

IDLO Evaluation Brief

Thematic Evaluation of “IDLO’s support to Kenyan Constitution Implementation Process with a focus on Devolution and Gender Reforms”

June 2017

1. Introduction and Background

This Evaluation Brief presents the summary of the “*Thematic Evaluation of International Development Law Organization’s (IDLO) Support to Kenyan Constitution Implementation Process with a Focus on Devolution and Gender Reforms*”, financed by the Danish International Development Agency (DANIDA).

The 2010 Constitution of the Republic of Kenya marks a historical reform step for the country. IDLO has been supporting the Constitutional reform process since its inception, initially by working with the Committee of Experts in charge of Constitution drafting, and following the adoption of the Constitution, with activities aimed at enhancing the constitutional implementation process (CIP). IDLO's technical assistance program, funded by DANIDA with a cumulative budget of ca. EUR 3,250,000, focused on the following sub-projects:

- i. Supporting Gender Reforms in Kenya's Public Service;
- ii. Supporting the Kenyan Constitution Implementation Process;
- iii. Supporting the Kenyan Constitution Implementation Process / Devolution;
- iv. Supporting the Kenyan Constitution Implementation Process / Access to Gender Justice.

The four projects above, described as the '4P framework'¹, have been assessed as part of one thematic Evaluation, merging the 4 intervention logics in one theory of change.

2. Evaluation Purpose and Methodology

The main purpose of this thematic Evaluation, carried out by independent experts, was to: (i) assess the extent to which the expected results within the '4P framework' were achieved; and (ii) identify lessons learned with a view to guide similar interventions in the future.

The Evaluation was conducted using a “theory-based” approach, where the reconstruction of the Theory of Change (ToC) of each of the projects within the '4P framework' and, subsequently, the overall '4P framework's' ToC, allowed for presenting the overarching

rationale behind the interventions. This led to the establishment of the causal link among activities, outputs, outcomes and impacts. Expected and unexpected results were assessed based on the findings related to the Evaluation questions. Indicators were formulated to gauge the 4P framework's relevance, efficiency and effectiveness, as well as its impact and sustainability prospects. In addition, the Evaluation looked at coordination and coherence within the '4P framework' as well as at IDLO's value added.

Data for this Evaluation was collected through: i) a desk study of relevant documents; ii) a field mission to Kenya with structured/semi-structured interviews and focus group discussions; and iii) on-line surveys. The data was triangulated to ensure its validity.

3. Findings

[Alignment with relevant strategies and responsiveness to the needs of beneficiaries](#)

The Evaluation found that the support IDLO provided within the '4P framework' responded well to the needs of the Judiciary to address issues of gender justice, internal governance, technical and administrative capacity, and professional development, as part of the judicial transformation process. Evaluation findings show that the support provided to the Executive branch of the government addressed gender mainstreaming and supported mechanisms for monitoring gender budgeting and government procurement at national and county levels. IDLO's gender support was aligned with the 2010 Constitution of Kenya and the Kenyan Government Mid-Term Plan II 2013-17. As for IDLO's work on the devolution process, the intervention was aligned with and supported the Constitutional Framework for Devolution, particularly in terms of improving capacities for legislative drafting at county level, as well as fiscal decentralization.

The Evaluation further noted that the focus of IDLO's projects on rights-based governance and respect for human rights fell squarely within DANIDA's strategic approach in Kenya.

¹ “4P” stands for “4 Projects”.

Responsiveness to political, social and security conditions

IDLO responded to a clear need for technical assistance to Kenyan institutions in their reform processes. Such demand-driven approach was praised by the government as well as by judicial counterparts. However, the Evaluation found that the intervention did not take sufficiently into account the specific political, social and security-related risks and challenges in Kenya. The programmatic intervention lacked a well-structured ToC as well as risk assessment and mitigation measures reflecting best practices in international development cooperation.

Allocation of staff and resources to facilitate achievement of project results

The Evaluation determined that IDLO staff and financial resources were to a satisfactory extent adequate to deliver program activities in a timely manner. The allocation of resources was in line with the demand-driven nature of the intervention and ensured a good balance between project growth and available human and financial resources.

As the '4P framework' worked with a large pool of external experts, the Evaluation identified a certain risk of 'spreading resources too thin'. IDLO core staff was overwhelmed with a high number of collateral activities and management of external professionals. On-site interviews with relevant institutions reveal that once external experts completed their assignments, such institutions felt a gap in the provision of highly specialized expertise.

Real time monitoring and reporting has been identified as an area with strong need for improvement. In particular, the Evaluation shows weaknesses in the design of Logframes and reveals that program indicators were mostly quantitative in nature and many times relating to items out of the span of IDLO's control. Changes in project design, although justified, were not reflected in updated Logframes. This made it highly challenging to track project results and make related adjustments where necessary. An analysis of various '4P framework' reports reveals that the established quantitative indicators were not strictly followed. The project's progress/monitoring reports were heavily activity-oriented, with limited or absent elaboration of results of IDLO's assistance.

