TG and TCC, there are no sanctions for non-adherence. MDAs do not get penalized for non/poor-performance nor do they get rewarded for good performance and therefore they tend to ignore rules guiding development and implementation of work plans. Some problems also point to the need for better co-ordination (and accountability) between GJLOS and other programmes. The existence of other programmes – blamed for failures in GJLOS – is suggestive of a short-coming in the SWAP.

Duplication

184. The departments of Immigration, Civil Registration and National Registration Bureau though housed in the same ministry, appear to work at cross purposes since they don't share a database. Indeed the two databases are not harmonized and it would appear that the three departments could be duplicating efforts.

Parliament

185. A number of Bills drafted by MDAs and submitted to the legislature for debate and approval have become stuck in parliament. Parliament has therefore been an obstacle to achieving responsive and enforceable laws & regulations (KR 1) mainly due to a lack of technical support in legislative review and drafting and over-politicization of the legislative process.

Lack of Data

186. It should also be noted that the lack of data on key performance indicators limits the measurement of efficiency & effectiveness of the MDAs and the overall GJLOS reform programme¹².

Institutional issues

187. As part of the review, the AT surveyed MDAs participating in GJLOS, as we have for each prior review.

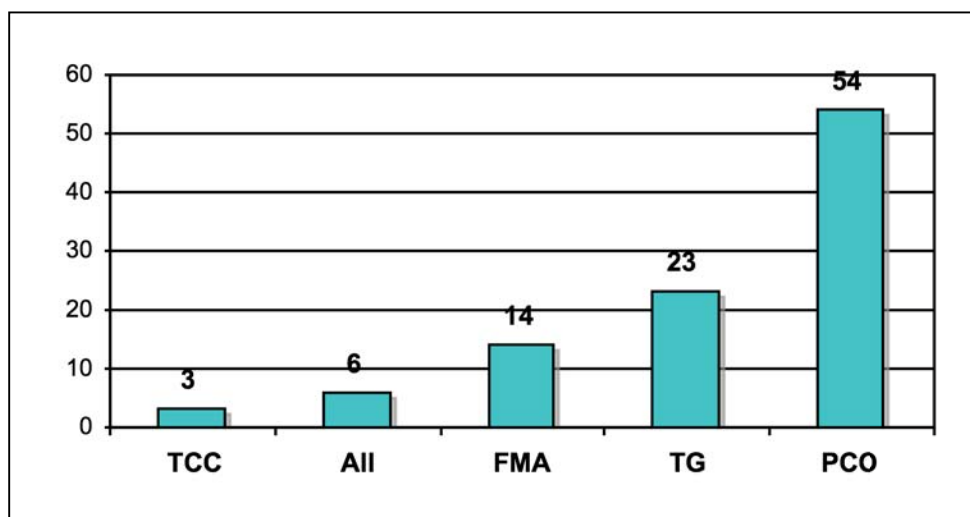


Figure 6: Which is the most important GJLOS institution to your MDA?

188. As part of the survey, we asked respondents which GJLOS institution was most important to them in implementing GJLOS. By a long way, the PCO topped the list. Importantly, Thematic Groups were second, showing their growing importance over time. The TCC is not part of day-to-day implementation and would not be expected to score high here. The FMA continues to score low, as it has done in the past. Given the importance to respondents of the PCO, the need to ensure that its functions are adequately handed over to the new reform and co-ordination department cannot be over-stressed.
189. It is reasonable to argue that the PCO (and FMA for basket-funded activities) are self-evidently important to MDAs, given the way the programme was designed. So we asked a different question on the issue, namely how respondents would rate their performance? (In other words, the PCO for example may be critical for the work of an MDA but may have performed poorly – the two questions work together to provide an overall assessment of GJLOS institutions.) This also allows each institution to be rated on its own merits, rather than forcing respondents to rank one above another.
190. Once again, the PCO dominates the situation, with an approval rating of 89%. The FMA and TGs get an approval rating less than half as high, while the scores for TCC and IASC – perhaps tellingly – are dominated by the category ‘don’t know’, where respondents felt they were insufficiently aware of what those structures did in order to rate their performance. Given that programme leadership is meant to be driven by these two structures, the results underscore our findings in this report regarding the poor performance of these bodies, and the suggestion that the transition be used as an opportunity to restructure and rejuvenate them.

¹² GOK, GJLOS report on Assessment of Administrative Data Collection and Analysis, 2007

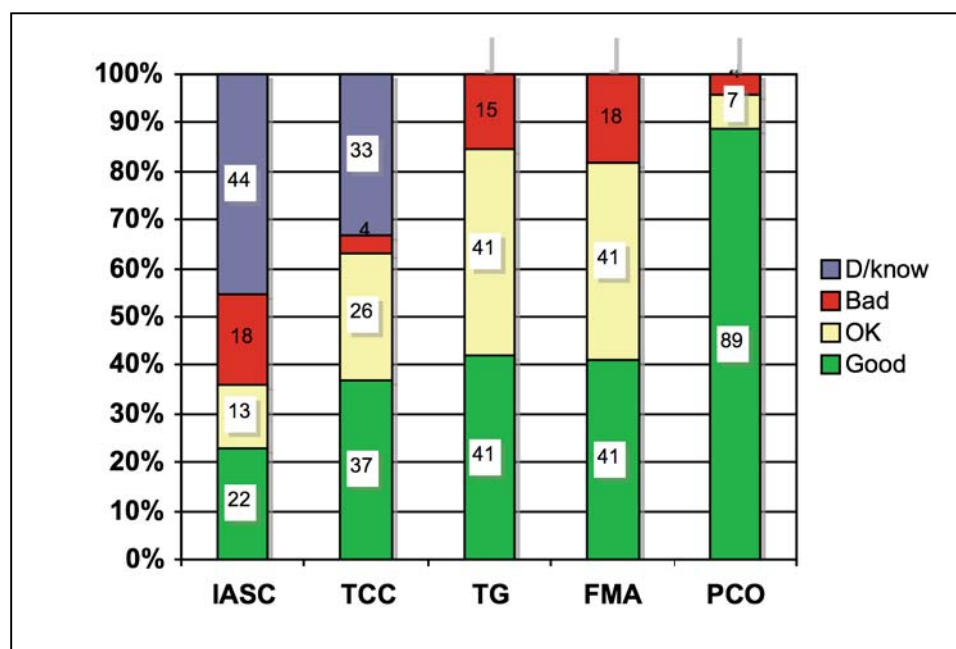


Figure 7: Rating the performance of GJLOS institutions

191. On the whole, respondents are satisfied with the GJLOS institutional machinery. Asked to rate their satisfaction 'with the way the GJLOS institutions are operating', 63% were satisfied or very satisfied (just 4% were 'very satisfied'), while a third (32%) were neither satisfied nor dissatisfied and chose a neutral option. There is room for improvement – and the transition is the opportunity to make those improvements.
192. There is of course room for improvement all round. Some of the suggestions for improvement from the MDA survey are cited below.

GJLOS Institution	Areas of Improvement
PCO	Improved Coordination and Communication Strategic Policy and Technical Guidance (instead of performing clearing and forwarding functions) Custodian of Best Practices Independence from MOJCA
FMA	Efficiency in Procurement Less Bureaucracy Service Charter on performance to MDAs Capacity Building of MDAs Submission of financial returns and reports
Thematic Group	Greater focus on reforms and less routine administration Strengthening of interdepartmental synergies Enforcing accountability and sanctions on non-performing MDAs Regular and effective meetings Neutrality of venues and convenors
TCC	Improved communication with Thematic Groups and MDAs Improved strategic leadership Participatory decision making More effective monitoring of Thematic Groups Improved attendance by TG Convenors and PS's
IASC	Policy direction and leadership Regular meetings

Table 5: Areas of improvement for GJLOS institutions (MDA survey)

193. At the outset, the GJLOS reform programme identified “Effective Management and Coordination of the GJLOS Reform Programme” as a key result. To help in the management and coordination of the reform programme, an institutional framework was put in place comprising the Inter-Agency Steering Committee (IASC), Technical Coordination Committee (TCC), Thematic Groups (TGs), Programme Coordination Office (PCO) and the Financial Management Agent (FMA). The programme management and coordination of the reform programme was to be spearheaded by the Ministry of Justice and Constitutional Affairs (MoJCA) through its Permanent Secretary as the secretary to the TCC, supported by the PCO which is staffed by externally recruited experts.
194. To enhance GoK institutional capacity to effectively manage and coordinate the reforms, the programme included some key activities aimed at building long-term sustainability and capacity of the programme governance structures. The FMA and PCO (each with specific roles under their respective terms of reference) were to build the capacity of GoK in annual work planning, budgeting and programme prioritization. In addition, programme leadership skills were to be enhanced. The programme also sought to establish a GJLOS sector working group under the Medium Term Expenditure Framework (MTEF).

Some important achievements

195. A window of opportunity for professional GoK workers: The programme has provided an opportunity for professional workers in government departments to excel in what they do. Many have exploited funding opportunities available through the programme that were previously unavailable to them. The programme has proved an incentive to innovative and creative workers in GoK. It has done so by cutting through the bureaucracy otherwise associated with specific GoK systems and by providing an opportunity for those who have the energy, professionalism and commitment to use their creativity to get the job done. Skills acquired by MDAs in planning and budgeting have been put to good use, even outside of GJLOS funded activities. Some have internalised and integrated these skills in the way in which they conduct their annual planning.
196. The participatory nature of planning promoted by GJLOS has, in particular, had a positive impact on planning within departments and the involvement of a broader range of personnel. This is a good achievement for the programme. As GJLOS looks to align its planning and budgeting process with that of GoK through treasury, this participatory approach could be part of a positive contribution from GJLOS to the overall public sector planning and budgeting reform process.
197. GJLOS was a frontrunner in building capacity around government work-planning processes. Each ministry in government now has a strategic plan and prepares annual work-plans and budgets. The challenge for GJLOS is to ensure that GJLOS strategies are incorporated in the Strategic Plans of all relevant ministries. Further, all planning at ministerial level is informed by the ERS which comes to an end in December 2007. The government proposes to replace it with a longer term policy framework, Vision 2030 (2008 – 2030). This will be a new development blue print. The first step in this process for the future is, therefore, to ensure that GJLOS departments have anchored their priorities in this policy framework. GJLOS leadership becomes critical to ensure that GJLOS priorities do not get lost within more expressly articulated agendas.
198. The SWAP approach to funding reform – and in particular the role of the thematic groups - has opened up the sector to scrutiny and created opportunities for harmonisation between different government and non-government actors. Using the SWAP approach has opened up the entire sector to a level of scrutiny that would not be possible without it. GJLOS was the first and is the best to date in running programmes through different departments, ministries, and semi-autonomous agencies. It is now much clearer where gaps in terms of interventions exist. Dialogue on these gaps can be initiated much more easily - unlike previously where departments were

closed and no department had a right (or opportunity) to point fingers at the other. In this regard there are linkages to be explored with change management initiatives under the Public Sector Reform and Development Secretariat (PSRDS).

199. This is not to say that all departments are talking to each other effectively and working towards getting solutions – not at all. However, the fact that different departments, private sector and civil society can meet, plan and discuss issues together – even where non-state actor groupings may have been censuring other state institutions for their failure to respect human rights, anti corruption reforms or other agendas - is a clear milestone. In some sense then, there has been a maturation of the democratic engagement and some level of acceptance that the challenges of one department can be interrogated and perhaps solved by others. Not that this should be overstated, however, there are still serious problems and institutions with a tendency towards complete isolation. But it is certainly fair to say that Thematic Groups have opened up opportunities for constructive engagement, particularly by private sector, donors and civil society organisations.
200. The thematic group on Constitutional Development provides an excellent example of positive contributions from private sector and civil society, as well as examples of collaboration around specific reform outputs led by the Law Reform Commission¹³. This positive energy is refreshing and is working well at an activity (work-plan) level but risks being undermined if the SWAP is unable to deliver true sector-wide leadership of the reform process. Put simply, this thematic group, for example, needs to realise success beyond the finalisation of bills; they need to see their work championed by political leaders and passed into legislation. The work done by the KLRC with excellent contributions from civil society on the Political Parties Bill is a case in point. The KLRC's own Bill (establishing it as an independent entity in its own right), the Elections Bill, and the Hate Speech Bill are other examples.
201. The reasons for the non-enactment of these and other Bills are many and include the highly partisan political environment. However, the major lesson for the reform process is the need to strategise around each Bill from conception to enactment. Without a consolidated and sustained initiative around each reform Bill, few will make it into legislation and even those that do may be so masticated that they lose their original reform content. A great deal more effort is needed in consultation, lobbying, publicity, public support and political leadership. As stated in previous review reports, GJLOS should establish a structured relationship with parliament for the purpose of getting support in passing legislation.
202. There are many stumbling blocks and many actors, key to the success of a Bill, who do not participate in GJLOS. There is a growing realisation that reforms will take time and lots of effort. Each initiative will need a comprehensive strategy to map out the risks, the most effective strategies of addressing these, and then a division of responsibility between different actors under one common leadership/co-ordination mechanism. While we have discussed this in relation to Constitutional (or legislative) Reform, the same is true for other GJLOS outcomes and the various Thematic Groups could play this role.
203. Thematic Groups – even those that have made good progress – have only scratched the surface of their true potential in co-ordinating the reform agenda around common or complementary activities between departments and with civil society. To realise their full potential, they will need strong leadership, the institutional/political backing to hold members accountable, effective dispute resolution where conflict arises, and a responsive facility to support CSOs which are participating and need funding to implement agreed activities. The long-awaited NSA support facility, can add considerable leverage to realise the potential of civil society organisations to make their

¹³ Five NGOs (Fida, LRC, CRADLE, IED, ICJ) are participating in the drafting and consultation process – together with the Law Reform Commission around several draft bills.

contribution. It is, however, positive to see some organisations in civil society, which already have some bilateral funding support, participating and making a substantive contribution to the work of some thematic groups. With a dedicated funding source, targeting NSA participation around GJLOS thematic areas and some longer-term strategic support, it is possible to envisage a far greater role for civil society that could positively impact on the overall GJLOS reform agenda.

204. When the sector is looked at, analysed and interventions sought from a sector wide perspective, more comprehensive and lasting solutions can be found and resources can be effectively directed towards the right interventions as opposed to when departments are only inward looking and examine solutions from a micro perspective. The SWAP approach, however, represents a different way of doing business. To succeed it needs constant encouragement and strong leadership (up to the highest levels of government) and a common understanding between different MDAs of the sector's goals. It also requires the institutional structure (to facilitate the effectiveness of this approach) to be strengthened.

Lessons learned

205. As part of the MDA survey we asked respondents what lessons they felt had been learned via GJLOS. These included the results focus especially output-based planning as opposed to resource-based planning; prioritization and sector wide consultations for greater impact; the customer focus on the citizen as the primary client in service delivery and the need for integration of the programme into GoK systems for sustainability are the key best practices and lessons learnt.
206. A number of bad practices have also emerged, in terms of over-ambitious workplans and unrealistic funding expectations, as well as unwillingness on the part of staff to participate in GJLOS reforms, which are seen as too much work. The best practices and lessons learnt are seen to cut across the sector in the form of the willingness of MDAs to discuss and understand each other, use work plans, and to implement planned activities in the work plans. However some MDAs were reported as unwilling to change or work with others. In addition, no platform exists for sharing best practices or lessons learnt, therefore the best practices and lessons learnt have not yet been discussed in the sector, neither do Thematic Groups share their experience.
207. There is also unevenness in the consideration of previous findings and recommendations on the programme. In particular, the reports and findings have not been discussed in some Thematic Groups, and have therefore clearly not influenced the direction of the programme.
208. The lessons learnt and best practices that are emerging need to be shared across the sector, in order to ensure there is continuity. The responsibility for making sure that this happens rests with the PCO and Thematic Conveners. It was felt in this regard that the PCO has become more of a clearing and forwarding house and is focusing too much on compliance rather than providing more strategic leadership. It now needs to be a custodian of best practices and to provide a framework for the sharing of best practices in the sector. There is also a need for the Thematic Groups approach to be institutionalized in the GoK procedures especially in the MTEF processes, for the efficiency gains realized in sector-wide planning and budgetary allocations to continue.

GJLOS institutions

209. Generally, although structures have been put in place they have not been strengthened and in some instances do not perform effectively.

Inter-Agency Steering Committee (IASC)

210. Records available at the PCO indicate that between July 2005 and June 2007 (the period of JRM IV review) the IASC met twice. The first meeting was held 23rd June 2005 to consider and approve the GJLOS MTS and the extension of the Short-Term Priorities Programme (STPP). The second

meeting was held on 13th June 2006 to consider GJLOS programme disruption following changes in the political environment and a development partners' protest note that resulted in the delay of the third Joint Review Meeting. Prior to these meetings, other meetings held since the inception of the GJLOS programme were held on the 6th May 2005 and 16th March 2003.

211. One factor that explains this lack of regular meetings is the absence of a policy and legislative framework. When the programme started there were certain actors who were quite active in promoting reforms; but drawbacks at the national level spilled over to this and other programmes. A clear policy framework might not be in place by the end of this year.
212. Relevance and Mandate of IASC: Though the IASC comprises Cabinet Ministers, it is not a recognized structure of Cabinet and therefore this GJLOS institution does not derive its mandate from formal Executive structures. Since it operates outside Cabinet, it has no reporting obligations and its decisions are not binding on Cabinet. The preferred arrangement for sustainability would be to transfer the functions of IASC to a formally constituted sub-committee of Cabinet. Such a sub-committee would then meet on a needs basis.
213. While the IASC should be responsible for the policy direction of the programme, it is not seen as taking a keen interest in the programme, nor is it seen to act as the champion of the reform agenda or provide policy leadership. To achieve its objectives and create the necessary buy-in across the sector, GJLOS needs visible and vocal leadership from government beyond that provided by its co-ordinating ministry.

Technical Coordination Committee (TCC)

214. Members of TCC met five times between June 2005 and June 2007. First, was on 10th June 2005 to consider and endorse the MTS and to receive the STPP closure report. A second, meeting was held on 28th October 2005 to review the MTS work plans for the fiscal year 2005/6, to receive the FMA STPP report on the basket fund, to consider GJLOS milestones, PCO sustainability and progress in PCO and FMA capacity building efforts. On 7th August 2006, the TCC convened to endorse the second annual work plan under the MTS. On 16th April 2007 another meeting was held to review GJLOS reform programme update, endorse the Mid-Term Review (MTR) implementation schedule and to review and endorse the proposed operationalisation of the Non-State Actors (NSA) support facility. The most recent meeting was held on 18th June 2007 to endorse the third annual work plan under MTS and extend the MTS 2 work plan until the end September 2007.
215. The TCC is also an excellent structure for providing leadership on management of the programme. The TCC meets as it should. However, it has been suggested that the heads of department do not always appear to have the time or information necessary to engage effectively around the conceptual issues that need discussion and decision making at this level. Mostly it is the technical officers who have a good grasp of the programme but the system of reporting upwards may need strengthening so that all Heads of Departments (HoDs) get updates and are able to effectively discharge their mandate at the TCC.
216. The TCC is now finding itself playing an important role in conflict management and resolution. This role is perhaps worth considering as part of a programme-wide conflict resolution agreement – something that was clearly not envisaged at the design phase of the programme, but is certainly needed.

