

IDLO EVALUATION BRIEF

EVALUATION OF THE PROJECT “ENHANCING THE CAPACITY OF THE JUDICIARY OF SOUTH SUDAN”

October, 2015

1. INTRODUCTION AND BACKGROUND

The Republic of South Sudan seceded from Sudan on 9 July 2011. Independence presents opportunities for South Sudan but also comes with serious challenges. The institutional capacity of the justice system in South Sudan remains low, rule of law is weak, existing laws are not consistently applied, access to justice is very poor, and human rights are still far from being fostered or protected. The Judiciary of South Sudan (JOSS) is the most visible face of the formal justice system for most South Sudanese. The Judiciary has been challenged by the adoption of an English-language, Common Law legal system that differs dramatically from the Arabic-language, civil/ Sharia law system of northern Sudan in which most justices and judges were trained.

In this context the European Union- funded and IDLO-implemented project “Enhancing the Capacity of the Judiciary of South Sudan” endeavored to contribute to building the capacity of the Judiciary of South Sudan, to fairly and efficiently interpret and apply the laws and Constitution of South Sudan and administer justice in criminal and civil cases. The project also aspired to increase the public’s confidence in the Judiciary and its administration of justice. This initiative, temporarily suspended for some months due to the outbreak of conflict in December 2013, is a continuation of previous IDLO support of the Judiciary of South Sudan to help in the establishment of a common law system.

The project’s overall objective (OO) was to improve the quality and delivery of judicial services in line with the laws and Constitution of South Sudan and international human rights standards.

The specific objectives (SO) are listed as: a) increased capacity of the JOSS to design, organize, and deliver high quality judicial training and; b) enhanced capacity of South Sudan’s High Courts and County Courts to fairly, effectively and efficiently administer justice in civil and criminal cases. The SOs were to be

achieved by accomplishing the following expected outputs: 1) to assist the Judiciary to develop an organizational structure and training program for the Judicial Training Institute that was foreseen in the Judiciary’s own Capacity Development Plan, and would facilitate the process of approval of the plan through a consultative process; 2) to cooperate with the Judiciary in delivering training to Judicial personnel in English language and function-specific substantive law related subjects; 3) to improve the access of judges to legal resources containing relevant laws, precedents and procedures, in particular in South Sudan’s rural areas, where access to these resources had been determined to be particularly poor.

2. EVALUATION PURPOSE, PROCESS AND METHODOLOGY

The purpose of the evaluation was to provide an independent assessment of the project and to measure the extent to which the expected results were achieved; and to identify relevant lessons learned with a view to informing the design and implementation of future projects and programs in South Sudan and beyond. The evaluation focused on the OECD DAC criteria (Relevance, Efficiency, Effectiveness Impact, and Sustainability), with the addition of another criterion - the IDLO’s Added Value. Based on the provision in the evaluation Terms of Reference, and informed by the reconstruction of the project’s Theory of Change (reflecting both the original project design and its amendments in response to the crisis of December 2013), the evaluator developed a set of evaluation questions (EQs) and related indicators, agreed upon by the EU and IDLO.

The evaluation exercise covered all project activities delivered between 22 December 2012 and 21 December 2014, with a project budget of €1,500,000. This period includes the initial project timeline (18 months) as well as the six-month extension concluded between the European Union and IDLO in July 2014, as a consequence of the



suspension of project implementation, due to political instability in the country.

Data for the evaluation was collected in two phases. Firstly, a desk study, consisting of a review of all relevant documents on the project, its Theory of Change, the capacity development strategy of the JOSS and the project-generated regular reports, including data analysis of the results of IDLO's internal approach for evaluating training¹. Secondly, a mission to South Sudan, which comprised a series of individual interviews of key informants, on the project and its context; focus group discussions with participants of the English language and law-related trainings (including both the judicial support staff and the judicial associates), the IDLO staff, the European Union Delegation as donor of the project, the leadership and staff of the Judiciary of South Sudan (as the main beneficiaries of the project), court users, relevant NGOs (e.g., the South Sudanese Bar Association) and other donors and development partners, formerly and currently involved in judicial support in South Sudan.

Constraints and limitations were encountered during the evaluation process. The volatile situation in South Sudan made it too dangerous to travel to South Sudan's rural area, therefore, the field phase of the evaluation was restricted to Juba only. In addition, opportunities to interview members of the leadership of the Judiciary were limited. The evaluation team was only able to conduct a brief interview of about 25 minutes with the Chief Justice and the Deputy Chief Justice.