Strengthened legal, policy and administrative framework for justice administration

The Evaluation found that IDLO's support to the government and the judiciary has contributed to a satisfactory extent to strengthening the legal, policy and administrative frameworks for justice administration, in line with the Constitution. This resulted, *inter alia*, in improved legislative and policy documents, such as the

Freedom of Information Bill, the Marriage Bill, the High Court Administration Act, the Judiciary Gender Policy and the Sexual Harassment Policy. IDLO also supported the Judiciary with organizational reforms and strategic planning, including the Strategic Plans for the Judiciary Training Institute and the Chief Registrar's Office. However, results vary across ministries and offices, depending on local ownership of these documents and political processes. During the Evaluation, some of the respondents mentioned that more follow up on the part of IDLO was needed for various initiatives. However, the Evaluation noted that IDLO leveraged support for some initiatives from other development partners, as in the case of the Bail and Bond Policy Guidelines, where UNDP is following up and expanding the initiative.

Strengthening of policy and administrative frameworks to efficiently address issues of gender justice

The Evaluation found that IDLO provided a tangible contribution towards strengthening policy and administrative frameworks to efficiently address issues of gender justice, sexual harassment in the workplace and gender mainstreaming across judiciary and government institutions, agencies and bodies. Project activities, which included drafting of relevant documents, helped bring gender justice and mainstreaming into the institutional agenda. However, the Evaluation noted that the adoption of legal frameworks drafted with IDLO's support (including the constitutional "two-thirds gender principle"²) is lagging behind and / or delayed. The evaluators observed that gender equality remains a rather undervalued topic, suffering from negative political and societal perceptions, including within key decision-makers in the government and the Judiciary – a situation mostly beyond IDLO's influence. This prevents quick wins in terms of enhancement of gender institutional and policy frameworks and stresses the need for further support in this area.

Improved capacity in legislative drafting and devolution of Public Finance Management

With the support of IDLO, the Kenyan government developed and adopted various guidelines, codes and manuals related to devolution, to be used by national and county level administrations. IDLO's training of county attorneys, support to modelling laws for replication at county level, as well as support to the Ministry of Devolution and Planning (MDP), brought positive outcomes in terms of increased ability of national and county administrations to draft better quality legislation and policies.

IDLO's support to the area of Public Finance Management (PFM) was limited and mainly operationalized through embedding experts in the National Treasury and the

² Article 27(8) of the Constitution calls for the state to put in place legislative and other measures to implement the principle that no more

than two-thirds of the members of elective or appointed bodies shall be of the same sex.

Council of Governors, respectively. These professionals were engaged in drafting new laws and plans, and supported the coordination of intergovernmental fiscal relations. However, serious challenges to a successful fiscal decentralization in Kenya remain prevalent, including limited capacity of both national and county level administrations to understand and implement PFM measures in line with Constitution, as well as political and economic factors.

Awareness-raising on Constitutional Implementation Process (CIP)

IDLO's awareness-raising activities on the need to improve CIP-related legislative/policy drafting and internal processes have been aimed mostly at governmental institutions and the Judiciary. The evaluation noted the limited involvement of non-state actors in the process - something that could have enhanced possible impact. Although some level of civil society engagement was recorded as part of the Experts' work on legislative processes (i.e. some of the Experts involved were coming from civil society)³ there was no systematic analysis of outcomes of such activities, which created gaps in understanding how informed the key non-state actors are on CIP.

Enhanced capacity of the Judiciary to deliver gender justice

The Evaluation shows that IDLO's activities in support of the Judiciary on gender justice have contributed to the establishment of new systems for the central registration of cases, including women's claims to land in succession cases. IDLO also positively contributed to the use of 'e-diaries', introducing the possibility to verify the location of land plots in succession claims. This fostered a systematization of judicial work, leading to increased access to justice for women. In parallel, efforts to strengthen gender justice competencies within the Judiciary show potential for further positive results. The Evaluation established that these activities, if implemented on a continuous basis, may contribute more broadly to an enhanced delivery of gender justice in Kenya.

Improved delivery, implementation, and awareness regarding devolution

The Evaluation shows that IDLO's support contributed to strengthening the knowledge and capacities of targeted national and county governments to draft legislation and improve their PFM processes. It can be assumed that, in the long run, improved legislation and PFM mechanisms⁴ will bring improved delivery of devolved governance. However, there was limited evidence pointing at an increase in the quality of local service delivery as a result of IDLO's intervention, or to an increased awareness of

civil society organizations vis-à-vis the devolution process and more broadly, the justice system.

4. Conclusions

Relevance

The Evaluation found that IDLO's interventions within the '4P framework' have been relevant, as they were aligned with key elements of the Kenyan Constitution addressing legislative drafting, fiscal decentralization, mainstreaming gender, while also assisting with improvement of internal mechanisms and systems to enhance delivery of justice for citizens. They contributed to the CIP and development of policies and legislation, with a focus on support to the Judiciary, the devolution process and gender mainstreaming, as articulated in the Judiciary Transformation Framework and in the National Capacity Development Framework of the Government of Kenya. The projects were also aligned with the Denmark-Kenya Partnership Policy 2015-2020 and IDLO's Strategic Plan 2013-2016.