Thematic Groups (TGs)

217. Records of TGs meetings are not kept centrally. However, minutes of the TCC indicate that Thematic Groups had a mixed performance. According to the TCC minutes, some, like TG 3, hardly meet at all. Meetings of other thematic groups were irregular and also recorded poor

- attendance. Furthermore, where records are maintained by the Thematic Groups, the quality of records kept varies. Even though TCC during its meetings seeks updates on performance of TGs, the reporting is done orally and no records are maintained centrally to facilitate briefing of the TCC by PCO and MoJCA. Some of the notable weaknesses in the management and coordination of TGs can be attributed to weak leadership by the respective convenors and/or co-convenors.
218. Nevertheless, TGs are excellent structures where various departments and stakeholders can (and in some instance do) hold each other accountable on what progress is being made by each on the reform agenda. They however lack the capacity and clout to enforce accountability. Given the unique nature of the programme as a SWAP where different departments report to each other, structures, rules and regulations have not been put in place to strengthen the capacity of thematic groups to perform their role effectively. For example, there are no sanctions/penalties for non attendance, or non implementation of the workplan. Debate on reform is minimal. Convenors generally hold meetings at will and efficacy depends on the leadership provided by each convenor and/or co-convenor. The ToR for TGs exist and functions of convenors are specified. However, some Thematic Group convenors do not chair Thematic Group meetings in person anymore implying they have lost interest in championing GJLOS reform agenda.
 219. Even though TGs at inception were seen as forums for policy negotiation/debate and entrenching accountability, they have not always succeeded in creating the necessary space for GJLOS reforms to take root for a number of reasons. First, MDA participation has been inconsistent. Second, GJLOS is perceived by some as a conduit for money and so some MDAs see TGs merely as the vehicle through which their work-plans and budgets are approved. For others, when funds are not forthcoming, interest wanes and in extreme situations some MDAs have withdrawn from active participation in TGs, citing disagreement/conflict with other MDAs and/or TG leadership.
 220. Small MDAs see TG as a source of 'funding security' - they argue that they feel better protected under the programme because, under GoK funding, they would not be visible and large MDAs would get more allocations at the expense of small ones. In their view, TG makes everyone equal – they all have an equal opportunity to access funds.
 221. In spite of the problems cited above, Thematic Groups will continue acting as the main links joining sector institutions as GJLOS is integrated into GoK systems. For this purpose, it is imperative that the policy framework specifies how Thematic Groups will be operating within the new context. This is important because Thematic Groups will be sustained only if they are anchored in a GoK policy framework.
 222. Policy dialogue within the IASC, TCC, Thematic Groups and TCC Management sub-committee (TMSC) has slackened. The available records indicate that IASC and Thematic Group meetings have not been regular and tend to be rushed. In addition, attendance at IASC, TCC, Thematic Group and TMSC meetings is irregular and the content of discussion has been diluted over the years, reflecting waning enthusiasm and busy schedules of the key participants in the various institutions. Many GJLOS institutions do not prepare a calendar of meetings in advance and meetings seem to be arranged in an ad-hoc manner and thus inconveniencing many members. Meetings are called at short notice and minutes are not always recorded. These, together, could explain the poor and irregular attendance at meetings. Some participants complain that they are given short notice for meetings and receive materials too late to make any meaningful contribution.
 223. There was also a notable general waning of interest in GJLOS which was attributed to the perception that GoK was backtracking on some key GJLOS reforms, such as, Constitutional Review, Anti-corruption campaigns and the transitional justice agenda.

224. Clarity of Roles: MoJCA proposes to establish an Inter-Ministerial Committee (IMC) to replace the TCC Management Sub-Committee¹⁴. The TCC Management Sub-Committee was established out of the realisation that members of TCC had busy schedules and were having difficulties attending to the needs of the TCC. An IMC will draw members from each of the GJLOS accounting ministries and agencies. It is important to clearly define the role of the IMC to avert possible conflicts and overlaps with the TCC. Representation of the Ministry of Finance and the Ministry of Planning and National Development will help in better coordination of planning and budgeting, which is critical to the sustainability of the sector reform.

Donors and NSAs¹⁵

225. The donor group meets regularly. However, the enthusiasm of some donors has diminished, especially since the emergence of evidence of new grand corruption within government and other anti-reform manifestations including police action and issues around media freedom. As discussed elsewhere in this report, in 2006, the donor group sent a protest note to the Permanent Secretary, citing the slow pace in dealing with emerging corruption and the raid on the offices of the Standard Group as evidence of GoK backtracking on GJLOS reforms.

226. Effective participation of Civil Society has been constrained by coordination challenges. Civil society organisations have different capacities and interests. They also have different levels of knowledge about the programme and government's procedures and not many have managed to see (let alone seize) the opportunities presented by a government-led governance and justice programme. Therefore when working in a group, relations are often characterized by mistrust and an unhappy consensus. Agreements tend to unravel when different interest groups meet separately. Organisations with strong capacity complain of being dragged down by the weaker ones, while the weaker organizations complain of domination and exclusion. In most cases the civil society representation (qua sector) in GJLOS structures is either lacking completely or ineffective.

227. Since the collapse of the NGO Council and the ongoing mismanagement of its potential to effectively represent civil society, there has not been any credible organisational representation of civil society. The conflicting positions taken by civil society organisations on the proposal to establish a Support Facility for Non-State Actors (NSA), demonstrates the weak coordination of the civil society¹⁶. This problem is not confined to GJLOS. Civil society organisations' participation in Thematic Group 5 is a notable exception but even here the constructive engagement has not reached its full potential as a driving force for the reform process.

228. On the one hand, delays in fast tracking the support facility suggest to many CSOs an apparent sense of indifference (or lack of urgency, at least) on the part of MoJCA, the PCO as well as the development partners towards CSOs. On the other hand, MoJCA, PCO and development partners, while continuing to stress the importance of CSO participation in the programme, feel fatigued and in some instances exasperated by their (failed) effort spent in structuring CSO engagement in the programme.

229. On a more positive note, there has been a recent attempt at self-structuring among CSOs, which appears to be heading towards a credible and inclusive framework. This initiative, together with the proposed support facility for Non-State Actors (currently under discussion by development partners) could unlock the potential among civil society organisations. If all goes according to plan GJLOS may enjoy a more structured and credible engagement from civil society in 2008. NSAs – and CSOs in particular – could play a critical role in the programme. They can infuse a reform

¹⁴ MoJCA, Strategy for the Transition and Integration of Government Systems into the GJLOS Reform Programme, November (2006).

¹⁵ A section dealing with non-state actors appears towards the end of this report.

¹⁶ Minutes of TCC meeting.

agenda into the programme and arouse demand for services while providing the necessary checks especially during the work planning processes. NSAs can also play a critical 'delivery' function as part of a broad strategy toward specific reform objectives, e.g. the publicity, lobbying and public awareness roles (discussed above) in relation to the eventual passing of reform legislation.

Financial Management Agency (FMA)

230. The AT was not asked to directly review the work of the FMA and our comments are informed by responses from MDAs and other key informants, using the same indicator questions as in Reviews 1, 2 and 3. Notably, the response to (and perceptions of) the FMA and its role in the programme are improving steadily over time. However, a number of MDAs continue to express dissatisfaction with the process of procurement under basket funding. In addition, examples of procurement delays were cited, especially for civil works in various MDAs. It should be noted however, that the delay in procurement of civil works is through no fault of the FMA – GoK and donors have never agreed on how this should be tackled.
231. The FMA records that they have played a role in developing the financial capacity of MDAs. In 2004 the FMA played a role in setting up of the initial planning and budgeting processes, training on excel spread sheets, and – since this initial role - in providing support to budgetary control, procurement and financial reporting through 'learning by doing' approach. The FMA report that as at 31 August 2007 they have procured 387 of 424 workshop and training requests, 227 out of 276 consultancy requests, and 150 out of 189 goods and equipment requests. Since 2005, however, the PCO has championed the planning and budgeting processes, establishing improved systems and building capacity among MDAs to operationalise these.
232. Of some concern is that there is – outside of 'learning by doing' – no demonstrable evidence that the FMA has built the financial management capacity of MDAs. There are also instances where MDAs complain of not having up to date data on their finances, which could suggest that financial and activity reporting mechanisms are not effectively systematized to get MDAs the information they require.

Programme Coordination Office

233. The PCO needs to concentrate more on conceptual issues of reform rather than operational and administrative issues. For example, the key reform and needs assessment issues highlighted below, and others captured in earlier joint review reports, have not been addressed due to the heavy workload of the PCO, which is mostly administrative and operational in nature.
234. With the transition now underway including plans to have the PCO hand over to a MoJCA coordinating department, the question is – will a GoK department manned by GoK staff being paid GoK salaries be in a position to effectively provide leadership and technical capacity of the nature demanded by the tasks previously undertaken by the PCO? If they have capacity, do they have the motivation? If they have the motivation, do they have the mandate to advise their peers from other ministries? Will the other ministries feel like they are being subordinated to MoJCA? These issues must be tackled head on and frankly if they are to be dealt with appropriately.
235. Put bluntly, while it may be a difficult or sometimes bruising set of conversations, the issues need to be on the table and dealt with or MoJCA – even with the best of intentions – may find itself undermined and frustrated in its efforts.
236. Records of TG meetings are not filed centrally. As observed above, minutes of TG meetings are not filed with the PCO which is the office charged with the responsibility of coordinating the GJLOS programme. This certainly complicates coordination and communication between TGs and other structures of GJLOS. Currently PCO is represented in all TG meetings as a way of maintaining an interface with the TGs. If TGs were to fully manage their affairs and report

promptly and regularly, perhaps more PCO effort could go into facilitating the policy dialogue, identifying areas where closer collaboration or additional leadership is needed. PCO could then participate in the TGs, not only to glean information and provide technical advice but also to push policy level issues. These comments on the policy/strategic leadership role of the PCO and the need for effective reporting to the PCO by the TGs, applies equally to the structure that replaces it.

237. Lack of/non-adherence to conflict resolution mechanisms: Whereas government has its own mechanisms to deal with conflict or errant members in government employment, it is apparent that the GJLOS management and coordination framework does not. Such conflict and dispute resolution mechanisms will ensure the sustainability of the GJLOS SWAP reform programme. A cardinal rule of SWAPs is that the rules of the game are known to all, and agreed by all up-front.
238. The current GJLOS institutional framework lacks clear arbitration mechanisms. Differences between MDAs in some TGs have resulted in walkouts. Some MDAs (e.g. the Police Department) are convinced that there is a need for an arbitration process to resolve differences within the GJLOS framework.
239. It should be noted that following the protest note sent by development partners dated 14th March 2006 through the Permanent Secretary, Ministry of Justice and Constitutional Affairs and the unilateral decision by development partners to postpone JRM III, it was felt that the development partners contravened Article 4.4. of the Joint Statement of Intent which requires that all parties consult before any decisions touching on GJLOS reform programme are taken. This served to put strain on the relations between the development partners and the government – but again, no conflict resolution mechanisms existed. To secure the future of the GJLOS reforms and ensure wide participation and integration of the GJLOS SWAP, any memorandums of understanding must include elaborate provisions on dispute resolution and all parties must observe such provisions once adopted.
240. Un-structured engagement between TGs and TCC: The GJLOS institutional framework does not provide for structured engagement between the TGs and the TCC. The PCO as the GJLOS coordinating office collates information arising from the TGs and prepares briefs for the TCC. This is however complicated by the fact that TGs do not file records of meetings or activity updates regularly with the PCO and therefore PCO has to be represented in all TG meetings. In the post-transition GJLOS, there is need to provide for a structured interaction between TGs and TCC so that TGs can account to the TCC.

Sustainability

Leadership of the reform process must be addressed

241. An analysis of what has made some departments' star performers and other lacklustre in their performance can (generally) be traced to the leadership of each department. Star performers such as, for example, the National Council for Law Reporting (NCLR), the Administration Police and the Kenya Law Reform Commission (KLRC)¹⁷, are fortunate to have excellent leadership.
242. Poor leadership can manifest in many ways, sometimes active but more often passive as illustrated by the following examples:
- Beneficiaries of the old system reluctant to let go of their vested interest, independent authority and the benefits that came with this
 - Lack of a common meaning of reform/capacity to grasp reform issues and what it takes to turn things round

¹⁷ Please note that this is not an exhaustive list.

- Inertia – used to a certain way of working that did not demand much and resistant to embracing more responsibilities, wanting to continue with business as usual.
243. Large, powerful institutions with substantial budgets such as the police and the judiciary represent specific challenges in the SWAP. Staff at these institutions say privately that they have seen reform efforts come and go... and GJLOS too will pass. It is not that they do not see the need for reform; they can certainly articulate a reform agenda and can absorb large amounts of resources – specifically of a capital nature. But their administration is so entrenched in doing things their own way, that they do not truly see themselves as accountable to a larger reform process. Even where officials are committed to reform, these institutions are so large that the collective inertia makes change (outside of capital acquisition) a very real challenge. Coupled to this – with a leadership that perceives itself as under threat from external criticism – there is a real risk of these institutions adopting an isolationist approach, thereby undermining the SWAP and scuttling the broader reform agenda.
244. The pockets of passive resistance unless addressed in a systematic way risk seriously affecting the reform momentum. They are pockets – but can be influential in spreading the ‘can’t work, won’t work’ gospel. Addressing these issues is no simple task. Ultimately, solutions may lie in a complex mix of stronger political leadership, constructive engagement, administrative intervention, external pressure and public recognition for success all applied over a sustained period. A strategy that draws attention to and acknowledges the problems, while building confidence to tackle them is necessary.
245. It is for this reason – in Part 3 of this report – that we propose a 100-day ‘reform blitz’ in 2008, a second (non infrastructure based) STPP that sets achievable, reform-oriented activities as a means of re-energising the programme, enhancing accountability internally and externally, and cementing sectoral partnerships.

There must be political goodwill to support reforms in the sector

246. The IASC has not met regularly and has not taken the necessary interest to drive the programme at the political level, notwithstanding claims that “informal consultations remained continuous”.¹⁸ The KLRC, for example, can draft lots of bills but without the political commitment, support and leadership from government to see the bills through the parliamentary approval process, its work will be a waste of time and resources. Government leadership in governance discourse is critical for GJLOS success but appears to be waning.
247. SWAP is a new approach of addressing reforms in the public sector. For the approach to work, structures must be strengthened and given the capacity to conduct their business. In the absence of this capacity – in the form of rules and regulations - MDAs will revert to their old ways of doing things and refer to existing rules and regulations to defeat the reform agenda. In other words, the SWAP approach needs to be given teeth with which it can bite and chew and a mouth with which it can swallow. There is need then to revisit the recommendations made in our first review report, particularly that the civil service code of conduct ought to be reviewed and bureaucratic rules that undermine sector reforms be identified for repeal.

Looking at the big picture is a must

248. Capacity needs to be built within the MDAs to make them more effective in their service delivery – but before one can build this capacity, the critical question that must be addressed is: what is the problem? This can only be done if a needs assessment across the MDA is conducted, something we have recommended in each AT report.

¹⁸ GoK GJLOS progress report 2007, p.10.

249. The MTS is very clear on what ails the sector – but it lacks clear implementation mechanisms to ensure that the challenges outlined are addressed in a comprehensive way. Any organization change/development model will usually look at the following key factors
- Policy, law and regulation
 - Institutional structures
 - Organizational structures
 - HR
 - Equipment
250. The MTS clearly defines these but it should now go a step further - to address the how of dealing with the challenges that arise from the issues identified above. The initial assumption when this programme was designed (and this may prove to be a critical one) was that reform would be initiated from within. It was assumed that the people working in the departments knew what the problem was, knew how to fix it and were willing and capable of doing so. It was assumed that they understood the issues and had the capacity to solve the challenges – given the (financial) resources to do so.
251. This may turn out to be the biggest design weakness of the programme. In some instances, departments are staffed by people who have no appreciation of the need to reform and do not realise that there is a problem that needs fixing at all. There seems to be a correlation between ‘understanding of reforms’ and where the staff are coming from. Those who came from outside the government and are running MDAs seem to have a similar view about what to fix and how to do it. Their major preoccupation has been to get things moving.
252. GoK staff may know what the problem is but in some instances are neither willing nor capable of fixing it. The programme lacks a clear strategy to address this. In the STTP for example, the quick wins strategy resulted in a lot of equipment purchasing. Despite this, departments are still asking for more. If a comprehensive sector wide needs assessment is not done to identify what issues need to be addressed in the sector, the planning process may be ill informed. The same applies to the organisational and human resource structures, the performance indicators, the hiring/firing/promotion systems in place and how these enhance or impede staff performance. This is a critical reform issue that must be addressed if performance in the public sector is going to be taken to the next level.

Change management in a stable bureaucracy

253. The rigidity of GoK structures has in some cases hindered effective change management. The attitude that this is how things are done in GoK is very destructive to the reform agenda. For real reform to take place, the bureaucracy must be interrogated and where it falls short, must be changed. New rules of the game must be drawn up to address new ways of doing things. In a SWAP programme for example – where the Accounting officer of MoJCA is responsible for the entire programme - how does the MoJCA accounting officer hold her fellow accounting officers in the other ministries accountable for the implementation of the programme? Does the accounting officer in MoJCA have the authority? And if not, how does the programme deal with such an issue? These kind of issues would be more easily addressed if there was a policy framework in place; there would then have been an institutional context for this.

Review challenges

254. The key challenge lies in the ownership of the programme by departments. Up till now, only a few technical officers and head of departments have a good understanding of what the programme is all about. Most MDAs still look at it as a source of funding – without clearly understanding the reform agenda. Others look at it as a bother – extra work for no pay. Still others have little idea about what goes on in the programme – its termed as ‘so and so’s’ programme. This places MoJCA in a very difficult situation, which – with the planned integration of the PCO – is going to

become a lot more acute. Without a continued effort to deepen the reform agenda within departments and clear buy in by all workers within the participating MDAs, the effectiveness of the programme will be undermined.

