

REPORT ON HOST COUNTRY AGREEMENTS
MEETING OF THE ASSEMBLY OF PARTIES
November 24, 2020

Background

In 2019, the Assembly of Parties adopted by consensus Resolution 3/2019, which recalled the commitment of Member States under Article VIII of the Establishment Agreement to grant IDLO rights, privileges and immunities comparable to those provided by Italy in the Headquarters Agreement and requested the Secretariat to provide a report to the Assembly of Parties on the progress made in providing for the legal status of the Organization in the countries in which it operates. The resolution also called upon Member States to undertake the swift conclusion of Host Country Agreements (HCAs) and urged them to support IDLO in its efforts to conclude HCAs, including with non-member countries in which the Organization has operations.

The adoption of Resolution 3/2019 demonstrated that the Assembly of Parties recognizes the importance for IDLO to secure appropriate privileges and immunities in its countries of operation. HCAs guarantee appropriate recognition for IDLO as an international organization and help secure IDLO's relations with the host country. In addition, they include basic legal provisions essential for the proper functioning of its offices and the effective implementation of its programs as well as the protection of its employees as international civil servants. HCAs facilitate basic elements of IDLO operations (such as the opening of a bank account, the entry and exit of employees, and the leasing of office space), ensure the inviolability of IDLO premises, and guarantee immunity from taxation and legal process. Thus, HCAs are a crucial instrument to alleviate legal and financial risks to IDLO's operations and also essential to enable IDLO to sustain the growth of the Organization, as envisaged in the Strategic Plan 2021-2024.

Prior to 2020, IDLO had concluded HCAs with ten countries, half of which had entered into force in the prior two years. IDLO's legal status is also recognized through other means, such as domestic legislation or exchanges of diplomatic notes, in numerous other countries. Advances in HCA negotiations were assisted by the signature in 2017 and the entry into force in 2019 of the new Headquarters Agreement between IDLO and the Republic of Italy, which has set an influential standard for IDLO's negotiations with other countries. Resolution 3/2019 sought to help IDLO build on that foundation.

Progress in 2020

In 2020, IDLO made significant progress regarding recognition of the legal status of the Organization in the countries in which it operates. This progress has included the conclusion of four new HCAs as well as positive strides forward in a number of other countries, as reflected below. The annexed chart identifies the updated state of affairs of recognition of IDLO's legal status in its countries of operation.

New Agreements

In 2020, IDLO concluded new HCAs with Burkina Faso, Mongolia, Niger, and Uganda. These new agreements have had immediate positive effects.

In Uganda, for example, the conclusion of the HCA in March 2020 has provided IDLO the necessary legal and operational capacity to roll out its flagship five-year Community Justice Support Programme, under which IDLO will provide financial and technical assistance to state and non-state institutions within the Justice, Law and Order Sector (JLOS). Following the formalization of its status in Uganda, IDLO has leased a long-term office space and initiated implementation of program activities, each of which will provide benefits to Uganda including employment and revenue opportunities. The conclusion of the HCA now enables IDLO to provide sustainable, longer-term support to its programs and to develop and roll out other aspects of support to Uganda's socio-economic agenda, including the Regulatory and Fiscal Capacity Building Programme on Non-Communicable Diseases, and potential support in other areas such as under the IDLO Investment Support Programme for Least Developing Countries (ISP/LDCs), and public health law-related support in response to COVID-19.

Meanwhile, in Mongolia, IDLO has developed a detailed implementation plan for the HCA in anticipation of the agreement's entry into force, commencing with listing IDLO in the country's registry of recognized international organizations. And in Burkina Faso and Niger, the recent conclusion of the HCAs will facilitate key operational requirements, including the opening of an office, establishment of a bank account, travel of IDLO officials, and hiring of local personnel, providing a substantial advancement to IDLO's implementation of its five-year, multi-country program in the Sahel on strengthening the criminal justice institutions to ensure they are more efficient, transparent and focused on the needs of the populations.