Efficiency

Implementation of projects within the '4P framework' is assessed as 'relatively efficient' in terms of human and financial resources used. The demand-driven strategy used by IDLO worked well in terms of ownership and appreciation of the assistance. However, the Evaluation notes that risk assessment and mitigation strategies were missing, and Logframes were not systematically updated (as per changes or additions to activities and related results) or used for project implementation management and monitoring of results.

The Evaluation notes that project budgets were generally sufficient but project implementation encountered delays related predominantly to external factors, such as lengthy domestic procedures for the approval of documents. Many of the deliverables related to gender mainstreaming could not be fully implemented due to political or social factors.

The core project team is lean with a large pool of external experts, which is a viable set-up and was praised by the counterparts as a good management practice. On the other hand, the Evaluation notes that such an approach to management can be demanding and poses a risk of spreading the project team's human resources too thin.

Effectiveness

IDLO's support to the government and the judiciary has contributed to strengthening the legal, policy and administrative frameworks for justice administration in line with the Constitution. It has also increased the knowledge of various stakeholders on such concepts.

³ E.g. In the framework of joint publications with the Katiba Institute

⁴ E.g.: Improved County Finance Bills, Country Disbursement Schedule for 2016/2017, and Budget Policy Statements for 2016/2017

However, the Evaluation concludes that there was limited engagement of civil society and the wider public.

IDLO's initiatives helped bring gender justice and gender mainstreaming into the domestic agenda, initiating discussions on issues of sexual harassment in the workplace, gender policies, gender mainstreaming and justice for women. Nevertheless, outcomes in these areas are limited due to the low level of political and public ownership, as well as awareness, of gender equality issues.

IDLO's support to devolution process brought positive results in the increased ability of targeted national and county administrations to draft better quality legislation and policies. However, IDLO's contribution to the strengthening of PFM devolution mechanisms was limited.

Impact prospects

Results achieved within the '4P framework' are likely to have positive impact prospects, contributing to an increased delivery of justice, as well as efficient and effective implementation of the Kenyan Constitution. This however, is conditional upon local support for and ownership of the various initiatives by the relevant decisions-makers. It shall be noted that while CIP has been formally realized to a greater degree, significant challenges remain for its substantial materialization. Shortcomings are attributable to political culture, self-interest, institutional interest, capacity constraints, constitutional fatigue and political blockages to the uptake of technical assistance from expert bodies.

Sustainability prospects

Evaluation results show mixed sustainability prospects. Although there is room for further development of the constitutional framework and expansion of relevant programs and approaches, there are clear political, institutional and financial constraints at the national and county levels.

At the operational level, the manuals, curricula, guides and assessment instruments developed within the '4P framework' provide a good basis for further capacity building and quality assurance. However, there is an open question of knowledge sustainability, bearing in mind that embedded experts are engaged in institutions for limited periods, and once they leave, many institutions have reported a gap in capacity.

Coordination and Coherence

Coordination with local stakeholders, the donor and other development partners has been one of the strongest aspects of IDLO's presence in Kenya. The demand-driven nature of the '4P framework' enabled IDLO to contribute to the important reform process. At the same time, the Evaluation points out that the coherence of IDLO's assistance within the '4P framework' has been somewhat weakened by the ad-hoc support to various initiatives. This

is demonstrated by a lack of consistency across programming documents and subsequent reporting. Externally, IDLO has maintained its vision of supporting the CIP, which was appreciated by partners.

IDLO Value Added

The Evaluation points out that, unlike many other development partners, IDLO can respond flexibly and quickly to requests for expertise from various institutions, in different thematic areas. IDLO also pioneered some new initiatives which leveraged support from other development partners (e.g. the Bail and Bond Policy which was started by IDLO and is now followed-up and expanded by UNDP).

5. Recommendations

Strategic and Programming Recommendations

- Create Dissemination & Advocacy Strategies to maximize the effectiveness and potential impact of policies, legislation, tools and mechanisms developed through the intervention;
- Continue efforts to mainstream gender across the government and the judiciary, as there are still gaps in ownership of the gender agenda at various levels;
- Continue supporting efforts for devolution through direct Technical Assistance to counties, especially in relation to strengthening the PFM framework, where results were limited;
- Engage in systematic fostering of public participation processes to strengthen the bottom-up dimension and consequently enhance country-wide ownership, impact and sustainability;
- Engage in a systematic monitoring of legal frameworks concerning civil society organizations, with a view to identify possible challenges and bottlenecks and ensure viability and effectiveness of civil society participation;
- Develop a Knowledge Management and Retention Plan for capacity building activities with Government and Judiciary counterparts to contain the potential capacity gap after the departure of external experts.

Operational Recommendations

- Establish sound monitoring framework and ensure continued and structured monitoring practices with standardized timings for reflection on results, lessons learned and challenges;
- Regularly document good practices and lessons learned to inform relevant policy measures and projects;

- Establish and continually update Risk Analysis and Mitigation Strategies for each area of intervention;
- Develop a Sustainability Plan for maintaining project results.