Address mixed capacities

255. The HR system in GoK does not currently recognize and reward good workers; neither does it punish bad workers. Performance contracts have been issued to top public servants but have not yet been cascaded downwards to the mid-level managers and lower cadre staff in public service. This means that promotion of mid-level managers and lower cadre staff is based on years served and not their output. As a result, upcoming, innovative, ambitious and reformist minded young professionals are seriously frustrated by moribund but senior (and older) colleagues.
256. The ongoing process of cascading performance contracts to lower levels of service delivery is critical for the overall success of the reform process. Performance contracts should also focus more on 'reform content'. Contracts tend to be about deliverables regardless of what they amount to (in terms of reform). As discussed above, HR is a key reform issue that should be addressed – by GJLOS - to ensure sustainability of reforms.

Generate demand for GJLOS reforms

257. It is the institutions that hold the “power of the purse” that have a significant influence in the planning and management of GJLOS , partly explaining why programme activities tend to be focused on Nairobi. In fact the reform programme was initiated before testing the perceptions of Kenyan citizens on governance issues. The first attempt at soliciting citizens’ perceptions was the National Integrated Household Baseline Survey conducted in 2006. The survey revealed that only 5% of all respondents knew about any GJLOS related reforms. This goes to confirm that the reform programme has been supply driven. There is a need to generate demand for the GJLOS reform programme but this can only happen if there is a regular interface with consumers of GJLOS services.
258. To facilitate the effective interface with the citizens, GJLOS visibility must be enhanced through catchy publicity campaigns and facilitating provision of regular feedback by the public e.g. via MoJCA, PCO, National Ombudsman office etc. There is a need for a paradigm shift from a supply driven to a demand driven GJLOS reform programme. Recently the GJLOS reform programme has sponsored advertisements in the local media. These publicity campaigns should be sustained and deepened if GJLOS is to maintain visibility. In addition, there must be greater interface between consumers of GJLOS services and the GJLOS management and implementation structures.
259. Another limit to citizens’ participation in the GJLOS reform programme is the complexity of the policies, laws and regulations within which the reforms operate. For the public to engage in GJLOS reforms, they need to understand some policies e.g. police act, traffic act, city by laws, human rights protocols, various citizens’ charters, electoral laws etc. GJLOS should commit to simplifying these policies, laws and regulations, and summarize them into easy-to-read briefs for circulation to citizens. This publicity would enhance their understanding of GJLOS and subsequently create demand for the benefits of programme, thus ensuring the sustainability of the reform process. The impact of the programme – judged by citizens – is not the number of laws or how well the programme is known, but the positive changes they can see in their lives and which are attributable to the government’s efforts.

Transition challenges¹⁹

¹⁹ We deal with the transition in some detail in Part 3 of this report.

260. The term of the PCO comes to an end in December 2007 and it is expected that the management and coordination of the GJLOS reform programme will be transferred to a Department hosted by MoJCA, yet to be established. Given that as at September no new staff had been appointed and no hand-over begun, timing is clearly worryingly tight. There are some challenges that need to be overcome for a smooth transition to take place. We are aware – as the reader should be – that a great deal of work has been done to prepare for the transition, but as with any bureaucracy, change is often slow and invisible. Moreover, things are changing all the time – as this report was being written, procurement rules were circulated for the new FMA, GJLOS became an MTEF sector, and so on. So our comments should be read in this spirit.
261. First, there is thus far no demonstrable capacity created within GoK to take over the functions of the PCO. The necessary skills-mix has not yet been secured, even though PCO contracts lapse in December 2007. PCO has not transferred tasks to new GoK staff in readiness for the transition. The coordination, and in particular consolidation of the work plans, budgets and M & E reports of the GJLOS programme, is being done almost exclusively by the PCO. Even assuming the skills are available and can be seconded from elsewhere within the public service, GJLOS is a complicated programme with many nuances. This is easy to remedy: simply resolve contractual issues with PCO staff immediately. If this is allowed to drift, it is reasonable to assume that the senior professionals in the PCO will find alternative employment on the assumption that their GJLOS contracts are about to expire.
262. It will take considerable time for a new team to establish itself and there needs to be a proper management of this transition. Staff consulted within MDAs are, almost without fail, poorly informed about the transition and equally uniformly, very concerned about the impact that these changes will have on the programme. Again, this is easily resolved. Get DPM to fast-track identifying new staff, and draft a robust hand-over strategy that includes measurable indicators, which PCO staff will have to achieve as part of their workplan.
263. Second, the work culture and attitude among some GoK staff has not changed and this may pose a challenge to the GJLOS reform programme during the upcoming transition. This is obviously far more difficult to deal with: what matters is that we are aware of it, and can respond appropriately. A number of factors suggest that work culture and attitude has not improved significantly. First, MDAs seldom adhere to set deadlines. For example, only 5 MDAs had submitted their M & E reports for the year 2006/7 by the deadline. Secondly, some MDAs still send reports that do not conform to the PCO reporting formats and there is no evidence of continuous M & E in many MDAs. Third, contents of the M & E reports submitted to PCO are almost always inadequate, with numerous hanging statements that would require further clarification and/or explanation. Fourth, there are notable information gaps in financial returns, inconsistency in reports, where current reports contradict past reports. (For instance, NACADA reported in the July – December 2006 progress report that they trained 30 magistrates on the demand and supply side controls but then revised that to 28 magistrates in the July 2006 – June 2007 progress report.) In addition, work-plan codes are not adhered to.
264. Third, a PCO-GoK transition strategy/plan was prepared by MoJCA in the first half of 2007. In addition, the PCO and FMA ToRs were revised this year. In the revised ToRs the PCO was assigned more responsibilities. This, coming at a time when PCO should be leaving in less than 5 months, perhaps questions the level of haste with which GoK is ushering out the PCO – and slowness in preparing itself to absorb the PCO functions. We have dealt with this above, and suspect it can be turned into a ‘non-issue’ with great ease, if the will to do so exists.
265. Fourth, the FMA was in the initial contract required to build capacity of MDAs. While there has been ‘on the job’ training, there is no evidence that capacity development has been done at the scale envisaged. This has been noted in all previous AT Reviews, and was picked up in the MTR. The FMA informed the review team that they submitted a capacity development plan at MoJCA’s

request but have not received feedback on that plan and have not been given the go-ahead to proceed. Perhaps the capacity assessment of the GJLOS institutions will help shed light on the capacity and level of preparedness among the MDAs to take up the challenge. Key informants suggest that at least half of the MDAs are likely to struggle in complying with the new procurement arrangements, given low capacity levels. The KLRC, for example, does not even have a procurement officer in place.

266. Fifth, the delayed recruitment of a new FMA was an anxiety, but again, the process of identification of a new FMA was at an advanced stage while we were preparing this report. Ideally the hand-over will be smooth, continuity will be achieved, and taken with the new procurement guidelines just issued by the PCO, this key area may now operate fairly smoothly.
267. Sixth, the GJLOS reform program is not underpinned by a Policy Framework. As observed in JRM III, the lack of a policy framework exposes the reform program to political risk since there is no ownership by the political leadership. The risks presumably increase since this is an election year. The preparation and adoption of a policy framework could also hasten and facilitate the integration of the GJLOS reforms into the Vision 2030. The PCO has been tasked with developing a policy framework paper. A draft exists, but needs to be fast-tracked – given that GJLOS has attained MTEF sector basis, the last big gap to fill before the election – to really secure the programme – is formal status via a Cabinet paper.
268. The PSRDS, anchored in the cabinet secretariat, was envisaged to co-ordinate all reforms but this has proved to be a very difficult task. While the PSRDS has made some gains, it has not managed to address key weaknesses around harmonisation and macro-political leadership. A cabinet sub-committee on reforms exists. However, leadership and harmonisation of the overall reform process is what many respondents see as lacking. They comment that communication is poor and suspicion is high. The reality is that while government is accused of not having the political will for reform, it is spending huge effort on reform processes. This is clearly an unwanted dichotomy that begs for effective stewardship, communication and authority at the highest levels.
269. Finally, the strength of GJLOS linkages with future Government Plans (e.g. Vision 2030) is paramount. This is important to the sustainability of reforms initiated under GJLOS program. Consultations on Vision 2030 are going on with MoJCA.

GJLOS sector integration in the broader GoK system

270. The GJLOS reform programme is set to migrate to a full GoK SWAP, probably at the beginning of 2008 but stretching into 2009. This will necessitate the harmonization of GJLOS systems and procedures to facilitate the systematic integration into GoK systems. This process will require careful thought and planning to ensure that the gains made under the STTP and MTS phases of the programme are not lost. This transition to GoK systems should also result in efficiency gains and the sustainability of the reform programme. The GJLOS management team must pay due attention to the gaps and weaknesses that might limit the smooth transition.
271. With regard to the GoK reporting system, there are notable challenges that must be met for a smooth transition to GoK systems to take place. First, there seems to be no clear guidelines in data and document collection and storage within the GoK²⁰ reporting system. This means that there are major variances in databases held by different government departments, which complicates GoK performance assessment, institutional/sector comparative analysis and time series analysis. GoK departments tend to have different templates for data collection. For example, the police and prisons departments use the individual as a unit of measuring crime, while judiciary uses the “crime” as a unit of measure. In some cases the accuracy and frequency of data

²⁰ GOK, *GJLOS Reform Programme, Administrative Data Collection and Analysis Report, May (2006)*

collection varies from one government department to another. Worse still, some government departments do not collect data at all.

272. Second, even though GJLOS MTS was finalised with a logical framework stipulating expected outputs and specific objectively verifiable indicators, there has been little effort to systematically and continuously collect and collate baseline data on some of the indicators such as crime prosecution and conviction, case backlog by crime, litigants receiving legal aid (disaggregated by gender, age, region or economic status). For example, not all courts make returns on court cases concluded and cases pending. Even where effort to collect such data has been made, the exercise tends to be irregular and disjointed from other data collection efforts e.g. at the Kenya National Bureau of Statistics.
273. Given that governance institutions are closely interrelated, for one to be able to effectively measure the impact of the GJLOS reforms one needs to be able to measure the output at all the levels of service delivery since output from one GJLOS institution would form the input in another GJLOS institution. For example, data on reported crime would form an input in the judicial system while data on prosecution and conviction would form an input to the prisons department. To ensure speedy and accurate reporting and decision making, all institutions involved in the delivery of justice, law and order, must be able promptly and accurately to report on crime identification, reporting, culprit apprehension, prosecution and conviction. Otherwise available data does not allow for tracking of progress across the criminal justice chain from crime detection to conviction due to variances in level of quality and detail in reporting.
274. Third, data that is presently maintained by GJLOS institutions, if any, tends to be limited in content and insufficient to aid in effective and timely decision making. For GJLOS institutions with branches e.g. the police and the judiciary, data collected by the various stations is not standardized making it very difficult to collate and analyze the data and compare performance across institutions.
275. Fourth, data collection tools in many GJLOS institutions e.g. the police and the judiciary, are highly manual and slow down service delivery and lower the efficiency and effectiveness of these institutions. Since the data captured by many GJLOS institutions is entered manually, the data tend to be prone to human error thus reducing its reliability. MDAs also reported limited interagency cooperation in information sharing.
276. Fifth, the GJLOS monitoring and evaluation (M & E) system appears to have focused more on inputs and outputs and less on results/impact or outcomes. This can partly be attributed to the limited data availability. The sector, since inception, has lacked baseline data as a basis of measuring performance. However, baseline data has been collected e.g. the administrative baseline data and the perception baseline survey. Citizens' scorecards have also been conducted for the Judiciary and immigration department with the support of GTZ. These surveys have been conducted by independent institutions or in partnership with GoK or by GoK itself. The success of GJLOS M & E will depend on the clarity of national and local level indicators, and development of a standardized reporting framework. However, with regard to GJLOS M & E systems, some progress has been made:
- GJLOS M & E strategy has been developed.
 - M & E contact persons in MDAs are already in place.
 - Reporting framework and templates have been developed but have not been embraced by all MDAs due to variances in work culture and attitudes. The reporting framework specifies reporting format, timelines/calendar and distribution list.
 - Some relevant MDA officers have been trained.
277. With regard to M & E, it is clear from the above that some measures have been put in place for transition from PCO to GoK. However, the success of the transition will depend on the GoK

- officers work culture and attitude which varies from MDA to MDA. The capacity of the central planning (M&E) Units at each Ministry should be strengthened, and at the level of the SWAP the Ministry of Planning and National Development should be playing an oversight and co-ordinating role.
278. The M & E reporting system is still offline and there is limited sharing of data, even among MDAs. This tends to slow down the process of decision making. As explained above, the lack of data, slow pace of data collection and poor quality of available data also make the GJLOS M & E system less robust.
279. GJLOS has just been recognized as an MTEF Sector. Moreover, the sector has been reorganised, so that the new GJLOS MTEF sector really 'is' GJLOS, and has lost some of the former PSLO members that had no place in the GJLO sector. This has created a massive opportunity for GJLOS. State House and others have been moved out of GJLOS and shifted to Public Administration, so we now have a "pure GJLOS SWAP". In other words, the space now exists for sector before Ministry before MDA thinking along sector-wide priorities. Put bluntly, given its experience in planning and prioritisation, GJLOS should be the front-runner in ensuring the MTEF operates as it should do.
280. The MTEF sectors are not involved in the entire planning cycle of ministries and this has resulted in a disjointed planning process. Whereas MTEF sectors are used in budgeting and resource prioritization, the sectors are not involved in the formulation of policies of individual ministries and departments. In most cases policies are handed to the MTEF for inclusion in the plans and budgets. Third, the operation of MTEF sectors face a number of challenges such as the ad-hoc manner of constituting meetings, short notices for meetings, perceptions that decisions taken at MTEF meetings are not taken seriously, and so on.
281. The foregoing suggests that merely entering the MTEF cycle is not a panacea in and of itself: but GJLOS will take a massive step forward by becoming a sector, and an appropriately populated sector, all in one step. Sector management structures and mandates should be revised to include policy dialogue and planning. Such harmonization will facilitate better management and coordination, in terms of policy formulation, planning, budgeting, programme implementation and oversight.
282. The percentage of GJLOS funds reflected in the MTEF budget has not increased since the inception of the GJLOS reform programme. The budget for the GJLOS reform programme is estimated at less than 3% of total MTEF budget for GJLOS institutions, reflecting a slow pace in the integration of GJLOS in the GoK development programme.
283. Nevertheless, significant progress had been made towards integrating the GJLOS planning and budgeting with the MTEF planning cycle and processes even before the announcement of its sector status. First, guidelines for synchronizing GJLOS sector planning and budgeting were prepared and circulated to all participating departments. Second, a calendar for GJLOS sector planning and budgeting has been synchronized to that of the MTEF (see MoJCA circular, MJ/042/SPB/WK-PLANS-MTEF/07 (1.2)). Third, the GJLOS sector was able to submit revised estimates for inclusion in the 2006/7 Supplementary Estimates. Finally, during MTS 2 and 3 GJLOS sector participated actively in the MTEF budgeting process under the PSLO sector and influenced the outcome of the sector negotiations, implying GJLOS is slowly being accepted rather than resisted as was the case in its early days. The programme has effectively positioned itself; now it needs to become 'the sector'.
284. Some factors suggest that the MTEF planning and Budgeting framework does not support a SWAP. First, the Public Procurement and Disposal of Assets Act, 2007 requires that all public procurements be authorized by the Accounting Officers in charge of implementing MDAs.

However, GJLOS resources are included in the Development Vote of MoJCA. How then will MoJCA procure for programs under Prisons Department or Police Department which fall under separate Ministries/Accounting Officer? Currently, the procurement for the basket funds is being done by the FMA. Secondly, the MTEF sector does not support policy dialogue/ratification but acts rather as resource allocation/negotiation fora. This limits the scope of MTEF sectors to influence policy and planning. However, GJLOS framework supports policy dialogue within Thematic Groups, TCC and IASC, a complete departure from MTEF arrangements.

285. GJLOS lacks the necessary baselines data on logistical support for effective planning and decision-making²¹. For example, there is no baseline data on GJLOS Human resource capacity (i.e. staff numbers and skills mix), ICT resource, office space, motor vehicles etc. Given that the GJLOS MDAs do not have such baseline data. It therefore follows that these MDAs do not have a basis for forming an opinion on shortfalls or excesses in resource requirement. This is not a problem that is unique to GJLOS, but characterizes the entire government. The ongoing assessment of GJLOS workload will provide the necessary baseline data to guide the staffing of the new department to replace PCO. The assessment should cover the entire GJLOS sector. This assessment will also establish the training needs, if any.
286. There is an urgent need to document and harmonize GJLOS related policies, laws and regulations governing GJLOS institutions. This will help in the simplification of the policies, laws and regulations, enhance their clarity and facilitate transition to a full-fledged GJLOS SWAP. This, we understand, is on-going.

GJLOS and Vision 2030

287. As stated earlier, the GJLOS reform programme was underpinned by government policy as stipulated in the ERSWEC, which covered the period 2004-2007. The ERSWEC comes to an end in December 2007 and the government proposes to replace it with a longer term plan, Vision 2030 which spans the period 2008 to 2030. This will be the new country's development blueprint. The vision is based on three broad pillars, the economic pillar which seeks to transform Kenya into a prosperous nation with an annual average Gross Domestic Product (GDP) growth rate of 10% for the next 25 years. Second, is the social pillar that seeks to build a just and cohesive society with social equity in a clean and secure environment. Third, the political pillar, will focus on attaining a democratic political system founded on issue-based politics that respects the rule of law and protects the rights and freedoms of all Kenyans.
288. In the development of Vision 2030, there has been some consultation with GJLOS through MoJCA. From interviews with MDAs it was reported that the consultations with MDAs were not adequate. Some felt that the consultations were with the senior level managers and that there had been insufficient engagement with middle level managers and others.
289. Vision 2030 hopes to achieve its objectives through continued exploitation of existing capacity but more importantly from pursuing efficiency gains and new investments. Recent evidence suggest that GJLOS institutions suffer the most in all the three areas identified by the Vision 2030 blue print because of long periods of neglect by the previous government. Most of the GJLOS institutions operate at below the existing capacity because of bad work attitudes, low staff morale etc.²² and yet there are relatively more citizens interacting with GJLOS institutions on an everyday basis than is the case with other GoK institutions. Cases of inefficiency are also rampant across many GJLOS institutions due to among other factors over reliance on manual systems, corruption, poor management and coordination etc.²³ Finally and equally important is that some

²¹ GoK, GJLOS Reform Programme, Administrative Data Collection and Analysis Report, May (2006)

²² GoK, Mid-Term Review of GJLOS Reform Programme, January (2007)

²³ GoK, GJLOS, Administrative Data Collection and Analysis Report, May 2007

GJLOS institutions need expanded capacity through new investment. For example, the police service could be equipped with the necessary equipment and technology to deal with crime, but the judiciary also deserves new investment in order to dispose of the huge backlog of cases pending in courts.