Advances in Negotiations

In addition to the agreements already concluded, IDLO has made significant advances toward securing its legal status through HCAs and other means in other countries of operation. In Armenia, for example, productive discussions with both the Ministry of Foreign Affairs and Ministry of Justice have clarified textual issues and a process for moving forward on an HCA. Importantly, with the support of those ministries, IDLO is also nearing conclusion of a Memorandum of Understanding that would provide legal recognition and basic privileges to facilitate the opening of an IDLO office there while the process of HCA negotiations continues. IDLO has pursued a similar approach in Indonesia.

IDLO's efforts to quickly secure legal recognition have been assisted by the development of an HCA template in multiple languages. In 2020, that template was translated into Arabic and shared with Yemen, where IDLO is implementing a project but has not yet opened an office, for consideration by that government. IDLO also initiated negotiations for HCAs with the Ministry of Foreign Affairs of the Commonwealth of The Bahamas and

provided a draft text to the Ministry of Foreign Affairs and the Ministry of Justice of Uzbekistan and the Ministry of Justice of Moldova. Discussions are continuing with each of these countries.

Pending Negotiations Awaiting Further Progress

Even prior to 2020, IDLO had made significant advances in discussing HCAs with countries such as Kyrgyzstan, Mexico, Philippines, Tunisia, and Ukraine, in many cases including specific negotiations on texts. In the Philippines, for example, productive steps forward were taken in late 2019 in meetings with Philippine officials in Manila. The COVID-19 pandemic and other challenges as reflected in the section below have impacted the speed of progress in these countries, but IDLO is hopeful about future coordination and fruitful negotiations leading to improved status that will facilitate better program outcomes.

Challenges

Over the course of this year, IDLO encountered various challenges in negotiating and securing IDLO's legal status in new countries. The absence of appropriate recognition of IDLO's legal status itself also poses significant challenges for the fulfillment of IDLO's mandate.

Challenges to Securing HCAs

Competing government priorities continue to be the main challenge for IDLO in securing HCAs. Although IDLO works at the invitation of countries in which it has operations, the steps necessary to translate that invitation into a proper recognition of legal status for the Organization require attention from numerous government officials and political will to devote that attention. A notable positive experience in this regard in 2020 was in Burkina Faso and Niger, where despite numerous significant domestic concerns both governments were able not only to devote resources to the expeditious negotiation of a treaty but also to ensure that it was promptly and efficiently considered and approved at the highest levels of government. In general, advocacy on IDLO's behalf by the Member Parties, including, for example, through the initiatives of the Standing Committee and the adoption of Resolution 3/2019, have also been instrumental in helping to address this challenge insofar as they have helped reinforce the value IDLO provides to potential partners. Similarly important has been the support of donor countries that have emphasized the importance of recognition of IDLO's legal status in the context of new project initiatives.

Among the competing priorities in 2020 was of course the COVID-19 pandemic, which impacted host governments severely. Due to the advent of the pandemic, many government offices closed or reduced staff, limiting the ability of governments to fully engage with IDLO. The virus has also drastically shifted government priorities, leading to extensions of anticipated timelines. Similar challenges have also impacted IDLO itself. In response to the pandemic, IDLO has implemented a range of measures to safeguard the security and well-being of its staff while continuing to carry out its mission to promote access to justice and the rule of law around the world. Despite these challenges, IDLO

continues work in some of the most complex and challenging environments. The progress made in concluding and advancing negotiations of HCAs, even in these challenging times, highlights the resilience of both IDLO and partner countries.

Even in the best of times, the conclusion of HCAs is a complex and time-consuming process. The treaty-making process in most states involves consultation with various government ministries, significant investment of time by ministries charged with leading the process (usually the Ministry of Foreign Affairs and/or Ministry of Justice), and decision-making at the highest levels of government. It can also involve consideration and approval by legislative bodies. IDLO continues to address this challenge through persistence and with the support of dedicated officials in ministries of our partner countries.