3. FINDINGS - ANSWERS TO THE EVALUATION QUESTIONS (EQS)

EQ 1 - Responsiveness to capacity - related needs of the Judiciary (Based on the OECD DAC criterion Relevance + IDLO criterion Value Added).

The project's intent of combining substantive and language training of judicial staff with the development of the Judiciary's own autonomous training capacity was fully in line with the capacity building strategic plan of the Judiciary of South Sudan. The project emphasized in particular the development of skills related to the management,

administration and trying of cases, and to a lesser extent the strengthening of general administrative skills and general administrative capacity of the Judiciary as a whole. Coordination with other development partners was limited to the exchange of information on activities, but did not extend to coordination at the level of support strategies.

EQ 2 - Responsiveness to the operating context changing conditions (Based on the OECD DAC criterion Relevance)

IDLO reacted flexibly and promptly to the volatile and changing circumstances in South Sudan. A relatively comprehensive risk analysis, in combination with IDLO's good relationship with the Judiciary, helped the project to adequately reprioritize the training-related project components after the outbreak of the crisis. The risk analysis was less comprehensive for the demanding effort to establish a Judicial Training Institute. Neither the original risk analysis nor the post-crisis amendments of the project sufficiently emphasized the organizational and political complexities of capacity building support for the Judiciary under South Sudan's volatile conditions.

EQ 3 - Allocation of human and financial resources (Based on the OECD DAC criterion Efficiency)

IDLO allocated and used staff and financial resources flexibly, in particular in the training-related components of the project, also by exploiting synergies between its interventions to react to ebb and flow in the project's work cycle. Data from IDLO's training monitoring system (TIMS) and the informal exchange among staff members, allowed the project to react promptly to challenges of earlier workshops in subsequent training, e.g., by better clustering the trainees according to language abilities; and by starting to use more national trainers and resource persons.

EQ 4 - Contributions to the establishment of the Judicial Training Institute (JTI) (Based on the OECD DAC criteria Effectiveness and Sustainability)

The project has provided several building blocks for establishing a Judicial Training Institute in South

¹ The approach entails the submission of questionnaires to trainees, during and at the end of the training, to assess participants' perception towards the course, the instructor(s) and their own learning achievements. All data are then collected and stored in the Training Information Management System

(TIMS), a web-based monitoring tool, repository of all the information related to the evaluation of training and the trainees, able to automatically generate course and module reports through basic data aggregation.

Sudan, such as a Training Needs Assessment (TNA) and technical input from Kenyan and Ugandan officials on the structure of the future Institute. However, delays in this part of the project linked to the weak organizational capacity of the Judiciary, and its highly centralized and personalized decision structure, meant that the development of this organizational structure and the design of a curriculum for the Institute could not be completed.

EQ 5 - Contributions to English Language improvements and increased substantive knowledge of the judges and the judicial support staff (Based on the OECD DAC criteria Effectiveness and Sustainability)

Without alternative options for acquiring much needed basic skills and knowledge, the IDLO's trainings responded to a very fundamental need for professional training of young judges and judicial support staff to acquire critical substantive knowledge and skills. In comparison, the effect of the trainings on the command and use of the English language was more limited, in particular for support staff who entered the trainings with a relatively low level of English. Without an enabling environment, allowing participants to practice their new language skills, trainees found it difficult to use English in their daily work around the courts and the Judiciary.

EQ 6 - Access to legal resources for judges, especially in rural areas (Based on the OECD DAC criteria Effectiveness and Sustainability)

Due to project delays and post-crisis changes to the project, the establishment of legal resource centers and the publication and dissemination of new South Sudan Law Reports were eliminated from the project, and thus did not help to increase access to legal resources in the country. IDLO did assist in the development of a Code of Judicial Conduct as the basis of a future bench book on judicial professional behavior. At the time of this evaluation, the corresponding report was still under consideration by the leadership of the Judiciary.