290. It should also be noted that GJLOS reforms are presently seen as key in insulating the economic and social reforms from governance/political risks. It is therefore important for GJLOS to seize all opportunities that will enhance its visibility, raise its profile and secure its sustainability. One such opportunity is provided by Vision 2030. However, if there are no structured consultations with sector players, the ownership of the Vision 2030 may be at risk. Vision 2030 provides GJLOS with numerous opportunities to entrench the programme in national processes and enhance its visibility.
291. First, Vision 2030 provides a good opportunity to consolidate and improve the linkage between GJLOS reform (e.g. legal reforms, police reforms etc) and social and economic development. Political governance and an independent, timely, effective and trusted legal system are key determinants of economic prosperity besides sound macroeconomic policies and improved social conditions. For example, it can be demonstrated that GJLOS can help reduce the cost of doing business e.g. reduction of number of licenses, speed of delivering economic/commercial justice etc. can enable a good environment for businesses operation and encourage investment²⁴.
292. Second, higher economic growth will create greater demand for effective oversight and/or regulation to ensure good business practices, fair distribution of opportunities/resources and good interface between the public and private sector etc. The expanded oversight/regulatory role will be as a result of an increase in the number of players in the growing economy i.e. more investors, employees, increased cross border trade etc. This can only be secured through GJLOS reform. Huge income inequalities and the fact that about half of the population live below the poverty line, implies that if equity issues are not addressed, then political or social disharmony could result. This is critical for GJLOS: to promote reforms that will not only protect the poor but also create opportunities for them to benefit from higher economic growth.
293. Third, the drive for higher growth may also come with temptations to flout human rights, democratic rights etc. Indeed there have been cases of human rights abuses reported in flowers farms in the recent past, at a time when the sector has been expanding rapidly.²⁵ Therefore the GJLOS reform program could help set up checks and balances and a regulatory framework that ensures equal treatment through e.g. consumer rights protection, human rights protection etc. This need to secure human, social and economic rights, therefore, builds a strong case for the inclusion of GJLOS reform agenda in the vision 2030. Only then will the gains made in the STTP and MTS implementation phases be secured and ensure the mainstreaming of rights based approach to economic development.
294. Fourth, in a recent GJLOS survey²⁶, citizens' rated corruption, access to justice, human rights, safety and security as the major governance challenges. These findings suggest that the political pillar of the Vision 2030 must give prominence to these issues by ensuring that the essence of GJLOS reform, are captured in the vision 2030. This will ensure that the reform transcends regime change, come January 2008, and minimize GJLOS exposure to political risks.
295. Finally, there is need for GJLOS institutions to urgently reposition themselves to be able to effectively exploit existing capacity, enhance efficiency e.g. through effective leadership, embracing result based management (e.g. performance contracting), automation of processes/systems etc.

²⁴ World Economic Forum, 2006

²⁵ Kenya Human Rights Commission (KHRC)

²⁶ GOK, GJLOS , National Integrated Household baseline Survey, September 2006

and where necessary expand capacity through new investment. Only then will GJLOS be able to respond to the country's Vision 2030 agenda. However, in its current form, the GJLOS sector institutions may not effectively support and/or contribute to the country's economic growth agenda because they are not be able to cope with increased and complex security demands, business disputes, corruption, social and political tensions and insecurities etc.

Conclusions

296. GJLOS must develop standardized templates for data collection and automate data collection systems. The template must stipulate the units of measure and frequencies of data collection. MDAs must as much as possible collection data that will help in performance assessment and aid in trend and cross MDA comparative analysis. In addition, MDAs must invest in the automation of data collection and analysis systems. This will minimize human errors and facilitate timely decision making.
297. There is need to allow more time (beyond December 2007) for the transition of the PCO into the GoK system. Evidence suggests that GoK and individual MDAs are yet to fully develop adequate capacity for effective management and coordination of GJLOS. The MDAs still rely heavily on the PCO for coordination. The transition must be done gradually as measures are sought to minimize the possible effects of negative work culture and attitudes.
298. To minimize the risk of low capacity within MDAs during transition, there is an urgent need to use the MTS 3 work-plans that have been finalised to produce a procurement plan for each of the MDAs – highlighting time-frames and key milestones that need to be met, including contingency plans if these are not met. Such procurement plans would go a long way in complementing the PCO and FMA exit strategies and GoK capacity building strategy.
299. To facilitate proper planning for smooth transition, GoK must urgently collect and collate baseline data on the essential logistical support for all participating MDAs. In other words, there is need for an assessment of GJLOS resource requirement, in terms of human resource demands (i.e. staff numbers and skills mix), office space, office equipment, motor vehicles etc. Once this is done, GoK will have a good picture of the resources required to deliver the GJLOS reform programme and be able to plan effectively and adequately address the shortfalls.
300. There is need to constantly review performance/leadership of GJLOS institutions i.e. IASC, TCC, TGs etc especially when management & coordination suffers and demand corrective measure.
301. The GJLOS reform programme must establish mechanisms for penalizing and rewarding GJLOS Institutions/MDAs on the basis of performance.
302. GJLOS arbitration mechanisms should be reviewed to ensure that any gaps that may exist are plugged to ensure that the GJLOS reform programme has a clear and enforceable arbitration process to deal with all disputes. GJLOS institutions signing contracts must include clauses on clear arbitration processes in the contracts. In addition, the GJLOS reform programme must develop rules and regulations to guide the operations of all MDAs, including other GJLOS institutions. Such rules and regulations will eliminate ambiguity and clarify the rules of the game and give SWAP the necessary authority to discipline errant participating ministries and departments.
303. To ensure sustainability of the programme, the essence of the GJLOS reform programme must be captured in future GoK plans, notably Vision 2030.
304. GJLOS must be demand driven. To achieve this, there is a need to facilitate effective interface between the GJLOS reform programme and the citizens (consumers of GJLOS services) by

ensuring regular feedback through e.g. MoJCA, PCO, National Ombudsman Office etc. Media publicity campaigns must be sustained, citizens' charters enforced and regular perception surveys conducted to inform the programme.

305. The GJLOS reform programme must deliberately and continuously interface with stakeholders and the legislature as Bills are being developed in order to minimize the effects of over-politicization of the Bills and get the necessary buy-in. In addition, the Cabinet must take ownership of the Bills once developed under the GJLOS reform programme and ensure their enactment in parliament. GJLOS should also consider supporting activities aimed at improving parliament's capacity in legislative review and drafting.

Part 3: Where next?

Introduction

306. In this section, we briefly review the issue of transition, since it is critical to the future of GJLOS – though much of what we have to say appears in Part I of the report – and then go on to focus on the future strategic orientation of GJLOS as a reform programme, which makes up the heart of this concluding section of the report.
307. As part of the latter, we recommend a ‘100 day reform blitz’, a second (non-infrastructure focused) STPP that is meant to re-energise the sector, win new friends and allies in the new government, and lubricate the transition by showing what GJLOS has to offer the nation. We begin with a few observations on the transition.

Transition

308. For GJLOS to be outside GoK was a strength in 2003/4 – it was insulated from the rampant corruption and mismanagement that had marked the previous regime. This was a view shared by GoK members as well as donors and others. By 2007, the strength has become a weakness. The programme became vulnerable because as public sector reform proceeded, the programme has been by-passed; it lacked formal political or sectoral status; and was vulnerable to donor conditionalities. Major changes have occurred as we wrote this report. This change, if well managed, will be healthy for the programme.
309. We dealt with many issues relating to transition in parts of the report. We note also that much of what we say below may be out of date within weeks – these are processes that are taking place, and we can only comment on what we see as at early September 2007, but the process may have moved past us between writing and the JRM. For example, a detailed document has just been released, explaining how procurement will be carried out under the interim FMA as the programme transitions to full SWAP – a notable achievement and one we commend.²⁷ We ask the reader to bear with us if indeed some of what we say is overtaken by events - this will be a sign of robust health in the programme.
310. Moreover, the transition is a lengthy complex affair that will probably take one and a half to two years to complete. What we are analysing here is the foundation for transition – the key activities that allow GJLOS to break decisively (but not entirely) from its current quasi-SWAP to full SWAP status. ‘Transition’ is often short-hand for the foundational activities, and we trust the reader will read our text accordingly. Finally, we are not outlining the transition, its structures and processes. Our task is only to comment on the plans that exist at the moment.
311. That the transition is needed is not in question, to our mind. GJLOS was Kenya’s first SWAP, and one of the most ambitious governance SWAPs in the world. Donors entered a SWAP reflecting their own principles – reflected in the Paris and Rome Declarations – namely that conditionalities need to be replaced by predictability, less burdensome reporting requirements, and faith in government as sector leader and policy maker.
312. Individual GJLOS donors have frequently expressed reservations about moving ‘on budget’, but have failed – despite AT recommendations in this regard – to develop indicators that may signal where their disquiet lay and what measures should be put in place to deal with them. As such,

²⁷ GJLOS (September 2007) ‘Transitional proposals and way forward regarding implementation of basket fund transaction under the third GJLOS sector workplan’.

donors are now facing a strong domestic government that has successfully managed the economy and made considerable progress in the GJLO sector reforms, demanding that donors live up to their commitments and principles. It is unfortunate that some GJLOS donors continue to express disquiet – often ‘off the record’ – when moving GJLOS into a full SWAP will be a key test, locally and globally, for the principles that guide development funding worldwide.

313. The AT regards this as a critical moment for the programme – but one that should be cause for uniting all partners in pushing the programme forward. We should recall that it was GoK personnel within GJLOS who were perhaps most sceptical about government in 2003/4 and its capacity to manage GJLOS; who believed that where rules frustrated reform, the rules should be broken; that called on GJLOS to reform the civil service code of conduct and thus break the anti-reform log-jam; and so on (see At report to JRM I). And now senior figures within GJLOS are calling for the move to a full SWAP. We listened when GJLOS figures said keep money out of Treasury; surely we will listen when they say it is time to put it into Treasury?
314. For donors, NSAs and all others within GJLOS, it is the moment when the reformist credentials of GJLOS must be put to the test: we have either built a programme strong enough to continue its reform work from within GoK, or we have failed. But keeping GJLOS as a quasi-SWAP, half-in and half-out of government, is simply untenable, as well as (from a SWAP perspective) unprincipled.
315. Thus the only question is when and how the transition happens, for the maximum benefit to GJLOS. This is a basic question facing JRM IV. The answer must be based on a realistic assessment of what GJLOS has achieved; what it has yet to achieve; whether it has progressed far enough down the road to becoming a full SWAP.
316. While this report was being written GJLOS gained MTEF status as a sector in its own right. This, coupled to a policy framework in the form of a Cabinet paper are key aspects of the transition. Some progress has been made in fast-tracking the Cabinet paper and it is critical that it now gets finalised. We understand further that the process of selecting an FMA is very far advanced. If our recommendation, to extend the duration of the PCO with measurable hand-over/capacity building milestones, is accepted, the transition will be a great deal more secure. These are some of the necessary and immediate steps to be taken. Thereafter there is a need to consolidate the sector by aligning the GJLOS MTS with Vision 2030, reviewing its reform status, and launching the ST(R)PP to win allies, re-energise forces, and secure broad political support.

GJLOS and SWAP

317. GJLOS was and is a quasi-SWAP because of shared concerns about the state of the public service after the 2002 election. Internally, the sector increasingly works well, plans together, budgets together, and as we show below, implementation is steadily improving. That said, reform energy – as opposed to absorptive capacity – does seem to be at a low ebb.
318. Externally, interim arrangements were put in place – using an FMA for pooled donor funds and a PCO to co-ordinate the programme; and recently the FMA contract has been tendered for another phase of activity to 2009.
319. A SWAP needs a formal policy and political basis; an appropriate sector basis and home; functional sector-wide structures; and appropriate sector-wide goals. The support structures – internal or external – are important, but at a secondary level compared with these primary needs of any SWAP. Progress has been made in all of these core areas. But is it enough to make the leap to a full GoK programme when the GoK itself is about to change?
320. The programme still lacks a formal policy basis. A draft concept paper exists – that will over time become a Green then White Paper and (hopefully) win Cabinet approval. But few would argue

that this realistically can be completed before the election. As it is, the timetable for the policy paper has changed as deadlines have come and gone. So the JRM should consider: do we try to rush the process to secure the policy basis of the programme, or rather get a better document for the new government to assess?

321. The sector is functioning well – and its elevation to MTEF sector status is a critical gain.
322. The sector-wide structures – notably the Thematic Groups – are not functioning as well as they can or should. Until the terms of reference for TGs, and for TG convenors, are in place and adhered to - including a system of sanction for non-performing TGs - this unevenness will remain.
323. The sector-wide goals also need revising, now that the baseline survey results are available, and more demand-driven delivery can realistically be designed. Again, a process is under way in this regard – but – as with all those mentioned above – it needs a timetable *that is adhered to*. So across the board what we see is movement towards SWAP status, better in some cases than others – but the programme clearly needs a collective act of will to focus some energy on attaining full SWAP status. That will require Cabinet approval, internalisation within government structures, and policy coherence. If SWAP status is not a shared commitment – with measurable indicators – it will become one among the hundreds of GJLOS activities (as at present) with diminished chances of success.

Transition: a biography

324. Let's briefly sketch a biography of transition within GJLOS. This is useful in reminding us of the fact that it is not new, and has always been on the cards; but also useful in signalling different motivations behind transition, some good and some less so; and noting some warning bells about the right course of action to follow.
325. One of the earliest documents dealing with transition, written by a former GoK employee seconded to the PCO, clearly saw transition as a response to the donors' ill-advised decision to delay supporting JRM III in protest at GoK actions. He wrote:

In view of [the] existing situation and behaviour of the Basket Fund development partners, it is evident that the GJLOS Reform programme requires insulation from political and other opportunistic attacks.²⁸

326. The author spoke of the need to 'reform and simplify donor conditionalities'. Transition is not occurring because of donors – it is a natural, organic and predictable development for GJLOS – the GJLOS donors should pause for a moment to consider the after-shock of their decision (on more than one occasion) to hold GJLOS ransom for the activities of the Kenyan government. That donors wished to and had the right to register a protest is absolutely not in question – but whether GJLOS was the right target to attack certainly can be questioned.
327. A perhaps more widely-shared view was that “sustainability cannot be assured as long as GJLOS structures, processes and systems continue to operate outside of (or parallel to) those of Government.”²⁹ This is certainly the approach of the AT where transition is concerned.
328. That said, the postponement of JRM III seems to have been the straw that broke the camel's back from a GoK perspective. But it occurred in a context, one where the sector was increasingly coherent, implementation improving, the economy growing, and government perhaps less willing than before to tolerate conditionality in development support. This directly informed debate at

²⁸ 'Concept paper' *op cit.*, p.9.

²⁹ 'GJLOS in transition': Internal PCO notes, March 2007.

the third joint review meeting, which took the decision to push for full SWAP status for GJLOS. The JRM called for an immediate start on the policy paper ... the TCC meeting of June 2007 heard that the policy paper would be ready by October 2007 ... but the paper remains a draft, and a long way from being ready to submit to Cabinet. Nonetheless, as the paper notes, it remains

...critical for widespread official recognition of the inter-agency cooperation and cross-institutional coordination needed for the maturation of GJLOS into a fully-fledged Sector Wide Approach (SWAP) (sic).³⁰

329. A post-JRM III document noted that after JRM III “it was recognised that it is now time to take GJLOS to the next level” – by embedding GJLOS in the national policy framework, integrating within government, and an elevated reform package.³¹ By 2007, this had taken shape: GJLOS needed policy integration (the policy paper), institutional integration (moving structures into government), policy cycle integration (via the MTEF) and systems integration (a single workplan, single set of procedures, targets and format).³²
330. This has been broadened to account for the different structures in the programme – though with some confusion, depending on which document or presentation one considers. As the Director: Legal Affairs noted, it is difficult to retain definite items (structures names, etc.) in a transition.³³ That said, it is strongly recommended that MoJCA (on behalf of the sector) urgently issues an authoritative guide to the transition, after appropriate consultation, to allow everyone to know exactly what will happen to each structure, what their functions and responsibilities will be, and so on.

What it is	What it will become
IASC	Cabinet Committee
TCC	Stay the same (TCC minutes) or Executive Stakeholder Forum
TCC management sub-committee	Inter-agency committee or Inter-Ministerial committee
Thematic Groups	Thematic Groups
PCO	GJLOS Reform and Co-ordination Department
MDAs	To create focal points
FMA	Functions carried out by all MDAs
Advisory Team	M&E Unit of ministry of Planning and National Development

Table 6: Transition and structures

331. Before we continue, lest anyone doubt the commitment of the Advisory Team in supporting the transition, we will stand down immediately after JRM IV and provide our full co-operation in order that our functions may be outsourced to a new team or absorbed by the M&E department of the Ministry of Planning, or some other agency, as determined by GoK, donors and other stakeholders.

³⁰ MoJCA/GJLOS: ‘Governance, Justice, Law and Order Sector (GJLOS) policy framework paper: Concept paper’ 30 March 2007, p. 10.

³¹ PCO (September 2006) ‘A forward-looking advisory on the range of strategic choices and related, time-critical decisions facing the programme in the journey towards full (SWAP) maturity’, p.3.

³² Letter from PS Dorothy Angote to TG convenors and others, 18 January 2007.

³³ Interview: Gichira Kibara, Director: Legal Affairs, MoJCA.