Another challenge is the reluctance of some countries or inability under their law to enter into an HCA with an organization of which they are not a member. IDLO does not require a country to be a member before entering into an HCA. Indeed, IDLO has previously concluded HCAs with non-member states like Somalia and South Sudan and both Article VIII of the Establishment Agreement and Resolution 3/2019 encourage the recognition by non-member countries of IDLO's legal status. Nevertheless, in some countries the membership process must proceed prior to or simultaneous with the negotiation of an HCA. IDLO membership has benefits such as enabling a party to participate in IDLO's governing bodies and decision-making, and provide leadership in shaping the strategic direction, policies and operational priorities of the Organization, and IDLO continues its efforts to inform non-member states about the process of becoming a member. The Assembly of Parties has already accepted the prospective membership of a number of countries, including some with which HCA negotiations are ongoing, and IDLO continues to encourage consideration of membership by countries where it constitutes a requirement for further recognition of IDLO's legal status.

Operational Challenges Resulting from the Lack of an HCA

As mentioned above, HCAs facilitate basic elements of IDLO operations. For this reason, the lack of an HCA in program countries poses multifaceted challenges for IDLO, affecting program planning, development, and implementation in host countries.

One of the most common challenges relates to obtaining proper recognition and documentation of the immigration status of IDLO officials in host countries. Without an HCA, ensuring that IDLO officials are able to obtain appropriate visas or residency permits to carry out their work can be burdensome, expensive, and uncertain. For instance, in one case – while HCA negotiations were pending – IDLO advocated for over four months with various national institutions to obtain a letter sponsoring the request for the issuance of a work and residency permit for the IDLO country manager, which required extensive diplomatic and institutional engagement both at HQ and country level. In addition to the significant time and financial implications for program implementation, insecure immigration status creates risks for both the Organization, which aims to ensure compliance with relevant domestic requirements of host countries, and IDLO officials.

The lack of an HCA also hinders the establishment and smooth operation of IDLO offices. Where it does not enjoy recognized legal personality at the domestic level, IDLO has in some cases been prevented from opening an office or required to operate under an alternative status that does not properly reflect its nature as an intergovernmental organization. For example, in one country where IDLO operates under an interim registration status, IDLO is required to re-register its status separately for each project it undertakes. This has affected IDLO's administrative operations (for example, with regard to banking), requires additional financial resources, and affects IDLO's ability to plan for future operations. In other countries, IDLO has had to establish a national entity that is subject to domestic administrative and financial requirements inconsistent with IDLO's status as an intergovernmental organization and which create a burden on IDLO operations.

In addition to helping secure IDLO's operations in a country, HCAs also extend certain crucial privileges and immunities to both IDLO and its officials. In some countries, IDLO has had to expend significant resources to address specious investigations and judicial proceedings related to its official functions, traditionally covered by immunity. Where IDLO is not able to assert immunity for the official actions of its officials, their safety and the Organization's ability to carry out its mandate face unnecessary risk.

Lack of an HCA also presents significant financial challenges for the Organization. When IDLO works in a country without an HCA, it often does so through temporary arrangements under which it is not exempt from local taxation, sometimes drastically increasing IDLO's operating expenses in that country, depending on the size of the project. Furthermore, without an HCA, IDLO is often unable to open a bank account. This requires increased reliance on cash, including petty cash, creating security and regulatory concerns, and reliance on other organizations for remittances, impacting the autonomy of IDLO's operations. Operating without a local bank account can also increase currency conversion costs and can result in delays in payments that generally require additional administrative support from headquarters for their processing.

Finally, but not least, without an HCA, IDLO must struggle for recognition in- country as part of the broader international organization community or is sometimes left out of that community altogether. This challenge has been particularly acute during the COVID-19 pandemic in 2020. We have seen the importance of appropriate recognition to ensure that IDLO offices and officials are given proper notice of government actions in a crisis situation and that IDLO offices and officials have access to mechanisms such as communication networks and emergency response facilities. In one country, for example, the government established a facility for COVID-19 testing for officials of international organizations to which IDLO was given access only after having learned of it through affirmative outreach. This challenge is broader than just in emergency situations, however. Recognition as part of the broader international organization community is essential to IDLO being able to build the relationships necessary to effectively deliver on and expand its mandate in its countries of operation.