EQ 7 - Increases in the training capacity of the Judiciary (Based on the OECD DAC criterion Impact + IDLO criterion Value Added)

Although the technical inputs for the organizational structure of the future Judicial Training Institute and the training of several judicial officers can be building blocks for future steps, the project has not substantially advanced the actual establishment of

the Judicial Training Institute. At the time of this evaluation, the Judiciary had not yet adopted the project proposals on the structure of the future Institute. Neither a curriculum nor a trainer pool for the Institute had been developed. Progress will require a concerted commitment by external development partners to support not just these processes, but the development of the organizational capacity of the Judiciary, overall.

EQ 8 - Capacity of the Judiciary to administer justice

(Based on the OECD DAC criterion Impact + IDLO criterion Value Added)

The project helped to improve the skills and knowledge of individual staff members of the Judiciary. It also provided important components for the development of a higher- performing Judiciary, although it could not facilitate their up-take by the Judiciary in the interest of increasing its capacity for administering justice across South Sudan. The withdrawal of many former development partners and the austerity conditions during the second half of the project period, exacerbated the difficulties of the Judiciary to utilize and build on the technical contributions of the project, and also meant that the Judiciary lacked much needed resources to address other significant capacity deficiencies to complement the support of the project.

4. CONCLUSIONS

C1: The project “Enhancing the Capacity of the Judiciary of South Sudan” has provided the Judiciary with essential services and resources, in relation to the training of its young judicial officers and support staff and beyond, before and in the wake of the crisis of December 2013. (Based on EQs 1, 2, 4 and 5).

C2: IDLO's unique relationship with leading members of the Judiciary developed through its consistent, reliable and flexible support of JOSS has come to represent a distinct comparative advantage of IDLO for engaging with the Judiciary of South Sudan. (Based on EQs 1, 2, 3, 4, 5 and 6).

C3: The approach and scope of the training were overall well- adapted to the needs and circumstances of the targeted JOSS staff, certain difficulties to appropriately gear each workshop to the specific language abilities of the participants notwithstanding. (Based on EQs 1, 3 and 5).

C4: Complexities and likely challenges of engaging



with the Judiciary on capacity development beyond training had not been sufficiently anticipated and reflected in the design of the project. (Based on EQs 1, 2, 4, 7 and 8).

C5: Training-related project progress, processes and results were comprehensively monitored and supervised on the basis of various corresponding tools and reports. Supervision and monitoring of “wider” capacity building was less well supported by formal mechanisms and tools. (Based on EQs 1, 3 and 4).

C6: The project team reacted flexibly to the changing circumstances for the project in South Sudan. However, risk assessment and risk response for the project were mainly focused on trainings-related activities, at the expense of other components. In particular, all risks related to the complex effort of helping the Judiciary to establish a Judicial Training Institute had not been adequately considered. (Based on EQs 1, 2, 3, 4, 7 and 8).

5. RECOMMENDATIONS

Continuation of JOSS support (based on Conclusions 1, 2, 3 and 4)

In the continuation of capacity development support to JOSS, future programming should link continued training of staff in language and law-related topics with a more deliberate and comprehensive engagement of the Judiciary in “wider” organizational capacity development. This engagement should aim at slowly establishing autonomous capacities within the Judiciary to take on responsibilities for the management and administration of its own training function.

Skills for capacity development “beyond training” (based on Conclusions 2, 4, 5 and 6)

IDLO should consider options for increasing the access of its South Sudanese project team to skills and know-how for capacity development “beyond training”; including for topics such as the development of administrative systems and structures; the strengthening of strategic leadership and strategic planning, organizational development, etc.

Differentiation of training content (based on Conclusions 1, 2, 3 and 6)

In preparation for the next project, IDLO should engage with the Judiciary to develop a slightly more

differentiated catalogue of training options on the basis of the results of the most recent training needs assessment. This catalogue should make at least the distinction between courses geared towards “management and administration of cases”, and “general administration”.

English language (based on Conclusions 1 and 3)

Depending on the needs of specific groups of trainees, IDLO / JOSS should also offer stand-alone English language instruction to trainees with particularly pronounced language training needs, independent from trainings on law-related topics. This modality should become part of a strategy for making language training available to staff on a regular basis.

Facilitating South-South cooperation (based on Conclusions 1, 2, 4, 5 and 6)

IDLO should use resources of the follow-on project in South Sudan to intensify its contacts and cooperation with Kenya and other regional partners who have expressed interest in supporting South Sudan. The goal should be in particular to develop a viable division of labor between IDLO and the regional partners in the facilitation of the organizational development/capacity building process with JOSS.