332. The structures, their names and functions, need to be debated and resolved in and by the sector. And this is not straight-forward: for example, the KNCHR, fighting to preserve its autonomy, has already proposed that the PCO should permanently be retained rather than absorbed within government; and that the TCC should be strengthened as a body that allows GoK and non-GoK (SAGA, NSA and other) to have a powerful voice in the programme, not make it a purely GoK initiative. In our view, it is premature to make any decisions on these matters: far more rigorous debate, engaging all GJLOS stakeholders, is needed before decisions can be taken that are both thorough and have wide-ranging support.
333. The AT would wish merely to make some observations that should guide the process – many of which have been made before by others within GJLOS.
334. Firstly, SWAP is about sectoral dialogue, sectoral strategising, and sectoral delivery. Structures are a tool – but in a transition, it is easy to focus on the structures and perhaps forget their purpose. We continue to believe that while the MTS remains a robust planning tool, GJLOS still lacks a concise sectoral reform strategy that gives sector-wide indicators for monitoring by the sector at regular intervals. A once-a-year JRM is inadequate – we are looking for regular sectoral dialogue and monitoring of sector-wide achievements, failures, learnings, and so on.
335. If we turn to structures, GJLOS lacks a bottom-up, sector-wide set of meetings that occur at least every quarter. Normally, this would begin at district level, where local GJLOS co-ordinating committees would meet to plan, review work, get inputs and act as learning forums, and so on. They would be in dialogue (i.e. two-way communication) with a national GJLOS co-ordinating committee, that would have 1 representative of all MDAs and stakeholders – including out of Nairobi - and which would meet at least quarterly. The key point is to foster a sense of sector – not just a set of workplans that taken together add up to a sector – and dialogue about what the sector has and has not achieved, revising targets and strategies as things change, and so on.
336. This does not remove the need for Thematic Groups – far from it – because the focus is on reform dialogue (which TGs are meant to foster) but at a *sectoral* level.
337. As things stand, when MDAs get together they are either divided by Result area (i.e. in Thematic Groups), or they come together to draft workplans, or once a year, for the JRM. We believe that the transition to a full SWAP must include far more deep-seated sector-wide dialogue, debate, discussion, argument and self-monitoring and learning.
338. So if we look at the structures that have been proposed and which we summarised in Table 6 above, we see basically more of the same. MDAs would plan, execute and report; then the forums and TGs would give space for progress reporting, which the Reform and Co-ordination Department elevates to policy dialogue for the TCC, while overall political governance and direction emanates from the Cabinet Committee, linked to full Cabinet.
339. But those structures lack what the AT recommends, namely local/district/national GJLOS co-ordinating structures that all operate at sector level, all focus on dialogue about reform and monitoring sector progress towards meeting sector goals, and provide the energy that dissipates in the current set of structures that focus people ‘downwards’ to look at their own activities, rather than ‘upwards’ to look at sector-wide reform.
340. **Timing** is of fundamental importance. The 2006 PCO ‘advisory’ noted that

...a lesson from post reform experience is that there will be a slowdown in major decision-making (especially by development partners) in the 2007 election year. It is

therefore critical that this dynamic is pragmatically factored in order to facilitate decision-making...³⁴

341. We believe the observation to be generally true (i.e. as true of GoK as of donors) and strongly urge that the timing of the transition be set after a careful consideration of the context. It is unlikely that donors or GoK will want to take profound decisions about GJLOS as the election approaches, or in its immediate aftermath, and we are unconvinced by the argument that the election is an opportunity to spring-board the transition to a new level. It seems quite the reverse, from our perspective. As the 'advisory' went on to note, "higher impact decisions will require a longer period of time to take effect". We strongly urge that the programme remember that more haste often results in less speed.
342. But with **timing** comes the issue of **workload**. In the next couple of years, the current FMA will close its books and be audited; and the new FMA will take over for its 2008-2009 window of operation. MTS 3 will need to ensure that it is aligned with both Vision 2030 and whatever additional post-election commitments the new government may wish to see in the programme, meaning that MTS 3 may need at least 'tweaking', at worst completely re-working.
343. But the lifespan of this phase of the programme is also coming to an end (2009), and work must start almost immediately on a new Sector Development Plan/Programme – with a design time of 9 – 12 months, ready to be adopted in late 2008 for a 2009 launch. While that is happening, and JRM V is approaching, the Joint Statement of Intent commits GJLOS to a summative evaluation, which (if the MTR was a guide) will take at least 6-8 months to complete. At the same time, a final GoK report covering the entire MTS phase will have to be prepared. Finally, in the midst of all the above, MTS 4 will need to be planned, designed, budgeted, implemented, monitored and reviewed.
344. We have made no mention of what is not known – i.e. the result of the election, with possible new Ministers, senior officials, and the like, all needing to be inducted and brought up to speed. These imponderables will undoubtedly have some effect on GJLOS, as they will on other government programmes. MoJCA officials have already noted (in a presentation) that "transition to government systems should be smooth and phased to avoid disrupting implementation"³⁵ – and if this is the case, we need to plan properly for a smooth, steady process, including the PCO/FMA hand-over. And let us be honest – no government on earth is famed for swiftness, particularly when it comes to creating new departments, identifying high-level staff, placing them, equipping their offices, and so on.
345. Finally, transition deadlines within GJLOS have come and gone. By the original design, the transitional arrangements regarding PCO should have come to fruition, the policy paper should have been with Cabinet, and the programme inducted into MTEF (which only came about as this report was moving to its second draft). This is not a criticism – it merely reflects the messiness of working within a large bureaucracy, and competing with other programmes and priorities for space and attention. But it warns us to plan the transition right in order to maximise the gains for GJLOS and minimise the risks.
346. It is inconceivable to the AT that the end of 2007 – in this context – is the right moment to let the contracts of the PCO expire, as seems to be the plan at the moment. The PCO play a key role in the programme, as we have noted; and their skills must be handed over to their successors in the 'reform and co-ordination department'. But that is not a matter of days or weeks – a robust hand-over should last 9 – 12 months and must include being taken through the

³⁴ PCO 'advisory' *op cit.*, p.4.

³⁵ MoJCA (2007) 'Highlights of the GJLOS transition process'.

next workplan process. It is clear that the workplans are the heart of GJLOS; and that the PCO is at the heart of crafting and guiding the workplans.

347. A final word on this issue. We regard the transition as a moment for the sector to learn by doing. What we must accept is that some structures are working well, and others not – and changing their name won't improve performance. So while the migration of IASC to Cabinet sub-committee has very important ramifications, leaving TGs as TGs without finding ways of evening out performance as well as improving it, would be to import existing problems into the next phase of the programme. The JRM is a key moment to reflect on at least the interim structures that may be needed, as well as the timetable.
348. But – and here we are deliberately repeating ourselves – the fundamental gaps remain (1) getting outside Nairobi and (2) creating regular, sector-wide structures for dialogue and learning, not workplanning. These do not yet exist, and must be a cornerstone of GJLOS as a full GoK SWAP.

The way forward

349. The following section of the report sets out to provide guidelines on what a high level, sector wide implementation plan should contain and ends with a key recommendation for a 2nd ST(R)PP. One which learns from the failings of the 1st STPP, emphasises key reform wins as opposed to quick wins such as hardware/infrastructure issues, provides an opportunity for the newly elected GoK to own and commit itself to the good governance principles embedded in the programme and reenergises and refocuses all those in the sector. It should be pointed out that the purpose of this 2nd STPP – correctly, the ST(R)PP (short term *reform* priorities programme) is not to throw the programme wide open, but it is to use the post-election period as an opportunity to re-energise and re-group the reform forces. If this is not done, the concern remains that the reform thrust of the programme will be lost. Simply delivering another host of activities without a strong reform focus could lead to future MTS workplans falling into the same traps that MTS I and II have encountered.
350. It is the AT's belief that for too long many have simply not been reading the existing road map correctly. Whilst a key tenet of the programme is to bring about reforms using a human rights based approach, many in the sector have chosen to interpret this as simply meaning modernisation. In practice this has meant a plethora of activities being planned, implemented and completed without necessarily being premised on a deeper understanding of how these activities will contribute to securing the basic rights of Kenyans or ensuring that Kenyans can make claims against, or demand accountability of, MDAs. This section therefore reminds the reader under each KR what the key reform priorities should be.
351. This can be done by examining both the strategic intent of the programme and the tactics implemented to achieve the strategy. The MTR (2007) provides a helpful overview of the programme's strategy, and importantly demonstrates the alignment of the strategy with GoK policies, MoJCA's strategy, and the strategies of development partners. In so doing they confirm the widely held view that the programme's aims and objectives are strategically linked to the ERS and will also be closely aligned to the nascent Vision 2030. Moreover, these policy links will be further strengthened and clarified once the GJLOS Policy Framework Paper is finalised. For this reason, this section of the report focuses primarily on the implementation side of the programme, the reform tactics employed under each KR, rather than the strategic policy component of the programme. It is the sense of the AT that the policy design and development for the programme is being competently dealt with, whereas some key challenges still remain with regards to transforming the reform agenda into action. With this in mind this section of the report, drawing on a wide range of documentation both internal and external to the programme, identifies (per key result) critical challenges and then suggests the ways and means these challenges need to be addressed.

352. However, before each KR is explored in detail it is important to remember that the overall purpose of this sector wide programme remains “**Improved governance, justice, law and order**” and that against the backdrop of a, still to be finalised, new constitution this involves focusing on five interrelated aspects – the MTS sector wide reform priorities, namely

- **Governance Reform:** Including intensification of the **ongoing fight against corruption**
- **Safety & Security/Law & Order Reform:** Focus on **crime prevention** as well as broader **police** and **penal reforms**.
- **Justice Reform:** Promote **equal access to justice** for all, including **commercial law reforms**
- **Human Rights Reform:** Aimed at **empowering the poor**, through **rights-based approaches**
- **Reform-Oriented Capacity Building:** Emphasising **sector-wide attitude and cultural change**

353. In order to assist with the development of a high level sector-wide implementation plan the AT offers the following as a means to shaping such a plan. The plan needs to speak to both the six KRs embedded in the logical framework matrix of the MTS and the core business of each of the Thematic Groups. Moreover this results based plan or “results matrix” must emphasise not only the sector priorities, but the sequence in which these priorities will be addressed and also which MDA(s) will be responsible for delivering these results. It should be noted that a number of the suggestions made below are drawn from ideas first posited in the MTS. Our feeling is that the MTS remains a crucial document and that it certainly maps out an effective strategy for the programme. Whilst some may argue that its overall aims were too ambitious, the AT would argue rather that the overall plan was correct but that the timeframe was too short and that in part the map lacked sufficient detail. This point was also echoed by the MTR which noted that:

Generally, it is noted that the workplans of the MDAs have been over-ambitious and many of the planned activities have not occurred due to time constraints and other factors. It is also observed that the different reform speed of the MDAs has a negative impact on the effectiveness of chain institutions. Accompanying measures to support the programme have been identified but not fully acted upon (MTR, 2007: 9).

Key Result

Key Result I: Responsive and Enforceable Policy, Law and Regulations

CHALLENGES

354. The outcome of this KR is primarily a robust legal framework³⁶, which will underpin the central reforms the programme is striving for. Moreover, this framework, once in place, will ensure the judiciary and public prosecutors are adequately empowered and that matters can be dealt with expeditiously and credibly in the courts thereby protecting the rights of all Kenyans. The major challenges facing the achievement of this KR include:

³⁶ This KR is to be assessed by the following indicator: “% of targeted policies, laws and regulations reviewed/ enacted annually”. South Africa, which acquired a new constitution in 1994 and consequently went through a process of revising, reforming, updating and introducing new laws, has seen its parliament pass (admittedly some with minor amendments) an average of about 68 laws per annum between 1994 and 2006.

- The ongoing impasse over the new constitution
- The slow and uneven pace of bills being enacted
- No national prosecutions policy implemented (albeit a draft policy has been prepared), nor a range of other essential policies that are needed to complete the legal framework³⁷

355. In addition, the MTS (2005: 57 - 58) identified the following key activities that should have been prioritised under this KR, but as of yet little progress has been achieved, namely:

- Restorative Justice
- Court case backlogs and the associated acute congestion in prisons (proposed human rights based remedies such relaxing bail requirements, improved sentencing policy and other non custodial options have yet to be coherently and consistently applied across the sector)
- Reforming the rules governing commercial and civil justice
- Recognition of an alternative dispute resolution (ADR) system
- Public Complaints mechanism (with accompanying policy and law) under the auspices of the Office of the Ombudsman
- Engender the Legal and Policy framework in order to secure the rights of women by removing gender-biased discriminatory legislation
- Preparing a Prevention of Domestic/ Family Violence Strategy
- Entrenching equal opportunities in recruitment across the sector

POTENTIAL SOLUTIONS

356. In the short term, the AT recommends that the following activities need to be considered:

- **Publicise the fact that a rigorous plan for the GJLOS specific laws that require reform** has been developed (the plan should signal which laws have been prioritised with respect to the sector, and provide a timetable specifying what actions are required, by whom and by when). In addition, this plan should also provide details on how the relevant human rights based legislation aimed at strengthening economic rights³⁸, gender equity, human rights, democratic governance and so on will be addressed (MTR, 2007).
- **Establish a task team** to explore ways and means to facilitate an increase in the speed which laws are passed³⁹, Acts are revised and accompanying regulations are gazetted⁴⁰. The AT are well aware of the fact that Parliament is external to the sector, nevertheless it does believe that there are ways and means whereby the sector could facilitate active engagement with parliament. Suggestions include: providing short summary documents explaining the key features and importance of key acts, providing briefing sessions to parliament on human rights based development more generally, legislation specific briefings/break-away sessions, additional training and capacity building on parliament's oversight functions with respect to the principles of good

³⁷ The draft "Report of the assessment of policies, laws and regulations" (GJLOS, August 2007: 31) lists a number of key policies as either drafted (i.e. not yet finalised) or not yet drafted, including: National Anti-corruption Policy, a freedom of information policy, a national human rights policy, an access to justice policy, Legal Aid Policy, a public safety and security policy, National Community Policing Policy, National Crime Prevention Strategy, National Prosecution Policy and so on.

³⁸ National Integrated Household Baseline Survey Report (2006: 66) found that 22% perceive economic rights as being largely absent. This also links to the MTS correctly identifying the urgent need for an enabling legal and policy environment to support public sector growth and development (2005: 30).

³⁹ The draft "Report of the assessment of policies, laws and regulations" (2007: 40-41) found that between 2003 – 2006 Parliament passed 45% of the Bills brought before it.

⁴⁰ The draft "Report of the assessment of policies, laws and regulations" (GJLOS, August 2007: 42-44) has helpfully identified the key blockages which includes the sitting time of parliament, complex technical procedures in parliament, unclear processes for public policy development, inadequate involvement by non state actors, uneven links between parliament and GJLOS (including presumably MOJCA), political interference and infighting, and poor synergy between relevant departments.

governance, ensuring that all the necessary technical and logistic support required of MOJCA are performed expeditiously and so on.

- Post-election facilitate the drawing up of a **new timetable for the Constitutional Review process**

357. In the medium to long – term the following activities need to be considered, several build on those suggested above:

- **Oversee the implementation** of the **plan for reforming laws** identified by the Thematic Law Review Groups
- **Facilitate and support Parliament** in its endeavours to speed up the passing of laws
- Support the Constitutional Review Process
- **Establish a separate institution** (or at the very least strengthen and empower existing structures) **to administer and manage the courts**. This body would be responsible for all court administration and would oversee the day-to-day functioning of courts, particularly at the lower levels. This may require certain functions of the existing Registrar of the High Courts to be decentralised at the lower level.
- **Monitoring and reviewing progress** being made to implementing the desired legal framework

Key Result 2: Improve Service Delivery by GJLOS Institutions

CHALLENGES

358. The outcome of this KR is primarily about ensuring that institutions in the sector “are effective in mandate”, efficient in meeting such mandate”, “suitably transparent and accountable” (MTS 2005: 59) and thereby deliver improved services⁴¹. The MTS is clear about what was meant to be achieved under this KR, and the evidence from the previous section suggests that the programme has made good progress towards these, namely improving management and administrative capacity, professionalizing staff, improving the physical infrastructure and equipment, and broadening the use of ICT. Nevertheless, significant challenges facing the achievement of this KR remain, including.

- Integrating activities on the ground
- Prioritising and sequencing activities in workplans
- Poor reporting and monitoring
- Linking capacity building initiatives
- MDA specific challenges – Community Policing, Backlog of cases, securing Kenya’s borders (immigration, drugs and arms trafficking, human trafficking, terrorism concerns etc), prisoner recidivism
- Spiralling crime rate⁴²
- Equal opportunities in recruitment across the sector
- Making institutions more accountable and responsive to the needs of Kenyans

POTENTIAL SOLUTIONS

359. In the short term activities within this KR need to include:

⁴¹ The key indicators for this KR include “% increase in Service Delivery Rating of GJLOS institutions, % increase in crime detection, prosecution and conviction rates of selected crimes, % decrease in the awaiting trial population, % decrease in case backlog of selected crimes, number of GJLOS buildings built or rehabilitated according to standards, and number of GJLOS ICT equipment procured to standard” (MTS 2005: 59).

⁴² NIHBS (2006: 46 - 54) provides some sobering statistics with regards to crime statistics from the victims’ perspective – 16% of all respondents had been victims of crime, less than half (49%) feel secure in their homes at night and roughly a quarter (29%) feel secure away from their home.

- Developing a **sector wide support plan**, this plan needs to focus on issues such as:
 - Using training needs assessments to identify the support required
 - Providing support to targeted officials (training must match the competencies required to do a specific function)
 - Coordination of support activities to avoid duplication
 - Strengthening capacity in the institutions responsible for carrying out investigations and prosecutions (and this includes addressing the widespread and long held concerns about the absence of a professionalized legal authority conducting all prosecutions).
 - The nature of the comprehensive support (including recruitment and training strategy) required for magistrates and paralegals (CSOs could play important roles here)
- Roll out the proposed **Mobile courts**
- Identify several **quick service delivery wins** to signal intent about existing service delivery challenges, these could include
 - Develop and publicise a holistic strategy to tackle **prison overcrowding** (including special task teams to address the court backlogs/ review adjourned cases, lengthened court hours/ Saturday courts, improving investigations, alternative sentencing, building on the success of the prison court pilots and so on)
 - Publicise how the sector will address **case backlogs** using measures already proposed in workplans and the MTS.
 - A **targeted thematic crime blitz** (e.g. against known drug lords or arms traffickers or hijackers) by police to signal its intent to ensure the safety of citizens.

360. The NIHBS (2006: 46) reported that whilst 16% of all households had been a victim of crime, less than half (40%) reported the crime. Exacerbating this is the finding that less than half (49%) of citizens feel safe in their own home, and this drops dramatically to just over a quarter (29%) feeling safe away from their home. If a key aim of the programme is to ensure safety and security than the programme has not yet made significant progress in this area. Crime clearly remains a significant challenge, in part this is the result of poor service delivery by key MDAs in the sector whose responsibility it is to ensure safety and security and in part it is the result of widespread economic and social issues that affect the country as a whole. There is clearly no short term fix to this challenge, but there are nevertheless some key steps that need to be addressed in the interim to **bolster the long term vision to reduce crime** (as signalled in Vision 2030). Key steps should include:

- Establishing the Independent Police Complaints Office and/or Community Liaison Office (which would need to include a independent/external section dedicated to dealing with complaints from citizens) and thereby enhancing the accountability mechanisms of the police.
- National Community policing policy revised to emphasise⁴³:
 - Shifting from crime control to crime prevention (i.e. moving away from reactive policing to policing that reduces crimes being committed);
 - Emphasising crime as a social issue as opposed to simply a security issue (i.e. creating a shared responsibility to combating crime with all tiers of government in partnership with local communities, thus introducing “whole government approach” to crime prevention); and
 - Outlining how the strategy will integrate into broader reform initiatives across the sector that will lead to, for instance, a shift to a restorative justice system and entrenching safety as a basic right within the Constitution.