Next Steps

IDLO will continue to prioritize the conclusion of HCAs in the coming years. Both the new Strategic Plan 2021-2024 and the Management Plan for 2021-2022 identify as a priority further steps to secure proper recognition of IDLO's legal status in its countries of operation. IDLO is working to increase awareness, both internally with all employees and externally with partners, of the importance of the issue and is developing strategies to pursue HCAs as well as interim options for legal recognition, pending the conclusion of the HCA process. IDLO looks forward to promptly concluding HCAs with those Member Parties where IDLO's legal status is still pending recognition. IDLO also welcomes the further support of Member Parties to bolster IDLO's commitment to securing appropriate recognition of its legal status in all its countries of operation.

/ENDS

ANNEX I
RECOGNITION OF IDLO LEGAL STATUS

Country	Membership	Status
Afghanistan	Member Party	Privileges and immunities equivalent to those of the United Nations recognized through exchange of diplomatic notes dated October 12 and November 9, 2004.
Armenia	Non-member	Draft HCA pending consideration by the Ministry of Foreign Affairs. Parallel discussions ongoing on the conclusion of an MOU under which IDLO status would be formally recognized on an interim basis.
Bahamas	Non-member	Discussions regarding an HCA initiated with the Ministry of Foreign Affairs in August 2020.
Burkina Faso	Member Party	HCA signed on September 21 and October 20, 2020; entered into force October 20, 2020.
Honduras	Member Party	HCA signed February 2, 2016; entered into force October 15, 2016.
Indonesia	Non-member	Discussions ongoing on the conclusion of an MOU under which IDLO status would be formally recognized on an interim basis pending HCA negotiations.
Italy	Member Party	Headquarters Agreement signed on June 14, 2017; entered into force October 1, 2019.
Jordan	Member Party	HCA signed on September 3 and October 3, 2018; entered into force February 12, 2019.
Kenya	Member Party	HCA signed on December 30, 2016; provisionally in force pursuant to Article 13. Entry into force will occur subsequent to publication in the Official Gazette.
Kyrgyz Republic	Prospective Member (Approved by AoP in 2015)	IDLO is currently operating through a branch office registered under domestic law June 8, 2016. HCA discussions were put on hold pending finalization of membership.
Liberia	Member Party	HCA signed on March 7 and April 19, 2016; entered into force April 19, 2016.
Mali	Member Party	HCA signed on June 21, 2018; entered into force June 21, 2018.
Mexico	Non-member	IDLO is currently operating through a Civil Association registered and established under domestic law. Draft HCA pending consideration by the Ministry of Foreign Affairs.
Moldova	Non-member	Draft HCA pending consideration by the Ministry of Foreign Affairs.
Mongolia	Member Party	HCA signed on April 27 and May 7, 2020; entered into force November 2, 2020.

Montenegro	Member Party	HCA signed on May 6 and May 20, 2019; entered into force on May 20, 2019.
Myanmar	Non-member	IDLO is currently operating in accordance with an MOU with the Attorney-General's Office, as amended in August 2020.
Netherlands	Member Party	HCA signed on December 19, 2013; entered into force January 1, 2014, with retroactive effect as of September 1, 2013.
Niger	Prospective Member (Approved by AoP in 2019)	HCA signed on October 20 and November 3, 2020; entered into force November 3, 2020.
Philippines	Member Party	Draft HCA pending consideration by the Department of Foreign Affairs.
Somalia	Non-member	HCA signed on June 16 and 27, 2018; entered into force June 27, 2018.
South Sudan	Non-member	HCA signed on May 27, 2016; entered into force May 27, 2016.
Switzerland	Non-member	Privileges and immunities recognized under the Vienna Convention of April 18, 1961, conferred by diplomatic note dated February 28, 2013.
Tunisia	Member Party	Draft HCA pending consideration by the Ministry of Foreign Affairs.
Uganda	Member Party	HCA signed on March 11 and 16, 2020; entered into force March 16, 2020.
Ukraine	Non-member	Draft HCA pending consideration by the Ministry of Foreign Affairs.
United States	Member Party	Privileges and immunities of international organizations conferred by the International Organization Immunities Act conferred by Executive Order 12842 dated March 29, 1993.
Uzbekistan	Non-member	Draft HCA pending consideration by the Ministry of Foreign Affairs.
Yemen	Prospective Member (Approved by AoP in 2014)	Draft HCA pending consideration by the Ministry of Foreign Affairs.