⁴³ Ideas gratefully received from Carstens, J. (August 2007), private correspondence, and Homel, P. (2004) *The Whole Government Approach to Crime Prevention*, Trends and Issues in Crime and Criminal Justice, No. 287, Australian Institute of Criminology, Australian Government.

361. The soon to be implemented **Judicial Performance Improvement Project (JPiP)** by the World Bank will address current problems facing the judiciary and should thereby improve the delivery of the judiciary. The three-fold outcomes of the programme are:

“a) enable the Judiciary to measure and monitor its performance, b) strengthen the accountability and transparency of the Judiciary; and c) provide judges and court offices with tools to improve performance in four areas: oversight of budget and procurement, increased responsiveness to citizens concerns, improved case and trial management to speed trials and reduce backlogs; and understanding and reducing major barriers to citizen use of courts”⁴⁴.

362. However, the AT has a concern about JPiP that the sector needs to address. Efforts must be made to ensure that the aims of the project are in line with the overall objectives of GJLOS Reform Programme. The emphasis must be on integration not parallel processes, the spirit of a SWAP demands this as does the Paris Declaration. Nevertheless, the JPiP does offer GJLOS a wonderful opportunity to shift scarce resources away from the Judiciary to strengthening the often neglected institutions working in the lower courts such as magistrates, paralegals and so on.

363. In the medium term, the reform activities within this KR need to include:

- **Prison “self sufficiency” strategy** drawn up⁴⁵
- Roll out of **National Community Policing Strategy**
- Strategy developed to ensure **Non state actor and parliamentary oversight of judiciary and police**
- Establish an **Independent Police Complaints Commission**
- **Integrate into E-Government** strategy⁴⁶
- Develop **Citizen Report Cards** (i.e. civilian oversight over transparency and accountability)
- Promotion of an **Administrative Justice Act** (i.e. rights of citizens with regards to reasonable administrative action and to the reasons for administrative action that effects them negatively)

364. In the long term, activities within this KR need to include:

- Victim centred **Restorative Justice system** established
- Bi-annual **citizen satisfaction surveys** to assess service delivery by MDAs in the sector
- Monitoring of service delivery against the service charters through **service standards**
- Roll out of **service delivery improvement initiatives across all Districts**

Key Result 3: Reduce Corruption Related Impunity

⁴⁴ World Bank (2007) *Judicial Performance Improvement Project*, Project Concept Note. Planned activities will include focussing on automation, alternative dispute resolution, judicial training based on a needs analysis, conducting research and pilots on access to justice issues. A small project implementation unit based in the Judiciary’s Central Planning Unit will manage the project.

⁴⁵ MTS points to ideas for the strategy including establishment of prison farms and industries relying on prison labour.

⁴⁶ MTS refers to automated recording of court procedures, automated law reporting, and networking the immigration and registration departments, computerisation of registries, automated fingerprint databases and so on.

CHALLENGES

365. The outcome of this KR is primarily about dealing with endemic corruption across the public sector in Kenya⁴⁷. This is to be achieved by creating an enabling policy and legal environment, building effective anti-corruption institutions and educating citizens about their rights and responsibilities. The major challenges facing the achievement of this KR include:

- No significant high profile prosecutions
- Citizens' confidence in key institutions remains low⁴⁸
- Institutions not championing their own Anti-corruption plans
- No national anti-corruption policy, albeit there is the existence of a National Anti-Corruption Plan (NACP) and MDAs (such as the Administration Police) have prepared their own plan and which they are now implementing (examples of these actions include setting up public complaints and customer care desks)
- Key anti-corruption legislation not yet promulgated

POTENTIAL SOLUTIONS

366. The National Integrated Household Baseline Survey (NIHBS, 2006: 27) reports that less than four out of every ten Kenyan (39%) believe that GoK has been "somewhat successful in combating corruption. In order to restore public confidence that GoK can deal appropriately with allegations of corruption the sector has correctly identified that this involves strengthening both the laws and the institutions in the judicial chain. It was noted earlier, under KR I, that a process is well under way with respect to the laws and that a comprehensive process of strengthening the judiciary has recently begun.

367. Moreover, GoK's Governance Action Plan (GAP) is currently being implemented. The first workplan covers November 2006 to December 2007 and recent progress updates suggest that considerable progress has been achieved⁴⁹. Nevertheless, it is suggested below that additional steps are also necessary to ensure that anti-corruption initiatives remain a key priority in both the legal framework process and the judiciary reform process. For instance, in the short – term, additional activities need to include⁵⁰.

- Identify and successfully launch the **prosecution of an alleged high profile corrupt official(s)** and or the sacking/resignation of the official⁵¹ (CSOs could again play important roles here)

⁴⁷ The three indicators used to measure this KR are "% decrease in KBI, % of target key laws enacted, % of citizens who rate anti-corruption institutions as satisfactory or above, % increase in the number of citizens reporting incidence of corruption" (MTS 2005: 61).

⁴⁸ The NIHBS (2006: 17 - 19) found that more than one out of ten Kenyans (12%) reported being in a situation where a bribe was sought or demanded, that a third (33%) of these incidents involved the police.

⁴⁹ Details can be found in the full report, these overlap with many of the GJLOS KRs and include strengthening the legal platform, broadening public access to government information (other than in the area of wealth declaration by senior officials where verification process is ongoing), professionalizing performance management through performance contracting, deepening PFM reforms and procurement reforms (for instance, Public Procurement Oversight Authority is being operationalised), strengthening prosecution and restitution (including enhancing prosecution capacity, faster disposal of cases and facilitating recovery of assets (GoK, *Draft GAP Report*, 2007).

⁵⁰ Ideas were gleaned from a variety of different sources including the MTS (2005), Sida (2004) *Anti-corruption Strategies in development cooperation*, Working Paper No. 3; Kaufmann, D. (2006) *Myths and Realities of Governance and Corruption*, World Bank: Washington; Kaufmann, D (2006) *Corruption, Governance and Security: Challenges for the Rich Countries and the World*, World Bank: Washington.

⁵¹ Note that the action most likely to restore public confidence (according to the NIHBS, 2006: 26) is the sacking or resignation of a high ranking official who was found to be corrupt. Studies done elsewhere confirm this and note other key triggers for restoring public confidence, these include: reassurances

- **National Toll free anti-corruption hotline** (as advocated in the MTS) be implemented (should be linked to an aggressive IEC campaign which explains how to register a complaint and emphasises anonymity and safety of those coming forward)⁵²
- **Publicising success** achieved in the first year of the National Anti-Corruption Plan
- **Prioritising specific anti-corruption laws** as part of the ongoing law review process, and then ensuring they are adequately strengthened⁵³. It may be sensible for a specific sub group of the law review process focus specifically on this issue, make recommendations and prepare a workplan (with timelines, roles and responsibilities identified) outlining what needs to be done with respect to the anti-corruption specific legislation.
- Conducting a specific **needs analysis on existing key anti-corruption institutions** to establish what still needs to be done to ensure they are adequately resourced and have the appropriate competencies and skills base to conduct their specific mandate.
- **Public Complaints Unit** (established and gazetted) needs to be fully implemented and its operations publicised, and sector lobbying needed to ensure an **Ombudsman** is installed
- **Facilitate recruitment of additional personnel for Anti-corruption Unit** (as recommended by AG's Review)
- **Support KACC in updating Code of Conduct** (Registrar of Assets of senior officials) to ensure a complete verification of wealth declaration by senior government officials

368. In the medium to long-term activities within this KR need to include.

- Development of a **change management strategy** to shift attitudes and behaviour within the sector so that a human rights based approach becomes embedded (this issue is further elaborated below)
- A **sector wide approach to strengthening capacity** in the institutions responsible for carrying out investigations and the prosecution of corruption cases. This needs to be a key component of the sector wide support strategy referred to in KR 2 and will need to be rolled out over the medium term once the strategy has been developed.
- MDAs supported in the implementation of their **Anti-corruption plans**
- Supporting initiatives to enhance accountability and transparency such as the **Publication of reports from Parliamentary oversight committees** (in particular budget documentation/ audit reports) and **publishing and monitoring performance contracts**
- Specialised Training/ support provided to MPs/ parliamentary staff in financial management/ good governance (e.g. **Parliamentary Support programme**)
- A partnership with development partners and the Private Sector in order to establish a **joint task team that investigates cross-border corruption** opportunities and leads to more stringent anti-corruption barriers being established in line with the OECD's Anti-Bribery Convention⁵⁴

regarding the safety and anonymity of whistleblowers, greater transparency in government procurement procedures, barring corrupt officials from holding public office, making public financial audits of government departments, blacklisting businesses proven to be involved in corruption, vigorous investigative journalism, and education system placing more emphasis on ethics and moral values (Institute of Security Studies, 2001, *Corruption in South Africa: Results of an Expert Panel Survey*, ISS Monograph Series No. 65).

⁵² Especially as the NIHBS (2006: 21) reports that only 4% of citizens reported an incident in which a bribe was sought or demanded to the relevant authority.

⁵³ Legal experts remain concerned that existing/ proposed anti-corruption laws have fatal flaws including they could be subject to constitutional challenges, they contain inadequate definitions, and they lack appropriate guidelines on how they can be implemented.

⁵⁴ Two recent African examples suffice: i) the Highlands Water Project in Lesotho in which a number of major European construction firms have been prosecuted as a result of participating in corrupt tendering procedures in Lesotho, and ii) the ongoing investigation into the corrupt practices of major armament manufacturers in Europe in winning a substantial arms tender in South Africa.

Key Result 4: Improved Access to the poor, marginalised and vulnerable

CHALLENGES

369. This KR as its title implies is concerned with “providing the poor, marginalised and vulnerable with improved access to justice that is affordable, speedy, relevant and effective” in respect to both State and non-State justice systems (MTS 2005: 63)⁵⁵. The MTS notes that this will be achieved by increasing the availability of legal services and decreasing barriers to accessible justice. By so doing this will not only secure every Kenyan’s fundamental right of access to justice, but this will also provide Kenyans with the means to protect other rights. The list of achievements tabled above suggest that many of the priorities advocated by the MTS (2005: 63) for this KR have yet to be successfully completed, and therefore the following remain a challenge:

- No National Legal Aid system
- No formal recognition of the community justice system (see baseline survey)
- No system yet established to support small business legal aid centres
- Wide ranging initiatives to reduce barriers in the courts such as help desks, court signage, translators, the establishment of specialised courts, promoting the concept of Court User Committees and so on
- Ongoing human rights abuses in the prison system
- Shifting the debate from procedural access to substantive justice⁵⁶

POTENTIAL SOLUTIONS

370. For this reason the AT propose the following over the short term:

- A comprehensive **study identifying existing access to justice related initiatives**, summarising lessons learnt from pilots already being conducted, and recommending that human rights based initiatives that have a proven track record in the Kenyan context should be rolled out further⁵⁷. This would include outlining:
 - How the Legal Aid Policy can be finalised and implemented.
 - The role that alternative dispute resolution mechanisms and mediation can be used within existing structures.
 - How best to introduce Small Claim courts
 - A mechanism for managing/coordinating non contentious issues
 - A process for formalising Community Courts within the system
 - Ways and means to publicise/educate citizens about these different processes⁵⁸.

⁵⁵ This KR is to be measured using the following indicators “% increase in the number of courts per 100 000 of population, % of litigants receiving legal aid, disaggregated by economic status, gender and age, and % increase in litigants who express satisfaction with legal aid received” (MTS 2005: 63).

⁵⁶ This is about the making the sector aware that guaranteeing the availability of lawyers or faster court procedures does not necessarily imply greater access to Justice, especially if discriminatory laws against women and the poor remain on the books.

⁵⁷ Especially as the NIHBS (2006: 35) reports that satisfaction levels with respect to third parties’ handling of disputes is higher amongst non-state alternatives than it is for state institutions amongst the general population in Kenya (26% rated state institutions as unsatisfactory versus 15% who rated non state alternatives as unsatisfactory).

⁵⁸ It is often assumed, erroneously, that by breaking down barriers/increasing access opportunities, those who were previously denied access will now use the Justice system. Studies done elsewhere have shown that predicting behaviour of the public is often far more complex and that those who have no experience or understanding of a justice system are reluctant to use it even if the opportunity presents itself (Skaar, E & Van-Dunem, J.O.S, 2006, *Courts under Construction in Angola: What can they do for the Poor?* Christian Michelson Institute, Working Paper No. 20).

- Based on this study there is a need for a **comprehensive, sector wide strategy** identifying in a coherent manner the steps to be **taken to promote access to justice**, particularly for those in the rural areas. Such as strategy should include prioritising some of the simple measures identified above to reduce the multitude of physical barriers to courts
- Link to previous suggestion made under KR 2, namely the need for **mobile courts**

371. In the medium to long term, activities within this KR need to include:

- **Implementing a coherent access to justice strategy** based on the research above (this includes an extensive public awareness campaign and ensuring that key legislation enacted is accompanied by easy-to-understand guides published in all official languages).
- A systematic process is embarked upon to **ensure the cooperation of private lawyers** in access to justice reform strategies⁵⁹.
- **Sharing ideas and lessons** with access to justice issues regionally and, if resources allows, globally⁶⁰

Key Result 5: Develop more informed and participatory citizenry and non-state actors

CHALLENGES

372. This KR speaks to a central theme of the programme, namely that by empowering citizens and non-state actors so that they can participate appropriately in GJLOS institutions the reforms become demand led⁶¹. Readers of this report will also be aware that a central goal of a human rights based approach to development is to empower citizens to demand accountability. The main key activities under this KR were to increase access to, and availability of, relevant information pertaining to the sector, and increase the mechanisms for participation. The main achievements listed above with respect to this KR suggest that whilst there has been success in the programmes IEC campaign, participation in GJLOS structures has been mixed. The challenges facing the sector with regards to this KR fall largely under the latter. The MTS prioritised a number of mechanisms to promote participation and many have yet to be fully implemented, these include:

- Establishing public complaints offices
- Community Police Forums
- Lay visitor schemes
- Court User Committees
- Lay assessor schemes

373. Other challenges include:

⁵⁹ Evidence from reforming justice systems elsewhere suggests improvements in the delivery system are almost impossible without buy-in from lawyers, such cooperation is not forthcoming when changes threaten their economic interests (World Bank, 2000, *Reforming civil justice systems: trends in industrial countries*, Poverty Reduction and Economic Management Network Note No. 46).

⁶⁰ The UNDP is currently involved in a number of interesting projects which have direct relevance to the Kenyan context. For instance, in Brazil Human Rights Observatories have been established where the paralegal skills of youth leaders can be developed within a human rights based context. Another example are the Centres of Administration and Justice established in rural areas in a number of South American countries which have assisted in promoting access, enhancing the accessibility to a range of adjudication systems, and accelerated decentralisation out of the metropolis (UNDP, 2004, *Access to Justice: Practice Note*, UNDP, Geneva and UNDP, 2005, *Programming for Justice: Access for All*, UNDP: Bangkok).

⁶¹ The following key indicators are identified for this KR: "% increase of respondents who rate government's commitment to five predetermined governance principles as fairly committed or committed, % of NSAs satisfied with the result of participation in GJLOS processes/ structures annually" (MTS 2005: 64).

- The failure to resolve the impasse over the establishment of a Support Facility for NSAs
- The failure for both NSAs and the private sector to prepare their respective strategies whereby they detail how they intend to engage constructively with the GJLOS Reform Programme
- Limited understanding of Rights-based approaches to governance, justice, law and order
- Insufficient engagement with Civil Society on Human Rights
- Transitional Justice and National Healing & Reconciliation mechanism not yet developed

POTENTIAL SOLUTIONS

374. A human rights based approach to promoting good governance, fighting corruption, promoting access to justice, ensuring safety and security, places NSAs at the centre of these initiatives. It is well known in the programme that an informed and participative NSA ensures accountability, oversight, improves service delivery and so on. More specifically NSAs can actively contribute to the success of this reform programme by performing critical functions such as:

- Conducting legal research, legal advocacy and monitoring
- Promoting legal awareness through legal literacy campaigns
- Providing and promoting legal advice bureaus
- A watchdog role, e.g. oversight of national Human Rights bodies and enforcement agencies

375. The AT therefore believes it is **imperative in the short term that the sector ensures that NSAs play their necessary function within the programme.** This will include:

- Increasing efforts to resolve the dispute over the Support Facility
- Endorsing the GJLOS Civil Society Engagement Strategy

376. In the medium to long term, activities within this KR need to include:

- **Human Rights-based approach to development strategy finalised** with action plan
- Process of promoting **Transitional Justice and National Healing & Reconciliation** developed and then implemented
- **Sector wide IEC initiatives** to ensure the roles and functions of all MDAs are adequately explained across the country
- Implementation of **National Action Plan for the Promotion and Protection of Human Rights in Kenya**
- Implement **GJLOS Civil Society Engagement Strategy**

Key Result 6: Effective management and co-ordination of GJLOS Reform Programme

CHALLENGES

377. Achieving an effective management and coordinated programme was, as stated in the MTS, was to be achieved through an appropriate “programme governance and implementation structure”, the integration of resource allocation under the MTEF, and “programme monitoring, evaluation and communication” (2005: 65)⁶². In explaining the approach to be used to achieve this result that MTS identified certain priorities, whilst many have been addressed there are those that have not seen much progress, these include:

⁶² To be measured using the following indicators “% of GJLOS institutions, development partners, CSOs and other non-state actors who express satisfaction with the management of the programme annually, and % increase in the GJLOS budget reflected in the MTEF” (MTS 2005: 65).

- Knowledge Management Facility (vital for coordinating and consolidating lessons learnt across the programme and then disseminating them across the sector to facilitate a learning culture)
- Developing and empowering “change champions” across the programme in order that they drive much needed change within most GJLOS institutions (also need for a change management strategy)
- Inadequate M&E (need a unit not a person)

POTENTIAL SOLUTIONS

378. The manner in which the programme will be integrated into MOJCA is still being finalised at the time of writing this report, so it is difficult to provide practical suggestions as to how the size and shape of the programme should look. Moreover, elsewhere in this report an assessment of the efficacy of the structures has been made. Nevertheless in order to complete the review of all 6 KRrs the AT provide further suggestions with regards to the management and coordination of the programme.

379. There is broad agreement that the **various bodies used to assist in the management of the programme should be retained**. The MTR (2007: 44 - 47) provided some helpful recommendations with respect to the different bodies and these bear repeating and need to be addressed in the short - term.

- IASC plays a critical political link to cabinet, and provides high level leadership and policy guidance, the challenge is to re-invigorate it to ensure that it plays this role
- Like the IASC the TCC also plays an important leadership role, particularly in terms of its stated mandate to provide the technical know how thereby ensure that implementation is in line with GoK policies, it too needs to meet more regularly
- Thematic Groups (whose primary role is to provide coordination and decision-making oversight) efficacy appears to largely depend on the skills of the convenor – to address this thought needs to be given to how to support the TGs so that they can play their important role regardless of the convenor, e.g. through a TG secretariat, regular monitoring and report backs with respect to workplans, distribution of minutes, sub groups who report back to plenary every quarter, annually meeting timetable etc.

380. In addition there is also an urgent need to bolster the Monitoring and Evaluation currently being conducted in the sector. For this reason the **AT believes that the responsible M&E Unit within MOJCA must be strengthened to provide the full range of M&E services the sector requires** (it is standard practice across SWAPs throughout the world that M&E is performed by a central unit as opposed to an individual). Moreover, any strengthening of the M&E system should be linked to the important finding made in the MTR (2007: 29) which needs to be repeated and needs to be addressed by the sector, namely.

“In the opinion of the MTR Team, the disassociation of the direct linkage between the individual TGs and MTS KRAs has had far-reaching consequences on the management of the MTS phase, particularly in regards to monitoring and evaluation and programme reporting. As a result of this design feature, GJLOS currently monitors and reports along the outputs of the thematic groups rather than against the key results. Under the current M&E format, it is very difficult to determine the progress being made towards the specific key results which should be a core feature of a results-based management approach....there should be an adjustment of the GJLOS M&E System to orient the monitoring and reporting in line with the key result areas as occurred during the STPP phase”⁶³

⁶³ The AT would also suggest that the feedback provided by the MTR (2006: 31 – 32) on the quality of existing indicators embedded within the MTS should at the very least be discussed within the programme. It may be highly problematic and onerous at this stage within the programme’s life to adjust

381. Closely linked to the need to strengthen M&E within the programme is the need to **develop a Knowledge Management strategy**⁶⁴ and to implement initiatives that promote a learning culture across the sector. Such activities should not only include data management and electronic dissemination of knowledge within the sector (e.g. by way of a knowledge depository⁶⁵) but should also include a range of qualitative knowledge sharing initiatives/ learning platforms, such as:
- **Learning journeys** (e.g. one MDA/region visits another to share experiences)
 - **Lessons Series** (e.g. identifying examples of best practice and sharing the lessons learnt from that experience)
 - **Field Notes** (e.g. documenting experiences from the field in a systematic manner and then sharing them)
 - **Peer Exchanges** (e.g. an official from one business unit/district/MDA spends time with another business unit/district/MDA)
 - **Case Studies** (e.g. looking at the lessons that can be learnt from pilots)
 - **Learning Networks/ Learning communities** (e.g. peer – to- peer mentoring or where MDAs get together on a regular basis to discuss common challenges and potential solutions⁶⁶)
382. The programme has to ensure that knowledge is disseminated both vertically throughout the programme (information must be shared at all levels) and horizontally (information must be shared equitably across the sector) in order to build support for the conclusions and lessons drawn from information embedded within the system. Moreover, knowledge must be shared externally to the sector to ensure accountability, the building of networks and importantly with respect to GJLOS, winning political support
383. A further area that needs to be addressed under this KR is the means by which the reforms currently being driven by GoK are being addressed within the SWAP. Transforming the much maligned and fragmented public sector in Kenya into one that becomes integrated, cooperative and responsive, and effective is clearly going to be an enormous task by promoting integrated service delivery. Moreover, the sector believes that this task must also be guided by a human rights based approach (i.e. ensuring participation and transparency, accountable officials, non – discrimination and so on

the indicators, but the MTR do nevertheless raise some legitimate concerns and the programme needs to be aware of the possible consequences of retaining the existing indicators.

⁶⁴ The key activities that need to be included in such a strategy would be knowledge creation (development, discovery and capturing of knowledge), knowledge retention (all activities that preserve knowledge and allow it to be retained in the system), knowledge transfer (flow of knowledge through the system) and knowledge utilisation (application of knowledge to functions performed by MDAs in the sector) for more details see Newman, B & Conrad, K.W. (2000) *A Framework for Characterising Knowledge Management Methods, Practices and Technologies*, The Knowledge Management Theory Papers: The Knowledge Management Forum, West Richland, Washington.

⁶⁵ For more details on the shape and size of this depository, its core functions and the standardised data classification system required see the comprehensive *Administrative Data Collection and Analysis Report* (GJLOS (May 2007)).

⁶⁶ Considerable recent education research has shown that peer tutoring/mentoring has two positive spin offs – the tutor/trainer learns more/understands concepts better as they lead the training, and the recipient of the training is likely to be more responsive and hence more likely to acquire skills from their peer than from an “outsider”. A practical way to do this in the sector is to focus initially on a few districts/pilots who currently meet or are close to meeting existing norms and standards, and then over time create “learning communities” whereby neighbouring districts with particular problems spend time with the “leaders in the field”.

384. To assist in this daunting process the AT conducted **a readiness assessment** of the programme with respect to integrated service delivery against best practice. The findings are tabulated in the table below. The literature suggests that there are several common features of effective transformation of service delivery to bring about integrated/ holistic government. These aspects can be turned into a checklist (as illustrated in the table below) under the broad headings of Policy, Implementation, Monitoring and Evaluation. Comparing the current situation within GJLOS with this checklist we find that on a number of key variables the programme has done remarkably well, however on a number of other important variables much work still has to be done.

Important Variable	Description	GJLOS
Policy		
Interagency policy groups	Allow for joint planning Or The creation of a new intergovernmental policy body to perform these functions	IASC and TCC focusing on the longer term strategic priorities
Interagency forums/ co-ordinating bodies	Allows for joint co-ordination and oversight Or The creation of a new co-ordinating body to perform these functions	Thematic Groups allow officials to come together to ensure a common understanding, provide links to the bigger picture, allows people to look beyond the boundaries of their MDAs.
Legislative mandate	Such as legislation that specifically promotes/aids integration	Although the legislative framework is being put in place, the mechanism to operationalise this is largely absent.
Implementation		
Organizational Design and structure	Reshaping procedures, systems and structures of the MDAs involved in order to facilitate effective delivery	Several GoK initiatives have been launched to consider this, but no significant changes have yet occurred in the MDAs operating in this sector.
Inter-agency MoUs/ Service Level Agreements	Formal agreements in place between agencies outlining roles and responsibilities	Agreements in place between MDAs and non governmental partners but little evidence of formal agreements between MDAs
Joint staffing of programmes	Agencies or departments involved provide staff to work together under single lines of authority	Whilst staff from different MDAs are working together on projects, projects/ sites of delivery are not jointly staffed
Pooled budget	Typically reclassified funding or funding specifically earmarked for joint activities	This opportunity currently exists under the FMA, it is not clear yet whether this opportunity will remain under the MTEF and GoK's PFM system.
Cross-training/ integrated training	Could involve integrated staff training programmes, initiating programmes to assist individuals prepare for the delivery of integrated services, and making available workplace support for those currently involved in integrated service delivery.	Some evidence can be found of integrated training programmes but this would need to be strengthened under the propose sector wide support strategy that needs to be developed
Legally/contractually binding accountability measures	Typically the best way to ensure accountability is to embed the	GoK has introduced Performance Agreements and Service Charters

Important Variable	Description	GJLOS
	<p>concept into performance agreements or some other form of contractual agreement. The most common characteristics of such an agreement include:</p> <ul style="list-style-type: none"> □ Establishing clear lines of accountability between HoDs and their departments □ Defining performance in an unambiguous way, in particular who is responsible for outputs and who is responsible for outputs □ Clear lines of authority for monitoring and reporting □ Establishing incentives to reward or punish results relative to the agreed outcome <p style="text-align: center;">Monitoring and Evaluation</p>	across government and these have been put in place in all MDAs operating in this sector
Clearly identified indicators for each integrated programme	Indicators developed jointly need to be in place in order to assess whether out-comes and priorities have been achieved.	The existing MTS contains measures that were jointly delivered
Joint measurement mechanisms	Comprehensive system with which to monitor progress against the indicators	Still being finalised
Interagency review mechanism	Such as joint reviews, audits and other integrated means to monitor progress and evaluate impact, effectiveness and efficiency	Gatherings such as the JRM and the TGs provide ideal opportunities for programme reviews.

Table 7 Comparing GJLOS with “Best Practice”⁶⁷

385. The table above highlights that in terms of service delivery integration, the programme has managed the basics (development of a coherent policy and so on); the key challenge will be to embed the strategy in the work of the programme (implementation and subsequent review of the implementation). Most importantly the key challenge will be to ensure that, as noted previously, the appropriate legislative framework is completed, departments make appropriate structural and procedural changes to accommodate the needs of improved service delivery, and that the sector wide support strategy must ensure a more integrated approach to training and capacity building.

Discussion and recommendations

386. At the heart of the GJLOS Reform Programme is the desire to *improve governance, justice, law and order so that citizens are safe and secure in a democratic, just, corruption free, human rights respecting and prosperous Kenya*. Data from the NIHBS provides clear evidence on how far the programme needs to go to achieve this, namely that a high proportion of citizens have.

⁶⁷ Ideas largely taken from Perri 6, Leat D, Seltzer K & Stoker G (2002) *Towards Holistic Governance: The New Reform Agenda*. Palgrave: New York, N.Y. 50 – 51; Bale, M. & Dale, T. (1998). Public Sector Reform in New Zealand and its relevance to developing countries. *The World Bank Research Observer*, 13(1), 103-121.

- Little confidence in GoK structures with respect to combating corruption,
- Been victims of crime,
- Under-report crime incidents, and
- Resolve their disputes outside of formal court processes

387. Yet at the same time it was noted above that the programme has made huge gains across all the KRs. Moreover, if you read through the detailed progress reports produced by each Thematic Group every 6 months you will note the enormous number of activities completed and, more importantly, that many of the activities completed (or at the very least are in-progress) are the very activities that external experts (drawing on international best practice) have argued the programme needs to embark upon. One is thus left with a key question that the AT recommends the JRM IV and other appropriate forums need to interrogate and debate, namely: **why do the sum of these activities not add up to produce the desired outcome?**

388. The answer is undoubtedly a complex one, but it could be argued that given time the parts will indeed add up to more than the whole. It can also be argued that unless the pieces are arranged in the right order, aligned correctly and so on the jigsaw will remain unfinished. There is unlikely to be an either / or answer, but it does need to be discussed and debated across the sector in order to shape the future direction of the programme.

389. Regardless of how one perceives the answer to the afore mentioned question, what cannot be questioned is that the programme is definitely showing signs of “reform fatigue” and that enthusiasm for the programme is not as high as it was before. This is of course totally expected and the AT have warned about this in previous reports. With the forthcoming election on the horizon, and consequently a new government, this is an ideal opportunity to re-energise the programme, inject some new ideas and refocus the minds of those in the sector.

390. The AT therefore proposes that **a second, reform-oriented ST(R)PP be launched** in 2008 to refocus the programme on its reform priorities. This 2nd ST(R)PP can be launched once GJLOS has settled into being a MTEF sector and during the process of alignment with Vision 2030. It will be an excellent opportunity for building alliance with new institutions in the sector, such as parliament and new government officials.

391. It must be noted that the AT are not suggesting additional activities to those already identified in the MTS 3 Workplans. Rather we are saying that in this period each of the Thematic Groups should prioritise a few key reform related activities in their existing workplans and focus on these during the ST(R)PP. This ST(R)PP would draw on the lessons from the previous STPP and other similar initiatives across government (such as the RRI) and do the following:

- Conduct the ST(R)PP over a 100 day period
- Link it to an extensive/revitalised IEC/Media campaign
- Identify a handful of key reform wins under each KR (no more than 3 or 4 and the key is to at least start the process – e.g., identify a key allegedly corrupt official(s) for prosecution, launch the Legal Aid policy, a crime blitz against known major drug lords, set short-term targets (which must be realistic and achievable) for the case backlogs, awaiting trial prisoners and so on, finalise the establishment of the a Police Complaints Mechanism, Strengthen the protection of whistleblowers/, provide a timetable for when key legislation will come before parliament,
- Avoid the pitfalls of the previous STPP such as over emphasising hardware needs, ignoring reform priorities, and failing to coordinate the approach being used by TGs (i.e. the ST(R)PP must be coordinated from the centre and sanctioned activities must be sector priorities)
- At the end of the period produce and publicise a report card on what was achieved during this period and use the political capital to re-launch the next phase of the programme

392. In so doing, it will not only provide a clear direction for the future of the programme, but it will respond directly to the cynicism that currently exists amongst many of the programme’s beneficiaries.

393. Within each of the KRs discussed above suggestions have been made as to which key activities need to be prioritised and by when they should occur (short – medium - long term), the AT also recommend that the following **four essential sector-wide activities** also need to be performed:

- **High level Sector-wide Implementation plan (signifying priorities/ and the sequence):** the AT have belaboured the point in previous reviews that there is an urgent need to prioritise and sequence human rights based reforms. During the STPP the emphasis was on quick wins, and this tended to mean the “easier stuff”, such as training, hardware, various forms of technical assistance and so on, whilst the “big picture” reforms were not adequately addressed. The MTS acknowledges this and attempted to steer the programme back to tackling key reform initiatives. The major achievements of this programme so far, and whilst not wanting to belittle their significance, still tend towards hardware achievements as opposed to the more complex shifts still needed in terms of commitment to reform. For this reason the AT continue to argue that the improvements made so far will not be sustainable unless the fundamental reforms are addressed predicated on a human rights based approach. It is therefore imperative the sector develops an overall implementation plan (based on the MTS, incorporating the new ideas captured in the Policy Framework Paper and so on) which lists the key priorities in the sector, provides the sequence to be followed (and this would obviously provide the timeline) and identifies clear roles and responsibilities for all the MDAs in the sector.
- **Change Management Strategy:** Reference has been made by the AT previously for the need for a Change Management Strategy to shift attitudes and behaviour in the sector. Whilst there a many different ways to developing such a strategy, we would argue that whatever approach is used it must contain the dimensions referred to in the table below. The table emphasises that a change management strategy must not focus simply on functional-rational internal aspects of the programme. It also warns against assuming that support to “transactional changes” in a “task-work” system will have a wider impact unless the context, in particular the political terrain, is conducive to change.

“Change typically involves conflict about authority and power. A feasible change strategy must be based on an intimate knowledge of the arenas in which such conflicts play out as well as of allies and opponents. Change management includes managing opposition, creating and heralding quick wins, taking advantage of opportune moments, and putting together and maintaining a supportive coalition....the challenge for any change strategy is to arrive at an appropriate (context specific) balance of incentives and power in favour of change, outside and inside the organisations developing capacity” (Bosen, 2005: 23).

	Focus on the “functional – rational dimension”	Focus on the “political dimension”
Focus on factors within the sector	Gets the job done (such as new structures, guidelines, technology, training and so on)	Getting the power balance right and accommodating political interests (such as hiring, promoting or even firing staff, providing targeted support and so on)

Focus on factors in the external environment	Creating an enabling environment for doing the job (such as revising existing regulations, strengthening the M&E system and so on)	Forcing change in the internal power relations (strengthening cross cutting issues such as gender, promoting staff equity, empowering CSOs and so on)
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Table 8 Four key aspects of promoting change⁶⁸

- Capacity needs analysis per MDA:** A recent World Bank evaluation study of institutional support/ capacity building initiatives across Africa⁶⁹ raised four key points (see below) that certainly have resonance within GJLOS. The points also underscore recommendations made repeatedly by the AT in earlier reviews regarding the importance of treating sector wide support as a core objective and ensuring that the support is country-owned, results-oriented, and evidence-based. The AT recommends that the programme at the management level should strengthen its knowledge base and amplify its capacity building framework across the sector to help MDAs a) prioritize their own capacity needs and thus capacity building activities; b) link institutional, organizational, and human capacity developments; and c) transform traditional capacity building tools (such as training) using quality assurance mechanisms to improve results. Management should also ensure that guidelines and processes are in place for self- and independent evaluation of sector support. Sector and thematic leadership should develop sector-specific guidance on diagnosing public sector capacity needs, enhancing incentives for sector performance improvements, and monitoring and evaluating interventions. They should also ensure that all operations that aim to build sector wide capacity are based on adequate assessments of capacity needs and have ways to monitor, and evaluate results.

Most capacity support remains fragmented. Most capacity building support is designed and managed operation by operation. This makes it difficult to capture cross-sector issues, and to learn lessons across operations. Many capacity building activities are founded on inadequate needs assessments and lack appropriate sequencing of measures aimed at institutional and organizational change and individual skill building.

Sector-specific capacity building strategies need strengthening. The sectoral challenges reflect variations in such factors as the power of interested groups, and the labor intensity and decentralization of service provision. More effort should be devoted to deriving lessons along sectoral dimensions and fostering country-led capacity building planning within sector programs.

Tools and instruments could be more effectively and fully utilized.

Technical assistance and training have often proved ineffective in helping to build sustained public sector capacity. Moreover, programmatic support has been more effective in enhancing strategic planning than in improving sector management and service delivery.

Quality assurance is inadequate Although capacity building is a stated priority, most activities lack standard quality assurance processes at the design stage, and capacity building interventions are not routinely tracked, monitored, and evaluated.

- Decentralization of GJLOS Reform Programme:** As recommended in the MTR (2006: 72)

“If the programme is going to have a larger scale societal impact that will benefit greater numbers of the population, there will need to be an emphasis on devolving the institutional capacity building initiatives to the decentralised units of the MDAs...A study should be

⁶⁸ Adapted from Bosen. N. (2005) *Institutional Assessment and Capacity Development: Why, what and how?* Brussels: EuropeAid, European Commission.

⁶⁹ World Bank (2007). *Capacity Building in Africa: An IEG Evaluation of World Bank Support*. Washington, D.C., World Bank

conducted to inform the development of a strategy paper on how to decentralize the programme in alignment with GoK's decentralisation initiatives”.

394. In summary, this section has argued that whilst the programme has undoubtedly made respectable progress in completing nearly half its planned activities, a number of the desired reform outcomes remain elusive. The AT have therefore recommended that 2nd ST(R)PP should be launched post-election, preferably early in the new year. This ST(R)PP must be firmly grounded in a human rights based approach, and must prioritise key activities that will contribute to achieving the reform goals of the programme.
395. In addition this section has also identified key activities that need to be addressed over the medium to long term. The AT trust that the programme will find these suggestions helpful and use them to develop a much needed high level sector-wide workplan for the programme which can sit alongside the MTS. The AT have also signalled that such a plan must provide a hierarchy of interventions in which the key reform priorities of the sector are identified and the sequence in which they will be addressed.

Engagement of NSAs

396. We end with a brief word about NSA engagement, requested by the Reference Group. Past AT reviews underlined the importance of effective engagement of Civil Society Organisations (CSOs) and the private sector in the programme. We noted that CSOs would add value in the programme because they had reform experience lacking among MDAs. We also noted the importance of the private sector; their participation was critical in establishing linkages between the programme and the Economic Recovery Strategy. We also noted that the previous government prevented and/or made it difficult for CSOs to undertake governance, justice, and human rights reforms. GJLOS provided an appropriate entry point for CSOs to deepen the discourse of reforms in the public sector.
397. At the first Joint Review Meeting, CSOs had not evolved a collective position regarding engagement in GJLOS. By the time of the second and third Joint Review Meetings, CSO had taken a collective position to engage with GJLOS. However their discourse regarding GJLOS showed a high degree of cynicism. They were cynical about the government's commitment to reforms and to working with civil society. They were concerned about the focus of the programme on hardware during STPP, as well as the state of human rights and corruption in the country. Declining levels of political accountability gave CSOs ammunition to argue for government's lack of commitment to reforming the sector. In the second review, CSOs had agreed to engage in the programme on the basis of several principles. These included engaging in all phases of the programme without affecting their independence. These principles were also incorporated in the MTS.
398. The private sector was less quiet with regard to participation in GJLOS. The need to ensure that the programme incorporated private sector concerns into the programme inspired participation of the sector through the Kenya Private Sector Alliance (KEPSA). The sector was active in Thematic Group meetings which had become an important forum for discussing reforms. In the third review, under-performance of Thematic Groups generally constrained the participation KEPSA and CSOs in the programme.
399. Another factor that constrained effective engagement of both CSOs and KEPSA was lack of funding to support their efforts in the programme. Donors and NSAs had initiated discussions on a funding mechanism to support NSAs. A detailed proposal for such a facility had been finalised (after extensive consultation) but there were issues that remained unresolved. These included the role of the government in the NSA facility and how NSAs would determine the reform agenda and priorities in the programme. A proposal by the TCC to endorse the design was rejected,

after objections from civil society, because some argued that the government was intending to control the facility and thus limit the extent to which NSAs would monitor the government. This effectively killed the initiative. In the circumstances, no funding was provided to CSOs or KEPSA through the proposed joint facility, although some bi-lateral funding continued.

400. NSAs continued to consult on the facility because some of the issues remained unresolved. The effects of this frustration are becoming clear. The reaction of some CSOs to JRM IV suggests that the stock of goodwill has run very dry. Some do not believe that the facility will ever come to fruition, and that government does not want them to effectively engage in GJLOS. We return to this discussion below.

NSAs in JRM IV

401. It is perhaps pertinent to ask what the programme has lost by not having CSOs and the private sector fully on board. We also discuss the implications of inadequate engagement of CSOs in the programme for the future context of the programme. We focus on these issues because the MTS has a key result area (KR 5) on informed public participation and increased access to relevant information by the public and NSAs so as to stimulate demand for reforms. The MTS specifically notes that increased participation of NSAs in GJLOS has the potential to generate increased demands for quality services from GJLOS institutions. NSAs would advocate for quality services and play a watchdog role regarding GJLOS institutions to ensure they comply with their mandate.
402. To foster participation of NSAs, the MTS identified several levels at which NSAs could engage in the programme. These include participation at the level of TCC and therefore participation in policy formulation; participation at the level of management committees, thereby playing an oversight role; and participation at the level of Thematic Groups. The MTS also notes that NSAs would be engaged through implementation of specific initiatives in the programme.
403. The MTS expectation of NSAs is in line with how some CSOs as well as KEPSA would want to engage in the programme. However, neither CSOs nor KEPSA have actively participated at all the levels identified in the MTS. Neither have they implemented specific activities with programme funds. In some instances, CSOs complain about failure of MDAs to commit implementing activities jointly with NSAs even though the need to do so is discussed at the level of Thematic Groups.
404. CSO participation at the level of TCC (defined in Annex 10 of the MTS) is through the LSK, KHRC, FIDA, CRADLE, TI and Ufungamano Reform Initiative. The CSO focal point, The Cradle, and FIDA, have been active in TCC meetings. Participation by other representatives has been irregular or absent. Although in previous reviews the AT pointed out that the way CSO representatives were identified was a problem that constrained effective engagement of CSOs, in JRM IV CSOs did not cite this as a major challenge. CSOs have addressed this by mapping participation in Thematic Groups on basis of their niche. It is noteworthy that some CSO representatives have been experiencing internal institutional challenges which have constrained their participation in the programme. Others such as Ufungamano Reform Initiative were identified at a time when they were conspicuous – as a movement rather than institutions - on matters of constitutional reforms. They have not been engaging with other CSOs on other reform discourses. Further they lack a clear organisational context for engaging in the programme.
405. Generally, the CSOs' representatives at the level of TCC have not consolidated into a neat team for effective engagement at this level. In spite of this, CSOs have not reviewed their effectiveness at the level of TCC and so they have not sought to replace inactive representatives. In other words, CSOs have not acted to remedy poor participation and non-attendance at TCC meetings by some of those there on behalf of CSOs. Furthermore, some CSOs complain that they do not consult adequately among themselves to inform their participation in TCC. They add that they have been slow at getting things done. They blame this on the fact that their present staffing levels – and capacity in general - are meant for certain specific programmes and projects which tend to

- compete with GJLOS. They have neither funding nor technical support to undertake GJLOS programme work yet it tends to preoccupy many of their staff. And they naturally tend to prioritise what they have funding for. In this regard, CSOs have been finalising their discussions on the Support Facility for NSAs and how they want to structure their future engagement in the programme.
406. Responsibility for poor attendance and non-participation at TCC level clearly lies with the CSOs, who are responsible for demanding active participation at the TCC by those representing them. Irregular attendance or absence from TCC meetings can result in CSOs having little or no impact on programme policies and decisions - yet this is where CSOs are expected to add value. Moreover, non participation in TCC meetings and lack of consultation among CSOs has the effect of CSOs having poor information about the programme, especially if they do not get first hand information on decisions made by and about the programme.
407. The TCC management sub-committee has been inactive. As a result CSOs are unable to play any oversight role in the programme nor are they able to monitor programme progress on a regular basis as envisaged in the MTS. In our view, failure to have an active TCC sub-Committee with participation from CSO, does not do the programme any good. It is at this level that CSOs can provide critical inputs to the reform content of the programme, and provide critical views on programme progress. However, their inputs can only be useful (and different from what MDAs are providing) if such inputs are based on solid research. The various Thematic Groups must open up and create space through which CSOs can bring this value to the programme. Some CSOs have important findings which can be utilised, programmatically, if the MDAs had a structured approach to integrating NSA inputs
408. CSOs have representatives in Thematic Groups. CSOs are active in some of the Thematic Groups; they share information with MDAs and assist in putting reform content into workplans. One problem cited by CSOs is irregularity of Thematic Group meetings, failure to accommodate different viewpoints from CSOs, and poor attendance of MDAs – a programme-wide problem, as we note elsewhere. Some also argue that there are Thematic Groups (such as Thematic Group 3) where MDAs do not value the contributions of NSAs in general and CSOs in particular. Invitations to CSOs for meetings are sent out late and information sharing is minimal. However, there are some Thematic Groups where CSOs appreciate the level of engagement. Often cited are Thematic Groups 2 and 5.
409. Irregularity of Thematic Group meetings, as noted in our previous reports, makes it difficult for NSAs to effectively engage in the programme. We also noted that the Thematic Groups are the main engine of the programme and therefore required regular servicing and lubricating in order to hold the programme together. Lack of lubrication has meant reduced speed which in turn has led to reduced participation of CSOs in the programme. For CSOs to effectively engage in the programme and inform the development of its reform content, Thematic Groups – as the main entry point of engagement of NSAs – should be revitalised. Only through well functioning Thematic Groups will the programme see value of CSOs and the private sector in the programme.
410. The MTS anticipated a funding facility to support NSAs in undertaking implementation of specific activities under the programme. It also planned for NSA engagement with the PCO on matters around the programme including supporting the PCO in disseminating GJLOS information to civil society networks. The MTS also envisaged NSAs supporting the PCO's advisory role in advocacy, monitoring and implementation. CSOs have not been effectively engaged especially in matters where they would add value such as the development and dissemination of IEC as well as profiling the programme at the local level.

411. CSOs have also not implemented programme-specific activities. Although CSOs individually undertake related activities, MDAs are yet to appreciate the role of CSOs and the need to integrate what they do into their activities. CSO engagement with the PCO has been eclectic and dissemination of programme related information to civil society networks has not been taking place. CSOs have not been advocating for GJLOS messages, nor have they been disseminating GJLOS reform messages. Simply put, the expectations of MTS with regard to this level of engagement have not been met at all.
412. Although the above discussion has focussed on CSOs, we note that the same findings apply to the participation of KEPSA. They are active at the level of the TCC when meetings are called but they have not been actively involved in the management sub-committee. KEPSA also complains about irregularity of Thematic Group meetings and non-attendance of senior MDA officials. Lack of funding to support KEPSA activities in the programme has resulted in KEPSA having to spend its own resources and to spread itself thin in the programme.

Factors affecting NSA engagement in GJLOS

413. There are several factors responsible for poor engagement of CSOs and the private sector in the programme. First is lack of funding to support NSA initiatives and participation in GJLOS. Development partners contributing to GJLOS initiated discussions on a Support Facility for NSAs in 2005 and later in 2006 commissioned a study to define modalities for effective engagement of NSAs. The study designed a funding mechanism and identified several principles to guide its operations. The proposed mechanism required NSAs to ensure that their activities related to GJLOS key results and thematic work plans. It recommended that funding for NSAs should be independent of government interests and that the government should not block or hand-pick NSAs for support. The study recommended a basket funding modality to be managed through an independent NSA Support Facility Programme Management Unit.
414. The support facility is not in operation. Both CSOs and the private sector have misgivings about its operation. The frustration brought by the absence of the facility and the time CSOs have spent discussing its utility as well as discussing how they can contribute to GJLOS in a structured manner has led some CSOs to become cynical. They argue that the discussions about the fund are meant to camouflage a decision that has already been reached: to lock CSOs out of GJLOS.
415. We stress here that the Support Facility for NSAs is very relevant for the purpose of supporting engagement in the programme. What is critical at this stage is to ensure that the fund is operational as quickly as possible. Access to funds by CSOs should not necessarily be predicated on the establishment of a basket fund PMU. Consideration must be given to fast tracking access to funds, possibly through the lead donor responsible for the NSA support facility basket fund, before the proposed PMU is established.
416. The second factor constraining NSA engagement is lack of clarity on how NSAs should engage in the programme and the failure of some MDAs to accommodate criticism or appreciate NSA inputs. Some NSAs remain unclear about how they want to engage in the programme and the value they think they can add. Some CSOs want to play watchdog and monitoring roles outside of the programme while others prefer to engage from within; yet others want to access funds to implement specific activities relating to GJLOS. For CSOs the purpose of the programme is not in question. However, they are yet to settle on how they can contribute to the programme. The oversight role they want to play means different things to different NSAs. This lack of a common approach feeds lack of co-ordination of and fragmentation among NSAs in GJLOS.
417. The third factor is lack of political and programmatic leadership. CSOs have shown no leadership in co-ordinating how they should proceed in the programme and how they can coordinate their inputs to the broader reforms, in or out of GJLOS. As already noted, the study on the support facility was circulated in the last quarter of 2006. CSOs indicated to us that they are yet to

convene a meeting to review the content of the study and give their position on its recommendations.

418. This observation coming about nine months after the study was finalised is indicative of bigger problems in civil society and among GJLOS-relevant CSOs in particular. Political leadership would have co-ordinated CSOs to set the agenda for reforms within GJLOS and would have guided dialogue between CSOs, the government and development partners. Little effort was made to promote dialogue in this respect. Neither have CSOs co-ordinated their inputs to the GJLOS reform agenda. Good leadership would have guided CSOs to undertake a comprehensive review and develop viable recommendations. Lack of leadership in this respect has failed CSOs in terms of coordinating their contributions to the reform space.
419. Lack of clear leadership with regard to GJLOS and failure to support CSOs to engage effectively in the programme has meant that CSOs continue debating how to engage the programme. CSOs have the potential to set the pace of reforms because of their experience and programme skills – GJLOS is certainly the poorer for their non-engagement, though holding GJLOS responsible for this would be unreasonable.
420. CSOs involved in the programme have different experiences. Some have experience in governance reforms while others have a history of promoting justice reforms. Still others are renowned for their human rights work. Very few GJLOS CSOs have broad sector-wide expertise. Because of this, there is a tendency to judge the programme on the basis of niche expertise rather than on basis of what the programme in its entirety seeks to contribute.
421. At the same time, levels of knowledge about the programme vary considerably. Some have a good understanding of the programme, its objectives, key results and priority areas. Others do not. The Support Facility must help address this shortcoming by ensuring that all CSOs wishing to access funds have a good understanding of the programme.
422. Finally, given the problems experienced in engaging CSOs and the time that the programme spent to bring CSOs on board and develop the NSA facility, there is a sense of exasperation that appears to be building at the level of MoJCA, the PCO, the donors and among CSOs themselves. Although the importance of having CSOs in the programme is formally acknowledged, some feel resigned to failure because their efforts have not yielded the desired results.

NSAs in the new context of the programme

423. The role that NSAs will play in the programme during and after the transition is critical. First, NSAs will be required to continue infusing a reform agenda at various levels and Thematic Group meetings in particular. Secondly, the programme will require the NSA infrastructure to disseminate reform messages as well as to arouse demand for quality services from GJLOS institutions. Thirdly, the programme will require NSAs to give a critical voice and to provide the necessary checks especially during work planning processes. Finally, they can participate in delivering key activities as part of specific reform strategies, under the co-ordination of the TGs. These are services that cannot be ignored. And that is why it is important not to shut the door on the Support Facility for NSAs.
424. With regard to CSOs, we would like to stress that strong civil society is an important pre-requisite for a strong democracy and, by implication, a pre-requisite for the consolidation of governance and justice reforms in any society. A strong civil society generally contributes to consolidation of a society built on principles of good governance, justice, and respect for diversity and human rights. In societies in transition from authoritarianism to democracy, civil society plays a watchdog role and prevents the state from rolling back into authoritarian tendencies. Monitoring respect for rights, practise of good governance and application of the rule of law become a key responsibility of civil society in this context.

425. The unique role that civil society plays in any society usually leads to strained relations with governments. The causes of poor relations in this case include mistrust and suspicions that are carried over from the past. In other instances, it is simply caused by poor knowledge of how each of them operates.
426. This framework explains the present context of CSOs in GJLOS. Relations between CSOs and government within GJLOS continue to be shaped by events in the broader political arena. This is understandable given that CSOs have a watchdog responsibility to ensure that gains made so far including within GJLOS are not reversed. It is for this reason that the programme should craft a clear role for CSOs – and NSAs in general – in the programme. It is again for this reason that we stress the need to urgently operationalise the NSA Support Facility and shift the debate from ‘how the facility should operate and how CSOs might access funds’. The attention should shift to development of ‘concrete proposals on how CSOs can participate in the reform process.’ The latter question can be discussed within TGs or completely outside of GJLOS structures but should translate into concrete proposals, which development partners (through the joint facility) can consider for support on their individual merits.

Appendix A: Scope of work

Introduction

The fourth GJLOS Joint Review (*JRM IV*) will provide both a historical and forward looking strategic and programmatic analysis of the GJLOS Reform Programme. This will be the first Joint Review process in which programme implementation under the Medium-Term Strategy (MTS) will be the subject of review, and the period of coverage will cover MTS 1 and MTS 2 workplan implementation, as well as MTS 3 workplan preparation. JRM IV will have a comprehensive programme-wide and case study focus, seeking to assess programme performance and document successes, lessons and challenges in an evolving context with an eye on the future

Objective(s)

1. To determine and assess the **results and impacts** of MTS implementation (*or the extent of achievement thereof*) for the period covered by MTS 1 and MTS 2, as well as MTS 3 work planning.
2. To consider and propose **modalities and means** for sustaining any successes and addressing any lessons and challenges for the GJLOS Reform Programme going forward, paying particular attention to the programme's continually evolving context (at National, Sectoral and Institutional level), and taking into consideration the recommendations of the late-2006 Mid-Term Review, as well as recommendations from past Joint Review processes.

Scope of Work

1. In relation to **the 3 case study MDAs**, provide an assessment of:
 - If and how they used their STPP experience as a platform for MTS implementation
 - actual MTS implementation, in programmatic and financial terms
 - specific results and impacts achieved during MTS implementation
 - the extent to which initiatives under the programme have impacted on the MDAs' daily work and overall performance
 - lessons learnt during MTS implementation, and how these lessons could possibly be applied across the sector
 - emerging best practices which have a potential application across the sector
 - challenges faced during implementation, and if and how these were addressed
2. In relation to **the MTS phase of the overall programme**, provide an assessment of:
 - If and how the GJLOS reform process and content has evolved, and what is needed to further enhance the sector's focus on the key (*programme*) results defined in the MTS
 - If and how the depth and breadth of GJLOS reform has evolved across the sector in relation to the sector-wide priorities outlined in the MTS, and what reform opportunities and reform challenges remain
3. In relation to **overall management and coordination of the programme**, provide an assessment of:
 - its general quality and overall efficiency and effectiveness
 - successes and lessons to build on in relation to the programme's sustainability
 - challenges and constraints to be addressed to assure the programme's sustainability
4. In relation to **lesson learning across the programme**, provide an assessment of the extent to which outputs from previous Joint Reviews, including AT and GoK Progress Reports,

as well as the Mid-Term Review and the National Integrated Household Baseline Survey have informed the work of the different programme structures (IASC, TCC, Thematic Groups, MDAs, NSAs, GJLOS Donor Group, MoJCA (including the PCO) and FMA)

Key Deliverables and Indicative Timing

Work Commences* ¹	4 June 2007
Inception Report* ² to the Ref Group	18 June 2007
First Draft Report to Ref Group	14 September 2007
Second Draft Report submitted	21 September 2007
Second Draft Report issued to all Stakeholders	27 September 2007
Input into Technical Preparatory Workshop	4 October 2007
Input into JRM IV Retreat	16–19 October 2007
Submission/Endorsement of Final Report – Ref Group	29 October 2007

*Note 1: These timings are based on the following internal timings to allow a June commencement for the Advisory Team.

- **10 May 2007** Reference Group approves final Scope of Work (SoW)
- **22 May 2007** Advisory Team provides a broad Technical/Staffing/ Cost Response to the Scope of Work for endorsement by the Reference Group
- **30 May 2007** Administrative/Mobilisation/Set-Up Arrangements for AT completed, and Delivery Order signed off with FMA

* Note 2: The Inception Report will provide an informed summary of the AT's understanding of the Scope of Work, the approach/methodology to be followed, a proposed report layout and a detailed workplan, interview schedule and list of data and other support requirements for JRM IV. The Inception Report will be presented to and endorsed by the Reference Group.

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